

**CASE**

**NUMBER:**

99-218



Paul E. Patton, Governor

Ronald B. McCloud, Secretary  
Public Protection and  
Regulation Cabinet

Thomas M. Dorman  
Executive Director  
Public Service Commission

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
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Martin J. Huelsmann  
Chairman

Edward J. Holmes  
Vice Chairman

Gary W. Gillis  
Commissioner

February 2, 2001

**VIA CERTIFIED MAIL**

Honorable C. Kent Hatfield  
Counsel for ICG Telecom Group, Inc.  
Middleton & Reutlinger  
2500 Brown & Williamson Tower  
Louisville, KY. 40202 3410

Honorable Creighton E. Mershon, Sr.  
General Counsel  
Kentucky BellSouth Telecommunications, Inc.  
P.O. Box 32410  
Louisville, KY. 40232

RE: A PETITION BY ICG TELECOM GROUP, INC. FOR ARBITRATION  
OF AN INTERCONNECTION AGREEMENT WITH BELL SOUTH  
TELECOMMUNICATIONS, INC. PURSUANT TO SECTION 252(b) OF  
THE TELECOMMUNICATIONS ACT OF 1996  
Case No. 99-218

Dear Sirs:

On November 27, 2000, the Commission entered an Order in this proceeding requiring the parties to submit for Commission review their executed interconnection agreement. The agreement was to comply with the mandate contained in the November 27, 2000 Order and in the March 2, 2000 Order. This interconnection agreement was due no later than December 17, 2000. When it was not forthcoming, Commission counsel telephoned regarding the failure to file this document.

To date, such signed interconnection agreement has not been filed. Nor has any explanation regarding the failure to file this document been submitted. Accordingly, I ask that you submit the signed interconnection agreement within 10 days of receipt of this letter. If you do not comply with this request Commission staff will recommend enforcement action.

Sincerely,

Thomas M. Dorman  
Executive Director

cc: All parties of record





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

November 27, 2000

To: All parties of record

RE: Case No. 1999-218

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

Sincerely,

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

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

Honorable C. Kent Hatfield  
Honorable Henry S. Alford  
Counsel for ICG Telecom Group, Inc.  
Middleton & Reutlinger  
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Louisville, KY 40202 3410

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Mary Jo Peed  
Stuart Hudnall, & Shelley Walls  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, NE  
Atlanta, GA 30375

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

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                       |   |          |
|---------------------------------------|---|----------|
| A PETITION BY ICG TELECOM GROUP, INC. | ) |          |
| FOR ARBITRATION OF AN INTERCONNECTION | ) |          |
| AGREEMENT WITH BELLSOUTH              | ) | CASE NO. |
| TELECOMMUNICATIONS, INC. PURSUANT TO  | ) | 99-218   |
| SECTION 252(b) OF THE                 | ) |          |
| TELECOMMUNICATIONS ACT OF 1996        | ) |          |

O R D E R

On March 2, 2000, the Commission entered an Order regarding this arbitration proceeding between ICG Telecom Group, Inc. ("ICG") and BellSouth Telecommunications, Inc. ("BellSouth"). Most issues were resolved by that Order but there are certain issues regarding which the parties were to submit additional information. Both parties have filed comments.

One such issue was the manner in which the parties would track the minutes of use for ISP-bound calls. This tracking will enable the parties to "true-up" the compensation consistent with the FCC's decision. The Commission has been advised that the parties have, after further negotiations, reached a region-wide agreement on reciprocal compensation for ISP-bound traffic. Accordingly, the requirement for developing a true-up mechanism is moot.

BellSouth was also ordered to file information regarding a reasonable cost-based fee for combining elements requested by ICG which are not currently combined in the BellSouth network. The Commission ordered this combining fee to be applicable to requests for enhanced extended links ("EELs"). The EEL must be available to ICG for the sum of the established total element long run incremental cost ("TELRIC") rates for

an unbundled loop, a cross connect of appropriate capacity, and unbundled inter office dedicated transport. The parties have also reached agreement on pricing issues for EELs including the combining fee. Thus, it is unnecessary for the Commission to take further action on these rates at this time.

The parties were also ordered to include in their agreement a binding forecast provision regarding the delivery of traffic over end office trunks to ICG's switch. This is the only issue not resolved by the parties. ICG and BellSouth have requested the Commission to draft the contract language based on the parties' separate proposals. The Commission believes that the language contained below is the appropriate language to be included in the parties' agreement.

3.6.5 Binding forecast:

3.6.5.1 In addition to, and not in lieu of, non-binding forecasts, ICG may provide to BellSouth a binding forecast of the trunks and trunk ports that BellSouth will need to interconnect with ICG in order to terminate traffic to ICG. The due date contained in the binding forecast shall be no less than three months from the date of the binding forecast.

3.6.5.2 BellSouth shall order the quantity of trunks for ICG set forth in the binding forecast. BellSouth shall request due dates on the trunk orders to coincide with the due dates specified in the binding forecast, and the Parties shall provision the ordered trunks by the due dates.

- 3.6.5.3 BellSouth may charge ICG when the capacity specified in the binding forecast remains unused and there is no customer available to purchase the unused capacity.
- 3.6.5.4 For the Binding Forecast specified in this section, in the event that ICG is unable to fill the capacity it requested, BellSouth shall mitigate any capacity shortfalls by offsetting the amount due from ICG if BellSouth uses capacity for itself or another customer.
- 3.6.5.5 Any trunks installed as a result of the binding forecast, must remain in service for a period of at least 180 days.
- 3.6.5.6 The Parties agree that each forecast provided under this section shall be deemed "Proprietary Information" under Section 9 of the General Terms and Conditions of this Agreement.

Having reviewed the parties' filings and having otherwise been sufficiently advised, the Commission HEREBY ORDERS that, within 20 days of the date of this Order, ICG and BellSouth shall submit their signed interconnection agreement complying with the mandates contained herein and in the March 2, 2000 Order.

Done at Frankfort, Kentucky, this 27th day of November, 2000.

By the Commission

ATTEST:

  
Executive Director

- 3.6.5.3 BellSouth may charge ICG when the capacity specified in the binding forecast remains unused and there is no customer available to purchase the unused capacity.
- 3.6.5.4 For the Binding Forecast specified in this section, in the event that ICG is unable to fill the capacity it requested, BellSouth shall mitigate any capacity shortfalls by offsetting the amount due from ICG if BellSouth uses capacity for itself or another customer.
- 3.6.5.5 Any trunks installed as a result of the binding forecast, must remain in service for a period of at least 180 days.
- 3.6.5.6 The Parties agree that each forecast provided under this section shall be deemed "Proprietary Information" under Section 9 of the General Terms and Conditions of this Agreement.

Having reviewed the parties' filings and having otherwise been sufficiently advised, the Commission HEREBY ORDERS that, within 20 days of the date of this Order, ICG and BellSouth shall submit their signed interconnection agreement complying with the mandates contained herein and in the March 2, 2000 Order.

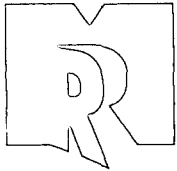
Done at Frankfort, Kentucky, this 27th day of November, 2000.

By the Commission

ATTEST:

  
Executive Director





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40202

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C. Kent Hatfield

khatfield@middreut.com

RECEIVED

SEP 08 2000

PUBLIC SERVICE  
COMMISSION

September 6, 2000

Mr. Tom Dorman  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

**RE: ICG Telecom Group, Inc. ("ICG") Petition for Arbitration  
of an Interconnection Agreement with BellSouth  
Telecommunications, Inc. ("BellSouth"); Case No. 99-218**

Dear Mr. Dorman:

This letter is to advise the Commission as to unresolved matters between ICG and BellSouth resulting from the Commission's March 2, 2000 arbitration order in the above-captioned matter. In its March 2<sup>nd</sup> Order, the Commission ordered the parties to "track the minutes of use for ISP-bound calls so that a retroactive "true-up" to the level of compensation ultimately adopted by the FCC may occur." Parties were ordered to submit information to the Commission regarding the manner in which they will track ISP-bound traffic. This will advise that the parties after further negotiations, have reached a region-wide agreement on reciprocal compensation for ISP-bound traffic and, therefore, the need for a true-up has become moot.

Secondly, the parties also have reached agreement on pricing for Enhanced Extended Links ("EELs"). When the parties file their interconnection agreement, it will contain the agreed provisions for handling of reciprocal compensation and the pricing of EELs.

Finally, the parties have not reached agreement on the language for a binding forecast provision which the Commission required in its order be included in the interconnection agreement. In early April, 2000, each party filed its proposed binding forecast language with the Commission. The binding forecast issue is now the sole remaining issue for decision by the Commission. The parties will file their

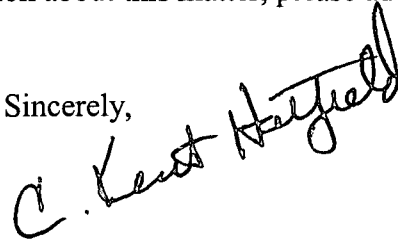
MIDDLETON  
REUTLINGER

Mr. Tom Dorman  
September 6, 2000  
Page 2

interconnection agreement following the Commission's decision on the binding forecast issue. Counsel for BellSouth has reviewed and concurs with this report to the Commission.

Should the Commission have any question about this matter, please advise.  
Thank you for your assistance.

Sincerely,



C. Kent Hatfield  
Counsel for ICG Telecom Group, Inc.

CKH:jms

cc: Amy E. Dougherty, Esq.  
All parties of record

# MIDDLETON & REUTLINGER

founded in 1854

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April 20, 2000

\*ALSO ADMITTED INDIANA  
\*\*LICENSED TO PRACTICE BEFORE  
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†ADMITTED IN INDIANA ONLY

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

RECEIVED  
APR 21 2000  
PUBLIC SERVICE  
COMMISSION

RE: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996  
PSC 99-218

Dear Mr. Huelsmann:

Pursuant to the Commission's March 2, 2000 Order in this matter, BellSouth Telecommunications, Inc. ("BellSouth") filed with the Commission on April 3, 2000 a cost-study for its proposed "combining" fee for combining previously uncombined UNEs. ICG Telecom Group, Inc. ("ICG") also filed with the Commission on April 3, 2000 ICG's proposal for resolving unresolved issues. At page 6 of that response, ICG requested the Commission allow ICG until April 17 to respond to the cost-study filed by BellSouth. Due to scheduling conflicts and unavailability of key personnel, ICG has been unable to prepare a response to the BellSouth filing at this time. ICG respectfully requests an additional two-week period, concluding May 1, 2000 in which to respond to the BellSouth cost-study filed herein.

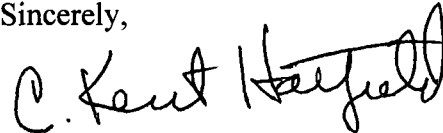
ICG does not believe that granting this additional time will prejudice any party to the proceeding. Having ICG's response in the record would, in our view, afford the Commission a better basis on which to resolve this outstanding matter.

Since there is not a Commission order which requires a response by ICG to the BellSouth cost-study by any certain date, ICG has not filed a formal motion seeking extension of a previously-set Commission date. ICG has instead simply requested the Commission to afford

Mr. Martin J. Huelsmann  
April 20, 2000  
Page 2

this additional time for response. To the extent the Commission believes a formal motion is required in this matter, ICG respectfully requests the Commission to treat this letter as a formal motion. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Kent Hatfield". The signature is written in a cursive style with a large, sweeping initial "C".

C. Kent Hatfield  
Counsel for ICG Telecom Group, Inc.

CKH:jms

cc: Hon. Amy E. Dougherty, Esq.  
All Parties of Record

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

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

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

502 582-8219  
Fax 502 582-1573

Creighton.Mershon@BellSouth.com

April 14, 2000

RECEIVED  
APR 17 2000  
PUBLIC SERVICE  
COMMISSION

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

Re: Petition by ICG Telecom Group, Inc. for Arbitration of  
an Interconnection Agreement with BellSouth  
Telecommunications, Inc. pursuant to Section 252(b) of  
the Telecommunications Act of 1996  
PSC 99-218

Dear Mr. Huelsmann:

In ICG's submission to the Kentucky Commission on April 3, 2000, regarding the contract language for BellSouth's provision of Enhanced Extended Links ("EELs") to ICG, ICG states that: "Although the Order does not authorize imposition of a non-recurring charge for currently combined EELs, BellSouth nevertheless attempts to insert such a non-recurring charge into the contract. Moreover, despite ICG's repeated requests for BellSouth to identify any alleged costs associated with providing already combined EELs, BellSouth has provided nothing." BellSouth finds ICG's assertion puzzling.


The Kentucky Commission's Order states, at page 6, that the total price charged by BellSouth for the EEL "should be the SUM of the established TELRIC rates for: (1) an unbundled loop; (2) a cross-connect of appropriate capacity; and (3) unbundled interoffice dedicated transport." The Kentucky Commission has, in previous dockets, established both recurring and non-recurring TELRIC rates for these unbundled network elements and therefore, if the Commission had intended on eliminating the non-recurring rate for the currently combined EEL, it would have expressly done so.

Mr. Martin J. Huelsmann, Jr.  
April 14, 2000  
Page 2

However, BellSouth put aside the non-recurring rate available to it in the Commission's Order and proposed in its submission on April 3, 2000, that the Commission adopt an interim non-recurring rate for the currently combined EEL. The interim non-recurring rate proposed was that ordered by the Georgia Public Service Commission in its combinations docket, Docket No. 10692-U, issued February 3, 2000. The basis for this proposal was that BellSouth's experience in the Georgia docket found that the cost based non-recurring charge for the currently combined EEL was less than the sum of the TELRIC rates established by the various state commissions. Therefore, BellSouth felt it reasonable to propose an interim rate until the Kentucky Commission orders a permanent rate.

Lastly, ICG stated in its submission on April 3, 2000, that it had repeatedly requested that BellSouth identify any costs associated with providing already combined EELs. BellSouth could find no record of any request in any interrogatory or transcript and could not recall any such request being made in negotiation. Further, the interim rate proposed by BellSouth, as stated previously, was that ordered by the Georgia Public Service Commission. ICG was a party of record to that proceeding and was represented by counsel at the hearing. The Georgia docket and hearing devoted a substantial period of time to the costs associated with the provision of currently combined EELs to CLECs such as ICG. BellSouth has been responsive and creative in its contract proposal. BellSouth's best and final offer should be adopted.

Respectfully submitted,

  
Creighton E. Mershon, Sr.

cc: Parties of Record

205551

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*founded in 1854*

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U.S. PATENT & TRADEMARK OFFICE  
†ADMITTED IN INDIANA ONLY

April 3, 2000

NOISSION  
COMMISSION  
PUBLIC SERVICE

APR 03 2000

RECEIVED

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

Re: ICG Telecom Group, Inc. ("ICG") Petition for Arbitration of an Interconnection Agreement with  
BellSouth Telecommunications, Inc. ("BellSouth");  
Case No. 99-218

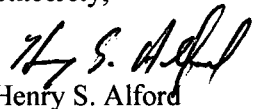
Dear Mr. Huelsmann:

Pursuant to the Commission's March 2, 2000 Order, the parties' arbitrated interconnection agreement is due for filing on April 3, 2000 for Commission approval. Although agreeing on most conforming language, the parties disagree on conforming language for two provisions. The provisions concern binding forecasts and Enhanced Extended Links ("EELs").

Below, ICG submits and files an original and 12 copies of its proposals for the unresolved issues. ICG also explains why its proposal better conforms to the Commission's Order than BellSouth's proposals. ICG sets out BellSouth's contrary language in redline format and describes BellSouth's objections, to the extent ICG understands them.

Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via the enclosed self-addressed, stamped envelope.

Sincerely,



Henry S. Alford  
Counsel for ICG Telecommunications, Inc.

HSA:jms

Enc.

RECEIVED

BINDING FORECASTS

APR 03 2000

PROPOSED LANGUAGE

PUBLIC SERVICE  
COMMISSION

- 3.6.5.1 In addition to, and not in lieu of, non-binding forecasts, ICG may provide to BellSouth a binding forecast of the trunks and switchports that BellSouth will need to interconnect with ICG in order to terminate traffic to ICG. ~~Unless otherwise agreed, a binding forecast may not be requested for an existing trunkgroup that is underutilized as defined in this section or for exhausted BellSouth switch locations. ICG shall provide to BellSouth sufficient justification for the quantity of trunks contained within the binding forecast. The due date contained in the binding forecast shall be no less than three months~~ three months, unless otherwise agreed to, from the date of the binding forecast. Once the binding forecast is submitted to BellSouth, ICG agrees to make no changes to said forecast. BellSouth.
- 3.6.5.2 BellSouth shall provide the total amount of requested trunks from either tandem or end offices depending on trunk and facilities availability.
- 3.6.5.3 A binding forecast shall not replace the ASR process of ordering trunks and BellSouth shall order the quantity of trunks from ICG set forth in the binding forecast. BellSouth shall request due dates on the trunk orders to coincide with the due dates specified in the binding forecast, and the Parties shall provision the ordered trunks by the due date.
- ~~3.6.5.4 To recover the cost associated with assuring that the quantity of trunk port terminations needed to meet the binding forecast are available on the agreed upon due date, ICG shall pay to BellSouth ICG shall pay \$305.00 for the first DS1 trunk port and \$152.50 for each additional DS1 trunk port forecasted in a trunk group (i.e. between an A to Z location or BellSouth switch location to an ICG switch location).~~
- ~~3.6.5.5~~ 3.6.5.4 If, within ~~90~~ 180 days of installation of the trunks, ~~85~~ 60 percent of the capacity of the trunks is not being utilized, ICG will pay BellSouth a percentage of the total monthly recurring trunk and facility charges from BellSouth's tariffs or the Parties' Interconnection Agreement, whichever is lower. for the percentage of the trunks' capacity that is not being utilized.
- ~~3.6.5.6~~ 3.6.5.5 If, within 180 days of installation of the trunks, the trunks are not being utilized to the capacity set forth above, the excess of the trunks may, after proper notice to ICG pursuant to the TSR process, be disconnected by BellSouth.
- 3.6.5.6 Utilization on BellSouth reciprocal interconnection trunk groups associated with a binding forecast shall be measured monthly and shall be measured at the time



consistent busy hour. The charges as a result of underutilization as described above ~~in~~ the preceding section shall apply monthly.

~~3.6.5.8~~

3.6.5.7 Except in the instance of underutilization by ICG as described in section 3.6.5.5, neither Party shall charge the other for ~~nonrecurring trunk and recurring, if applicable, trunk~~ charges associated with a binding forecast.

3.6.5.8 Any trunks installed, as a result of the binding forecast, must remain in service for a period of at least 180 days.

### ICG's PROPOSED LANGUAGE BETTER CONFORMS WITH THE COMMISSION'S ORDER

In 3.6.5.1, BellSouth proposes, with no justification in the Commission's Order or elsewhere, to carve out two exemptions from ICG's right to a binding forecast. First, BellSouth would exempt any BellSouth switch locations which are "exhausted" at the time of the forecast. Accordingly, BellSouth wants to prolong indefinitely its failure to provide nondiscriminatory interconnection at such locations. BellSouth's position violates Section 251 of the Telecommunications Act and, by creating an exception that swallows the rule, flouts this Commission's order that the binding forecast option be available to ICG. The Commission held (Order at page 8):

The threshold question here is whether the commission has jurisdiction to require a binding forecast provision in a 47 U.S.C. §252 arbitration as requested by ICG. BellSouth is correct in pointing out that there is not a specific provision of 47 U.S.C. §251 which requires ILECs to enter binding forecasts. The relevant inquiry, however, is not whether there is any direct reference to binding forecast in 47 USC §251, but whether requiring binding forecasts is consistent with the general interconnection obligations of ILECs as set forth in that section of the Act.

Pursuant to 47 U.S.C. §251(c)(2)(c), incumbent LECs are required to provide interconnection with requesting carriers that is at least equal in quality to that provided by the local exchange carrier to itself. ICG's binding forecast proposal clearly relates to interconnection and is designed to ensure that such interconnection is provided on a non-discriminatory basis. ICG's proposal, therefore, falls well within the parameters of 47 U.S.C. §251 and the Commission's authority pursuant to that section. (Emphasis added)

Under BellSouth's proposed "already exhausted switch locations" exemption to binding forecasts, BellSouth could, for example, indefinitely deny ICG interconnection to an important competitive marketplace where BellSouth maintains an "exhausted" switch. Simultaneously, BellSouth could allocate capital required to provide non-discriminatory

interconnection to the allegedly "exhausted" switch, to another purpose which pursues its own business initiatives in other switch areas, other states, or other countries. This anticompetitive conduct should not be allowed. The Commission should not enable BellSouth to eviscerate, in the circumstances it is most necessary, the binding forecast option.

In addition to the "already exhausted switch location" exemption, BellSouth tries to impose a second exemption to binding forecasts. The second exemption would exclude binding forecasts "for an existing trunk group that is underutilized as defined in this agreement." First, there is no basis to impose such an exemption. Second, the inability of the parties to agree on the definition of "underutilization" (See discussion below concerning section 3.6.5.5) further underscores the impropriety of such an exemption. Indeed, if BellSouth's proffered underutilization percentage, below 85 percent, were the standard before binding forecasts could be submitted by ICG for a trunk group, the forecasting process would be unworkable and severely obstruct ICG's ability to plan its business. BellSouth certainly does not operate its network on such a level of efficiency - 85 percent. Its attempt to impose that standard on ICG's right to a binding forecast reflects again BellSouth's intent to deny ICG interconnection that is at least equal in quality to its own standards.

BellSouth also proposes that it be required to satisfy the binding forecast in "no less than" three months, and not within any specific time beyond three months. This is another attempt by BellSouth to circumvent the Commission's Order that binding forecasts be an option. Accordingly, the Commission should order that the Parties include ICG's language requiring a reasonable due date of three months, unless the Parties agree otherwise.

Further, with respect to ordering a binding forecast, BellSouth demands ICG provide BellSouth "sufficient justification for the quantity" forecasted. First, there is no basis for requiring "sufficient justification" in the judgment of BellSouth. At its essence, the binding forecast process boils down to ICG ordering the capacity it needs. BellSouth must provide, at no risk to itself, the capacity and is ensured against any ICG mistakes with financial reimbursement.

Further, in connection with 3.6.5.1, BellSouth's demand that ICG be prohibited from making changes after it has submitted its binding forecast should be denied. There is no reason asserted by BellSouth to justify this extraordinary measure aimed at destroying ICG's planning flexibility. As long as any delay caused by a forecast change by ICG is added to the associated due date for BellSouth to perform, ICG should not be barred from making forecast changes.

Finally, in 3.6.5.1, the contract language should clarify that switchports are part of the binding forecast obligation. Very often, it is the switchports which are unavailable to competing interconnectors.

In 3.6.5.4, BellSouth would impose a charge "associated with assuring the quantity of trunkport terminations to meet the binding forecast are available", \$305 for the first trunk group and \$152.50 for each additional trunk group. Despite repeated requests by ICG for BellSouth to identify the alleged costs "associated with assuring the quantity of trunkport terminations" and how such costs were measured to support the proposed rates, BellSouth has provided nothing.

The cost recovery compensation for BellSouth in connection with binding forecasts is an proportionate usage payment in the event the trunks subject to the forecast are underutilized. These proposed surtaxes are yet another attempt by BellSouth to undermine the binding forecast process.

In 3.6.5.5, BellSouth would require ICG to make payments for trunk underutilization. BellSouth would define " underutilization" as less than 85 percent of capacity. There is no basis for BellSouth to impose this high level of usage. Indeed, when ICG asked whether BellSouth meets this usage level in its own network, BellSouth responded only that 85 percent is a "goal". Accordingly, an industry standard percentage of utilization, such as the 60 percent cited by ICG, should be the trigger for penalty payments to BellSouth for underutilization, not a percentage BellSouth sets as an unmet goal for its own network. Finally, with respect to 3.6.5.5, ICG should be charged the rates in the interconnection agreement, if lower than a tariffed rate, to compensate BellSouth in the event of any underutilization. The contract rate more accurately reflects the parties' economic pricing relationship.

Further, this unfounded 85 percent capacity threshold would bar ICG from opting for a binding forecast in connection with any trunk group not reaching the 85 percent. According to BellSouth's proposal in 3.6.5.1, "unless otherwise agreed, a binding forecast may not be requested for an existing trunk group that is underutilized as defined in this [3.6.5.5] section." This is yet another example of BellSouth's effort to do indirectly what it has failed to do directly – evade the binding forecast process. Also noteworthy is that under 3.6.5.6, discussed below, BellSouth would disconnect trunks not below 85 percent use.

Finally, with respect to 3.6.5.5, BellSouth purports to give ICG only 90 days to bring its usage to the level required for avoiding underutilization payments. This amount of time should be 180 days, a more reasonable time based on business realities and the volatility of ICG's traffic profile. Further, 90 days is inconsistent with the 180 days in BellSouth's language for 3.6.5.9 which states that any trunks installed as a result of the binding forecast must remain in service for a period of at least 180 days.

In 3.6.5.6, BellSouth wants the right to disconnect trunks ordered pursuant to the binding forecast in the event the trunks are being underutilized as measured by the Parties' agreed upon trunk utilization standard in 3.6.5.5. ICG proposes that BellSouth be required, prior to any disconnection, to notify ICG pursuant to the TSR process. Such notification is the minimal process required to avoid the disastrous consequences associated with disconnecting trunks that are not underutilized or otherwise disconnecting the wrong trunks. The notification requested by ICG is a minimal burden compared to the consequences of erroneous disconnection.

EELs

ICG's PROPOSED LANGUAGE BETTER CONFORMS WITH THE  
COMMISSION'S ORDER

1.9.4 The total price charged by BellSouth for the Currently Combined EEL and the new, not Currently Combined EELs described in section 1.9.3 shall be precisely the sum of the Commission based TELRIC rates for : (1) an unbundled loop, (2) a cross connect of appropriate capacity, and (3) unbundled interoffice dedicated transport. ~~These at the recurring rates rates are set forth in Exhibit C.~~ In addition to the recurring rates, ICG shall pay the non-recurring interim rates set forth in Exhibit C for the Currently Combined EEL until such time as the Kentucky Commission established permanent non-recurring rates for said EELs. ~~The non-recurring interim rates paid by ICG shall be subject to true up after the permanent rates are established by the Commission.~~ In addition to the recurring rates, ICG shall pay the non-recurring rates set forth in Exhibit C for the new, not Currently Combined EELs.

#### ICG's PROPOSED LANGUAGE BETTER CONFORMS WITH THE COMMISSION'S ORDER

The Commission's Order (page 6) states: "The EEL must be available to ICG at the TELRIC-based UNE prices. Specifically, the total price charged by BellSouth for the EEL should be the sum of the established TELRIC rates for: (1) an unbundled loop; (2) a cross connect of appropriate capacity; and (3) unbundled interoffice dedicated transport." There is no justification for BellSouth to refuse to insert in 1.9.4 the Commission's clear description of the elements which add up to the "total price" of an EEL. ICG does not disagree with a reference to such rates being reflected in Exhibit C of the contract. However, BellSouth's attempt to leave the door open for an attempt to blur the pricing issue should be rejected. The contract language should mirror the Commission's unambiguous words in the Order.

Although the Order does not authorize imposition of a non-recurring charge for currently combined EELs, BellSouth nevertheless attempts to insert such a non-recurring charge into the contract. Moreover, despite ICG's repeated requests for BellSouth to identify any alleged costs associated with providing already combined EELs, BellSouth has provided nothing. The Commission should reject BellSouth's unauthorized and unsupported proposal to charge non-recurring rates associated with providing an already combined EEL.

In its Order (page 6), the Commission held that : "BellSouth should combine previously uncombined elements for a reasonable cost-based fee in situations where those elements currently are not combined in the BellSouth network." The Commission also ordered (page 10): "Within 30 days of the date of this Order, BellSouth shall file its proposed combining fee [for elements currently not combined] and cost support papers." ICG does not object to contract containing language providing for a non-recurring charge for combining elements not currently combined. However, ICG withholds its agreement to such language and its reference therein by BellSouth to rates set forth in Exhibit C until ICG has had an opportunity to review the rates and BellSouth's support for asserting such rates are "reasonable" and "cost-based." Accordingly, ICG requests until April 17 to respond to BellSouth's proposal regarding a combining fee and its associated cost support papers.

Based on the foregoing, ICG requests that the Commission order that its submitted language be inserted into the final interconnection agreement.

cc: Mary Jo Peed  
BSO local Kentucky counsel  
Bruce Holdridge  
Gwen Rowling  
Adrienne Leonard  
Mark Long  
Al Kramer  
Jeff Binder

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

502 582-8219  
Fax 502 582-1573

April 3, 2000

**RECEIVED**

APR 03 2000

PUBLIC SERVICE  
COMMISSION

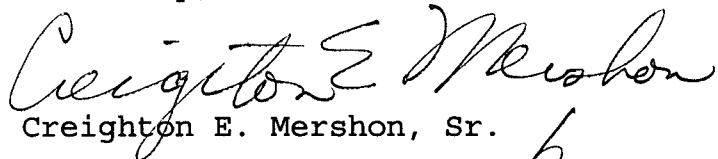
Mr. Martin J. Huelsmann, Jr.  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: Petition by ICG Telecom Group, Inc. for Arbitration of  
an Interconnection Agreement with BellSouth  
Telecommunications, Inc. pursuant to Section 252(b) of  
the Telecommunications Act of 1996  
PSC 99-218

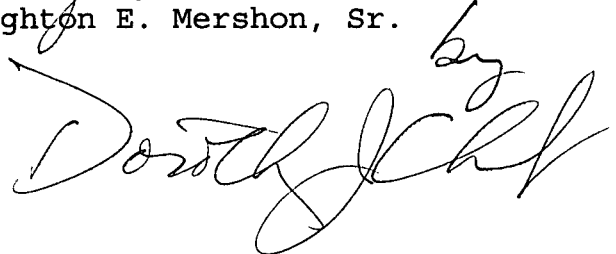
Dear Mr. Huelsmann:

Enclosed for filing in the above-captioned case are the  
original and ten (10) copies of Response of BellSouth to  
Arbitration Order. The attached cost study has been extracted  
from the Georgia order. The document is not proprietary; the  
portions redacted simply are not relevant to this matter.

Sincerely,

  
Creighton E. Mershon, Sr.

by



Enclosures

cc: Parties of Record

203713

COMMONWEALTH OF KENTUCY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

APR 03 2000

PUBLIC SERVICE  
COMMISSION

In the Matter of:

A PETITION BY ICG TELECOM )  
GROUP, INC. FOR ARBITRATION )  
OF AN INTERCONNECTION AGREEMENT )  
WITH BELL SOUTH TELECOMMUNICATIONS, )  
INC. PURSUANT TO SECTION 252(b) )  
OF THE TELECOMMUNICATIONS )  
ACT OF 1996 )

CASE NO. 99-218

RESPONSE OF BELL SOUTH TO ARBITRATION ORDER

INTRODUCTION

On March 2, 2000, the Kentucky Public Service Commission ("Commission") issued an Order in the above-captioned docket. The Order addressed some five unresolved issues between the parties to the arbitration, ICG Telecom Group, Inc. ("ICG") and BellSouth Telecommunications, Inc. ("BellSouth"). Among other findings, the Commission ordered that BellSouth make a currently combined enhanced extended link ("EEL") available to ICG at the TELRIC-based UNE prices for the sum of an unbundled loop, a cross-connect, and an unbundled interoffice dedicated transport (Ordering Clause 5); that BellSouth combine the previously uncombined elements of loop cross-connect and transport for a reasonable cost based fee (Ordering Clause 6); that within 30 days of the date of the Order, BellSouth shall file its proposed "combining" fee and cost support workpapers (Ordering Clause 7); and that the parties include a binding forecast provision in the interconnection agreement

(Ordering Clause 9) (See Order, pp. 9-10). It is to these findings that this response is addressed.

### DISCUSSION

#### Ordering Clauses 5, 6 and 7:

The Commission, in Ordering Clauses 5 and 7, required BellSouth to provide currently combined EELs to ICG at TELRIC-based UNE prices (at the sum of the UNEs that comprise the EEL); provide the previously uncombined elements of loop, cross-connect, and transport for a "reasonable cost based fee"; and file the proposed "combining" fee and cost support workpapers. In Kentucky, to provide an EEL for a 2 wire voice grade loop with DS1 interoffice transport at the sum of the UNE prices would equate to a sum in excess of \$500. As an alternative to the Commission's order, BellSouth proposes that the Commission adopt a nonrecurring interim rate for a currently combined EEL. The rate proposed will be interim until such time as the Commission orders a permanent rate for utilizing Kentucky-specific costs. The interim nonrecurring rate proposed is compatible with the nonrecurring rate for a currently combined EEL ordered by the Georgia Public Service Commission in Docket No. 10692-U (issued February 1, 2000). Therefore, ICG would pay a nonrecurring charge of \$25.58 for a currently combined EEL and monthly recurring charges for the individual network elements making up the combination.

Moreover, BellSouth is herewith providing cost studies for "new" EELs (previously uncombined). These nonrecurring costs reflect the work activities required to provision an entire circuit comprised of a loop and interoffice transport



facilities. It is assumed that this circuit does not currently exist, i.e., the CLEC is requesting a "new" loop-transport combination. In order to develop the time estimates, the stand alone activities were reviewed and duplicative activities were eliminated. Thus, the inputs to this study reflect the synergies achieved because the loop and transport are ordered as a combination.

As to Ordering Clause 6, BellSouth has filed an appeal in the United States District Court for the Eastern District of Kentucky. BellSouth avers that, in ordering BellSouth to combine previously uncombined elements, this Commission is acting in a manner that is inconsistent with the Telecommunications Act of 1996 and the current state of Federal law. However, pending the outcome of said appeal, and without waiver of any legal recourse or position it may present, BellSouth has proposed to provide to ICG previously uncombined EELs at the nonrecurring rate per the attached cost studies.

#### Ordering Clause 9

Despite good faith negotiations, the Parties were unable to reach agreement on one provision to the final interconnection agreement. Section 3.6.5 of Attachment 3 concerns the terms and conditions of the binding forecast required by the Commission. Included within this pleading as Exhibit "A" is BellSouth's best and final proposed language for section 3.6.5 of Attachment 3 and its rationale in support of its proposal. ICG will be submitting a similar filing to the Commission. Both Parties respectfully request that the Commission determine which Parties' language is the appropriate language for inclusion within the final interconnection agreement. For this reason, the parties will not be

submitting a signed agreement. Once the Commission rules on this issue, the parties will promptly submit a signed agreement, consistent with the mandates of the Commission Order.

Respectfully submitted this 3rd of April, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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(502) 582-8219

by  
*Dorothy K. Ch...*

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A. LANGLEY KITCHINGS  
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(404) 335-0765

203668

## EXHIBIT A

### **Binding Forecast**

**Issue:** Should BellSouth be required to provide trunking facilities to deliver traffic from BellSouth's network to ICG when ICG is willing to enter into a binding forecast of traffic volumes?

#### **Contract Provision in Dispute--**

Attachment 3, section 3.6.5

#### **BellSouth's Proposed Language**

3.6.5 Binding forecast:

- 3.6.5.1 In addition to, and not in lieu of, non-binding forecasts, ICG may provide to BellSouth a binding forecast of the trunks and trunk ports that BellSouth will need to interconnect with ICG in order to terminate traffic to ICG. Unless otherwise agreed, a binding forecast may not be requested for an existing trunk group that is underutilized as defined in this section or for exhausted BellSouth switch locations. ICG shall provide to BellSouth sufficient justification for the quantity of trunks contained within the binding forecast. The due date contained in the binding forecast shall be no less than three months from the date of the binding forecast. Once the binding forecast is submitted to BellSouth, ICG agrees to make no changes to said forecast.
- 3.6.5.2 BellSouth shall provide the total amount of requested trunks from either tandem or end offices depending on trunk and facilities availability.
- 3.6.5.3 A binding forecast shall not replace the ASR process of ordering trunks and BellSouth shall order the quantity of trunks from ICG set forth in the binding forecast. BellSouth shall request due dates on the trunk orders to coincide with the due dates specified in the binding forecast, and the Parties shall provision the ordered trunks by the due date.
- 3.6.5.4 To recover the cost associated with assuring that the quantity of trunk port terminations needed to meet the binding forecast are available on the agreed upon due date, ICG shall pay to BellSouth \$305.00 for the first DS1 trunk port and \$152.50 for each additional DS1 trunk port forecasted in a trunk group (i.e. between an A to Z location or BellSouth switch location to an ICG switch location).

- 3.6.5.5 If, within 90 days of installation of the trunks, 85 percent of the capacity of the trunks is not being utilized, ICG will pay BellSouth a percentage of the total monthly recurring trunk and facility charges from BellSouth's tariffs for the percentage of the trunks' capacity that is not being utilized.
- 3.6.5.6 If, within 180 days of installation of the trunks, the trunks are not being utilized to the capacity set forth above, the excess of the trunks may be disconnected by BellSouth.
- 3.6.5.7 Utilization on BellSouth reciprocal interconnection trunk groups associated with a binding forecast shall be measured monthly and shall be measured at the time consistent busy hour. The charges as a result of under-utilization as described in the preceding section shall apply monthly.
- 3.6.5.8 Except in the instance of underutilization by ICG in section 3.6.5.5, neither Party shall charge the other for nonrecurring trunk and recurring, if applicable, trunk charges associated with a binding forecast.
- 3.6.5.9 Any trunks installed, as a result of the binding forecast, must remain in service for a period of at least 180 days.

#### **BellSouth's Rationale for Position--**

A number of issues have caused the Parties to not reach agreement regarding the terms and conditions of the binding forecast. The first issue is that BellSouth incurs a cost to reserve the requisite number of trunk port terminations on its switch that should be recovered from ICG. The reservation of trunk port terminations is outside of BellSouth's ordinary business practices. In the ordinary course of business, forecasts are utilized for planning purposes, however, no carrier or customer is guaranteed that the requisite facilities will be available upon BellSouth's receipt of an order for service. Today, as customers, including other CLECs, interexchange carriers, wireless carriers, independent companies and retail customers order services that require trunk port terminations, of which there are a finite number on the switch, the trunk port terminations are used. Reserving the facilities results in ready and willing customers, needing service today, to be denied service until a growth job on the switch can be implemented, which requires capital expenditure, because the ports, although not being used, are being reserved. A reservation option, which is what a binding forecast results in, will impact the current ordering process and may result in the reservation of trunk port terminations becoming standard.

Therefore, a binding forecast, which causes BellSouth to have to reserve trunk port terminations to ensure that the terminations will be available on the

installation due date, will cause BellSouth to incur additional costs. A BellSouth employee will be required to access a database, locate the requisite number of trunk port terminations which may or may not be located adjacent to one another, and mark the trunk port terminations in the database as reserved. In preparation for the provisioning of the trunks on the due date, the BellSouth employee will again have to access the same database, locate the reserved trunk port terminations and transfer the location information of the trunk port terminations to the appropriate provisioning forms for use by the network technicians. It is estimated that the approximate employee time is 4 hours and the rates set forth in BellSouth's proposal is consistent with the Commission's cost methodology.

The second issue relates to the charges incurred by ICG when the trunks installed are underutilized. BellSouth has proposed a 90 day, or 3 month ramp up period for ICG whereafter if the trunks are underutilized, ICG will pay a percentage of the **tariffed** charges for the trunks installed. The tariffed charges are appropriate because the underutilization has caused BellSouth to forego the use of those trunk port terminations and further, may have caused capital expenditure on the part of BellSouth. Utilization of the tariffed charge for the trunks and trunk port terminations is consistent with the Commission's order and ICG's proposal. The Commission stated in its Order, "[u]nder ICG's proposal, however, ICG will pick up the cost for those facilities by paying BellSouth 100 percent of the tariffed price for the forecasted plant if the trunks are not used." (Commission Order at p. 8). Therefore the tariffed rate is appropriate.

The third issue relates to the appropriate percentage to determine utilization. BellSouth's proposal, in section 3.6.5.5, is for the trunks to be utilized at 85% capacity within 90 days of installation. BellSouth utilizes a 90% capacity factor in its own network and this factor represents an efficient and economical use of facilities. It is important to recall that the binding forecast is to be utilized for the purposes of provisioning trunks to carry BellSouth **originated** traffic to ICG, and therefore the percentage of capacity utilized should be consistent with **BellSouth's** standard of utilization. Less than 85% utilization causes BellSouth to incur unnecessary capital expense in the provision of additional unnecessary trunks. Lastly, the intent of the Commission's decision and ICG's proposal was to fully protect BellSouth from unreasonable or unnecessary risk. Therefore, it is most appropriate to utilize BellSouth's standard capacity factor.

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 April 2000.

  
Dorothy J. Chambers

SERVICE LIST - PSC 99-218

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**GEORGIA DOCKET NO. 10692-U**

**COMBINATION STUDIES**

**NONRECURRING NEW**

**MARCH 16, 2000**



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**GEORGIA DOCKET NO. 10692-U**  
**SECTION 1**  
**EXECUTIVE SUMMARY**

**STATEMENT OF PURPOSE**

BellSouth Telecommunications, Inc. (hereinafter referred to as BellSouth or the Company) is filing cost studies for unbundled network elements (UNEs) in response to the Georgia Public Service Commission's (GPSC) Order in Docket 10692-U. Included in this document are Total Element Long Run Incremental Cost (TELRIC) studies, including shared and common costs, for the nonrecurring costs associated with loop/port and loop/transport combinations that are not currently in place. These studies comply with the orders and regulations established by the GPSC in the Order Establishing Cost Based Rates in Docket 7061-U. The shared and common factors used in these studies are those adopted by the GPSC in Docket 7061-U. Other factors and labor rates have been updated from the values presented in Docket 7061-U to reflect a 2000-2002 study period.

BellSouth TELRIC Calculator  
 Unbundled Network Cost Elements Summary Report  
 Georgia  
 Combo Nonrecurring New

03/15/2000

Cost Element

Non  
 Recurring Recurring First Additional Initial Subsequent

P.0 UNBUNDLED LOOP COMBINATIONS

|          |  |          |          |  |  |  |
|----------|--|----------|----------|--|--|--|
| P.6      | 2-WIRE VOICE EXTENDED LOOP WITH DS1 DEDICATED INTEROFFICE TRANSPORT                                    |          |          |  |  |  |
| P.6.11   | 2-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW                                       | \$314.21 | \$230.76 |  |  |  |
| P.6.12   | 2-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INCREMENTAL COST MAN vs. ELEC-NEW         | \$34.00  | \$27.79  |  |  |  |
| P.6.13   | 2-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION                  | \$12.15  | \$8.76   |  |  |  |
| P.6.1199 | 2-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - DISCONNECT                          | \$116.72 | \$55.83  |  |  |  |
| P.6.1299 | 2-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INC. COST-MAN vs. ELEC-NEW-DISCONNECT     | \$20.10  | \$11.98  |  |  |  |
| P.7      | 4-WIRE VOICE GRADE EXTENDED LOOP WITH DS1 DEDICATED INTEROFFICE TRANSPORT                              |          |          |  |  |  |
| P.7.11   | 4-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW                                       | \$459.23 | \$360.87 |  |  |  |
| P.7.12   | 4-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INCREMENTAL COST MAN vs. ELEC-NEW         | \$34.00  | \$27.79  |  |  |  |
| P.7.13   | 4-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION                  | \$12.15  | \$8.76   |  |  |  |
| P.7.1199 | 4-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - DISCONNECT                          | \$124.80 | \$79.06  |  |  |  |
| P.7.1299 | 4-W VV EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC - NEW - DISCONNECT | \$20.10  | \$11.98  |  |  |  |

BellSouth TELRIC Calculator  
 Unbundled Network Cost Elements Summary Report  
 Georgia  
 Combo Nonrecurring New

03/15/2000

| P.11      | Cost Element   | Non       |           | Non-Recurring |         |            |
|-----------|--|-----------|-----------|---------------|---------|------------|
|           |  | Recurring | Recurring | First         | Initial | Subsequent |
| P.11.11   | EXTENDED 4-WIRE DS1 DIGITAL LOOP WITH DEDICATED DS1 INTEROFFICE TRANSPORT                              |           |           |               |         |            |
| P.11.11   | EXT. 4W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - NEW                               | \$644.78  |           | \$283.25      |         |            |
| P.11.12   | EXT. 4W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - INC. COST MAN vs. ELEC - NEW                     | \$23.98   |           | \$17.77       |         |            |
| P.11.1199 | EXT. 4W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - NEW - DISCONNECT                  | \$133.70  |           | \$46.66       |         |            |
| P.11.1299 | EXT. 4W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC-NEW - DISC | \$15.13   |           | \$7.02        |         |            |

**GEORGIA DOCKET NO. 10692-U**  
**SECTION 2**  
**METHODOLOGY**

**TOTAL ELEMENT LONG RUN INCREMENTAL COST (TELRIC)**

The studies submitted with this filing adhere to the Total Element Long Run Incremental Cost (TELRIC) methodology as envisioned by the Federal Communications Commission (FCC). The basic guidelines that form the foundation of a TELRIC study are:

- 1) The studies should reflect a long-run perspective. Long run implies a period long enough that all costs are variable. In other words, this principle assumes all costs are avoidable in the long run.
- 2) Cost causation is a key concept in incremental costing. Thus, only those costs that are directly caused by the particular item being studied are considered. This principle mandates the identification of costs directly attributable to providing a "service" (network capability).
- 3) The increment being studied should be the entire quantity of service. This point recognizes that costs normally thought of as shared in a service-specific study, would be included in a study of a network capability. For example, in a service study, the planning engineer's costs associated with loops would be shared across many product lines, e.g. ESSX, coin, business. In an unbundled network element study, this cost would be directly attributable to the loop element.
- 4) Any function necessary to produce a service must have an associated cost. In essence, this guideline states that no sunk costs should be included.
- 5) Common overheads are not part of a long run incremental cost study. However, the FCC's TELRIC methodology allows for the recovery of "a reasonable allocation of forward-looking common costs". Thus, BellSouth has considered common costs to produce the TELRIC economic cost.
- 6) The technology used should reflect the least cost, most efficient technology.
- 7) Costs should be forward-looking.

There are two generic types of costs that have been studied: recurring and nonrecurring.

**RECURRING COSTS**

The monthly costs resulting from capital investments deployed to provision network elements are called recurring costs. Recurring costs include capital and

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**METHODOLOGY**

operating costs. Capital costs include depreciation, cost of money and income tax. Operating costs include the expenses for maintenance, ad valorem and other taxes and represent ongoing costs associated with upkeep of the initial capital investment. Gross receipts tax (which includes municipal license taxes and PSC fees) is added.

The first step in developing recurring TELRIC studies is to determine the forward-looking network architecture that, when deployed, represents the most efficient design to provision the network element. The material prices for the equipment necessary to implement the forward-looking design are gathered. Next, account specific Telephone Plant Indexes (TPIs) are applied, when necessary, to trend material prices to the base study period. Telecommunications equipment and plant placements are typically "lumpy". Thus, utilization (or fill) factors are applied to the material prices to reflect BellSouth's forward-looking actual utilization of the plant. Also, when multiple vendors are used, it is necessary to determine the average material price for a typical element based on the probability of occurrence. Inflation Factors, by plant account code, are then applied to the material prices to trend the base-year material price to levelized amounts that are valid for a three-year planning period. In order to convert the material prices to installed investments, account specific inplant loadings are applied to the material prices. The inplant loadings include engineering and installation labor (both BellSouth and vendor) exempt material and sales taxes.

Supporting equipment and power loadings are added, as appropriate to specific investment accounts. Next, supporting structure investments for land, building, poles and conduit are developed. These supporting structure investments are identified by their relationship to the respective item of plant being supported. For example, applying a pole-loading factor against the aerial cable investment develops the pole investment.

2000-2002 level Annual Cost Factors are used to calculate the direct cost of capital, plant specific expenses and taxes. Account specific factors for each Uniform System of Accounts – Field Reporting Code (USOA-FRC) are applied to the investment by account code, yielding an annual cost per account code. Account specific shared cost factors are applied to produce forward-looking TELRIC costs. Then the common cost allocation factor and the gross receipts tax factor are applied. The result is the monthly economic cost.

The generic steps for developing recurring cost can be summarized as shown below. The unique technical characteristics and physical makeup of each service cost element must be taken into consideration.

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Step 1: Determine the forward looking network designs (architectures) which will be used in deployment of the network element.

Step 2: Determine current material prices for the items of plant used in each design. Material prices are obtained from BellSouth contracts with various vendors.

Step 3: Apply material Telephone Plant Indexes (TPIs) as appropriate to determine the base year material prices. Material TPIs estimate the changes in material prices over time.

Step 4: Adjust the material prices for utilization to account for spare capacity using a reasonable projection of actual total usage.

Step 5: Weight the material prices, as appropriate, to determine the average material price for a typical element by USOA-FRC, i.e., plant account.

Step 6: Apply material inflation factors, referred to as levelization factors, to the material prices to convert the utilized base year material prices to material prices representative of a three year planning period.

Step 7: Apply inplant loadings to the levelized material prices to convert the material prices to an installed investment, which includes the cost of material, engineering labor and installation labor.

Step 8: Apply support loadings to the investments to determine investments for support equipment and power, land, buildings, poles and conduit as appropriate.

Step 9: Convert the investments by FRC to annual costs by applying account specific TELRIC annual cost factors to the various investments. The annual cost factors calculate the capital costs (depreciation, cost of money, and income tax) and operating expenses (plant specific expense, ad valorem taxes, and other taxes). Add the annual costs for the various FRCs. Next divide by 12 to determine the direct monthly cost.

Step 10: Apply the shared cost (account specific) factors. Then apply the gross receipts tax factor. The result is TELRIC.

Step 11: Apply the common cost allocation factor to determine economic costs.



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**NONRECURRING COSTS**

Nonrecurring costs are one-time expenses associated with provisioning, installing and disconnecting a network capability. These costs include four major categories of activity: service order processing, engineering, connect and test, and technician travel time. Examples of the work activities in each of these categories are:

- Service Order Processing - Prepare and issue service orders
- Engineering - Assign cable and pair; design circuit; order plug-in;  
perform translations in the switch
- Connect and Test - Install circuit; test circuit; disconnect
- Technician Travel Time - Travel to the customer's premises

The first step in developing nonrecurring costs is to determine the cost elements associated with the network capability. These cost elements are then described by the individual activities required to provision the cost element. Individuals familiar with the network capability identify which activities are applicable. Subject matter experts identify the amount of time required to perform the task and also determine the probability that the activity will occur. Provisioning costs are developed by multiplying the work time for each work function by the labor rate for the work group performing the function.

Utilizing work functions, work times, and labor rates, disconnect costs are calculated in the same manner as the installation costs.

The generic steps for developing nonrecurring costs are summarized in the following steps:

- Step 1: Determine the cost elements to be developed.
- Step 2: Define the work functions.
- Step 3: Establish work flows.
- Step 4: Determine work times for each work function.
- Step 5: Develop labor costs for each work function (labor rate x work time).
- Step 6: Accumulate work function costs to determine the total nonrecurring costs for each cost element. Add gross receipts tax. The result is TELRIC.
- Step 7: Apply the Common Cost Allocation factor to determine the economic costs.

The TELRIC Calculator®, a model developed by BellSouth, produces long run incremental cost studies. The model was designed to accept variable inputs that are applied according to a user-controlled matrix. The TELRIC Calculator® was used to produce the TELRIC studies included in this filing. Additionally, this is the same model presented to the GPSC in Docket 7061-U.

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**SECTION 3**  
**DESCRIPTION OF MODELS AND PRICE CALCULATORS**

**1. TELRIC Calculator©**

The TELRIC Calculator© consists of three Microsoft Excel templates. The templates consist of twenty-one sheets each, eight for receiving input data and thirteen for calculations. All templates perform calculations in exactly the same manner and differ only in the number of decimal places displayed. It should be noted that no rounding is done in any of the sheets.

The TELRIC Calculator© User Interface takes information from the default data sources or from the user-modified sources and inputs them into the appropriate template depending on the cost element selected. Investments are entered by Field Reporting Code (FRC), Sub Field Reporting Code (Sub-FRC), and cost element number into the sheet called "Investments". The sub-FRC is used by the TELRIC Calculator© to determine the appropriate application of factors and loadings, which are applied based on a matrix contained in "Factor Matrix". Factors and loadings are placed by FRC on the sheet labeled "Factors". Recurring and nonrecurring work times are placed by function and Job Function Code (JFC) or Payband into the sheets labeled "Recurring Labor" and "Nonrecurring Labor", respectively. Other recurring and nonrecurring expenses are entered by description into the sheet called "Additives". Lastly, direct labor rates are placed by JFC or Payband into the sheet called "Labor Rates".

The inputs then flow automatically through the "calculator" portions of the template. These sheets are labeled TELRIC Recurring Summary, INVEST-VS, INVEST-VI, LBPC-VS, LBPC-VI, FRCTELRIC-VS, FRCTELRIC-VI, RECEXP, TELRIC NRC Summary A, NR-NR, TELRIC NRC Summary B, NR-1A, and NR-IS. The function and detail of these sheets are outlined in the following narrative.

**TELRIC Calculator© Recurring Worksheets**

**Investment Development (Excluding Land, Building, Pole, & Conduit)**

Investment development begins in the worksheets INVEST-VS and INVEST-VI, where volume sensitive and volume insensitive investments by FRC and sub-FRC flow from the input sheets. The inflation factors, inplant loadings and supporting equipment and/or power loadings are applied, if applicable. As stated previously, the application of these factors/loadings is driven by a matrix contained within the template. If the factor/loading is not applicable to the FRC and sub-FRC, the investment is multiplied by the default value of one. All calculations are detailed above each cell. These investments flow to the Land,

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## SECTION 3

### DESCRIPTION OF MODELS AND PRICE CALCULATORS

Building, Pole, & Conduit Development sheet and to the Recurring Cost Development sheet.

#### **Land, Building, Pole, & Conduit Investment Development**

Investments from the Investment Development sheets flow into the sheets LBPC-VS and LBPC-VI. These worksheets apply land, building, pole, and conduit loadings to the investments. Land, building, pole, and conduit investments carried from the Investment Development sheets are multiplied by a factor of one. If one or all of these factors do not apply to an FRC, excluding land, building, pole, and conduit FRCs, the factor defaults to zero. The results are then summed and totaled at the top of the sheet and flow to the next sheet. All calculations are detailed above each cell.

#### **Recurring Cost Development**

The investments from the Investment Development and the Land, Building, Pole, and Conduit Investment Development sheets are summed to the FRC level and flow into the sheets called FRCTELRIC-VS and FRCTELRIC-VI. These sheets apply depreciation, cost of money (COM), income tax, plant specific, and ad valorem tax factors to the investments. If a factor does not apply, the default is zero. These results are then summed to produce direct cost. All calculations are detailed above each cell. The shared cost factor is applied to the investments to produce shared cost and then added to direct cost to produce TELRIC. The user has the option of designating the type of cost produced, e.g. whether the final cost is billed on a monthly basis or on a per minute of use (MOU) basis. Thus, if the input investments are annual investments, the resulting cost outputs are divided by twelve to produce monthly costs. The results then flow to the summary sheet. The common cost factor is applied on the summary sheet to produce economic cost.

#### **Recurring Labor Expense Development**

Recurring labor work times flow to the worksheet called RECEXP. The times are associated with a work function and a JFC or Payband. The associated direct labor rates, and TELRIC labor rates, determined by the JFC or Payband, are applied to the work times to produce both the direct expenses and TELRIC expenses. These expenses flow to the summary sheet. All calculations are detailed above each cell.

#### **Recurring Cost Development**

Recurring direct costs from sheets FRCTELRIC-VS and FRCTELRIC-VI, recurring direct expenses from sheet RECEXP, and other expenses from the input sheet "Additives" flow to the sheet called TELRIC Recurring Summary. All costs and expenses are summed to a total cost. This cost is then multiplied by

SECTION 3

DESCRIPTION OF MODELS AND PRICE CALCULATORS

Gross Receipts Tax and Common Cost factors to obtain the volume sensitive and volume insensitive recurring costs. These two costs are summed to produce economic costs.

All, some, or none of the previously described recurring cost development sheets will be included with a cost element, depending on their applicability.

**TELRIC Calculator© Nonrecurring Worksheets**

**Nonrecurring Cost Development**

Installation and disconnect work times by work function and JFC or Payband flow from the input sheet "Nonrecurring Labor" to the three nonrecurring cost development sheets called NR-NR, NR-1A, and NR-IS. The three sheets exist to accommodate different types of nonrecurring charge structures. The sheet NR-NR develops cost for a single nonrecurring charge, the sheet NR-1A develops cost for charges which are first and additional, and the sheet NR-IS develops cost for charges which are initial and subsequent. Only one of these three sheets is populated with actual work times for a cost element; the other sheets receive work time values of zero. The cost development methodology is the same for all three sheets.

The TELRIC Calculator© User Interface calculates the disconnect factor and places this factor into the "Factors" input sheet which causes it to flow to the three nonrecurring cost development sheets. Disconnect factors are used to develop the present value of a labor cost that will take place in the future. The interface develops this factor by first locating the factor associated with the study midpoint date in the working database. The end-point date is then determined by adding the cost element life, in months, to the midpoint date. The factor associated with this date is then divided by the midpoint factor. If there is no cost element life indicated (i.e., value equals zero), the disconnect factor is one. If the disconnect cost is to be collected at the time of disconnect, a future value is calculated. Disconnect cost is not converted to a present value.

To develop the direct cost, the appropriate direct labor rate for the JFC or Payband is applied to the installation and disconnect work times for each function to produce the install cost and the disconnect cost. The costs then flow to the appropriate summary sheet. All calculations are detailed above each cell.

To develop the TELRIC cost, the appropriate TELRIC labor rate for the JFC or Payband is applied to the installation and disconnect work times for each function to produce the install TELRIC and the disconnect TELRIC. The steps are then the same as those for developing the direct cost.

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DESCRIPTION OF MODELS AND PRICE CALCULATORS

**Nonrecurring Cost Development**

Nonrecurring direct costs from sheets NR-NR, NR-1A, NR-IS, and other expenses from the input sheet "Additives" flow to the sheets called "TELRIC NRC Summary A" and "TELRIC NRC Summary B". The first sheet summarizes a single nonrecurring cost; the second sheet summarizes first and additional costs or initial and subsequent costs. Costs and expenses are summed to a total cost. This cost is then multiplied by Gross Receipts Tax and Common Cost factors to produce the nonrecurring economic costs.

Depending on the structure of the nonrecurring cost, only two of the cost development sheets will be included with a cost element. The sheets NR-NR and TELRIC NRC Summary A will be included with the single cost structure. The sheets NR-1A and TELRIC NRC Summary B will be included with the first and additional cost structure. The sheets NR-IS and TELRIC NRC Summary B will be included with the initial and subsequent cost structure. The previously described nonrecurring cost development sheets will not be included with a cost element for which nonrecurring costs are not applicable.

**2. Shared and Common Cost Model**

The Shared and Common Cost Model used in this filing is the version adopted by the GPSC in Docket No. 7061-U.

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**SECTION 4**  
**INPUTS - LOADINGS AND FACTORS**

**GROSS RECEIPTS TAX FACTOR**

Some states and municipalities tax the revenues that a company receives from services provided within the state/municipality. The taxes may be designed to fund such things as PSC fees, franchise taxes, license taxes, or other similar items, but because the taxes are levied on the basis of revenues, they are commonly referred to as a gross receipts tax. Unlike some taxes that are billed to the customer and flowed through to the taxing authority, a gross receipts tax is a cost of doing business to BellSouth.

The BellSouth Tax Department provides the effective tax rate at which BellSouth is charged by the taxing authority and that rate is "grossed up" to reflect the following formula:

$$\frac{\text{GROSS RECEIPTS TAX RATE}}{(1 - \text{GROSS RECEIPTS TAX RATE})}$$

A summary of ad valorem and other tax and gross receipts tax factors used in these studies is included in Appendix A.

**DISCONNECT FACTORS**

Disconnect factors are translators used to determine the costs associated with disconnecting a service. These factors are developed because there is a difference in time between when a service is disconnected and when BellSouth recovers this disconnect cost. Disconnect costs are typically included in the one-time up front service establishment charges. The customer is billed now for work that will be done in the future.

The calculation of the disconnect factors is based on the following data: the expected life of the service being studied and an interest rate that is comparable to the highest rate BellSouth is required to pay its customers for customer deposit payments held by BellSouth. The disconnect factor inflates the labor cost to the period of the future disconnect and discounts these costs to the present. Disconnect factors are calculated by month for twelve years for the company on a regional basis. The data sources for these factors are the 1998 forecasted labor inflation rates from the BellSouth Region TPIs and a discount rate based on simple interest calculations.

If disconnect costs are recovered at the time of disconnect, the factor equals the inflation portion of the Disconnect Factor.

Disconnect factor worksheets are included in Appendix A.

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**SECTION 4**  
**INPUTS - LOADINGS AND FACTORS**

**LABOR RATES**

Labor rates for specific work groups are developed annually based on extracts of previous year's data from the Financial Front End System. This extract collects labor expense and hours and a PC application processes the information to produce labor rates. During processing, the actual costs for a given work group are accumulated by expenditure type (e.g., direct labor productive, premium, other employee, etc.). These actual costs are divided by the actual hours (classified productive hours for plant and engineering work groups and total productive hours for cost groups) reported by work group to determine the basic rates. A factor from the BellSouth Region TPis is applied to inflate these rates to the study period 2000-2002.

**LABOR RATE COMPONENTS:**

The following are various cost components that make up labor rates:

**DIRECT SALARIES AND WAGES**

1. Direct Labor - Productive (RESOURCE TYPE CODE (RTC) 111, 121)  
Represents the wage and salary costs associated with work reporting employees during the month for regularly scheduled time and overtime spent performing productive work. Also includes the costs of salaries paid to management employees when performing productive work. Classified and unclassified productive hours are used as the basis for Direct Labor Costs.
2. Direct Labor - Premium (RTC 122)  
Represents the wage and salary costs associated with premium hours paid for hours worked beyond the normally scheduled work period.
3. Direct Labor - Other Employee (RTC 199, 19B, 19C, 193)  
Covers the costs associated with the periodic incentive compensation payments made to management employees based on corporate service and financial performance, the annual bonus paid to non-management employees, all costs associated with commissions paid to employees, cash awards paid for any approved program, etc.
4. Direct Labor - Annual Paid Absence (RTC 132, 19E)  
Identifies the cost of a monthly prorata share of payments to be made over the year to occupational work reporting employees for accrued costs of holidays, vacations, and excused days.

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**SECTION 4**  
**INPUTS - LOADINGS AND FACTORS**

5. Direct Administration (RTC 111, 121, 122, 199, 19B, 19C, 19E, 193, 132)  
Identifies the costs of salaries paid during the month to the first level of supervision responsible for supervising occupational work reporting employees, and salaries and wages paid to employees and immediate supervisors who perform basic office services for occupational work reporting employees. Also included are the wages paid to occupational work reporting employees loaned to perform supervisory or clerical functions.
6. Other Tools - Salaries (RTC CQR)  
Identifies the salary portion of the distributed costs associated with tools.
7. Motor Vehicles - Salaries (RTC CQM)  
Identifies the salary portion of the plant motor vehicle expenses which are distributed to construction, removal or plant specific operations expense accounts based on the classified productive hours of the labor groups using the motor vehicles.

OTHER DIRECT

1. Direct Labor - Other Costs (Various RTCs)  
Identifies the costs incurred during the month for office, traveling and other costs of employees whose wage and salary costs are direct labor.
2. Other Tools - Benefits (RTC CQS)  
Identifies the distributed benefits costs associated with tools.
3. Other Tools - Rents (RTC CQK)  
Identifies the distributed rent costs associated with tools.
4. Other Tools - Other (RTC CQL)  
Identifies the distributed other expense costs associated with tools.
5. Motor Vehicles - Benefits (RTC CQN)  
Identifies the benefits portion of the plant motor vehicle expenses which are distributed to construction, removal or plant specific operations expense accounts based on the classified productive hours of the labor groups using the motor vehicles.



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6. Motor Vehicle - Rents (RTC CQP)  
Identifies the rents portion of the plant motor vehicle expenses which are distributed to construction, removal or plant specific operation expense accounts based on the classified productive hours of the labor groups using the motor vehicles.
  
7. Motor Vehicle - Other (RTC CQQ)  
Identifies the other costs portion of the plant motor vehicle expenses which are distributed to construction, removal or plant specific operations expense accounts based on the classified productive hours of the labor groups using the motor vehicles.
  
8. Benefits (RTC KB1)  
Identifies amounts for the payroll related benefits and taxes. These costs include pension accruals; company matching portion of savings plan; dental, medical, and group insurance plan reimbursements; and company portion of social security and unemployment payroll taxes.

**TOTAL PRODUCTIVE HOURS**

1. Classified Productive Hours  
Hours of work reporting employees which are reported to final accounting classifications.
  
2. Unclassified Productive Hours  
The working hours of plant work reporters devoted to activities of such a general nature as to not be assignable to specific accounting classifications. Unclassified activities include: attending conferences or meetings (including travel time) which are general in nature; attending first aid classes or safety meetings; paid time spent on union activities; paid time spent on quality of work life activities; time spent in a classroom (including travel time) for general or job specific training; and other unclassified activities such as attending assessment centers.

Labor Rate worksheets are included in Appendix A.

**SHARED AND COMMON COST ALLOCATION FACTORS**

The Shared and Common Cost factors used in this filing are the factors adopted by the GPSC in Docket No. 7061-U.

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**SECTION 5**  
**UNBUNDLED NETWORK ELEMENT (UNE) STUDIES**

**INTRODUCTION**

This section contains a description of cost elements and an overview of the study process for each category of elements studied by BellSouth. Additionally, inputs and workpapers for each individual UNE are provided.

The studies included in this filing are all based on a three (3) year study period (2000 - 2002). All long run costs associated with providing the service cost elements are identified and included in the TELRIC studies.

The following pages contain a listing of the unbundled network cost elements provided in this filing package. Each cost element is represented by a designated cost element number that is referenced throughout the studies.

Following this listing are the narratives for each category of cost elements describing the elements, study technique, and specific study assumptions. After the narratives are the TELRIC Calculator© outputs. Following the outputs, Microsoft Excel spreadsheets containing the inputs and workpapers are included.

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SECTION 5  
UNBUNDLED NETWORK ELEMENT (UNE) STUDIES**

|            |   | File Name  |
|------------|---|------------|
| <b>P.0</b> | <b>UNBUNDLED LOOP COMBINATIONS</b>  |            |
|            |   |            |
| <b>P.6</b> | <b><i>2-WIRE VOICE GRADE EXTENDED LOOP WITH DS1 DEDICATED INTEROFFICE TRANSPORT</i></b>             |            |
| P.6.11     | 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW                                    | p_6_11.xls |
| P.6.12     | 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INCREMENTAL. COST MAN vs. ELEC-NEW     | p_6_11.xls |
| P.6.13     | 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION               | p_6_11.xls |
| P.6.1199   | 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW- DISCONNECT                        | p_6_11.xls |
| P.6.1299   | 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INC. COST- MAN vs. ELEC-NEW-DISCONNECT | p_6_11.xls |
|            |   |            |
| <b>P.7</b> | <b><i>4-WIRE VOICE GRADE EXTENDED LOOP WITH DS1 DEDICATED INTEROFFICE TRANSPORT</i></b>             |            |
| P.7.11     | 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW                                    | p_7_11.xls |
| P.7.12     | 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INCREMENTAL. COST MAN vs. ELEC-NEW     | p_7_11.xls |
| P.7.13     | 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION               | p_7_11.xls |
| P.7.1199   | 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - DISCONNECT                       | p_7_11.xls |
| P.7.1299   | 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC-NEW- DISCONNECT | p_7_11.xls |

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**UNBUNDLED NETWORK ELEMENT (UNE) STUDIES**

|           |   |             |
|-----------|---|-------------|
| P.11      | <b>EXTENDED 4-WIRE DS1 DIGITAL LOOP WITH DEDICATED DS1 INTEROFFICE TRANSPORT</b>                        |             |
| P.11.11   | EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - NEW                               | p_11_11.xls |
| P.11.12   | EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC - NEW      | p_11_11.xls |
| P.11.1199 | EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - NEW - DISCONNECT                  | p_11_11.xls |
| P.11.1299 | EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC-NEW - DISC | p_11_11.xls |

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**NARRATIVES**

- P.0        COMBINATION STUDIES**
- 
- P.6        2-WIRE VOICE GRADE EXTENDED LOOP WITH DS1 DEDICATED  
INTEROFFICE TRANSPORT**
- P.6.11     2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT -  
NONRECURRING - NEW**
- P.6.12     2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT -  
NONRECURRING - INCREMENTAL. COST MAN vs. ELEC-NEW**
- P.6.13     2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT -  
NONRECURRING - NEW - CHANNEL ACTIVATION**
- 
- P.7        4-WIRE VOICE GRADE EXTENDED LOOP WITH DS1 DEDICATED  
INTEROFFICE TRANSPORT**
- P.7.11     4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT -  
NONRECURRING - NEW**
- P.7.12     4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT -  
NONRECURRING - INCREMENTAL. COST MAN vs. ELEC-NEW**
- P.7.13     4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT -  
NONRECURRING - NEW - CHANNEL ACTIVATION**

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- P.11        EXTENDED 4-WIRE DS1 DIGITAL LOOP WITH DEDICATED DS1 INTEROFFICE TRANSPORT**
- P.11.11    EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - NEW**
- P.11.12    EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC - NEW**

**Element Description**

These elements represent nonrecurring costs associated with loop to port combinations. These cost elements are determined by the individual activities required to

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**SECTION 5**  
**UNBUNDLED NETWORK ELEMENT (UNE) STUDIES**

provision the combination. Subject matter experts familiar with the activities, which are applicable, identify the amount of time required to perform the task and also determine the probability that the activity will occur. Provisioning costs are developed by multiplying the work time for each work function by the labor rate for the work group performing the function.

**Specific Study Assumptions**

Nonrecurring costs assume that the combination of elements is not currently in place.



**Nonrecurring Cost Summary**

Georgia  
**P.6.11 - 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW**

03/14/2000

**Nonrecurring Cost**

|   | <u>First</u> |                   | <u>Additional</u> |                   |
|---|--------------|-------------------|-------------------|-------------------|
|   | Direct Cost  | Shared Cost       | Direct Cost       | Shared Cost       |
| Nonrecurring Cost Development Sheet Col H | \$295.6535   | \$0.0000          | \$217.1307        | \$0.0000          |
| Total Cost                                | \$295.6535   | \$0.0000          | \$217.1307        | \$0.0000          |
| Gross Receipts Tax Factor                 |              | X                 |                   | X                 |
| Cost (including Gross Receipts Tax)       |              | 1.0110            |                   | 1.0110            |
| Common Cost Factor                        |              | X                 |                   | X                 |
| <b>Nonrecurring Economic Cost</b>         |              | <b>\$314.2115</b> |                   | <b>\$230.7599</b> |

000028

Nonrecurring Cost Development

Georgia  
P.6.11 - 2-W VEXT. LOOP WITH DS1 DED. NO TRANSPORT - NONRECURRING - NEW

| Function        | JFC/ Payband | Description                          | A                     |            | C       | D-A-C      |            | E-B-C    |            | F        | G-E-F                      |            | H-D-G                      |             |
|-----------------|--------------|--------------------------------------|-----------------------|------------|---------|------------|------------|----------|------------|----------|----------------------------|------------|----------------------------|-------------|
|                 |              |                                      | Installation Worktime | Additional |         | First      | Additional | First    | Additional |          | Discounted Disconnect Cost | Additional | Discounted Disconnect Cost | First       |
| Service Order   | 230X         | Customer Port Of Contact - ICSC/LCSC | 0.0361                | 0.0000     | \$31.17 | \$1,1252   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$1,1252   | \$0.0000                   | \$1,1252    |
| Engineering     | 320X         | Outside Plant Eng (FG30)             | 0.1000                | 0.0000     | \$43.66 | \$0.7291   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$4,3660   | \$0.0000                   | \$4,3660    |
| Service Inquiry | 340X         | Ntw & Eng Planning (FG20)            | 0.2500                | 0.0000     | \$50.98 | \$0.0000   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$12,7450  | \$0.0000                   | \$12,7450   |
| Engineering     | 3A2X         | Ntw Plug-In Admin (PCS)              | 0.0640                | 0.0000     | \$37.04 | \$1,8520   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$2,3706   | \$0.0000                   | \$2,3706    |
| CONNECT & TEST  | 410X         | Install & Mica - Pops                | 0.3175                | 0.0000     | \$40.26 | \$12,7828  | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$12,7828  | \$0.0000                   | \$12,7828   |
| TRAVEL          | 410X         | Install & Mica - Pops                | 0.0687                | 0.0000     | \$42.04 | \$21,0200  | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$25,5500  | \$0.0000                   | \$25,5500   |
| Connect & Test  | 431X         | CO Install & Mica Field - Ctl & Fac  | 1.2500                | 0.0000     | \$38.31 | \$4,5972   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$6,7043   | \$0.0000                   | \$6,7043    |
| Service Order   | 4A0X         | Acc Cust Advocate Ctr (ACAC)         | 4.8383                | 0.0000     | \$34.31 | \$171,9008 | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$185,3553 | \$0.0000                   | \$185,3553  |
| Engineering     | 4A0X         | Address & Facility Inventory (AFIG)  | 0.1187                | 0.0000     | \$33.64 | \$1,2615   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$1,2615   | \$0.0000                   | \$1,2615    |
| CONNECT & TEST  | 4M1X         | Circuit Provisioning Group (CPG)     | 0.0450                | 0.0000     | \$33.64 | \$0,2243   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$1,5138   | \$0.0000                   | \$1,5138    |
| ENGINEERING     | 4N4X         | Circuit Provisioning Group (CPG)     | 0.0687                | 0.0000     | \$32.76 | \$1,6390   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$4,1900   | \$0.0000                   | \$4,1900    |
| Service Order   | 4W3X         | Work Management Center (WMC)         | 0.2500                | 0.0000     | \$32.76 | \$1,6390   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$6,1900   | \$0.0000                   | \$6,1900    |
|                 |              |                                      |                       |            |         |            |            |          |            |          |                            |            |                            | 295,653469  |
|                 |              |                                      |                       |            |         |            |            |          |            |          |                            |            |                            | 217,1306787 |

| Function        | JFC/ Payband | Description                          | A                     |            | C       | D-A-C      |            | E-B-C    |            | F        | G-E-F                      |            | H-D-G                      |             |
|-----------------|--------------|--------------------------------------|-----------------------|------------|---------|------------|------------|----------|------------|----------|----------------------------|------------|----------------------------|-------------|
|                 |              |                                      | Installation Worktime | Additional |         | First      | Additional | First    | Additional |          | Discounted Disconnect Cost | Additional | Discounted Disconnect Cost | First       |
| Service Order   | 230X         | Customer Port Of Contact - ICSC/LCSC | 0.0361                | 0.0000     | \$31.17 | \$1,1252   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$1,1252   | \$0.0000                   | \$1,1252    |
| Engineering     | 320X         | Outside Plant Eng (FG30)             | 0.1000                | 0.0000     | \$43.66 | \$0.7291   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$4,3660   | \$0.0000                   | \$4,3660    |
| Service Inquiry | 340X         | Ntw & Eng Planning (FG20)            | 0.2500                | 0.0000     | \$50.98 | \$0.0000   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$12,7450  | \$0.0000                   | \$12,7450   |
| Engineering     | 3A2X         | Ntw Plug-In Admin (PCS)              | 0.0640                | 0.0000     | \$37.04 | \$1,8520   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$2,3706   | \$0.0000                   | \$2,3706    |
| CONNECT & TEST  | 410X         | Install & Mica - Pops                | 0.3175                | 0.0000     | \$40.26 | \$12,7828  | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$12,7828  | \$0.0000                   | \$12,7828   |
| TRAVEL          | 410X         | Install & Mica - Pops                | 0.0687                | 0.0000     | \$42.04 | \$21,0200  | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$25,5500  | \$0.0000                   | \$25,5500   |
| Connect & Test  | 431X         | CO Install & Mica Field - Ctl & Fac  | 1.2500                | 0.0000     | \$38.31 | \$4,5972   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$6,7043   | \$0.0000                   | \$6,7043    |
| Service Order   | 4A0X         | Acc Cust Advocate Ctr (ACAC)         | 4.8383                | 0.0000     | \$34.31 | \$171,9008 | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$185,3553 | \$0.0000                   | \$185,3553  |
| Engineering     | 4A0X         | Address & Facility Inventory (AFIG)  | 0.1187                | 0.0000     | \$33.64 | \$1,2615   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$1,2615   | \$0.0000                   | \$1,2615    |
| CONNECT & TEST  | 4M1X         | Circuit Provisioning Group (CPG)     | 0.0450                | 0.0000     | \$33.64 | \$0,2243   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$1,5138   | \$0.0000                   | \$1,5138    |
| ENGINEERING     | 4N4X         | Circuit Provisioning Group (CPG)     | 0.0687                | 0.0000     | \$32.76 | \$1,6390   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$4,1900   | \$0.0000                   | \$4,1900    |
| Service Order   | 4W3X         | Work Management Center (WMC)         | 0.2500                | 0.0000     | \$32.76 | \$1,6390   | \$0.0000   | \$0.0000 | 1.1524     | \$0.0000 | \$0.0000                   | \$6,1900   | \$0.0000                   | \$6,1900    |
|                 |              |                                      |                       |            |         |            |            |          |            |          |                            |            |                            | 295,653469  |
|                 |              |                                      |                       |            |         |            |            |          |            |          |                            |            |                            | 217,1306787 |

000029

Nonrecurring Cost Summary

Georgia  
 P.6.12 - 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INCREMENTAL. COST MAN vs. ELEC-NEW

03/14/2000

Nonrecurring Cost

|   | First            |             | Additional       |             |
|---|------------------|-------------|------------------|-------------|
|   | Direct Cost      | Shared Cost | Direct Cost      | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$31,9929        | \$0.0000    | \$26,1485        | \$0.0000    |
| Total Cost                                | \$31,9929        | \$0.0000    | \$26,1485        | \$0.0000    |
| Gross Receipts Tax Factor                 |                  | X           |                  | X           |
| Cost (including Gross Receipts Tax)       | \$32,3450        |             | \$26,4363        |             |
| Common Cost Factor                        |                  | X           |                  | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$34,0011</b> |             | <b>\$27,7898</b> |             |

000030

Nonrecurring Cost Development

Georgia  
P.6.12 - 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INCREMENTAL COST MAN vs. ELEC-NEW

| Function / Service Order | JFCI / Payband                        | A                            |                                   | B                          |                                 | C                 |              | D=AxC     |            | E=BxC           |                                  | F                                     | G=FxF           |                                  | H=DxG                                 |                   |
|--------------------------|---------------------------------------|------------------------------|-----------------------------------|----------------------------|---------------------------------|-------------------|--------------|-----------|------------|-----------------|----------------------------------|---------------------------------------|-----------------|----------------------------------|---------------------------------------|-------------------|
|                          |                                       | Installation Worktimes First | Installation Worktimes Additional | Disconnect Worktimes First | Disconnect Worktimes Additional | Direct Labor Rate | Install Cost | First     | Additional | Discount Factor | Discounted Disconnect Cost First | Discounted Disconnect Cost Additional | Discount Factor | Discounted Disconnect Cost First | Discounted Disconnect Cost Additional | Direct Cost First |
| 230X                     | Customer Point Of Contact - ICSCALCSC | 1.0284                       | 0.0389                            | 0.0000                     | 0.0000                          | \$31.17           | \$31,9929    | \$26,1485 | \$0,0000   | \$0,0000        | \$0,0000                         | 1.1524                                | \$0,0000        | \$0,0000                         | \$31,9929                             | \$26,1485         |
|                          |                                       |                              |                                   |                            |                                 |                   |              |           |            |                 |                                  |                                       |                 |                                  | 31.992888                             | 26.148513         |
|                          |                                       |                              |                                   |                            |                                 |                   |              |           |            |                 |                                  |                                       |                 |                                  | Total                                 | Total             |

| Function / Service Order | JFCI / Payband                        | A                            |                                   | B                          |                                 | C                 |              | D=AxC     |            | E=BxC           |                                  | F                                     | G=FxF           |                                  | H=DxG                                 |                   |
|--------------------------|---------------------------------------|------------------------------|-----------------------------------|----------------------------|---------------------------------|-------------------|--------------|-----------|------------|-----------------|----------------------------------|---------------------------------------|-----------------|----------------------------------|---------------------------------------|-------------------|
|                          |                                       | Installation Worktimes First | Installation Worktimes Additional | Disconnect Worktimes First | Disconnect Worktimes Additional | Direct Labor Rate | Install Cost | First     | Additional | Discount Factor | Discounted Disconnect Cost First | Discounted Disconnect Cost Additional | Discount Factor | Discounted Disconnect Cost First | Discounted Disconnect Cost Additional | Direct Cost First |
| 230X                     | Customer Point Of Contact - ICSCALCSC | 1.0284                       | 0.0389                            | 0.0000                     | 0.0000                          | \$31.17           | \$31,9929    | \$26,1485 | \$0,0000   | \$0,0000        | \$0,0000                         | 1.1524                                | \$0,0000        | \$0,0000                         | \$31,9929                             | \$26,1485         |
|                          |                                       |                              |                                   |                            |                                 |                   |              |           |            |                 |                                  |                                       |                 |                                  | 31.992888                             | 26.148513         |
|                          |                                       |                              |                                   |                            |                                 |                   |              |           |            |                 |                                  |                                       |                 |                                  | Total                                 | Total             |

000031

Nonrecurring Cost Summary

Georgia  
 P.6.13 - 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION

03/14/2000

Nonrecurring Cost

|   | <u>First</u>     |             | <u>Additional</u> |             |
|---|------------------|-------------|-------------------|-------------|
|   | Direct Cost      | Shared Cost | Direct Cost       | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$11.4295        | \$0.0000    | \$8.2383          | \$0.0000    |
| Total Cost                                | \$11.4295        | \$0.0000    | \$8.2383          | \$0.0000    |
| Gross Receipts Tax Factor                 |                  | X           |                   | X           |
| Cost (including Gross Receipts Tax)       | \$11.5553        |             | \$8.3289          |             |
| Common Cost Factor                        | 1.0512           |             | 1.0512            |             |
| <b>Nonrecurring Economic Cost</b>         | <b>\$12.1469</b> |             | <b>\$8.7554</b>   |             |

000032

Nont recurring Cost Development

Georgia  
P 6.13 - 2-W V.G. EXT. LOOP WITH DS1DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION

| Function                      | JFC/<br>Payband | JFC/Payband<br>Description                                  | A                         |                  | B                       |                  | C                    |                      | D-A+C                |                      | E-B+C                |                  | F                    |                      | G-E+F                         |                      | H-D+G                |                        |                      |                          |
|-------------------------------|-----------------|---|---------------------------|------------------|-------------------------|------------------|----------------------|----------------------|----------------------|----------------------|----------------------|------------------|----------------------|----------------------|-------------------------------|----------------------|----------------------|------------------------|----------------------|--------------------------|
|                               |                 |   | Installation<br>Worktimes |                  | Disconnect<br>Worktimes |                  | Direct<br>Labor Rate |                      | Install<br>Cost      |                      | Disconnect<br>Cost   |                  | Disconnect<br>Factor |                      | Discounted Disconnect<br>Cost |                      | Direct Cost          |                        |                      |                          |
|                               |                 |   | First                     | Additional       | First                   | Additional       | First                | Rate                 | First                | Additional           | First                | Additional       | First                | Additional           | First                         | Additional           | First                | Additional             | First                | Additional               |
| Engineering<br>Connect & Test | 3A2X<br>4AXX    | Nhwk Plug In Admin (PICIS)<br>Acc Cust Advocate Cntr (ACAC) | 0.0500<br>0.2500          | 0.0500<br>0.1667 | 0.0000<br>0.0000        | 0.0000<br>0.3831 | \$37.04<br>\$38.31   | \$1,8520<br>\$9,5775 | \$1,8520<br>\$6,3863 | \$0,0000<br>\$0,0000 | \$0,0000<br>\$0,0000 | 1.1524<br>1.1524 | \$0,0000<br>\$0,0000 | \$0,0000<br>\$0,0000 | \$1,8520<br>\$9,5775          | \$1,8520<br>\$6,3863 | \$0,0000<br>\$0,0000 | \$11,4295<br>\$11,4295 | \$1,8520<br>\$6,3863 | \$9,238277<br>\$9,238277 |
|                               |                 |   |                           |                  |                         |                  |                      |                      |                      |                      |                      |                  |                      |                      |                               |                      |                      |                        |                      |                          |

000033

Nonrecurring Cost Summary

Georgia  
P.6.1199 - 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW- DISCONNECT

03/14/2000

Nonrecurring Cost

|   | <u>First</u>      |             | <u>Additional</u> |             |
|---|-------------------|-------------|-------------------|-------------|
|   | Direct Cost       | Shared Cost | Direct Cost       | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$109,8260        | \$0.0000    | \$52,5363         | \$0.0000    |
| Total Cost                                | \$109,8260        | \$0.0000    | \$52,5363         | \$0.0000    |
| Gross Receipts Tax Factor                 |                   | X           |                   | X           |
| Cost (including Gross Receipts Tax)       | \$111,0348        |             | \$53,1145         |             |
| Common Cost Factor                        | 1.0512            | X           | 1.0512            | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$116.7198</b> |             | <b>\$55.8340</b>  |             |

000034





Nonrecurring Cost Summary

Georgia  
 P.6.1299 - 2-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INC. COST-MAN vs. ELEC-NEW-DISCONNECT

|   | Nonrecurring Cost |             |                  | Additional  |             |                  |
|---|-------------------|-------------|------------------|-------------|-------------|------------------|
|   | First             |             |                  | Shared Cost |             | TELRIC           |
|   | Direct Cost       | Shared Cost | TELRIC           | Direct Cost | Shared Cost | TELRIC           |
| Nonrecurring Cost Development Sheet Col H | \$18,9088         | \$0.0000    | \$18,9088        | \$11,2756   | \$0.0000    | \$11,2756        |
| Total Cost                                | \$18,9088         | \$0.0000    | \$18,9088        | \$11,2756   | \$0.0000    | \$11,2756        |
| Gross Receipts Tax Factor                 |                   | X           | 1,0110           |             |             | 1,0110           |
| Cost (including Gross Receipts Tax)       |                   |             | \$19,1170        |             |             | \$11,3997        |
| Common Cost Factor                        |                   | X           | 1,0512           |             |             | 1,0512           |
| <b>Nonrecurring Economic Cost</b>         |                   |             | <b>\$20,0957</b> |             |             | <b>\$11,9834</b> |

03/14/2000

000036

Nonrecurring Cost Development

Georgia  
P.6.1298 - 2-W VG EXT. LOOP WITH DS1 DED. ID TRANSPORT - NONRECURRING - INC. COST-MAN vs. ELEC-NEW-DISCONNECT

| Function<br>Service Order | JFCI<br>Payband<br>230X | JFCI/Payband<br>Description<br>Customer Point Of Contact - ICSCALCSC | A                         |            | B                       |        | C                       |                         | D=A+C              |                    | E=B+C                |                                  | F                                |                    | G=E+F                |                                  | H=D+G                            |                    |
|---------------------------|-------------------------|--|---------------------------|------------|-------------------------|--------|-------------------------|-------------------------|--------------------|--------------------|----------------------|----------------------------------|----------------------------------|--------------------|----------------------|----------------------------------|----------------------------------|--------------------|
|                           |                         |  | Installation<br>Worktimes | Additional | Disconnect<br>Worktimes | First  | Additional              | Direct<br>Labor<br>Rate | First<br>Cost      | Additional<br>Cost | Disconnect<br>Cost   | Disconnect<br>Factor             | Discounted<br>Disconnect<br>Cost | First              | Additional           | Disconnect<br>Factor             | Discounted<br>Disconnect<br>Cost | First<br>Cost      |
|                           |                         |  | 0.0000                    | 0.0000     | 0.5264                  | 0.3139 | \$31.17                 | \$0.0000                | \$0.0000           | \$16.4079          | \$9.7843             | 1.1524                           | \$18.9088                        | \$11.2756          |                      | \$18.9088                        | \$11.2756                        |                    |
|                           |                         |  |                           |            |                         |        | TELRIC<br>Labor<br>Rate | First<br>Cost           | Additional<br>Cost | Disconnect<br>Cost | Disconnect<br>Factor | Discounted<br>Disconnect<br>Cost | First<br>Cost                    | Additional<br>Cost | Disconnect<br>Factor | Discounted<br>Disconnect<br>Cost | First<br>Cost                    | Additional<br>Cost |
|                           |                         |  | 0.0000                    | 0.0000     | 0.5264                  | 0.3139 | \$31.17                 | \$0.0000                | \$0.0000           | \$16.4079          | \$9.7843             | 1.1524                           | \$18.9088                        | \$11.2756          |                      | \$18.9088                        | \$11.2756                        |                    |
|                           |                         |  |                           |            |                         |        |                         |                         |                    |                    |                      |                                  |                                  |                    |                      |                                  |                                  |                    |
|                           |                         |  | Total                     | Total      | Total                   | Total  | Total                   | Total                   | Total              | Total              | Total                | Total                            | Total                            | Total              | Total                | Total                            | Total                            | Total              |
|                           |                         |  | 0.0000                    | 0.0000     | 0.5264                  | 0.3139 | \$31.17                 | \$0.0000                | \$0.0000           | \$16.4079          | \$9.7843             | 1.1524                           | \$18.9088                        | \$11.2756          |                      | \$18.9088                        | \$11.2756                        |                    |

000037

Nonrecurring Cost Summary

Georgia  
P.7.11 - 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW

03/14/2000

Nonrecurring Cost

|   | First             |             | Additional        |             |
|---|-------------------|-------------|-------------------|-------------|
|   | Direct Cost       | Shared Cost | Direct Cost       | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$432,1057        | \$0,0000    | \$339,5534        | \$0,0000    |
| Total Cost                                | \$432,1057        | \$0,0000    | \$339,5534        | \$0,0000    |
| Gross Receipts Tax Factor                 |                   | X           |                   | X           |
| Cost (including Gross Receipts Tax)       | \$436,8614        |             | \$343,2905        |             |
| Common Cost Factor                        | 1,0512            | X           | 1,0512            | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$459,2287</b> |             | <b>\$360,8670</b> |             |

000038

Nonrecurring Cost Development

Georgia  
P.7.11 - 4-WV-EXT. LOOP WITH DS1 DED. ID TRANSPORT - NONRECURRING - NEW

| Function        | JFC/ Payband | JFC/ Payband Description              | A Installation Worktimes |            | B Disconnect Worktimes |            | C Direct Labor Rate | D-AxC Install Cost |            | E-BxC Disconnect Cost |            | F Disconnect Discount Factor | G-E,F Discounted Disconnect Cost |          | Direct Cost | I-I-D,G Additional |
|-----------------|--------------|---------------------------------------|--------------------------|------------|------------------------|------------|---------------------|--------------------|------------|-----------------------|------------|------------------------------|----------------------------------|----------|-------------|--------------------|
|                 |              |                                       | First                    | Additional | First                  | Additional |                     | First              | Additional | First                 | Additional |                              |                                  |          |             |                    |
| Service Order   | 230X         | Customer Point Of Contact - ICSC/LCSC | 0 0361                   | 0 0167     | 0 0000                 | 0 0000     | \$31.17             | \$11,1252          | \$4,3660   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$1,1252    | \$1,1252           |
| Engineering     | 32XX         | Outside Plant Eng (FG30)              | 0 1000                   | 0 0000     | 0 0000                 | 0 0000     | \$43.66             | \$0,7291           | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$4,3660    | \$0,7291           |
| Service Inquiry | 34XX         | Ntwk & Eng Planning (FG20)            | 0 2500                   | 0 0000     | 0 0000                 | 0 0000     | \$50.98             | \$12,7450          | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$12,7450   | \$0,0000           |
| Engineering     | 342X         | Ntwk Plug-In Admin (PICS)             | 0 0640                   | 0 0500     | 0 0000                 | 0 0000     | \$37.04             | \$2,3706           | \$1,8520   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$2,3706    | \$1,8520           |
| SERVICE ORDER   | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0 3072                   | 0 0000     | 0 0000                 | 0 0000     | \$45.41             | \$13,9484          | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$13,9484   | \$0,0000           |
| CONNECT & TEST  | 411X         | Install & Mica - Spec Svcs (SSIM)     | 2 4580                   | 2 4580     | 0 0000                 | 0 0000     | \$45.41             | \$111,6178         | \$111,6178 | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$111,6178  | \$111,6178         |
| TRAVEL          | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0 3333                   | 0 0000     | 0 0000                 | 0 0000     | \$42.04             | \$14,0700          | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$14,0700   | \$0,0000           |
| Service Order   | 431X         | CO Install & Mica Field - Cnt & Fac   | 1 2500                   | 0 5000     | 0 0000                 | 0 0000     | \$42.04             | \$52,5500          | \$21,0200  | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$52,5500   | \$21,0200          |
| Connect & Test  | 44XX         | Acc Cust Advocate Cntr (ACAC)         | 0 3033                   | 0 3033     | 0 0000                 | 0 0000     | \$38.31             | \$11,6194          | \$11,6194  | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$11,6194   | \$11,6194          |
| Service Order   | 44XX         | Acc Cust Advocate Cntr (ACAC)         | 5 0028                   | 4 9195     | 0 0000                 | 0 0000     | \$38.31             | \$191,6573         | \$188,4660 | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$191,6573  | \$188,4660         |
| Engineering     | 4M1X         | Address & Facility Inventory (AFIG)   | 0 1187                   | 0 0000     | 0 0000                 | 0 0000     | \$34.31             | \$4,0040           | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$4,0040    | \$0,0000           |
| Service Order   | 4M1X         | Address & Facility Inventory (AFIG)   | 0 0375                   | 0 0375     | 0 0000                 | 0 0000     | \$33.64             | \$1,5138           | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$1,5138    | \$0,0000           |
| ENGINEERING     | 4N4X         | Circuit Provisioning Group (CPG)      | 0 0450                   | 0 0067     | 0 0000                 | 0 0000     | \$32.76             | \$8,1900           | \$1,6380   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$8,1900    | \$1,6380           |
| Service Order   | 4WXX         | Work Management Center (WMC)          | 0 2500                   | 0 0500     | 0 0000                 | 0 0000     | \$32.76             | \$8,1900           | \$1,6380   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$8,1900    | \$1,6380           |
|                 |              |                                       |                          |            |                        |            |                     |                    |            |                       |            |                              |                                  |          | 432,10585   | 339,533737         |

| Function        | JFC/ Payband | JFC/ Payband Description              | A Installation Worktimes |            | B Disconnect Worktimes |            | TELRIC Labor Rate | D-AxC Install Cost |            | E-BxC Disconnect Cost |            | F Disconnect Discount Factor | G-E,F Discounted Disconnect Cost |          | Direct Cost | I-I-D,G Additional |
|-----------------|--------------|---------------------------------------|--------------------------|------------|------------------------|------------|-------------------|--------------------|------------|-----------------------|------------|------------------------------|----------------------------------|----------|-------------|--------------------|
|                 |              |                                       | First                    | Additional | First                  | Additional |                   | First              | Additional | First                 | Additional |                              |                                  |          |             |                    |
| Service Order   | 230X         | Customer Point Of Contact - ICSC/LCSC | 0 0361                   | 0 0167     | 0 0000                 | 0 0000     | \$31.17           | \$11,1252          | \$4,3660   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$1,1252    | \$1,1252           |
| Engineering     | 32XX         | Outside Plant Eng (FG30)              | 0 1000                   | 0 0000     | 0 0000                 | 0 0000     | \$43.66           | \$0,7291           | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$4,3660    | \$0,7291           |
| Service Inquiry | 34XX         | Ntwk & Eng Planning (FG20)            | 0 2500                   | 0 0000     | 0 0000                 | 0 0000     | \$50.98           | \$12,7450          | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$12,7450   | \$0,0000           |
| Engineering     | 342X         | Ntwk Plug-In Admin (PICS)             | 0 0640                   | 0 0500     | 0 0000                 | 0 0000     | \$37.04           | \$2,3706           | \$1,8520   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$2,3706    | \$1,8520           |
| SERVICE ORDER   | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0 3072                   | 0 0000     | 0 0000                 | 0 0000     | \$45.41           | \$13,9484          | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$13,9484   | \$0,0000           |
| CONNECT & TEST  | 411X         | Install & Mica - Spec Svcs (SSIM)     | 2 4580                   | 2 4580     | 0 0000                 | 0 0000     | \$45.41           | \$111,6178         | \$111,6178 | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$111,6178  | \$111,6178         |
| TRAVEL          | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0 3333                   | 0 0000     | 0 0000                 | 0 0000     | \$42.04           | \$14,0700          | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$14,0700   | \$0,0000           |
| Service Order   | 431X         | CO Install & Mica Field - Cnt & Fac   | 1 2500                   | 0 5000     | 0 0000                 | 0 0000     | \$42.04           | \$52,5500          | \$21,0200  | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$52,5500   | \$21,0200          |
| Connect & Test  | 44XX         | Acc Cust Advocate Cntr (ACAC)         | 0 3033                   | 0 3033     | 0 0000                 | 0 0000     | \$38.31           | \$11,6194          | \$11,6194  | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$11,6194   | \$11,6194          |
| Service Order   | 44XX         | Acc Cust Advocate Cntr (ACAC)         | 5 0028                   | 4 9195     | 0 0000                 | 0 0000     | \$38.31           | \$191,6573         | \$188,4660 | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$191,6573  | \$188,4660         |
| Engineering     | 4M1X         | Address & Facility Inventory (AFIG)   | 0 1187                   | 0 0000     | 0 0000                 | 0 0000     | \$34.31           | \$4,0040           | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$4,0040    | \$0,0000           |
| Service Order   | 4M1X         | Address & Facility Inventory (AFIG)   | 0 0375                   | 0 0375     | 0 0000                 | 0 0000     | \$33.64           | \$1,5138           | \$0,0000   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$1,5138    | \$0,0000           |
| ENGINEERING     | 4N4X         | Circuit Provisioning Group (CPG)      | 0 0450                   | 0 0067     | 0 0000                 | 0 0000     | \$32.76           | \$8,1900           | \$1,6380   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$8,1900    | \$1,6380           |
| Service Order   | 4WXX         | Work Management Center (WMC)          | 0 2500                   | 0 0500     | 0 0000                 | 0 0000     | \$32.76           | \$8,1900           | \$1,6380   | \$0,0000              | \$0,0000   | 1.1524                       | \$0,0000                         | \$0,0000 | \$8,1900    | \$1,6380           |
|                 |              |                                       |                          |            |                        |            |                   |                    |            |                       |            |                              |                                  |          | 432,10585   | 339,533737         |

000039

Nonrecurring Cost Summary

Georgia  
 P.7.12 - 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INCREMENTAL. COST MAN vs. ELEC-NEW

03/14/2000

Nonrecurring Cost

|   | First            |             | Additional       |             |
|---|------------------|-------------|------------------|-------------|
|   | Direct Cost      | Shared Cost | Direct Cost      | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$31.9929        | \$0.0000    | \$26.1485        | \$0.0000    |
| Total Cost                                | \$31.9929        | \$0.0000    | \$26.1485        | \$0.0000    |
| Gross Receipts Tax Factor                 |                  |             |                  | X           |
| Cost (including Gross Receipts Tax)       | \$32.3450        |             | \$26.4363        |             |
| Common Cost Factor                        |                  |             |                  | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$34.0011</b> |             | <b>\$27.7898</b> |             |

000040

Nonrecurring Cost Development

Georgia  
P.7.12 - 4-WV.G EXT. LOOP WITH DST DED. ID TRANSPORT - NONRECURRING - INCREMENTAL COST MAN vs. ELEC-NEW

| Function<br>Service Order | JFC/<br>Payband<br>230X | JFC/ Payband<br>Description<br>Customer Point Of Contact - ICSCALCSC | A                                  |                      | B                                |                      | C                                  |                          | D-AIC                   |                             | E-BIC                  |  | F                                       |                        | G-ExF                                  |                         | H-DIC                |                         |
|---------------------------|-------------------------|--|------------------------------------|----------------------|----------------------------------|----------------------|------------------------------------|--------------------------|-------------------------|-----------------------------|------------------------|--|---|------------------------|--|-------------------------|----------------------|-------------------------|
|                           |                         |  | Installation<br>Worktimes<br>First | Additional<br>0.8389 | Disconnect<br>Worktimes<br>First | Additional<br>0.0000 | Direct<br>Labor<br>Rate<br>\$31.17 | Install<br>Cost<br>First | Additional<br>\$26 1485 | Disconnect<br>Cost<br>First | Additional<br>\$0 0000 | Disconnect<br>Discount<br>Factor<br>1.1524 | Disconnect<br>Discount<br>Cost<br>First | Additional<br>\$0 0000 | Discounted Disconnect<br>Cost<br>First | Additional<br>\$0 0000  | Direct Cost<br>First | Additional<br>\$26 1485 |
|                           |                         |  | 1.0264                             |                      | 0.0000                           |                      | \$31.929                           | \$26 1485                | \$0 0000                | 1.1524                      | \$0 0000               | \$0 0000                                   | \$0 0000                                | \$0 0000               | \$31 929                               | \$26 1485               | \$1 92886            | \$26 1485               |
|                           |                         | Total  |                                    |                      |                                  |                      |                                    |                          |                         |                             |                        |  |   |                        | 31.92886                               | 26.148513               |                      | 26.148513               |
|                           |                         |  | A                                  |                      | B                                |                      | C                                  |                          | D-AIC                   |                             | E-BIC                  |  | F                                       |                        | G-ExF                                  |                         | H-DIC                |                         |
|                           |                         |  | Installation<br>Worktimes<br>First | Additional<br>0.8389 | Disconnect<br>Worktimes<br>First | Additional<br>0.0000 | Direct<br>Labor<br>Rate<br>\$31.17 | Install<br>Cost<br>First | Additional<br>\$26 1485 | Disconnect<br>Cost<br>First | Additional<br>\$0 0000 | Disconnect<br>Discount<br>Factor<br>1.1524 | Disconnect<br>Discount<br>Cost<br>First | Additional<br>\$0 0000 | Direct Cost<br>First                   | Additional<br>\$26 1485 | First                | Additional              |
|                           |                         |  | 1.0264                             |                      | 0.0000                           |                      | \$31.929                           | \$26 1485                | \$0 0000                | 1.1524                      | \$0 0000               | \$0 0000                                   | \$0 0000                                | \$0 0000               | \$31 929                               | \$26 1485               | \$1 92886            | \$26 1485               |
|                           |                         | Total  |                                    |                      |                                  |                      |                                    |                          |                         |                             |                        |  |   |                        | 31.92886                               | 26.148513               |                      | 26.148513               |

000041

**Nonrecurring Cost Summary**

Georgia  
**P.7.13 - 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION**

03/14/2000

**Nonrecurring Cost**

|   | <u>First</u>     |             | <u>Additional</u> |             |
|---|------------------|-------------|-------------------|-------------|
|   | Direct Cost      | Shared Cost | Direct Cost       | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$11,4295        | \$0.0000    | \$8,2383          | \$0.0000    |
| Total Cost                                | \$11,4295        | \$0.0000    | \$8,2383          | \$0.0000    |
| Gross Receipts Tax Factor                 | X                | X           | X                 | X           |
| Cost (including Gross Receipts Tax)       | \$11,5553        | \$11,4295   | \$8,3289          | \$8,2383    |
| Common Cost Factor                        | X                | X           | X                 | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$12,1469</b> |             | <b>\$8,7554</b>   |             |

000042

Nonrecurring Cost Development

Georgia  
P.7.13 - 4-W VG EXT. LOOP WITH DST DED. IO TRANSPORT - NONRECURRING - NEW - CHANNEL ACTIVATION

| Function                   | JFC/ Payband | JFC/ Payband Description     | A                      |            | B      |            | C                 |            | D=AtC      |              | E=BxC    |            | F               |          | G=EtF      |                            | H=D+G    |            |             |
|----------------------------|--------------|------------------------------|------------------------|------------|--------|------------|-------------------|------------|------------|--------------|----------|------------|-----------------|----------|------------|----------------------------|----------|------------|-------------|
|                            |              |                              | Installation Worktimes | Additional | First  | Additional | Direct Labor Rate | First      | Additional | Install Cost | First    | Additional | Discount Factor | First    | Additional | Discounted Disconnect Cost | First    | Additional | Direct Cost |
| Engineering Connect & Test | 3A2X         | Nwtk Plug In Admin (PKCS)    | 0.0500                 | 0.0500     | 0.0000 | 0.0000     | \$37.04           | \$1,852.00 | \$9,577.50 | \$1,852.00   | \$0.0000 | \$0.0000   | 1.1524          | \$0.0000 | \$0.0000   | \$0.0000                   | \$0.0000 | \$1,852.00 | \$1,852.00  |
|                            | 4AAX         | Acc Cust Advocate Ctr (ACAC) | 0.2500                 | 0.1667     | 0.0000 | 0.0000     | \$38.31           | \$9,577.50 | \$9,577.50 | \$6,386.30   | \$0.0000 | \$0.0000   | 1.1524          | \$0.0000 | \$0.0000   | \$0.0000                   | \$0.0000 | \$9,577.50 | \$6,386.30  |
|                            |              |                              |                        |            |        |            |                   |            |            |              |          |            |                 |          |            |                            |          | 11,429.50  | 8,238.277   |
|                            |              |                              |                        |            |        |            |                   |            |            |              |          |            |                 |          |            |                            |          |            |             |

| Function                   | JFC/ Payband | JFC/ Payband Description     | A                      |            | B      |            | C                 |            | D=AtC      |              | E=BxC    |            | F               |          | G=EtF      |                            | H=D+G    |            |            |
|----------------------------|--------------|------------------------------|------------------------|------------|--------|------------|-------------------|------------|------------|--------------|----------|------------|-----------------|----------|------------|----------------------------|----------|------------|------------|
|                            |              |                              | Installation Worktimes | Additional | First  | Additional | TELRIC Labor Rate | First      | Additional | Install Cost | First    | Additional | Discount Factor | First    | Additional | Discounted Disconnect Cost | First    | Additional | TELRIC     |
| Engineering Connect & Test | 3A2X         | Nwtk Plug In Admin (PKCS)    | 0.0500                 | 0.0500     | 0.0000 | 0.0000     | \$37.04           | \$1,852.00 | \$9,577.50 | \$1,852.00   | \$0.0000 | \$0.0000   | 1.1524          | \$0.0000 | \$0.0000   | \$0.0000                   | \$0.0000 | \$1,852.00 | \$1,852.00 |
|                            | 4AAX         | Acc Cust Advocate Ctr (ACAC) | 0.2500                 | 0.1667     | 0.0000 | 0.0000     | \$38.31           | \$9,577.50 | \$9,577.50 | \$6,386.30   | \$0.0000 | \$0.0000   | 1.1524          | \$0.0000 | \$0.0000   | \$0.0000                   | \$0.0000 | \$9,577.50 | \$6,386.30 |
|                            |              |                              |                        |            |        |            |                   |            |            |              |          |            |                 |          |            |                            |          | 11,429.50  | 8,238.277  |
|                            |              |                              |                        |            |        |            |                   |            |            |              |          |            |                 |          |            |                            |          |            |            |

000043



Nonrecurring Cost Summary

Georgia  
 P.7.1199 - 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING -NEW - DISCONNECT

03/14/2000

Nonrecurring Cost

|   | <u>First</u>      |             | <u>Additional</u> |             |
|---|-------------------|-------------|-------------------|-------------|
|   | Direct Cost       | Shared Cost | Direct Cost       | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$117,4270        | \$0,0000    | \$74,3931         | \$0,0000    |
| Total Cost                                | \$117,4270        | \$0,0000    | \$74,3931         | \$0,0000    |
| Gross Receipts Tax Factor                 |                   | X           |                   | X           |
| Cost (including Gross Receipts Tax)       | \$118,7194        |             | \$75,2119         |             |
| Common Cost Factor                        | 1,0512            | X           | 1,0512            | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$124,7978</b> |             | <b>\$79,0627</b>  |             |

000044

Nonrecurring Cost Development

Georgia  
P.7.1195 - 4WVG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - NEW - DISCONNECT

| Function       | JFC/ Payband | JFC/Payband Description               | A                      |            | B                    |            | C       | D-A1-C   |            | E-B1-C    |            | F      | G-E1-F          |                            | H-D1-G                  |            |
|----------------|--------------|---------------------------------------|------------------------|------------|----------------------|------------|---------|----------|------------|-----------|------------|--------|-----------------|----------------------------|-------------------------|------------|
|                |              |                                       | Installation Worktimes | Additional | Disconnect Worktimes | Additional |         | First    | Additional | First     | Additional |        | Discount Factor | Discounted Disconnect Cost | First                   | Additional |
| Service Order  | 230X         | Customer Point Of Contact - ICSC/LCSC | 0.0000                 | 0.0000     | 0.0361               | 0.0000     | \$31.17 | \$0.0000 | \$0.0000   | \$1.1252  | \$0.0000   | 1.1524 | \$1.2968        | \$0.0000                   | \$0.5976                | \$1.2968   |
| Engineering    | 342X         | Nixk Plug-In Admin (PICS)             | 0.0000                 | 0.0000     | 0.0140               | 0.0000     | \$45.41 | \$0.0000 | \$0.0000   | \$2.7050  | \$0.0000   | 1.1524 | \$26.1658       | \$0.0000                   | \$26.1658               | \$0.0000   |
| CONNECT & TEST | 411X         | Instal & Mica - Spec Svcs (SSIM)      | 0.0000                 | 0.0000     | 0.5000               | 0.5000     | \$42.04 | \$0.0000 | \$0.0000   | \$22.7050 | \$22.7050  | 1.1524 | \$48.4479       | \$12.1120                  | \$26.1658               | \$26.1658  |
| Service Order  | 431X         | CO Instal & Mica Field - Ctl & File   | 0.0000                 | 0.0000     | 1.0000               | 0.5000     | \$38.31 | \$0.0000 | \$0.0000   | \$42.0400 | \$10.5100  | 1.1524 | \$23.9864       | \$23.9864                  | \$23.9864               | \$12.1120  |
| CONNECT & TEST | 440X         | Acc Cust Advocate Ctr (ACAC)          | 0.0000                 | 0.0000     | 0.5433               | 0.5433     | \$38.31 | \$0.0000 | \$0.0000   | \$20.8138 | \$20.8138  | 1.1524 | \$23.9864       | \$23.9864                  | \$23.9864               | \$23.9864  |
| Service Order  | 440X         | Acc Cust Advocate Ctr (ACAC)          | 0.0000                 | 0.0000     | 0.2395               | 0.2395     | \$34.31 | \$0.0000 | \$0.0000   | \$9.1752  | \$9.1752   | 1.1524 | \$10.5738       | \$10.5738                  | \$10.5738               | \$10.5738  |
| Engineering    | 4M1X         | Address & Facility Inventory (AFIG)   | 0.0000                 | 0.0000     | 0.1167               | 0.0000     | \$33.64 | \$0.0000 | \$0.0000   | \$4.0040  | \$0.0000   | 1.1524 | \$4.6143        | \$0.0000                   | \$4.6143                | \$0.0000   |
| ENGINEERING    | 4N4X         | Circuit Provisioning Group (CPG)      | 0.0000                 | 0.0000     | 0.0450               | 0.0067     | \$33.64 | \$0.0000 | \$0.0000   | \$1.5138  | \$0.2243   | 1.1524 | \$1.7445        | \$0.2585                   | \$1.7445                | \$0.2585   |
|                |              |                                       |                        |            |                      |            |         |          |            |           |            |        |                 |                            | Total                   |            |
|                |              |                                       |                        |            |                      |            |         |          |            |           |            |        |                 |                            | 117.4270073 74.39310048 |            |

| Function       | JFC/ Payband | JFC/Payband Description               | A                      |            | B                    |            | C       | D-A1-C   |            | E-B1-C    |            | F      | G-E1-F          |                            | H-D1-G                  |            |
|----------------|--------------|---------------------------------------|------------------------|------------|----------------------|------------|---------|----------|------------|-----------|------------|--------|-----------------|----------------------------|-------------------------|------------|
|                |              |                                       | Installation Worktimes | Additional | Disconnect Worktimes | Additional |         | First    | Additional | First     | Additional |        | Discount Factor | Discounted Disconnect Cost | First                   | Additional |
| Service Order  | 230X         | Customer Point Of Contact - ICSC/LCSC | 0.0000                 | 0.0000     | 0.0361               | 0.0000     | \$31.17 | \$0.0000 | \$0.0000   | \$1.1252  | \$0.0000   | 1.1524 | \$1.2968        | \$0.0000                   | \$0.5976                | \$1.2968   |
| Engineering    | 342X         | Nixk Plug-In Admin (PICS)             | 0.0000                 | 0.0000     | 0.0140               | 0.0000     | \$45.41 | \$0.0000 | \$0.0000   | \$2.7050  | \$0.0000   | 1.1524 | \$26.1658       | \$0.0000                   | \$26.1658               | \$0.0000   |
| CONNECT & TEST | 411X         | Instal & Mica - Spec Svcs (SSIM)      | 0.0000                 | 0.0000     | 0.5000               | 0.5000     | \$42.04 | \$0.0000 | \$0.0000   | \$22.7050 | \$22.7050  | 1.1524 | \$48.4479       | \$12.1120                  | \$26.1658               | \$26.1658  |
| Service Order  | 431X         | CO Instal & Mica Field - Ctl & File   | 0.0000                 | 0.0000     | 1.0000               | 0.5000     | \$38.31 | \$0.0000 | \$0.0000   | \$42.0400 | \$10.5100  | 1.1524 | \$23.9864       | \$23.9864                  | \$23.9864               | \$12.1120  |
| CONNECT & TEST | 440X         | Acc Cust Advocate Ctr (ACAC)          | 0.0000                 | 0.0000     | 0.5433               | 0.5433     | \$38.31 | \$0.0000 | \$0.0000   | \$20.8138 | \$20.8138  | 1.1524 | \$23.9864       | \$23.9864                  | \$23.9864               | \$23.9864  |
| Service Order  | 440X         | Acc Cust Advocate Ctr (ACAC)          | 0.0000                 | 0.0000     | 0.2395               | 0.2395     | \$34.31 | \$0.0000 | \$0.0000   | \$9.1752  | \$9.1752   | 1.1524 | \$10.5738       | \$10.5738                  | \$10.5738               | \$10.5738  |
| Engineering    | 4M1X         | Address & Facility Inventory (AFIG)   | 0.0000                 | 0.0000     | 0.1167               | 0.0000     | \$33.64 | \$0.0000 | \$0.0000   | \$4.0040  | \$0.0000   | 1.1524 | \$4.6143        | \$0.0000                   | \$4.6143                | \$0.0000   |
| ENGINEERING    | 4N4X         | Circuit Provisioning Group (CPG)      | 0.0000                 | 0.0000     | 0.0450               | 0.0067     | \$33.64 | \$0.0000 | \$0.0000   | \$1.5138  | \$0.2243   | 1.1524 | \$1.7445        | \$0.2585                   | \$1.7445                | \$0.2585   |
|                |              |                                       |                        |            |                      |            |         |          |            |           |            |        |                 |                            | Total                   |            |
|                |              |                                       |                        |            |                      |            |         |          |            |           |            |        |                 |                            | 117.4270073 74.39310048 |            |

000045

Nonrecurring Cost Summary

Georgia  
 P.7.1299 - 4-W VG EXT. LOOP WITH DS1 DED. IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC - NEW- DISCONNECT

03/14/2000

Nonrecurring Cost

|   | First       |             | Additional  |             |
|---|-------------|-------------|-------------|-------------|
|   | Direct Cost | Shared Cost | Direct Cost | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$18,9088   | \$0.0000    | \$11,2756   | \$0.0000    |
| Total Cost                                | \$18,9088   | \$0.0000    | \$11,2756   | \$0.0000    |
| Gross Receipts Tax Factor                 |             |             |             |             |
| Cost (including Gross Receipts Tax)       |             |             |             |             |
| Common Cost Factor                        |             |             |             |             |
|   |             |             |             | TELRIC      |
|   |             |             |             | \$11,2756   |
|   |             |             |             | 1,0110      |
|   |             |             |             | \$11,3997   |
|   |             |             |             | 1,0512      |
|   |             |             |             | \$11,9834   |

Nonrecurring Economic Cost

000046



Nonrecurring Cost Summary

Georgia  
 P.11.11 - EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - NEW

03/14/2000

Nonrecurring Cost

|   | First             |             | Additional        |             |
|---|-------------------|-------------|-------------------|-------------|
|   | Direct Cost       | Shared Cost | Direct Cost       | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$606.6984        | \$0.0000    | \$266.5218        | \$0.0000    |
| Total Cost                                | \$606.6984        | \$0.0000    | \$266.5218        | \$0.0000    |
| Gross Receipts Tax Factor                 |                   | X           |                   | X           |
| Cost (including Gross Receipts Tax)       | \$613.3757        |             | \$269.4552        |             |
| Common Cost Factor                        |                   | X           |                   | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$644.7806</b> |             | <b>\$283.2513</b> |             |

000078

Nonrecurring Cost Development

Georgia  
P-11.11 - EXT. 4W DSI DIGITAL LOOP WITH DED. DSI IO TRANSPORT - NONRECURRING - NEW

| Function       | Payband | JFCI | JFCI/Payband Description             | A                      |            | B                    |            | C          | D=A+C             |           | E=B+C      |          | F          |                   | G-E+F      |            | H-D+G      |            |
|----------------|---------|------|--------------------------------------|------------------------|------------|----------------------|------------|------------|-------------------|-----------|------------|----------|------------|-------------------|------------|------------|------------|------------|
|                |         |      |                                      | Installation Worktimes | Additional | Disconnect Worktimes | Additional |            | Direct Labor Rate | First     | Additional | First    | Additional | Disconnect Factor | First      | Additional | First      | Additional |
| Service Order  | 230X    |      | Customer Port Of Contact - ICSCALCSC | 0.0361                 | 0.0000     | 0.0000               | \$1,1252   | \$1,1252   | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$1,1252          | \$1,1252   | \$1,1252   | \$1,1252   |            |
| Engineering    | 32XX    |      | Outside Plant Eng (FG20)             | 0.0750                 | 0.0000     | 0.0000               | \$43.66    | \$130,9800 | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$130,9800        | \$130,9800 | \$130,9800 | \$130,9800 |            |
| Engineering    | 34XX    |      | Net & Eng Plan (FG20)                | 0.0800                 | 0.0000     | 0.0000               | \$50.96    | \$25,4800  | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$25,4800         | \$25,4800  | \$25,4800  | \$25,4800  |            |
| Engineering    | 36XX    |      | Net Plug-In Admn (PG20)              | 0.0333                 | 0.0000     | 0.0000               | \$37.04    | \$12,3340  | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$12,3340         | \$12,3340  | \$12,3340  | \$12,3340  |            |
| Service Order  | 411X    |      | Install & Misc - Spec Svcs (SSIM)    | 0.2500                 | 0.0000     | 0.0000               | \$45.41    | \$11,3525  | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$11,3525         | \$11,3525  | \$11,3525  | \$11,3525  |            |
| Connect & Test | 411X    |      | Install & Misc - Spec Svcs (SSIM)    | 3.6670                 | 0.0000     | 0.0000               | \$45.41    | \$166,5185 | \$56,7625         | \$56,7625 | 1.1524     | \$0,0000 | \$0,0000   | \$166,5185        | \$166,5185 | \$166,5185 | \$166,5185 |            |
| Travel         | 411X    |      | Install & Misc - Spec Svcs (SSIM)    | 0.3000                 | 0.0000     | 0.0000               | \$45.41    | \$13,6230  | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$13,6230         | \$13,6230  | \$13,6230  | \$13,6230  |            |
| Connect & Test | 431X    |      | CO Install & Misc Field - Ckt & Fac  | 0.4716                 | 0.0000     | 0.0000               | \$42.04    | \$19,8670  | \$21,0200         | \$21,0200 | 1.1524     | \$0,0000 | \$0,0000   | \$19,8670         | \$19,8670  | \$19,8670  | \$19,8670  |            |
| Service Order  | 44XX    |      | Acc Cust Advocate Ctr (ACAC)         | 3.9519                 | 0.0000     | 0.0000               | \$38.31    | \$151,3973 | \$5,2983          | \$5,2983  | 1.1524     | \$0,0000 | \$0,0000   | \$151,3973        | \$151,3973 | \$151,3973 | \$151,3973 |            |
| Connect & Test | 44XX    |      | Acc Cust Advocate Ctr (ACAC)         | 0.1500                 | 0.0000     | 0.0000               | \$38.31    | \$5,7465   | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$5,7465          | \$5,7465   | \$5,7465   | \$5,7465   |            |
| Engineering    | 44XX    |      | Address & Facility Inventory (AFGI)  | 0.1333                 | 0.0000     | 0.0000               | \$33.64    | \$4,4842   | \$0,0000          | \$0,0000  | 1.1524     | \$0,0000 | \$0,0000   | \$4,4842          | \$4,4842   | \$4,4842   | \$4,4842   |            |
| Service Order  | 44XX    |      | Circuit Provisioning Group (CPG)     | 0.4917                 | 0.0000     | 0.0000               | \$33.64    | \$16,5408  | \$16,5408         | \$16,5408 | 1.1524     | \$0,0000 | \$0,0000   | \$16,5408         | \$16,5408  | \$16,5408  | \$16,5408  |            |
| Engineering    | 44XX    |      | Circuit Provisioning Group (CPG)     | 0.2500                 | 0.0000     | 0.0000               | \$32.76    | \$8,1900   | \$16,5408         | \$16,5408 | 1.1524     | \$0,0000 | \$0,0000   | \$8,1900          | \$8,1900   | \$8,1900   | \$8,1900   |            |
| Service Order  | 44XX    |      | Work Management Center (WMC)         | 0.0500                 | 0.0000     | 0.0000               | \$32.76    | \$1,6380   | \$1,6380          | \$1,6380  | 1.1524     | \$0,0000 | \$0,0000   | \$1,6380          | \$1,6380   | \$1,6380   | \$1,6380   |            |

| Function       | Payband | JFCI | JFCI/Payband Description             | Installation Worktimes |            | Disconnect Worktimes |            | TELRIC Labor Rate | Initial Cost |            | Disconnect Cost |            | Discounted Disconnect Cost |            | TELRIC     |            |            |
|----------------|---------|------|--------------------------------------|------------------------|------------|----------------------|------------|-------------------|--------------|------------|-----------------|------------|----------------------------|------------|------------|------------|------------|
|                |         |      |                                      | First                  | Additional | First                | Additional |                   | First        | Additional | First           | Additional | First                      | Additional | First      | Additional |            |
| Service Order  | 230X    |      | Customer Port Of Contact - ICSCALCSC | 0.0361                 | 0.0000     | 0.0000               | \$31.17    | \$1,1252          | \$1,1252     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$1,1252   | \$1,1252   | \$1,1252   | \$1,1252   |
| Engineering    | 32XX    |      | Outside Plant Eng (FG20)             | 0.0750                 | 0.0000     | 0.0000               | \$43.66    | \$32,7450         | \$1,0915     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$32,7450  | \$32,7450  | \$32,7450  | \$32,7450  |
| Engineering    | 34XX    |      | Net & Eng Plan (FG20)                | 0.0800                 | 0.0000     | 0.0000               | \$50.96    | \$40,7680         | \$4,0764     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$40,7680  | \$40,7680  | \$40,7680  | \$40,7680  |
| Engineering    | 36XX    |      | Net Plug-In Admn (PG20)              | 0.0333                 | 0.0000     | 0.0000               | \$37.04    | \$12,3340         | \$1,2334     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$12,3340  | \$12,3340  | \$12,3340  | \$12,3340  |
| Service Order  | 411X    |      | Install & Misc - Spec Svcs (SSIM)    | 0.2500                 | 0.0000     | 0.0000               | \$45.41    | \$11,3525         | \$7,5698     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$11,3525  | \$11,3525  | \$11,3525  | \$11,3525  |
| Connect & Test | 411X    |      | Install & Misc - Spec Svcs (SSIM)    | 3.6670                 | 0.0000     | 0.0000               | \$45.41    | \$166,5185        | \$56,7625    | \$56,7625  | \$0,0000        | \$0,0000   | \$0,0000                   | \$166,5185 | \$166,5185 | \$166,5185 | \$166,5185 |
| Travel         | 411X    |      | Install & Misc - Spec Svcs (SSIM)    | 0.3000                 | 0.0000     | 0.0000               | \$45.41    | \$13,6230         | \$0,0000     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$13,6230  | \$13,6230  | \$13,6230  | \$13,6230  |
| Connect & Test | 431X    |      | CO Install & Misc Field - Ckt & Fac  | 0.4716                 | 0.0000     | 0.0000               | \$42.04    | \$19,8670         | \$21,0200    | \$21,0200  | \$0,0000        | \$0,0000   | \$0,0000                   | \$19,8670  | \$19,8670  | \$19,8670  | \$19,8670  |
| Service Order  | 44XX    |      | Acc Cust Advocate Ctr (ACAC)         | 3.9519                 | 0.0000     | 0.0000               | \$38.31    | \$151,3973        | \$5,2983     | \$5,2983   | \$0,0000        | \$0,0000   | \$0,0000                   | \$151,3973 | \$151,3973 | \$151,3973 | \$151,3973 |
| Connect & Test | 44XX    |      | Acc Cust Advocate Ctr (ACAC)         | 0.1500                 | 0.0000     | 0.0000               | \$38.31    | \$5,7465          | \$0,0000     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$5,7465   | \$5,7465   | \$5,7465   | \$5,7465   |
| Engineering    | 44XX    |      | Address & Facility Inventory (AFGI)  | 0.1333                 | 0.0000     | 0.0000               | \$33.64    | \$4,4842          | \$0,0000     | \$0,0000   | \$0,0000        | \$0,0000   | \$0,0000                   | \$4,4842   | \$4,4842   | \$4,4842   | \$4,4842   |
| Service Order  | 44XX    |      | Circuit Provisioning Group (CPG)     | 0.4917                 | 0.0000     | 0.0000               | \$33.64    | \$16,5408         | \$16,5408    | \$16,5408  | \$0,0000        | \$0,0000   | \$0,0000                   | \$16,5408  | \$16,5408  | \$16,5408  | \$16,5408  |
| Engineering    | 44XX    |      | Circuit Provisioning Group (CPG)     | 0.2500                 | 0.0000     | 0.0000               | \$32.76    | \$8,1900          | \$16,5408    | \$16,5408  | \$0,0000        | \$0,0000   | \$0,0000                   | \$8,1900   | \$8,1900   | \$8,1900   | \$8,1900   |
| Service Order  | 44XX    |      | Work Management Center (WMC)         | 0.0500                 | 0.0000     | 0.0000               | \$32.76    | \$1,6380          | \$1,6380     | \$1,6380   | \$0,0000        | \$0,0000   | \$0,0000                   | \$1,6380   | \$1,6380   | \$1,6380   | \$1,6380   |

000079

Nonrecurring Cost Summary

P.11.12 - EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC - NEW

Georgia

03/14/2000

Nonrecurring Cost

|   | First            |             | Additional       |             |
|---|------------------|-------------|------------------|-------------|
|   | Direct Cost      | Shared Cost | Direct Cost      | Shared Cost |
| Nonrecurring Cost Development Sheet Col H | \$22,5640        | \$0.0000    | \$16.7196        | \$0.0000    |
| Total Cost                                | \$22,5640        | \$0.0000    | \$16.7196        | \$0.0000    |
| Gross Receipts Tax Factor                 |                  | X           |                  | X           |
| Cost (including Gross Receipts Tax)       | \$22,8123        |             | \$16,9036        |             |
| Common Cost Factor                        |                  | X           |                  | X           |
| <b>Nonrecurring Economic Cost</b>         | <b>\$23,9803</b> |             | <b>\$17,7691</b> |             |

000080

Nonrecurring Cost Development

Georgia  
P. 11.12 - EXT. 4-W DSI DIGITAL LOOP WITH DED. DSI IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC. - NEW

| Function      | JFC/ Payband | JFC/Payband Description               | JFC/Payband Description               | A                      | B                    | C                 | D-A-C        | E-B-C           | F                          | G-E-F                      | H-D-G       |
|---------------|--------------|---------------------------------------|---------------------------------------|------------------------|----------------------|-------------------|--------------|-----------------|----------------------------|----------------------------|-------------|
| Service Order | 230X         | Customer Point Of Contact - ICSCA/CSC | Customer Point Of Contact - ICSCA/CSC | Installation Worktimes | Disconnect Worktimes | Direct Labor Rate | Initial Cost | Disconnect Cost | Disconnect Discount Factor | Discounted Disconnect Cost | Direct Cost |
|               |              |                                       |                                       | First                  | First                |                   | First        | First           |                            | First                      | First       |
|               |              |                                       |                                       | 0.7239                 | 0.0000               | \$31.17           | \$22,5640    | \$0.0000        | 1.1524                     | \$0.0000                   | \$22,5640   |
|               |              |                                       |                                       | Additional             | Additional           |                   | Additional   | Additional      |                            | Additional                 | Additional  |
|               |              |                                       |                                       | 0.5364                 | 0.0000               |                   | \$16,7196    | \$0.0000        |                            | \$0.0000                   | \$16,7196   |
|               |              |                                       |                                       | Total                  | Total                | Total             | Total        | Total           | Total                      | Total                      | Total       |
|               |              |                                       |                                       | 1.2603                 | 0.0000               | \$31.17           | \$39,2836    | \$0.0000        | 1.1524                     | \$0.0000                   | \$39,2836   |

| Function      | JFC/ Payband | JFC/Payband Description               | JFC/Payband Description               | A                      | B                    | C                 | D-A-C        | E-B-C           | F                          | G-E-F                      | H-D-G       |
|---------------|--------------|---------------------------------------|---------------------------------------|------------------------|----------------------|-------------------|--------------|-----------------|----------------------------|----------------------------|-------------|
| Service Order | 230X         | Customer Point Of Contact - ICSCA/CSC | Customer Point Of Contact - ICSCA/CSC | Installation Worktimes | Disconnect Worktimes | TELRIC Labor Rate | Initial Cost | Disconnect Cost | Disconnect Discount Factor | Discounted Disconnect Cost | Direct Cost |
|               |              |                                       |                                       | First                  | First                |                   | First        | First           |                            | First                      | First       |
|               |              |                                       |                                       | 0.7239                 | 0.0000               | \$31.17           | \$22,5640    | \$0.0000        | 1.1524                     | \$0.0000                   | \$22,5640   |
|               |              |                                       |                                       | Additional             | Additional           |                   | Additional   | Additional      |                            | Additional                 | Additional  |
|               |              |                                       |                                       | 0.5364                 | 0.0000               |                   | \$16,7196    | \$0.0000        |                            | \$0.0000                   | \$16,7196   |
|               |              |                                       |                                       | Total                  | Total                | Total             | Total        | Total           | Total                      | Total                      | Total       |
|               |              |                                       |                                       | 1.2603                 | 0.0000               | \$31.17           | \$39,2836    | \$0.0000        | 1.1524                     | \$0.0000                   | \$39,2836   |

000081



Nonrecurring Cost Summary

Georgia  
 P.11.1199 - EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - NEW - DISCONNECT

03/14/2000

Nonrecurring Cost

|   | First             |             | Additional       |                  |
|---|-------------------|-------------|------------------|------------------|
|   | Direct Cost       | Shared Cost | Direct Cost      | Shared Cost      |
| Nonrecurring Cost Development Sheet Col H | \$125.7987        | \$0.0000    | \$43.9082        | \$0.0000         |
| Total Cost                                | \$125.7987        | \$0.0000    | \$43.9082        | \$0.0000         |
| Gross Receipts Tax Factor                 |                   | X           |                  | X                |
| Cost (including Gross Receipts Tax)       | \$127.1833        | 1.0110      | \$44.3914        | 1.0110           |
| Common Cost Factor                        | X                 |             | X                |                  |
| <b>Nonrecurring Economic Cost</b>         | <b>\$133.6951</b> |             | <b>\$46.6643</b> |                  |
|   |                   |             | <b>TELRIC</b>    | <b>\$43.9082</b> |
|   |                   |             |                  | <b>\$43.9082</b> |

000082

Nonrecurring Cost Development

Georgia  
P.11.1189 - EXT. 4-W DSI DIGITAL LOOP WITH DED. DSI ID TRANSPORT - NONRECURRING - NEW - DISCONNECT

| Function       | JFCI Payband | JFCI Description                      | A Installation Worktimes |            | B Disconnect Worktimes | C Direct Labor Rate | D-AcC Install Cost |            | E=B+C Disconnect Cost |            | F Disconnect Discount Factor | G-E+G Discounted Disconnect Cost |             | H-D+G Direct Cost |            |
|----------------|--------------|---------------------------------------|--------------------------|------------|------------------------|---------------------|--------------------|------------|-----------------------|------------|------------------------------|----------------------------------|-------------|-------------------|------------|
|                |              |                                       | First                    | Additional |                        |                     | First              | Additional | First                 | Additional |                              | First                            | Additional  | First             | Additional |
| Service Order  | 230X         | Customer Point Of Contact - ICSCALCSC | 0.0000                   | 0.0000     | 0.0361                 | \$31.17             | \$0.0000           | \$0.0000   | \$1.1252              | \$0.0000   | 1.1524                       | \$1.2968                         | \$1.2968    | \$1.2968          | \$0.0000   |
| Engineering    | 32XX         | Outside Plant Eng (FG30)              | 0.0000                   | 0.0000     | 0.0333                 | \$43.66             | \$0.0000           | \$0.0000   | \$1.4539              | \$0.0000   | 1.1524                       | \$1.6755                         | \$1.6755    | \$1.6755          | \$0.0000   |
| Engineering    | 34XX         | Ntwk & Eng Planning (FG20)            | 0.0000                   | 0.0000     | 0.1667                 | \$50.98             | \$0.0000           | \$0.0000   | \$8.4984              | \$0.0000   | 1.1524                       | \$9.7937                         | \$9.7937    | \$9.7937          | \$4.8939   |
| Engineering    | 3A2X         | Ntwk Plug-In Admin (PICS)             | 0.0000                   | 0.0000     | 0.0633                 | \$37.04             | \$0.0000           | \$0.0000   | \$19.5200             | \$0.0000   | 1.1524                       | \$21.3429                        | \$21.3429   | \$21.3429         | \$2.7020   |
| Service Order  | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0.0000                   | 0.0000     | 0.3000                 | \$45.41             | \$0.0000           | \$0.0000   | \$13.6230             | \$0.0000   | 1.1524                       | \$15.6995                        | \$15.6995   | \$15.6995         | \$0.0000   |
| Connect & Test | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0.0000                   | 0.0000     | 0.9997                 | \$45.41             | \$0.0000           | \$0.0000   | \$45.3964             | \$0.0000   | 1.1524                       | \$52.3159                        | \$52.3159   | \$52.3159         | \$13.0672  |
| Travel         | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0.0000                   | 0.0000     | 0.3783                 | \$45.41             | \$0.0000           | \$0.0000   | \$17.1786             | \$0.0000   | 1.1524                       | \$19.7970                        | \$19.7970   | \$19.7970         | \$1.9797   |
| Service Order  | 431X         | CO Install & Mica Field - Ctl & Fac   | 0.0000                   | 0.0000     | 0.0240                 | \$42.04             | \$0.0000           | \$0.0000   | \$1.0090              | \$0.0000   | 1.1524                       | \$1.1627                         | \$1.1627    | \$1.1627          | \$0.0000   |
| Service Order  | 4A4X         | Acc Cust Advocate Cntr (ACAC)         | 0.0000                   | 0.0000     | 0.0058                 | \$38.31             | \$0.0000           | \$0.0000   | \$0.2222              | \$0.0000   | 1.1524                       | \$0.2561                         | \$0.2561    | \$0.2561          | \$0.0000   |
| Connect & Test | 4A4X         | Acc Cust Advocate Cntr (ACAC)         | 0.0000                   | 0.0000     | 0.0333                 | \$38.31             | \$0.0000           | \$0.0000   | \$1.2757              | \$0.0000   | 1.1524                       | \$1.4702                         | \$1.4702    | \$1.4702          | \$0.0000   |
| Engineering    | 4M1X         | Address & Facility Inventory (AFIG)   | 0.0000                   | 0.0000     | 0.0250                 | \$34.31             | \$0.0000           | \$0.0000   | \$0.8578              | \$0.0000   | 1.1524                       | \$0.9885                         | \$0.9885    | \$0.9885          | \$0.0000   |
| Total          |              |                                       |                          |            |                        |                     |                    |            |                       |            |                              |                                  | 125.7887356 | 43.90816201       |            |

| Function       | JFCI Payband | JFCI Description                      | A Installation Worktimes |            | B Disconnect Worktimes | C Direct Labor Rate | D-AcC Install Cost |            | E=B+C Disconnect Cost |            | F Disconnect Discount Factor | G-E+G Discounted Disconnect Cost |             | H-D+G Direct Cost |            |
|----------------|--------------|---------------------------------------|--------------------------|------------|------------------------|---------------------|--------------------|------------|-----------------------|------------|------------------------------|----------------------------------|-------------|-------------------|------------|
|                |              |                                       | First                    | Additional |                        |                     | First              | Additional | First                 | Additional |                              | First                            | Additional  | First             | Additional |
| Service Order  | 230X         | Customer Point Of Contact - ICSCALCSC | 0.0000                   | 0.0000     | 0.0361                 | \$31.17             | \$0.0000           | \$0.0000   | \$1.1252              | \$0.0000   | 1.1524                       | \$1.2968                         | \$1.2968    | \$1.2968          | \$0.0000   |
| Engineering    | 32XX         | Outside Plant Eng (FG30)              | 0.0000                   | 0.0000     | 0.0333                 | \$43.66             | \$0.0000           | \$0.0000   | \$1.4539              | \$0.0000   | 1.1524                       | \$1.6755                         | \$1.6755    | \$1.6755          | \$0.0000   |
| Engineering    | 34XX         | Ntwk & Eng Planning (FG20)            | 0.0000                   | 0.0000     | 0.1667                 | \$50.98             | \$0.0000           | \$0.0000   | \$8.4984              | \$0.0000   | 1.1524                       | \$9.7937                         | \$9.7937    | \$9.7937          | \$4.8939   |
| Engineering    | 3A2X         | Ntwk Plug-In Admin (PICS)             | 0.0000                   | 0.0000     | 0.0633                 | \$37.04             | \$0.0000           | \$0.0000   | \$19.5200             | \$0.0000   | 1.1524                       | \$21.3429                        | \$21.3429   | \$21.3429         | \$2.7020   |
| Service Order  | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0.0000                   | 0.0000     | 0.3000                 | \$45.41             | \$0.0000           | \$0.0000   | \$13.6230             | \$0.0000   | 1.1524                       | \$15.6995                        | \$15.6995   | \$15.6995         | \$0.0000   |
| Connect & Test | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0.0000                   | 0.0000     | 0.9997                 | \$45.41             | \$0.0000           | \$0.0000   | \$45.3964             | \$0.0000   | 1.1524                       | \$52.3159                        | \$52.3159   | \$52.3159         | \$13.0672  |
| Travel         | 411X         | Install & Mica - Spec Svcs (SSIM)     | 0.0000                   | 0.0000     | 0.3783                 | \$45.41             | \$0.0000           | \$0.0000   | \$17.1786             | \$0.0000   | 1.1524                       | \$19.7970                        | \$19.7970   | \$19.7970         | \$1.9797   |
| Service Order  | 431X         | CO Install & Mica Field - Ctl & Fac   | 0.0000                   | 0.0000     | 0.0240                 | \$42.04             | \$0.0000           | \$0.0000   | \$1.0090              | \$0.0000   | 1.1524                       | \$1.1627                         | \$1.1627    | \$1.1627          | \$0.0000   |
| Service Order  | 4A4X         | Acc Cust Advocate Cntr (ACAC)         | 0.0000                   | 0.0000     | 0.0058                 | \$38.31             | \$0.0000           | \$0.0000   | \$0.2222              | \$0.0000   | 1.1524                       | \$0.2561                         | \$0.2561    | \$0.2561          | \$0.0000   |
| Connect & Test | 4A4X         | Acc Cust Advocate Cntr (ACAC)         | 0.0000                   | 0.0000     | 0.0333                 | \$38.31             | \$0.0000           | \$0.0000   | \$1.2757              | \$0.0000   | 1.1524                       | \$1.4702                         | \$1.4702    | \$1.4702          | \$0.0000   |
| Engineering    | 4M1X         | Address & Facility Inventory (AFIG)   | 0.0000                   | 0.0000     | 0.0250                 | \$34.31             | \$0.0000           | \$0.0000   | \$0.8578              | \$0.0000   | 1.1524                       | \$0.9885                         | \$0.9885    | \$0.9885          | \$0.0000   |
| Total          |              |                                       |                          |            |                        |                     |                    |            |                       |            |                              |                                  | 125.7887356 | 43.90816201       |            |

000083

### Nonrecurring Cost Summary

Georgia  
 P.11.1299 - EXT. 4-W DS1 DIGITAL LOOP WITH DED. DS1 IO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC-NEW - DISC

#### Nonrecurring Cost

03/14/2000

|   | <u>First</u>     |                  | <u>Additional</u> |                 |
|---|------------------|------------------|-------------------|-----------------|
|   | Direct<br>Cost   | Shared<br>Cost   | Direct<br>Cost    | Shared<br>Cost  |
| Nonrecurring Cost Development Sheet Col H | \$14,2319        | \$0.0000         | \$6.6059          | \$0.0000        |
| Total Cost                                | \$14,2319        | \$0.0000         | \$6.6059          | \$0.0000        |
| Gross Receipts Tax Factor                 | X                | X                | X                 | X               |
| Cost (including Gross Receipts Tax)       | \$14,3886        | \$14,3886        | \$6,6786          | \$6,6786        |
| Common Cost Factor                        | X                | X                | X                 | X               |
| <b>Nonrecurring Economic Cost</b>         | <b>\$15,1253</b> | <b>\$15,1253</b> | <b>\$7,0205</b>   | <b>\$7,0205</b> |

000084

Nonrecurring Cost Development

Georgia  
P.11.1289 - EXT. 4W DS1 DIGITAL LOOP WITH DED. DS1 TO TRANSPORT - NONRECURRING - INC. COST MAN vs. ELEC-NEW - DISC

| Function<br>Service Order | JFC/<br>Payband<br>230X | JFC/Payband<br>Description<br>Customer Point Of Contact - ICSCALCSC | A                                  |                      | B                                |                      | C                                  |                          | D-A-C                  |                             | E-B-C                  |  | F                                      |                        | G-E-F                                  |                        | H-D-G                |                        |                      |
|---------------------------|-------------------------|---|------------------------------------|----------------------|----------------------------------|----------------------|------------------------------------|--------------------------|------------------------|-----------------------------|------------------------|--|--|------------------------|--|------------------------|----------------------|------------------------|----------------------|
|                           |                         |   | Installation<br>Worktimes<br>First | Additional<br>0.0000 | Disconnect<br>Worktimes<br>First | Additional<br>0.1839 | Direct<br>Labor<br>Rate<br>\$31.17 | Install<br>Cost<br>First | Additional<br>\$0.0000 | Disconnect<br>Cost<br>First | Additional<br>\$5.7322 | Disconnect<br>Discount<br>Factor<br>1.1524 | Discounted Disconnect<br>Cost<br>First | Additional<br>\$6.6059 | Discounted Disconnect<br>Cost<br>First | Additional<br>\$6.6059 | Direct Cost<br>First | Additional<br>\$6.6059 | Direct Cost<br>First |
|                           |                         |   | 0.0000                             | 0.0000               | 0.3962                           | 0.1839               | \$31.17                            | \$0.0000                 | \$12.3498              | 1.1524                      | \$14.2319              | \$6.6059                                   | \$14.2319                              | \$6.6059               | \$14.2319                              | \$6.6059               | \$14.2319            | \$6.6059               | 6.60583563           |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |
|                           |                         |   | 0.0000                             | 0.0000               | 0.3962                           | 0.1839               | \$31.17                            | \$0.0000                 | \$12.3498              | 1.1524                      | \$14.2319              | \$6.6059                                   | \$14.2319                              | \$6.6059               | \$14.2319                              | \$6.6059               | \$14.2319            | \$6.6059               | 6.60583563           |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |
|                           |                         |   |                                    |                      |                                  |                      |                                    |                          |                        |                             |                        |  |  |                        |  |                        |                      |                        |                      |

000085

|    | A                             | B | C | D | E | F | G | H | I | J | K |
|----|-------------------------------|---|---|---|---|---|---|---|---|---|---|
| 1  | Georgia                       |   |   |   |   |   |   |   |   |   |   |
| 2  | Index Sheet                   |   |   |   |   |   |   |   |   |   |   |
| 3  | Study Period: 01/2000-12/2002 |   |   |   |   |   |   |   |   |   |   |
| 4  |                               |   |   |   |   |   |   |   |   |   |   |
| 5  |                               |   |   |   |   |   |   |   |   |   |   |
| 6  |                               |   |   |   |   |   |   |   |   |   |   |
| 7  |                               |   |   |   |   |   |   |   |   |   |   |
| 8  |                               |   |   |   |   |   |   |   |   |   |   |
| 9  |                               |   |   |   |   |   |   |   |   |   |   |
| 10 |                               |   |   |   |   |   |   |   |   |   |   |
| 11 |                               |   |   |   |   |   |   |   |   |   |   |
| 12 |                               |   |   |   |   |   |   |   |   |   |   |
| 13 |                               |   |   |   |   |   |   |   |   |   |   |
| 14 |                               |   |   |   |   |   |   |   |   |   |   |
| 15 |                               |   |   |   |   |   |   |   |   |   |   |
| 16 |                               |   |   |   |   |   |   |   |   |   |   |
| 17 |                               |   |   |   |   |   |   |   |   |   |   |
| 18 |                               |   |   |   |   |   |   |   |   |   |   |
| 19 |                               |   |   |   |   |   |   |   |   |   |   |
| 20 |                               |   |   |   |   |   |   |   |   |   |   |
| 21 |                               |   |   |   |   |   |   |   |   |   |   |
| 22 |                               |   |   |   |   |   |   |   |   |   |   |
| 23 |                               |   |   |   |   |   |   |   |   |   |   |
| 24 |                               |   |   |   |   |   |   |   |   |   |   |
| 25 |                               |   |   |   |   |   |   |   |   |   |   |

**Sheet Name:**  
Index  
INPUT\_NRC  
Investments  
Additives\_Recurring  
Additives\_Nonrecurring  
Recurring Labor  
Nonrecurring Labor

**Description:**  
2-Wire VG Extended Loop - w/ Dedicated DS1 Interoffice Transport  
Non-recurring Worktimes  
CALCULATOR INPUT FORM - MATERIAL/INVESTMENT DATA  
CALCULATOR INPUT FORM - RECURRING EXPENSES DATA  
CALCULATOR INPUT FORM - NONRECURRING EXPENSES DATA  
CALCULATOR INPUT FORM - RECURRING LABOR EXPENSES DATA  
CALCULATOR INPUT FORM - NONRECURRING LABOR TIMES

000113

| A    |   | B               | C             | D       | E                      | F                         | G                           | H                              |
|------|---|-----------------|---------------|---------|------------------------|---------------------------|-----------------------------|--------------------------------|
| Item | Description   | Description     | JFC / JG / WS | Source  | First Install Time Hrs | First Disconnect Time Hrs | Additional Install Time Hrs | Additional Disconnect Time Hrs |
| 1    | Georgia   |                 |               |         |                        |                           |                             |                                |
| 2    | Non-recurring Worktimes   |                 |               |         |                        |                           |                             |                                |
| 3    | Study Period: 01/2000-12/2002   |                 |               |         |                        |                           |                             |                                |
| 4    |   |                 |               |         |                        |                           |                             |                                |
| 5    |   |                 |               |         |                        |                           |                             |                                |
| 6    | Item/Description  |                 |               |         |                        |                           |                             |                                |
| 7    | Work Group  |                 |               |         |                        |                           |                             |                                |
| 8    | CUSTOMER POINT OF CONTACT (LCSC)  | Service Order   | 230X          | Network | 0.0361                 | 0.0361                    | 0.0361                      | 0.0361                         |
| 9    | CUSTOMER POINT OF CONTACT (LCSC) MANUAL   | Service Order   | 230X          | Network | 1.0264                 | 0.5264                    | 0.8389                      | 0.3139                         |
| 10   | OUTSIDE PLANT ENGINEERING (FG30)  | Engineering     | 32XX          | Network | 0.1000                 | 0.0000                    | 0.0167                      | 0.0000                         |
| 11   | NETWORK PLANNING & ENGINEERING (FG20)   | Service Inquiry | 34XX          | Network | 0.2500                 | 0.0000                    | 0.0000                      | 0.0000                         |
| 12   | NETWORK PLANNING & ENGINEERING (PICS)   | Engineering     | 3A2X          | Network | 0.0640                 | 0.0140                    | 0.0500                      | 0.0000                         |
| 13   | I&M makes x-conn@x-box, test circuit w/CO@ prem & x-box, lags circuit & connect | CONNECT & TEST  | 410X          | Network | 0.3175                 | 0.0000                    | 0.3175                      | 0.0000                         |
| 14   | I&M (incidental travel time which is not captured in MID)                       | TRAVEL          | 410X          | Network | 0.0667                 | 0.0000                    | 0.0000                      | 0.0000                         |
| 15   | CO INSTALL & MTCE CKT & FAC (NTEL)  | Connect & Test  | 431X          | Network | 1.2500                 | 1.0000                    | 0.5000                      | 0.2500                         |
| 16   | ACCESS CUSTOMER ADVOCATE CENTER (UNEC)  | Service Order   | 4AXX          | Network | 0.1750                 | 0.4150                    | 0.1200                      | 0.3600                         |
| 17   | ACCESS CUSTOMER ADVOCATE CENTER (UNEC)  | Connect & Test  | 4AXX          | Network | 4.8383                 | 0.7883                    | 4.4871                      | 0.5204                         |
| 18   | ADDRESS & FACILITY INVENTORY (AFIG)   | Engineering     | 4M1X          | Network | 0.1167                 | 0.1167                    | 0.0000                      | 0.0000                         |
| 19   | CPG processes svc request   | SERVICE ORDER   | 4N4X          | Network | 0.0375                 | 0.0000                    | 0.0375                      | 0.0000                         |
| 20   | CPG designs circuit and generates DLR & word document for OLE                   | ENGINEERING     | 4N4X          | Network | 0.0450                 | 0.0450                    | 0.0067                      | 0.0067                         |
| 21   | WORK MANAGEMENT CENTER (WMC)  | Service Order   | 4WXX          | Network | 0.2500                 | 0.0000                    | 0.0500                      | 0.0000                         |
| 22   |   |                 |               |         |                        |                           |                             |                                |
| 23   |   |                 |               |         |                        |                           |                             |                                |
| 24   | Feature Activation  |                 |               |         |                        |                           |                             |                                |
| 25   |   |                 |               |         |                        |                           |                             |                                |
| 26   | NETWORK PLANNING & ENGINEERING (PICS)   | Engineering     | 3A2X          | Network | 0.0500                 | 0.0000                    | 0.0500                      | 0.0000                         |
| 27   | ACCESS CUSTOMER ADVOCATE CENTER (UNEC)  | Connect & Test  | 4AXX          | Network | 0.2500                 | 0.0000                    | 0.1667                      | 0.0000                         |
| 28   |   |                 |               |         |                        |                           |                             |                                |

000114

| A  | B  | C | D          | E                | F                  | G | H | I | J |
|----|--|---|------------|------------------|--------------------|---|---|---|---|
| 1  | <b>CALCULATOR INPUT FORM - MATERIAL/INVESTMENT DATA</b>                          |   |            |                  |                    |   |   |   |   |
| 2  | Instructions:  |   |            |                  |                    |   |   |   |   |
| 3  | 1. Use this worksheet to record material and/or investments to be input into the |   |            |                  |                    |   |   |   |   |
| 4  | Calculator calculations.   |   |            |                  |                    |   |   |   |   |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).           |   |            |                  |                    |   |   |   |   |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row              |   |            |                  |                    |   |   |   |   |
| 7  | after last line of data, type END in Cost Element Column.                        |   |            |                  |                    |   |   |   |   |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.          |   |            |                  |                    |   |   |   |   |
| 9  | 5. Do NOT change columns, headings, sheet name.                                  |   |            |                  |                    |   |   |   |   |
| 10 |  |   |            |                  |                    |   |   |   |   |
| 11 |  |   |            |                  |                    |   |   |   |   |
| 12 |  |   |            |                  |                    |   |   |   |   |
| 13 | <u>Cost</u>  |   | <u>Sub</u> | <u>Volume</u>    | <u>Volume</u>      |   |   |   |   |
| 14 | <u>Element #</u>   |   | <u>FRC</u> | <u>Sensitive</u> | <u>Insensitive</u> |   |   |   |   |
| 15 |  |   |            | <u>\$ Amount</u> | <u>\$ Amount</u>   |   |   |   |   |
| 16 |  |   |            |                  |                    |   |   |   |   |
| 17 |  |   |            |                  |                    |   |   |   |   |
| 18 |  |   |            |                  |                    |   |   |   |   |
| 19 |  |   |            |                  |                    |   |   |   |   |
| 20 |  |   |            |                  |                    |   |   |   |   |
| 21 |  |   |            |                  |                    |   |   |   |   |
| 22 |  |   |            |                  |                    |   |   |   |   |
| 23 |  |   |            |                  |                    |   |   |   |   |
| 24 |  |   |            |                  |                    |   |   |   |   |
| 25 |  |   |            |                  |                    |   |   |   |   |

000115

| A  | B   | C                | D                                     | E                | F                  | G | H |  |
|----|---|------------------|---------------------------------------|------------------|--------------------|---|---|--|
| 1  | <b>CALCULATOR INPUT FORM - RECURRING EXPENSES DATA</b>                            |                  |                                       |                  |                    |   |   |  |
| 2  | <b>Instructions:</b>  |                  |                                       |                  |                    |   |   |  |
| 3  | 1. Use this worksheet to record recurring non-labor expenses to be input into the |                  |                                       |                  |                    |   |   |  |
| 4  | Calculator calculations.  |                  |                                       |                  |                    |   |   |  |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).            |                  |                                       |                  |                    |   |   |  |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row               |                  |                                       |                  |                    |   |   |  |
| 7  | after last line of data, type END in Cost Element Column.                         |                  |                                       |                  |                    |   |   |  |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.           |                  |                                       |                  |                    |   |   |  |
| 9  | 5. Do NOT change columns, headings, sheet name.                                   |                  |                                       |                  |                    |   |   |  |
| 10 |   |                  |                                       |                  |                    |   |   |  |
| 11 |   |                  |                                       |                  |                    |   |   |  |
| 12 |   |                  |                                       |                  |                    |   |   |  |
| 13 |   |                  |                                       |                  |                    |   |   |  |
| 14 |   |                  |                                       |                  |                    |   |   |  |
| 15 |   |                  |                                       |                  |                    |   |   |  |
| 16 |   |                  |                                       |                  |                    |   |   |  |
| 17 | <u>State</u>  | <u>Cost</u>      | <u>Recurring</u>                      | <u>Recurring</u> |                    |   |   |  |
| 18 |   | <u>Element #</u> | <u>Expense Description</u>            | <u>Volume</u>    | <u>Volume</u>      |   |   |  |
| 19 |   |                  | <u>(Limited to 25 characters)</u>     | <u>Sensitive</u> | <u>Insensitive</u> |   |   |  |
| 20 |   |                  |                                       | <u>\$ Amount</u> | <u>\$ Amount</u>   |   |   |  |
| 21 |   |                  |                                       |                  |                    |   |   |  |
| 22 |   |                  |                                       |                  |                    |   |   |  |
| 23 |   |                  |                                       |                  |                    |   |   |  |
| 24 |   |                  |                                       |                  |                    |   |   |  |
| 25 |   |                  |                                       |                  |                    |   |   |  |
| 26 |   |                  |                                       |                  |                    |   |   |  |
| 27 |   |                  |                                       |                  |                    |   |   |  |
| 28 |   |                  |                                       |                  |                    |   |   |  |
| 29 |   |                  |                                       |                  |                    |   |   |  |
| 30 |   |                  |                                       |                  |                    |   |   |  |
|    |   |                  | Maximum 10 entries per Cost Element # |                  |                    |   |   |  |

000116



| A   | B  | C  | D                             | E                                   | F  | G                                     | H  |
|---|--|--|-------------------------------|-------------------------------------|--|---------------------------------------|--|
| <b>CALCULATOR INPUT FORM - NONRECURRING EXPENSES DATA</b> |  |  |                               |                                     |  |                                       |  |
| 1   | <b>Instructions:</b>   |  |                               |                                     |  |                                       |  |
| 2   | 1. Use this worksheet to record nonrecurring non-labor expenses to be input into the Calculator calculations.      |  |                               |                                     |  |                                       |  |
| 3   | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).   |  |                               |                                     |  |                                       |  |
| 4   | 3. Input data, by Cost Element, leaving no blank lines. On next row  |  |                               |                                     |  |                                       |  |
| 5   | after last line of data, type <b>END</b> in Cost Element Column.   |  |                               |                                     |  |                                       |  |
| 6   | 4. All data on this form should be cell-referenced to study workpapers.  |  |                               |                                     |  |                                       |  |
| 7   | 5. Do <b>NOT</b> change columns, headings, sheet name.   |  |                               |                                     |  |                                       |  |
| 8   | 6. Use column D when cost element has a single nonrecurring cost; use columns E & F for elements with a first      |  |                               |                                     |  |                                       |  |
| 9   | and additional nonrecurring cost; use columns G & H for elements with an initial and subsequent nonrecurring cost. |  |                               |                                     |  |                                       |  |
| 10  |  | <u>Nonrecurring Expense Description<br/>(Limited to 25 characters)</u> | <u>Nonrecurring \$ Amount</u> | <u>Nonrecurring First \$ Amount</u> | <u>Nonrecurring Additional \$ Amount</u> | <u>Nonrecurring Initial \$ Amount</u> | <u>Nonrecurring Subsequent \$ Amount</u> |
| 11  | <u>State</u>   | <u>Cost Element #</u>  |                               |                                     |  |                                       |  |
| 12  |  |  |                               |                                     |  |                                       |  |
| 13  |  |  |                               |                                     |  |                                       |  |
| 14  |  |  |                               |                                     |  |                                       |  |
| 15  |  |  |                               |                                     |  |                                       |  |
| 16  |  |  |                               |                                     |  |                                       |  |
| 17  |  |  |                               |                                     |  |                                       |  |
| 18  |  |  |                               |                                     |  |                                       |  |
| 19  |  |  |                               |                                     |  |                                       |  |
| 20  |  |  |                               |                                     |  |                                       |  |
| 21  |  |  |                               |                                     |  |                                       |  |
| 22  |  |  |                               |                                     |  |                                       |  |
| 23  |  |  |                               |                                     |  |                                       |  |
| 24  |  |  |                               |                                     |  |                                       |  |
| 25  |  |  |                               |                                     |  |                                       |  |
| 26  |  |  |                               |                                     |  |                                       |  |
| 27  |  |  |                               |                                     |  |                                       |  |
| 28  |  |  |                               |                                     |  |                                       |  |
| 29  |  |  |                               |                                     |  |                                       |  |
| 30  |  |  |                               |                                     |  |                                       |  |

000117

| A  | B   | C                                 | D              | E                        | F                  | G             | H                  |  |
|----|---|-----------------------------------|----------------|--------------------------|--------------------|---------------|--------------------|--|
| 1  | <b>CALCULATOR INPUT FORM - RECURRING LABOR EXPENSES DATA</b>                        |                                   |                |                          |                    |               |                    |  |
| 2  | <b>Instructions:</b>  |                                   |                |                          |                    |               |                    |  |
| 3  | 1. Use this worksheet to record recurring expensed labor times to be input into the |                                   |                |                          |                    |               |                    |  |
| 4  | Calculator calculations.  |                                   |                |                          |                    |               |                    |  |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).              |                                   |                |                          |                    |               |                    |  |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row                 |                                   |                |                          |                    |               |                    |  |
| 7  | after last line of data, type END in Cost Element Column.                           |                                   |                |                          |                    |               |                    |  |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.             |                                   |                |                          |                    |               |                    |  |
| 9  | 5. Do NOT change columns, headings, sheet name.                                     |                                   |                |                          |                    |               |                    |  |
| 10 |   |                                   |                |                          |                    |               |                    |  |
| 11 |   |                                   |                |                          |                    |               |                    |  |
| 12 |   |                                   |                |                          |                    |               |                    |  |
| 13 |   |                                   |                |                          |                    |               |                    |  |
| 14 | <u>Cost</u>   | <u>Labor Expense Description</u>  | <u>JFC/</u>    | <u>Work Time (Hours)</u> | <u>Volume</u>      | <u>Volume</u> | <u>Insensitive</u> |  |
| 15 | <u>Element #</u>  | <u>(Limited to 25 characters)</u> | <u>Payband</u> | <u>Sensitive</u>         | <u>Insensitive</u> |               |                    |  |
| 16 |   |                                   |                |                          |                    |               |                    |  |
| 17 |   |                                   |                |                          |                    |               |                    |  |
| 18 |   |                                   |                |                          |                    |               |                    |  |
| 19 |   |                                   |                |                          |                    |               |                    |  |
| 20 |   |                                   |                |                          |                    |               |                    |  |
| 21 |   |                                   |                |                          |                    |               |                    |  |
| 22 |   |                                   |                |                          |                    |               |                    |  |
| 23 |   |                                   |                |                          |                    |               |                    |  |
| 24 |   |                                   |                |                          |                    |               |                    |  |
| 25 |   |                                   |                |                          |                    |               |                    |  |
| 26 |   |                                   |                |                          |                    |               |                    |  |
| 27 |   |                                   |                |                          |                    |               |                    |  |
| 28 |   |                                   |                |                          |                    |               |                    |  |
| 29 |   |                                   |                |                          |                    |               |                    |  |
| 30 |   |                                   |                |                          |                    |               |                    |  |
| 31 |   |                                   |                |                          |                    |               |                    |  |
| 32 |   |                                   |                |                          |                    |               |                    |  |
| 33 |   |                                   |                |                          |                    |               |                    |  |
| 34 |   |                                   |                |                          |                    |               |                    |  |
| 35 |   |                                   |                |                          |                    |               |                    |  |
| 36 |   |                                   |                |                          |                    |               |                    |  |
| 37 |   |                                   |                |                          |                    |               |                    |  |
| 38 |   |                                   |                |                          |                    |               |                    |  |

000118

| A  | B              | C         | D            | E  | F            | G   | H                       | I                               | J                             | K                                    | L                                  | M                                 | N                               | O                                    |                                    |
|--|----------------|-----------|--------------|--|--------------|---|-------------------------|---------------------------------|-------------------------------|--------------------------------------|------------------------------------|-----------------------------------|---------------------------------|--------------------------------------|------------------------------------|
| CALCULATOR INPUT FORM - NONRECURRING LABOR TIMES   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| Instructions:  |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 1. Use this worksheet to record nonrecurring labor times to be input into the Calculator calculations.   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 3. Input data, by Cost Element, leaving no blank lines. On next row after last line of data, type END In Cost Element Column.  |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 4. All data on this form should be cell-referenced to study worksheets.  |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 5. Do NOT change columns, headings, sheet name.  |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 6. Use columns F & G when cost element has a single nonrecurring cost; use columns H, I, J, & K for elements with a first and additional nonrecurring cost; use columns L, M, N & O for elements with an initial and subsequent nonrecurring cost. |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 7. Input Cost Element Life (in months) on first row of data for each cost element. It is not necessary to repeat on each line.   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| State  | Cost Element # | Life (Mo) | Cost Element | Labor Expense Description (Limited to 25 characters) | JFC/ Payband | (For use w/ one NR) Installation Time (Hours) | Disconnect Time (Hours) | First Installation Time (Hours) | First Disconnect Time (Hours) | Additional Installation Time (Hours) | Additional Disconnect Time (Hours) | Initial Installation Time (Hours) | Initial Disconnect Time (Hours) | Subsequent Installation Time (Hours) | Subsequent Disconnect Time (Hours) |
| 14   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 15   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 16   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 17   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 18   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 19   |                |           |              |  |              |   |                         |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 20   | GA             | P.6.11    | 42           | Service Order  | 230X         |   |                         | 0.0361                          | 0.0000                        | 0.0361                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 21   | GA             | P.6.12    | 42           | Service Order  | 230X         |   |                         | 1.0264                          | 0.0000                        | 0.8389                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 22   | GA             | P.6.11    | 42           | Engineering  | 32XX         |   |                         | 0.1000                          | 0.0000                        | 0.0167                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 23   | GA             | P.6.11    | 42           | Service Inquiry                                      | 34XX         |   |                         | 0.2500                          | 0.0000                        | 0.0000                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 24   | GA             | P.6.11    | 42           | Engineering  | 3A2X         |   |                         | 0.0640                          | 0.0000                        | 0.0500                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 25   | GA             | P.6.11    | 42           | CONNECT & TEST                                       | 410X         |   |                         | 0.3175                          | 0.0000                        | 0.3175                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 26   | GA             | P.6.11    | 42           | TRAVEL   | 410X         |   |                         | 0.0667                          | 0.0000                        | 0.0000                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 27   | GA             | P.6.11    | 42           | Connect & Test                                       | 431X         |   |                         | 1.2500                          | 0.0000                        | 0.5000                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 28   | GA             | P.6.11    | 42           | Service Order  | 4AXX         |   |                         | 0.1750                          | 0.0000                        | 0.1200                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 29   | GA             | P.6.11    | 42           | Connect & Test                                       | 4AXX         |   |                         | 4.8363                          | 0.0000                        | 4.4871                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 30   | GA             | P.6.11    | 42           | Connect & Test                                       | 4M1X         |   |                         | 0.1167                          | 0.0000                        | 0.0000                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 31   | GA             | P.6.11    | 42           | Engineering  | 4N4X         |   |                         | 0.0375                          | 0.0000                        | 0.0375                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 32   | GA             | P.6.11    | 42           | SERVICE ORDER  | 4N4X         |   |                         | 0.0450                          | 0.0000                        | 0.0667                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 33   | GA             | P.6.11    | 42           | ENGINEERING  | 4WXX         |   |                         | 0.2500                          | 0.0000                        | 0.0500                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 34   | GA             | P.6.1199  | 42           | Service Order  | 230X         |   |                         | 0.0000                          | 0.0361                        | 0.0000                               | 0.0361                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 35   | GA             | P.6.1299  | 42           | Service Order  | 230X         |   |                         | 0.0000                          | 0.5264                        | 0.0000                               | 0.3139                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 36   | GA             | P.6.1199  | 42           | Engineering  | 3A2X         |   |                         | 0.0000                          | 0.0140                        | 0.0000                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 37   | GA             | P.6.1199  | 42           | CONNECT & TEST                                       | 410X         |   |                         | 0.0000                          | 0.0000                        | 0.0000                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 38   | GA             | P.6.1199  | 42           | Connect & Test                                       | 431X         |   |                         | 0.0000                          | 1.0000                        | 0.0000                               | 0.2500                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 39   | GA             | P.6.1199  | 42           | Service Order  | 4AXX         |   |                         | 0.0000                          | 0.4150                        | 0.0000                               | 0.3600                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 40   | GA             | P.6.1199  | 42           | Service Order  | 4AXX         |   |                         | 0.0000                          | 0.7883                        | 0.0000                               | 0.5204                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 41   | GA             | P.6.1199  | 42           | Connect & Test                                       | 4M1X         |   |                         | 0.0000                          | 0.0000                        | 0.0000                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 42   | GA             | P.6.1199  | 42           | Engineering  | 4N4X         |   |                         | 0.0000                          | 0.0450                        | 0.0000                               | 0.0067                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 43   | GA             | P.6.1199  | 42           | ENGINEERING  | 4N4X         |   |                         | 0.0500                          | 0.0000                        | 0.0500                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |
| 44   | GA             | P.6.13    | 42           | Engineering  | 3A2X         |   |                         | 0.0500                          | 0.0000                        | 0.0500                               | 0.0000                             | 0.0000                            | 0.0000                          | 0.0000                               | 0.0000                             |

000119

|    | A                             | B | C | D | E | F | G | H | I | J | K |
|----|-------------------------------|---|---|---|---|---|---|---|---|---|---|
| 1  | Georgia                       |   |   |   |   |   |   |   |   |   |   |
| 2  | Index Sheet                   |   |   |   |   |   |   |   |   |   |   |
| 3  | Study Period: 01/2000-12/2002 |   |   |   |   |   |   |   |   |   |   |
| 4  |                               |   |   |   |   |   |   |   |   |   |   |
| 5  |                               |   |   |   |   |   |   |   |   |   |   |
| 6  |                               |   |   |   |   |   |   |   |   |   |   |
| 7  |                               |   |   |   |   |   |   |   |   |   |   |
| 8  |                               |   |   |   |   |   |   |   |   |   |   |
| 9  |                               |   |   |   |   |   |   |   |   |   |   |
| 10 |                               |   |   |   |   |   |   |   |   |   |   |
| 11 |                               |   |   |   |   |   |   |   |   |   |   |
| 12 |                               |   |   |   |   |   |   |   |   |   |   |
| 13 |                               |   |   |   |   |   |   |   |   |   |   |
| 14 |                               |   |   |   |   |   |   |   |   |   |   |
| 15 |                               |   |   |   |   |   |   |   |   |   |   |
| 16 |                               |   |   |   |   |   |   |   |   |   |   |
| 17 |                               |   |   |   |   |   |   |   |   |   |   |
| 18 |                               |   |   |   |   |   |   |   |   |   |   |
| 19 |                               |   |   |   |   |   |   |   |   |   |   |
| 20 |                               |   |   |   |   |   |   |   |   |   |   |
| 21 |                               |   |   |   |   |   |   |   |   |   |   |
| 22 |                               |   |   |   |   |   |   |   |   |   |   |
| 23 |                               |   |   |   |   |   |   |   |   |   |   |
| 24 |                               |   |   |   |   |   |   |   |   |   |   |
| 25 |                               |   |   |   |   |   |   |   |   |   |   |

**Sheet Name:**  
Index  
INPUT\_NRC  
Investments  
Additives\_Recurring  
Additives\_Nonrecurring  
Recurring Labor  
Nonrecurring Labor

**Description:**  
4-Wire VG Extended Loop -- w/ Dedicated DS1 Interoffice Transport  
Non-recurring Worktimes  
CALCULATOR INPUT FORM - MATERIAL/INVESTMENT DATA  
CALCULATOR INPUT FORM - RECURRING EXPENSES DATA  
CALCULATOR INPUT FORM - NONRECURRING EXPENSES DATA  
CALCULATOR INPUT FORM - RECURRING LABOR EXPENSES DATA  
CALCULATOR INPUT FORM - NONRECURRING LABOR TIMES

000120

| A   |                  | B               | C             | D       | E                      |                           | F                           | G                              | H |
|---|------------------|-----------------|---------------|---------|------------------------|---------------------------|-----------------------------|--------------------------------|---|
| Item/Description  | Item/Description | Description     | JFC / JG / WS | Source  | First Install Time Hrs | First Disconnect Time Hrs | Additional Install Time Hrs | Additional Disconnect Time Hrs |   |
| 1 Georgia   |                  |                 |               |         |                        |                           |                             |                                |   |
| 2 Non-recurring Worktimes   |                  |                 |               |         |                        |                           |                             |                                |   |
| 3 Study Period: 01/2000-12/2002   |                  |                 |               |         |                        |                           |                             |                                |   |
| 4   |                  |                 |               |         |                        |                           |                             |                                |   |
| 5   |                  |                 |               |         |                        |                           |                             |                                |   |
| 6 Item/Description  | Work Group       |                 |               |         |                        |                           |                             |                                |   |
| 7   |                  |                 |               |         |                        |                           |                             |                                |   |
| 8   |                  |                 |               |         |                        |                           |                             |                                |   |
| 9 CUSTOMER POINT OF CONTACT (LCSC)  |                  | Service Order   | 230X          | Network | 0.0361                 | 0.0361                    | 0.0361                      | 0.0361                         |   |
| 10 CUSTOMER POINT OF CONTACT (LCSC) MANUAL  |                  | Service Order   | 230X          | Network | 1.0264                 | 0.5264                    | 0.8389                      | 0.3139                         |   |
| 11 OUTSIDE PLANT ENGINEERING (FG30)   |                  | Engineering     | 32XX          | Network | 0.1000                 | 0.0000                    | 0.0167                      | 0.0000                         |   |
| 12 NETWORK PLANNING & ENGINEERING (FG20)  |                  | Service Inquiry | 34XX          | Network | 0.2500                 | 0.0000                    | 0.0000                      | 0.0000                         |   |
| 13 NETWORK PLANNING & ENGINEERING (PICS)  |                  | Engineering     | 3A2X          | Network | 0.0640                 | 0.0140                    | 0.0500                      | 0.0000                         |   |
| 14 SSIM PROCESSES SVC request   |                  | SERVICE ORDER   | 411X          | Network | 0.3072                 | 0.3072                    | 0.0000                      | 0.0000                         |   |
| 15 SSIM makes x-conn @ x-box, tests circuit w/co @ prem & x-box, tags circuit & completes order |                  | CONNECT & TEST  | 411X          | Network | 2.4580                 | 0.5000                    | 2.4580                      | 0.5000                         |   |
| 16 SSIM (incidental travel time which is not captured in NID/crop investment)                   |                  | TRAVEL          | 411X          | Network | 0.3333                 | 0.3333                    | 0.0000                      | 0.0000                         |   |
| 17 CO INSTALL & MTCE CKT & FAC (NTEL)   |                  | Connect & Test  | 431X          | Network | 1.2500                 | 1.0000                    | 0.5000                      | 0.2500                         |   |
| 18 ACCESS CUSTOMER ADVOCATE CENTER (UNEC)   |                  | Service Order   | 4AXX          | Network | 0.3033                 | 0.5433                    | 0.3033                      | 0.5433                         |   |
| 19 ACCESS CUSTOMER ADVOCATE CENTER (UNEC)   |                  | Connect & Test  | 4AXX          | Network | 5.0028                 | 0.2395                    | 4.9195                      | 0.2395                         |   |
| 20 ADDRESS & FACILITY INVENTORY (AFIG)  |                  | Engineering     | 4M1X          | Network | 0.1167                 | 0.1167                    | 0.0000                      | 0.0000                         |   |
| 21 CPG processes svc request  |                  | SERVICE ORDER   | 4N4X          | Network | 0.0375                 | 0.0000                    | 0.0375                      | 0.0000                         |   |
| 22 CPG designs circuit and generates DLR & word document for OLEC & field                       |                  | ENGINEERING     | 4N4X          | Network | 0.0450                 | 0.0450                    | 0.0067                      | 0.0067                         |   |
| 23 WORK MANAGEMENT CENTER (WMC)   |                  | Service Order   | 4WXX          | Network | 0.2500                 | 0.0000                    | 0.0500                      | 0.0000                         |   |
| 24  |                  |                 |               |         |                        |                           |                             |                                |   |
| 25  |                  |                 |               |         |                        |                           |                             |                                |   |
| 26  |                  |                 |               |         |                        |                           |                             |                                |   |
| 27  |                  |                 |               |         |                        |                           |                             |                                |   |
| 28 NETWORK PLANNING & ENGINEERING (PICS)  |                  | Engineering     | 3A2X          | Network | 0.0500                 | 0.0000                    | 0.0500                      | 0.0000                         |   |
| 29 ACCESS CUSTOMER ADVOCATE CENTER (UNEC)   |                  | Connect & Test  | 4AXX          | Network | 0.2500                 | 0.0000                    | 0.1667                      | 0.0000                         |   |
| 30  |                  |                 |               |         |                        |                           |                             |                                |   |

000121

|    | A  | B         | C | D   | E         | F           | G | H | I | J |
|----|--|-----------|---|-----|-----------|-------------|---|---|---|---|
| 1  | <b>CALCULATOR INPUT FORM - MATERIAL/INVESTMENT DATA</b>                          |           |   |     |           |             |   |   |   |   |
| 2  | Instructions:  |           |   |     |           |             |   |   |   |   |
| 3  | 1. Use this worksheet to record material and/or investments to be input into the |           |   |     |           |             |   |   |   |   |
| 4  | Calculator calculations.   |           |   |     |           |             |   |   |   |   |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).           |           |   |     |           |             |   |   |   |   |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row              |           |   |     |           |             |   |   |   |   |
| 7  | after last line of data, type END in Cost Element Column.                        |           |   |     |           |             |   |   |   |   |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.          |           |   |     |           |             |   |   |   |   |
| 9  | 5. Do NOT change columns, headings, sheet name.                                  |           |   |     |           |             |   |   |   |   |
| 10 |  |           |   |     |           |             |   |   |   |   |
| 11 |  |           |   |     |           |             |   |   |   |   |
| 12 |  |           |   |     | Volume    | Volume      |   |   |   |   |
| 13 |  | Cost      |   | Sub | Sensitive | Insensitive |   |   |   |   |
| 14 |  | Element # |   | FRC | \$ Amount | \$ Amount   |   |   |   |   |
| 15 |  | State     |   |     |           |             |   |   |   |   |
| 16 |  |           |   |     |           |             |   |   |   |   |
| 17 |  |           |   |     |           |             |   |   |   |   |
| 18 |  |           |   |     |           |             |   |   |   |   |
| 19 |  |           |   |     |           |             |   |   |   |   |
| 20 |  |           |   |     |           |             |   |   |   |   |
| 21 |  |           |   |     |           |             |   |   |   |   |
| 22 |  |           |   |     |           |             |   |   |   |   |
| 23 |  |           |   |     |           |             |   |   |   |   |
| 24 |  |           |   |     |           |             |   |   |   |   |
| 25 |  |           |   |     |           |             |   |   |   |   |

| A  | B   | C | D | E | F | G | H |  |
|----|---|---|---|---|---|---|---|--|
| 1  | <b>CALCULATOR INPUT FORM - RECURRING EXPENSES DATA</b>                            |   |   |   |   |   |   |  |
| 2  | <b>Instructions:</b>  |   |   |   |   |   |   |  |
| 3  | 1. Use this worksheet to record recurring non-labor expenses to be input into the |   |   |   |   |   |   |  |
| 4  | Calculator calculations.  |   |   |   |   |   |   |  |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).            |   |   |   |   |   |   |  |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row               |   |   |   |   |   |   |  |
| 7  | after last line of data, type END in Cost Element Column.                         |   |   |   |   |   |   |  |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.           |   |   |   |   |   |   |  |
| 9  | 5. Do NOT change columns, headings, sheet name.                                   |   |   |   |   |   |   |  |
| 10 |   |   |   |   |   |   |   |  |
| 11 |   |   |   |   |   |   |   |  |
| 12 |   |   |   |   |   |   |   |  |
| 13 |   |   |   |   |   |   |   |  |
| 14 |   |   |   |   |   |   |   |  |
| 15 |   |   |   |   |   |   |   |  |
| 16 |   |   |   |   |   |   |   |  |
| 17 |   |   |   |   |   |   |   |  |
| 18 |   |   |   |   |   |   |   |  |
| 19 |   |   |   |   |   |   |   |  |
| 20 |   |   |   |   |   |   |   |  |
| 21 |   |   |   |   |   |   |   |  |
| 22 |   |   |   |   |   |   |   |  |
| 23 |   |   |   |   |   |   |   |  |
| 24 |   |   |   |   |   |   |   |  |
| 25 |   |   |   |   |   |   |   |  |
| 26 |   |   |   |   |   |   |   |  |
| 27 |   |   |   |   |   |   |   |  |
| 28 |   |   |   |   |   |   |   |  |
| 29 |   |   |   |   |   |   |   |  |
| 30 |   |   |   |   |   |   |   |  |

000123

|    | A  | B                | C                                 | D                   | E                   | F                   | G                   | H                   |
|----|--|------------------|-----------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| 1  | <b>CALCULATOR INPUT FORM - NONRECURRING EXPENSES DATA</b>  |                  |                                   |                     |                     |                     |                     |                     |
| 2  | <b>Instructions:</b>   |                  |                                   |                     |                     |                     |                     |                     |
| 3  | 1. Use this worksheet to record nonrecurring non-labor expenses to be input into the Calculator calculations.      |                  |                                   |                     |                     |                     |                     |                     |
| 4  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).   |                  |                                   |                     |                     |                     |                     |                     |
| 5  | 3. Input data, by Cost Element, leaving no blank lines. On next row  |                  |                                   |                     |                     |                     |                     |                     |
| 6  | after last line of data, type END in Cost Element Column.  |                  |                                   |                     |                     |                     |                     |                     |
| 7  | 4. All data on this form should be cell-referenced to study workpapers.  |                  |                                   |                     |                     |                     |                     |                     |
| 8  | 5. Do NOT change columns, headings, sheet name.  |                  |                                   |                     |                     |                     |                     |                     |
| 9  | 6. Use column D when cost element has a single nonrecurring cost; use columns E & F for elements with a first      |                  |                                   |                     |                     |                     |                     |                     |
| 10 | and additional nonrecurring cost; use columns G & H for elements with an initial and subsequent nonrecurring cost. |                  |                                   |                     |                     |                     |                     |                     |
| 11 |  |                  |                                   |                     |                     |                     |                     |                     |
| 12 |  |                  |                                   |                     |                     |                     |                     |                     |
| 13 |  |                  |                                   |                     |                     |                     |                     |                     |
| 14 |  |                  |                                   |                     |                     |                     |                     |                     |
| 15 |  |                  |                                   |                     |                     |                     |                     |                     |
| 16 | <u>State</u>   | <u>Cost</u>      | <u>Nonrecurring</u>               | <u>Nonrecurring</u> | <u>Nonrecurring</u> | <u>Nonrecurring</u> | <u>Nonrecurring</u> | <u>Nonrecurring</u> |
| 17 |  | <u>Element #</u> | <u>Expense Description</u>        | <u>\$ Amount</u>    | <u>First</u>        | <u>Additional</u>   | <u>Initial</u>      | <u>Subsequent</u>   |
| 18 |  |                  | <u>(Limited to 25 characters)</u> | <u>\$ Amount</u>    | <u>\$ Amount</u>    | <u>\$ Amount</u>    | <u>\$ Amount</u>    | <u>\$ Amount</u>    |
| 19 |  |                  |                                   |                     |                     |                     |                     |                     |
| 20 |  |                  |                                   |                     |                     |                     |                     |                     |
| 21 |  |                  |                                   |                     |                     |                     |                     |                     |
| 22 |  |                  |                                   |                     |                     |                     |                     |                     |
| 23 |  |                  |                                   |                     |                     |                     |                     |                     |
| 24 |  |                  |                                   |                     |                     |                     |                     |                     |
| 25 |  |                  |                                   |                     |                     |                     |                     |                     |
| 26 |  |                  |                                   |                     |                     |                     |                     |                     |
| 27 |  |                  |                                   |                     |                     |                     |                     |                     |
| 28 |  |                  |                                   |                     |                     |                     |                     |                     |
| 29 |  |                  |                                   |                     |                     |                     |                     |                     |
| 30 |  |                  |                                   |                     |                     |                     |                     |                     |

Maximum 10 entries per Cost Element #



| A  | B   | C                               | D   | E                             | F   | G                                   | H |
|----|---|---------------------------------|---|-------------------------------|---|-------------------------------------|---|
| 1  | <b>CALCULATOR INPUT FORM - RECURRING LABOR EXPENSES DATA</b>                        |                                 |   |                               |   |                                     |   |
| 2  | Instructions:   |                                 |   |                               |   |                                     |   |
| 3  | 1. Use this worksheet to record recurring expensed labor times to be input into the |                                 |   |                               |   |                                     |   |
| 4  | Calculator calculations.  |                                 |   |                               |   |                                     |   |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).              |                                 |   |                               |   |                                     |   |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row                 |                                 |   |                               |   |                                     |   |
| 7  | after last line of data, type END in Cost Element Column.                           |                                 |   |                               |   |                                     |   |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.             |                                 |   |                               |   |                                     |   |
| 9  | 5. Do NOT change columns, headings, sheet name.                                     |                                 |   |                               |   |                                     |   |
| 10 | <u>State</u>  | <u>Cost</u><br><u>Element #</u> | <u>Labor Expense Description</u><br><u>(Limited to 25 characters)</u> | <u>JFC/</u><br><u>Payband</u> | <u>Work Time (Hours)</u><br><u>Volume</u><br><u>Sensitive</u> | <u>Volume</u><br><u>Insensitive</u> |   |
| 11 |   |                                 |   |                               |   |                                     |   |
| 12 |   |                                 |   |                               |   |                                     |   |
| 13 |   |                                 |   |                               |   |                                     |   |
| 14 |   |                                 |   |                               |   |                                     |   |
| 15 |   |                                 |   |                               |   |                                     |   |
| 16 |   |                                 |   |                               |   |                                     |   |
| 17 |   |                                 |   |                               |   |                                     |   |
| 18 |   |                                 |   |                               |   |                                     |   |
| 19 |   |                                 |   |                               |   |                                     |   |
| 20 |   |                                 |   |                               |   |                                     |   |
| 21 |   |                                 |   |                               |   |                                     |   |
| 22 |   |                                 |   |                               |   |                                     |   |
| 23 |   |                                 |   |                               |   |                                     |   |
| 24 |   |                                 |   |                               |   |                                     |   |
| 25 |   |                                 |   |                               |   |                                     |   |
| 26 |   |                                 |   |                               |   |                                     |   |
| 27 |   |                                 |   |                               |   |                                     |   |
| 28 |   |                                 |   |                               |   |                                     |   |
| 29 |   |                                 |   |                               |   |                                     |   |
| 30 |   |                                 |   |                               |   |                                     |   |
| 31 |   |                                 |   |                               |   |                                     |   |
| 32 |   |                                 |   |                               |   |                                     |   |
| 33 |   |                                 |   |                               |   |                                     |   |
| 34 |   |                                 |   |                               |   |                                     |   |
| 35 |   |                                 |   |                               |   |                                     |   |
| 36 |   |                                 |   |                               |   |                                     |   |
| 37 |   |                                 |   |                               |   |                                     |   |
| 38 |   |                                 |   |                               |   |                                     |   |
|    | Maximum 20 entries per Cost Element #   |                                 |   |                               |   |                                     |   |

000125



|    | A                             | B | C | D | E | F | G | H | I | J | K |
|----|-------------------------------|---|---|---|---|---|---|---|---|---|---|
| 1  | Georgia                       |   |   |   |   |   |   |   |   |   |   |
| 2  | Index Sheet                   |   |   |   |   |   |   |   |   |   |   |
| 3  | Study Period: 01/2000-12/2002 |   |   |   |   |   |   |   |   |   |   |
| 4  |                               |   |   |   |   |   |   |   |   |   |   |
| 5  |                               |   |   |   |   |   |   |   |   |   |   |
| 6  |                               |   |   |   |   |   |   |   |   |   |   |
| 7  |                               |   |   |   |   |   |   |   |   |   |   |
| 8  |                               |   |   |   |   |   |   |   |   |   |   |
| 9  |                               |   |   |   |   |   |   |   |   |   |   |
| 10 |                               |   |   |   |   |   |   |   |   |   |   |
| 11 |                               |   |   |   |   |   |   |   |   |   |   |
| 12 |                               |   |   |   |   |   |   |   |   |   |   |
| 13 |                               |   |   |   |   |   |   |   |   |   |   |
| 14 |                               |   |   |   |   |   |   |   |   |   |   |
| 15 |                               |   |   |   |   |   |   |   |   |   |   |
| 16 |                               |   |   |   |   |   |   |   |   |   |   |
| 17 |                               |   |   |   |   |   |   |   |   |   |   |
| 18 |                               |   |   |   |   |   |   |   |   |   |   |
| 19 |                               |   |   |   |   |   |   |   |   |   |   |
| 20 |                               |   |   |   |   |   |   |   |   |   |   |
| 21 |                               |   |   |   |   |   |   |   |   |   |   |
| 22 |                               |   |   |   |   |   |   |   |   |   |   |
| 23 |                               |   |   |   |   |   |   |   |   |   |   |
| 24 |                               |   |   |   |   |   |   |   |   |   |   |
| 25 |                               |   |   |   |   |   |   |   |   |   |   |

**Sheet Name:**  
Index  
INPUT\_NRC  
Investments  
Additives\_Recurring  
Additives\_Nonrecurring  
Recurring Labor  
Nonrecurring Labor

**Description:**  
Extended 4-Wire DS1 Digital Loop - w/ Dedicated DS1 Interoffice Transp  
Non-recurring Worktimes  
CALCULATOR INPUT FORM - MATERIAL/INVESTMENT DATA  
CALCULATOR INPUT FORM - RECURRING EXPENSES DATA  
CALCULATOR INPUT FORM - NONRECURRING EXPENSES DATA  
CALCULATOR INPUT FORM - RECURRING LABOR EXPENSES DATA  
CALCULATOR INPUT FORM - NONRECURRING LABOR TIMES

| A                |   | B              | C             | D       | E                      | F                         | G                           | H                              |
|------------------|---|----------------|---------------|---------|------------------------|---------------------------|-----------------------------|--------------------------------|
| 1                | 2   | 3              | 4             | 5       | 6                      | 7                         | 8                           | 9                              |
| Item/Description |   | Description    | JFC / JG / WS | Source  | First Install Time Hrs | First Disconnect Time Hrs | Additional Install Time Hrs | Additional Disconnect Time Hrs |
| 1                | Georgia   |                |               |         |                        |                           |                             |                                |
| 2                | Non-recurring Worktimes                                   |                |               |         |                        |                           |                             |                                |
| 3                | Study Period: 01/2000-12/2002                             |                |               |         |                        |                           |                             |                                |
| 4                |   |                |               |         |                        |                           |                             |                                |
| 5                |   |                |               |         |                        |                           |                             |                                |
| 6                | Item/Description  | Description    | JFC / JG / WS | Source  | First Install Time Hrs | First Disconnect Time Hrs | Additional Install Time Hrs | Additional Disconnect Time Hrs |
| 7                |   |                |               |         |                        |                           |                             |                                |
| 8                | Work Group  |                |               |         |                        |                           |                             |                                |
| 9                | CUSTOMER POINT OF CONTACT (LCSC)                          | Service Order  | 230X          | Network | 0.0361                 | 0.0361                    | 0.0361                      | 0.0361                         |
| 10               | Customer Point of Contact (Manual SvcOrder vs Electronic) | Service Order  | 230X          | Network | 0.7239                 | 0.3962                    | 0.5364                      | 0.1839                         |
| 11               | OUTSIDE PLANT ENGINEERING (FG30)                          | Engineering    | 32XX          | Network | 3.0000                 | 0.0000                    | 0.0250                      | 0.0000                         |
| 12               | NETWORK & ENGINEERING PLANNING (FG20)                     | Engineering    | 34XX          | Network | 0.5000                 | 0.0000                    | 0.0800                      | 0.0000                         |
| 13               | NETWORK PLANNING & ENGINEERING (PICS)                     | Engineering    | 3A2X          | Network | 0.0333                 | 0.0333                    | 0.0000                      | 0.0000                         |
| 14               | INSTALL & MTCE-SPEC SVCS (SSIM)                           | Service Order  | 411X          | Network | 0.2500                 | 0.1667                    | 0.1667                      | 0.0833                         |
| 15               | INSTALL & MTCE-SPEC SVCS (SSIM)                           | Connect & Test | 411X          | Network | 3.6670                 | 0.5000                    | 1.2500                      | 0.0633                         |
| 16               | INSTALL & MTCE-SPEC SVCS (SSIM)                           | Travel         | 431X          | Network | 0.3000                 | 0.3000                    | 0.0000                      | 0.0000                         |
| 17               | CO INSTALL & MTCE GKT & FAC (NTEL)                        | Connect & Test | 431X          | Network | 1.2500                 | 0.9997                    | 0.5000                      | 0.2497                         |
| 18               | ACCESS CUSTOMER ADVOCATE CENTER (UNEC)                    | Service Order  | 4AXX          | Network | 0.4716                 | 0.3783                    | 0.1383                      | 0.3783                         |
| 19               | ACCESS CUSTOMER ADVOCATE CENTER (UNEC)                    | Connect & Test | 4AXX          | Network | 3.9519                 | 0.0240                    | 3.9519                      | 0.0240                         |
| 20               | ADDRESS & FACILITY INVENTORY (AFIG)                       | Engineering    | 4M1X          | Network | 0.1500                 | 0.0058                    | 0.0000                      | 0.0000                         |
| 21               | CIRCUIT PROVISIONING CENTER (CPG)                         | Service Order  | 4N4X          | Network | 0.1333                 | 0.0333                    | 0.0000                      | 0.0000                         |
| 22               | CIRCUIT PROVISIONING CENTER (CPG)                         | Engineering    | 4N4X          | Network | 0.4917                 | 0.0250                    | 0.4917                      | 0.0250                         |
| 23               | WORK MANAGEMENT CENTER                                    | Service Order  | 4WXX          | Network | 0.2500                 | 0.0000                    | 0.0500                      | 0.0000                         |
| 24               |   |                |               |         |                        |                           |                             |                                |
| 25               |   |                |               |         |                        |                           |                             |                                |
| 26               |   |                |               |         |                        |                           |                             |                                |
| 27               |   |                |               |         |                        |                           |                             |                                |
| 28               |   |                |               |         |                        |                           |                             |                                |
| 29               |   |                |               |         |                        |                           |                             |                                |
| 30               |   |                |               |         |                        |                           |                             |                                |
| 31               |   |                |               |         |                        |                           |                             |                                |

000149

|    | A  | B                | C          | D          | E                | F                  | G                  | H                  | I                  | J                  |
|----|--|------------------|------------|------------|------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| 1  | <b>CALCULATOR INPUT FORM - MATERIAL/INVESTMENT DATA</b>                          |                  |            |            |                  |                    |                    |                    |                    |                    |
| 2  | <b>Instructions:</b>   |                  |            |            |                  |                    |                    |                    |                    |                    |
| 3  | 1. Use this worksheet to record material and/or investments to be input into the |                  |            |            |                  |                    |                    |                    |                    |                    |
| 4  | Calculator calculations.   |                  |            |            |                  |                    |                    |                    |                    |                    |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).           |                  |            |            |                  |                    |                    |                    |                    |                    |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row              |                  |            |            |                  |                    |                    |                    |                    |                    |
| 7  | after last line of data, type END in Cost Element Column.                        |                  |            |            |                  |                    |                    |                    |                    |                    |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.          |                  |            |            |                  |                    |                    |                    |                    |                    |
| 9  | 5. Do NOT change columns, headings, sheet name.                                  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 10 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 11 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 12 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 13 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 14 | <b>State</b>   | <b>Cost</b>      | <b>FRC</b> | <b>Sub</b> | <b>FRC</b>       | <b>Volume</b>      | <b>Volume</b>      | <b>Volume</b>      | <b>Volume</b>      | <b>Volume</b>      |
| 15 |  | <b>Element #</b> | <b>FRC</b> | <b>FRC</b> | <b>Sensitive</b> | <b>Insensitive</b> | <b>Insensitive</b> | <b>Insensitive</b> | <b>Insensitive</b> | <b>Insensitive</b> |
| 16 |  |                  |            |            | <b>\$ Amount</b> | <b>\$ Amount</b>   | <b>\$ Amount</b>   | <b>\$ Amount</b>   | <b>\$ Amount</b>   | <b>\$ Amount</b>   |
| 17 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 18 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 19 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 20 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 21 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 22 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 23 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 24 |  |                  |            |            |                  |                    |                    |                    |                    |                    |
| 25 |  |                  |            |            |                  |                    |                    |                    |                    |                    |

000150

|    | A   | B                | C                                 | D                | E                  | F | G | H |
|----|---|------------------|-----------------------------------|------------------|--------------------|---|---|---|
| 1  | <b>CALCULATOR INPUT FORM - RECURRING EXPENSES DATA</b>                            |                  |                                   |                  |                    |   |   |   |
| 2  | Instructions:   |                  |                                   |                  |                    |   |   |   |
| 3  | 1. Use this worksheet to record recurring non-labor expenses to be input into the |                  |                                   |                  |                    |   |   |   |
| 4  | Calculator calculations.  |                  |                                   |                  |                    |   |   |   |
| 5  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).            |                  |                                   |                  |                    |   |   |   |
| 6  | 3. Input data, by Cost Element, leaving no blank lines. On next row               |                  |                                   |                  |                    |   |   |   |
| 7  | after last line of data, type END in Cost Element Column.                         |                  |                                   |                  |                    |   |   |   |
| 8  | 4. All data on this form should be cell-referenced to study workpapers.           |                  |                                   |                  |                    |   |   |   |
| 9  | 5. Do NOT change columns, headings, sheet name.                                   |                  |                                   |                  |                    |   |   |   |
| 10 |   |                  |                                   |                  |                    |   |   |   |
| 11 |   |                  |                                   |                  |                    |   |   |   |
| 12 |   |                  |                                   |                  |                    |   |   |   |
| 13 |   |                  |                                   |                  |                    |   |   |   |
| 14 |   |                  |                                   |                  |                    |   |   |   |
| 15 |   |                  |                                   |                  |                    |   |   |   |
| 16 |   |                  |                                   |                  |                    |   |   |   |
| 17 | <u>State</u>  | <u>Cost</u>      | <u>Recurring</u>                  | <u>Recurring</u> | <u>Recurring</u>   |   |   |   |
| 18 |   | <u>Element #</u> | <u>Expense Description</u>        | <u>Volume</u>    | <u>Volume</u>      |   |   |   |
| 19 |   |                  | <u>(Limited to 25 characters)</u> | <u>Sensitive</u> | <u>Insensitive</u> |   |   |   |
| 20 |   |                  |                                   | <u>\$ Amount</u> | <u>\$ Amount</u>   |   |   |   |
| 21 |   |                  |                                   |                  |                    |   |   |   |
| 22 |   |                  |                                   |                  |                    |   |   |   |
| 23 |   |                  |                                   |                  |                    |   |   |   |
| 24 |   |                  |                                   |                  |                    |   |   |   |
| 25 |   |                  |                                   |                  |                    |   |   |   |
| 26 |   |                  |                                   |                  |                    |   |   |   |
| 27 |   |                  |                                   |                  |                    |   |   |   |
| 28 |   |                  |                                   |                  |                    |   |   |   |
| 29 |   |                  |                                   |                  |                    |   |   |   |
| 30 |   |                  |                                   |                  |                    |   |   |   |

Maximum 10 entries per Cost Element #

000151

| A  | B  | C | D | E | F | G | H |
|----|--|---|---|---|---|---|---|
| 1  | <b>CALCULATOR INPUT FORM - NONRECURRING EXPENSES DATA</b>  |   |   |   |   |   |   |
| 2  | <b>Instructions:</b>   |   |   |   |   |   |   |
| 3  | 1. Use this worksheet to record nonrecurring non-labor expenses to be input into the Calculator calculations.      |   |   |   |   |   |   |
| 4  | 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).   |   |   |   |   |   |   |
| 5  | 3. Input data, by Cost Element, leaving no blank lines. On next row  |   |   |   |   |   |   |
| 6  | after last line of data, type END in Cost Element Column.  |   |   |   |   |   |   |
| 7  | 4. All data on this form should be cell-referenced to study workpapers.  |   |   |   |   |   |   |
| 8  | 5. Do NOT change columns, headings, sheet name.  |   |   |   |   |   |   |
| 9  | 6. Use column D when cost element has a single nonrecurring cost; use columns E & F for elements with a first      |   |   |   |   |   |   |
| 10 | and additional nonrecurring cost; use columns G & H for elements with an initial and subsequent nonrecurring cost. |   |   |   |   |   |   |
| 11 |  |   |   |   |   |   |   |
| 12 |  |   |   |   |   |   |   |
| 13 |  |   |   |   |   |   |   |
| 14 |  |   |   |   |   |   |   |
| 15 |  |   |   |   |   |   |   |
| 16 | <u>State</u>   |   |   |   |   |   |   |
| 17 | <u>Cost</u>  |   |   |   |   |   |   |
| 18 | <u>Element #</u>   |   |   |   |   |   |   |
| 19 |  |   |   |   |   |   |   |
| 20 |  |   |   |   |   |   |   |
| 21 |  |   |   |   |   |   |   |
| 22 |  |   |   |   |   |   |   |
| 23 |  |   |   |   |   |   |   |
| 24 |  |   |   |   |   |   |   |
| 25 |  |   |   |   |   |   |   |
| 26 |  |   |   |   |   |   |   |
| 27 |  |   |   |   |   |   |   |
| 28 |  |   |   |   |   |   |   |
| 29 |  |   |   |   |   |   |   |
| 30 |  |   |   |   |   |   |   |

000152

|    | A | B | C  | D | E | F | G | H |  |
|----|---|---|--|---|---|---|---|---|--|
| 1  |   |   | <b>CALCULATOR INPUT FORM - RECURRING LABOR EXPENSES DATA</b> |   |   |   |   |   |  |
| 2  |   |   |  |   |   |   |   |   |  |
| 3  |   |   |  |   |   |   |   |   |  |
| 4  |   |   |  |   |   |   |   |   |  |
| 5  |   |   |  |   |   |   |   |   |  |
| 6  |   |   |  |   |   |   |   |   |  |
| 7  |   |   |  |   |   |   |   |   |  |
| 8  |   |   |  |   |   |   |   |   |  |
| 9  |   |   |  |   |   |   |   |   |  |
| 10 |   |   |  |   |   |   |   |   |  |
| 11 |   |   |  |   |   |   |   |   |  |
| 12 |   |   |  |   |   |   |   |   |  |
| 13 |   |   |  |   |   |   |   |   |  |
| 14 |   |   |  |   |   |   |   |   |  |
| 15 |   |   |  |   |   |   |   |   |  |
| 16 |   |   |  |   |   |   |   |   |  |
| 17 |   |   |  |   |   |   |   |   |  |
| 18 |   |   |  |   |   |   |   |   |  |
| 19 |   |   |  |   |   |   |   |   |  |
| 20 |   |   |  |   |   |   |   |   |  |
| 21 |   |   |  |   |   |   |   |   |  |
| 22 |   |   |  |   |   |   |   |   |  |
| 23 |   |   |  |   |   |   |   |   |  |
| 24 |   |   |  |   |   |   |   |   |  |
| 25 |   |   |  |   |   |   |   |   |  |
| 26 |   |   |  |   |   |   |   |   |  |
| 27 |   |   |  |   |   |   |   |   |  |
| 28 |   |   |  |   |   |   |   |   |  |
| 29 |   |   |  |   |   |   |   |   |  |
| 30 |   |   |  |   |   |   |   |   |  |
| 31 |   |   |  |   |   |   |   |   |  |
| 32 |   |   |  |   |   |   |   |   |  |
| 33 |   |   |  |   |   |   |   |   |  |
| 34 |   |   |  |   |   |   |   |   |  |
| 35 |   |   |  |   |   |   |   |   |  |
| 36 |   |   |  |   |   |   |   |   |  |
| 37 |   |   |  |   |   |   |   |   |  |
| 38 |   |   |  |   |   |   |   |   |  |

**Instructions:**  
 1. Use this worksheet to record recurring expensed labor times to be input into the Calculator calculations.  
 2. All amounts shown are per unit (e.g., per call, per loop, per MOU).  
 3. Input data, by Cost Element, leaving no blank lines. On next row after last line of data, type END in Cost Element Column.  
 4. All data on this form should be cell-referenced to study workpapers.  
 5. Do NOT change columns, headings, sheet name.

**State**  
**Cost Element #**  
**Labor Expense Description (Limited to 25 characters)**  
**JFC/ Payband**  
**Work Time (Hours) Volume Sensitive**  
**Volume Insensitive**

Maximum 20 entries per Cost Element #

000153



| A  | B                           | C              | D                        | E  | F            | G   | H                               | I                             | J                                    | K                                  | L                                 | M                               | N                                    | O                                  |
|--|-----------------------------|----------------|--------------------------|--|--------------|---|---------------------------------|-------------------------------|--------------------------------------|------------------------------------|-----------------------------------|---------------------------------|--------------------------------------|------------------------------------|
| 1  | 2                           | 3              | 4                        | 5  | 6            | 7   | 8                               | 9                             | 10                                   | 11                                 | 12                                | 13                              | 14                                   | 15                                 |
| 16   | 17                          | 18             | 19                       | 20   | 21           | 22  | 23                              | 24                            | 25                                   | 26                                 | 27                                | 28                              | 29                                   | 30                                 |
| 31   | 32                          | 33             | 34                       | 35   | 36           | 37  | 38                              | 39                            | 40                                   | 41                                 | 42                                | 43                              | 44                                   | 45                                 |
| 46   | 47                          | 48             | 49                       | 50   | 51           | 52  | 53                              | 54                            | 55                                   | 56                                 | 57                                | 58                              | 59                                   | 60                                 |
| <p><b>CALCULATOR INPUT FORM - NONRECURRING LABOR TIMES</b></p> <p>Instructions:</p> <p>1. Use this worksheet to record nonrecurring labor times to be input into the Calculator calculations.</p> <p>2. All amounts shown are per unit (e.g., per call, per loop, per MOU).</p> <p>3. Input data, by Cost Element, leaving no blank lines. On next row after last line of data, type END in Cost Element Column.</p> <p>4. All data on this form should be call-referenced to study worksheets.</p> <p>5. Do NOT change columns, headings, sheet name.</p> <p>6. Use columns F &amp; G when cost element has a single nonrecurring cost; use columns H, I, J, &amp; K for elements with a first and additional nonrecurring cost; use columns L, M, N &amp; O for elements with an initial and subsequent nonrecurring cost.</p> <p>7. Input Cost Element Life (in months) on first row of data for each cost element. It is not necessary to repeat on each line.</p> |                             |                |                          |  |              |   |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 15   | Study Mid-Point Date (Mos.) |                |                          | 6/1/2001   |              |   |                                 |                               |                                      |                                    |                                   |                                 |                                      |                                    |
| 19   | State                       | Cost Element # | Cost Element Life (Mos.) | Labor Expense Description (Limited to 25 characters) | JFC/ Payband | (For use w/ one NR) Installation Time (Hours) | First Installation Time (Hours) | First Disconnect Time (Hours) | Additional Installation Time (Hours) | Additional Disconnect Time (Hours) | Initial Installation Time (Hours) | Initial Disconnect Time (Hours) | Subsequent Installation Time (Hours) | Subsequent Disconnect Time (Hours) |
| 20   | GA                          | P.11.11        | 42                       | Service Order  | 230X         |   | 0.0361                          | 0.0000                        | 0.0361                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 21   | GA                          | P.11.12        | 42                       | Service Order  | 320X         |   | 0.7239                          | 0.0000                        | 0.5364                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 22   | GA                          | P.11.11        | 42                       | Engineering  | 320X         |   | 3.0000                          | 0.0000                        | 0.0250                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 23   | GA                          | P.11.11        | 42                       | Engineering  | 340X         |   | 0.5000                          | 0.0000                        | 0.0600                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 24   | GA                          | P.11.11        | 42                       | Engineering  | 3A2X         |   | 0.0333                          | 0.0000                        | 0.0000                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 25   | GA                          | P.11.11        | 42                       | Engineering  | 411X         |   | 0.2500                          | 0.0000                        | 0.1667                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 26   | GA                          | P.11.11        | 42                       | Service Order  | 411X         |   | 3.6670                          | 0.0000                        | 1.2500                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 27   | GA                          | P.11.11        | 42                       | Connect & Test                                       | 411X         |   | 0.3000                          | 0.0000                        | 0.0000                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 28   | GA                          | P.11.11        | 42                       | Travel   | 431X         |   | 1.2500                          | 0.0000                        | 0.5000                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 29   | GA                          | P.11.11        | 42                       | Connect & Test                                       | 431X         |   | 0.4716                          | 0.0000                        | 0.1383                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 30   | GA                          | P.11.11        | 42                       | Service Order  | 4A0X         |   | 3.9519                          | 0.0000                        | 3.9519                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 31   | GA                          | P.11.11        | 42                       | Connect & Test                                       | 4M1X         |   | 0.1500                          | 0.0000                        | 0.0000                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 32   | GA                          | P.11.11        | 42                       | Engineering  | 4N4X         |   | 0.1333                          | 0.0000                        | 0.0000                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 33   | GA                          | P.11.11        | 42                       | Service Order  | 4N4X         |   | 0.4917                          | 0.0000                        | 0.4917                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 34   | GA                          | P.11.11        | 42                       | Engineering  | 4W0X         |   | 0.2500                          | 0.0000                        | 0.0500                               | 0.0000                             |                                   |                                 |                                      |                                    |
| 35   | GA                          | P.11.11        | 42                       | Service Order  | 230X         |   | 0.0000                          | 0.0361                        | 0.0000                               | 0.0361                             |                                   |                                 |                                      |                                    |
| 36   | GA                          | P.11.1199      | 42                       | Service Order  | 230X         |   | 0.0000                          | 0.3962                        | 0.0000                               | 0.3962                             |                                   |                                 |                                      |                                    |
| 37   | GA                          | P.11.1299      | 42                       | Service Order  | 320X         |   | 0.0000                          | 0.0333                        | 0.0000                               | 0.0333                             |                                   |                                 |                                      |                                    |
| 38   | GA                          | P.11.1199      | 42                       | Engineering  | 3A2X         |   | 0.0000                          | 0.1667                        | 0.0000                               | 0.1667                             |                                   |                                 |                                      |                                    |
| 39   | GA                          | P.11.1199      | 42                       | Engineering  | 3A2X         |   | 0.0000                          | 0.5000                        | 0.0000                               | 0.5000                             |                                   |                                 |                                      |                                    |
| 40   | GA                          | P.11.1199      | 42                       | Service Order  | 411X         |   | 0.0000                          | 0.3000                        | 0.0000                               | 0.3000                             |                                   |                                 |                                      |                                    |
| 41   | GA                          | P.11.1199      | 42                       | Service Order  | 411X         |   | 0.0000                          | 0.9997                        | 0.0000                               | 0.9997                             |                                   |                                 |                                      |                                    |
| 42   | GA                          | P.11.1199      | 42                       | Connect & Test                                       | 411X         |   | 0.0000                          | 0.3783                        | 0.0000                               | 0.3783                             |                                   |                                 |                                      |                                    |
| 43   | GA                          | P.11.1199      | 42                       | Travel   | 431X         |   | 0.0000                          | 0.0240                        | 0.0000                               | 0.0240                             |                                   |                                 |                                      |                                    |
| 44   | GA                          | P.11.1199      | 42                       | Connect & Test                                       | 4A0X         |   | 0.0000                          | 0.0058                        | 0.0000                               | 0.0058                             |                                   |                                 |                                      |                                    |
| 45   | GA                          | P.11.1199      | 42                       | Service Order  | 4A0X         |   | 0.0000                          | 0.0333                        | 0.0000                               | 0.0333                             |                                   |                                 |                                      |                                    |
| 46   | GA                          | P.11.1199      | 42                       | Connect & Test                                       | 4A0X         |   | 0.0000                          | 0.0250                        | 0.0000                               | 0.0250                             |                                   |                                 |                                      |                                    |
| 47   | GA                          | P.11.1199      | 42                       | Engineering  | 4M1X         |   | 0.0000                          | 0.0000                        | 0.0000                               | 0.0000                             |                                   |                                 |                                      |                                    |

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**GEORGIA DOCKET NO. 10692-U  
APPENDIX A**

The following worksheets showing the calculations associated with loadings and factors development discussed in Section 4 are included in this Appendix.

|                       | File Name    |
|-----------------------|--------------|
| 1. Gross receipts Tax | 99stuse3.xls |
| 2. Disconnect Factor  | discon99.xls |
| 3. Labor Rates        | 99Lab_ga.xls |

Gross Receipts

GROSS RECEIPTS TAX CALCULATIONS

| AREA<br>a | GROSS RECEIPTS<br>NET TAX<br>b | GROSS RECEIPTS<br>REVENUES<br>c | GROSS RECEIPTS<br>TAX RATE<br>d = b/c | GROSS RECEIPTS<br>MARKUP FACTOR<br>e = 1/(1-d) - 1 |
|-----------|--------------------------------|---------------------------------|---------------------------------------|--|
| GEORGIA   | 21,544,202                     | 1,979,074,106                   | 0.0109                                | 0.0110   |

| 1999 FACTORS FOR DETERMINING DISCONNECT FACTOR 11/17/99 |  |       |                       |                        |                   |                   |                   |
|---|--|-------|-----------------------|------------------------|-------------------|-------------------|-------------------|
| DISCOUNT RATE (Marketing Department)                    |  |       |                       |                        |                   |                   | 7.00%             |
| YEAR  | ANNUAL TELCO COE LABOR INFLATION RATE (Network-TPI Sep 98) |       |                       |                        |                   |                   |                   |
| 2000  | 4.0%   |       |                       |                        | 2006              | 4.4%              |                   |
| 2001  | 4.1%   |       |                       |                        | 2007              | 4.4%              |                   |
| 2002  | 4.1%   |       |                       |                        | 2008              | 4.4%              |                   |
| 2003  | 4.1%   |       |                       |                        | 2009              | 4.4%              |                   |
| 2004  | 4.1%   |       |                       |                        | 2010              | 4.4%              |                   |
| 2005  | 4.1%   |       |                       |                        | 2011              | 4.4%              |                   |
| ANNUAL MONTHLY  |  |       |                       |                        |                   |                   |                   |
| NO.   | YEAR   | MONTH | ANNUAL INFLATION RATE | MONTHLY INFLATION RATE | MONTHLY INFLATION | DISCOUNT DISCOUNT | DISCONNECT FACTOR |
| 1   | 2000   | JAN   | 4.01%                 | 1.003285               | 1.003285          | 0.994378          | 0.997644          |
| 2   | 2000   | FEB   | 4.01%                 | 1.003285               | 1.006581          | 0.994378          | 0.995294          |
| 3   | 2000   | MAR   | 4.01%                 | 1.003285               | 1.009887          | 0.994378          | 0.992949          |
| 4   | 2000   | APR   | 4.01%                 | 1.003285               | 1.013205          | 0.994378          | 0.990610          |
| 5   | 2000   | MAY   | 4.01%                 | 1.003285               | 1.016533          | 0.994378          | 0.988276          |
| 6   | 2000   | JUN   | 4.01%                 | 1.003285               | 1.019872          | 0.994378          | 0.985948          |
| 7   | 2000   | JUL   | 4.01%                 | 1.003285               | 1.023222          | 0.994378          | 0.983625          |
| 8   | 2000   | AUG   | 4.01%                 | 1.003285               | 1.026583          | 0.994378          | 0.981307          |
| 9   | 2000   | SEP   | 4.01%                 | 1.003285               | 1.029956          | 0.994378          | 0.978996          |
| 10  | 2000   | OCT   | 4.01%                 | 1.003285               | 1.033339          | 0.994378          | 0.976689          |
| 11  | 2000   | NOV   | 4.01%                 | 1.003285               | 1.036733          | 0.994378          | 0.974388          |
| 12  | 2000   | DEC   | 4.01%                 | 1.003285               | 1.040139          | 0.994378          | 0.972093          |
| 13  | 2001   | JAN   | 4.14%                 | 1.003384               | 1.043658          | 0.994378          | 0.969898          |
| 14  | 2001   | FEB   | 4.14%                 | 1.003384               | 1.047190          | 0.994378          | 0.967708          |
| 15  | 2001   | MAR   | 4.14%                 | 1.003384               | 1.050733          | 0.994378          | 0.965523          |
| 16  | 2001   | APR   | 4.14%                 | 1.003384               | 1.054288          | 0.994378          | 0.963343          |
| 17  | 2001   | MAY   | 4.14%                 | 1.003384               | 1.057855          | 0.994378          | 0.961168          |
| 18  | 2001   | JUN   | 4.14%                 | 1.003384               | 1.061434          | 0.994378          | 0.958998          |
| 19  | 2001   | JUL   | 4.14%                 | 1.003384               | 1.065026          | 0.994378          | 0.956832          |
| 20  | 2001   | AUG   | 4.14%                 | 1.003384               | 1.068629          | 0.994378          | 0.954672          |
| 21  | 2001   | SEP   | 4.14%                 | 1.003384               | 1.072245          | 0.994378          | 0.952516          |
| 22  | 2001   | OCT   | 4.14%                 | 1.003384               | 1.075873          | 0.994378          | 0.950366          |
| 23  | 2001   | NOV   | 4.14%                 | 1.003384               | 1.079513          | 0.994378          | 0.948220          |
| 24  | 2001   | DEC   | 4.14%                 | 1.003384               | 1.083166          | 0.994378          | 0.946079          |
| 25  | 2002   | JAN   | 4.14%                 | 1.003384               | 1.086831          | 0.994378          | 0.943943          |
| 26  | 2002   | FEB   | 4.14%                 | 1.003384               | 1.090508          | 0.994378          | 0.941812          |
| 27  | 2002   | MAR   | 4.14%                 | 1.003384               | 1.094198          | 0.994378          | 0.939685          |
| 28  | 2002   | APR   | 4.14%                 | 1.003384               | 1.097900          | 0.994378          | 0.937563          |
| 29  | 2002   | MAY   | 4.14%                 | 1.003384               | 1.101615          | 0.994378          | 0.935447          |
| 30  | 2002   | JUN   | 4.14%                 | 1.003384               | 1.105342          | 0.994378          | 0.933334          |
| 31  | 2002   | JUL   | 4.14%                 | 1.003384               | 1.109082          | 0.994378          | 0.931227          |
| 32  | 2002   | AUG   | 4.14%                 | 1.003384               | 1.112835          | 0.994378          | 0.929124          |
| 33  | 2002   | SEP   | 4.14%                 | 1.003384               | 1.116600          | 0.994378          | 0.927027          |
| 34  | 2002   | OCT   | 4.14%                 | 1.003384               | 1.120378          | 0.994378          | 0.924934          |
| 35  | 2002   | NOV   | 4.14%                 | 1.003384               | 1.124169          | 0.994378          | 0.922845          |
| 36  | 2002   | DEC   | 4.14%                 | 1.003384               | 1.127972          | 0.994378          | 0.920762          |
| 37  | 2003   | JAN   | 4.14%                 | 1.003384               | 1.131789          | 0.994378          | 0.918683          |
| 38  | 2003   | FEB   | 4.14%                 | 1.003384               | 1.135618          | 0.994378          | 0.916608          |
| 39  | 2003   | MAR   | 4.14%                 | 1.003384               | 1.139461          | 0.994378          | 0.914539          |
| 40  | 2003   | APR   | 4.14%                 | 1.003384               | 1.143316          | 0.994378          | 0.912474          |
| 41  | 2003   | MAY   | 4.14%                 | 1.003384               | 1.147185          | 0.994378          | 0.910414          |
| 42  | 2003   | JUN   | 4.14%                 | 1.003384               | 1.151066          | 0.994378          | 0.908358          |

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|     |          |       |          |          |          |          |          |
|-----|----------|-------|----------|----------|----------|----------|----------|
| 43  | 2003 JUL | 4.14% | 1.003384 | 1.154961 | 0.994378 | 0.784708 | 0.906307 |
| 44  | 2003 AUG | 4.14% | 1.003384 | 1.158869 | 0.994378 | 0.780296 | 0.904261 |
| 45  | 2003 SEP | 4.14% | 1.003384 | 1.162790 | 0.994378 | 0.775909 | 0.902219 |
| 46  | 2003 OCT | 4.14% | 1.003384 | 1.166724 | 0.994378 | 0.771547 | 0.900182 |
| 47  | 2003 NOV | 4.14% | 1.003384 | 1.170672 | 0.994378 | 0.767209 | 0.898149 |
| 48  | 2003 DEC | 4.14% | 1.003384 | 1.174633 | 0.994378 | 0.762895 | 0.896122 |
| 49  | 2004 JAN | 4.14% | 1.003384 | 1.178607 | 0.994378 | 0.758606 | 0.894098 |
| 50  | 2004 FEB | 4.14% | 1.003384 | 1.182595 | 0.994378 | 0.754341 | 0.892079 |
| 51  | 2004 MAR | 4.14% | 1.003384 | 1.186596 | 0.994378 | 0.750100 | 0.890065 |
| 52  | 2004 APR | 4.14% | 1.003384 | 1.190611 | 0.994378 | 0.745882 | 0.888056 |
| 53  | 2004 MAY | 4.14% | 1.003384 | 1.194639 | 0.994378 | 0.741689 | 0.886051 |
| 54  | 2004 JUN | 4.14% | 1.003384 | 1.198681 | 0.994378 | 0.737519 | 0.884050 |
| 55  | 2004 JUL | 4.14% | 1.003384 | 1.202737 | 0.994378 | 0.733372 | 0.882054 |
| 56  | 2004 AUG | 4.14% | 1.003384 | 1.206807 | 0.994378 | 0.729249 | 0.880062 |
| 57  | 2004 SEP | 4.14% | 1.003384 | 1.210890 | 0.994378 | 0.725149 | 0.878075 |
| 58  | 2004 OCT | 4.14% | 1.003384 | 1.214987 | 0.994378 | 0.721072 | 0.876093 |
| 59  | 2004 NOV | 4.14% | 1.003384 | 1.219098 | 0.994378 | 0.717018 | 0.874115 |
| 60  | 2004 DEC | 4.14% | 1.003384 | 1.223223 | 0.994378 | 0.712986 | 0.872141 |
| 61  | 2005 JAN | 4.14% | 1.003384 | 1.227362 | 0.994378 | 0.708978 | 0.870172 |
| 62  | 2005 FEB | 4.14% | 1.003384 | 1.231514 | 0.994378 | 0.704991 | 0.868207 |
| 63  | 2005 MAR | 4.14% | 1.003384 | 1.235681 | 0.994378 | 0.701028 | 0.866247 |
| 64  | 2005 APR | 4.14% | 1.003384 | 1.239862 | 0.994378 | 0.697086 | 0.864291 |
| 65  | 2005 MAY | 4.14% | 1.003384 | 1.244057 | 0.994378 | 0.693167 | 0.862339 |
| 66  | 2005 JUN | 4.14% | 1.003384 | 1.248267 | 0.994378 | 0.689270 | 0.860392 |
| 67  | 2005 JUL | 4.14% | 1.003384 | 1.252490 | 0.994378 | 0.685394 | 0.858450 |
| 68  | 2005 AUG | 4.14% | 1.003384 | 1.256728 | 0.994378 | 0.681541 | 0.856511 |
| 69  | 2005 SEP | 4.14% | 1.003384 | 1.260980 | 0.994378 | 0.677709 | 0.854578 |
| 70  | 2005 OCT | 4.14% | 1.003384 | 1.265247 | 0.994378 | 0.673899 | 0.852648 |
| 71  | 2005 NOV | 4.14% | 1.003384 | 1.269528 | 0.994378 | 0.670110 | 0.850723 |
| 72  | 2005 DEC | 4.14% | 1.003384 | 1.273823 | 0.994378 | 0.666342 | 0.848802 |
| 73  | 2006 JAN | 4.38% | 1.003580 | 1.278384 | 0.994378 | 0.662596 | 0.847052 |
| 74  | 2006 FEB | 4.38% | 1.003580 | 1.282961 | 0.994378 | 0.658870 | 0.845305 |
| 75  | 2006 MAR | 4.38% | 1.003580 | 1.287554 | 0.994378 | 0.655166 | 0.843562 |
| 76  | 2006 APR | 4.38% | 1.003580 | 1.292164 | 0.994378 | 0.651482 | 0.841822 |
| 77  | 2006 MAY | 4.38% | 1.003580 | 1.296791 | 0.994378 | 0.647820 | 0.840087 |
| 78  | 2006 JUN | 4.38% | 1.003580 | 1.301434 | 0.994378 | 0.644177 | 0.838354 |
| 79  | 2006 JUL | 4.38% | 1.003580 | 1.306093 | 0.994378 | 0.640556 | 0.836625 |
| 80  | 2006 AUG | 4.38% | 1.003580 | 1.310770 | 0.994378 | 0.636954 | 0.834900 |
| 81  | 2006 SEP | 4.38% | 1.003580 | 1.315463 | 0.994378 | 0.633373 | 0.833179 |
| 82  | 2006 OCT | 4.38% | 1.003580 | 1.320173 | 0.994378 | 0.629812 | 0.831460 |
| 83  | 2006 NOV | 4.38% | 1.003580 | 1.324899 | 0.994378 | 0.626271 | 0.829746 |
| 84  | 2006 DEC | 4.38% | 1.003580 | 1.329643 | 0.994378 | 0.622750 | 0.828035 |
| 85  | 2007 JAN | 4.38% | 1.003580 | 1.334404 | 0.994378 | 0.619248 | 0.826327 |
| 86  | 2007 FEB | 4.38% | 1.003580 | 1.339181 | 0.994378 | 0.615767 | 0.824623 |
| 87  | 2007 MAR | 4.38% | 1.003580 | 1.343976 | 0.994378 | 0.612305 | 0.822923 |
| 88  | 2007 APR | 4.38% | 1.003580 | 1.348788 | 0.994378 | 0.608862 | 0.821226 |
| 89  | 2007 MAY | 4.38% | 1.003580 | 1.353617 | 0.994378 | 0.605439 | 0.819533 |
| 90  | 2007 JUN | 4.38% | 1.003580 | 1.358464 | 0.994378 | 0.602035 | 0.817843 |
| 91  | 2007 JUL | 4.38% | 1.003580 | 1.363328 | 0.994378 | 0.598650 | 0.816156 |
| 92  | 2007 AUG | 4.38% | 1.003580 | 1.368209 | 0.994378 | 0.595284 | 0.814473 |
| 93  | 2007 SEP | 4.38% | 1.003580 | 1.373108 | 0.994378 | 0.591937 | 0.812794 |
| 94  | 2007 OCT | 4.38% | 1.003580 | 1.378024 | 0.994378 | 0.588609 | 0.811118 |
| 95  | 2007 NOV | 4.38% | 1.003580 | 1.382958 | 0.994378 | 0.585300 | 0.809445 |
| 96  | 2007 DEC | 4.38% | 1.003580 | 1.387909 | 0.994378 | 0.582009 | 0.807776 |
| 97  | 2008 JAN | 4.38% | 1.003580 | 1.392878 | 0.994378 | 0.578737 | 0.806110 |
| 98  | 2008 FEB | 4.38% | 1.003580 | 1.397866 | 0.994378 | 0.575483 | 0.804448 |
| 99  | 2008 MAR | 4.38% | 1.003580 | 1.402870 | 0.994378 | 0.572247 | 0.802789 |
| 100 | 2008 APR | 4.38% | 1.003580 | 1.407893 | 0.994378 | 0.569030 | 0.801134 |
| 101 | 2008 MAY | 4.38% | 1.003580 | 1.412934 | 0.994378 | 0.565831 | 0.799482 |
| 102 | 2008 JUN | 4.38% | 1.003580 | 1.417993 | 0.994378 | 0.562649 | 0.797833 |
| 103 | 2008 JUL | 4.38% | 1.003580 | 1.423070 | 0.994378 | 0.559486 | 0.796188 |

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|     |      |     |       |          |          |          |          |          |
|-----|------|-----|-------|----------|----------|----------|----------|----------|
| 104 | 2008 | AUG | 4.38% | 1.003580 | 1.428165 | 0.994378 | 0.556340 | 0.794546 |
| 105 | 2008 | SEP | 4.38% | 1.003580 | 1.433278 | 0.994378 | 0.553212 | 0.792907 |
| 106 | 2008 | OCT | 4.38% | 1.003580 | 1.438410 | 0.994378 | 0.550102 | 0.791272 |
| 107 | 2008 | NOV | 4.38% | 1.003580 | 1.443560 | 0.994378 | 0.547009 | 0.789641 |
| 108 | 2008 | DEC | 4.38% | 1.003580 | 1.448729 | 0.994378 | 0.543934 | 0.788012 |
| 109 | 2009 | JAN | 4.38% | 1.003580 | 1.453916 | 0.994378 | 0.540876 | 0.786387 |
| 110 | 2009 | FEB | 4.38% | 1.003580 | 1.459121 | 0.994378 | 0.537835 | 0.784766 |
| 111 | 2009 | MAR | 4.38% | 1.003580 | 1.464345 | 0.994378 | 0.534811 | 0.783148 |
| 112 | 2009 | APR | 4.38% | 1.003580 | 1.469588 | 0.994378 | 0.531804 | 0.781533 |
| 113 | 2009 | MAY | 4.38% | 1.003580 | 1.474850 | 0.994378 | 0.528814 | 0.779921 |
| 114 | 2009 | JUN | 4.38% | 1.003580 | 1.480131 | 0.994378 | 0.525841 | 0.778313 |
| 115 | 2009 | JUL | 4.38% | 1.003580 | 1.485430 | 0.994378 | 0.522884 | 0.776708 |
| 116 | 2009 | AUG | 4.38% | 1.003580 | 1.490748 | 0.994378 | 0.519944 | 0.775106 |
| 117 | 2009 | SEP | 4.38% | 1.003580 | 1.496086 | 0.994378 | 0.517021 | 0.773508 |
| 118 | 2009 | OCT | 4.38% | 1.003580 | 1.501442 | 0.994378 | 0.514114 | 0.771913 |
| 119 | 2009 | NOV | 4.38% | 1.003580 | 1.506818 | 0.994378 | 0.511224 | 0.770321 |
| 120 | 2009 | DEC | 4.38% | 1.003580 | 1.512213 | 0.994378 | 0.508349 | 0.768733 |
| 121 | 2010 | JAN | 4.38% | 1.003580 | 1.517627 | 0.994378 | 0.505491 | 0.767147 |
| 122 | 2010 | FEB | 4.38% | 1.003580 | 1.523061 | 0.994378 | 0.502649 | 0.765565 |
| 123 | 2010 | MAR | 4.38% | 1.003580 | 1.528514 | 0.994378 | 0.499823 | 0.763987 |
| 124 | 2010 | APR | 4.38% | 1.003580 | 1.533987 | 0.994378 | 0.497013 | 0.762411 |
| 125 | 2010 | MAY | 4.38% | 1.003580 | 1.539479 | 0.994378 | 0.494218 | 0.760839 |
| 126 | 2010 | JUN | 4.38% | 1.003580 | 1.544991 | 0.994378 | 0.491440 | 0.759270 |
| 127 | 2010 | JUL | 4.38% | 1.003580 | 1.550523 | 0.994378 | 0.488677 | 0.757704 |
| 128 | 2010 | AUG | 4.38% | 1.003580 | 1.556074 | 0.994378 | 0.485929 | 0.756142 |
| 129 | 2010 | SEP | 4.38% | 1.003580 | 1.561646 | 0.994378 | 0.483197 | 0.754583 |
| 130 | 2010 | OCT | 4.38% | 1.003580 | 1.567237 | 0.994378 | 0.480480 | 0.753027 |
| 131 | 2010 | NOV | 4.38% | 1.003580 | 1.572848 | 0.994378 | 0.477779 | 0.751474 |
| 132 | 2010 | DEC | 4.38% | 1.003580 | 1.578480 | 0.994378 | 0.475093 | 0.749924 |
| 133 | 2011 | JAN | 4.38% | 1.003580 | 1.584131 | 0.994378 | 0.472422 | 0.748378 |
| 134 | 2011 | FEB | 4.38% | 1.003580 | 1.589803 | 0.994378 | 0.469766 | 0.746835 |
| 135 | 2011 | MAR | 4.38% | 1.003580 | 1.595495 | 0.994378 | 0.467124 | 0.745295 |
| 136 | 2011 | APR | 4.38% | 1.003580 | 1.601208 | 0.994378 | 0.464498 | 0.743758 |
| 137 | 2011 | MAY | 4.38% | 1.003580 | 1.606941 | 0.994378 | 0.461886 | 0.742224 |
| 138 | 2011 | JUN | 4.38% | 1.003580 | 1.612694 | 0.994378 | 0.459290 | 0.740694 |
| 139 | 2011 | JUL | 4.38% | 1.003580 | 1.618468 | 0.994378 | 0.456707 | 0.739166 |
| 140 | 2011 | AUG | 4.38% | 1.003580 | 1.624263 | 0.994378 | 0.454139 | 0.737642 |
| 141 | 2011 | SEP | 4.38% | 1.003580 | 1.630078 | 0.994378 | 0.451586 | 0.736121 |
| 142 | 2011 | OCT | 4.38% | 1.003580 | 1.635915 | 0.994378 | 0.449047 | 0.734603 |
| 143 | 2011 | NOV | 4.38% | 1.003580 | 1.641772 | 0.994378 | 0.446522 | 0.733088 |
| 144 | 2011 | DEC | 4.38% | 1.003580 | 1.647650 | 0.994378 | 0.444012 | 0.731576 |

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SUMMARY

| State | JFC/JG/WS | Description                              | Directly Assigned |            | Telric     |            |
|-------|-----------|--|-------------------|------------|------------|------------|
|       |           |  | Labor Date        | Labor Rate | Labor Rate | Labor Date |
| RW    | 4M1X      | Address & Facility Inventory (AFIG)      | 11-05-99          | \$ 34.31   | \$ 34.31   | 11-05-99   |
| RW    | 4M2X      | Address & Facility Inventory (AFIG)      | 11-05-99          | \$ 34.31   | \$ 34.31   | 11-05-99   |
| RW    | 410X      | Install & Mtce - Pots                    | 11-05-99          | \$ 40.26   | \$ 40.26   | 11-05-99   |
| RW    | 411X      | Install & Mtce - Spec Svcs (SSIM)        | 11-05-99          | \$ 45.41   | \$ 45.41   | 11-05-99   |
| RW    | 420X      | Outside Plant Constr (OSPC)              | 11-05-99          | \$ 42.55   | \$ 42.55   | 11-05-99   |
| RW    | 421X      | Outside Plant Constr (OSPC)              | 11-05-99          | \$ 42.55   | \$ 42.55   | 11-05-99   |
| RW    | 424X      | Outside Plant Admin Cntr (OPAC)          | 11-05-99          | \$ 38.02   | \$ 38.02   | 11-05-99   |
| RW    | 425X      | Cable Repair Technician (CRT)            | 11-05-99          | \$ 44.06   | \$ 44.06   | 11-05-99   |
| RW    | 426X      | Cable Repair Technician (CRT)            | 11-05-99          | \$ 44.06   | \$ 44.06   | 11-05-99   |
| RW    | 430X      | CO Install & Mtce Field - Switch Eq      | 11-05-99          | \$ 44.49   | \$ 44.49   | 11-05-99   |
| RW    | 431X      | CO Install & Mtce Field - Ckt & Fac      | 11-05-99          | \$ 42.04   | \$ 42.04   | 11-05-99   |
| RW    | 431XB     | CO I&M Field, Basic Time - Ckt & Fac     | 11-05-99          | \$ 40.32   | \$ 40.32   | 11-05-99   |
| RW    | 431XO     | CO I&M Field, OT - Ckt & Fac             | 11-05-99          | \$ 52.09   | \$ 52.09   | 11-05-99   |
| RW    | 431XP     | CO I&M Field, Prem Time - Ckt & Fac      | 11-05-99          | \$ 63.85   | \$ 63.85   | 11-05-99   |
| RW    | 4N1X      | Recent Chng Line Trans (RCMAG)           | 11-05-99          | \$ 36.85   | \$ 36.85   | 11-05-99   |
| RW    | 4N2X      | Switch & Trunk Based Translations        | 11-05-99          | \$ 43.27   | \$ 43.27   | 11-05-99   |
| RW    | 432X      | CO Install, Mtce & Admin - Software      | 11-05-99          | \$ 48.51   | \$ 48.51   | 11-05-99   |
| RW    | 4N5X      | Trunk & Carrier Group (TCG)              | 11-05-99          | \$ 43.20   | \$ 43.20   | 11-05-99   |
| RW    | 4LXX      | Network Reliability Center (NRC)         | 11-05-99          | \$ 43.74   | \$ 43.74   | 11-05-99   |
| RW    | 4PXX      | Proactive Analysis/Repair Ctr (PAR)      | 11-05-99          | \$ 43.63   | \$ 43.63   | 11-05-99   |
| RW    | 4N4X      | Circuit Provisioning Group (CPG)         | 11-05-99          | \$ 33.64   | \$ 33.64   | 11-05-99   |
| RW    | 4AXX      | Acc Cust Advocate Cntr (ACAC)            | 11-05-99          | \$ 38.31   | \$ 38.31   | 11-05-99   |
| RW    | 4AXXB     | Acc Cust Adv Cntr, Bas Time (ACAC)       | 11-05-99          | \$ 35.83   | \$ 35.83   | 11-05-99   |
| RW    | 4AXXO     | Acc Cust Adv Cntr, OT (ACAC)             | 11-05-99          | \$ 47.29   | \$ 47.29   | 11-05-99   |
| RW    | 4AXXP     | Acc Cust Adv Cntr, Prem Time (ACAC)      | 11-05-99          | \$ 58.76   | \$ 58.76   | 11-05-99   |
| RW    | 4N3X      | Equip Bill Accuracy Cont (EBAC)          | 11-05-99          | \$ 35.36   | \$ 35.36   | 11-05-99   |
| RW    | 4BXX      | Business Repair Center (BRC)             | 11-05-99          | \$ 36.63   | \$ 36.63   | 11-05-99   |
| RW    | 4RXX      | Residence Repair Center (RRC)            | 11-05-99          | \$ 30.61   | \$ 30.61   | 11-05-99   |
| RW    | 4WXX      | Work Management Center (WMC)             | 11-05-99          | \$ 32.76   | \$ 32.76   | 11-05-99   |
| RW    | 490X      | Network Buried Facility (NBF)            | 11-05-99          | \$ 25.53   | \$ 25.53   | 11-05-99   |
| RW    | 4DXX      | Regional Network Operations Cntr (RNOC)  | 11-05-99          | \$ 39.16   | \$ 39.16   | 11-05-99   |
| RW    | 4EXX      | Company Initiated Activities Center(CIA) | 11-05-99          | \$ 39.76   | \$ 39.76   | 11-05-99   |
| RW    | 4FXX      | Service Advocacy Center (SAC)            | 11-05-99          | \$ 32.62   | \$ 32.62   | 11-05-99   |
| RW    | 30XX      | Land And Buildings (FG10)                | 11-05-99          | \$ 83.04   | \$ 83.04   | 11-05-99   |
| RW    | 34XX      | Ntwk & Eng Planning (FG20)               | 11-05-99          | \$ 50.98   | \$ 50.98   | 11-05-99   |
| RW    | 3AXX      | Ntwk & Eng Planning (FG20)               | 11-05-99          | \$ 50.98   | \$ 50.98   | 11-05-99   |
| RW    | 3A2X      | Ntwk Plug-In Admin (PICS)                | 11-05-99          | \$ 37.04   | \$ 37.04   | 11-05-99   |
| RW    | 32XX      | Outside Plant Eng (FG30)                 | 11-05-99          | \$ 43.66   | \$ 43.66   | 11-05-99   |
| RW    | 230X      | Customer Point Of Contact - ICSC/LCSC    | 11-05-99          | \$ 31.17   | \$ 31.17   | 11-05-99   |
| RW    | 230XB     | Cust Pnt Of Cont, Basic Time - ICSC/LCSC | 11-05-99          | \$ 29.26   | \$ 29.26   | 11-05-99   |
| RW    | 230XO     | Cust Pnt Of Cont, OT - ICSC/LCSC         | 11-05-99          | \$ 38.79   | \$ 38.79   | 11-05-99   |
| RW    | 230XP     | Cust Pnt Of Cont, Prem Time - ICSC/LCSC  | 11-05-99          | \$ 48.31   | \$ 48.31   | 11-05-99   |
| RW    | 212XA     | Call Completion Attendants               | 11-05-99          | \$ 14.41   | \$ 14.41   | 11-05-99   |
| RW    | 212XO     | Toll & Assist Operators                  | 11-05-99          | \$ 29.35   | \$ 29.35   | 11-05-99   |
| RW    | 294XA     | Directory Assistance Attendants          | 11-05-99          | \$ 13.80   | \$ 13.80   | 11-05-99   |
| RW    | 294XO     | Directory Assistance Operators           | 11-05-99          | \$ 27.30   | \$ 27.30   | 11-05-99   |
| RW    | 260X      | Customer Billing                         | 11-05-99          | \$ 29.50   | \$ 29.50   | 11-05-99   |
| RW    | 2E4X      | Collections Representative               | 11-05-99          | \$ 30.09   | \$ 30.09   | 11-05-99   |
| RW    | 2E5X      | Customer Service                         | 11-05-99          | \$ 30.65   | \$ 30.65   | 11-05-99   |
| RW    | 287X      | Sales - Customer Service Related         | 11-05-99          | \$ 30.75   | \$ 30.75   | 11-05-99   |
| RW    | 124X      | Comptrollers Clerical                    | 11-05-99          | \$ 27.54   | \$ 27.54   | 11-05-99   |
| RW    | 125X      | Comptrollers Clerical                    | 11-05-99          | \$ 27.54   | \$ 27.54   | 11-05-99   |
| RW    | 126X      | Comptrollers Clerical                    | 11-05-99          | \$ 27.54   | \$ 27.54   | 11-05-99   |
| RW    | 127X      | Comptrollers Clerical                    | 11-05-99          | \$ 27.54   | \$ 27.54   | 11-05-99   |
| RW    | 2700      | Network Services Clerical                | 11-05-99          | \$ 29.10   | \$ 29.10   | 11-05-99   |
| RW    | 2701      | Network Services Clerical                | 11-05-99          | \$ 29.10   | \$ 29.10   | 11-05-99   |
| RW    | 2730      | Network Services Clerical                | 11-05-99          | \$ 29.10   | \$ 29.10   | 11-05-99   |
| RW    | 2751      | Network Services Clerical                | 11-05-99          | \$ 29.10   | \$ 29.10   | 11-05-99   |
| RW    | 221X      | Complex Resale Support Group (CRSG)      | 11-05-99          | \$ 31.17   | \$ 31.17   | 11-05-99   |
| RW    | AEWC      | Acct Executive w/Sales Comp              | 11-05-99          | \$ 50.61   | \$ 50.61   | 11-05-99   |
| RW    | AEWOC     | Acct Executive wo/Sales Comp             | 11-05-99          | \$ 38.07   | \$ 38.07   | 11-05-99   |

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SUMMARY

| State | JFC/JG/WS | Description                   | Directly Assigned | Directly Assigned | Telric   | Telric   |
|-------|-----------|-------------------------------|-------------------|-------------------|----------|----------|
|       |           |                               | Labor             | Labor             | Labor    | Labor    |
|       |           |                               | Date              | Rate              | Rate     | Date     |
| RW    | SDWC      | Systems Designer w/Sales Com  | 11-05-99          | \$ 51.17          | \$ 51.17 | 11-05-99 |
| RW    | SDWOC     | Systems Designer wo/Sales Com | 11-05-99          | \$ 46.88          | \$ 46.88 | 11-05-99 |
| RW    | SVCC      | Service Consultant            | 11-05-99          | \$ 33.96          | \$ 33.96 | 11-05-99 |
| RW    | JG54      | Job Grade 54                  | 11-05-99          | \$ 28.29          | \$ 28.29 | 11-05-99 |
| RW    | JG55      | Job Grade 55                  | 11-05-99          | \$ 31.15          | \$ 31.15 | 11-05-99 |
| RW    | JG56      | Job Grade 56                  | 11-05-99          | \$ 36.16          | \$ 36.16 | 11-05-99 |
| RW    | JG57      | Job Grade 57                  | 11-05-99          | \$ 40.54          | \$ 40.54 | 11-05-99 |
| RW    | JG58      | Job Grade 58                  | 11-05-99          | \$ 47.07          | \$ 47.07 | 11-05-99 |
| RW    | JG59      | Job Grade 59                  | 11-05-99          | \$ 54.58          | \$ 54.58 | 11-05-99 |
| RW    | JG60      | Job Grade 60                  | 11-05-99          | \$ 62.43          | \$ 62.43 | 11-05-99 |
| RW    | JG61      | Job Grade 61                  | 11-05-99          | \$ 71.24          | \$ 71.24 | 11-05-99 |
| RW    | WS10      | Wage Scale 10                 | 11-05-99          | \$ 24.14          | \$ 24.14 | 11-05-99 |
| RW    | WS14      | Wage Scale 14                 | 11-05-99          | \$ 25.17          | \$ 25.17 | 11-05-99 |
| RW    | WS16      | Wage Scale 16                 | 11-05-99          | \$ 25.85          | \$ 25.85 | 11-05-99 |
| RW    | WS18      | Wage Scale 18                 | 11-05-99          | \$ 26.37          | \$ 26.37 | 11-05-99 |
| RW    | WS23      | Wage Scale 23                 | 11-05-99          | \$ 27.72          | \$ 27.72 | 11-05-99 |
| RW    | WS32      | Wage Scale 32                 | 11-05-99          | \$ 33.28          | \$ 33.28 | 11-05-99 |

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BELLSOUTH TELECOMMUNICATIONS TPIS  
OCTOBER 1998 FORECAST ASSUMPTIONS

Attachment C

|      | PRICE INDEX<br>NONRESIDENTIAL<br>STRUCTURES | CHAIN PRICE<br>INDEX<br>GDP | GDP<br>1992\$ | CAPITAL<br>EQUIPMENT<br>PPI | UNION<br>WAGES | COPPER<br>CATHODE<br>PPI | PVC<br>PPI | SEMICOND.<br>PPI |
|------|---|-----------------------------|---------------|-----------------------------|----------------|--------------------------|------------|------------------|
| 1995 | 4.2   | 2.5                         | 2.0           | 2.0                         | 2.6            | 27.9                     | 10.5       | -7.0             |
| 1996 | 2.3   | 2.3                         | 2.8           | 1.2                         | 2.7            | -21.5                    | -14.5      | -8.1             |
| 1997 | 3.3   | 2.0                         | 3.8           | 0.0                         | 2.6            | -2.9                     | 4.7        | -10.9            |
| 1998 | 2.5   | 1.2                         | 3.3           | -0.7                        | 2.9            | -26.3                    | -17.0      | -9.5             |
| 1999 | 2.0   | 1.9                         | 1.9           | -0.2                        | 3.2            | -5.0                     | -1.5       | -9.0             |
| 2000 | 1.9   | 2.3                         | 2.6           | 1.2                         | 3.4            | 3.5                      | 1.0        | -8.0             |
| 2001 | 2.1   | 2.3                         | 2.3           | 1.4                         | 3.5            | 8.0                      | 6.0        | -8.0             |
| 2002 | 1.9   | 2.3                         | 2.3           | 1.3                         | 3.5            | 5.0                      | 4.0        | -7.0             |
| 2003 | 2.0   | 2.3                         | 2.4           | 1.5                         | 3.5            | 2.5                      | 3.0        | -7.0             |
| 2004 | 2.0   | 2.3                         | 2.5           | 1.6                         | 3.5            | 2.5                      | 2.5        | -7.0             |
| 2005 | 2.2   | 2.3                         | 2.5           | 1.6                         | 3.5            | 3.0                      | 2.6        | -7.0             |
| 2006 | 2.2   | 2.3                         | 2.5           | 1.5                         | 3.7            | 3.5                      | 2.6        | -7.0             |
| 2007 | 2.2   | 2.3                         | 2.4           | 1.5                         | 3.7            | 3.5                      | 2.6        | -7.0             |

DIR ASSG SUMMARY

| A   | B         | C                 | D                  | E                             | F  |
|---|-----------|-------------------|--------------------|-------------------------------|--|
| 2000 - 2002 DIRECTLY ASSIGNED LABOR RATES |           |                   |                    |                               |  |
| PLANT WORK CENTERS                        | JFC       | DIRECTLY ASSIGNED | COLUMN C REFERENCE | 2000 - 2002 INFLATION FACTOR* | 2000 - 2002 DIRECTLY ASSIGNED LABOR RATE (C'E) |
| ADDRESS & FACILITY INVENTORY (AFIG)       | 4M1X 4M2X | \$ 31.06          | AFIG C30           | 1.104872                      | \$ 34.31                                       |
| INSTALL & MTCE - POTS                     | 410X      | \$ 36.43          | I&M POTS C30       | 1.104872                      | \$ 40.26                                       |
| INSTALL & MTCE - SPEC SVCS (SSIM)         | 411X      | \$ 41.10          | SSIM C30           | 1.104872                      | \$ 45.41                                       |
| OUTSIDE PLANT CONSTRUCTION (OSPC)         | 420X 421X | \$ 38.51          | OSPC C30           | 1.104872                      | \$ 42.55                                       |
| OUTSIDE PLANT ADMIN CENTER (OPAC)         | 424X      | \$ 34.41          | OPAC C30           | 1.104872                      | \$ 38.02                                       |
| CABLE REPAIR TECHNICIAN (CRT)             | 425X 426X | \$ 39.88          | CRT C30            | 1.104872                      | \$ 44.06                                       |
| CO INSTALL & MTCE FIELD - SWITCH EQUIP    | 430X      | \$ 40.27          | COIM-SW EQ C30     | 1.104872                      | \$ 44.49                                       |
| CO INSTALL & MTCE FIELD - CIRCUIT & FAC   | 431X      | \$ 38.05          | COIM-CIR&FAC C30   | 1.104872                      | \$ 42.04                                       |
| RECENT CHANGE LINE TRANSLATIONS (RCMAG)   | 4N1X      | \$ 33.35          | RCMAG C30          | 1.104872                      | \$ 36.85                                       |
| SWITCH & TRUNK BASED TRANSLATIONS         | 4N2X      | \$ 39.16          | TRANSLATIONS C30   | 1.104872                      | \$ 43.27                                       |
| CO INSTALL, MTCE & ADMIN - SOFTWARE       | 432X      | \$ 43.91          | SOFTWARE C30       | 1.104872                      | \$ 48.51                                       |
| TRUNK & CARRIER GROUP (TCG)               | 4N5X      | \$ 39.10          | TCG C30            | 1.104872                      | \$ 43.20                                       |
| NETWORK RELIABILITY CENTER (NRC)          | 4LXX      | \$ 39.59          | NRC C30            | 1.104872                      | \$ 43.74                                       |
| PROACTIVE ANALYSIS & REPAIR CTR (PAR)     | 4PXX      | \$ 39.49          | PAR C30            | 1.104872                      | \$ 43.63                                       |
| CIRCUIT PROVISIONING GROUP (CPG)          | 4N4X      | \$ 30.45          | CPG C30            | 1.104872                      | \$ 33.64                                       |
| ACCESS CUSTOMER ADVOCATE CENTER (ACAC)    | 4AXX      | \$ 34.68          | ACAC C30           | 1.104872                      | \$ 38.31                                       |
| EQUIPMENT BILLING ACCURACY CONT (EBAC)    | 4N3X      | \$ 32.00          | EBAC C30           | 1.104872                      | \$ 35.36                                       |
| BUSINESS REPAIR CENTER (BRC)              | 4BXX      | \$ 33.16          | BRC C30            | 1.104872                      | \$ 36.63                                       |
| RESIDENCE REPAIR CENTER (RRC)             | 4RXX      | \$ 27.71          | RRC C30            | 1.104872                      | \$ 30.61                                       |
| WORK MANAGEMENT CENTER (WMC)              | 4WXX      | \$ 29.65          | WMC C30            | 1.104872                      | \$ 32.76                                       |
| NETWORK BURIED FACILITY (NBF)             | 490X      | \$ 23.10          | NBF C30            | 1.104872                      | \$ 25.53                                       |
| REGIONAL NETWORK OPERATIONS CTR (RNOC)    | 4DXX      | \$ 35.44          | RNOC C30           | 1.104872                      | \$ 39.16                                       |
| COMPANY INITIATED ACTIVITIES CENTER (CIA) | 4EXX      | \$ 35.98          | CIA C30            | 1.104872                      | \$ 39.76                                       |
| SERVICE ADVOCACY CENTER (SAC)             | 4FXX      | \$ 29.52          | SAC C30            | 1.104872                      | \$ 32.62                                       |
| * INFL FACTOR E18                         |           |                   |                    |                               |  |

DIR ASSG SUMMARY

| A                                     | B                   | C                 | D                      | E                             | F  |
|---------------------------------------|---------------------|-------------------|------------------------|-------------------------------|--|
|                                       | JFC                 | DIRECTLY ASSIGNED | COLUMN C REFERENCE     | 2000 - 2002 INFLATION FACTOR* | 2000 - 2002 DIRECTLY ASSIGNED LABOR RATE (C'E) |
| <b>ENGINEERING FORCE GROUPS</b>       |                     |                   |                        |                               |  |
| LAND AND BUILDINGS (FG10)             | 30XX                | \$ 75.16          | FG10 C21               | 1.104872                      | \$ 83.04                                       |
| NETWORK & ENGINEERING PLANNING (FG20) | 34XX 3AXX           | \$ 46.14          | FG20 C21               | 1.104872                      | \$ 50.98                                       |
| NETWORK PLUG-IN ADMINISTRATION (PICS) | 3A2X                | \$ 33.52          | PICS C21               | 1.104872                      | \$ 37.04                                       |
| OUTSIDE PLANT ENGINEERING (FG30)      | 32XX                | \$ 39.52          | FG30 C21               | 1.104872                      | \$ 43.66                                       |
| * INFL FACTOR E21                     |                     |                   |                        |                               |  |
| <b>COST GROUPS</b>                    | JFC                 | DIRECTLY ASSIGNED | COLUMN C REFERENCE     | 2000 - 2002 INFLATION FACTOR* | 2000 - 2002 DIRECTLY ASSIGNED LABOR RATE (C'E) |
| CUSTOMER POINT OF CONTACT - ICSC/LCSC | 230X                | \$ 28.21          | ICSC LCSC C20          | 1.104872                      | \$ 31.17                                       |
| CALL COMPLETION ATTENDANTS            | 212XA               | \$ 13.04          | CALL COMP ATTEND C20   | 1.104872                      | \$ 14.41                                       |
| TOLL & ASSIST OPERATORS               | 212XO               | \$ 26.56          | TOLL & ASSIST OPER C20 | 1.104872                      | \$ 29.35                                       |
| DIRECTORY ASSISTANCE ATTENDANTS       | 294XA               | \$ 12.49          | DIR ASSIST ATTEND C20  | 1.104872                      | \$ 13.80                                       |
| DIRECTORY ASSISTANCE OPERATORS        | 294XO               | \$ 24.71          | DIR ASSIST OPER C20    | 1.104872                      | \$ 27.30                                       |
| CUSTOMER BILLING                      | 260X                | \$ 26.70          | COIN COLL C20          | 1.104872                      | \$ 29.50                                       |
| COLLECTIONS REPRESENTATIVE            | 2E4X                | \$ 27.23          | COLL REPC20            | 1.104872                      | \$ 30.09                                       |
| CUSTOMER SERVICE                      | 2E5X                | \$ 27.75          | SVC REP-RES C20        | 1.104872                      | \$ 30.65                                       |
| SALES - CUSTOMER SERVICE RELATED      | 287X                | \$ 27.83          | SVC REP-BUS C20        | 1.104872                      | \$ 30.75                                       |
| COMPTROLLERS CLERICAL                 | 124X 125X 126X 127X | \$ 24.92          | COMP CLER C20          | 1.104872                      | \$ 27.54                                       |
| NETWORK SERVICES CLERICAL             | 2700 2701 2730 2751 | \$ 26.34          | NTWK SVC CLER C20      | 1.104872                      | \$ 29.10                                       |
| COMPLEX RESALE SUPPORT GROUP (CRSG)   | 221X                | \$ 28.21          | CRSG C20               | 1.104872                      | \$ 31.17                                       |
| ACCOUNT EXECUTIVE                     | NOT APPLICABLE      | \$ 45.81          | AE SD SC B12           | 1.104872                      | \$ 50.61                                       |
| WITH SALES COMPENSATION               | NOT APPLICABLE      | \$ 34.46          | AE SD SC B16           | 1.104872                      | \$ 38.07                                       |
| WITHOUT SALES COMPENSATION            | NOT APPLICABLE      | \$ 46.31          | AE SD SC B22           | 1.104872                      | \$ 51.17                                       |
| SYSTEMS DESIGNER                      | NOT APPLICABLE      | \$ 42.43          | AE SD SC B26           | 1.104872                      | \$ 46.88                                       |
| WITH SALES COMPENSATION               | NOT APPLICABLE      | \$ 30.74          | AE SD SC B32           | 1.104872                      | \$ 33.96                                       |
| WITHOUT SALES COMPENSATION            | NOT APPLICABLE      |                   |                        |                               |  |
| SERVICE CONSULTANT                    | NOT APPLICABLE      |                   |                        |                               |  |
| * INFL FACTOR E18                     |                     |                   |                        |                               |  |

000179

SECURITY ESCORT COIM-CIR FAC

| A   | B                  | C                   |
|---|--------------------|---------------------|
| <b>SECURITY ESCORT</b>  |                    | <b>05-Nov-99</b>    |
| <b>2000 - 2002 DIRECTLY ASSIGNED - BASIC, OVERTIME, PREMIUM</b> |                    |                     |
| <b>COIM - CIR&amp;FAC</b>                                       | <b>HOURLY RATE</b> | <b>REFERENCE</b>    |
| <b>BASIC</b>  |                    |                     |
| DIRECTLY ASSIGNED   | \$ 38.05           | COIM-CIR&FAC C30    |
| LESS PREMIUM  | \$ 1.56            | COIM-CIR&FAC C15    |
| DA LESS PREM  | \$ 36.50           |                     |
| <b>TOTAL 2000 - 2002 DA</b>                                     | <b>\$ 40.32</b>    | B11*INFL FACTOR E18 |
| <b>OVERTIME (1 1/2)</b>   |                    |                     |
| DIRECTLY ASSIGNED   | \$ 38.05           | COIM-CIR&FAC C30    |
| LESS PREMIUM  | \$ 1.56            | COIM-CIR&FAC C15    |
| DA LESS PREM  | \$ 36.50           |                     |
| 1/2 PROD LABOR  | \$ 10.65           | COIM-CIR&FAC C14/2  |
| DA LESS PREM +1/2 PROD  | \$ 47.14           |                     |
| <b>TOTAL 2000 - 2002 DA</b>                                     | <b>\$ 52.09</b>    | B20*INFL FACTOR E18 |
| <b>PREMIUM (2X)</b>   |                    |                     |
| DIRECTLY ASSIGNED   | \$ 38.05           | COIM-CIR&FAC C30    |
| LESS PREMIUM  | \$ 1.56            | COIM-CIR&FAC C15    |
| DA LESS PREM  | \$ 36.50           |                     |
| 1X PROD LABOR   | \$ 21.29           | COIM-CIR&FAC C14    |
| DA LESS PREM + 1X PROD  | \$ 57.79           |                     |
| <b>TOTAL 2000 - 2002 DA</b>                                     | <b>\$ 63.85</b>    | B29*INFL FACTOR E18 |

SECURITY ESCORT ACAC

| A  | B                  | C                   |
|--|--------------------|---------------------|
| SECURITY ESCORT  |                    | 05-Nov-99           |
| 2000 - 2002 DIRECTLY ASSIGNED - BASIC, OVERTIME, PREMIUM |                    |                     |
| <u>ACAC</u>  | <u>HOURLY RATE</u> | <u>REFERENCE</u>    |
| <b>BASIC</b>   |                    |                     |
| DIRECTLY ASSIGNED  | \$ 34.68           | ACAC C30            |
| LESS PREMIUM   | \$ 2.25            | ACAC C15            |
| DA LESS PREM   | \$ 32.43           |                     |
| TOTAL 2000 - 2002 DA                                     | \$ 35.83           | B11*INFL FACTOR E18 |
| <b>OVERTIME (1 1/2)</b>                                  |                    |                     |
| DIRECTLY ASSIGNED  | \$ 34.68           | ACAC C30            |
| LESS PREMIUM   | \$ 2.25            | ACAC C15            |
| DA LESS PREM   | \$ 32.43           |                     |
| 1/2 PROD LABOR   | \$ 10.38           | ACAC C14/2          |
| DA LESS PREM +1/2 PROD                                   | \$ 42.80           |                     |
| TOTAL 2000 - 2002 DA                                     | \$ 47.29           | B20*INFL FACTOR E18 |
| <b>PREMIUM (2X)</b>                                      |                    |                     |
| DIRECTLY ASSIGNED  | \$ 34.68           | ACAC C30            |
| LESS PREMIUM   | \$ 2.25            | ACAC C15            |
| DA LESS PREM   | \$ 32.43           |                     |
| 1X PROD LABOR  | \$ 20.76           | ACAC C14            |
| DA LESS PREM + 1X PROD                                   | \$ 53.18           |                     |
| TOTAL 2000 - 2002 DA                                     | \$ 58.76           | B29*INFL FACTOR E18 |

000181

SECURITY ESCORT ICSC LCSC

| A  | B                  | C                   |
|--|--------------------|---------------------|
| SECURITY ESCORT  |                    | 05-Nov-99           |
| 2000 - 2002 DIRECTLY ASSIGNED - BASIC, OVERTIME, PREMIUM |                    |                     |
| <u>ICSC/LCSC</u>   | <u>HOURLY RATE</u> | <u>REFERENCE</u>    |
| <b>BASIC</b>   |                    |                     |
| DIRECTLY ASSIGNED  | \$ 28.21           | ICSC LCSC C22       |
| LESS PREMIUM   | \$ 1.73            | ICSC LCSC C15       |
| DA LESS PREM   | \$ 26.48           |                     |
| <b>TOTAL 2000 - 2002 DA</b>                              | <b>\$ 29.26</b>    | B11*INFL FACTOR E18 |
| <b>OVERTIME (1 1/2)</b>                                  |                    |                     |
| DIRECTLY ASSIGNED  | \$ 28.21           | ICSC LCSC C22       |
| LESS PREMIUM   | \$ 1.73            | ICSC LCSC C15       |
| DA LESS PREM   | \$ 26.48           |                     |
| 1/2 PROD LABOR   | \$ 8.62            | ICSC LCSC C12/2     |
| DA LESS PREM + 1/2 PROD                                  | \$ 35.10           |                     |
| <b>TOTAL 2000 - 2002 DA</b>                              | <b>\$ 38.79</b>    | B20*INFL FACTOR E18 |
| <b>PREMIUM (2X)</b>                                      |                    |                     |
| DIRECTLY ASSIGNED  | \$ 28.21           | ICSC LCSC C22       |
| LESS PREMIUM   | \$ 1.73            | ICSC LCSC C15       |
| DA LESS PREM   | \$ 26.48           |                     |
| 1X PROD LABOR  | \$ 17.25           | ICSC LCSC C12       |
| DA LESS PREM + 1X PROD                                   | \$ 43.73           |                     |
| <b>TOTAL 2000 - 2002 DA</b>                              | <b>\$ 48.31</b>    | B29*INFL FACTOR E18 |

000182

**JOB GRADE & WAGE SCALE SUMMARY**

| A  | B                  | C                            | D  | E   |
|--|--------------------|------------------------------|--|---|
| <b>2000 - 2002 DIRECTLY ASSIGNED LABOR RATES</b> |                    |                              |  |   |
|  | <u>HOURLY RATE</u> | <u>COLUMN B REFERENCE</u>    | <b>2000 - 2002<br/>INFLATION<br/>FACTOR*</b> | <b>05-Nov-99<br/><br/>2000 - 2002<br/>DIRECTLY<br/>ASSIGNED<br/>(B*D)</b> |
| JOB GRADE 54                                     | \$ 25.61           | JOB GRADES & WAGE SCALES B15 | 1.104872                                     | \$ 28.29  |
| JOB GRADE 55                                     | \$ 28.19           | JOB GRADES & WAGE SCALES C15 | 1.104872                                     | \$ 31.15  |
| JOB GRADE 56                                     | \$ 32.73           | JOB GRADES & WAGE SCALES D15 | 1.104872                                     | \$ 36.16  |
| JOB GRADE 57                                     | \$ 36.69           | JOB GRADES & WAGE SCALES E15 | 1.104872                                     | \$ 40.54  |
| JOB GRADE 58                                     | \$ 42.60           | JOB GRADES & WAGE SCALES F15 | 1.104872                                     | \$ 47.07  |
| JOB GRADE 59                                     | \$ 49.40           | JOB GRADES & WAGE SCALES G15 | 1.104872                                     | \$ 54.58  |
| JOB GRADE 60                                     | \$ 56.51           | JOB GRADES & WAGE SCALES H15 | 1.104872                                     | \$ 62.43  |
| JOB GRADE 61                                     | \$ 64.47           | JOB GRADES & WAGE SCALES I15 | 1.104872                                     | \$ 71.24  |
| WAGE SCALE 10                                    | \$ 21.85           | JOB GRADES & WAGE SCALES B29 | 1.104872                                     | \$ 24.14  |
| WAGE SCALE 14                                    | \$ 22.78           | JOB GRADES & WAGE SCALES C29 | 1.104872                                     | \$ 25.17  |
| WAGE SCALE 16                                    | \$ 23.40           | JOB GRADES & WAGE SCALES D29 | 1.104872                                     | \$ 25.85  |
| WAGE SCALE 18                                    | \$ 23.87           | JOB GRADES & WAGE SCALES E29 | 1.104872                                     | \$ 26.37  |
| WAGE SCALE 23                                    | \$ 25.09           | JOB GRADES & WAGE SCALES F29 | 1.104872                                     | \$ 27.72  |
| WAGE SCALE 32                                    | \$ 30.12           | JOB GRADES & WAGE SCALES G29 | 1.104872                                     | \$ 33.28  |
| * INFL FACTOR E18                                |                    |                              |  |   |

**000183**



AFIG

| A  | B                | C        |
|--|------------------|----------|
| STATE: REGION                                  |                  |          |
| FG/FSG: ADDRESS AND FACILITY INVENTORY         |                  |          |
| WCT: AFIG                                      |                  |          |
| JFC: 4M1X OR 4M2X                              |                  |          |
| 1998   |                  |          |
| CLASSIFIED                                     |                  |          |
| 1998   |                  |          |
| HOURLY COST                                    |                  |          |
| COMPONENT                                      | DOLLARS**        | (B/B32)  |
| DIRECT LABOR - PRODUCTIVE                      | \$ 20,258,903.55 | \$ 16.85 |
| DIRECT LABOR - PREMIUM                         | \$ 1,069,407.92  | \$ 0.89  |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 427,153.31    | \$ 0.36  |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 3,426,120.51  | \$ 2.85  |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 3,527,632.76  | \$ 2.93  |
| TOTAL DIRECT LABOR                             | \$ 28,709,218.05 | \$ 23.88 |
| DIRECT LABOR - OTHER COST                      | \$ 62,299.99     | \$ 0.05  |
| OTHER TOOLS - SALARIES                         | \$ 8,092.18      | \$ 0.01  |
| OTHER TOOLS - BENEFITS                         | \$ 1,445.77      | \$ 0.00  |
| OTHER TOOLS - RENTS                            | \$ 46,605.87     | \$ 0.04  |
| OTHER TOOLS - OTHER                            | \$ 1,434,730.68  | \$ 1.19  |
| MOTOR VEHICLES - SALARIES                      | \$ 166,913.00    | \$ 0.14  |
| MOTOR VEHICLES - BENEFITS                      | \$ 34,850.74     | \$ 0.03  |
| MOTOR VEHICLES - RENTS                         | \$ 976.79        | \$ 0.00  |
| MOTOR VEHICLES - OTHER                         | \$ 1,516,768.86  | \$ 1.26  |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 5,352,555.89  | \$ 4.45  |
| TOTAL DIRECTLY ASSIGNED                        | \$ 37,334,457.82 | \$ 31.06 |
| TOTAL CLASSIFIED PROD HOURS                    | 1,202,121.25     |          |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |          |

000184

I&M POTS

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| FG/FSG: INSTALLATION AND MTCE - POTS           |                   |                |
| WCT: I&M POTS                                  |                   |                |
| JFC: 410X                                      |                   |                |
| 1998   |                   |                |
| CLASSIFIED                                     |                   |                |
| 1998   |                   |                |
| HOURLY COST                                    |                   |                |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u>  | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 323,632,309.48 | \$ 19.78       |
| DIRECT LABOR - PREMIUM                         | \$ 51,193,986.73  | \$ 3.13        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 7,185,553.39   | \$ 0.44        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 39,915,598.12  | \$ 2.44        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 36,070,131.54  | \$ 2.20        |
| TOTAL DIRECT LABOR                             | \$ 457,997,579.26 | \$ 27.99       |
| DIRECT LABOR - OTHER COST                      | \$ 1,860,391.29   | \$ 0.11        |
| OTHER TOOLS - SALARIES                         | \$ 120,856.66     | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 20,736.18      | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 902,483.40     | \$ 0.06        |
| OTHER TOOLS - OTHER                            | \$ 22,240,105.66  | \$ 1.36        |
| MOTOR VEHICLES - SALARIES                      | \$ 2,556,121.77   | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                      | \$ 536,900.39     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 17,884.40      | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 23,002,586.50  | \$ 1.41        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 87,002,300.41  | \$ 5.32        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 596,257,945.92 | \$ 36.43       |
| TOTAL CLASSIFIED PROD HOURS                    | 16,365,225.17     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |

000185

## SSIM

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| FG/FSG: INSTALLATION & MTCE - SPECIAL SERVICES |                   |                |
| WCT: SSIM                                      |                   |                |
| JFC: 411X                                      |                   |                |
| 1998   |                   |                |
| CLASSIFIED                                     |                   |                |
|  | 1998              | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b>  | <b>(B/B32)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 63,038,168.43  | \$ 23.25       |
| DIRECT LABOR - PREMIUM                         | \$ 6,713,982.16   | \$ 2.48        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 1,101,577.76   | \$ 0.41        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 8,306,460.31   | \$ 3.06        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 7,367,242.53   | \$ 2.72        |
| TOTAL DIRECT LABOR                             | \$ 86,527,431.19  | \$ 31.92       |
| DIRECT LABOR - OTHER COST                      | \$ 341,888.42     | \$ 0.13        |
| OTHER TOOLS - SALARIES                         | \$ 17,439.66      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 3,011.77       | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 118,593.84     | \$ 0.04        |
| OTHER TOOLS - OTHER                            | \$ 3,612,702.29   | \$ 1.33        |
| MOTOR VEHICLES - SALARIES                      | \$ 421,599.34     | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                      | \$ 87,809.85      | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 3,349.19       | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 3,786,287.40   | \$ 1.40        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 16,487,758.50  | \$ 6.08        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 111,407,871.45 | \$ 41.10       |
| TOTAL CLASSIFIED PROD HOURS                    | 2,710,907.07      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |

000186

OSPC

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| FG/FSG: OUTSIDE PLANT CONSTRUCTION             |                   |                |
| WCT: OSPC                                      |                   |                |
| JFC: 420X OR 421X                              |                   |                |
| 1998   |                   |                |
| CLASSIFIED                                     |                   |                |
| 1998   |                   | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b>  | <b>(B/B32)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 137,510,941.88 | \$ 20.66       |
| DIRECT LABOR - PREMIUM                         | \$ 10,436,182.27  | \$ 1.57        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 2,914,030.04   | \$ 0.44        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 21,424,786.38  | \$ 3.22        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 24,343,558.08  | \$ 3.66        |
| TOTAL DIRECT LABOR                             | \$ 196,629,498.65 | \$ 29.54       |
| DIRECT LABOR - OTHER COST                      | \$ 2,515,990.78   | \$ 0.38        |
| OTHER TOOLS - SALARIES                         | \$ 49,844.33      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 8,972.54       | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 309,536.58     | \$ 0.05        |
| OTHER TOOLS - OTHER                            | \$ 8,755,550.73   | \$ 1.32        |
| MOTOR VEHICLES - SALARIES                      | \$ 1,034,886.11   | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                      | \$ 215,143.55     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 5,359.68       | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 9,443,446.08   | \$ 1.42        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 37,388,472.36  | \$ 5.62        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 256,356,701.39 | \$ 38.51       |
| TOTAL CLASSIFIED PROD HOURS                    | 6,656,374.79      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |

000187

OPAC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: OUTSIDE PLANT ADMINISTRATION CENTER    |                  |                |
| WCT: OPAC                                      |                  |                |
| JFC: 424X                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 2,835,992.30  | \$ 15.65       |
| DIRECT LABOR - PREMIUM                         | \$ 31,173.86     | \$ 0.17        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 61,074.62     | \$ 0.34        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 517,852.41    | \$ 2.86        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 1,479,693.62  | \$ 8.17        |
| TOTAL DIRECT LABOR                             | \$ 4,925,786.81  | \$ 27.18       |
| DIRECT LABOR - OTHER COST                      | \$ 28,504.02     | \$ 0.16        |
| OTHER TOOLS - SALARIES                         | \$ 1,577.06      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 277.50        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 12,860.67     | \$ 0.07        |
| OTHER TOOLS - OTHER                            | \$ 238,010.48    | \$ 1.31        |
| MOTOR VEHICLES - SALARIES                      | \$ 27,587.11     | \$ 0.15        |
| MOTOR VEHICLES - BENEFITS                      | \$ 5,872.40      | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 178.55        | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 251,782.57    | \$ 1.39        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 742,747.51    | \$ 4.10        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 6,235,184.68  | \$ 34.41       |
| TOTAL CLASSIFIED PROD HOURS                    | 181,208.00       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000188

CRT

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| FG/FSG: CABLE REPAIR TECHNICIAN                |                   |                |
| WCT: CRT                                       |                   |                |
| JFC: 425X OR 426X                              |                   |                |
| 1998   |                   |                |
| CLASSIFIED                                     |                   |                |
| 1998   |                   | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b>  | <b>(B/B32)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 159,170,728.90 | \$ 21.47       |
| DIRECT LABOR - PREMIUM                         | \$ 25,893,406.38  | \$ 3.49        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 2,759,493.71   | \$ 0.37        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 20,743,274.31  | \$ 2.80        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 19,784,563.00  | \$ 2.67        |
| TOTAL DIRECT LABOR                             | \$ 228,351,466.30 | \$ 30.81       |
| DIRECT LABOR - OTHER COST                      | \$ 796,163.94     | \$ 0.11        |
| OTHER TOOLS - SALARIES                         | \$ 65,725.70      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 12,076.27      | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 357,101.15     | \$ 0.05        |
| OTHER TOOLS - OTHER                            | \$ 9,926,822.08   | \$ 1.34        |
| MOTOR VEHICLES - SALARIES                      | \$ 1,172,438.25   | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                      | \$ 248,188.24     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 11,313.02      | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 10,669,092.59  | \$ 1.44        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 43,992,956.77  | \$ 5.94        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 295,603,344.31 | \$ 39.88       |
| TOTAL CLASSIFIED PROD HOURS                    | 7,412,024.54      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |

000189

## COIM-CIR&amp;FAC

| A   | B                       | C                     |
|---|-------------------------|-----------------------|
| STATE: REGION                                       |                         |                       |
| FG/FSG: CO INSTALLATION & MTCE - CIRCUIT & FACILITY |                         |                       |
| WCT: COIM-CIR & FAC                                 |                         |                       |
| JFC: 431X   |                         |                       |
| 1998  |                         |                       |
| CLASSIFIED  |                         |                       |
| 1998  |                         |                       |
| HOURLY COST   |                         |                       |
| <b>COMPONENT</b>                                    | <b><u>DOLLARS**</u></b> | <b><u>(B/B32)</u></b> |
| DIRECT LABOR - PRODUCTIVE                           | \$ 39,810,550.26        | \$ 21.29              |
| DIRECT LABOR - PREMIUM                              | \$ 2,910,755.43         | \$ 1.56               |
| DIRECT LABOR - OTHER EMPLOYEE                       | \$ 720,979.58           | \$ 0.39               |
| DIRECT LABOR - ANNUAL PAID ABSENCE                  | \$ 6,058,901.44         | \$ 3.24               |
| DIRECT LABOR - DIRECT ADMINISTRATION                | \$ 5,332,764.61         | \$ 2.85               |
| TOTAL DIRECT LABOR                                  | \$ 54,833,951.32        | \$ 29.33              |
| DIRECT LABOR - OTHER COST                           | \$ 542,495.16           | \$ 0.29               |
| OTHER TOOLS - SALARIES                              | \$ 7,759.66             | \$ 0.00               |
| OTHER TOOLS - BENEFITS                              | \$ 1,511.23             | \$ 0.00               |
| OTHER TOOLS - RENTS                                 | \$ 26,588.48            | \$ 0.01               |
| OTHER TOOLS - OTHER                                 | \$ 2,495,880.04         | \$ 1.33               |
| MOTOR VEHICLES - SALARIES                           | \$ 286,243.83           | \$ 0.15               |
| MOTOR VEHICLES - BENEFITS                           | \$ 59,677.99            | \$ 0.03               |
| MOTOR VEHICLES - RENTS                              | \$ 3,067.88             | \$ 0.00               |
| MOTOR VEHICLES - OTHER                              | \$ 2,571,155.75         | \$ 1.38               |
| DIRECTLY ASSIGNED BENEFITS                          | \$ 10,313,697.60        | \$ 5.52               |
| TOTAL DIRECTLY ASSIGNED                             | \$ 71,142,028.94        | \$ 38.05              |
| TOTAL CLASSIFIED PROD HOURS                         | 1,869,598.17            |                       |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM      |                         |                       |

000130

COIM-SW EQ

| A   | B                 | C              |
|---|-------------------|----------------|
| STATE: REGION   |                   |                |
| FG/FSG: CO INSTALLATION AND MTCE FIELD - SWITCH EQUIP |                   |                |
| WCT: COIM-SW EQ                                       |                   |                |
| JFC: 430X   |                   |                |
| 1998  |                   |                |
| CLASSIFIED  |                   |                |
| 1998  |                   | HOURLY COST    |
| <u>COMPONENT</u>                                      | <u>DOLLARS**</u>  | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                             | \$ 79,587,837.65  | \$ 22.63       |
| DIRECT LABOR - PREMIUM                                | \$ 5,138,319.53   | \$ 1.46        |
| DIRECT LABOR - OTHER EMPLOYEE                         | \$ 1,331,847.41   | \$ 0.38        |
| DIRECT LABOR - ANNUAL PAID ABSENCE                    | \$ 12,129,672.17  | \$ 3.45        |
| DIRECT LABOR - DIRECT ADMINISTRATION                  | \$ 10,421,315.48  | \$ 2.96        |
| TOTAL DIRECT LABOR                                    | \$ 108,608,992.24 | \$ 30.88       |
| DIRECT LABOR - OTHER COST                             | \$ 1,626,495.25   | \$ 0.46        |
| OTHER TOOLS - SALARIES                                | \$ 32,997.78      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                                | \$ 5,403.14       | \$ 0.00        |
| OTHER TOOLS - RENTS                                   | \$ 291,808.23     | \$ 0.08        |
| OTHER TOOLS - OTHER                                   | \$ 4,705,221.23   | \$ 1.34        |
| MOTOR VEHICLES - SALARIES                             | \$ 564,251.96     | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                             | \$ 118,978.62     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                                | \$ 5,103.99       | \$ 0.00        |
| MOTOR VEHICLES - OTHER                                | \$ 5,037,082.56   | \$ 1.43        |
| DIRECTLY ASSIGNED BENEFITS                            | \$ 20,638,020.93  | \$ 5.87        |
| TOTAL DIRECTLY ASSIGNED                               | \$ 141,634,355.93 | \$ 40.27       |
| TOTAL CLASSIFIED PROD HOURS                           | 3,517,179.84      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM        |                   |                |

000191



## RCMAG

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: RECENT CHANGE MEMORY LINE TRANSLATION  |                  |                |
| WCT: RCMAG                                     |                  |                |
| JFC: 4N1X                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  |                |
| HOURLY COST                                    |                  |                |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B32)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 9,922,403.92  | \$ 17.69       |
| DIRECT LABOR - PREMIUM                         | \$ 551,471.81    | \$ 0.98        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 192,788.23    | \$ 0.34        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 1,590,823.05  | \$ 2.84        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 2,171,525.88  | \$ 3.87        |
| TOTAL DIRECT LABOR                             | \$ 14,429,012.89 | \$ 25.72       |
| DIRECT LABOR - OTHER COST                      | \$ 18,687.18     | \$ 0.03        |
| OTHER TOOLS - SALARIES                         | \$ 3,312.83      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 542.41        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 26,729.53     | \$ 0.05        |
| OTHER TOOLS - OTHER                            | \$ 758,653.41    | \$ 1.35        |
| MOTOR VEHICLES - SALARIES                      | \$ 88,118.70     | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                      | \$ 18,471.03     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 607.66        | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 779,431.88    | \$ 1.39        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 2,585,747.87  | \$ 4.61        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 18,709,315.39 | \$ 33.35       |
| TOTAL CLASSIFIED PROD HOURS                    | 560,962.68       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000192

TRANSLATIONS

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: SWITCH AND TRUNK BASED TRANSLATIONS    |                  |                |
| WCT: TRANSLATIONS                              |                  |                |
| JFC: 4N2X                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 14,192,518.20 | \$ 21.44       |
| DIRECT LABOR - PREMIUM                         | \$ 825,996.60    | \$ 1.25        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 287,541.38    | \$ 0.43        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 2,219,350.70  | \$ 3.35        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 2,371,164.04  | \$ 3.58        |
| TOTAL DIRECT LABOR                             | \$ 19,896,570.92 | \$ 30.06       |
| DIRECT LABOR - OTHER COST                      | \$ 411,538.25    | \$ 0.62        |
| OTHER TOOLS - SALARIES                         | \$ 5,359.99      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 937.27        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 35,152.21     | \$ 0.05        |
| OTHER TOOLS - OTHER                            | \$ 888,045.35    | \$ 1.34        |
| MOTOR VEHICLES - SALARIES                      | \$ 105,372.54    | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                      | \$ 21,851.44     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 1,025.40      | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 943,241.59    | \$ 1.43        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 3,609,407.50  | \$ 5.45        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 25,918,502.46 | \$ 39.16       |
| TOTAL CLASSIFIED PROD HOURS                    | 661,853.81       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000193

SOFTWARE

| A  | B                | C                  |
|--|------------------|--------------------|
| STATE: REGION  |                  |                    |
| FG/FSG: CO INSTALLATION, MAINTENANCE AND ADMINISTRATION-SOFTWARE |                  |                    |
| WCT: SOFTWARE  |                  |                    |
| JFC: 432X  |                  |                    |
| 1998   |                  |                    |
| CLASSIFIED   |                  |                    |
| 1998   |                  |                    |
| HOURLY COST  |                  |                    |
| <u>COMPONENT</u>   | <u>1998</u>      | <u>HOURLY COST</u> |
|  | <u>DOLLARS**</u> | <u>(B/B32)</u>     |
| DIRECT LABOR - PRODUCTIVE  | \$ 5,522,178.80  | \$ 26.22           |
| DIRECT LABOR - PREMIUM   | \$ 463,285.11    | \$ 2.20            |
| DIRECT LABOR - OTHER EMPLOYEE                                    | \$ 93,643.52     | \$ 0.44            |
| DIRECT LABOR - ANNUAL PAID ABSENCE                               | \$ 846,714.02    | \$ 4.02            |
| DIRECT LABOR - DIRECT ADMINISTRATION                             | \$ 171,743.09    | \$ 0.82            |
| TOTAL DIRECT LABOR   | \$ 7,097,564.54  | \$ 33.70           |
| DIRECT LABOR - OTHER COST  | \$ 36,310.26     | \$ 0.17            |
| OTHER TOOLS - SALARIES   | \$ 2,364.73      | \$ 0.01            |
| OTHER TOOLS - BENEFITS   | \$ 534.74        | \$ 0.00            |
| OTHER TOOLS - RENTS  | \$ 1,230.02      | \$ 0.01            |
| OTHER TOOLS - OTHER  | \$ 264,508.03    | \$ 1.26            |
| MOTOR VEHICLES - SALARIES  | \$ 32,460.33     | \$ 0.15            |
| MOTOR VEHICLES - BENEFITS  | \$ 6,508.20      | \$ 0.03            |
| MOTOR VEHICLES - RENTS   | \$ 15.94         | \$ 0.00            |
| MOTOR VEHICLES - OTHER   | \$ 305,391.71    | \$ 1.45            |
| DIRECTLY ASSIGNED BENEFITS                                       | \$ 1,501,134.80  | \$ 7.13            |
| TOTAL DIRECTLY ASSIGNED  | \$ 9,248,023.30  | \$ 43.91           |
| TOTAL CLASSIFIED PROD HOURS                                      | 210,630.25       |                    |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM                   |                  |                    |

000194

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: TRUNK AND CARRIER GROUP                |                  |                |
| WCT: TCG                                       |                  |                |
| JFC: 4N5X                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  |                |
| HOURLY COST                                    |                  |                |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 7,588,243.98  | \$ 21.78       |
| DIRECT LABOR - PREMIUM                         | \$ 196,441.34    | \$ 0.56        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 146,342.09    | \$ 0.42        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 1,204,828.19  | \$ 3.46        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 1,422,508.03  | \$ 4.08        |
| TOTAL DIRECT LABOR                             | \$ 10,558,363.63 | \$ 30.30       |
| DIRECT LABOR - OTHER COST                      | \$ 127,735.87    | \$ 0.37        |
| OTHER TOOLS - SALARIES                         | \$ 1,916.22      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 353.56        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 11,078.98     | \$ 0.03        |
| OTHER TOOLS - OTHER                            | \$ 469,439.69    | \$ 1.35        |
| MOTOR VEHICLES - SALARIES                      | \$ 53,990.78     | \$ 0.15        |
| MOTOR VEHICLES - BENEFITS                      | \$ 11,230.65     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 486.94        | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 488,508.13    | \$ 1.40        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 1,902,366.12  | \$ 5.46        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 13,625,470.57 | \$ 39.10       |
| TOTAL CLASSIFIED PROD HOURS                    | 348,444.45       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000195

NRC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: NETWORK RELIABILITY CENTER             |                  |                |
| WCT: NRC                                       |                  |                |
| JFC: 4LXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 21,192,531.17 | \$ 22.52       |
| DIRECT LABOR - PREMIUM                         | \$ 1,711,520.41  | \$ 1.82        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 406,267.75    | \$ 0.43        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 2,621,060.50  | \$ 2.79        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 2,429,091.50  | \$ 2.58        |
| TOTAL DIRECT LABOR                             | \$ 28,360,471.33 | \$ 30.14       |
| DIRECT LABOR - OTHER COST                      | \$ 1,515,597.92  | \$ 1.61        |
| OTHER TOOLS - SALARIES                         | \$ 1,173.46      | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 303.78        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 5,333.36      | \$ 0.01        |
| OTHER TOOLS - OTHER                            | \$ 927,899.41    | \$ 0.99        |
| MOTOR VEHICLES - SALARIES                      | \$ 128,458.05    | \$ 0.14        |
| MOTOR VEHICLES - BENEFITS                      | \$ 25,646.19     | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 25.30         | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 1,197,203.19  | \$ 1.27        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 5,086,411.20  | \$ 5.41        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 37,248,523.19 | \$ 39.59       |
| TOTAL CLASSIFIED PROD HOURS                    | 940,878.35       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000196

PAR

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: PROACTIVE ANALYSIS AND REPAIR CENTER   |                  |                |
| WCT: PAR                                       |                  |                |
| JFC: 4PXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 1,010,902.03  | \$ 18.89       |
| DIRECT LABOR - PREMIUM                         | \$ 24,180.91     | \$ 0.45        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 22,011.57     | \$ 0.41        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 163,052.12    | \$ 3.05        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 632,528.92    | \$ 11.82       |
| TOTAL DIRECT LABOR                             | \$ 1,852,675.55  | \$ 34.62       |
| DIRECT LABOR - OTHER COST                      | \$ 4,515.36      | \$ 0.08        |
| OTHER TOOLS - SALARIES                         | \$ 0.71          | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 0.14          | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 0.81          | \$ 0.00        |
| OTHER TOOLS - OTHER                            | \$ 121.62        | \$ 0.00        |
| MOTOR VEHICLES - SALARIES                      | \$ 23.00         | \$ 0.00        |
| MOTOR VEHICLES - BENEFITS                      | \$ 4.89          | \$ 0.00        |
| MOTOR VEHICLES - RENTS                         | \$ 0.03          | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 174.46        | \$ 0.00        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 255,399.57    | \$ 4.77        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 2,112,916.14  | \$ 39.49       |
| TOTAL CLASSIFIED PROD HOURS                    | 53,510.50        |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000197

## CPG

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: CIRCUIT PROVISIONING GROUP             |                  |                |
| WCT: CPG                                       |                  |                |
| JFC: 4N4X                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998 HOURLY COST                               |                  |                |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 9,475,341.34  | \$ 17.51       |
| DIRECT LABOR - PREMIUM                         | \$ 298,953.47    | \$ 0.55        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 206,843.52    | \$ 0.38        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 1,641,545.89  | \$ 3.03        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 2,351,423.08  | \$ 4.35        |
| TOTAL DIRECT LABOR                             | \$ 13,974,107.30 | \$ 25.83       |
| DIRECT LABOR - OTHER COST                      | \$ 37,642.69     | \$ 0.07        |
| OTHER TOOLS - SALARIES                         | \$ 12.75         | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 1.88          | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 28.82         | \$ 0.00        |
| OTHER TOOLS - OTHER                            | \$ 5,292.31      | \$ 0.01        |
| MOTOR VEHICLES - SALARIES                      | \$ 505.00        | \$ 0.00        |
| MOTOR VEHICLES - BENEFITS                      | \$ 121.66        | \$ 0.00        |
| MOTOR VEHICLES - RENTS                         | \$ 0.35          | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 4,433.21      | \$ 0.01        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 2,448,205.50  | \$ 4.53        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 16,470,351.47 | \$ 30.45       |
| TOTAL CLASSIFIED PROD HOURS                    | 540,985.50       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000198

## RRC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: RESIDENCE REPAIR CENTER                |                  |                |
| WCT: RRC                                       |                  |                |
| JFC: 4RXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  |                |
| HOURLY COST                                    |                  |                |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 23,673,736.27 | \$ 16.05       |
| DIRECT LABOR - PREMIUM                         | \$ 2,465,553.99  | \$ 1.67        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 647,541.92    | \$ 0.44        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 3,015,843.65  | \$ 2.04        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 4,513,061.75  | \$ 3.06        |
| TOTAL DIRECT LABOR                             | \$ 34,315,737.58 | \$ 23.26       |
| DIRECT LABOR - OTHER COST                      | \$ 43,399.85     | \$ 0.03        |
| OTHER TOOLS - SALARIES                         | \$ 199.42        | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 42.46         | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 207.46        | \$ 0.00        |
| OTHER TOOLS - OTHER                            | \$ 47,707.51     | \$ 0.03        |
| MOTOR VEHICLES - SALARIES                      | \$ 5,495.93      | \$ 0.00        |
| MOTOR VEHICLES - BENEFITS                      | \$ 1,186.87      | \$ 0.00        |
| MOTOR VEHICLES - RENTS                         | \$ 20.91         | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 48,621.77     | \$ 0.03        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 6,406,664.58  | \$ 4.34        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 40,869,284.34 | \$ 27.71       |
| TOTAL CLASSIFIED PROD HOURS                    | 1,475,131.50     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000202



## WMC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: WORK MANAGEMENT CENTER                 |                  |                |
| WCT: WMC                                       |                  |                |
| JFC: 4WXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  |                |
| HOURLY COST                                    |                  |                |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 25,556,675.00 | \$ 16.52       |
| DIRECT LABOR - PREMIUM                         | \$ 1,629,873.62  | \$ 1.05        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 583,689.68    | \$ 0.38        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 4,221,771.80  | \$ 2.73        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 7,494,786.46  | \$ 4.85        |
| TOTAL DIRECT LABOR                             | \$ 39,486,796.56 | \$ 25.53       |
| DIRECT LABOR - OTHER COST                      | \$ 81,803.13     | \$ 0.05        |
| OTHER TOOLS - SALARIES                         | \$ 29.44         | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 7.43          | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 76.00         | \$ 0.00        |
| OTHER TOOLS - OTHER                            | \$ 12,584.75     | \$ 0.01        |
| MOTOR VEHICLES - SALARIES                      | \$ 1,315.06      | \$ 0.00        |
| MOTOR VEHICLES - BENEFITS                      | \$ 331.09        | \$ 0.00        |
| MOTOR VEHICLES - RENTS                         | \$ 1.17          | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 10,942.32     | \$ 0.01        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 6,269,577.19  | \$ 4.05        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 45,863,464.14 | \$ 29.65       |
| TOTAL CLASSIFIED PROD HOURS                    | 1,546,686.50     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000203

NBF

| A  | B                | C        |
|--|------------------|----------|
| STATE: REGION                                  |                  |          |
| FG/FSG: NETWORK BURIED FACILITY                |                  |          |
| WCT: NBF                                       |                  |          |
| JFC: 490X                                      |                  |          |
| 1998   |                  |          |
| CLASSIFIED                                     |                  |          |
| 1998   |                  |          |
| HOURLY COST                                    |                  |          |
| COMPONENT                                      | DOLLARS**        | (B/B32)  |
| DIRECT LABOR - PRODUCTIVE                      | \$ 7,285,289.68  | \$ 11.89 |
| DIRECT LABOR - PREMIUM                         | \$ 541,044.32    | \$ 0.88  |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 219,791.49    | \$ 0.36  |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 467,481.83    | \$ 0.76  |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 1,971,120.34  | \$ 3.22  |
| TOTAL DIRECT LABOR                             | \$ 10,484,727.66 | \$ 17.11 |
| DIRECT LABOR - OTHER COST                      | \$ 20,775.67     | \$ 0.03  |
| OTHER TOOLS - SALARIES                         | \$ 5,321.17      | \$ 0.01  |
| OTHER TOOLS - BENEFITS                         | \$ 152.33        | \$ 0.00  |
| OTHER TOOLS - RENTS                            | \$ 193,881.87    | \$ 0.32  |
| OTHER TOOLS - OTHER                            | \$ 902,417.00    | \$ 1.47  |
| MOTOR VEHICLES - SALARIES                      | \$ 102,035.20    | \$ 0.17  |
| MOTOR VEHICLES - BENEFITS                      | \$ 20,338.35     | \$ 0.03  |
| MOTOR VEHICLES - RENTS                         | \$ 509.43        | \$ 0.00  |
| MOTOR VEHICLES - OTHER                         | \$ 802,295.51    | \$ 1.31  |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 1,625,394.03  | \$ 2.65  |
| TOTAL DIRECTLY ASSIGNED                        | \$ 14,157,848.22 | \$ 23.10 |
| TOTAL CLASSIFIED PROD HOURS                    | 612,782.26       |          |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |          |

000204

RNOC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: REGIONAL NETWORK OPERATIONS CTR        |                  |                |
| WCT: RNOC                                      |                  |                |
| JFC: 4DXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B32)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 1,888,854.94  | \$ 19.16       |
| DIRECT LABOR - PREMIUM                         | \$ 224,634.66    | \$ 2.28        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 31,535.36     | \$ 0.32        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 284,748.62    | \$ 2.89        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 418,434.92    | \$ 4.25        |
| TOTAL DIRECT LABOR                             | \$ 2,848,208.50  | \$ 28.90       |
| DIRECT LABOR - OTHER COST                      | \$ 15,651.94     | \$ 0.16        |
| OTHER TOOLS - SALARIES                         | \$ 63.70         | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 16.56         | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 244.37        | \$ 0.00        |
| OTHER TOOLS - OTHER                            | \$ 55,209.27     | \$ 0.56        |
| MOTOR VEHICLES - SALARIES                      | \$ 6,619.46      | \$ 0.07        |
| MOTOR VEHICLES - BENEFITS                      | \$ 1,219.05      | \$ 0.01        |
| MOTOR VEHICLES - RENTS                         | \$ 3.38          | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 59,790.38     | \$ 0.61        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 506,236.97    | \$ 5.14        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 3,493,263.58  | \$ 35.44       |
| TOTAL CLASSIFIED PROD HOURS                    | 98,567.75        |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000205

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: COMPANY INITIATED ACTIVITIES CENTER    |                  |                |
| WCT: CIA                                       |                  |                |
| JFC: 4EXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  |                |
| HOURLY COST                                    |                  |                |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 5,107,569.95  | \$ 21.48       |
| DIRECT LABOR - PREMIUM                         | \$ 167,786.52    | \$ 0.71        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 102,642.16    | \$ 0.43        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 834,281.38    | \$ 3.51        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 835,794.84    | \$ 3.51        |
| TOTAL DIRECT LABOR                             | \$ 7,048,074.85  | \$ 29.64       |
| DIRECT LABOR - OTHER COST                      | \$ 37,408.47     | \$ 0.16        |
| OTHER TOOLS - SALARIES                         | \$ 433.61        | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 73.33         | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 3,650.52      | \$ 0.02        |
| OTHER TOOLS - OTHER                            | \$ 78,728.42     | \$ 0.33        |
| MOTOR VEHICLES - SALARIES                      | \$ 9,380.31      | \$ 0.04        |
| MOTOR VEHICLES - BENEFITS                      | \$ 1,941.28      | \$ 0.01        |
| MOTOR VEHICLES - RENTS                         | \$ 71.44         | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 85,242.58     | \$ 0.36        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 1,290,782.38  | \$ 5.43        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 8,555,787.19  | \$ 35.98       |
| TOTAL CLASSIFIED PROD HOURS                    | 237,782.05       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000206

## SAC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: SERVICE ADVOCACY CENTER                |                  |                |
| WCT: SAC                                       |                  |                |
| JFC: 4FXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 4,092,817.96  | \$ 16.13       |
| DIRECT LABOR - PREMIUM                         | \$ 162,665.13    | \$ 0.64        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 86,056.89     | \$ 0.34        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 706,098.48    | \$ 2.78        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 553,843.97    | \$ 2.18        |
| TOTAL DIRECT LABOR                             | \$ 5,601,482.43  | \$ 22.08       |
| DIRECT LABOR - OTHER COST                      | \$ 27,095.04     | \$ 0.11        |
| OTHER TOOLS - SALARIES                         | \$ 1,840.59      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 325.56        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 12,836.88     | \$ 0.05        |
| OTHER TOOLS - OTHER                            | \$ 342,781.26    | \$ 1.35        |
| MOTOR VEHICLES - SALARIES                      | \$ 38,973.82     | \$ 0.15        |
| MOTOR VEHICLES - BENEFITS                      | \$ 8,203.44      | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 318.79        | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 350,432.17    | \$ 1.38        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 1,107,026.55  | \$ 4.36        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 7,491,316.53  | \$ 29.52       |
| TOTAL CLASSIFIED PROD HOURS                    | 253,738.50       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000207

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: LAND AND BUILDINGS (FG10)              |                  |                |
| JFC: 30XX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B23)</u> |
| DIRECT ENGINEERING - PRODUCTIVE                | \$ 1,042,215.89  | \$ 44.82       |
| DIRECT ENGINEERING - PREMIUM                   | \$ 2,630.46      | \$ 0.11        |
| DIRECT ENGINEERING - OTHER EMPLOYEE            | \$ 125,556.39    | \$ 5.40        |
| DIRECT ENGINEERING - ANNUAL PAID ABSENCES      | \$ 108,891.41    | \$ 4.68        |
| DIRECT ENGINEERING - DIRECT ADMINISTRATIO      | \$ 142,387.77    | \$ 6.12        |
| TOTAL DIRECT LABOR                             | \$ 1,421,681.92  | \$ 61.13       |
| DIRECT ENGINEERING - OTHER COSTS               | \$ 57,671.48     | \$ 2.48        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 268,478.05    | \$ 11.54       |
| TOTAL DIRECTLY ASSIGNED                        | \$ 1,747,831.45  | \$ 75.16       |
| TOTAL CLASSIFIED PROD HOURS                    | 23,255.30        |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000208

| A   | B                | C              |
|---|------------------|----------------|
| STATE: REGION                                   |                  |                |
| FG/FSG: NETWORK AND ENGINEERING PLANNING (FG20) |                  |                |
| JFC: 34XX OR 3AXX                               |                  |                |
| 1998  |                  |                |
| CLASSIFIED                                      |                  |                |
| 1998  |                  | HOURLY COST    |
| <u>COMPONENT</u>                                | <u>DOLLARS**</u> | <u>(B/B23)</u> |
| DIRECT ENGINEERING - PRODUCTIVE                 | \$ 42,011,743.18 | \$ 25.03       |
| DIRECT ENGINEERING - PREMIUM                    | \$ 255,219.51    | \$ 0.15        |
| DIRECT ENGINEERING - OTHER EMPLOYEE             | \$ 5,324,325.70  | \$ 3.17        |
| DIRECT ENGINEERING - ANNUAL PAID ABSENCES       | \$ 5,733,917.18  | \$ 3.42        |
| DIRECT ENGINEERING - DIRECT ADMINISTRATIO       | \$ 9,172,616.92  | \$ 5.47        |
| TOTAL DIRECT LABOR                              | \$ 62,497,822.49 | \$ 37.24       |
| DIRECT ENGINEERING - OTHER COSTS                | \$ 2,427,149.13  | \$ 1.45        |
| DIRECTLY ASSIGNED BENEFITS                      | \$ 12,513,211.57 | \$ 7.46        |
| TOTAL DIRECTLY ASSIGNED                         | \$ 77,438,183.19 | \$ 46.14       |
| TOTAL CLASSIFIED PROD HOURS                     | 1,678,295.17     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM  |                  |                |

000209

PICS

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: NETWORK PLUG-IN ADMINISTRATION (PICS)  |                  |                |
| JFC: 3A2X                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B23)</b> |
| DIRECT ENGINEERING - PRODUCTIVE                | \$ 3,302,276.05  | \$ 19.68       |
| DIRECT ENGINEERING - PREMIUM                   | \$ 211,969.18    | \$ 1.26        |
| DIRECT ENGINEERING - OTHER EMPLOYEE            | \$ 175,040.56    | \$ 1.04        |
| DIRECT ENGINEERING - ANNUAL PAID ABSENCES      | \$ 384,448.06    | \$ 2.29        |
| DIRECT ENGINEERING - DIRECT ADMINISTRATIO      | \$ 426,476.46    | \$ 2.54        |
| TOTAL DIRECT LABOR                             | \$ 4,500,210.31  | \$ 26.82       |
| DIRECT ENGINEERING - OTHER COSTS               | \$ 199,306.08    | \$ 1.19        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 925,889.75    | \$ 5.52        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 5,625,406.14  | \$ 33.52       |
| TOTAL CLASSIFIED PROD HOURS                    | 167,815.75       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000210



| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: OUTSIDE PLANT ENGINEERING (FG30)       |                  |                |
| JFC: 32XX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B23)</u> |
| DIRECT ENGINEERING - PRODUCTIVE                | \$ 33,783,303.15 | \$ 20.85       |
| DIRECT ENGINEERING - PREMIUM                   | \$ 581,358.14    | \$ 0.36        |
| DIRECT ENGINEERING - OTHER EMPLOYEE            | \$ 3,684,657.91  | \$ 2.27        |
| DIRECT ENGINEERING - ANNUAL PAID ABSENCES      | \$ 4,885,280.54  | \$ 3.02        |
| DIRECT ENGINEERING - DIRECT ADMINISTRATIO\$    | 9,962,730.93     | \$ 6.15        |
| TOTAL DIRECT LABOR                             | \$ 52,897,330.67 | \$ 32.65       |
| DIRECT ENGINEERING - OTHER COSTS               | \$ 794,199.75    | \$ 0.49        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 10,330,155.50 | \$ 6.38        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 64,021,685.92 | \$ 39.52       |
| TOTAL CLASSIFIED PROD HOURS                    | 1,620,126.77     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000211

ICSC LCSC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: CUSTOMER POINT OF CONTACT-ICSC/LCSC     |                  |                |
| JFC: 230X                                      |                  |                |
| 1998   |                  |                |
|  | 1998             | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B23)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 17,382,480.76 | \$ 17.25       |
| DIRECT LABOR - PREMIUM                         | \$ 1,745,963.09  | \$ 1.73        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 424,960.75    | \$ 0.42        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 2,224,640.54  | \$ 2.21        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 2,266,159.04  | \$ 2.25        |
| TOTAL DIRECT LABOR                             | \$ 24,044,204.18 | \$ 23.86       |
| DIRECT LABOR - OTHER COST                      | \$ 66,075.33     | \$ 0.07        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 4,323,164.30  | \$ 4.29        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 28,433,443.81 | \$ 28.21       |
| TOTAL HOURS                                    | 1,007,812.01     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000212

TOLL & ASSIST - COMBINED

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: TOLL & ASSIST - COMBINED                |                  |                |
| JFC: 212X                                      |                  |                |
|  |                  | 1998           |
|  | 1998             | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B23)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 17,122,437.06 | \$ 15.23       |
| DIRECT LABOR - PREMIUM                         | \$ 1,367,871.10  | \$ 1.22        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 432,513.41    | \$ 0.38        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 3,174,320.17  | \$ 2.82        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 1,063,303.35  | \$ 0.95        |
| TOTAL DIRECT LABOR                             | \$ 23,160,445.09 | \$ 20.60       |
| DIRECT LABOR - OTHER COST                      | \$ 35,945.03     | \$ 0.03        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 5,108,700.48  | \$ 4.54        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 28,305,090.60 | \$ 25.17       |
| TOTAL HOURS                                    | 1,124,508.56     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000213

CALL COMP ATTEND

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: CALL COMPLETION ATTENDANTS              |                  |                |
| JFC: 212XA                                     |                  |                |
|  | 1998             |                |
|  | 1998             | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B23)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 867,839.48    | \$ 7.50        |
| DIRECT LABOR - PREMIUM                         | \$ 69,329.65     | \$ 0.60        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 21,921.66     | \$ 0.19        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 160,888.33    | \$ 1.39        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 114,468.03    | \$ 0.99        |
| TOTAL DIRECT LABOR                             | \$ 1,234,447.15  | \$ 10.67       |
| DIRECT LABOR - OTHER COST                      | \$ 1,915.86      | \$ 0.02        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 272,292.73    | \$ 2.35        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 1,508,655.74  | \$ 13.04       |
| TOTAL HOURS                                    | 115,711.93       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |
| % Direct Administration                        | 13.19%           |                |
| % Call Completion Attendant Hours              | 10.29%           |                |

000214

TOLL & ASSIST OPER

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: TOLL & ASSIST OPERATORS                 |                  |                |
| JFC: 212XO                                     |                  |                |
|  |                  | 1998           |
|  | 1998             | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B23)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 16,254,597.58 | \$ 16.11       |
| DIRECT LABOR - PREMIUM                         | \$ 1,298,541.45  | \$ 1.29        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 410,591.75    | \$ 0.41        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 3,013,431.84  | \$ 2.99        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 948,835.32    | \$ 0.94        |
| TOTAL DIRECT LABOR                             | \$ 21,925,997.94 | \$ 21.73       |
| DIRECT LABOR - OTHER COST                      | \$ 34,029.17     | \$ 0.03        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 4,836,407.75  | \$ 4.79        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 26,796,434.86 | \$ 26.56       |
| TOTAL HOURS                                    | 1,008,796.63     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |
| % Direct Administration                        | 5.83%            |                |
| % Toll & Assist Operator Hours                 | 89.71%           |                |

000215

DIR ASSIST - COMBINED

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| GROUP: DIRECTORY ASSISTANCE - COMBINED         |                   |                |
| JFC: 294X                                      |                   |                |
|  |                   | 1998           |
|  | 1998              | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u>  | <u>(B/B23)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 69,519,046.63  | \$ 14.47       |
| DIRECT LABOR - PREMIUM                         | \$ 3,950,989.06   | \$ 0.82        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 2,190,780.07   | \$ 0.46        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 12,128,738.38  | \$ 2.52        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 3,886,114.71   | \$ 0.81        |
| TOTAL DIRECT LABOR                             | \$ 91,675,668.85  | \$ 19.08       |
| DIRECT LABOR - OTHER COST                      | \$ 291,172.42     | \$ 0.06        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 19,878,339.24  | \$ 4.14        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 111,845,180.51 | \$ 23.28       |
| TOTAL HOURS                                    | 4,805,275.94      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |

000216

DIR ASSIST ATTEND

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: DIRECTORY ASSISTANCE ATTENDANTS         |                  |                |
| JFC: 294XA                                     |                  |                |
|  |                  | 1998           |
|  | 1998             | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B23)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 4,231,045.47  | \$ 7.50        |
| DIRECT LABOR - PREMIUM                         | \$ 240,463.80    | \$ 0.43        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 133,334.54    | \$ 0.24        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 738,175.31    | \$ 1.31        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 431,989.74    | \$ 0.77        |
| TOTAL DIRECT LABOR                             | \$ 5,775,008.86  | \$ 10.24       |
| DIRECT LABOR - OTHER COST                      | \$ 18,342.09     | \$ 0.03        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 1,252,214.32  | \$ 2.22        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 7,045,565.26  | \$ 12.49       |
| TOTAL HOURS                                    | 564,139.40       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |
| % Direct Administration                        | 10.21%           |                |
| % Directory Assistance Attendant Hours         | 11.74%           |                |

000217

DIR ASSIST OPER

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| GROUP: DIRECTORY ASSISTANCE OPERATORS          |                   |                |
| JFC: 294XO                                     |                   |                |
| 1998   |                   |                |
|  | 1998              | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u>  | <u>(B/B23)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 65,288,001.16  | \$ 15.39       |
| DIRECT LABOR - PREMIUM                         | \$ 3,710,525.26   | \$ 0.87        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 2,057,445.53   | \$ 0.49        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 11,390,563.07  | \$ 2.69        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 3,454,124.97   | \$ 0.81        |
| TOTAL DIRECT LABOR                             | \$ 85,900,659.99  | \$ 20.25       |
| DIRECT LABOR - OTHER COST                      | \$ 272,830.33     | \$ 0.06        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 18,626,124.92  | \$ 4.39        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 104,799,615.25 | \$ 24.71       |
| TOTAL HOURS                                    | 4,241,136.54      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |
| % Direct Administration                        | 5.30%             |                |
| % Directory Assistance Operator Hours          | 88.26%            |                |

000218



CUST BILL

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: CUSTOMER BILLING                        |                  |                |
| JFC: 260X                                      |                  |                |
|  |                  | 1998           |
|  |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B23)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 5,056,422.09  | \$ 16.82       |
| DIRECT LABOR - PREMIUM                         | \$ 148,517.78    | \$ 0.49        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 177,800.81    | \$ 0.59        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 781,760.31    | \$ 2.60        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 632,052.76    | \$ 2.10        |
| TOTAL DIRECT LABOR                             | \$ 6,796,553.75  | \$ 22.61       |
| DIRECT LABOR - OTHER COST                      | \$ 3,991.99      | \$ 0.01        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 1,226,109.21  | \$ 4.08        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 8,026,654.95  | \$ 26.70       |
| TOTAL HOURS                                    | 300,648.72       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000219

COLL REP

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: COLLECTIONS REPRESENTATIVE              |                  |                |
| JFC: 2E4X                                      |                  |                |
|  | 1998             |                |
|  | 1998             | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b> | <b>(B/B23)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 42,021,293.14 | \$ 16.68       |
| DIRECT LABOR - PREMIUM                         | \$ 2,134,219.61  | \$ 0.85        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 1,140,200.09  | \$ 0.45        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 6,547,866.91  | \$ 2.60        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 5,233,529.76  | \$ 2.08        |
| TOTAL DIRECT LABOR                             | \$ 57,077,109.51 | \$ 22.66       |
| DIRECT LABOR - OTHER COST                      | \$ 215,028.55    | \$ 0.09        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 11,288,885.79 | \$ 4.48        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 68,581,023.85 | \$ 27.23       |
| TOTAL HOURS                                    | 2,518,632.98     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000220

CUST SVC

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| GROUP: CUSTOMER SERVICE                        |                   |                |
| JFC: 2E5X                                      |                   |                |
|  |                   | 1998           |
|  | 1998              | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u>  | <u>(B/B23)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 110,476,729.31 | \$ 16.96       |
| DIRECT LABOR - PREMIUM                         | \$ 7,265,546.13   | \$ 1.12        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 3,785,678.86   | \$ 0.58        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 15,377,886.66  | \$ 2.36        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 13,674,007.53  | \$ 2.10        |
| TOTAL DIRECT LABOR                             | \$ 150,579,848.49 | \$ 23.11       |
| DIRECT LABOR - OTHER COST                      | \$ 803,485.39     | \$ 0.12        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 29,399,775.62  | \$ 4.51        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 180,783,109.50 | \$ 27.75       |
| TOTAL HOURS                                    | 6,515,836.57      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |

000221

SALES - CUST SVC REL

| A  | B                 | C              |
|--|-------------------|----------------|
| STATE: REGION                                  |                   |                |
| GROUP: SALES - CUSTOMER SERVICE RELATED        |                   |                |
| JFC: 287X                                      |                   |                |
|  |                   | 1998           |
|  | 1998              | HOURLY COST    |
| <b>COMPONENT</b>                               | <b>DOLLARS**</b>  | <b>(B/B23)</b> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 88,372,146.68  | \$ 17.02       |
| DIRECT LABOR - PREMIUM                         | \$ 5,480,874.31   | \$ 1.06        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 2,651,521.81   | \$ 0.51        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 12,118,594.81  | \$ 2.33        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 11,336,172.13  | \$ 2.18        |
| TOTAL DIRECT LABOR                             | \$ 119,959,309.74 | \$ 23.10       |
| DIRECT LABOR - OTHER COST                      | \$ 1,056,303.08   | \$ 0.20        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 23,496,648.13  | \$ 4.53        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 144,512,260.95 | \$ 27.83       |
| TOTAL HOURS                                    | 5,192,228.57      |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                   |                |

000222

COMP CLER

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: COMPTROLLERS CLERICAL                   |                  |                |
| JFC: 124X OR 125X OR 126X OR 127X              |                  |                |
|  |                  | 1998           |
|  | 1998             | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B23)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 7,343,470.85  | \$ 15.60       |
| DIRECT LABOR - PREMIUM                         | \$ 650,830.95    | \$ 1.38        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 154,432.85    | \$ 0.33        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 963,302.51    | \$ 2.05        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 917,933.86    | \$ 1.95        |
| TOTAL DIRECT LABOR                             | \$ 10,029,971.02 | \$ 21.31       |
| DIRECT LABOR - OTHER COST                      | \$ 4,048.44      | \$ 0.01        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 1,698,772.28  | \$ 3.61        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 11,732,791.74 | \$ 24.92       |
| TOTAL HOURS                                    | 470,755.43       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000223

NTWK SVC CLER

| A   | B                | C              |
|---|------------------|----------------|
| STATE: REGION                                   |                  |                |
| GROUP: NETWORK SERVICES CLERICAL                |                  |                |
| JFC: 2700 OR 2701 OR 2730 OR 2751               |                  |                |
|   |                  | 1998           |
|   | 1998             | HOURLY COST    |
| <b>COMPONENT</b>                                | <b>DOLLARS**</b> | <b>(B/B23)</b> |
| DIRECT LABOR - PRODUCTIVE                       | \$ 4,547,033.44  | \$ 16.18       |
| DIRECT LABOR - PREMIUM                          | \$ 130,083.88    | \$ 0.46        |
| DIRECT LABOR - OTHER EMPLOYEE                   | \$ 99,907.32     | \$ 0.36        |
| DIRECT LABOR - ANNUAL PAID ABSENCE              | \$ 806,212.79    | \$ 2.87        |
| DIRECT LABOR - DIRECT ADMINISTRATION            | \$ 568,379.18    | \$ 2.02        |
| TOTAL DIRECT LABOR                              | \$ 6,151,616.61  | \$ 21.89       |
| DIRECT LABOR - OTHER COST                       | \$ 69,197.78     | \$ 0.25        |
| DIRECTLY ASSIGNED BENEFITS                      | \$ 1,180,384.66  | \$ 4.20        |
| TOTAL DIRECTLY ASSIGNED                         | \$ 7,401,199.05  | \$ 26.34       |
| TOTAL HOURS                                     | 281,026.91       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM. |                  |                |

000224

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| GROUP: COMPLEX RESALE SUPPORT GROUP            |                  |                |
| JFC: 221X                                      |                  |                |
| 1998   |                  |                |
|  | 1998             | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B23)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 2,722,283.45  | \$ 15.60       |
| DIRECT LABOR - PREMIUM                         | \$ 59,786.75     | \$ 0.34        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 745,617.22    | \$ 4.27        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 267,965.39    | \$ 1.54        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 340,285.43    | \$ 1.95        |
| TOTAL DIRECT LABOR                             | \$ 4,135,938.24  | \$ 23.70       |
| DIRECT LABOR - OTHER COST                      | \$ 24,800.10     | \$ 0.14        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 761,937.69    | \$ 4.37        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 4,922,676.03  | \$ 28.21       |
| TOTAL HOURS                                    | 174,508.67       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000225

| 05-Nov-99  |                 |
|--|-----------------|
| DIRECTLY ASSIGNED LABOR RATES FOR                            |                 |
| ACCOUNT EXECUTIVE, SYSTEMS DESIGNER AND SERVICE CONSULTANT   |                 |
| 1998   |                 |
| ACCOUNT EXECUTIVE  | HOURLY RATE     |
| DIRECT SALARIES AND WAGES                                    | \$ 27.47        |
| OTHER DIRECT   | \$ 18.34        |
| <b>DIRECTLY ASSIGNED WITH SALES COMP</b>                     | <b>\$ 45.81</b> |
| DIRECT SALARIES AND WAGES                                    | \$ 27.47        |
| OTHER DIRECT   | \$ 6.99         |
| <b>DIRECTLY ASSIGNED WITHOUT SALES COMP</b>                  | <b>\$ 34.46</b> |
| <b>SYSTEMS DESIGNER</b>                                      |                 |
| DIRECT SALARIES AND WAGES                                    | \$ 35.36        |
| OTHER DIRECT   | \$ 10.95        |
| <b>DIRECTLY ASSIGNED WITH SALES COMP</b>                     | <b>\$ 46.31</b> |
| DIRECT SALARIES AND WAGES                                    | \$ 35.36        |
| OTHER DIRECT   | \$ 7.07         |
| <b>DIRECTLY ASSIGNED WITHOUT SALES COMP</b>                  | <b>\$ 42.43</b> |
| <b>SERVICE CONSULTANT</b>                                    |                 |
| DIRECT SALARIES AND WAGES                                    | \$ 25.85        |
| OTHER DIRECT   | \$ 4.89         |
| <b>DIRECTLY ASSIGNED</b>                                     | <b>\$ 30.74</b> |
| <b>SOURCE: FINANCE DEPARTMENT/BELLSOUTH BUSINESS SYSTEMS</b> |                 |

000226



JOB GRADES & WAGE SCALES

| 05-Nov-99                              | JOB GRADE 54 | JOB GRADE 55 | JOB GRADE 56 | JOB GRADE 57 | JOB GRADE 58 | JOB GRADE 59 | JOB GRADE 60 | JOB GRADE 61 |
|--|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| STATE: REGION                          |              |              |              |              |              |              |              |              |
| Component                              |              |              |              |              |              |              |              |              |
| DIRECT LABOR - PRODUCTIVE              | \$ 17.51     | \$ 19.28     | \$ 22.38     | \$ 25.09     | \$ 29.13     | \$ 33.78     | \$ 38.64     | \$ 44.09     |
| DIRECT LABOR - PREMIUM                 | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         |
| DIRECT LABOR - OTHER EMPLOYEE          | \$ 2.88      | \$ 3.17      | \$ 3.68      | \$ 4.12      | \$ 4.79      | \$ 5.55      | \$ 6.35      | \$ 7.24      |
| DIRECT LABOR - ANNUAL PAID ABSENCE     | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         |
| DIRECT LABOR - DIRECT ADMINISTRATION   | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         |
| TOTAL DIRECT LABOR                     | \$ 20.39     | \$ 22.45     | \$ 26.06     | \$ 29.21     | \$ 33.92     | \$ 39.33     | \$ 44.99     | \$ 51.33     |
| DIRECT LABOR - OTHER COST              | \$ 1.09      | \$ 1.20      | \$ 1.39      | \$ 1.56      | \$ 1.81      | \$ 2.09      | \$ 2.40      | \$ 2.73      |
| DIRECTLY ASSIGNED BENEFITS             | \$ 4.13      | \$ 4.55      | \$ 5.28      | \$ 5.92      | \$ 6.88      | \$ 7.97      | \$ 9.12      | \$ 10.41     |
| TOTAL DIRECTLY ASSIGNED                | \$ 25.61     | \$ 28.19     | \$ 32.73     | \$ 36.69     | \$ 42.60     | \$ 49.40     | \$ 56.51     | \$ 64.47     |
| COMPONENT                              |              |              |              |              |              |              |              |              |
| DIRECT LABOR - PRODUCTIVE              | \$ 15.54     | \$ 16.29     | \$ 16.79     | \$ 17.17     | \$ 18.15     | \$ 18.15     | \$ 18.15     | \$ 18.15     |
| DIRECT LABOR - PREMIUM                 | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         |
| DIRECT LABOR - OTHER EMPLOYEE          | \$ 0.37      | \$ 0.38      | \$ 0.40      | \$ 0.41      | \$ 0.43      | \$ 0.52      | \$ 0.52      | \$ 0.52      |
| DIRECT LABOR - ANNUAL PAID ABSENCE     | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         | \$ -         |
| DIRECT LABOR - DIRECT ADMINISTRATION   | \$ 2.14      | \$ 2.14      | \$ 2.14      | \$ 2.14      | \$ 2.14      | \$ 2.14      | \$ 2.14      | \$ 2.14      |
| TOTAL DIRECT LABOR                     | \$ 18.05     | \$ 18.82     | \$ 19.33     | \$ 19.72     | \$ 20.72     | \$ 20.72     | \$ 20.72     | \$ 20.72     |
| DIRECT LABOR - OTHER COST              | \$ 0.14      | \$ 0.15      | \$ 0.15      | \$ 0.16      | \$ 0.16      | \$ 0.20      | \$ 0.20      | \$ 0.20      |
| DIRECTLY ASSIGNED BENEFITS             | \$ 3.66      | \$ 3.81      | \$ 3.92      | \$ 4.00      | \$ 4.20      | \$ 5.04      | \$ 5.04      | \$ 5.04      |
| TOTAL DIRECTLY ASSIGNED                | \$ 21.85     | \$ 22.78     | \$ 23.40     | \$ 23.87     | \$ 25.09     | \$ 30.12     | \$ 30.12     | \$ 30.12     |
| 1998 RELATIONSHIPS FROM BST LABOR DATA |              |              |              |              |              |              |              |              |
| BST Labor Relationships                |              |              |              |              |              |              |              |              |
| OTHER EMPLOYEE TO PRODUCTIVE           | 16.43%       | 16.43%       | 16.43%       | 16.43%       | 16.43%       | 16.43%       | 16.43%       | 16.43%       |
| DIRECT ADMINISTRATION TO PRODUCTIVE    | 0.00%        | 0.00%        | 0.00%        | 0.00%        | 0.00%        | 0.00%        | 0.00%        | 0.00%        |
| OTHER COST TO TOTAL DIRECT LABOR       | 5.33%        | 5.33%        | 5.33%        | 5.33%        | 5.33%        | 5.33%        | 5.33%        | 5.33%        |
| BENEFITS TO TOTAL DIRECT LABOR         | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       |
| BST Labor Relationships                |              |              |              |              |              |              |              |              |
| OTHER EMPLOYEE TO PRODUCTIVE           | 2.36%        | 2.36%        | 2.36%        | 2.36%        | 2.36%        | 2.36%        | 2.36%        | 2.36%        |
| DIRECT ADMINISTRATION TO PRODUCTIVE    | 13.78%       | 13.14%       | 12.75%       | 12.47%       | 11.80%       | 9.64%        | 9.64%        | 9.64%        |
| OTHER COST TO TOTAL DIRECT LABOR       | 0.80%        | 0.80%        | 0.80%        | 0.80%        | 0.80%        | 0.80%        | 0.80%        | 0.80%        |
| BENEFITS TO TOTAL DIRECT LABOR         | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       | 20.27%       |

000227

| <u>Work Center/<br/>Cost Group</u> | <u>Date<br/>Updated</u> |
|------------------------------------|-------------------------|
| AFIG                               | 05-Nov-99               |
| I&M POTS                           | 05-Nov-99               |
| SSIM                               | 05-Nov-99               |
| OSPC                               | 05-Nov-99               |
| OPAC                               | 05-Nov-99               |
| CRT                                | 05-Nov-99               |
| COIM-CIR&FAC                       | 05-Nov-99               |
| COIM-SW EQ                         | 05-Nov-99               |
| RCMAG                              | 05-Nov-99               |
| TRANSLATIONS                       | 05-Nov-99               |
| SOFTWARE                           | 05-Nov-99               |
| TCG                                | 05-Nov-99               |
| NRC                                | 05-Nov-99               |
| PAR                                | 05-Nov-99               |
| CPG                                | 05-Nov-99               |
| ACAC                               | 05-Nov-99               |
| EBAC                               | 05-Nov-99               |
| BRC                                | 05-Nov-99               |
| RRC                                | 05-Nov-99               |
| WMC                                | 05-Nov-99               |
| NBF                                | 05-Nov-99               |
| RNOC                               | 05-Nov-99               |
| CIA                                | 05-Nov-99               |
| SAC                                | 05-Nov-99               |
| FG10                               | 05-Nov-99               |
| FG20                               | 05-Nov-99               |
| PICS                               | 05-Nov-99               |
| FG30                               | 05-Nov-99               |
| ICSC LCSC                          | 05-Nov-99               |
| TOLL & ASSIST - COMBINED           | 05-Nov-99               |
| DIR ASSIST - COMBINED              | 05-Nov-99               |
| CUST BILL                          | 05-Nov-99               |
| COLL REP                           | 05-Nov-99               |
| CUST SVC                           | 05-Nov-99               |
| SALES - CUST SVC REL               | 05-Nov-99               |
| COMP CLER                          | 05-Nov-99               |
| NTWK SVC CLER                      | 05-Nov-99               |
| CRSG                               | 05-Nov-99               |

000228

ACAC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: ACCESS CUSTOMER ADVOCATE CENTER        |                  |                |
| WCT: ACAC                                      |                  |                |
| JFC: 4AXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
|  | 1998             | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 19,814,003.40 | \$ 20.76       |
| DIRECT LABOR - PREMIUM                         | \$ 2,148,727.15  | \$ 2.25        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 428,095.93    | \$ 0.45        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 2,342,702.15  | \$ 2.45        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 3,579,956.82  | \$ 3.75        |
| TOTAL DIRECT LABOR                             | \$ 28,313,485.45 | \$ 29.66       |
| DIRECT LABOR - OTHER COST                      | \$ 124,703.69    | \$ 0.13        |
| OTHER TOOLS - SALARIES                         | \$ -             | \$ -           |
| OTHER TOOLS - BENEFITS                         | \$ -             | \$ -           |
| OTHER TOOLS - RENTS                            | \$ 0.39          | \$ 0.00        |
| OTHER TOOLS - OTHER                            | \$ 87.61         | \$ 0.00        |
| MOTOR VEHICLES - SALARIES                      | \$ 10.06         | \$ 0.00        |
| MOTOR VEHICLES - BENEFITS                      | \$ 1.44          | \$ 0.00        |
| MOTOR VEHICLES - RENTS                         | \$ 0.01          | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 91.22         | \$ 0.00        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 4,665,126.69  | \$ 4.89        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 33,103,506.56 | \$ 34.68       |
| TOTAL CLASSIFIED PROD HOURS                    | 954,644.25       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000199

EBAC

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: EQUIPMENT BILLING ACCURACY CONTROL     |                  |                |
| WCT: EBAC                                      |                  |                |
| JFC: 4N3X                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  | HOURLY COST    |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 1,818,493.24  | \$17.37        |
| DIRECT LABOR - PREMIUM                         | \$ 29,223.53     | \$ 0.28        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 38,367.52     | \$ 0.37        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 320,421.12    | \$ 3.06        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 363,449.06    | \$ 3.47        |
| TOTAL DIRECT LABOR                             | \$ 2,569,954.47  | \$ 24.55       |
| DIRECT LABOR - OTHER COST                      | \$ 5,988.83      | \$ 0.06        |
| OTHER TOOLS - SALARIES                         | \$ 1,123.63      | \$ 0.01        |
| OTHER TOOLS - BENEFITS                         | \$ 189.05        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 9,425.00      | \$ 0.09        |
| OTHER TOOLS - OTHER                            | \$ 136,958.76    | \$ 1.31        |
| MOTOR VEHICLES - SALARIES                      | \$ 17,262.94     | \$ 0.16        |
| MOTOR VEHICLES - BENEFITS                      | \$ 3,498.15      | \$ 0.03        |
| MOTOR VEHICLES - RENTS                         | \$ 112.43        | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 152,915.74    | \$ 1.46        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 453,210.82    | \$ 4.33        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 3,350,639.82  | \$ 32.00       |
| TOTAL CLASSIFIED PROD HOURS                    | 104,699.50       |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000200

| A  | B                | C              |
|--|------------------|----------------|
| STATE: REGION                                  |                  |                |
| FG/FSG: BUSINESS REPAIR CENTER                 |                  |                |
| WCT: BRC                                       |                  |                |
| JFC: 4BXX                                      |                  |                |
| 1998   |                  |                |
| CLASSIFIED                                     |                  |                |
| 1998   |                  |                |
| HOURLY COST                                    |                  |                |
| <u>COMPONENT</u>                               | <u>DOLLARS**</u> | <u>(B/B32)</u> |
| DIRECT LABOR - PRODUCTIVE                      | \$ 39,046,474.34 | \$ 19.40       |
| DIRECT LABOR - PREMIUM                         | \$ 3,229,170.75  | \$ 1.60        |
| DIRECT LABOR - OTHER EMPLOYEE                  | \$ 798,576.97    | \$ 0.40        |
| DIRECT LABOR - ANNUAL PAID ABSENCE             | \$ 5,903,496.54  | \$ 2.93        |
| DIRECT LABOR - DIRECT ADMINISTRATION           | \$ 6,770,935.55  | \$ 3.36        |
| TOTAL DIRECT LABOR                             | \$ 55,748,654.15 | \$ 27.70       |
| DIRECT LABOR - OTHER COST                      | \$ 141,909.52    | \$ 0.07        |
| OTHER TOOLS - SALARIES                         | \$ 1,197.72      | \$ 0.00        |
| OTHER TOOLS - BENEFITS                         | \$ 128.29        | \$ 0.00        |
| OTHER TOOLS - RENTS                            | \$ 32,490.83     | \$ 0.02        |
| OTHER TOOLS - OTHER                            | \$ 229,556.46    | \$ 0.11        |
| MOTOR VEHICLES - SALARIES                      | \$ 25,559.35     | \$ 0.01        |
| MOTOR VEHICLES - BENEFITS                      | \$ 5,784.94      | \$ 0.00        |
| MOTOR VEHICLES - RENTS                         | \$ 169.37        | \$ 0.00        |
| MOTOR VEHICLES - OTHER                         | \$ 208,014.70    | \$ 0.10        |
| DIRECTLY ASSIGNED BENEFITS                     | \$ 10,348,159.79 | \$ 5.14        |
| TOTAL DIRECTLY ASSIGNED                        | \$ 66,741,625.12 | \$ 33.16       |
| TOTAL CLASSIFIED PROD HOURS                    | 2,012,872.75     |                |
| **DATA EXTRACT FROM FINANCIAL FRONT END SYSTEM |                  |                |

000201



BellSouth Telecommunications, Inc.  
P.O. Box 32410  
Louisville, KY 40232

or  
BellSouth Telecommunications, Inc.  
Room 407  
601 West Chestnut Street  
Louisville, KY 40203

Creighton.Mershon@BellSouth.com

Creighton E. Mershon, Sr.  
General Counsel-Kentucky

502 582-8219  
Fax 502 582-1573

March 23, 2000

RECEIVED

MAR 23 2000

PUBLIC SERVICE  
COMMISSION

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

Re: Petition by ICG Telecom Group, Inc. for Arbitration of  
an Interconnection Agreement with BellSouth  
Telecommunications, Inc. pursuant to Section 252(b) of  
the Telecommunications Act of 1996  
PSC 99-218

Dear Mr. Huelsmann:

BellSouth has reached a region-wide agreement with ICG on reciprocal compensation issues. This agreement basically resolved all compensation issues regarding the exchange of local traffic, including tandem switching. BellSouth respectfully submits that the record in this docket does not support the Commission's finding in favor of ICG on this tandem switching issue. Nevertheless, because of the aforementioned agreement, BellSouth is not filing for reconsideration of the Commission's determination that ICG is entitled to tandem switching compensation based on a finding that ICG's switch performs functions equivalent to BellSouth's tandem switching.

In this docket, ICG's only evidence to show that its switch served a geographic area comparable to the area served by BellSouth's tandem switch was a diagram. That diagram did not identify the location of ICG's customers in Kentucky - essential information in determining whether ICG's switch serves a comparable geographic area. BellSouth respectfully submits that the issue is whether ICG's switch actually "serves" a comparable geographic area, not whether its switch is technically capable of serving a particular geographic area.


Mr. Martin J. Huelsmann, Jr.  
March 23, 2000  
Page 2

Because this issue will likely arise in future arbitration cases, BellSouth respectfully calls the Commission's attention to *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.*, 1999 U.S. Dist. LEXIS 11418 (N.D. Ill. June 22, 1999) (copy attached) which upheld a finding of the Illinois Commerce Commission that MCI was not entitled to tandem switching compensation based on evidence presented by MCI that was strikingly similar to that presented by ICG in this docket. The district court reasoned that:

The "Chicago area" is large, yet MCI offered no evidence as to the location of its customers within the Chicago area. Indeed, an MCI witness said that he "doubted" whether MCI had customers in every "wire center territory" within the Chicago service area. MCI's customers might have been concentrated in an area smaller than that served by an Ameritech tandem switch or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. These are questions that MCI could have addressed, but did not.... In short, MCI offered nothing but bare, unsupported conclusions that its switch currently served an area comparable to Ameritech tandem switch or was capable of serving such an area in the future. The ICC's determination that "MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate" was not arbitrary and capricious.

*Id.* at \*22-23 (emphasis added).

Respectfully submitted,



Creighton E. Mershon, Sr.

Attachment

cc: Parties of Record

202233

1999 U.S. Dist. LEXIS 11418 printed in FULL format.

MCI TELECOMMUNICATIONS CORPORATION, a Delaware Corporation, and MCIMETRO ACCESS TRANSMISSION SERVICES, INC., a Delaware CORPORATION, Plaintiffs, v. ILLINOIS BELL TELEPHONE COMPANY d/b/a AMERITECH ILLINOIS, INC., an Illinois Corporation, the ILLINOIS COMMERCE COMMISSION; and DAN MILLER, RICHARD HOLHAUSER, RUTH KRETSCHMER, KARL McDERMOTT and BRENT BOHLEN, in their official capacities as Commissioners of the Illinois Commerce Commission, Defendants.

NO. 97 C 2225

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

1999 U.S. Dist. LEXIS 11418

June 22, 1999, Decided

June 28, 1999, Docketed

DISPOSITION: [\*1] Illinois Commerce Commission's decision of December 17, 1996 affirmed in part and reversed in part.

COUNSEL: For MCI TELECOMMUNICATIONS CORPORATION, MCIMETRO ACCESS TRANSMISSION SERVICES, INC., plaintiffs: Terri Lynn Mascherin, Darryl Mark Bradford, Eric Andrew Sacks, Andrew Malen Spangler, Jr., David Charles Layden, Kristina Marion Entner, John J. Hamill, Jr., David Zev Smith, Jenner & Block, Chicago, IL.

For ILLINOIS BELL TELEPHONE COMPANY, defendant: Theodore A. Livingston, Matthew Aloysius Rooney, Christian Frederick Binnig, Dennis G. Friedman, Kira Elizabeth Druyan, Mayer, Brown & Platt, Chicago, IL.

For ILLINOIS BELL TELEPHONE COMPANY, counter-claimant: Theodore A. Livingston, Matthew Aloysius Rooney, Christian Frederick Binnig, Dennis G. Friedman, Kira Elizabeth Druyan, Mayer, Brown & Platt, Chicago, IL.

For MCI TELECOMMUNICATIONS CORPORATION, MCIMETRO ACCESS TRANSMISSION SERVICES, INC., counter-defendants: Terri Lynn Mascherin, Darryl Mark Bradford, Jenner & Block, Chicago, IL.

For UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS COMMISSION, intervenor

plaintiffs: AUSA, United States Attorney's Office, Chicago, IL.

For UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS [\*2] COMMISSION, intervenor plaintiffs: Theodore C. Hirt, Jonathan T. Foot, United States Department of Justice, Washington, DC.

Deborah A. Golden, AMERITECH CORPORATION, Chicago, IL.

Thomas R. Stanton, ILLINOIS COMMERCE COMMISSION, Chicago, IL.

JUDGES: Suzanne B. Conlon, United States District Judge.

OPINIONBY: Suzanne B. Conlon

OPINION: DECISION ON THE MERITS

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, "MCI") sue Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc. ("Ameritech"), the Illinois Commerce Commission (the "ICC"), and five ICC commissioners in their official capacities under § 252(e)(6) of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. § 252(e)(6). n1 Ameritech asserts a counterclaim against MCI and a cross-claim against the ICC and the individual commissioners under § 252(e)(6) of the Act.



n1 The Act is codified in scattered sections of Title 47 of the United States Code. Citations to sections of the Act are references to the corresponding sections of the Code.

[\*3]

#### BACKGROUND

Historically, local telecommunications services were dominated by state-sanctioned monopolies granted to local exchange carriers such as Ameritech. H. R. Rep. No. 104-204, at 49 (1995) (hereafter, "H. Rep."). The Act imposes a scheme designed to end monopolies in local telecommunications services. The Act recognizes that incoming exchange carriers must be able to make use of the incumbent carrier's existing network in order to compete effectively. Id. The primary mechanisms for opening access to the incumbent carrier's network are found in §§ 251 and 252. Section 251 establishes three methods that the incoming exchange carriers may use to access the incumbent carrier's network. The first method, called "interconnection," allows incoming carriers to construct their own networks and interconnect with the incumbent carrier's facilities on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2). The second method requires incumbent carriers to provide incoming carriers with "nondiscriminatory access to network elements on an unbundled basis." Id. at § 251(c)(3). However, the incumbent [\*4] carrier need make available unbundled network elements only if the failure to provide access to the network element would "impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." Id. at § 251(d)(2)(B). Finally, the Act allows "resale," by which incoming carriers may purchase the incumbent carrier's services at wholesale rates and resell the services to retail customers under a different brand name. Id. at § 251(c)(4).

Section 252 establishes the procedures for determining the terms under which incoming carriers will access the incumbent carrier's network. First, incumbent carriers must negotiate in good faith over the terms of interconnection, access to network elements, and resale. Id. at §§ 251(c)(1) and 252(a)(1). If the parties reach a satisfactory agreement, any open issues are submitted to compulsory arbitration conducted by state public utility commissions. Id. at § 252(b). The state commissions are required to apply the substantive requirements of the Act and any implementing regulations in resolving open issues. Id. at § 252(c). Once an agreement has been reached through negotiation and arbitration, [\*5] the proposed agreement must be submitted to the state commission for final approval. Id. at § 252(e)(1). A

party who believes the state commission failed to properly apply the Act may seek judicial review of the commission's determinations. Id. at § 252(e)(6).

On March 26, 1996, MCI requested negotiations with Ameritech, the incumbent carrier, for access to Ameritech's network in the Chicago area. Def. Br. at Ex. 2, p. 1-2. On August 30, 1996, MCI filed a petition with the ICC for arbitration of unresolved issues. Pl. Br. at Ex. 6. Ameritech filed a timely response. Def. Br. at Ex. 2, p. 2. The ICC assigned a hearing examiner, who conducted an evidentiary hearing and issued a proposed arbitration decision. Id. Both MCI and Ameritech filed exceptions to the proposed decision. Id. On December 17, 1996, the ICC issued an arbitration decision. Id. On January 28, 1997, MCI presented a proposed interconnection agreement for the ICC's approval. Pl. Br. at 12; Def. Br. at 5. The ICC determined the proposed agreement could only be approved if it was amended in certain respects. The parties submitted an amended interconnection agreement in accordance with the ICC's directives. [\*6] Pl. Br. at Ex. 11.

MCI brings this action under § 252(e)(6) challenging specific aspects of the agreement. First, MCI contends the agreement does not require Ameritech to provide MCI with nondiscriminatory access to the network element "shared transport" or "common transport." n2 In order to fully understand MCI's claim, it is necessary to briefly describe the structure of the local telephone network. n3 A telephone customer's home is connected to the network through wires called a "local loop." The local loop connects the customer's home to an "end office," which consists largely of a "local switch." The local switch serves a routing function - it reads the telephone number dialed by the customer and, based on programmed instructions, directs the call on a transmission path to its final destination. If the party receiving the call is connected to the same end office as the caller, the local switch connects the call directly. However, if the caller and the receiving party are connected to different end offices, the call must be "transported" from one end office to another. End offices are connected to one another by "interoffice transmission facilities," which generally consist of [\*7] fiber-optic cables capable of carrying hundreds of calls at once. End offices are also connected to "tandem switches" by a type of interoffice transmission facility called a "trunk." Tandem switches are connected to numerous end offices in a hub-and-spoke arrangement, and connect end offices that are not directly connected. MCI's request for "shared transport" refers to Ameritech's interoffice transmission facilities.

n2 The precise meanings of these terms are disputed, as explained below.

n3 The following description of a local telephone network is gleaned from the parties' briefs and from statements at oral argument. Because these foundational facts are not in dispute, the court will forego cumbersome citations to the record.

Although Ameritech agreed to provide MCI with "shared transport," the parties could not agree on the meaning of that term. Ameritech argued that "shared transport" refers only to interoffice transmission facilities purchased on a dedicated basis and shared by other carriers or customers, [\*8] but not the incumbent carrier. MCI argued that "shared transport" refers to interoffice facilities shared by customers and other carriers including the incumbent - what the industry refers to as "common transport." At the heart of the parties' dispute is the interpretation of "shared transport" as used by the Federal Communications Commission (FCC) in 47 C.F.R. § 51.319 ("Rule 319"). The ICC determined the FCC regulations were ambiguous. Pl. Br. at Ex. 7, p. 28. Accordingly, the ICC concluded MCI was entitled to shared transport as defined by Ameritech, but MCI could seek access to common transport only through a bona fide request process set out in the interconnection agreement. Id. at Ex. 7, p. 29. MCI contends the ICC violated the Act by requiring it to submit to a lengthy request process in order to gain access to common transport.

MCI's second claim concerns the Act's requirement that local exchange carriers "establish reciprocal compensation arrangements for the party's transport and termination on telecommunications." 47 U.S.C. § 251(b)(5). In other words, MCI must pay Ameritech a fee when an MCI customer calls an Ameritech customer, and Ameritech [\*9] must pay MCI a fee when an Ameritech customer calls an MCI customer. MCI argued before the ICC that it was entitled to the "tandem interconnection rate" set out in the interconnection agreement. However, the ICC determined that MCI was entitled only to the lower "end office switching rate," concluding that MCI had failed to produce sufficient evidence showing it should be paid the higher rate. MCI contends the ICC decision violates § 251(c)(2)(D), which requires that reciprocal compensation be paid on just, reasonable, and nondiscriminatory terms.

MCI asserts in its third claim that the ICC violated § 251(c)(3) when it accepted Ameritech's proposal regarding the amount of time allowed for Ameritech to provide MCI access to local loops. MCI's proposal gave Ameritech two to five days, depending on the number

of requests. Ameritech proposed a five to seven day period. The ICC accepted Ameritech's proposal.

MCI's fourth claim is that the ICC imposed unjust, unreasonable, and discriminatory terms on MCI when it approved Ameritech's proposal for a bona fide request process. The bona fide request process is the vehicle by which MCI may request access to additional network elements. [\*10] Ameritech proposed a request procedure that could take up to four months to conclude. MCI's proposal involved a significantly shorter time period. According to MCI, Ameritech's proposal needlessly and intentionally delays MCI's access to necessary network elements.

Finally, MCI claims the ICC erred when it approved provisions limiting Ameritech's liability to MCI for breaches of the interconnection agreement. The liability limitations were never a subject of arbitration. Instead, the ICC imposed the provisions at Ameritech's request during the approval stage of the negotiation and arbitration process. According to MCI, the ICC had no authority under § 252(e)(2) to impose the liability limitations at that point in the process. MCI also contends the liability limitations violate § 251(c) because the provisions are not just, reasonable, and nondiscriminatory.

Ameritech's counterclaim arises from the ICC's decision to grant MCI access to "dark fiber." Dark fiber is simply optical fiber that has been physically placed in the network but is not attached to electronics that are necessary to "illuminate" the fiber and enable it to carry telecommunications. n4 Ameritech contends the ICC [\*11] had no authority to grant MCI access to dark fiber because the issue was never submitted to the ICC in arbitration. Ameritech next argues the ICC had no authority to identify dark fiber as a network element after the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 834 (1999) (hereafter, "IUB"). Finally, Ameritech argues that even if the ICC had authority to grant MCI access to dark fiber, its decision violated the Act because the ICC failed to determine that denial of access to MCI would impair MCI's ability to provide telecommunications services, as required by § 251(d)(2)(B).

n4 As explained at oral argument, dark fiber is used to save resources. The process of burying cable in the ground or suspending it along poles is very expensive. Therefore, when an exchange carrier lays new cable in the network, it frequently lays more cable than is required. The excess cable is dark fiber, which can be activated if additional carrying capacity is needed.

[\*12]

## DISCUSSION

The parties agree that the applicable standard of review of the ICC's decisions depends on whether a particular issue is one of fact or of law. Determinations of fact are entitled to substantial deference unless they are arbitrary and capricious. Questions of law are subject to de novo review.

## I. Shared Transport

In the preliminary negotiations between Ameritech and MCI, Ameritech agreed to provide MCI access to interoffice transport facilities on a "shared" basis. n5 At arbitration, the parties disputed the meaning of the word "shared," and looked to Rule 319 for the appropriate definition. Def. Supp. Br. at 6. The ICC concluded Rule 319 was ambiguous, and ultimately adopted Ameritech's proposed contract language. n6 The ICC ruled that if MCI wanted access to common transport, it could seek access through the bona fide request process. After the ICC reached its decision, the FCC issued its Third Reconsideration Order, which left no doubt that "shared transport" under Rule 319 encompassed the industry understanding of "common transport." The FCC explained that incumbents must offer access "to the same interoffice transport facilities that [\*13] the incumbent uses for its own traffic." Pl. Br. at Ex. 4, P 22. The Third Reconsideration Order also amended the text of Rule 319 to expressly include the concept of common transport within the meaning of the term "shared." MCI argues that the Third Reconsideration Order clearly indicates the ICC's decision was erroneous. n7

n5 Although Ameritech has not expressly admitted this assertion, MCI has repeatedly advanced the argument. See Supp. Resp. at 2; Tr. Apr. 15, 1999 at 9-10. Ameritech has not challenged MCI's position.

n6 The ICC's decision was a determination of law, and therefore is subject to de novo review.

n7 Ameritech argues that this court should not consider the Third Reconsideration Order after the Supreme Court's order in *Ameritech Corp. v. FCC*, 119 S. Ct. 2016, 143 L. Ed. 2d 1029, 1999 WL 116994 (U.S. 1999). Ameritech Corp. vacated the Eighth Circuit's decision in *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 597 (8th Cir. 1998), which affirmed the Third Reconsideration Order. However, Ameritech Corp. did not vacate the Third Reconsideration Order, nor did it instruct the Eighth

Circuit to do so. The Supreme Court merely vacated the judgment and remanded for further consideration in light of *IUB. Ameritech Corp.*, 119 S. Ct. 2016, 143 L. Ed. 2d 1029, 1999 WL 116994 (U.S. 1999). The Third Reconsideration Order is still valid.

[\*14]

Ameritech responds that because Rule 319 was vacated by the Supreme Court in *IUB*, there is no basis for reversing the ICC's decision. But the vacation of Rule 319 is irrelevant to the question before this court. MCI need not look to Rule 319 for the authority to compel Ameritech to provide access to shared transport, because Ameritech agreed to do so in preliminary negotiations. Rule 319 merely serves as an external source of definition of the terms in the negotiated interconnection agreement. *IUB* has no effect on the function of Rule 319 in this case. n8

n8 If the continued vitality of Rule 319 were necessary to compel Ameritech to provide access to shared transport, Ameritech presumably would challenge its obligation to provide MCI access to any type of "shared transport," however that term is defined. The fact that Ameritech challenges only its obligation to provide common transport bolsters the conclusion that Ameritech's obligation to provide shared transport stems from the preliminary negotiations rather than from Rule 319.

[\*15]

Ameritech also argues that MCI failed to exhaust its administrative remedies because it did not seek common transport through the bona fide request process recommended by the ICC. But the basis of MCI's claim is that it should not have to undergo the bona fide request process in order to gain access to common transport. Ameritech seeks to bootstrap its way out of MCI's claim by assuming that the ICC's decision to require MCI to undertake a bona fide request is valid. Ameritech's argument is without merit.

Finally, Ameritech contends that the Third Reconsideration Order changed existing law, and that MCI must therefore pursue its remedies under § 29.3 of the interconnection agreement. Section 29.3 provides:

In the event of . . . any final and nonappealable legislative, regulatory, judicial order, rule or regulation or other legal action that revises and reverses . . . the FCC's First Report and Order [which promulgated Rule 319] . . . either party may . . . require that the affected provisions be renegotiated in good faith and this

agreement be amended accordingly.

Pl. Br. at Ex. 11, § 29.3. But the Third Reconsideration Order did not change [\*16] Rule 319 as that Rule relates to the present issue. The Third Reconsideration Order merely clarified the definition of "shared transport" already contained in Rule 319. As the FCC made clear in the Introduction to the Third Reconsideration Order, "the [First Report and Order] required incumbent [exchange carriers] to provide requesting carriers with access to the same transport facilities . . . that incumbent [exchange carriers] use to carry their own traffic." Pl. Br. at Ex. 4, P 2 (emphasis added). In discussing the issue in depth, the FCC stated:

Some parties have argued that certain aspects of the rules adopted last August were ambiguous which, in our view, were clear. Specifically, in the [First Report and Order], we expressly required incumbent [exchange carriers] to provide access to transport facilities "shared by more than one customer or carrier." The term "carrier" includes both an incumbent [exchange carrier] as well as a requesting telecommunications carrier. We, therefore, conclude that "shared transport," as required by the [First Report and Order] encompasses a facility that is shared by multiple carriers, including the incumbent [\*17] [exchange carrier.]

Id. at Ex. 4, P 22 (citing 47 C.F.R. § 51.319) (emphasis added). The above quotation makes clear that Rule 319's definition of shared transport, as it existed at the time of the ICC's decision, encompassed the concept of common transport.

One might argue, of course, that the ICC was correct in its conclusion that Rule 319 was ambiguous. Even assuming the ICC was correct, there is no need to force MCI to undergo a lengthy bona fide request process. The ICC emphasized that it was "unwilling to conclude that the FCC . . . intended to preclude the provision of 'common transport' as a network element." Pl. Br. at Ex. 7, p. 28. Indeed, the ICC deferred any final resolution of the question until MCI filed a bona fide request so as "to enable the Commission to evaluate the competing contentions of the parties within a more meaningful context." Id. at Ex. 7, p. 29. In other words, the ICC indicated it could not determine the meaning of "shared transport" under Rule 319 on the evidence and arguments before it. The question left open by the ICC has since been answered in the Third Reconsideration Order. To force MCI to undertake a [\*18] bona fide request would unjustifiably delay MCI's access to common transport. Delaying access to a network element to which MCI is clearly entitled is inconsistent with the basic purpose of

the Act.

Accordingly, the ICC's decision denying MCI access to shared transport without undertaking a bona fide request is reversed.

## II. Tandem Interconnection Rate

The Act requires a local exchange carrier to pay mutual and reciprocal compensation for the cost of transporting and terminating calls on another carrier's network. 47 U.S.C. §§ 251(b)(5), 252(d)(2). A variety of methods has been proposed for determining the rates one carrier may charge another. Pl. Br. at 23 (and citation therein). One aspect of the rates the ICC imposed in the Ameritech / MCI interconnection agreement is the "tandem interconnection rate." Id. The tandem interconnection rate is a function of other rates set out in the agreement, including the tandem switching rate, a charge for transport and termination, and the end office switching rate. Id. The tandem interconnection rate is higher than the "end office rate," which includes only the end office switching rate and a [\*19] charge for transport and termination. Id.

In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI's single switch in Bensonville, Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch. n9 Id. at 23-24. The ICC determined that MCI was entitled only to the end office rate. MCI contends the ICC's decision imposes reciprocal compensation on terms that are unjust and unreasonable in violation of § 251(c)(2)(d). Because the parties agree that the ICC applied the proper legal standard, its decision rests on factual determinations that are reviewed under an arbitrary and capricious standard.

n9 MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the "functionality / geography" test. 119 S. Ct. at 733. MCI admits that the ICC used this test. Pl. Br. at 24. Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test. Pl. Supp. Br. at 7-8. But there is no real dispute that the ICC applied the functionality / geography test; the dispute centers around whether the ICC reached the proper conclusion under that test.

[\*20]

The ICC did not make express findings regarding the comparable functions of MCI's switch and Ameritech's switches or the comparative geographical areas served by the various switches. However, the ICC did discuss the evidence offered by each party on these issues, and concluded from the "totality of the evidence" that MCI had failed to establish it was entitled to the tandem interconnection rate. Pl. Br. at Ex. 7, p. 12. The issue of comparable functionality apparently was not in serious dispute. MCI presented evidence and arguments that its switch served to aggregate calls that could then be distributed to any MCI customer within the switch's service area, and that Ameritech's tandem switches served the same function. Id. at Ex. 7, p. 10. Ameritech offered no counter-arguments to the ICC, nor does it offer any to this court. See Id. at Ex. 7, p. 11 (discussing Ameritech's arguments and evidence only as to the question of geographical area); Def. Resp. at 23-25. Therefore, only at issue is the geographical areas served by the respective switches. The ICC summarized MCI's evidence regarding the geographical area served by its switch as follows:

MCI maintains that its [\*21] switch in Bensonville, Illinois serves a geographical area comparable to the area served by [Ameritech's] tandem switch. MCI is authorized to provide local exchange service in the Chicago [service area.] MCI plans to use it Bensenville switch to provide service to any customer in the Chicago [service area] where such service is feasible. [Ameritech] currently serves the Chicago [service area] with three tandem switches . . . . Thus, MCI claims that its switch covers approximately the same geographic area as three . . . Ameritech tandem switches.

Id. at Ex. 7, p. 10 (emphasis added). As the highlighted portions of the quotation make clear, much of MCI's evidence focused on the company's intentions for its switch, which of course are irrelevant to the question whether the switch is capable of servicing the area as intended. However, MCI argued that because its switch currently served the entire Chicago area - the same area that Ameritech served with three tandem switches -- its switch must serve an area comparable to any one of Ameritech's switches.

MCI's argument has surface appeal, but fails under closer scrutiny. During arbitration, [\*22] MCI had less than 50,000 customers in the Chicago area. Id. at Ex. 7, p. 11. The "Chicago area" is large, yet MCI offered no evidence as to the location of its customers within the Chicago area. Indeed, an MCI witness said that he "doubted" whether MCI had customers in every "wire center territory" within the Chicago service

area. Pl. Br. at Ex. 28, p. 207. MCI's customers might have been concentrated in an area smaller than that served by an Ameritech tandem switch. Or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. n10 These are questions that MCI could have addressed, but did not. The ICC compared MCI's proof with the proof offered by an incoming exchange carrier in a different case, noting that the other carrier produced "a map showing geographically widespread deployment of various nodes in its network" and "some discussion of the location of [the carrier's] local exchange customers." Id. at Ex. 7, p. 12. In contract, MCI had expressly refused to provide "specific empirical data, including maps, [\*23] to demonstrate that it serves an area comparable to Ameritech's tandem network." Id. at Ex. 21, p. 13. In short, MCI offered nothing but bare, unsupported conclusions that its switch currently served an area comparable to an Ameritech tandem switch or was capable of serving such an area in the future. The ICC's determination that "MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate" was not arbitrary and capricious.

n10 MCI argues that it is patently unfair to look to the number of customers served by the switch, since Ameritech, as a long time beneficiary of a state-sanctioned monopoly, will almost always have more customers than incoming exchange carriers. However, nothing in the ICC's opinion indicates that it improperly relied on the number of MCI customers in reaching its decision. Furthermore, as the discussion in the text makes clear, identification of MCI customers is relevant to the question of the location of the customers and the geographical area actually serviced by MCI's switch.

[\*24]

### III. Timing of Connections to Local Loops

"Local loops" are the portions of the network connecting the exchange carrier's end office or switch to the customer's premises. Ameritech submitted to the ICC a proposal allowing Ameritech five to seven days to provide MCI with local loops. MCI's proposal allowed Ameritech two to five days to provide local loops. MCI contends the ICC violated the Act by adopting Ameritech's proposal. MCI argues that the time required to obtain local loops is critical because it determines how long a customer must wait before being switched to MCI's service. During the change-over in-

terval, MCI contends the customer will be subjected to Ameritech's targeted efforts to win back the customer. According to MCI, the ICC's decision violates 47 U.S.C. § 251(c)(3), which requires an incumbent carrier to provide unbundled network elements on "just, reasonable, and nondiscriminatory" terms, and 47 C.F.R. § 51.313 ("Rule 313"), which requires an incumbent carrier to provide access to network elements on terms "no less favorable" than the terms under which the incumbent carrier provides the elements to itself. n11

n11 In its reply, MCI argues that § 51.311(b) ("Rule 311"), which requires that elements given an incoming carrier must be "equal in quality" to the elements the incumbent carrier supplies itself, also applies to timing of access to local loops. But Rule 313 specifically refers to "the time within which the incumbent [exchange carrier] provisions such access to unbundled network elements," while Rule 311 refers generally to the "quality" of access to unbundled network elements. Rule 313 provides the applicable standard for determining whether the ICC's acceptance of Ameritech's proposal is permissible under the Act.

[\*25]

Rule 313(b) provides,

Where applicable, the terms and conditions pursuant to which an incumbent [exchange carrier] offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent [exchange carrier] provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent [exchange carrier] provides such elements to itself.

47 C.F.R. § 51.313(b). For present purposes, the most important phrase in Rule 313 is the qualifier "where applicable." This phrase makes the "no less favorable" standard conditional on the applicability of the regulation. The difficult question is whether the incoming carrier bears the burden of demonstrating the regulation applies, or whether the incumbent carrier bears the burden of demonstrating the regulation does not apply. In this court's view, the regulation places the burden on the incoming carrier. In understanding this conclusion, it is helpful to contrast Rule 313 with the closely analogous Rule 311. Rule 311 requires incumbent carriers to provide incoming carriers [\*26] access to network elements "equal in quality" to the access the incumbent carrier provides to itself. 47 C.F.R. § 51.311(b). However,

the incumbent carrier is held to this strict standard only when it is "technically feasible" to provide access of equal quality. *Id.* If the incumbent carrier does not provide access meeting the requisite standard, Rule 311 unequivocally places the burden of demonstrating technical infeasibility on the incumbent carrier - "the incumbent carrier must prove to the state commission that it is not technically feasible . . ." *Id.* Rule 311 demonstrates that in crafting the rules regarding parity of access to network elements, the FCC carefully considered which party should bear the burden of proof. Rule 311 also demonstrates that the FCC chose when to place that burden on the incumbent carrier. Yet Rule 313, a companion to Rule 311, contains no comparable language placing the burden on the incumbent; Rule 313 simply mandates provisioning intervals to be congruent "where applicable." The sharp contrast between the language of these two closely analogous rules indicates the FCC did not intend that the incumbent carrier bear the burden of showing [\*27] Rule 313 is inapplicable.

This conclusion comports with common sense when one considers the differences between the quality of access addressed in Rule 311 and the timing of access addressed in Rule 313. In considering quality of access, it is difficult to imagine a situation in which an incumbent carrier could not provide incoming carriers access to network elements equal in quality to that the incumbent provides itself. The quality of access presumably is a function of the technologies, services, and physical facilities that comprise the network element. There is no apparent reason why the quality of the technologies, services, or physical facilities would decline simply because the facilities are to be used by a different telecommunications carrier. Therefore, Rule 311 properly forces the incumbent to prove it cannot provide access equal in quality to that which it provides itself. But the timing of access to network elements presents an entirely different situation. As Ameritech points out, it does not unbundle local loops, or any other network element, for its own use. See *Def. Resp.* at 28. The process of providing access to unbundled network elements to competing carriers [\*28] that often operate on a different network is different, and presumably more time-consuming, than the process of provisioning network elements for the incumbent's own use. MCI's witness recognized there are differences between processing orders for unbundled network elements and processing orders for retail services. *Def. Resp.* at Ex. 15, p. 155; *Pl. Br.* at Ex. 7, p. 57. Of course, some network elements might be provided to incoming carriers through the same processes through which the incumbent carrier supplies itself. Rule 313 logically places the burden on incoming carriers to demonstrate that the incumbent

carrier can provide unbundled elements to the competing carrier in the same time frame that the incumbent provides elements to itself.

The ICC concluded MCI did not sufficiently demonstrate that Ameritech could feasibly provide access to local loops in two to five days. n12 MCI admitted that its pleadings in the arbitration proceedings lacked data supporting its proposal. Def. Resp. at Ex. 15, p. 180. MCI merely argued that Ameritech should be forced to provide access to unbundled local loops in a comparable amount of time to that required to provide local loops for resale. Pl. [\*29] Br. at Ex. 7, p. 57. The ICC stated that "MCI does little more than point to its own proposals and allege in the most general of terms that they are necessary for 'parity' or 'nondiscrimination' or that [Ameritech's] proposals are 'inadequate.'" Pl. Br. at Ex. 7, p. 62. The ICC concluded that "MCI's claims regarding provisioning benchmarks mix apples and oranges" because the "procedures for provisioning an unbundled loop and a resale loop are different and the respective provisioning intervals are not comparable." Id. The ICC's decision was not erroneous under Rule 313.

n12 The ICC's decision is a mixed determination of law and fact, and is subject to de novo review.

#### IV. Timing of Bona Fide Request Process

Both MCI and Ameritech presented the ICC with proposals for a "bona fide request" process by which MCI could request access to additional network elements not specified in the interconnection agreement. MCI proposed an 85-day process, while Ameritech proposed 120 days. MCI's proposal allowed [\*30] Ameritech fifteen days from the time of the request to determine if the request was technically feasible. Pl. Br. at 33 (and citations therein). If Ameritech determined the request was technically feasible, it would provide MCI a price quote within an additional twenty business days. Id. MCI would then have thirty days to accept or reject the quote. Id. In the event of a dispute, the ICC would decide within twenty days of Ameritech's response whether Ameritech should be required to provide the element. Id. at 34. Ameritech proposed a more lengthy process. Under Ameritech's plan, Ameritech would have thirty days to evaluate whether a request was required by the Act and, if so, whether the request was technically feasible. Def. Br. at 32 (and citations therein). If Ameritech determined the request was feasible, it then would have ninety days to prepare a quote that includes a complete product description, proposed rates, ordering intervals,

methods and procedures for ordering the requested item, and a statement of Ameritech's development costs. Id. Ameritech also agreed to completely process certain less complicated bona fide requests within thirty days of receipt. [\*31] Id. MCI would have thirty days to accept or reject the quote, or to seek a remedy under the dispute resolution terms of the interconnection agreement. Pl. Br. at 34 (and citations therein). Dispute resolution could occupy as much as an additional thirty days. Id. Under Ameritech's plan, Ameritech would not be required to provide unbundled network elements until more than four months after MCI's initial request. Id. The ICC ultimately rejected MCI's proposal and adopted Ameritech's proposal. MCI claims the ICC violated § 251(c)(3) of the Act because Ameritech's proposal was not "just, reasonable, and nondiscriminatory."

In support of its position, MCI relies heavily on a statement in a report of the House of Representatives that the Act was designed to promote competition in local telecommunications markets "as quickly as possible." See H. Rep. at 89. According to MCI, the ICC applied a "commercial reasonableness" standard to the bona fide request issue. n13 Pl. Rep. at 16. MCI contends the commercial reasonableness standard is inconsistent with the purpose of the Act because it allows the ICC to approve a procedure that does not resolve disputes as quickly as [\*32] possible. MCI goes so far as to say that "a [bona fide request] provision cannot, as a matter of law, satisfy the 1996 Act unless it is as short as possible." Pl. Rep. at 17 (emphasis added). MCI's argument proves too much, and demonstrates that the statement in the House Report cannot be taken literally. It would be possible to resolve bona fide requests in a matter of days or weeks by requiring all parties to immediately dedicate their full attention and resources to the problem. But such a requirement is neither practical nor reasonable. MCI implicitly recognizes that it is not entitled to resolution "as quickly as possible" in its own proposal, which allows a maximum time of eighty-five days. The statement in the House Report reflects a general policy or purpose of the Act, but it does not mean that a bona fide request provision cannot satisfy the Act as a matter of law unless the resolution period is as short as possible. Nor does the statement in the House Report override the plain language of the Act, which requires access to network elements on terms that are just, reasonable, and nondiscriminatory. MCI's attempt to read an "as quickly as possible" [\*33] standard into § 251(c)(3) of the Act does not comport with common sense, the plain language of the statute, or MCI's own proposal. The ICC applied an appropriate analysis.

n13 Apparently, the ICC did not expressly articulate the commercial reasonableness standard, but cited with approval another interconnection arbitration decision that applied the standard. Pl. Rep. at 16.

Having determined that the ICC did not apply an erroneous standard to the issue of the bona fide request process, the court must now determine whether the ICC's factual determination that Ameritech's proposal was more commercially reasonable than MCI's was arbitrary or capricious. MCI argues that Ameritech failed to adduce evidence sufficient to support a finding that the four month period was reasonable. But Ameritech presented the ICC with ample evidence sufficient to support the conclusion that Ameritech's proposal was commercially reasonable. Ameritech presented evidence regarding the unpredictable number, timing, and complexity of [\*34] the bona fide requests it receives from various competing exchange carriers. Def. Br. at 34-35 (and citations therein). Ameritech also presented evidence regarding similar time frames approved by the FCC and other state commissions in analogous situations. *Id.* at 35-36. In contrast with Ameritech's presentation, MCI presented little evidence in support of its own proposal. MCI's witness conceded that MCI did not do "any type of empirical analysis of the processes, resources, [or] costs" that Ameritech might incur in responding to bona fide requests, but instead "worked backwards" from Ameritech's 120-day proposal. n14 Def. Resp. at Ex. 23, p. 593. The ICC's determination that Ameritech's proposal was the more reasonable of the two plans was not arbitrary and capricious.

n14 Significantly, MCI presents nothing to this court in defense of its plan. MCI merely attacks Ameritech's proposal as unjust, unreasonable, and discriminatory.

MCI also presents, in a footnote, an argument that Ameritech's proposal [\*35] is discriminatory in violation of § 251(c)(3). Pl. Br. at 37, n. 10. MCI contends that § 251(c)(3) requires Ameritech to provide network elements to MCI on the same terms and conditions that it provides the elements to itself. According to MCI, the bona fide request provision is discriminatory because it forces MCI to wait for access to Ameritech's network elements longer than Ameritech must wait. But the "nondiscriminatory" language of § 251(c)(3) has no application here. To say that MCI is entitled to nondiscriminatory access to network elements presupposes that MCI is entitled to any access to the elements. MCI is

not entitled to access to network elements beyond those provided for in the interconnection agreement until it successfully completes the bona fide request process. The purpose of the bona fide request process is to determine whether, and on what terms, Ameritech is required to provide access to additional network elements not addressed in the interconnection agreement. Only after MCI obtains the right to access additional network elements through the bona fide request process does § 251(c)(3) forbid nondiscriminatory access to those elements. [\*36]

#### V. Limitations of Liability

The Act contemplates two distinct functions of state public utilities commissions. First, state commissions conduct arbitration pursuant to § 252(b)(1). Second, state commissions evaluate negotiated or arbitrated agreements against the standards set out in § 252(e)(2) and either approve or reject the agreement. At the approval stage, the state commission's authority is limited to determining whether the agreement meets the requirements of § 252(e)(2). See e.g., *TCG Milwaukee, Inc. v. Public Serv. Comm'n of Wisconsin*, 980 F. Supp. 992, 999 (W.D. Wis. 1997). It is undisputed that liability limitations were not considered until the approval stage; MCI and Ameritech did not agree on liability limitations during preliminary negotiations, nor did they arbitrate the issue. Therefore, unless Ameritech prevails on one of its arguments in support of the ICC's decision to incorporate liability limitations into the agreement, the limitations must be stricken. The court reviews the ICC's decision de novo.

Ameritech first argues that the ICC's decision was appropriate under § 252(e)(3), which allows state commissions to enforce requirements [\*37] of state law in reviewing an agreement. In support of its assertion, Ameritech cites *In re Illinois Bell Switching Station*, 161 Ill. 2d 233, 641 N.E.2d 440, 448-49, 204 Ill. Dec. 216 (Ill. 1994). But Illinois Bell does not establish a state law requiring limitations on Ameritech's liability. In *Illinois Bell*, a single justice of the Illinois Supreme Court states that limitations of liability are an "important part" of a utility company's contracts. 641 N.E.2d at 449 (Miller, J., concurring). This unremarkable statement does not even suggest that limitations of liability must be included in a utility company's contracts. Ameritech's argument is without merit.

Ameritech next contends the ICC was required to include liability limitations under § 252(e)(2)(B) because without the limitations, the pricing provisions of the agreement would violate the standards of § 252(d). Section 252(d) requires that prices set out in intercon-



nection agreements must be based on the incumbent carrier's costs of providing the network elements at issue. According to Ameritech, the prices in the interconnection agreement would not accurately reflect Ameritech's costs unless Ameritech's [\*38] liability was limited. Ameritech initially contended that its liability exposure was a component of its costs. See Def. Resp. at 41-42. However, MCI correctly argued the Act mandates that prices be set according to forward-looking costs, and not according to a rate-of-return analysis. 47 U.S.C. § 252(d)(1)(A)(ii); see also, 47 C.F.R. § 51.105. Under the Act's pricing scheme, the cost of Ameritech's liability to MCI is not recoverable in the prices of unbundled network elements. Recognizing this difficulty, Ameritech changed its strategy and now argues that the liability limitations represent the cost of "gold-plating" Ameritech's network to ensure the network will not fail. Def. Supp. Resp. at 5-6. But the costs of gold-plating the network and the costs of liability are two sides of the same coin. The costs of gold-plating a network element are extraordinary costs incurred solely to avoid liability, and are otherwise unrelated to the cost of producing or supplying the network elements. It is incongruous to say that Ameritech may not charge MCI for the additional cost of Ameritech's liability to MCI, but may charge MCI for the additional cost of avoiding [\*39] that liability. The pricing regulations do not allow Ameritech to recover the cost of gold-plating through the prices it charges MCI.

Ameritech next argues that the ICC was authorized to impose liability limitations under § 252(e), which permits state commissions to reject agreements that discriminate against carriers that are not parties to the agreements. All of Ameritech's interconnection agreements with incoming carriers in Illinois contain liability limitations similar to those Ameritech proposed to the ICC in this case. Ameritech argues that if the ICC approved the MCI agreement without limiting Ameritech's liability, the agreement would discriminate against other Illinois carriers. Ameritech's argument proves too much. Under Ameritech's view of the Act, any provision in an interconnection agreement that is favorable to the incoming carrier is impermissible unless that provision is contained in all the incumbent's other interconnection agreements. Taking Ameritech's argument to its absurd extreme, every interconnection agreement within a region must be identical. Furthermore, the template for all subsequent interconnection agreements would be established by the first incoming [\*40] carrier to negotiate with the incumbent. This result would be at odds with § 252, which contemplates individualized negotiations between the incumbent and each incoming carrier.

Nevertheless, the absence of liability limitations in

MCI's agreement with Ameritech clearly gives MCI an advantage over other incoming carriers. But the anti-discrimination language of § 252(e) does not prevent MCI from gaining this competitive advantage. Whatever the parameters of the discrimination targeted by § 252(e), that section cannot be read to preclude interconnection agreements that give an incoming carrier a competitive advantage over other incoming carriers. n15 As noted above, this interpretation conflicts with the Act's vision of individualized negotiations between the incumbent and each incoming carrier. More importantly, Ameritech's interpretation of § 252(e) is at odds with the very purpose of the Act. The Act was designed to open local telecommunications markets to competition. *Iowa Utilities Board v. FCC*, 120 F.3d 753, 816 (8th Cir. 1997), rev'd in part by *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 142 L. Ed. 2d 834, 119 S. Ct. 721 (1999). In a free market, [\*41] incoming local exchange carriers would compete with each other as well as with the incumbent. Yet under Ameritech's view, § 252 stifles vigorous competition between incoming carriers. The meaning of "discrimination" under § 252(e) is elusive, but that section does not prevent an incoming carrier from gaining a competitive advantage over other incoming carriers by negotiating a more favorable interconnection agreement. n16

n15 In light of the overall purpose of the Act, it is likely that Congress intended § 252(e) to forbid anticompetitive discrimination, i.e., collusive discrimination or oligopolistic behavior among the incumbent and one or more incoming carriers.

n16 Even assuming the absence of liability limitations in MCI's interconnection agreement discriminates against other incoming carriers, Ameritech does not have standing to raise the claims of other carriers.

Finally, Ameritech argues that MCI waived any challenge to the liability limitations. When MCI protested the imposition of liability [\*42] limitations, the ICC declared it would not approve the agreement without the limitations. MCI was presented with a choice: it could either accept the liability limitations to gain ICC approval, or it could repeat the entire negotiation and arbitration process by refusing the limitations. Ameritech argues that because MCI elected to go forward, it waived its right to challenge the ICC's decision. Ameritech's argument lacks merit. The Act provides for judicial review of state public utilities commission decisions in § 252(e)(6). If liability limitations were improperly imposed on MCI during the approval stage, MCI's remedy

is to challenge the ICC's decision in this court. It is inconsistent with the Act's procedural scheme to conclude that the ICC may deprive MCI of its right to judicial review by forcing MCI either to accept terms that were not arbitrated or to forfeit the considerable time and resources already expended. MCI did not waive its right to challenge the liability limitations.

For the foregoing reasons, the limitations on liability erroneously imposed by the ICC must be stricken.

## VI. Dark Fiber

The ICC ordered Ameritech to provide MCI with access to "dark fiber" [\*43] as an unbundled network element. "Dark fiber" is optical fiber that is not attached to electronics that are necessary to "illuminate" the fiber and enable it to carry telecommunications. Ameritech launches a three-pronged attack against the ICC's ruling. First, Ameritech contends the ICC had no jurisdiction to grant MCI access to dark fiber because the issue was never raised before the ICC in arbitration. Under § 252(b)(4)(A), the ICC was bound to "limit its consideration of any petition . . . (and any response thereto) to the issues set forth in the petition and the response, if any . . . ." (emphasis added). Ameritech contends MCI's petition did not set forth dark fiber as an issue for arbitration. MCI responds that it raised the issue of dark fiber under the rubric of "dedicated interoffice transmission" and "shared interoffice transmission." Pl. Resp. at 3. The court need not resolve this dispute, because Ameritech plainly raised the issue of dark fiber in its response to MCI's petition. n17 See Pl. Resp. at 3-4 (and citations therein). Ameritech concedes that its response "discussed" dark fiber. Def. Rep. at 7. However, Ameritech contends it was forced to do so only because [\*44] "it was impossible for Ameritech to be certain that the ICC was not going to address dark fiber" because it was "extremely difficult to tell from MCI's vague Petition just what issues MCI was setting forth." Id. Ameritech contends it faced a dilemma: it could decline to address dark fiber and run the risk that the ICC would erroneously decide the issue without Ameritech having a chance to present its position, or it could address the merits of the dark fiber issue and risk a later ruling that the response set forth the issue for arbitration. Id. Ameritech chose the latter course, thereby raising the dark fiber issue for arbitration under § 252(b)(4)(A). In essence, Ameritech maintains it could argue the merits of the dark fiber issue before the ICC and yet claim in this court that the issue was not before the ICC. Section 252(b)(4)(A) forbids this result.

n17 This fact distinguishes this case from *MCI*

*Telecommunications, Inc. v. Pacific Bell*, 1998 U.S. Dist. LEXIS 17556, No. C 97-0670 SI (N.D. Cal. Sept. 29, 1998), in which the court found that MCI failed to raise the issue of dark fiber in an arbitration petition identical to the petition before the ICC. Ameritech claims MCI is collaterally estopped from arguing it raised the dark fiber issue in its arbitration petition. Collateral estoppel is inapplicable because here, unlike *Pacific Bell*, the response set forth dark fiber as an arbitration issue.

[\*45]

Ameritech next argues the ICC had no authority to identify dark fiber as a network element after the Supreme Court's decision in *IUB*, which vacated Rule 319. Rule 319 enumerated several specific network elements that must be unbundled under the Act. The Court vacated Rule 319 as inconsistent with § 251(d)(2) of the Act. Section 251(d)(2) provides:

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether--

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

The Court examined the FCC's methodology in promulgating Rule 319, and concluded that the agency had failed to properly apply the "necessary and impair" standard. *119 S. Ct. at 734-35*.

47 C.F.R. § 51.317 (hereafter, "Rule 317") is a companion to Rule 319. Rule 317 sets forth the standards state public utilities commissions are to apply in determining what network elements [\*46] other than those specified in Rule 319 must be unbundled. Although *IUB* did not expressly vacate Rule 317, the rule purports to allow state commissions to apply the same erroneous standard that was fatal to Rule 319. Therefore, the reasoning of *IUB* applies with equal force to Rule 317. Ameritech contends that Rule 317 was "the sole asserted source of any State commission authority to identify network elements that must be unbundled." Def. Supp. Br. at 9. Because Rule 317 is now a dead letter, Ameritech contends the ICC had no authority to order it to unbundle dark fiber. However, Rule 317 does not grant state

public utilities commissions the power to name additional elements. The rule presupposes that such power exists, and establishes the standards under which the power must be exercised. n18 Nothing in IUB suggests that state public utilities commissions lack power to name additional network elements to be unbundled.

n18 Indeed, Rule 317 is entitled "Standards for identifying network elements to be made available."

[\*47]

Nevertheless, Ameritech's argument has some merit. Although state public utilities commissions have the power to name network elements to be unbundled, they must do so under the standards set forth in the Act as interpreted by the FCC. See *IUB*, 119 S. Ct. at 730, n. 6, and *Id.* at 729-33 (questioning "whether it will be the FCC or the federal courts that draw the lines to which [state commissions] must hew" and concluding that 47 U.S.C. § 201(b) grants the FCC rulemaking authority under the Act). Those standards were set out in rule 317, which no longer governs. In the absence of a standard guiding the state public utilities commission's exercise of its power, the commission might not be able to exercise its power. This court need not decide whether a state public utilities commission may anticipate FCC-promulgated standards and itself undertake to interpret the mandates of the Act. When the ICC rendered its decision on Ameritech's dark fiber, there was a standard in place, albeit the erroneous standard set out in Rule 317. Therefore, Ameritech's attack on the ICC's authority to name dark fiber as a network element is nothing more than an argument [\*48] that the ICC applied the wrong standard in making its determination - precisely the argument Ameritech uses as the third prong of its attack on the ICC's decision.

In the initial briefs on the dark fiber issue, Ameritech maintained that the ICC failed to apply the necessary and impair test in any fashion, concluding its discussion after it determined dark fiber was a network element. Def. Br. at 15. MCI responded that even if the ICC did not articulate a finding of impairment, the evidence provided a reasonable basis for the ICC to conclude that without access to Ameritech's dark fiber, MCI would be impaired under the standards set out in Rule 317. Pl. Resp. at 17-18. But assuming MCI is correct, the ICC applied an erroneous standard under the Act after IUB.

Recognizing this difficulty, MCI urges the court to defer its decision on the dark fiber issue until the FCC promulgates new regulations interpreting the necessary

and impair standard under the doctrine of primary jurisdiction. The goals of the doctrine of primary jurisdiction include ensuring nationally uniform application of the law and promoting deference to agency expertise. *United States v. Western Pacific R.R. Co.*, 352 U.S. 59, 65, 1 L. Ed. 2d 126, 77 S. Ct. 161 (1956). [\*49] The doctrine does not apply here, because this court can render a decision without infringing on the FCC's province. If the court were required to interpret the Act's necessary and impair requirement in order to resolve the dark fiber issue, MCI's argument might have some merit. But the court agrees with Ameritech that the ICC engaged in no analysis of necessity and impairment. The ICC's discussion focuses solely on the question whether dark fiber is a network element; it does not even make passing mention of the necessary and impair standard. Def. Br. at Ex. 2, p. 26-27. The court is not persuaded by MCI's argument that because MCI presented evidence of impairment, and because the law required the ICC to undertake a necessary and impair analysis, a finding of impairment is implicit in the ICC's decision. Pl. Resp. at 17-18. MCI's argument begs the question whether the ICC in fact considered MCI's evidence of impairment as the law required. If MCI's position were correct, there could never be a finding that a state commission failed to apply the necessary and impair test if evidence of impairment was presented. This result would be absurd.

Because the ICC failed to make any determination [\*50] of necessity and impairment as required by 47 U.S.C. § 251(d)(2), its decision compelling Ameritech to provide MCI access to dark fiber was erroneous and must be reversed.

#### CONCLUSION

The ICC's decision is affirmed in part and reversed in part. The ICC's decisions to adopt Ameritech's proposals regarding the time frame for providing access to local loops, to adopt Ameritech's proposed schedule for a bona fide request process, and to deny MCI the tandem interconnection rate are affirmed. The ICC's decisions to deny MCI access to shared transport without undertaking a bona fide request, to incorporate liability limitations in the interconnection agreement, and to grant MCI access to Ameritech's dark fiber are reversed.

ENTER:

Suzanne B. Conlon

United States District Judge

June 22, 1999



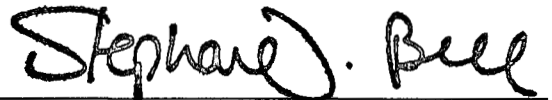
COMMONWEALTH OF KENTUCKY  
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CERTIFICATE OF SERVICE

RE: Case No. 1999-218  
ICG TELECOM GROUP, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on March 2, 2000.

See attached parties of record.

  
Secretary of the Commission

SB/hv  
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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                       |   |          |
|---------------------------------------|---|----------|
| A PETITION BY ICG TELECOM GROUP, INC. | ) |          |
| FOR ARBITRATION OF AN INTERCONNECTION | ) | CASE NO. |
| AGREEMENT WITH BELL SOUTH             | ) | 99-218   |
| TELECOMMUNICATIONS, INC. PURSUANT TO  | ) |          |
| SECTIONS 252(b) OF THE                | ) |          |
| TELECOMMUNICATIONS ACT OF 1996        | ) |          |

O R D E R

ICG Telecom Group, Inc. ("ICG") seeks arbitration of specific issues related to its interconnection contract with BellSouth Telecommunications, Inc. ("BellSouth"). Many of the issues originally pending have been resolved by agreement between the parties. A public hearing was held December 2, 1999. The matter now stands ready for Commission decision on five unresolved issues: (1) reciprocal compensation for calls to Internet service providers ("ISPs"); (2) the appropriate compensation rate for ICG's switch; (3) the availability and pricing of the enhanced extended link ("EEL"); (4) issues related to performance measures and enforcement mechanisms; and (5) issues related to take and pay arrangements for binding forecast of traffic volumes.

I. WHETHER RECIPROCAL COMPENSATION SHOULD BE REQUIRED FOR CALLS TO INTERNET SERVICE PROVIDERS.

ICG argues that the Commission should require BellSouth to pay reciprocal compensation for ISP-bound traffic. None of the Federal Communications Commission's ("FCC") decisions, according to ICG, preclude state commissions from determining that reciprocal compensation is an appropriate inter-carrier compensation

rule pending final FCC action.<sup>1</sup> The FCC determined that state commissions may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.

ICG asserts that BellSouth itself agrees that reciprocal compensation should be paid for all non-ISP local calls to compensate for costs that one carrier incurs on behalf of the other. In the absence of reciprocal compensation for ISP-bound traffic, ICG would be handling a large number of calls from BellSouth customers and incurring costs that BellSouth would avoid. Moreover, the FCC indicated that its "policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in a separate context of reciprocal compensation, suggest that such compensation is due for that traffic."<sup>2</sup> ICG contends that BellSouth's proposal for tracking the traffic and making payments retroactively based on FCC decisions indefinitely delays its ability to cover current costs.

BellSouth, on the other hand, asserts that reciprocal compensation is not an appropriate cost recovery mechanism for ISP-bound traffic. BellSouth argues that the longer hold times for ISP-bound calls result in an over-recovery of call setup costs. BellSouth argues that the parties should track the ISP-bound traffic. Once the FCC has established an inter-carrier compensation mechanism for ISP-bound traffic, then the

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<sup>1</sup> FCC 99-38, Implementation of Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98) and Inter-Carrier Compensation for ISP-Bound Traffic (CC Docket No. 99-68), Rel. February 26, 1999 ["Declaratory Ruling"] at ¶25.

<sup>2</sup> *Id.* Even the FCC acknowledges that no matter what the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates on another LEC's network. Declaratory Ruling at ¶29.

parties would true-up the payments retroactively from the effective date of this interconnection agreement.

After careful consideration, the Commission concludes that ISP-bound traffic should be eligible for reciprocal compensation, pending a final determination by the FCC. The FCC has indicated that this Commission has the legal authority to order a reciprocal compensation arrangement in this proceeding. Equity precludes this Commission from denying ICG any compensation from BellSouth for carrying BellSouth's traffic on ICG's local network. Furthermore, it is logical to consider a call to an ISP to be a call that is "terminated" locally, at the ISP server, because a protocol conversion occurs before the information is passed on to the Internet. In the wake of the FCC's pending determination, the most reasonable method for compensation is at the current rate for local calls. However, in addition the parties should track the minutes of use for calls to ISPs and be prepared to "true-up" the compensation consistent with the FCC's decision. Thus, the compensation ordered herein for ISP-bound traffic should be retroactively "trued-up" to the level of compensation ultimately adopted by the FCC.

II. WHETHER, IF ICG'S SWITCH SERVES A GEOGRAPHIC AREA SIMILAR TO THAT SERVED BY BELLSOUTH'S TANDEM SWITCH, ICG IS ENTITLED TO RECIPROCAL COMPENSATION AT THE TANDEM RATE.

ICG states that its switch provides service to a geographic area that is at least as large as the area served by BellSouth's tandem switches. As is common among new entrants, ICG uses a single switching platform to transfer calls between multiple ILEC central offices as well as to transfer calls between the ICG and ILEC network. A tandem switch connects trunks and is an intermediate connection between an



originating telephone call location and the final destination of the call. ICG's switch performs many of the same functions that the ILEC tandem switch performs. According to ICG this is further indication that tandem termination rates are appropriate for its switch's use.

BellSouth contends ICG is entitled to recover the tandem switching elemental rate only when ICG's switch actually performs the same tandem switching function as the ILEC switch and actually serves a geographic area comparable to the ILEC switch. However, Rule 51.711(a)(3) of the FCC's Interconnection Order states:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the ILEC's tandem interconnection rate.

Accordingly, pursuant to FCC requirements, tandem interconnection rates are required. ICG should be compensated at the tandem interconnection rate.

III. WHETHER BELLSOUTH SHOULD BE REQUIRED TO MAKE THE ENHANCED EXTENDED LINK ("EEL") AVAILABLE AS AN UNBUNDLED NETWORK ELEMENT COMBINATION, AT AN UNBUNDLED NETWORK ELEMENT PRICE.

ICG asserts that the provisioning of EELs as unbundled network elements ("UNEs") at the DS-0 and DS-1 level will act to extend the range of ICG's ability to serve customers, thus permitting ICG to bring the benefits of competition to a much broader base of customers than ICG is currently able to serve. ICG asserts that the FCC's Rule 51.315(b) makes clear that if BellSouth currently combines loop and transport, BellSouth must make loop and transport available as a UNE combination that is priced accordingly. ICG maintains that the EEL is an efficient mechanism for bringing the

benefits of competition to Kentucky because it will allow ICG and other CLECs to serve customers without requiring collocation in a particular customer's serving central office.

ICG also argues that the EEL should be offered at the TELRIC-based UNE prices established by the Commission. According to ICG, the total price charged by BellSouth for the EEL should be the sum of the TELRIC rate for the three components.

BellSouth argues that the EEL is nothing more than a combination of three separate UNEs that replicate private line and/or special access services. BellSouth will, on a voluntary basis, provide EELs through "Professional Services Agreements." BellSouth asserts that since those offers are separate and apart from any obligations under 47 U.S.C. §§251 and 252, there is no requirement that the EEL be provided at TELRIC rates. Therefore, the EEL is offered at prices approximating retail rates.

A competitor's right to obtain combinations of UNEs has been one of the more contentious issues arising from the passage of the Act and the rules originally promulgated by the FCC to implement the requirements of the Act. The rules of this Commission and of the FCC governing UNE combinations have their genesis in 47 U.S.C. §251(c)(3) which imposes on ILECs

[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Accordingly, the Commission requires BellSouth to provision the EEL at the DS-O and DS-1 levels where it currently combines those loops with transport within its network. The EEL is the only efficient mechanism currently available to ICG to serve customers without collocating in the BellSouth central office serving that particular customer. The EEL is necessary to provide service, particularly in less dense residential areas where collocation is not feasible. In such instances, the unavailability of the EEL would certainly impair ICG's ability to provide service because there is no other source for this access. The EEL must be available to ICG at the TELRIC-based UNE prices. Specifically, the total price charged by BellSouth for the EEL should be the sum of the established TELRIC rates for: (1) an unbundled loop; (2) a cross-connect of appropriate capacity; and (3) unbundled interoffice dedicated transport.

Further, BellSouth should combine previously uncombined elements for a reasonable cost-based fee in situations where those elements currently are not combined in the BellSouth network.

IV. WHETHER PERFORMANCE MEASURES WITH ENFORCEMENT MECHANISMS, SHOULD BE ORDERED TO ENSURE THAT BELL SOUTH PROVIDES NONDISCRIMINATORY SERVICE TO ICG ON PARITY WITH THE SERVICE BELL SOUTH PROVIDES TO ITSELF AND ITS RETAIL CUSTOMERS.

ICG requests that the performance measures and enforcement mechanisms adopted by the Texas Utilities Commission should be ordered for BellSouth in this case.

BellSouth asserts that its "Service Quality Measurements" ("SQMs") will provide sufficient protection to ICG. According to BellSouth, the SQMs cover BellSouth's performance in preordering, ordering, provisioning, maintenance and repair, billing,

operator services, directory assistance, E911, trunk group performance, and co-location. According to BellSouth, these are available now to all CLECs in Kentucky.

As the Commission has noted in several previous orders, BellSouth is required to provide the same quality of service to ICG as it provides to itself. There is no need to assume that BellSouth will not in good faith comply with that requirement. Thus, performance measures and enforcement mechanisms of the nature requested by ICG are not necessary. Should ICG have a basis on which to allege that poor quality of service is being delivered to its customers by BellSouth then it should bring this matter to the Commission's attention through a complaint petition.

V. WHETHER BELLSOUTH SHOULD BE REQUIRED TO PROVIDE TRUNKING FACILITIES TO DELIVER TRAFFIC FROM BELLSOUTH'S NETWORK TO ICG WHEN ICG IS WILLING TO ENTER INTO A BINDING FORECAST OF TRAFFIC VOLUMES.

ICG relies on BellSouth end office trunks to deliver traffic to ICG's switch. These trunks are usually BellSouth's responsibility to provision and administer. ICG provides BellSouth with quarterly traffic forecasts to assist BellSouth in planning for facilities to handle traffic between their networks. However, ICG contends that BellSouth is under no obligation to add more end office trunks even though ICG's forecasts may indicate that additional trunking is necessary.

ICG asks this Commission to require BellSouth to provision additional end office trunks dictated by ICG's forecast. In exchange, ICG will agree to pay BellSouth for any trunks that are not fully utilized as indicated by the forecast. ICG maintains that under its proposal, BellSouth will not assume any risk for additional trunks that are underutilized.

BellSouth asserts that although it is continuing to analyze the possibility of providing binding forecasts and has not foreclosed the idea, BellSouth cannot be ordered to agree to binding forecasts because there is no requirement that it do so pursuant to 47 U.S.C. §251. BellSouth accordingly argues that, pursuant to 47 U.S.C. §252(c), binding forecasts are not properly subject to arbitration.

The threshold question here is whether the Commission has jurisdiction to require a binding forecast provision in a 47 U.S.C. §252 arbitration as requested by ICG. BellSouth is correct in pointing out that there is not a specific provision of 47 U.S.C. §251 that requires ILECs to enter binding forecasts. The relevant inquiry, however, is not whether there is any direct reference to binding forecast in 47 U.S.C. §251, but whether requiring binding forecasts is consistent with the general interconnection obligations of ILECs as set forth in that section of the Act.

Pursuant to 47 U.S.C. §251(c)(2)(C), ILECs are required to provide interconnection with requesting carriers that is at least equal in quality to that provided by the ILEC to itself. ICG's binding forecast proposal clearly relates to interconnection and is designed to ensure that such interconnection is provided to ICG on a non-discriminatory basis. ICG's proposal, therefore, falls well within the parameters of 47 U.S.C. §251 and the Commission's authority to enforce the provisions of that Section.

BellSouth normally has the financial responsibility for the facilities which ICG seeks to make subject to binding forecasts. Under ICG's proposal, however, ICG will pick up the cost for those facilities by paying BellSouth 100 percent of the tariffed price for the forecasted plant if the trunks are not used.

ICG's proposal fully protects BellSouth from assuming unreasonable or unnecessary risk. ICG's proposal is a just and reasonable basis for the parties to negotiate the details of a binding forecast arrangement. The parties should include a binding forecast provision in their interconnection agreement. BellSouth should have the network in service as forecasted by ICG by the end of the forecasted period. Thus, ICG must provide BellSouth at least three months' notice of its capacity requirements.

The Commission, having considered ICG's petition and BellSouth's response thereto, and all other evidence of record, and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Reciprocal compensation shall be required for calls to ISPs at the agreed upon rate for compensation of local calls, pending the FCC's determination.
2. Parties shall track the minutes of use for ISP-bound calls so that a retroactive "true-up" to the level of compensation ultimately adopted by the FCC may occur.
3. Within 30 days of the date of this Order, parties shall submit information regarding the manner in which they will track ISP-bound traffic.
4. BellSouth shall compensate ICG for use of its switch at the tandem interconnection rate.
5. The EEL shall be made available to ICG at the TELRIC-based UNE prices for the sum of an unbundled loop, a cross-connect, and an unbundled interoffice dedicated transport.
6. BellSouth shall combine previously uncombined elements for a reasonable cost-based fee.

7. Within 30 days of the date of this Order, BellSouth shall file its proposed "combining" fee and cost support workpapers.

8. Performance measures and enforcement mechanisms shall not be required at this time, however, BellSouth shall continue to provide SQMs to ICG.

9. The parties shall include a binding forecast provision in their interconnection agreement consistent with the Commission's decisions herein.

10. Within 30 days of the date of this Order, parties shall submit a signed agreement consistent with the mandates herein.

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

By the Commission

ATTEST:

*Deputy* Wm H Bowber  
Executive Director

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PUBLIC SERVICE  
COMMISSION

February 17, 2000

\*ALSO ADMITTED INDIANA  
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U.S. PATENT & TRADEMARK OFFICE  
†ADMITTED IN INDIANA ONLY

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

Via Federal Express

**RE: Case 99-218; ICG Telecommunications Group, Inc. v. BellSouth  
Telecommunications, Inc.: Arbitration**

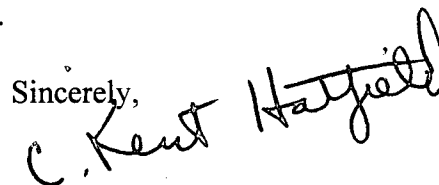
Dear Mr. Huelsmann:

ICG Telecommunications Group, Inc. ("ICG") submits herewith copies of recent orders of the Georgia Public Service Commission and the Alabama Public Service Commission in recent arbitrations between ICG and BellSouth pursuant to Section 252(b) of the Telecommunications Act of 1996. Enclosed are the Order of the Georgia Public Service Commission of February 1, 2000 in Docket No. 10767-U and the Order Denying Reconsideration of the Alabama Public Service Commission of February 3, 2000 in Docket No. 27069.

These very recent orders were not available at the time the parties submitted their briefs in this matter, and ICG files them with the Commission herein in order to make them available for the Commission's review.

Thank you for your assistance in this matter.

Sincerely,



C. Kent Hatfield  
Counsel for ICG Telecommunications  
Group, Inc.

enc.

cc: All parties on service list



RECEIVED  
FEB 18 2000  
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COMMISSION

Docket No. 10767-U

In Re: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.

ORDER

Appearances

On behalf of ICG Telecom Group, Inc.

Charles V. Gerkin, Attorney  
Albert H. Kramer, Attorney  
Jacob S. Farber, Attorney

On behalf of BellSouth Telecommunications, Inc.

Fred McCallum, Attorney  
Lisa Foshee, Attorney  
A. Langley Kitchings, Attorney

On behalf of the Commission Staff

Daniel Walsh, Attorney

On behalf of the Consumers' Utility Counsel Division

Of the Governor's Office of Consumer Affairs

Ron Jackson, Attorney  
John Maclean, Attorney

BY THE COMMISSION:

On May 27, 1999, ICG Telecom Group, Inc. ("ICG") petitioned the Commission to decide the unresolved issues in the interconnection negotiations with BellSouth Telecommunications, Inc. ("BellSouth").

## I. JURISDICTION AND PROCEEDINGS

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21, and 46-2-23.

On December 18, 1998, BellSouth notified ICG that it wished to negotiate a new interconnection agreement. On May 27, 1999, pursuant to Section 252 of the Federal Act, ICG petitioned the Commission to arbitrate the issues that the parties were unable to negotiate. ICG's initial Petition for Arbitration included 26 issues; however, the parties have settled the majority of these issues.

On August 25, 1999, the Hearing Officer issued a Consent Procedural and Scheduling Order. Both ICG and BellSouth filed testimony on October 8, and rebuttal testimony on October 25, 1999. The Commission held hearings on the matter on November 4 and 5, 1999. The Commission Staff and the Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs appeared but did not question the witnesses.

The testimony at the hearing addressed the six issues that remained as of the time of the hearing:

1. Until the FCC adopts a rule with prospective application, should dial-up calls to internet service providers ("ISPs") be treated as if they were local calls for purposes of reciprocal compensation?
2. For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch?
3. Should BellSouth be required to provide as a UNE "Enhanced Extended Link" Loops ("EELs")?
4. Should BellSouth be required to enter into a binding forecast of future traffic requirements for a specified period?
5. Should the Commission order enforcement mechanisms to ensure BellSouth's compliance with the Performance Measures included in the interconnection agreement?

6. Should BellSouth be required to make available as UNEs packet-switching capabilities?

At the hearing, BellSouth and ICG agreed to a set of service quality measurements ("SQMs") contained in the attachment to BellSouth witness Coon's testimony. These are the same service quality measurements that BellSouth agreed to in Louisiana. If the parties agree to amend the SQMs, then the changes would be automatically incorporated into the interconnection agreement. Tr. 127. Any new SQMs ordered by either this or the Louisiana Commission would be automatically adopted into the agreement. Id. Any performance measurement that BellSouth agrees to in either Louisiana or Georgia will be automatically incorporated into this BellSouth-ICG agreement, without the need for Commission approval. Id. The parties were not able to reach agreement on whether enforcement mechanisms to hold BellSouth to the performance standards should be included in the interconnection agreement. After the hearing, ICG and BellSouth reached an agreement on the final issue stated above, the obligation of BellSouth to make available as UNEs packet-switching capabilities.

Pursuant to the Consent Procedural and Scheduling Order, ICG and BellSouth filed briefs on November 22, 1999 and reply briefs on December 6, 1999. The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

## II. FINDINGS AND CONCLUSIONS

- A. **Until the FCC adopts a rule with prospective application, should dial-up calls to internet service providers (ISPs) be treated as if they were local calls for purposes of reciprocal compensation?**

In its Petition, ICG asserted that reciprocal compensation is appropriate for calls prior to the adoption of a prospective rule by the FCC. ICG argues that, while the FCC found in its February 26, 1999 Declaratory Ruling, in CC Docket 96-98 (Declaratory Ruling), that ISP traffic is mostly interstate in nature, it also authorized state commissions to find in arbitrations that reciprocal compensation is appropriate for ISP-bound calls until a federal rule is adopted concerning inter-carrier compensation for such traffic. Further, ICG asserts that BellSouth should be economically indifferent to whether it incurs the transport and delivery costs directly or through a reciprocal compensation arrangement with ICG. ICG Post-Hearing Brief, p. 11.

BellSouth maintains the position that the FCC, in its Declaratory Ruling, held that the obligation to pay reciprocal compensation is not applicable to ISP-bound traffic, and that therefore, any inter-carrier compensation mechanism adopted by a state commission is outside the provisions of 252(b)(5). BellSouth Post-Hearing Brief, p. 3. BellSouth urged the Commission to decline ruling on reciprocal compensation, until the final resolution of the FCC's Notice of Proposed Rule-Making on ISP-bound traffic. BellSouth proposed that the parties track ISP-bound traffic and true-up any compensation due after the FCC reaches a final decision on whether ISP traffic is due reciprocal compensation. BellSouth's Post-Hearing Brief, p. 13.

The Commission finds that it has the authority under Section 252 of the Federal Act to order a provision in the arbitration agreement that reciprocal compensation be due for ISP-bound traffic. see Declaratory Ruling ¶ 25 (State commissions "may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic."). The Commission concludes that, pending the adoption of a federal rule, dial-up calls to ISPs should be treated as local calls for purposes of reciprocal compensation. As the FCC has stated, the FCC's own policy of "treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation suggest that such compensation is due for that traffic." Id. ILECs and CLECs should be compensated for transport and delivery of ISP-bound calls based on the rates established in Docket No. 7061-U. While the FCC's issuance of a Notice of Proposed Rule-Making on ISP-bound traffic does not mean the Commission cannot, or should not, address this question in the context of this Petition, it is efficient to structure its decision in an effort to accommodate, to the degree possible, potential outcomes of the Rule-Making. Accordingly, the Commission directs the parties to track all reciprocal compensation payments, which shall be subject to a true-up mechanism approved by this Commission as warranted by the outcome of the FCC's Rule-Making in CC Docket 99-68 on ISP-bound traffic. Except to the extent the FCC's forthcoming Rule-Making directs otherwise, the parties shall continue under all applicable terms of this order until further order of this Commission.

**B. For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch?**

The Commission must answer two questions in order to determine whether ICG should receive reciprocal compensation for end office, tandem and transport elements of termination. The first issue is whether ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch. ICG testified that the answer to this question is yes. Tr. 173. BellSouth argues in brief that ICG did not make an adequate showing that the geographic areas are comparable. However, at the hearing, BellSouth did not contradict ICG's assertion. The Commission finds that the ICG's switch serves a comparable geographic area because ICG's assertion to that effect went undisputed.

The second question concerns whether ICG's switch performs the same function as BellSouth's. ICG argues that similar functionality is not a prerequisite to receive the tandem reciprocal compensation rate. However, ICG states that even if the Commission were to find that the same functionality is required, its switch performs the same function as BellSouth's tandem switch. To support this conclusion, ICG references both Alabama and North Carolina Commission findings that the switch functions are similar. Finally, ICG argues that because ICG's switch is identified in the local exchange routing guide ("LERG") as a tandem, it meets BellSouth's own standards for payment of the tandem reciprocal compensation rate. ICG cited BellSouth testimony in an arbitration case before the Florida Public Service Commission that BellSouth would only pay ICG the interconnection rate if ICG's switch was identified in the LERG as a tandem. ICG Post-Hearing Brief, p.28.

In its Post-Hearing Brief, BellSouth references the FCC's language in its First Report and Order that states state commissions "shall consider whether new technologies perform functions similar to those performed by an incumbent LEC's tandem switch" to demonstrate that similar functionality is required to receive the tandem reciprocal compensation rate. BellSouth argues that since ICG has only one voice switch it cannot operate as a tandem switch, and thus, cannot achieve similar functionality.

The Commission finds that the appropriate policy is to compensate ICG for the service that it provides. First, the record supports the conclusion that ICG's switch serves the same geographic area as BellSouth. On the issue of functionality, the Commission finds that ICG's switch serves the same function as a BellSouth switch. For instance, even if a BellSouth customer calls an ICG customer within the same service area, the call has to go through an ICG switch. Therefore, granting ICG the tandem interconnection rate for purposes of reciprocal compensation would allow ICG to recover its costs associated with the transport and termination on its network facilities. See U.S. West Communications v. MFS Intelenet, Inc., 1999 WL 799082, \*9 (9<sup>th</sup> Cir. Oct. 9, 1999). Finally, the Commission is persuaded by the evidence that the LERG identifies ICG's switch as a tandem, and, in other proceedings, BellSouth has considered such identification a prerequisite for receiving the interconnection rate.

**C. Should BellSouth be Required to Provide as a UNE, "Enhanced Extended Link" Loops ("EELs")?**

The EEL is a UNE combination consisting of a loop, transport and a cross-connect. Like the FCC, the Commission declines to define the EEL itself as a UNE. Third Report and Order, ¶ 478. However, as discussed below, CLECs can obtain at UNE rates combinations of UNEs that BellSouth ordinarily combines in its network.

FCC Rule 315 addressed combinations of unbundled network elements. Rule 315(b) provides:

Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent currently combines.

(Emphasis added). BellSouth has interpreted the term "currently combines" as "currently combined." BellSouth defines the term to mean those elements "that are physically in a combined state as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes' basis. . . . Currently combined elements only include loops, ports, transport or other elements that are currently installed for the existing customer that the CLEC wishes to serve." BellSouth's Post-Hearing Brief, p. 23. ICG argued that BellSouth is obligated to provide EELs as a UNE combination at UNE prices. ICG's Post-Hearing Brief, p. 31.

When the Supreme Court reinstated Rule 315(b), it stated its understanding of the intent of the rule:

The reality is that §251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in §251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." Reply Brief for Federal Petitioners 23. It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

Iowa Board.

It appears clear that the Supreme Court believed that at least one major purpose of Rule 315(b) was to prevent the incumbent from ripping apart elements which were already connected to each other. The Commission agrees that at the very least, Rule 315(b) requires BellSouth to provide combinations of elements that are already physically connected to each other regardless of whether they are currently being used to serve a particular customer. The Supreme Court, however, did not state that it was reinstating Rule 315(b) only to the extent it prohibited incumbents from ripping apart elements currently physically connected to each other. It reinstated Rule 315(b) in its entirety, and it did so based on its interpretation of the nondiscrimination language of Section 251(c)(3). See Third Report and Order, ¶¶ 481 and 482.

The Ninth Circuit Court of Appeals has even recently ruled that it "necessarily follows from AT&T that requiring [the ILEC] to combine unbundled network elements is not inconsistent with the Act . . . the Act does not say or imply that network elements may only be leased in discrete parts." U.S. West Communications v. MFS Intelenet, Inc., 1999 WL 799082, \*7 (9<sup>th</sup> Cir. Oct. 9, 1999). The Commission, however, does not at this time order BellSouth to combine for CLEC's UNEs that BellSouth does not ordinarily combine for itself.

Rule 315(b), by its own terms, applies to elements that the incumbent "currently combines," not merely elements which are "currently combined." In the FCC's First Report and Order, the FCC stated that the proper reading of "currently combines" is "ordinarily combined within their network, in the manner which they are typically combined." First Report and Order, ¶ 296. In its Third Report and Order, the FCC stated that it was declining to address this argument at this time because the matter is currently pending before the Eighth Circuit. Third Report and Order, ¶ 479.<sup>1</sup> Accordingly, the only FCC interpretation of "currently combines"

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<sup>1</sup> While the FCC declined to address this argument again in its Third Report and Order, significantly the FCC did not disavow the position it took in the First Report and Order. BellSouth argues that "the FCC made clear that 'currently combined' elements are those elements physically combined as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes basis.'" BellSouth's Brief on Impact of Third Report and Order, p. 5. The FCC, however, was not stating that Rule 51-315(b) is limited only to currently combined elements. Instead, the FCC was stating that since, at the least, Rule 51-315(b) includes currently combined elements, and since when a CLEC purchases special access the elements are currently combined, that even under the

remains the literal one contained in the First Report and Order. The Commission finds that "currently combines" means ordinarily combined within the BellSouth's network, in the manner which they are typically combined. Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed. However, in the event that the Eighth Circuit Court of Appeals determines that ILECs have no legal obligation to combine UNEs under the Federal Act, the Commission will reevaluate its decision on this issue.

Based on the FCC's Third Report and Order, even if this Commission were to limit the definition of "currently combines" to the more restrictive "currently combined" interpretation, CLECs would still be able to obtain and use the same UNE combinations. The process of obtaining them would be more cumbersome, however, and would serve no purpose except to complicate the ordering process and impede competition. According to the FCC, CLECs can purchase services such as special access and resale even when the network elements supporting the underlying service are not physically connected at the time the service is ordered. At the point when the CLEC begins to receive such service, the underlying network elements are necessarily physically connected. The CLECs can then obtain such currently combined network elements as UNE combinations at UNE prices. Third Report and Order, ¶¶ 480, 486. The Commission finds that even assuming arguendo that "currently combines" means "currently combined," rather than go through the circuitous process of requiring the CLEC to submit two orders (e.g., one for special access followed by another to convert the special access to UNEs) to receive the UNE combination, the process should be streamlined to allow CLECs to place only one order for the UNE combination.

To the extent that ICG seeks to obtain other combinations of UNEs that BellSouth ordinarily combines in its network, which have not been specifically priced by this Commission when purchased in combined form, the Commission finds that ICG can purchase such UNE combinations at the sum of the stand-alone prices of the UNEs which make up the combination. If ICG is dissatisfied with using the sum of the stand-alone rates, it is free to pursue the bona fide request process with BellSouth to seek a different rate. ICG may purchase EELs from BellSouth at the rates and subject to the conditions established in the Commission's Docket No. 10692-U.

On November 24, 1999, the FCC issued a Supplemental Order to its Third Report and Order. In this Supplemental Order, the FCC modified its conclusion in paragraph 486 of the Third Report and Order to now allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service. Supplemental Order, ¶ 4. IXCs may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities, unless the IXC uses the combination "to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." *Id.* at ¶ 5. Accordingly, the Commission finds that in order for ICG to use a loop/transport combination to provide special access service, it must provide a significant amount of local exchange service over the combination. Further, such loop/transport combinations must be connected to a CLEC switch and must be used in the provision, of circuit switched telephone exchange service. ICG

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more restrictive "currently combined" interpretation, CLECs would be able to convert special access to loop-transport combinations at UNE rates. Third Report and Order ¶ 480.

must "self-certify that they are providing a significant amount of local exchange service over combinations of unbundled loops and transport network elements" in order to convert special access facilities to UNE pricing. *Id.* at footnote 9. The FCC did not find it to be necessary for ILECs and requesting carriers to undertake auditing processes to monitor whether requesting carriers are using UNEs solely to provide exchange access service. *Id.* The Commission finds that BellSouth shall not make auditing a precondition to converting special access to UNEs; thus the conversion of facilities will not be delayed. The Commission finds, however, that BellSouth shall be allowed to audit ICG's records in order to verify the type of traffic being transmitted over EELs. If, based on its audits, BellSouth concludes that ICG is not providing a significant amount of local exchange traffic over the facilities, BellSouth may file a complaint with this Commission.

**D. Should BellSouth be required to enter into a binding forecast of future traffic requirements for a specified period?**

ICG requested that the interconnection agreement include binding forecasts for trunking facilities to deliver to ICG traffic originated in BellSouth's network. Currently, BellSouth is responsible for the costs associated with the trunking for calls from a BellSouth customer to an ICG customer. Tr. 86. However, ICG testified that binding forecasts would ensure that BellSouth would have the requisite capacity on its network to meet ICG's traffic needs as its business expands. In addition, ICG testified that it would commit to BellSouth for a specified volume of traffic to be delivered by BellSouth. If the traffic volume does not meet the forecasted levels, ICG committed to pay BellSouth's full costs for the unused trunks. Tr. 86-87. In response, BellSouth argued that binding forecasts are not required by the Federal Act. Moreover, BellSouth questions whether ICG has contemplated all the costs related to binding forecasts. BellSouth's Post-Hearing Brief, p.30.

Merely because an issue is not explicitly spelled out in the Federal Act, does not render it outside its scope. Binding forecasts relate to the quality of service that ICG can provide its customers. Enabling CLECs to provide quality service to its customers promotes competition, and promoting competition is an intent of the Federal Act. The binding forecasts would provide a benefit to ICG without exposing BellSouth to any risk, so long as the costs of unused trunks are passed on to ICG. The interconnection agreement should include the option of the binding forecasts requested by ICG, under the condition that ICG pays for BellSouth's full costs for the unused trunks.

**E. Should the Commission order enforcement mechanisms to ensure BellSouth's compliance with the Performance Measures included in the interconnection agreement?**

In its May 27, 1999, Petition for Arbitration, ICG included the following issues related to Performance Standards/Measures:

- a. Should BellSouth be subject to liquidated damages for failing to meet the time intervals for provisioning UNEs?



- b. Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the Parties?
- c. Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?
- d. Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?
- e. Should BellSouth continue to be responsible when the duration of service's failure exceeds certain benchmarks?
- f. Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?
- g. Should BellSouth continue to be responsible when the duration of service's failure to meet the grade of service requirements exceeds certain benchmarks?
- h. Should BellSouth be required to pay liquidated damages when BellSouth fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?
- i. Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmarks?

Although the parties reached agreement at the hearing on service quality measurements, the issue of enforcement of the measurements remains unresolved. ICG argued that in order for the performance standards to which the parties have agreed to have meaning, enforcement mechanisms must be in place. ICG Post-Hearing Brief, p. 41. Without the threat of penalty, BellSouth does not have enough of an incentive to meet the performance standards. BellSouth counters with both a legal and a policy argument. Its legal argument is that ICG is asking the Commission to award compensatory damages, which is outside the scope of Commission authority. BellSouth's Post-Hearing Brief, p. 32-33. BellSouth's policy argument is that it is unnecessary to include enforcement mechanisms in the interconnection agreement because ICG can make use of the Commission's complaint procedures. *Id.* at 34.

Addressing the legal issue first, the inclusion of enforcement mechanisms in an interconnection agreement are distinguishable from awarding compensatory damages. BellSouth

cites Georgia Public Service Commission v. Atlanta Gas Light Company,<sup>2</sup> to support its claim that the Commission does not have the authority to order the inclusion of enforcement mechanisms in an interconnection agreement. This case involved the Commission ordering a refund to customers after the Company charged a rate that the Commission approved. There is nothing retroactive, however, about the Commission ordering enforcement mechanisms in an interconnection agreement. Moreover, the mere inclusion of the enforcement mechanisms does not, in and of itself, amount to compensatory damages. It is only providing an incentive for BellSouth to meet the performance standards to which it has agreed. In any event, the Commission is specifically authorized to set and enforce terms and conditions of interconnection and unbundling. O.C.G.A. § 46-5-164. Therefore, the Commission concludes that it has the authority to order enforcement measures as part of an interconnection agreement.

Despite the Commission's jurisdiction in this area, the specific enforcement measures advocated by ICG, and listed under the Statement of Proceedings, do not find adequate support in the record. The Commission reserves the jurisdiction to adopt for this agreement, enforcement mechanisms that are ordered in future arbitration proceedings.

### **III. CONCLUSION AND ORDERING PARAGRAPHS**

The Commission finds and concludes that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

**WHEREFORE IT IS ORDERED**, pending the adoption of a federal rule, dial-up calls to ISPs should be treated as local calls for purposes of reciprocal compensation. ILECs and CLECs should be compensated for transport and delivery of ISP-bound calls based on the rates established in Docket No. 7061-U. However, the Commission directs the parties to track all reciprocal compensation payments, which shall be subject to a true-up mechanism, based upon the outcome of the FCC's Rule-Making in CC Docket 99-68 on ISP-bound traffic.

**ORDERED FURTHER**, that for the purposes of reciprocal compensation, ICG is entitled to the tandem switch rate,

**ORDERED FURTHER**, that BellSouth is obligated to provide to ICG EELs at UNE prices because the network elements that comprise EELs are routinely combined in BellSouth's system,

**ORDERED FURTHER**, that the arbitration agreement shall provide ICG with the option of binding forecasts for trunking facilities to deliver to ICG traffic originated in BellSouth's network, provided that ICG is responsible for the costs of unused trunks,

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<sup>2</sup> 205 Ga. 863, 55 S.E.2d 618 (1949)

**ORDERED FURTHER**, that enforcement mechanisms are within the Commission's authority. However, the measures proposed by ICG in this proceeding are not supported by the record. Therefore, the Commission will reserve its jurisdiction to incorporate enforcement measures that are approved in a future interconnection arbitration into the ICG-BellSouth interconnection agreement.

**ORDERED FURTHER**, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

**ORDERED FURTHER**, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 1st day of February, 2000.

---

Helen O'Leary  
Executive Secretary

---

Bob Durden  
Chairman

---

Date

---

Date



STATE OF ALABAMA  
ALABAMA PUBLIC SERVICE COMMISSION  
P O BOX 991  
MONTGOMERY, ALABAMA 36101-0991

JIM SULLIVAN, PRESIDENT  
JAN COOK, ASSOCIATE COMMISSIONER  
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.  
SECRETARY

In the Matter of: ) DOCKET 27069  
)  
Petition by ICG Telecom Group, Inc. for )  
Arbitration of Interconnection )  
Agreement with BellSouth )  
Telecommunications, Inc. Pursuant to )  
Section 252(b) of the )  
Telecommunications Act of 1996 )  
)

ORDER DENYING RECONSIDERATION

I. Background

BY THE COMMISSION:

On December 10, 1999, BellSouth Telecommunications, Inc. (BellSouth), filed a Motion for Reconsideration (BellSouth's Motion) of certain portions of the Commission's November 10, 1999 Final Order on Arbitration (the Commission's Order) entered in the above-styled cause. Specifically, BellSouth seeks reconsideration concerning: (1) The interim inter-carrier compensation rates adopted by the Commission for Internet service provider (ISP) traffic; and (2) the Commission's determination that ICG Telecom Group, Inc. (ICG) is entitled to reciprocal compensation at BellSouth's tandem interconnection rate. ICG filed a Response in Opposition (ICG's Response) to BellSouth's Motion for Reconsideration on December 20, 1999.

II. BellSouth's Arguments in Support of Reconsideration

BellSouth bases its request for the Commission to reconsider the interim inter-carrier compensation rates established for ISP traffic in the November 10, 1999 Order on a claim that the Commission improperly relied on the elemental rates established in the *UNE Pricing Docket*<sup>1</sup> in arriving at those rates. BellSouth alleges that the elemental rates established in the *UNE Pricing Docket* are based on an assessment of BellSouth

<sup>1</sup> *In the Matter of Generic Proceedings; Consideration of TELRIC Studies, Docket No. 26029 (August 25, 1998).*

## DOCKET 27069 - #2

cost studies which examine the costs of transporting and terminating voice traffic, not the costs of handling ISP-bound traffic.

The crux of BellSouth's argument is that ISP traffic has, on average, significantly longer holding times than traditional voice traffic. BellSouth relies primarily on a March 1998 National Association of Regulatory Utility Commissioners (NARUC) study<sup>2</sup> and a 1996 study performed by BellCore<sup>3</sup> for this proposition.

BellSouth advocates an adjusted ISP call length proposal for Alabama similar to one submitted to the North Carolina Utilities Commission by ICG. BellSouth asserts that the adoption of such a proposal in Alabama would result in rates for ISP traffic which are approximately twenty-five percent (25%) lower than the rates approved by the Commission in the *UNE Pricing Docket* for traditional voice traffic. The BellSouth Motion for Reconsideration contains a rate comparison chart reflecting the magnitude by which elemental rates will be reduced if an adjusted ISP call length proposal is utilized.

Based on the foregoing, BellSouth asserts that the payment of reciprocal compensation for ISP-bound traffic based on the rates for transporting and terminating traditional local voice traffic will result in an over-recovery of call set-up costs. BellSouth thus urges the Commission to reconsider the decision rendered in its November 10, 1999 Order concerning elemental rates for interim inter-carrier compensation for ISP traffic.

With regard to the Commission's ruling that ICG is entitled to reciprocal compensation at the tandem interconnection rate, BellSouth asserts that the Commission is relying on a misinterpretation of the prevailing law and unsupported findings of fact. Specifically, BellSouth argues that ICG failed to establish at hearing that its switch actually performs functions similar to BellSouth's tandem switch.

BellSouth maintains that the only evidence presented by ICG concerning switch functionality revolved around a network diagram submitted by ICG witness Starkey. Based on that diagram, BellSouth asserts that it is clear that: (1) ICG does not

<sup>2</sup> Report of the NARUC Internet Working Group, *Pricing and Policies for Internet traffic on the Public Switched Network*, at 2 (March 1998).

<sup>3</sup> Alal and Gordon, *Impacts of Internet Traffic of LEC Networks and Switching Systems*, at 3-4 (BellCore 1996).

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interconnect end offices or perform trunk-to-trunk switching, but rather performs line-to-trunk or trunk-to-line switching; (2) to the extent ICG has a switch in Alabama, it performs only end office switching functions and does not switch BellSouth's traffic to another ICG switch; and (3) based on the information provided, ICG's switch does not provide other centralization functions such as call recording, routing of calls to operator services and signaling conversion for other switches as BellSouth's tandem switches do.

BellSouth also alleges that the equipment which ICG collocates in BellSouth central offices appears to be nothing more than a subscriber loop carrier which is part of loop technology and provides no switching functionality. BellSouth thus maintains that ICG's switch is not providing a transport or tandem function, but is switching traffic through its end office for delivery of traffic from that switch to the called party's premises. Since no switching is performed in such collocation arrangements, BellSouth asserts that the lines involved are simply long loops transported to ICG's switch, not trunks. BellSouth argues that such long loop facilities do not qualify as facilities over which local calls are transported and terminated as described by the Telecommunications Act of 1996. BellSouth therefore, argues that such facilities are not eligible for reciprocal compensation.

BellSouth further asserts that even if it is incorrectly assumed that ICG's switch performs the same functions as BellSouth's tandem switch, there is no evidence in the record that ICG's switch actually serves a geographic area comparable to BellSouth's tandem switch. According to BellSouth, ICG failed to identify where its customers are located - information that is essential to support a finding that ICG's switch serves a comparable geographic area. BellSouth thus urges the Commission to reconsider its decision and deny ICG's request for reciprocal compensation at the tandem interconnection rate.

### III. The Arguments Raised by ICG

In its December 20, 1999, Response in Opposition to BellSouth's Motion for Reconsideration, ICG contends that BellSouth's argument that the rates established in the *UNE Pricing Docket* are inappropriate for purposes of determining reciprocal

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compensation for ISP traffic due to the alleged longer holding times for ISP traffic constitutes a substantial new argument which BellSouth is improperly raising for the first time in its Motion for Reconsideration. ICG further alleges that BellSouth is attempting to support its substantial new argument with evidence which was available prior to the arbitration proceedings in Alabama, but was not introduced by BellSouth.

According to ICG, the Commission must look to Rule 21 of the Commission's Rules of Practice and Rule 59 of the Alabama Rules of Civil Procedure (ARCP) in order to determine whether BellSouth is entitled to reconsideration based on the new evidence submitted in its Motion for Reconsideration<sup>4</sup>. ICG insists that BellSouth is entitled to relief only if it can demonstrate that the new evidence it seeks to introduce was discovered after trial, that such evidence could not have been discovered with due diligence prior to trial, that such evidence is material to the issue and not merely cumulative or impeaching, and that said evidence is of such a nature that a different verdict would probably result if a new hearing were granted<sup>5</sup>.

ICG contends that BellSouth cannot meet the standards discussed immediately above. According to ICG, BellSouth is intimately familiar with the BellSouth cost studies relied upon by the Commission in its establishment of interim inter-carrier compensation rates for ISP traffic. ICG asserts that BellSouth was in a position at any time prior to or during the arbitration hearing, or even following the hearing in post-hearing briefs, to make the arguments it now attempts to make in its Motion concerning its cost studies.

ICG further alleges that the NARUC Report that BellSouth cites for the proposition that the hold times associated with ISP-bound calls are longer than the hold times for other calls hardly constitutes new evidence given its March 1998 date. ICG also points out that the modified ISP call holding time proposal it submitted to the North Carolina Utilities Commission was known to BellSouth prior to the arbitration hearing in Alabama, but was not even referenced by BellSouth in its presentation before the Arbitration Panel in Alabama.

ICG further clarifies that the modified ISP call holding time proposal it submitted

<sup>4</sup> Citing *Walker v. Alabama Public Service Commission*, 297 So.2d 370 (Ala. 1974); *overruled on other grounds, Ex Parte Andrews*, 520 So.2d 507 (Ala. 1987).

<sup>5</sup> Citing *Talley v. Kellogg Co.*, 546 So.2d 385 (Ala. 1989).

## DOCKET 27069 - #5

to the North Carolina Commission was filed in response to a settlement directive from that Commission. ICG maintains that the North Carolina Commission ultimately rejected its modified ISP call holding time proposal in favor of an ISP compensation arrangement identical to that adopted by this Commission in its November 10, 1999 Order.

ICG surmises that BellSouth's blatant attempt to change the rules of the game in midstream should not be entertained by the Commission based on the principles of the Alabama Rules of Civil Procedure and the Alabama case law discussed above. ICG thus urges the Commission to deny BellSouth's Motion for Reconsideration on the grounds of improperly submitted new evidence and improperly raised arguments.

ICG further asserts that even if the Commission determines that BellSouth's Request for Reconsideration is due to be granted, the interim inter-carrier compensation rates adopted by the Commission for ISP-bound traffic are supported by the evidence of record. ICG in fact maintains that the testimony before the Arbitration Panel and ultimately before the Commission was that the costs associated with a voice call versus an ISP call are exactly the same. ICG argues that the Commission's findings are consistent with that established principle.

ICG further maintains that BellSouth presented no evidence that the costs ICG incurs in delivering calls from BellSouth customers to ICG's ISP customers are in any way different than the costs ICG incurs in delivering traffic originated on BellSouth's network by BellSouth customers to an ICG business or residential customer. In fact, ICG points out that BellSouth presented no evidence whatsoever regarding the costs that ICG incurs in delivering BellSouth-originated calls to ISP's.

Concerning the Commission's determination that ICG is entitled to reciprocal compensation at BellSouth's Tandem interconnection rate, ICG maintains that the Commission's holding in this regard is indeed supported by the evidence of record. ICG alleges that BellSouth simply refuses to recognize that the evidence it claims to be non-existent regarding this issue is amply spread throughout the record and is totally consistent with the Commission's findings and conclusions regarding same. ICG maintains that it amply demonstrated that its switch serves a geographic area



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comparable to BellSouth's tandem switch and performs functions which closely approximate those performed by BellSouth's tandem switch. ICG alleges that its demonstrations in this regard are uncontroverted by BellSouth.

ICG further notes that BellSouth's claim that the facilities between ICG's collocation points in the BellSouth network and ICG's switch location are nothing more than long loop facilities is totally unfounded and constitutes a new argument not previously raised in this proceeding. ICG alleges that had this issue been properly raised in Alabama, ICG would have demonstrated, as it did in proceedings before the Tennessee Regulatory Authority, that the facilities BellSouth characterizes as long loops are in fact purchased from BellSouth as transport.

#### IV. The Findings and Conclusions of the Commission

We have considered the Motion for Reconsideration submitted by BellSouth and ICG's Response thereto in light of the record compiled in this proceeding. Having done so, we are somewhat perplexed by BellSouth's advancement of substantial new arguments which are supported by evidence which is also new to this proceeding. Although BellSouth did not specifically request a hearing on its Motion or further proceedings to address the issues raised therein, the magnitude of the new arguments and the new evidence submitted by BellSouth dictates that the Commission treat BellSouth's Motion as it would a request for rehearing.

ICG is correct in noting that the Commission is primarily guided by Rule 21 of the Commission's Rules of Practice in its evaluation of motions for reconsideration and/or rehearing. The Commission is also required to adhere to the requirements of Code §37-1-105 where rehearings are concerned. Additional consideration must be given to the requirements governing new trials established by Rule 59 of the Alabama Rules of Civil Procedure (ARCP Rule 59) given the Supreme Court of Alabama's long standing holding that the requirements governing motions for a new trial in civil matters in the circuit courts of Alabama also apply to requests for rehearing on Orders of the Commission<sup>6</sup>.

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<sup>6</sup> *Walker v. Alabama Public Service Commission* at p. 374.

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BellSouth did not specify its justification for submitting the new evidence it seeks to introduce in its Motion, but the Commission can only assume that such new evidence is being treated by BellSouth as "newly discovered evidence". The determination of whether to grant a request for a new trial, or in this case a rehearing, based on such newly discovered evidence is largely at the discretion of the Commission. However, well established Alabama case law dictates that in order to be entitled to a new trial on the grounds of "newly discovered evidence", a movant must show that the evidence in question was discovered after trial, that it could not have been discovered with due diligence prior to trial, that it is material to the issue and not merely cumulative or impeaching, and that it is of such a nature that a different verdict would probably result if a new trial were granted<sup>7</sup>.

Clearly, the new evidence relied upon by BellSouth to establish its newly introduced proposition that the allegedly different call holding times associated with ISP traffic dictate lower reciprocal compensation rates for such traffic could, with due diligence, have been discovered and presented to the Commission during the August 11, 1999 arbitration hearing in this cause. The cost studies which BellSouth now attempts to distinguish and the NARUC and BellCore reports which BellSouth relies upon to do so were all available well before the August 11, 1999 arbitration hearing and could have been discovered and introduced by BellSouth. Therefore, it would not now be appropriate to grant BellSouth's request for reconsideration and/or rehearing based on such evidence. The fact that the arguments concerning modified call holding times for ISP traffic had been raised in prior proceedings before the North Carolina Utilities Commission only strengthens this conclusion.

With regard to the issue whether ICG is entitled to reciprocal compensation at the BellSouth tandem interconnection rate, it does not appear that BellSouth has introduced entirely new arguments as contended by ICG. It does, however, appear that BellSouth has expanded its arguments concerning the alleged functional limitations of the switching equipment which ICG operates.

<sup>7</sup> *Weeks v. Danford*, 608 So.2d 387 (Ala. 1992).

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Despite BellSouth's enhanced arguments to the contrary, we are persuaded that the record in this cause reflects that ICG's switch, and the facilities it uses in conjunction therewith, perform functions which so closely approximate those performed by BellSouth's tandem switch that ICG is entitled to the tandem interconnection rate. More particularly, ICG's network relies upon distributed network intelligence to aggregate ICG's customer base into a central switching platform. Even though ICG utilizes a different network architecture than does BellSouth, ICG's switching platform transfers traffic amongst discreet network nodes that exist in the ICG network for purposes of serving groups of ICG customers in the same fashion that BellSouth's tandem switch distributes traffic. The switch employed by ICG in this configuration also serves as ICG's toll center, its operator position system and as ICG's interconnection point with other carriers. BellSouth relies upon its tandem switch to perform the same type functions<sup>8</sup>.

We also expressly affirm our previous conclusion that ICG's switch serves a geographic area comparable to that served by BellSouth's tandem switch. In conjunction with its Birmingham, Alabama switch, ICG utilizes approximately one hundred and fifty miles of company owned fiber-optic facilities, leased fiber-optic facilities, high capacity connections leased from BellSouth and collocation arrangements with BellSouth to aggregate and serve its customers which are spread across the Birmingham metropolitan area<sup>9</sup>. We remain of the opinion that ICG's testimony in this regard sufficiently demonstrates geographic comparability. BellSouth's argument that ICG is collocated in only two BellSouth central offices does not sufficiently controvert ICG's representations of geographic comparability.

In conclusion we affirm our Order of November 10, 1999 in all respects and deny in all respects BellSouth's Motion for Reconsideration and/or Rehearing. The parties are hereby instructed to submit their arbitrated interconnection agreement for Commission approval no later than twenty (20) days from the effective date of this Order.

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<sup>8</sup> Starkey, Tr. p. 103, 130.

<sup>9</sup> Starkey, Tr. pp. 129-130.

DOCKET 27069 - #9

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That based on the foregoing, the Motion for Reconsideration and/or Rehearing submitted by BellSouth Telecommunications, Inc. is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION, That the parties to this cause must submit, within twenty (20) days of the effective date of this Order, their arbitrated interconnection agreement for Commission approval.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause in hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 3rd day of February, 2000.

ALABAMA PUBLIC SERVICE COMMISSION

*Jim Sullivan*  
Jim Sullivan, President

*Jan Cook*  
Jan COOK, Commissioner

*George C. Wallace, Jr.*  
George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

*Walter L. Thomas, Jr.*  
Walter L. Thomas, Jr., Secretary



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
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POST OFFICE BOX 615  
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February 8, 2000

To: All parties of record

RE: Case No. 1999-218

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

Sincerely,

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

Stephanie Bell  
Secretary of the Commission

SB/sa  
Enclosure

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                       |   |          |
|---------------------------------------|---|----------|
| PETITION OF ICG TELECOM GROUP, INC.   | ) |          |
| FOR ARBITRATION WITH BELLSOUTH        | ) | CASE NO. |
| TELECOMMUNICATIONS, INC. PURSUANT TO  | ) | 99-218   |
| SECTION 252 OF THE TELECOMMUNICATIONS | ) |          |
| ACT OF 1996                           | ) |          |

O R D E R

ICG Telecom Group, Inc. filed a motion for an extension of time to file post-hearing briefs. BellSouth Telecommunications, Inc. has no objection.

Accordingly, IT IS THEREFORE ORDERED that the motion for an extension to file post-hearing briefs shall be granted. Likewise, the date by which the Commission must render its decision has been extended to March 2, 2000.

Done at Frankfort, Kentucky, this 8th day of February, 2000.

By the Commission

ATTEST:

  
Executive Director

Before the  
COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
Frankfort, Kentucky

RECEIVED  
JAN 21 2000  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

PETITION OF ICG TELECOM )  
GROUP, INC. FOR ARBITRATION )  
WITH BELLSOUTH ) Docket No. 99-218  
TELECOMMUNICATIONS, INC. )  
PURSUANT TO SECTION 252 )  
OF THE TELECOMMUNICATIONS )  
ACT OF 1996 )

POST-HEARING BRIEF OF ICG TELECOM GROUP, INC.

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January 21, 2000



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Before the  
COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION  
Frankfort, Kentucky

In the Matter of:

|                             |   |                   |
|-----------------------------|---|-------------------|
| PETITION OF ICG TELECOM     | ) |                   |
| GROUP, INC. FOR ARBITRATION | ) |                   |
| WITH BELLSOUTH              | ) | Docket No. 99-218 |
| TELECOMMUNICATIONS, INC.    | ) |                   |
| PURSUANT TO SECTION 252     | ) |                   |
| OF THE TELECOMMUNICATIONS   | ) |                   |
| ACT OF 1996                 | ) |                   |

**POST-HEARING BRIEF OF ICG TELECOM GROUP, INC.**

ICG Telecom Group, Inc. ("ICG") hereby files its Post-Hearing Brief in the above-captioned proceeding.

**INTRODUCTION**

ICG is a competitive local exchange carrier ("CLEC") that offers local exchange and other services in Kentucky. ICG has invested about \$27 million in facilities in Kentucky. Schonhaut Redirect Tr. at 140. In order to provide service, ICG sought, and entered into, an interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth"). On December 18, 1998, pursuant to the terms of the parties' agreement, BellSouth notified ICG that it wished to negotiate a new agreement pursuant to Section 251 of the Communications Act of 1934, as amended ("Act"). Despite meeting for several negotiating sessions over the next several months, the parties were unable to reach agreement on a number of issues. On May 27, 1999, ICG filed a Petition for Arbitration pursuant to Section 252 of the Act, requesting that the Kentucky Public Service Commission ("Commission") resolve twenty-six disputed issues.

As a result of settlement negotiations between the parties, only six issues remain for decision by the Commission. They are as follows:

1. Whether the Commission should require reciprocal compensation for calls to Internet Service Providers ("ISPs") (Petition for Arbitration Issues 1 and 8);

2. Whether, if ICG's switch serves a similar geographic area as BellSouth's tandem switch, ICG is entitled to reciprocal compensation at the tandem rate, particularly where (although not required), ICG's switch also provides the same functionality as BellSouth's tandem switch (Petition for Arbitration Issue 7);

3. Whether BellSouth should be required to make the Enhanced Extended Link ("EEL") available as an unbundled network element ("UNE") combination, at UNE prices (Petition for Arbitration Issue 4);

4. Whether the Commission should order performance measures, backed by appropriate enforcement mechanisms, to ensure that BellSouth provides nondiscriminatory service to ICG on parity with the service BellSouth provides to itself and its retail customers (Petition for Arbitration Issues 19-26);

5. Whether BellSouth should be required to provision the requisite trunking facilities to deliver traffic from BellSouth's network to ICG when ICG is willing to enter into a binding forecast of traffic volume from BellSouth to ICG and will pay BellSouth for the provisioned facilities, regardless of whether the traffic reaches the forecasted levels (Petition for Arbitration Issue 11); and

6. Whether BellSouth should be required to offer packet switching on a UNE basis (Petition for Arbitration Issue 3).

The disputed issues between ICG and BellSouth have been or are being arbitrated by the parties in five other states throughout BellSouth's operating region. As of the filing of this brief, three of those states – North Carolina, Alabama and Florida – have issued arbitration orders resolving the disputed issues. The North Carolina and Alabama commissions ruled in ICG's favor

on virtually every issue before them,<sup>1</sup> including reciprocal compensation for ISP-bound traffic. *In re Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-582, Sub 6 (N.C. Utils. Comm'n Nov. 4, 1999) ("North Carolina Order"); *In re Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket 27069 (Ala. Pub. Serv. Comm'n Nov. 10, 1999) ("Alabama Order").

The Florida commission, with regard to compensation for ISP-bound traffic, decided to maintain the status quo of the parties under their existing interconnection agreement<sup>2</sup> until the Federal Communications Commission ("FCC") issues a final ruling on inter-carrier compensation for such traffic. The Florida commission largely ruled against ICG on the other issues pending before it. *In re Petition of ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 990691-TP, Order No. PSC-00-0128-FOF-TP (Fla. Pub. Serv. Comm'n Jan. 14, 2000) ("Florida Order").

Each of the six remaining open issues is addressed below.

**I. THE COMMISSION SHOULD REQUIRE BELLSOUTH AND ICG TO PAY EACH OTHER RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC**

The issue of reciprocal compensation for ISP-bound traffic is one of critical importance to ICG and CLECs generally. ISPs have not had their needs met by BellSouth and other incumbent

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<sup>1</sup> Many of the issues had been settled by the parties, eliminated by commission ruling or otherwise were not before the Alabama and North Carolina commissions.

<sup>2</sup> The parties currently are in litigation over the effect of their existing agreement, with ICG contesting BellSouth's refusal to pay reciprocal compensation for ISP-bound traffic.



local exchange carriers ("ILECs"). See *Schonhaut Direct* at 4-5; *Starkey Direct* at 6-7, 11-12, 14. As a result, ICG and other CLECs have been far more successful in obtaining ISP customers than has BellSouth. BellSouth's attempt to exclude those customers from reciprocal compensation targets that segment of ICG's customer base where ICG has been most successful in competing with BellSouth and threatens to leave ICG in the position of delivering a large number of calls from BellSouth customers – and thereby incurring the costs that BellSouth avoids – without any compensation from BellSouth. *Starkey Direct* at 6.

ICG's loss would be BellSouth's gain because BellSouth would be given a free ride while ICG incurred the costs associated with providing Internet access to BellSouth customers. This would translate into a double competitive advantage for BellSouth: not only would it avoid paying the costs generated by its customers, it would foist those costs off on a competitor.

Having lost in the marketplace, BellSouth is now asking the Commission to distort that market result and provide BellSouth with protection from the competition that has begun to erode its monopoly market share. The Commission should not allow BellSouth to shield itself from the pressures of competition and to avoid having to pay for the costs its customers have generated.

**A. The Commission Has Authority To Address Compensation For ISP-Bound Traffic**

The threshold issue that the Commission must address in deciding whether to require reciprocal compensation for ISP-bound traffic is whether it has the authority to do so after the FCC's February 26, 1999 order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Declaratory Ruling in CC Docket No. 96-98 & Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd 3689 (1999) ("*Declaratory Ruling*"). As discussed in I.A.1 below, the answer to that question is yes. The FCC's *Declaratory Ruling* is unequivocal that the Commission has the authority to address compensation for ISP-bound traffic. Moreover, as

explained in I.A.2 below, even leaving the *Declaratory Ruling* aside, the Commission would have the authority – indeed the duty – under Section 252 of the Act to address compensation for ISP-bound traffic as an “open issue” for the parties’ negotiation/arbitration.

BellSouth does not seriously contest the Commission’s authority to address compensation for ISP-bound traffic under the *Declaratory Ruling*. Rather, BellSouth argues that the Commission lacks the power to do so in a Section 251/252 arbitration. For the reasons discussed in I.A.3 below, this argument depends on a tortured reading of the Act and is completely without merit.

1. **The FCC’s February 26, 1999 Declaratory Ruling Makes Clear That the Commission Has Authority to Address Compensation for Calls to ISPs**

In the *Declaratory Ruling*, the FCC held that, although mixed, ISP-bound traffic appears to be largely interstate. *Declaratory Ruling* ¶ 12. The FCC therefore asserted jurisdiction over ISP-bound traffic. *Id.*

The FCC was explicit, however, that its jurisdictional ruling in no way precludes state commissions from requiring reciprocal compensation for ISP-bound traffic under Section 252 of the Act. The following excerpts from the *Declaratory Ruling* make this absolutely clear:

Our determination that at least a substantial portion of dial-up ISP-bound traffic is interstate does not, however, alter the current ESP exemption . . . . Nor, as we discuss below, is it dispositive of interconnection disputes currently before state commissions.<sup>3</sup>

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We find no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic.<sup>4</sup>

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<sup>3</sup> *Declaratory Ruling* ¶ 20 (emphasis added).

<sup>4</sup> *Id.* ¶ 21.

[N]othing in this Declaratory Ruling precludes state commissions from determining, pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule pending completion of the rulemaking we initiate [in this Declaratory Ruling.]<sup>5</sup>

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Even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.<sup>6</sup>

While the Declaratory Ruling was completely clear on this point, the FCC has since provided an interpretation of that decision that removes any doubt as to the authority of state commissions to address reciprocal compensation for ISP-bound traffic in Section 252 arbitrations. In *In re Bell Atlantic Delaware, Inc. v. Global NAPs, Inc.*, No. E-99-22, 1999 FCC LEXIS 6188 (Dec. 2, 1999) (“Global NAPs”), the FCC had before it a formal complaint brought by Bell Atlantic challenging Global NAPs’ federal tariff, which included a per-minute charge assessed on originating local exchange carriers (“LECs”) for the delivery of ISP-bound traffic. Bell Atlantic contended that compensation for the delivery of ISP-bound calls was an open issue before the Massachusetts Department of Telecommunications and Energy (“Massachusetts DTE”) and the tariff provision was therefore unreasonable because it imposed an uncertain charge. *Id.* at \*2. The FCC agreed, finding that there was an open dispute concerning the application of reciprocal compensation to ISP-bound traffic before the Massachusetts DTE and that the tariff therefore was contingent and unclear. *Id.* at \*30.

In the course of so holding, the FCC analyzed the Declaratory Ruling’s discussion of state authority to address reciprocal compensation for ISP-bound traffic. The FCC stated:

[I]t was within our discretion to direct in the [Declaratory Ruling] that, on an interim basis, inter-carrier compensation for ISP-bound traffic should be

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<sup>5</sup> *Id.* ¶ 27 (emphasis added).

<sup>6</sup> *Id.* ¶ 25 (emphasis added).

treated as an "open issue" subject to the state-supervised negotiation/mediation/arbitration processes set forth in sections 251 and 252 of the Act. Accordingly, whether the existing interconnection agreement between Bell Atlantic and Global NAPs does or should provide for inter-carrier compensation for ISP-bound traffic is an appropriate area of inquiry for the Massachusetts DTE under sections 251 and 252 of the Act, even though ISP-bound traffic is largely interstate.

*Id.* at \*27-\*28. Obviously, if reciprocal compensation for ISP-bound traffic is an appropriate subject for review by the Massachusetts DTE, it is also appropriate for review by the Commission.

**2. Section 252 Provides the Commission with Authority to Address the Issue**

As the *Global NAPs* decision suggests, the Commission would have ample authority to address this issue under Section 252 of the Act even absent the *Declaratory Ruling*. Section 252(b)(4)(C) of the Act expressly mandates that state commissions take action during an arbitration proceeding to "resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of [Section 252] upon the parties to the agreement." 47 U.S.C. § 252(b)(4)(C). Section 252(c) of the Act goes on to state, in relevant part:

In resolving by arbitration . . . any open issues and imposing any conditions upon the parties to the agreement, a State commission shall –

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the [FCC] pursuant to section 251 of this title . . . .

47 U.S.C. § 252(c). Accordingly, state commissions are not only permitted but are in fact obligated by Section 252 of the Act to resolve any and all issues for which the parties have requested resolution, provided that those issues remain open and that resolution of those issues does not conflict with Section 251 of the Act. And the FCC has, as discussed below, explicitly stated that ordering reciprocal compensation for ISP-bound traffic does not conflict with any federal scheme.

Not only does the *Declaratory Ruling* hold that the states can set inter-carrier compensation rates for ISP-bound traffic, but also the FCC tentatively concluded that the final rule it ultimately will adopt will be that the states *should* do so:

We tentatively conclude that, as a matter of federal policy, the inter-carrier compensation for this interstate telecommunications traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Act. Resolution of failures to reach agreement on inter-carrier compensation for interstate ISP-bound traffic then would occur through arbitrations conducted by state commissions, which are appealable to federal district courts.

*Declaratory Ruling* ¶ 30. Obviously, if the FCC believes that the most appropriate mechanism for establishing inter-carrier compensation mechanisms for ISP-bound traffic is the negotiation/state arbitration process, then, in the FCC's view, there is no question that state commissions have the authority to address the issue in Section 252 arbitrations, notwithstanding the FCC's jurisdictional finding.

BellSouth's arguments to the contrary are nothing more than a collateral attack on the FCC's *Declaratory Ruling*. Such arguments may not be heard by the Commission, but, pursuant to the Hobbs Act, only by federal appellate courts. 28 U.S.C. § 2342. Indeed, the United States Court of Appeals for the Ninth Circuit has specifically held that challenges to the FCC's holding in the *Declaratory Ruling* that state commissions have jurisdiction to address reciprocal compensation for ISP-bound traffic fall within the scope of the Hobbs Act. *US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1120 (9th Cir. 1999) ("*US West*") ("[T]he Hobbs Act grants exclusive jurisdiction to courts of appeals to determine the validity of all final orders of the FCC."). Thus, the only appropriate forum for BellSouth's arguments was an appellate court challenge of the *Declaratory Ruling*. *Id.*

In fact, BellSouth raised precisely such a challenge before the United States Court of Appeals for the District of Columbia Circuit. See *Bell Atlantic Tel. Cos. v. FCC*, No. 99-1094 (D.C. Cir. filed

Mar. 8, 1999). BellSouth is proceeding with its court challenge to the *Declaratory Ruling*. That proceeding is the appropriate forum. BellSouth is precluded, as a matter of law, from raising the same challenge here.

**B. The Commission Should Require Reciprocal Compensation For ISP-Bound Calls**

Having established that the Commission has authority to require reciprocal compensation for ISP-bound traffic, the question becomes whether it should. Both the simple principle that ICG is entitled to be reimbursed for the costs that it incurs on behalf of BellSouth and important public policy considerations dictate that the answer to that question is yes. Moreover, it is significant that the overwhelming majority of the state commissions and all of the federal courts that have addressed the issue have required or upheld reciprocal compensation for ISP-bound traffic.

**1. ICG Incurs Costs – That BellSouth Avoids – in Delivering BellSouth Traffic to ISP Customers and Is Entitled to Recover Those Costs**

At issue is whether BellSouth should be required to pay the costs that ICG incurs when ICG delivers traffic that originates on BellSouth's network and is directed to a customer on ICG's network that happens to be an ISP. The costs incurred by ICG in delivering a call bound for an ISP customer do not differ from those generated by calls bound for an ICG customer. As discussed in I.B.1.a below, ICG believes that in both instances it is entitled to recover those costs from BellSouth. Moreover, as ICG demonstrates in section I.B.1.b below, BellSouth should be the party responsible for paying the costs because it has the closest relationship to the cost-causing customer who placed the call.

BellSouth takes the audacious position that in the case of ISP-bound traffic, not only should ICG make its facilities available to BellSouth customers for free, but ICG should *pay BellSouth* a portion of the revenue that ICG receives from its ISP customers. As discussed in I.B.1.c below, that

argument is utterly without merit because (aside from being economically irrational) it assumes a regulatory framework for ISP traffic that the FCC has repeatedly and unequivocally rejected.

**a. ICG Incurs the Same Costs in Delivering BellSouth Traffic to an ICG Customer Regardless of Whether the Customer Is an ISP**

The parties agree that one of the chief principles governing inter-carrier compensation is that carriers should be compensated for the costs they incur as a result of delivering each other's traffic. Hendrix Cross Tr. at 174. All that ICG is requesting is that it be permitted to recover the costs it incurs in delivering BellSouth's traffic.

**(i) BellSouth Concedes That in the Case of Local Calls to Non-ISP Customers, BellSouth Should Pay Reciprocal Compensation to ICG to Compensate ICG for the Costs ICG Incurs on Behalf of BellSouth**

In the case of a BellSouth-originated call delivered by ICG to an ICG customer, BellSouth does not contest that the payment of reciprocal compensation is appropriate because BellSouth is paying ICG for the costs ICG incurs in delivering BellSouth's traffic. This was made clear when, during his cross-examination, BellSouth witness Hendrix was asked about two of the diagrams attached to his direct testimony: Diagram A, depicting a local call originated on BellSouth's network and delivered to a BellSouth customer; and Diagram B, depicting two calls, one a local call originated by an End User on BellSouth's network and delivered by a CLEC to the CLEC's End User, and the other a call flowing in the other direction (a call originated by an End User on the CLEC's network and delivered by BellSouth to a BellSouth End User). Mr. Hendrix agreed that for local calls to non-ISP customers:

BellSouth, based on the rates assuming cost-based rates, would, in fact, recover its costs from the end user in Diagram A and, in Diagram B, will pay the CLEC for terminating that call because BellSouth is not incurring those costs to terminate the call to the end user.

Hendrix Cross Tr. at 173-74. As between paying reciprocal compensation for the delivery of a local call and delivering that call itself, BellSouth is economically indifferent because in the first case, BellSouth is simply paying a CLEC for the costs BellSouth avoids by not delivering the call itself. Starkey Direct at 10.

**(ii) BellSouth Concedes the Network Functionality and the Costs Incurred Are the Same Regardless of Whether the End User to Whom ICG Delivers a BellSouth Call Is an ISP**

The record in this proceeding establishes that BellSouth-originated calls delivered by ICG to an ISP are no different from calls delivered to a customer in either their use of ICG's network or the costs ICG incurs on BellSouth's behalf. As ICG witness Starkey testified:

[R]egardless of whether the originating customer dials either [an] ICG residential customer or [an] ISP customer, the call travels from the originating customer's premises to the BST central office switch, which then routes the call to the BST/ICG interconnection point and ultimately to the ICG switch. From the ICG switch the call is then transported to either the residential customer or the ISP customer depending upon the number dialed by the BST caller.

Starkey Direct at 16; see Starkey Direct, Diagram 1 (showing that calls from a BellSouth customer to an ICG residential customer and to an ICG ISP customer are identical in their use of ICG's network). Thus, a "ten minute call originated on the BST network and directed to the ICG network travels exactly the same path, requires the use of exactly the same facilities, and generates exactly the same level of cost regardless of whether that call is dialed to an ICG local residential customer or to an ISP provider." Starkey Direct at 16.<sup>7</sup>

BellSouth concedes that there is no difference between how BellSouth-originated local voice calls and ISP-bound calls are carried by ICG's network. BellSouth's own exhibits in this proceeding make it clear that the calls are identical. Compare Diagrams B and F attached to BellSouth witness

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<sup>7</sup> It is irrelevant that once the call reaches the ISP, it continues on to its ultimate destination, an Internet web site. It is the portion of the call that is carried on ICG's facilities that is relevant and that segment of the call is identical to any local voice call in terms of how ICG's network is used.



Hendrix's direct testimony. Diagram B depicts a call originated by a BellSouth End User, carried by BellSouth to the point of interconnection, and then delivered by a CLEC to the CLEC's non-ISP End User. Diagram F depicts a call originated by a BellSouth End User, carried by BellSouth to the point of interconnection, and then delivered by a CLEC to the CLEC's ISP End User customer. Significantly, the two diagrams are completely identical, except for the labeling of the CLEC's customer in the one instance as an ISP and in the other as a non-ISP. In other words, by BellSouth's own admission, calls to ICG's customers, whether or not they happen to be an ISP, transit BellSouth's and ICG's networks in exactly the same manner. As BellSouth witness Hendrix conceded:

I would agree that they're very similar. I would agree that you have end office switching on the left. You have tandem switching on both calls on the right. You have a switching function that is taking place at both end offices with the circle, and then you have a premise on the right; one is the carrier, and one is the end user. I would agree that, from that standpoint, if I can draw a closure to that, that those functions are very similar and, in many cases, one would argue that they could very well be the same.

Hendrix Cross Tr. at 179.

**(iii) There Is No Basis for Treating Calls to ISPs Differently from Other BellSouth-Originated Calls Delivered by ICG**

The Act requires, and the parties have agreed, that they will pay one another reciprocal compensation for local calls. Yet BellSouth would have functionally identical calls to ISPs go completely uncompensated. This runs counter to one of the most basic economic principles: Given that the costs to deliver calls made to residential customers and to ISP customers are identical, the rates associated with recovering those costs should be identical. As the Alabama commission held in finding in ICG's favor on the issue of reciprocal compensation for ISP-bound traffic,

*calls over [LEC] facilities to ISPs appear functionally equivalent to local voice calls which are subject to reciprocal compensation. Since the same network facilities and functions are utilized to complete both types of calls, it is axiomatic that*

*the costs to deliver them are identical. We find that those identical costs dictate that the rates associated with recovering those costs should also be identical.*

*Alabama Order* at 18 (emphasis added). Thus, as with BellSouth-originated calls delivered to customers, ICG is entitled to recover the costs it incurs on BellSouth's behalf when it delivers a call to an ISP.

That ICG collects revenue from the ISP to whom the call is delivered is irrelevant to the question of whether BellSouth should pay ICG for delivering the call. The revenues ICG recovers from its end users, such as ISPs, cover ICG's costs of providing service to such end users, *not the costs ICG incurs in delivering traffic* to those customers. ILECs typically charge end users a monthly fee for local exchange service. From that payment, the ILEC provides the end user with transport and termination of local calls throughout the local calling area. End users do not pay for local calls terminated to them. What is true for end users generally is no less true for ISP customers. See *Declaratory Ruling* ¶ 4 (typically, an ISP "purchases business lines from a LEC, for which it pays a flat monthly fee that allows unlimited incoming calls").

Local exchange rates are set such that end users pay for the facilities dedicated to them and for the use of their provider's network to originate calls. The costs incurred by a carrier in delivering a call are paid from the revenue received for originating the call. Thus, where a BellSouth customer calls an ISP, whether that ISP is on BellSouth's network or on ICG's, the costs incurred in delivering the call must be recovered from the revenue BellSouth receives from its originating subscriber. Where BellSouth delivers the call, the originating revenue covers its costs incurred in doing so. Where ICG delivers the call and incurs the costs that BellSouth avoids, it is no less entitled to recover those costs from BellSouth's originating revenue in the form of reciprocal compensation.

While there *may*, on average, be differences in costs between longer and shorter calls, that has nothing to do with differences in costs between ISP-bound calls and other calls. A carrier incurs the same costs in delivering a 5-minute-long call to an ISP as it does in delivering a 5-minute-long

call to a residential customer, and incurs the same costs in delivering a 100-minute-long call to an ISP as it does in delivering a 100-minute-long call to a residential customer. Taylor Cross Tr. at 151.

To the extent that BellSouth has a valid concern, it is with long calls whether or not they are placed to an ISP.

**b. BellSouth's Customers Cause Costs on ICG's Network**

In the debate as to whom ICG should look to for cost recovery, the parties are in complete agreement on one point. "Cost causation is the fundamental economic principle on which all pricing and cost recovery efforts should be based." Taylor Direct at 6; *see* Starkey Rebuttal at 39. The cost-causer should pay for the costs it causes. This, as BellSouth witness Taylor correctly puts it, "leads to prices that fully recover costs and, at the same time, ensure that consumption occurs – and resources are used – efficiently." Taylor Direct at 7; *see also* Starkey Cross Tr. at 111-12.

**(i) ICG Has No Relationship with the Cost-Causer**

Applying that general principle to the situation at hand means that ICG should recover the costs it incurs in delivering a BellSouth customer's call to an ICG ISP from the BellSouth customer who placed the call and thus is the cost-causer. Taylor Cross Tr. at 148; Starkey Rebuttal at 30-31. It is the BellSouth customer who makes the decision to place the call and it is the caller who benefits from being provided with a link to the ISP through ICG's telephone network. Starkey Rebuttal at 31. ICG, however, has no relationship with the customer. Given that ICG has no relationship with – and thus cannot recover its costs directly from – the caller, in order to recover its costs, ICG must look to one of the other two parties involved in the transaction – either BellSouth or ICG's ISP customer. As ICG shows below, it is BellSouth that should be responsible for reimbursing ICG for the costs that ICG incurs on BellSouth's behalf.

**(ii) BellSouth Is the Appropriate Party from Whom to Recover the Costs Incurred by ICG**

In deciding whether ICG should look to BellSouth or to ICG's ISP customers for recovery of the costs that ICG incurs in delivering calls from BellSouth customers to ISP, the Commission must essentially choose one of two compensation models. The first is the LEC-LEC model, where the originating LEC pays reciprocal compensation to the LEC that delivers the call. Under this model, which ICG believes is appropriate, BellSouth would compensate ICG for the costs that ICG incurs on BellSouth's behalf.

The second is the LEC-IXC access charge model urged by BellSouth, where the originating LEC and the LEC that delivers the traffic both look to the IXC for cost recovery in the form of access charges. Taylor Direct at 10. The BellSouth proposal is unworkable.

In determining who should bear the costs of a call from a BellSouth customer to an ISP served by ICG, to the extent that it is not possible to place the costs directly on the cost causer, economic efficiency is best served by moving down the chain of cost-causation to come as close to the cost-causer as possible. Taylor Cross Tr. at 148. This is because the more closely a market can link the decision to consume with the cost of consumption, the more likely the market is to efficiently allocate scarce resources. Starkey Cross Tr. at 111-12.

Here, it is BellSouth that is the next link after the caller in the chain of cost causation. When a BellSouth customer places a call, and thereby causes costs, it is BellSouth that provides the caller with access to the network such that the caller has the opportunity to generate costs on the network. When the caller places a call to an ISP, it does so by using BellSouth's network, on which it generates costs. If the ISP is a BellSouth customer, BellSouth incurs all the costs of handling the call. If, however, the ISP is served by ICG, BellSouth incurs only the costs generated by delivering the call to ICG. It is therefore appropriate for ICG to look to BellSouth for the cost recovery that ICG cannot obtain directly from the caller.

BellSouth contends that, in its view, the caller is acting as a customer of the ISP when it places the call and thus it is the ISP, not BellSouth to whom ICG should look to for cost recovery. It is irrelevant, however, whether the caller is a customer of BellSouth or the ISP. The relevant relationship is cost-causer (caller) and cost-enabler (BellSouth).

**(iii) ICG Is Effectively Precluded from Recovering Its Costs from the ISP**

Notwithstanding that it is BellSouth, not the ICG ISP, that has the most proximate relationship with the cost-causing caller, BellSouth presses its view that the ISP should be responsible for reimbursing ICG for the costs that ICG incurs in delivering the call. See, e.g. Taylor Direct at 15.

Even if it were rational to look to the ISP for cost-recovery – which, for the reasons shown above, it is not – there are two reasons why ICG is effectively prohibited from doing so. First, ICG is precluded by a confluence of regulatory policy and market forces from raising its rates to its ISP customers. Under the FCC's "ESP exemption," ICG could not raise its rates and hope to remain competitive with BellSouth. Second, under the existing local exchange rate structure, the costs incurred in delivering traffic are recovered from the local exchange rates paid by originating end users. It is therefore inappropriate and would leave ICG at a competitive disadvantage for ICG to look to ISPs for recovery of the costs incurred in delivering to the ISPs traffic originated by BellSouth subscribers.

Under the FCC's "ESP exemption," which is discussed in more detail below, the FCC requires LECs to provide enhanced service providers ("ESPs"), including ISPs, from the incumbent LECs' local business service tariffs. *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order*, 3 FCC Rcd 2631, 2635 n.8, 2637 n.53. As a result, LECs are prohibited from charging ISPs more than they charge their local business customers. See *Declaratory Ruling*, ¶ 5; Taylor Cross Tr. at 150.

The ESP exemption prevents ICG from looking to its ISP customers for cost recovery. To begin with, the ESP exemption may function as a direct bar against ICG charging ISPs anything other than ICG's standard business local exchange rates. While ICG regards whether or not the ESP exemption applies to CLECs as well as to ILECs as an open question, it is very likely that if ICG sought to raise its rates to ISPs above its standard business rates, the ESPs would insist on their right to buy service out of ICG's business tariffs.

In any event, the ESP exemption effectively caps the rates that ICG can charge ISPs because ICG is competitively constrained by the rates that BellSouth charges. Since ICG must compete with BellSouth to win ISP customers, the prices that BellSouth, as a dominant carrier, charges its ISP customers effectively function as a price ceiling for ICG and other CLECs. If ICG were to attempt to raise ESP rates to recover the costs ICG incurs when delivering traffic from BellSouth customers, ICG would lose its ISP customers to BellSouth. BellSouth's economic witness conceded as much under cross:

Q. But, as a competitive matter – let's lay to one side the questions of whether they take out of the local business exchange tariff when they take from a CLEC. As a competitive matter, isn't the price that a CLEC can charge an ISP constrained by the fact that the ISP always has the option of going onto the BellSouth network under the local business exchange tariffs?

A. Sure. Yes, that's correct.

Q. And paying the local business exchange tariffed rates?

A. That's correct.

Taylor Cross Tr. at 150-51.

**(iv) The LEC-IXC Model Does Not Reflect Reality, and BellSouth Has Offered No Evidence in Support of Its Model**

While it is clear that reciprocal costs are incurred when one carrier terminates traffic for another, and that the LEC-LEC model reflects reality, BellSouth has offered no evidence to show

that its LEC-IXC model has any relationship to the reality of the ISP market. Thus, BellSouth has presented no evidence to support the notion that ISPs act like IXCs. BellSouth has not shown, as it suggests, that the ISP is involved in the purchase or assembly of that part of the ISP call beginning at the end user's premise and ending at ICG's switch. Nor has BellSouth supported the proposition that ISPs, in designing their rates, include charges to recover the costs incurred by BellSouth and ICG in delivering an ISP call to an ISP. Indeed, the contrary is the case. ISP rates are flat rated and notoriously low, now even approaching zero. This has no relation to the IXC model. IXCs clearly perform these functions, but BellSouth has not demonstrated that ISPs do so. The ISP, similar to a bank, a doctor's office, or a stockbroker, provides a telephone number where its services can be accessed, but leaves it up to the end user to procure whatever service the end user requires to reach that number and then to pay for those services. All of these factors suggest the ISP is an end user and not a carrier, and that the LEC-LEC model provides the proper construct for compensation for ISP calls.

**c. There Is No Merit Whatsoever to Any of BellSouth's Three Proposed Options for Inter-Carrier Compensation for ISP-Bound Traffic**

BellSouth suggests the three following options for resolving the issue of inter-carrier compensation for ISP-bound traffic: (1) establish an inter-carrier revenue sharing arrangement based on the assumption that ISP-bound traffic is access traffic; (2) track ISP-bound calls and retroactively apply any compensation mechanism ultimately established by a final non-appealable FCC order; or (3) establish a bill-and-keep arrangement. Hendrix Direct at 14-15. Each of BellSouth's three options is wholly without merit.

**(i) BellSouth's Contention That ICG's Revenues from ISP Customers Is "Access" Revenue That Should Be Shared with BellSouth Ignores Repeated FCC Guidance and Is Wrong**

The FCC has said time and time again that ISP-bound traffic is *not* treated as exchange access for regulatory purposes. Nevertheless, BellSouth proposes that ISP-bound traffic be treated the same way that interexchange carrier access traffic is treated when two LECs are involved in delivering the traffic, *i.e.*, the LECs should share the revenue generated for originating (or delivering) the traffic. Under this proposal, the LEC serving – and therefore billing – the ISP would treat the ISP's payments for business exchange services as “access” revenue and share it with the other carrier. Hendrix Direct at 16-24; Taylor Direct at 7-26. In other words, not only would the LEC ultimately delivering the ISP-bound traffic receive no compensation for the costs it incurs in carrying the other carrier's customers' calls, it would *pay the originating LEC for doing so*.

As mentioned above, the FCC's policy long has been to exempt ISPs and other ESPs from the payment of access charges, pursuant to the FCC's so-called “ESP exemption.”<sup>8</sup> *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982 ¶ 345 (1997) (“*Access Charge Reform Order*”), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998) (“We decide here that ISPs should not be subject to interstate access charges.”). The *Declaratory Ruling* explicitly left the ESP exemption in place. The FCC held: “Our determination that at least a substantial portion of dial-up ISP-bound traffic is interstate does not, however, alter the current ESP exemption.” *Declaratory Ruling* ¶ 20; *see also id.* ¶ 34 (“We emphasize, however, that we do not seek comment on whether interstate access charges should be imposed on ESPs as part of this proceeding. We recently reaffirmed that exemption in the *Access Charge Reform Order*, and we do not reconsider it here.”).

There are two regulatory concomitants of the ESP exemption. First, ESPs, including ISPs, are treated as end users – not carriers – in terms of how they access the public switched network,

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<sup>8</sup> See *Declaratory Ruling* ¶ 5 & n.9 (citing MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983)).



including access charges. *Declaratory Ruling* ¶ 5. Second, the FCC treats “ISP-bound traffic as though it were local” traffic, *id.* ¶ 23; *see id.* ¶ 16, and requires the states to do the same, *id.* ¶ 26 n.88.

These two regulatory results, in turn, dictate that ISPs purchase services from LEC local exchange tariffs instead of from LEC access tariffs. *Id.* ¶ 23. As the FCC found in the *Declaratory Ruling*, typically the ISP “purchases business lines from a LEC, for which it pays a flat monthly fee that allows unlimited incoming calls.” *Id.* ¶ 4. In other words, pursuant to the ESP exemption, ISPs subscribe to the same local exchange service as any other business customer. For their part, ILECs traditionally have characterized expenses and revenues associated with ISP-bound traffic as intrastate for separations purposes. *Id.* ¶ 23.

Notwithstanding the ESP exemption, BellSouth suggests that the rates ISPs pay LECs are actually charges for access assessed through local exchange tariffs. *See, e.g., Hendrix Direct* at 18-19. This is simply not the case. Pursuant to the FCC’s exemption, ISPs purchase local exchange service. As local exchange customers, ISPs *do not* pay access charges. BellSouth cannot convert the purchase of monthly local exchange service into the purchase of access service merely by asserting that that is the case. The FCC emphasized in the *Declaratory Ruling* that, in light of the ESP exemption, neither ICG nor BellSouth can force ISPs to pay switched access charges for access to their networks: “[U]nder the ESP exemption, LECs may not impose access charges on ISPs; therefore, there are no access revenues for interconnecting carriers to share.” *Declaratory Ruling* ¶ 9; *see also Alabama Order* at 17 (“It is abundantly clear . . . that ISPs purchase monthly local exchange service much like any other local exchange customer. As local exchange customers, ISPs do not pay access charges and neither ICG nor BellSouth can force [I]SPs to pay switched access charges for access to their networks.”); *Starkey Rebuttal* at 11-17, 29-36.

Thus, BellSouth's assertions to the contrary notwithstanding, it is clear that ISP-bound traffic is not subject to an access charge regulatory framework, but rather is treated as local exchange traffic for regulatory purposes:

In the *Access Charge Reform Order*, the [FCC] decided to maintain the existing pricing structure pursuant to which ESPs are treated as end users for the purpose of applying access charges. Thus, *the [FCC] continues to discharge its interstate regulatory obligations by treating ISP-bound traffic as though it were local.*

*Declaratory Ruling* ¶ 5 (emphasis added) (footnotes omitted); *see also Alabama Order* at 17 ("Clearly, ISP-bound traffic is not subject to an access charge regulatory framework but rather is treated as [l]ocal exchange traffic for regulatory purposes."). As the Alabama commission found, "BellSouth['s] 'access' traffic arguments [are] misplaced and totally contrary to prevailing regulatory mandates." *Alabama Order* at 16.<sup>9</sup>

Instead, the FCC made clear that, in deciding whether to require reciprocal compensation for ISP-bound traffic, state commissions should be guided by the FCC's policy of treating ISP-bound traffic as functionally local:

The passage of the 1996 Act raised the novel issue of the applicability of its local competition provisions to the issue of inter-carrier compensation for ISP-bound traffic. Section 252 imposes upon state commissions the statutory duty to approve voluntarily-negotiated interconnection agreements and to arbitrate interconnection disputes. As we observed in the *Local Competition Order*, state commission authority over interconnection agreements pursuant to Section 252, "extends to both interstate and intrastate matters." Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process. However, any such arbitration must be consistent with governing federal law. *While to date the Commission has not adopted a specific rule governing the matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.*

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<sup>9</sup> Mr. Hendrix's view that calls to ISPs constitute access traffic also ignores the plain reality that BellSouth-originated calls delivered by ICG to ICG's ISP customers transit ICG's network in exactly the same manner as calls delivered to a business or residential subscriber. *See discussion supra* I.B.1.a.ii.

*Declaratory Order* ¶ 25 (emphasis added) (citation omitted) (footnotes omitted). Thus, a determination by the Commission that the parties should pay one another reciprocal compensation would be consistent with the functionally local nature of ISP-bound traffic and with the FCC's regulatory framework for that traffic.

(ii) **BellSouth's Tracking Proposal Would Indefinitely Delay ICG's Ability to Collect Revenues to Cover Current Costs**

BellSouth's proposal that carriers simply track ISP-bound traffic during the interim period and that any rule compensation mechanism adopted by the FCC be applied retroactively is at first blush of some superficial appeal, but does not survive scrutiny. The problem with this proposal is that it would absolve BellSouth of the obligation to pay compensation *now*. As the North Carolina commission found, this "may adversely affect competition because . . . ICG will not have the 'bird in the hand' to pay [its] bills, even while [ICG] continue[s] to incur costs." *North Carolina Order* at 7-8; see also *Alabama Order* at 14 ("[i]t would be entirely inconsistent with the competitive principles underlying the Act not to provide ICG with some mechanism to recover those costs as they are incurred").

In any case, Mr. Hendrix assumes that the FCC's ultimate rule will be inconsistent with a determination by the Commission that reciprocal compensation should be paid for ISP-bound traffic. This assumption is unwarranted. In the Notice of Proposed Rulemaking portion of the *Declaratory Ruling*, the FCC "tentatively conclude[d]" that it will leave it to the parties and the state commissions to determine appropriate rates for compensation for ISP-bound traffic. *Declaratory Ruling* ¶ 30. According to the FCC, "the inter-carrier compensation for this interstate telecommunications traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Act. *Resolution of failures to reach*

agreement on inter-carrier compensation for interstate ISP-bound traffic then would occur through arbitrations conducted by state commissions." *Id.* (emphasis added).

**(iii) BellSouth's Bill-and-Keep Proposal Makes No Sense Where, As Here, There Are Significant Traffic Imbalances**

As ICG's economic witness explained, bill-and-keep is a reasonable arrangement only where the traffic exchanged between carriers is balanced. Starkey Rebuttal at 18. BellSouth itself has acknowledged as much in other proceedings. *See id.* 19-20. BellSouth's bill-and-keep proposal also is inconsistent with the FCC's rules. Section 51.713 of the FCC's rules requires a state that chooses to impose a bill-and-keep arrangement to find that the traffic between the two carriers in question is balanced:

**§ 51.713 Bill-and-keep arrangements for reciprocal compensation**

\* \* \* \*

(b) A state commission may 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).

47 C.F.R. § 51.713. Clearly, BellSouth has provided no evidence in this proceeding that would allow the Commission to find that ISP-bound traffic passed between itself and ICG is balanced. As explained by ICG's economic witness, because ICG has been notably successful in winning ISP providers as customers, it is unlikely that the traffic between BellSouth and ICG is balanced. Starkey Direct at 6. As such, a bill-and-keep arrangement would not be efficient, equitable or allowed by Section 51.713 of the FCC's rules.

2. **Requiring Reciprocal Compensation for ISP-Bound Traffic Is Sound Public Policy**

Not only will requiring BellSouth to pay reciprocal compensation for ISP-bound traffic ensure that ICG is able to recover the costs it incurs in delivering BellSouth traffic, it is also sound public policy.

a. **Eliminating CLECs' Ability to Recover Their Costs Associated with Serving ISPs Would Be Likely to Distort One of the Few Key Local Exchange Market Segments That Is Well on the Way to Effective Competition**

If ICG is unable to recover the costs of delivering BellSouth traffic to ICG's ISP customers, it would make it difficult for ICG to continue to provide competitive service to ISP customers. Schonhaut Direct at 6. Losing the ability to serve its ISP customer base would hit ICG particularly hard because ISPs and other technologically advanced customers are a natural entry point into the local exchange marketplace for competitive providers. As ICG's economic witness testified, in marketplaces undergoing a transition towards competition,

new entrants are usually most successful in attracting customers that (1) are most disaffected by the services or quality offered by the incumbent, (2) have technological, capacity, or other specific requirements that are not easily met by the incumbent's oftentimes inflexible service offerings and/or (3) don't have a long history of taking service from the incumbent.

Starkey Direct at 11. ISPs meet all three of these criteria, making them "far more likely to explore competitive opportunities than more traditional residential and/or business customers." *Id.* at 12.

This, in turn, has made ISPs an extremely important customer base for ICG and other CLECs. *Id.* For their part, because of their unproven track record, CLECs have been forced to market to ISPs, who are often themselves new market entrants, instead of the ILECs' entrenched base of existing residential and general business customers. CLECs and ISPs are thus "made for one another" [and] ISPs have flocked to new entrant CLECs in increasing numbers." *Id.*

The success of ICG and other CLECs in attracting ISP customers away from BellSouth and other ILECs has resulted in the ISP "market segment exhibiting some of the most competitive characteristics of any segment in the local market." Starkey Direct at 14. If ICG and other CLECs cannot recover their costs associated with their ISP customers, those customers will "immediately turn from highly valued customers to customers that are likely to be unprofitable." *Id.* at 14-15. In other words, BellSouth will have succeeded in turning one of the CLECs' most notable competitive successes into a defeat. This, in turn, could have serious ramifications for the spread of competition in the local exchange marketplace. Having lost their toehold and without the revenue stream and growth potential produced by ISPs, it would be significantly more difficult for CLECs to successfully enter other more traditional business and residential markets.

**b. Requiring Reciprocal Compensation for ISP-Bound Traffic Will Ensure That Kentucky Continues to Reap the Benefits of the Explosive Growth of the Internet and the Information Economy**

Not only would CLECs suffer if the Commission does not require reciprocal compensation for ISP-bound traffic, ISPs and their customers would also be significant losers. ICG has been highly successful in attracting ISP customers in large part because of the failure of ILECs to adequately serve those customers. Before CLECs began to offer competitive service, ISPs and other end users with specialized needs were dependent exclusively on ILECs. ILECs, however, operating as monopoly providers, have little incentive to tailor services to meet the needs of ISPs. As ICG witness Schonhaut testified, "[w]ithout competitive pressures, the ILECs offered [only] 'one size fits all' service at high rates. Often the 'size' offered to ISPs was one that barely fit their operations." Schonhaut Direct at 5. ICG and other CLECs, however, are "able to offer ISPs service packages that are carefully tailored to the ISPs' operations." *Id.* For example, ICG offers ISPs the option of collocating ISP equipment alongside ICG equipment in ICG's central offices. *Id.* ISPs have also been

attracted by ICG's superior network, which consists entirely of digital switching and fiber optic transport as opposed to ILECs' hybrid legacy networks. *Id.*

Without the arrival of ICG and other CLECs, there is no reason to believe that ILECs would have been spurred to develop the attractive service packages that CLECs offer ISPs. Schonhaut Direct at 5. They certainly would not have done so at the accelerated pace that competition has produced.

If the Commission does not require reciprocal compensation for ISP-bound traffic, many of the benefits provided to ISPs by CLECs will be lost. ICG and other CLECs would be forced to either raise their rates or absorb significant costs. "If CLECs are forced to raise their rates to ISPs because the CLECs are not recovering the cost of delivering the traffic, it could result in increased costs to end-users of ISP services." Schonhaut Direct at 7. As ICG witness Schonhaut testified, this in turn could deter the growth of the Internet in Kentucky: "There is no way of knowing how ISPs would handle rate increases, and whether ISP rate increases would artificially suppress demand for services in such a way that the growth of the Internet in this state would not reach the levels it otherwise would have achieved." *Id.*

**3. The Great Majority of the State Commissions and All of the Federal Courts That Have Addressed the Issue Since the Declaratory Ruling Have Required Reciprocal Compensation for ISP-Bound Traffic**

Of the twenty-five state commissions that have addressed the issue since the *Declaratory Ruling*, the great majority have required or upheld the application of reciprocal compensation to ISP-bound traffic. The post-*Declaratory Ruling* state commission decisions fall into two categories. First, and most directly relevant, are those that have been decided in the context of an arbitration proceeding for a new interconnection agreement or in a generic proceeding applicable generally to all future agreements. To date, ten states have reached the merits of reciprocal compensation for

ISP-bound traffic in this context. Of those, eight decisions – including the *North Carolina Order* and the *Alabama Order* and decisions in California, New Mexico,<sup>10</sup> New York, Oregon, Pennsylvania and West Virginia – have held that reciprocal compensation is required. Only South Carolina has ruled to the contrary, while Florida ruled that the parties' current interconnection agreement governs the issue pending issuance of a final FCC ruling on inter-carrier compensation for ISP-bound traffic.<sup>11</sup>

The second category of *post-Declaratory Ruling* state commission decisions are those interpreting existing agreements. Twenty-one state commissions have issued rulings on the merits. Of those, nineteen found that the agreement in question required the payment of reciprocal compensation for ISP-bound traffic. Those nineteen states are: Alabama, California, Colorado, Delaware, Florida, Hawaii, Indiana, Maryland, Minnesota, Nevada, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Washington and West Virginia. Only two states – Louisiana and New Jersey – have held that an existing agreement does not require reciprocal compensation for ISP-bound traffic.<sup>12</sup>

Similarly, all five federal courts that have issued *post-Declaratory Ruling* decisions addressing appeals of state commission decisions requiring reciprocal compensation for ISP-bound traffic have upheld the state commission's determination. The five courts include the United States Courts of Appeals for the Seventh Circuit and the Ninth Circuit and three district courts.

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<sup>10</sup> The New Mexico decision, which was released November 22, 1999, is the recommended decision of an arbitrator.

<sup>11</sup> In addition, the Louisiana commission was presented with the issue but did not reach the merits. In particular, the Massachusetts commission, on whose decision BellSouth relies so heavily, affirmatively determined not to reach the issue after acknowledging that the *Declaratory Ruling* undercut the basis for its decision.

<sup>12</sup> In addition, two states – Massachusetts and Missouri – did not reach the merits.



**C. The Commission Should Not Delay Acting On Compensation For ISP-Bound Traffic**

Perhaps because it recognizes that its position on the merits is a losing one, BellSouth raises two arguments as to why the Commission should refrain from requiring reciprocal compensation for ISP-bound traffic at this time. First, in BellSouth's view, since the FCC's *Declaratory Ruling* is currently subject to appeal, "states could find that they do not have the authority to create even an interim compensation arrangement." Hendrix Direct at 11. Second, according to BellSouth, "[e]ven if the states do have the authority, such authority is valid only until the FCC completes its rulemaking on the subject. Therefore, any effort devoted by this Commission to establishing an interim compensation arrangement for ISP-bound traffic may not be the best use of resources." *Id.* As discussed below, neither of these arguments has any merit.

**1. The Commission Should Not Delay Acting Because the *Declaratory Ruling* Is Subject to Appeal**

According to BellSouth witness Hendrix, it would be a waste of the Commission's efforts to address reciprocal compensation for ISP-bound traffic. Hendrix Direct Tr. at 11. However, as ICG witness Schonhaut testified, in making this argument, "Mr. Hendrix concedes that the present state of the law is such that this Commission has the requisite authority to order reciprocal compensation for calls to ISPs. Until the FCC acts, only a court order can remove this authority, but no court has thus far given any indication that it will change the existing situation before the FCC adopts a rule." Schonhaut Rebuttal at 5.

Under Mr. Hendrix's analysis, the simple fact that a ruling has been challenged is reason enough not to give it effect. Such an approach would lead to "competitive paralysis," Schonhaut Rebuttal at 5-6, which in the end can benefit only BellSouth. Until such time as some court acts to vacate the *Declaratory Ruling*, it is controlling federal law. In the meantime, as the Alabama commission held, the "mere fact that the [*Declaratory Ruling*] is currently subject to a legal challenge

does not in and of itself render the determinations of the FCC in that ruling void. . . . The [Alabama] Commission, therefore, has a duty and responsibility to exercise the authority it currently has, at least until such time as a federal rule is implemented.” *Alabama Order* at 13.

2. **If the Commission Delays Acting Until the FCC Issues a Final Ruling, ICG and Other CLECs Will Never Receive Any Compensation for the Interim Period**

As for BellSouth’s argument that the Commission should not act in light of the FCC’s pending ruling, the FCC has made clear that its ruling will have prospective effect only. Schonhaut Rebuttal at 4; see *Declaratory Ruling* ¶ 28. Thus, as the Alabama commission found, “if the Commission does not take action to require compensation for calls to ISPs, ICG will never be compensated for the calls it delivers to ISPs during the interim period . . . [until] the FCC adopts a federal rule governing that subject.” *Alabama Order* at 13; see also Schonhaut Rebuttal at 4.

Compounding the adverse impact on ICG, as ICG witness Schonhaut points out, “the interim period until the FCC acts could stretch for several months or even a year.” Schonhaut Rebuttal at 4. In this regard, it is worth noting that it “took the FCC almost two years (20 months) to respond to the June 1997 request for clarification that led to the *Declaratory Ruling*.” *Id.* There is no reason to believe that the FCC will necessarily act more expeditiously in promulgating a final ruling than it did in releasing the *Declaratory Ruling*. Moreover, the FCC may not issue adequate guidance on appropriate compensation, thereby necessitating further proceedings – and further delay – before BellSouth would be required to pay the compensation to which ICG is entitled. In the meantime, ICG continues to incur the daily out-of-product costs of handling the traffic. Deep pocket ILECs, such as BellSouth, may be able to conduct business on such a basis, but it would be unfair to put such a strain on the cash flow of an already financially burdened facilities-based CLEC such as ICG.

3. **The Commission Should Not Defer the Issue of Inter-Carrier Compensation for ISP-Bound Traffic to a Generic Docket**

BellSouth has not raised the issue of deferring inter-carrier compensation for ISP-bound traffic to a generic docket in Kentucky. However, BellSouth has attempted that stratagem with ICG in other states (e.g., Alabama and North Carolina) and may make a belated attempt to do so in the brief it will file with the Commission. If BellSouth does make such an attempt (to which ICG will have no opportunity for reply), the Commission should reject such effort and refuse to defer the issue of inter-carrier compensation for ISP-bound traffic to a generic docket.

Section 252(b)(4)(C) of the Act requires state commissions to "resolve each issue set forth in the petition and the response . . . and . . . conclude the resolution of any unresolved issues not later than 9 months after the date on which" negotiations commenced. The statutory deadline for resolution of the ICG arbitration occurred over two months ago, albeit such deadline has been extended voluntarily by the parties. A generic proceeding would easily take another six to nine months, if not longer, to conclude, a delay that ICG would find wholly unacceptable.

The Alabama, North Carolina and Tennessee commissions have already rejected BellSouth's argument that they address the issue of inter-carrier compensation for ISP-bound traffic in generic dockets, rather than in pending arbitration proceedings in which the issue has been properly raised.

The North Carolina commission found that

establishing a generic docket *at this time* would be a substantial misallocation of the Commission's and the parties' resources . . . .

This subject is a highly contested one, and it does not appear to be judicially efficient to conduct a major generic docket while awaiting the FCC decision, simply to have to do it all over again once the FCC has rendered a decision.

*In re BellSouth Telecommunications, Inc., Petition for a Generic Proceeding Concerning Inter-Carrier Compensation for ISP Traffic, Order Denying Petition for Generic Proceeding, Docket No. P-100, Sub*

144 (N.C. Utils. Comm'n Nov. 23, 1999) at 4. If BellSouth raises the issue, the Commission should similarly dispose of the matter.<sup>13</sup>

**II. ICG IS ENTITLED TO RECIPROCAL COMPENSATION AT THE TANDEM INTERCONNECTION RATE**

Because ICG's switch in Kentucky serves a geographic area at least the size of the geographic area served by a BellSouth tandem switch, ICG is entitled to reciprocal compensation at the tandem interconnection rate. Moreover, to the extent it is relevant, ICG's switch in Kentucky provides functions comparable to the functions performed by a BellSouth tandem switch.

**A. ICG's Switch Serves A Geographic Area Comparable To That Served By A BellSouth Tandem Switch**

Section 51.711 of the FCC's rules, 47 C.F.R. § 51.711, sets forth the sole criteria for determining whether ICG is eligible for interconnection at the tandem rate. Section 51.711(a)(3) provides:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

47 C.F.R. § 51.711(a)(3). Thus, if ICG's switch serves a geographic area comparable to a BellSouth tandem switch, the appropriate reciprocal compensation rate is the tandem rate.

The uncontroverted evidence in this proceeding is that ICG's switch serves a comparable geographic area to that served by a BellSouth tandem switch. ICG presented direct testimony to that

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<sup>13</sup> Similarly, a Commission order that the parties maintain the status quo regarding compensation for ISP-bound calls would not lessen the prejudice to ICG. BellSouth refuses to pay ICG anything for its transport and delivery of BellSouth-originated calls to ISPs, and the parties are currently litigating over this issue. Maintaining the status quo would mean that ICG would continue to incur costs for its services to BellSouth for which BellSouth refuses to pay. BellSouth has consistently refused to pay competing local providers for this service. Granting a Commission order in BellSouth's favor would extend for an indefinite period the uncertainty of payment for ICG's transport and delivery of these calls for BellSouth.

effect. Starkey Direct at 27, 28; Diagram 3. ICG's investment in Kentucky is not limited to switches. As ICG witness Schonhaut testified, ICG has invested about \$27 million in Kentucky, including extensive fiber facilities, Schonhaut Redirect Tr. at 140, that provide transport between ICG nodes See Hendrix Cross Tr. at 202.

BellSouth has offered no evidence in rebuttal. Thus, as both the North Carolina and Alabama commissions found when presented with essentially the same evidence that is before the Commission, "ICG is entitled to compensation at the tandem interconnection rate." *North Carolina Order* at 10; *accord Alabama Order* at 22.

**B. Although Not Required By The FCC's Rule, ICG Has Demonstrated That Its Switch Provides Functionality Comparable To A BellSouth Tandem Switch**

Unable to rebut ICG's showing that ICG's switch serves a geographic area comparable to that served by a BellSouth tandem switch, BellSouth reads the *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 1090 (1996) ("*Local Competition Order*") as requiring an additional criterion, not found in the plain language of Section 51.711(a)(3), that BellSouth claims ICG must meet in order to qualify for the tandem interconnection rate. According to BellSouth witness Hendrix, ICG is only entitled to reciprocal compensation at the tandem rate if ICG's switch performs the same functionality as an ILEC tandem switch in addition to serving a similar geographic area. See *Hendrix Rebuttal* at 24. The plain language of Section 51.711 makes clear, however, that serving a similar geographic area is the *only* requirement under the FCC's rules. 47 C.F.R. § 51.711(a)(3); see also *North Carolina Order* at 10 (rejecting BellSouth's argument that switch functionality is relevant under Section 51.711 and finding that the *Local Competition Order* "requires only that a [CLEC's] switch serve a geographic area comparable to that served by an ILEC's tandem to qualify for the tandem

termination rates"); *Alabama Order* at 21 (functional equivalency is not a requirement of the FCC's rules).

At least one court has held that if a CLEC is able to make the showing that its switch serves a geographic area comparable to that served by the ILEC switch, it is entitled to the tandem rate, regardless of whether it is able to make the functionality showing. *U S West Communications, Inc. v. Minnesota Pub. Utils. Comm'n*, 55 F. Supp. 2d 968, 979 (D. Minn. 1999) (under the FCC's rule, evidence that a CLEC's switch covers a geographic area comparable to that covered by a tandem switch "alone provides sufficient grounds for a finding that the appropriate rate for the [switch] is the tandem rate"). While there are also cases that have held that a CLEC must make both showings, *see, e.g., U S West Communications, Inc. v. Public Serv. Comm'n*, No. 2:97 CV 558, 1999 U.S. Dist. LEXIS 18148, at \*12 (D. Utah Nov. 23, 1999), ICG believes that the explicit language of the rule makes clear that the better view is that only the geographic showing need be made.

In any case, as both the Alabama and North Carolina commissions found, ICG's switch "provides functionality comparable to that provided by BellSouth's tandem switch." *Alabama Order* at 22; *see North Carolina Order* at 10 ("there is comparable functionality between [BellSouth's] tandem and ICG's switch"). As described in Mr. Starkey's testimony, ICG's network consists of a centrally located host switch that supports other switching nodes that are collocated either in BellSouth central offices or in customer locations. ICG's fiber optic ring connects these discrete nodes within its network. The fiber optic ring provides transport between these nodes, as BellSouth conceded, *Hendrix Cross Tr.* at 202, and transfers traffic amongst those nodes. These are the functions that BellSouth's tandem end office switch architecture serves in the BellSouth network. *Starkey Direct* at 28-30.

The fact that ICG is able to deploy SONET nodes, instead of placing full Class 5 switches in each of its collocations or customer buildings, does not detract from the fact that the ICG network

performs exactly the same functions as the BellSouth network. Because of technological developments not available when BellSouth built its network, ICG is able to use a different network architecture employing different technology to accomplish the same tasks.

BellSouth argues that ICG's switch cannot perform tandem functionality (and thus qualify for the tandem rate) because ICG's network architecture does not resemble BellSouth's. BellSouth sets up a test that only its network meets. According to BellSouth witness Hendrix, "trunks connect switches, tandem switches connect trunks to each other and end office switches connect trunks to customer lines." *Hendrix Rebuttal at 26.* Under BellSouth's analysis, a CLEC would have to replicate the switch intensive network BellSouth has built. This is not an efficient result. ICG has chosen instead to deploy a fiber ring and optical switching nodes in lieu of building numerous end offices with switches.

ICG should not be handicapped because it chose to take advantage of those new technologies, instead of mirroring BellSouth's network architecture. This is exactly what the FCC had in mind when it directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem." *Local Competition Order*, 11 FCC Rcd 15499, ¶ 1090.

BellSouth witness Hendrix attempts to dismiss ICG's fiber ring as nothing more than a "long loop" that has nothing to do with tandem functionality. *Hendrix Rebuttal at 32-33.* However, a loop is defined, both under Section 51.319(a)(1) of the FCC's rules and the parties' interconnection agreement, as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and [the loop demarcation point] at an end-user customer premises." 47 C.F.R. § 51.319(a). ICG's fiber ring does not fall within that definition. Moreover, if ICG sought to purchase the equivalent of any of the internodal segments of its fiber ring from BellSouth, BellSouth conceded ICG would buy the facilities as unbundled transport. *Hendrix Cross Tr. at 202.*

Clearly, if the facilities in question are transport facilities, they cannot be characterized as another sort of loop, long or not.

In addition to the traffic routing functions described above, ICG's switch also performs the other functions typically performed by tandem switches. As Mr. Starkey testified:

Tandem switches (what are commonly called Class 4 switches in the traditional AT&T hierarchy), generally aggregate toll traffic from a number of central office switches (Class 5 switches) for purposes of passing that traffic to the long distance network. The tandem switch is also a traditional focal point for other purposes as well, including the aggregation and processing of operator services traffic, routing traffic that is to be transferred between the trunk groups of two separate carriers and measuring and recording toll traffic detail for billing. While ILECs have traditionally employed two separate switches to accomplish these Class 4 and Class 5 functions, ICG's Lucent 5ESS platform performs all of these functions in addition to a number of others within the same switch.

Starkey Direct at 28; *see also* Starkey Rebuttal at 53-58. Among other things, ICG "uses its switching platform as its Feature Group D access point for originating and terminating traffic to and from IXCs.

Likewise, ICG uses its 5ESS as its Operator Services access point for all of its local customers."<sup>14</sup>  
Starkey Rebuttal at 56.

Significantly, in previous arbitrations between the parties, BellSouth took the position that it would only consider ICG's switch to be equivalent to a tandem switch if it were identified in the local exchange routing guide ("LERG")<sup>15</sup> as such. For example, a BellSouth witness testified before the Alabama commission that "BellSouth will pay the tandem interconnection rate only if ICG's switch is identified in the [LERG] as a tandem." Varner Alabama Direct (filed with the Alabama Public Service Commission May 27, 1999) at 33 (copy of relevant excerpt attached hereto as

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<sup>14</sup> There was some confusion as to whether ICG serves residential customers. *See* Schonhaut Redirect Tr. at 137. ICG has corrected the record on whether it provides residential service. Letter of December 27, 1999 from Henry S. Alford to Helen Helton. ICG is not providing residential service at this time.

<sup>15</sup> The LERG contains area code and central office numbering assignments as identified by the North American Numbering Plan, as well as carrier identification codes and specialty dialing codes.



Appendix A). While this criterion is an invention of BellSouth, not found in the FCC's rules, it is met by ICG. "ICG's switches, including those in Kentucky, are included in the LERG as a tandem." Starkey Rebuttal at 55. Realizing its error, BellSouth does not make the same argument regarding the LERG in the instant proceeding. However, having said very explicitly what it regards as the touchstone for whether or not ICG's switch qualifies for the tandem rate, BellSouth should be held to that position.

In sum, ICG's switch serves a geographic area comparable to the area served by a BellSouth tandem switch, performs the same functions and is identified in the LERG as a tandem. Therefore, ICG is entitled to a reciprocal compensation rate equal to the rate that BellSouth levies for calls terminated to its tandem. BellSouth's tandem termination rates recover costs associated with (1) tandem switching, (2) transport between BellSouth's tandem and its end office switches and (3) end office switching. Thus, those three categories of costs should be recovered by ICG from the reciprocal compensation it receives from BellSouth.

### **III. BELLSOUTH SHOULD BE REQUIRED TO MAKE THE EEL AVAILABLE AS A UNE COMBINATION**

ICG has requested that BellSouth provide the EEL as a UNE combination. The EEL consists of (1) the loop running from a customer's premises to the serving BellSouth central office in which ICG is not collocated and (2) a dedicated transmission path from that central office to a second BellSouth central office where ICG is collocated or to an ICG switch. By extending the range of ICG's ability to serve customers, the EEL would permit ICG to bring the benefits of competition to a much broader base of Kentucky businesses and consumers than ICG currently is able to serve. Holdridge Direct at 10-11. Without the EEL, ICG would be forced to incur the debilitating expense of collocation in each of BellSouth's central offices where ICG wishes to serve even a single customer.

*Id.* at 11.

BellSouth, for its part, has said that it will provide the EEL through "an agreement . . . that is not subject to the Act." Hendrix Direct at 10. BellSouth has made clear, however, that it regards this offer as voluntary and as outside of its obligations under Sections 251 and 252 of the Act. *Id.* Thus, the retail rates under which BellSouth has said it will make EELs available are much higher than the TELRIC rates at which BellSouth is required to provide UNEs and UNE combinations. Holdridge Direct at 9. This retail pricing of the EEL "severely limits ICG's emergence as a competitor to BellSouth." *Id.*

The issue before the Commission thus is whether BellSouth must make EELs available as a UNE combination at UNE prices. As discussed in III.A below, Section 51.315(b) of the FCC's rules, 47 C.F.R. § 51.315(b), and the FCC's *UNE Remand Order*<sup>16</sup> make clear that where loop and transport are actually combined within BellSouth's network, the answer to that question is yes.<sup>17</sup> And, as discussed in III.B below, to the extent that BellSouth does not currently combine loop and transport, the Commission can and should use its authority under Section 251 to require that BellSouth make EELs available as a means of efficiently bringing the benefits of competition to all Kentucky consumers.

**A. Where BellSouth Currently Combines Loop And Transport Within Its Network, It Must Make EEL Available To ICG As A Combination Of UNEs**

Section 51.315(b) of the FCC's rules states that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47

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<sup>16</sup> *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 1999 FCC LEXIS 5663 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

<sup>17</sup> BellSouth devotes much of its testimony to arguing that the FCC declined to add the EEL to the FCC's national list of UNEs. While ICG believes that the Commission could make the necessary finding to itself define the EEL as a UNE, it is ICG's position in this proceeding that BellSouth should be required to make the EEL available as a combination of other, existing UNEs. Whether or not the EEL is also independently a UNE is irrelevant to the question of whether the EEL must be made available as a combination.

C.F.R. § 51.315(b). While Section 51.315(b) had been vacated by the United States Court of Appeals for the Eighth Circuit, it was reinstated by the Supreme Court's January 25, 1999 decision in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S. Ct. 721 (1999) ("AT&T"). The application of that law is straightforward. The parties agree that EEL is simply the combination of two network elements – loop and transport.<sup>18</sup> See *Hendrix Direct* at 8. Under Section 51.315(b), if those two elements are currently combined in BellSouth's network, BellSouth must make that combination available to ICG without separating the combined elements. 47 C.F.R. § 51.315(b).

Section 51.315(b) makes clear that the requirement that BellSouth make available UNE combinations that it "currently combines" applies to all UNEs that are actually connected together in BellSouth's network. Section 51.315(b) provides that "an incumbent LEC shall not separate requested elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b) (emphasis added). In other words, ILECs are prohibited from taking apart combinations that actually exist in their networks. See *AT&T*, 119 S. Ct. at 737 ("As the [FCC] explains," Section 51.315(b) is "aimed at preventing incumbent LECs from 'disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants.'" (citation omitted)).

The FCC specifically addressed the combination of loop and transport elements comprising the EEL in the *UNE Remand Order*. The FCC held that, where an unbundled loop is connected to unbundled dedicated transport, "the statute and our rule 51.315(b) require the incumbent to provide

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<sup>18</sup> The FCC's *UNE Remand Order* has resolved whatever debate there may have been among the parties as to whether the cross connect between the loop and transport elements is part of the EEL UNE combination. The FCC clarified that cross connects between network elements are not themselves UNEs. *UNE Remand Order* ¶ 179 ("We continue to view the cross connect as a means of interconnection with a network element, rather than as part of the network element."). The FCC went on to say that ILECs must "provide cross connect facilities according to sections 252(d)(1) and 251(c)(3) at any technically feasible point that a requesting carrier seeks access to the loop." *Id.* Furthermore, charges for cross connects "must meet the cost-based standard provided in section 252(d)(1), and the terms and conditions of providing cross connect facilities must be reasonable and nondiscriminatory under section 251(c)(3)." *Id.* ¶ 178.

such elements to requesting carriers in combined form.” *UNE Remand Order* ¶ 480. Moreover, the FCC held that “requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.” *Id.*

1. **Special Access Is a Clear Instance of Loop and Transport Elements Being Currently Combined in BellSouth’s Network**

In particular, the FCC explicitly held that “incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs.” *UNE Remand Order* ¶ 480. Thus, where ICG (or any other CLEC for that matter) is providing local exchange service to a customer using facilities purchased out of BellSouth’s special access tariff, the FCC’s *UNE Remand Order* makes clear that ICG is entitled to convert the special access facilities to an EEL at UNE pricing.

Notwithstanding the *UNE Remand Order*’s unequivocal direction, BellSouth continues to balk at converting special access facilities to EELs. According to BellSouth witness Hendrix, “BellSouth is still determining whether even this circumstance does, in fact, constitute currently combined UNEs. Even if it does, it is unclear whether ICG can convert the special access to UNEs prior to the completion of the FCC’s Fourth FNPRM.” Hendrix Rebuttal at 41.

That BellSouth is “still determining” whether or not it is required to convert special access facilities to EELs is sheer nonsense. The *UNE Remand Order* could not have spelled out BellSouth’s obligations in this regard any more clearly. In any case, the FCC released its *Supplemental Order* in the proceeding, which specifically addressed the conversion of special access facilities to EELs. *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, CC Docket No. 96-98, 1999 FCC LEXIS 5999 (rel. Nov. 24, 1999) (“*Supplemental Order*”). The *Supplemental Order* clarifies that ILECs have an absolute obligation to convert special access facilities to EELs, so long as the special access facilities are being used to “provide a significant

amount of local exchange service.” *Supplemental Order* ¶ 5. The FCC went on to say that it will “presume that the requesting carrier is providing significant local exchange service if the requesting carrier is providing all of the end user’s local exchange service.” *Id.* ¶ 5 n.9. The FCC also said that it was up to the requesting carrier to self-certify that it is providing a significant amount of local exchange traffic. *Id.*

ICG already has made absolutely clear that it “intends to use the EEL only for offering its customers local exchange service.” Holdridge Direct Exam Tr. at 7. Since ICG is willing to comply with the single precondition established by the FCC for conversion of special access facilities to EELs, there is no basis for BellSouth’s continued refusal to concede that it is required to do so.<sup>19</sup>

Mr. Hendrix’s suggestion that BellSouth’s obligation to convert special access facilities may not be effective until the FCC completes its Further Notice of Proposed Rulemaking is nothing short of ludicrous. The *UNE Remand Order* is explicit that, as of the order’s effective date, ILECs are required to convert special access facilities being used to provide local exchange service to EELs. *UNE Remand Order* ¶ 480. The Further Notice portion of the order deals only with whether or not special access facilities that are being used to provide *exchange access* service can be converted to EELs. *See id.* ¶¶ 492-496. This effort to read uncertainty into the *UNE Remand Order* where there is none is just another example of obstructionist, anticompetitive behavior on the part of BellSouth.

BellSouth may argue here, as it has in other arbitrations between the parties, that the Commission should restrict ICG’s ability to convert facilities purchased out of BellSouth’s special access tariff to UNEs by requiring a six-month waiting period for such conversions. BellSouth, however, is barred from raising this argument. Not only did BellSouth not raise the issue in its response to ICG’s petition for arbitration; it did not so much as present a single line of testimony on

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<sup>19</sup> BellSouth witness Hendrix has contended that BellSouth should not be required to make the EEL combination available because “ICG plans to use the EEL . . . as a substitute for access service.” Hendrix Rebuttal at 43.

this point. The issue is thus not properly before the Commission for consideration. In any case, Section 51.315(b) of the FCC's rules establishes ICG's right to UNE combinations at UNE prices.

It is hardly gaming the system for ICG to exercise that right. If ICG wishes to order special access and convert the facilities to UNE pricing, it is entitled to do so, at will, and without a waiting period.

Furthermore, BellSouth's proposed restriction would clearly violate Section 51.309(a) of the FCC's rules. Section 51.309(a) provides that "[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." 47 C.F.R. § 51.309(a). Indeed, the FCC's *Supplemental Order* in the UNE remand proceeding clarifies that CLECs are entitled to convert special access facilities to UNEs without delay. *Supplemental Order* ¶ 5 n.9. BellSouth's proposed waiting period is directly contrary to the FCC's ruling.

**2. In addition to Special Access, the FCC Has Enumerated Several Combinations of Loop and Transport That Constitute the EEL**

In addition to special access, the FCC also cited in another context several other examples of where ILECs "routinely provide combinations of loop and transport elements" in their networks and where failure to provide the combination would be discriminatory. *UNE Remand Order* ¶ 481.

Among those are where ILECs use the combination of loop and transport to "(1) deliver data traffic to their own packet switches; (2) provide private line services; and (3) provide foreign exchange service." *Id.* Clearly, under Section 51.315(b), where ILECs provide these current combinations to themselves, they are required to make them available to requesting carriers. 47 C.F.R. § 51.315(b); *UNE Remand Order* ¶¶ 480-481; see *Alabama Order* at 28 (holding that Section 51.315(b) requires BellSouth to provide the EEL "where it currently combines . . . loops with transport within its network").

3. **BellSouth's View of What Constitutes an Existing Combination Is Absurdly Narrow**

ICG witness Holdridge provides another example of existing combinations of loop and transport within BellSouth's network. Mr. Holdridge testified that "[i]t is my understanding that not all of BellSouth's switches have ISDN capability, but that BellSouth provides ISDN Basic Rate Interface ('ISDN-BRI') service, and possibly ISDN Primary Rate Interface ('ISDN-PRI') service, in all exchanges." Holdridge Direct at 10. As Mr. Holdridge explained, this is possible because, "[i]n exchanges where the serving switch does not have ISDN capability, BellSouth provides ISDN by combining a loop from the serving central office with transport to an ISDN-capable switch." *Id.* Where BellSouth provides ISDN in this manner, ICG is entitled under Section 51.315(b) of the FCC's rules to convert the existing combination of loop and transport facilities to the EEL if it wins the customer.

Notwithstanding the FCC's clear direction, BellSouth does not agree; it continues to maintain an unreasonably narrow view of what constitutes an existing combination of loop and transport. BellSouth witness Hendrix contends that when a combination of loop and transport elements is being used by BellSouth to provide service to an end user and that end user converts its service from BellSouth to ICG, the combination is no longer an existing combination. Hendrix Cross Tr. at 211-12. Mr. Hendrix maintained this view even though he conceded that the actual loop/transport combination ended before it reached the cross connect. *Id.* at 214. According to Mr. Hendrix, this is because moving even the final cross connect (between the distribution frame or similar device (such as DCS), either of which he conceded was the termination point of the loop/transport combination, and BellSouth's switch) "to an ICG collocation" destroys the

combination. *Id.* at 212. Thus, in Mr. Hendrix's view, there can be no existing combination in any case where a CLEC wishes to avail itself of a combination that the ILEC is providing to itself.<sup>20</sup>

The FCC's enumeration of several combinations of loop and transport elements in the ILECs' networks that are equivalent to the EEL makes clear that this is not what Section 51.315(b) intended. Moreover, Mr. Hendrix's position rests on the notion that the cross connect is part of the combination. As discussed above, *see supra* note 18, the FCC has clarified that this is not the case. BellSouth must make available to ICG any current combination of loop and transport in BellSouth's network, regardless of whether that entails moving a cross connect to ICG's collocation.<sup>21</sup>

**B. The Commission Can And Should Require BellSouth To Make The EEL Available As An Efficient Means Of Bringing The Benefits Of Competition To Kentucky**

Even to the extent that the EEL is not an existing combination within BellSouth's network, the Commission can and should require BellSouth to make the EEL available to ICG as an important tool for creating effective competition in the Commonwealth.

**1. The Supreme Court's Decision in AT&T Makes Clear That Section 251(c)(3) Provides Ample Authority for Requiring BellSouth to Combine the Loop and Transport UNEs Comprising the EEL**

In light of the Supreme Court's decision in *AT&T*, it is clear that the Commission has authority under Section 251 of the Act to require BellSouth to provide EELs as a UNE combination, regardless of whether the combination is currently combined in BellSouth's network. Section 251(c)(3) imposes on ILECs

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<sup>20</sup> Under this reasoning, the only possible existing combination of UNEs that can remain in place when a CLEC converts an ILEC customer is the UNE platform, where the CLEC buys all of the elements necessary to provide service to the end user from the ILEC and thus does not require a cross connect to collocated facilities. Any other combination would require moving a cross connect from the ILEC's switch to the CLEC's collocation.

<sup>21</sup> ICG would pay a reasonable, cost-based nonrecurring charge to BellSouth for moving the cross connect.



[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

47 U.S.C. § 251(c)(3).

Both subsection 51.315(b), which requires ILECs to provide UNE combinations that the ILEC currently combines, and subsections 51.315(c)-(f), which require ILECs to combine previously uncombined elements, were vacated by the Eighth Circuit. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part and rev'd in part sub nom. AT&T*. The Supreme Court, however, in reversing the Eighth Circuit with respect to Section 51.315(b), held that the FCC's interpretation of Section 251(c)(3) was "entirely rational, finding its basis in § 251(c)(3)'s nondiscrimination requirement." *AT&T*, 119 S. Ct. at 737. According to the Court, Section 51.315(b) was designed to prevent ILECs from imposing "wasteful costs" on requesting carriers and it was "well within the bounds of the reasonable for the [FCC] to opt in favor of ensuring against an anticompetitive practice." *Id.* at 738.

While subsections 51.315(c)-(f) were not before the Supreme Court, the Court's logic in reinstating Section 51.315(b) clearly extends to those other provisions. The same nondiscrimination requirement that undergirds Section 51.315(b)'s requirement that combined elements not be separated also underlies the requirement that ILECs must combine elements for requesting carriers. See *Local Competition Order*, 11 FCC Rcd at 15647, ¶ 294 ("we conclude that section 251(c)(3) should be read to require incumbent LECs to combine elements requested by other carriers").

Thus, regardless of whether subsections 51.315(c)-(f) of the FCC's rules currently are in effect, the Commission has more than ample authority under Section 251(c)(3) of the Act to require

BellSouth to make the EEL combination available regardless of whether loop and transport are currently combined in BellSouth's network. The United States Court of Appeals for the Ninth Circuit has recently confirmed that this is the case in *US West*, 193 F.3d 1112. In that case, the Ninth Circuit upheld the Washington Utilities and Transportation Commission's decision in an arbitration proceeding to require US West to combine UNEs. In so holding, the court specifically found that the Supreme Court's reasoning in *AT&T* makes clear that not only does the nondiscrimination provision of Section 251(c)(3) prohibit ILECs from separating existing combinations, it is also the basis for requiring ILECs to combine UNEs upon request. *Id.* at 1121. The Ninth Circuit thus affirmed the Washington commission, holding that "it also necessarily follows from [the Supreme Court's decision in *AT&T*] that requiring U.S. West to combine unbundled network elements is not inconsistent with the Act." *Id.*

**2. The Commission Is Not Barred from Acting Because the Eighth Circuit Has Vacated Section 51.315(c)-(f) of the FCC's Rules**

BellSouth points out that the Eighth Circuit has vacated Section 51.315(c)-(f) of the FCC's rules, which required ILECs to combine UNEs for requesting carriers. US West made exactly this argument to the Ninth Circuit. The Ninth Circuit's reasoning in rejecting the argument is exactly correct:

The Supreme Court opinion, however, undermined the Eighth Circuit's rationale for invalidating [Section 51.315(c)-(f)]. Although the Supreme Court did not directly review the Eighth Circuit's invalidation of § 51.315(c)-(f), its interpretation of 47 U.S.C. § 251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act. We must follow the Supreme Court's reading of the Act despite the Eighth Circuit's prior invalidation of the . . . FCC regulation.

*Id.*

Moreover, the FCC itself stated in the *UNE Remand Order* that the Supreme Court's decision in *AT&T* requires the reinstatement of Section 51.315(c)-(f). *UNE Remand Order* ¶ 481

("the reasoning of the Supreme Court's decision to reinstate rule 51.315(b) based on the nondiscrimination language of section 251(c)(3) applies equally to rules 51.315(c)-(f)"). While the FCC declined in the *UNE Remand Order* to reinstate Section 51.315(c)-(f) because of the remand proceeding before the Eighth Circuit, the FCC was quite clear that "section 251(c)(3) provides a sound basis for reinstating rules 51.315(c)-(f)." *Id.* ¶ 482.

Unlike the FCC, the Commission need not feel that its hands are tied; its rules are not before the Eighth Circuit. The Commission can and should do what the FCC felt it could not and use its authority under Section 251 to order BellSouth to provide the EEL regardless of whether it is currently combined in BellSouth's network.

**IV. THE COMMISSION SHOULD ORDER THE PERFORMANCE MEASURES PROPOSED BY ICG, BACKED BY APPROPRIATE ENFORCEMENT MECHANISMS, TO ENSURE THAT BELLSOUTH PROVIDES NONDISCRIMINATORY SERVICE**

There is no dispute between the parties as to whether their agreement should include a set of performance measures to help ensure that BellSouth provides nondiscriminatory service to ICG at parity with the service BellSouth provides to itself and its retail customers.<sup>22</sup> The question is which set of proposed performance measures should be adopted. ICG proposes a series of performance measures and enforcement mechanisms recently adopted by the Public Utility commission of Texas in a comprehensive "mega-arbitration" proceeding (the "Texas Performance Measures" and the "Texas Performance Remedy Plan," collectively the "Texas Plan"). Copies of the Texas Performance Measures and the Texas Performance Remedy Plan are attached as Exhibits 1 and 2, respectively, to the direct testimony of ICG witness Rowling. BellSouth, for its part, contends that the Commission should adopt BellSouth's proposed Service Quality Measurements ("SQMs"). Coon

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<sup>22</sup> As BellSouth counsel Foshee observed in her cross-examination of ICG witness Rowling: "Can we agree that the issue here today is not whether the parties will have performance measurements but which performance measurements the parties will have?" Tr. 47.

Rebuttal at 6-7. In IV.A below, ICG demonstrates why the Texas Performance Measures are superior to BellSouth's proposed SQMs.

The other open issue is whether the performance measures adopted by the parties will be backed by meaningful enforcement mechanisms. ICG believes that it is critical that such mechanisms be in place to ensure that BellSouth has a financial incentive to meet its established performance measures. The Texas Plan proposed by ICG includes liquidated damages payments that are triggered when BellSouth fails to meet the performance benchmarks included in the plan. Predictably, BellSouth for its part maintains that no enforcement mechanisms are needed. Hendrix Rebuttal at 47-48. Alternatively, BellSouth urges that the Commission adopt the enforcement mechanism plan that BellSouth has proposed before the FCC (the "BellSouth Enforcement Plan"), which is essentially a watered-down, less well-developed version of the Texas Performance Remedy Plan. In IV.B below, ICG demonstrates why it is critical that the Commission require self-executing enforcement mechanisms to ensure BellSouth's compliance with its performance measures. In IV.C below, ICG demonstrates that the Commission has authority to adopt enforcement mechanisms under federal and state law, and explains why the best available option is the enforcement mechanisms contained in the Texas Plan.

**A. The Commission Should Require BellSouth To Adopt The Texas Performance Measures Proposed By ICG**

The evidence in this proceeding makes clear that the Texas Performance Measures are superior to the SQMs proposed by BellSouth for a variety of reasons.

**1. Unlike the SQMs, the Texas Performance Measures Were Developed in Conjunction with a Set of Enforcement Mechanisms**

The Texas Plan includes fully developed, self-executing enforcement mechanisms in the form of two tiers of liquidated damages payments. As discussed in more detail below, it is critical that any

performance measures adopted by the Commission include enforcement mechanisms. As Ms. Rowling testified, "BellSouth has every incentive not to live up to [its] obligations. The system needs teeth to ensure BellSouth's compliance, without which the Telecommunications Act's policy goal of robust local competition will never be fulfilled." Rowling Direct at 15. The liquidated damages associated with the Texas Plan "would provide the enforcement strength necessary." *Id.* While liquidated damages theoretically could be grafted onto the SQMs, such an enforcement mechanism could not function effectively until BellSouth completes the significant work required to establish a complete set of benchmarks and statistical calculations. The Texas Plan offers a ready-made, effective package of performance measures that were designed in conjunction with an associated set of enforcement mechanisms. Thus, while the Texas Plan can essentially be used off the shelf, considerable work would be required to complete BellSouth's SQMs and fashion effective enforcement mechanisms.

**2. While the SQMs Are Still Under Development, the Texas Plan Is Fully Realized**

The Texas Plan contains over 120 categories of measurements, all of which have been fully developed. While the Texas commission and interested parties are continuing to refine the plan, it is fully functional in every respect. Thus, the Texas Plan can be incorporated into an interconnection agreement today.

In contrast, BellSouth's proposal is very much a work-in-progress. As BellSouth witness Coon conceded on cross-examination, BellSouth's SQMs are still under development in several critical areas or include very recent, untested quick fixes. Coon Cross Tr. at 155-65.<sup>23</sup> Attached hereto as Appendix B is a copy of the table of contents of BellSouth's SQMs (Coon Rebuttal Ex. DAC-1) marked to show which of the measurements were under development. As Appendix B

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<sup>23</sup> These last-minute fixes are not included in the version of the SQMs filed by BellSouth in this proceeding.

reflects, of the 43 measurements reported by BellSouth, in 24 some aspect of the measurement is under development. In other words, 56% of BellSouth's proposed SQMs are incomplete.<sup>24</sup>

The aspect of the measurement under development varies from case to case. In 10 instances, the measurement is incomplete in that there is no retail analog or benchmark against which BellSouth's performance can be measured. See Coon Rebuttal Ex. DAC-1. In another 11 instances there is no retail analog in the critical area of UNEs. Thus, in 23 of the 43 measurements, there is no way to compare the service that BellSouth provides to CLECs with the service that BellSouth provides to itself and its retail customers with respect to at least some subset of the measurement. A raw measurement is of no utility in measuring discrimination if there is not some standard to compare it against. See Rowling Cross Tr. at 62-63. In 14 instances, BellSouth has yet to define how a particular measurement will be applied to a particular "Product" (service offering).

One example of an SQM where the product measurements are undefined is Provisioning Measure 4, "Average Completion Interval (OIC) & Order Completion Interval Distribution." When asked by BellSouth counsel on cross-examination about that particular measure, ICG witness Rowling described in detail the deficiencies in that SQM:

May I just point out, on Page 25 [of Coon Rebuttal Exhibit DAC-1], which is in the same measurement, the level of disaggregation as well as the benchmark are missing from the BellSouth's performance measurement on this particular one, and, again, looking at the data, if I might, looking at the exact data that's on the PMAP, this shows what the completion is when it doesn't show UNE combinations. It doesn't show the switching. It doesn't show even what the benchmark is. It doesn't provide us with the exact information of what we're looking for in order to ensure performance is being – standards are being met.

Rowling Cross Tr. at 61. By contrast, the counterpart measurement in the Texas Performance Measures is fully in place. *Id.* at 59-60.

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<sup>24</sup> BellSouth may have made some recent modest updates to the SQMs contained in Coon Rebuttal Exhibit DAC-1.

Another area in which several of the SQMs are incomplete is the measurements and rules for local number portability. As Mr. Coon acknowledged, BellSouth is still developing the SQMs in that area. Coon Cross Tr. at 159-60. By contrast, the Texas Performance Measures contain meaningful measures of performance relating to local number portability. See Rowling Direct Exhibit 1 at 107-20.

BellSouth attempts to shrug off as unimportant several measurements contained in the Texas Plan. See, e.g., BellSouth Rebuttal Ex. DAC-2, Sections XIII (NXXs), XIV (Bona Fide Requests). It was apparent on cross-examination that BellSouth's efforts on these measurements were window dressing. Coon Cross Tr. at 155-57. Moreover, even these efforts relate to a category-by-category comparison rather than a meaningful measurement-by-measurement comparison. *Id.* at 156-57.

### 3. The Texas Plan Meets the Broad Needs of CLECs

BellSouth contends that its SQMs should be adopted instead of the Texas Performance Measures so that there will be a set of measurements "that is consistent for all CLECs and for the retail units of BellSouth." Coon Rebuttal at 6. This assumes that, if the Texas Plan is adopted, it will not replace the SQMs as the standard set of performance measures adopted by all or nearly all CLECs operating in Kentucky. That is an unwarranted assumption. The comprehensive set of measures contained in the Texas Plan is much more likely to meet the different needs of various CLECs<sup>25</sup> than is the more limited, less well-developed set of measures contained in the SQMs. See Rowling Cross Tr. at 54-55. It is thus likely that the Texas Plan will become the new standard set of performance measures if adopted by the Commission.

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<sup>25</sup> Different CLECs may have different needs, depending on their respective business plans. For example, the robust performance measures relating to DSL that might be appropriate for a data CLEC might be unnecessary for other carriers.

BellSouth mentions that because ICG was willing to accept the SQMs in Georgia it should be willing to do so in Kentucky. *See Coon Rebuttal at 4.* However, the situation in Georgia was very different from the one in Kentucky. Georgia had already opened a generic proceeding where it was examining and refining the SQMs. Some 20 performance measures had already been made available to CLECs. Mindful of the considerable amount of work that had already been done by the Georgia commission and interested parties, ICG felt that it could not ask the Georgia commission to start from scratch with a whole new set of measurements. Here, by contrast, there was no equivalent proceeding and ICG felt that it was appropriate to propose the Texas Plan. Moreover, even though it accepted the SQMs in Georgia, ICG made clear that it believed that the SQMs were less than ideal, and simply represented an expedient way for ICG to accomplish some, but not all, of what it believed was necessary to ensure BellSouth's compliance with its nondiscrimination obligations.

**B. Any Performance Measures Adopted By The Commission Must Be Backed By A Self-Executing Enforcement Mechanism**

Performance measurements merely identify standards; to have real meaning there must be an incentive for BellSouth to meet those standards. Notwithstanding BellSouth's obligations under the Act to provide ICG with nondiscriminatory service on a par with the service that BellSouth provides to itself and its own retail customers, BellSouth has every economic incentive not to do so. Rowling Direct at 3; Holdridge Direct at 12. As ICG witness Holdridge testified, "[b]y providing competitors inadequate service for use of its bottleneck facilities -- whether through understaffing, or cumbersome systems that lead to installation delays, trunk blockage, uncoordinated cut-overs, etc. -- BellSouth makes it more difficult for those competitors to lure away BellSouth customers." Holdridge Direct at 12.

In fact, BellSouth has a direct incentive not to perform in a manner that allows ICG to best serve its customers. The longer that BellSouth can delay effective competition, the longer it can



preserve its monopoly market position. Holdridge Direct at 12. Thus, it is critical that the Commission adopt an effective set of enforcement mechanisms to provide incentive to BellSouth to perform its obligations in a nondiscriminatory manner. Unless BellSouth suffers greater harm for failing to provide nondiscriminatory service than the benefit it realizes by impairing its competitors, it is economically rational for BellSouth to continue to do everything in its power to forestall competition.

Even BellSouth has acknowledged that an enforcement mechanism might be appropriate for ensuring it meets the performance standards to which it agrees. BellSouth recently filed a Proposal for Self-Effectuating Enforcement Measures with the FCC in conjunction with its pursuit of Section 271 authority to enter the long distance market. Holdridge Direct at 13. In that proposal, BellSouth recognizes the need for monetary liquidated damages to be paid to a CLEC for BellSouth's failure to meet certain performance standards.

Despite BellSouth's willingness to make enforcement mechanisms available at the federal level, it has steadfastly refused to negotiate enforcement mechanisms with ICG. It is not enough that BellSouth is willing to consider enforcement mechanisms when it has Section 271 authority to gain at the federal level. Enforcement mechanisms are a critical tool for opening BellSouth's markets to effective competition. The Commission must ensure that that tool is available to ICG and other CLECs to use in Kentucky.

**C. The Commission Should Adopt The Enforcement Mechanisms Contained In The Texas Plan**

**1. The Commission Has the Authority to Adopt an Enforcement Mechanism Based on Liquidated Damages**

BellSouth has indicated its belief throughout this proceeding that the Commission has no authority under Section 251 of the Act to require inclusion of provisions establishing performance

measures and enforcement mechanisms in the arbitrated BellSouth-ICG agreement. BellSouth's position is simply legally erroneous.

As ICG witness Rowling explained, there is ample legal authority to support ICG's position that performance measures and enforcement mechanisms should be addressed through this arbitration and that the Commission has authority to order that the Texas Plan's Tier 1 liquidated damages provisions and Tier 2 penalty provisions be included in the final arbitrated agreement. Section 251 of the Act and the FCC's implementing rules require incumbent local exchange companies to provide interconnection, access to unbundled network elements and resale at parity to that which it provides to itself. 47 U.S.C. § 251(c)(2)(C); 47 C.F.R. § 51.503(a).

The FCC has held that this means that access to network elements must be provided on a nondiscriminatory basis, and the level of access must be equal in terms of "quality, accuracy and timeliness" to that that the ILEC provides to its own customers. *In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20618, ¶ 139 (1997). Furthermore, in its decision rejecting BellSouth's Louisiana Section 271 application, the FCC applauded the Louisiana commission's requirement that BellSouth develop performance standards and enforcement mechanisms. *In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, 20618-19, ¶ 22 (1998). Thus, while Section 251 contains no direct reference to performance standards or enforcement mechanisms, such standards and mechanisms are tools which the Commission can use to determine if BellSouth is meeting its explicit statutory interconnection obligations and to promote and encourage future compliance if BellSouth is found in violation.

In arbitration proceedings with ICG in other states, BellSouth has argued that its obligation to provide performance standards and remedies springs solely from the public interest standard of

Section 271, while ICG has argued that such obligation also is grounded in Sections 251 and 252 of the Act. The FCC's recent order, *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (1999) ("*DSL Order*"), confirms ICG's position that the obligation to provide for performance standards and remedies also stems from Sections 251 and 252 of the Act. While the *DSL Order* only applies to digital subscriber lines, it is clear from the order that Sections 251 and 252 are sources of authority for requiring performance standards and remedies for ILECs' provisioning of all services and facilities to their competitors. See *DSL Order* ¶¶ 172, 173.

The *DSL Order* sent a clear message on the importance of performance standards and remedies. The FCC stated:

We . . . encourage the states to adopt performance measurements to include in their arbitration awards and to establish penalties for incumbent LEC failure to comply with their obligation. . . . We also suggest that the states consider the imposition of forfeiture penalties on any incumbent LEC that fails to comply. . . .

*Id.* ¶ 171.

The FCC offered additional specific suggestions to the states in developing an enforcement strategy.

[T]he states could impose penalties on the incumbent LEC each time an incumbent LEC fails to comply with its section 251(c)(3) unbundling obligations, even if the state has already taken action on prior violations by the same incumbent LEC, with respect to the same central office or the same competing carrier. We encourage states to consider adoption of self-executing remedies to minimize litigation in this area. Given the importance of these obligations, we emphasize that, in addition to whatever actions the states may take, we intend to monitor carefully incumbent LEC practices in this area, and to take strong enforcement action in appropriate cases.

DSL Order ¶ 176. In short, the FCC has made clear that Sections 251 and 252 are a source of authority for state commissions to require enforcement mechanisms and has strongly encouraged the states to exercise that authority.

The Commission also has authority to require performance standards and enforcement mechanisms under Kentucky law. KRS 278.040 *et seq.* Kentucky statutory law provides the Commission with broad powers to supervise, control and regulate public utilities. Specifically, the Commission has exclusive regulatory authority over each utility's provisioning of rates and service in the Commonwealth, which includes the power to enforce the Commission's orders and findings relating to those rates and services. KRS 278.040; KRS 278.990. Thus, the Commission has a firm legal basis for the consideration and adoption of performance measures and enforcement mechanisms if the Commission determines that such action is warranted.

It is anticipated that BellSouth will argue that the Commission cannot adopt performance measures and enforcement mechanisms because it lacks the jurisdiction to award "damages" to a party in a proceeding. This argument is without merit on multiple fronts. BellSouth has simply waived any right to assert the position that Tier 1 liquidated damages cannot be legally authorized by the Commission. As a matter of routine business practice, BellSouth agrees to such liquidated damages provisions with customers in special contracts filed with, and approved by, the Commission. See Rowling Rebuttal at 7. The same concept underlies many of the early termination charges in BellSouth's tariffs.

As a matter of Kentucky common law, contractual liquidated damages provisions such as the Texas Plan's Tier 1 enforcement mechanisms are clearly legal and enforceable in situations such as this, where actual damages for failure to provide parity of service would be difficult, if not impossible, to determine. See, e.g., *Man O War Restaurants, Inc. v. Martin*, 932 S.W.2d 366, 368 (Ky. 1996); *Travelers Ins. Co. v. Corporex Properties, Inc.*, 798 F. Supp. 423, 428 (E.D. Ky. 1992). With regard

to the Texas Plan's Tier 2 payments, the Commission clearly has the statutory authority to impose such remedies should it deem it necessary to ensure BellSouth's provisioning of equal service. KRS 278.990.

The Commission should not be unmindful of the distinction between, on one hand, the Commission's authority to award damages to a party and, on the other hand, the Commission's authority to direct parties to come to an agreement regarding, or to insert in an agreement, the remedial provisions that will govern relations between the parties. The broad federal and state authority conferred by the statutory provisions cited above clearly confers the latter power. It is, in fact, the Commission's duty under the Act to force parties to "agree" to terms and conditions of service which they would not otherwise accept.

Contrary to BellSouth's claims, the Texas Plan will not result in unjustifiably high levels of damages. Rowling Cross Tr. at 66-72. Not only are the payments capped at an annual amount, but payments per CLEC on a monthly basis are also capped. *Id.* at 67-72. If the Commission adopts the Texas Plan, it may be appropriate to adjust the level of the annual cap to reflect that BellSouth's revenues in Kentucky are significantly less than Southwestern Bell's revenues in Texas. *Id.* at 70-72. That said, any adjustment should also reflect the fact that, as the FCC's Common Carrier Bureau Chief Lawrence Strickling recently indicated in a September 28, 1999 letter to Southwestern Bell, the Texas Plan's overall cap of \$120 million was far too low in light of the fact that this amount represented only 2.19% of Southwestern Bell's in-state gross local revenues. Rowling Direct Ex. 3. Mr. Strickling emphasized that "the potential liability under such a plan must be high enough that an incumbent could not rationally conclude that making payments under an enforcement plan is an acceptable price to pay for hindering competition." *Id.* Subsequently, Southwestern Bell voluntarily increased the annual cap to \$225 million. See letter dated January 7, 2000 from Kelly Murray, Senior

Counsel, Southwestern Bell to Administrative Law Judge Katherine Farroba, at the Texas commission.

**2. The Enforcement Mechanisms in the Texas Plan Are Superior to the BellSouth Enforcement Plan**

BellSouth urges that the Commission adopt the BellSouth Enforcement Plan instead of the Texas Plan. BellSouth's plan, however, is inferior to the enforcement mechanisms contained in the Texas Plan for several reasons. First, as with its proposed performance measures, the enforcement mechanisms proposed by BellSouth are incomplete. BellSouth's filing with the FCC is a work-in-progress, based on the Texas Plan. By contrast, the Texas Plan is fully developed. Second, the BellSouth plan is far weaker than the Texas Plan. Whereas the Texas Plan provides 91 measurements that can trigger liquidated damages, the BellSouth proposal includes only 21. Moreover, the enforcement amount per measure is considerably lower in the BellSouth plan, and the annual payment cap is considerably lower per state.

Finally, the Texas Plan is available immediately. By contrast, BellSouth is only willing to make the BellSouth Enforcement Plan available once it has obtained Section 271 approval.

**3. The Complaint Procedures Proposed by BellSouth Are Not a Viable Alternative**

BellSouth argues that instead of adopting liquidated damages, the Commission should rely on its complaint procedures to ensure BellSouth's compliance with any performance measures adopted in this proceeding. As ICG witness Rowling testified, however, the

complaint process puts the burden on the CLEC in spite of the fact that it is the ILEC who bears responsibility to fulfill its legal obligations under Section 251 of the Act. Using the complaint process alone ensures that CLECs, which generally are smaller companies with far less resources than an ILEC such as BellSouth, must carry the responsibility to litigate on a complaint by complaint basis the issue of BellSouth's failure to comply with the Act. The

complaint process is much less efficient than self-effectuating enforcement mechanisms to ensure an ILEC's broad scale compliance with the Act's requirements.

Rowling Rebuttal at 3-4. In sum, the complaint process is cumbersome and inefficient, and it requires repeated litigation of the same or similar claims. Moreover, the need to litigate and re-litigate every BellSouth violation will be a significant strain on not only ICG's resources, but the Commission's as well.

**V. BELLSOUTH SHOULD BE REQUIRED TO PROVIDE ICG WITH THE OPTION OF BINDING FORECASTS FOR TRUNKING FACILITIES TO DELIVER TO ICG TRAFFIC ORIGINATED ON BELLSOUTH'S NETWORK**

ICG builds or leases the trunks that carry traffic on its own network and the trunks that deliver traffic from ICG to BellSouth. The trunks used to deliver traffic from BellSouth to ICG, however, are BellSouth's responsibility. Jenkins Direct at 3. ICG's traffic volumes have grown significantly over the past several years and ICG expects this trend to continue. *Id.* ICG needs some way of ensuring that BellSouth will provision adequate trunking facilities to carry calls from BellSouth customers to ICG's growing customer base. This is a matter of critical importance because if BellSouth customers are unable to reach ICG customers because of a blockage on BellSouth's network due to a lack of capacity, it is ICG that will be seen as the cause of the problem. ICG can ill afford this perception in the marketplace.

To this end, ICG has requested that a binding forecast mechanism be included in the parties' interconnection agreement. Such a mechanism would ensure that there is no blockage of incoming traffic to ICG's network and would be at no cost to BellSouth since, as described below, ICG would be willing to bear all of the financial risk.

**A. The Binding Forecast Proposal Will Ensure That BellSouth Provisions The Trunking Capacity Necessary To Ensure That There Is No Blockage Of Incoming Calls To ICG's Network**

Currently, ICG provides BellSouth with quarterly traffic forecasts. Jenkins Direct at 3. These forecasts are intended to assist BellSouth in planning the expansion of its network to accommodate ICG's traffic. As relevant here, the forecasts provide BellSouth with guidance in planning how much end office trunking capacity it will require to deliver traffic from BellSouth end offices to ICG's switch. *Id.* Because these trunks carry BellSouth customers' originating traffic, they are BellSouth's responsibility to provision and administer, and BellSouth bears their cost.

Currently, BellSouth is under no obligation to respond in any way to ICG's forecasts. BellSouth is not required to expand its trunking capacity even if ICG's forecasts indicate that more trunks are or soon will be needed. Jenkins Direct at 3. Nor is BellSouth required to provision the additional trunking capacity called for by ICG's forecasts in a timely manner. ICG thus has no way of ensuring that BellSouth will provision the trunking capacity necessary to ensure that there is no blockage of incoming calls to ICG's network. *Id.*

Under ICG's binding forecast proposal, ICG would have the option of committing to a particular level of traffic. BellSouth would then be obligated to, in a timely manner, provision the trunking necessary to carry that level of traffic. This will ensure that there is adequate capacity in BellSouth's network to meet demand. This in turn will ensure that there are no blockages which would frustrate not only ICG customers, who would be unable to receive calls from BellSouth customers, but also BellSouth customers, who would be unable to place the calls to ICG customers.

ICG does not contemplate that the binding forecast mechanism would be used in every instance. Jenkins Direct at 4. In many cases, ICG would continue to rely on the nonbinding quarterly forecasts it currently provides BellSouth to assist BellSouth in planning. ICG anticipates only using the binding forecast mechanism where it is (i) confident of substantial additional growth



and (ii) concerned that, absent a binding commitment from BellSouth to timely provision the necessary trunks, there would be an unacceptable risk of blockage of incoming calls to ICG customers because of BellSouth's inability to handle the traffic flow. *Id.*

**B. ICG Would Bear All Of The Financial Risk Of The Binding Forecast Proposal**

While ordinarily BellSouth is responsible for the cost of the trunking necessary to carry its originating traffic to ICG, under the binding forecast mechanism ICG would assume all of the financial risk. ICG would pay BellSouth's tariffed rate for any trunks that BellSouth provisions which go unutilized. Jenkins Direct at 4. ICG believes that its forecasting methodologies are accurate enough that such shortfalls are unlikely and that, where they do occur, traffic volumes will quickly rise to the forecasted level.

C. It Is Within The Commission's Section 251 Authority To Require Binding Forecasts

Notwithstanding that ICG would bear all of the financial risk associated with the binding forecasts and that BellSouth's own customers would be well served, BellSouth is unwilling to accept ICG's proposal. According to BellSouth, the Act does not require BellSouth to provide binding forecasts. Hendrix Direct at 49. State commissions are split on the issue. The Florida commission agreed with BellSouth, *Florida Order* at 12, and declined to require BellSouth to offer binding forecasts. ICG believes this is a short-sighted view. The Alabama commission properly found that BellSouth was required to include in its interconnection agreement with ICG a provision requiring the parties to negotiate the terms and conditions of binding forecasts. *Alabama Order* at 23-24. The North Carolina commission stopped short of requiring a commitment to binding forecasts, but encouraged ICG and BellSouth to continue negotiations toward this goal. *North Carolina Order* at 12.

The issue of whether a state commission has authority in an arbitration proceeding to decide issues and/or impose requirements not enumerated in Sections 251 or 252 of the Act was recently addressed in *US West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d 968 (D. Minn. 1999). In that case, US West sought review of a provision that had been approved by the Minnesota Public Utilities Commission ("MPUC") in an arbitration proceeding regarding the interconnection agreement between US West and AT&T Wireless Services, Inc. The provision required US West to make its recording and billing services available to AT&T Wireless to facilitate AT&T Wireless' collection of termination charges. US West argued that the MPUC lacked authority under the Act to impose this requirement, and that the MPUC had violated Section 252(b)(4) and (c) of the Act in doing so. The court disagreed with US West, holding that the MPUC had the authority under Section 252 of the Act to resolve in an arbitration proceeding any open issues between the parties presented to it for resolution – regardless of whether those issues are

covered by the Act – provided the MPUC's resolution of those open issues did not violate or conflict with the Act. *Id.* at 985-86.

The relevant inquiry is thus whether requiring binding forecasts is consistent with the obligations set forth in Section 251. The answer is yes. Section 251(c)(2) generally imposes on ILECs the duty to provide interconnection with requesting carriers, and in particular Section 251(c)(2)(C) requires that the interconnection provided be “at least equal in quality to that provided by the local exchange carrier to itself.” 47 U.S.C. § 251(c)(2)(C). ICG's binding forecast proposal clearly relates to interconnection and is designed to ensure that it be provided to ICG on nondiscriminatory terms. ICG's proposal therefore falls well within the scope of the Commission's authority under Section 251.

#### VI. ICG ACCEPTS BELLSOUTH'S OFFER CONCERNING THE PROVISION OF PACKET SWITCHING AS A UNE

BellSouth has taken the position that, in connection with the interconnection agreement, it will provide packet switching as a UNE, including all data speeds requested by ICG, at the prices set forth in Exhibit JH-9 attached to BellSouth witness Hendrix's direct testimony. ICG accepts this offer.

#### CONCLUSION

For the foregoing reasons, ICG Telecom Group, Inc. respectfully submits that the Commission should resolve the outstanding issues in the interconnection agreement between ICG and BellSouth by ruling:

1. That BellSouth and ICG must pay each other reciprocal compensation for ISP-bound traffic;
2. That ICG is entitled to receive reciprocal compensation payments from BellSouth at the tandem interconnection rate;

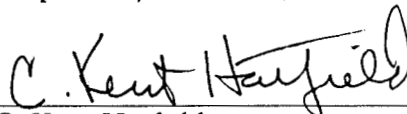
3. That BellSouth must make the EEL available to ICG as a UNE combination, at UNE prices;

4. That the interconnection agreement between ICG and BellSouth must incorporate performance measures and enforcement mechanisms contained in the Texas Plan;

5. That BellSouth must provide ICG with the option of binding forecasts for trunking facilities to deliver traffic originated on BellSouth's network to ICG; and

6. That BellSouth should be required to offer packet switching on a UNE basis, including all data speeds requested by ICG, at the prices set forth in Exhibit JH-9 attached to BellSouth witness Hendrix's direct testimony.

Respectfully submitted,



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January 21, 2000

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served, via first class, U.S. mail, postage pre-paid, upon the parties of record, this 21<sup>st</sup> day of January, 2000.

*C. Kent Haufield*

\_\_\_\_\_  
COUNSEL FOR ICG TELECOM GROUP, INC.

# APPENDIX A

EXCERPT FROM  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF ALPHONSO J. VARNER  
BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION

DOCKET NO. 27069

JUNE 21, 1999

1

2 *Issue 7: For purposes of reciprocal compensation, should ICG be compensated for*  
3 *end office, tandem, and transport elements of termination where ICG's switch*  
4 *serves a geographic area comparable to the area served by BellSouth's tandem*  
5 *switch?*

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. BellSouth's position is that if a call is not handled by a switch on a tandem  
10 basis, it is not appropriate to pay reciprocal compensation for the tandem  
11 switching function. BellSouth will pay the tandem interconnection rate only if  
12 ICG's switch is identified in the local exchange routing guide ("LERG") as a  
13 tandem. A tandem switch connects one trunk to another trunk and is an  
14 intermediate switch or connection between an originating telephone call  
15 location and the final destination of the call. An end office switch is connected  
16 to a telephone subscriber and allows the call to be originated or terminated. If  
17 ICG's switch is an end-office switch, then it is handling calls that originate  
18 from or terminate to customers served by that local switch, and thus ICG's  
19 switch is not providing a tandem function. ICG is seeking to be compensated  
20 for the cost of equipment it does not own and for functionality it does not  
21 provide. Therefore, this Commission should deny ICG's request for tandem  
22 switching compensation when tandem switching is not performed.

23

24 *ISSUE 9: In calculating PLU and PIU, should BellSouth be required to report the*  
25 *traffic on a monthly basis?*

# APPENDIX B

BELLSOUTH SERVICE  
QUALITY MEASUREMENTS  
REGIONAL PERFORMANCE REPORTS  
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TABLE OF CONTENTS

| CATEGORY  | FUNCTION*   | PAGE # | Some aspect under development | Benchmark and/or retail analog under dev. | No UNE retail analog | No product meas. |
|---|---|--------|-------------------------------|---|----------------------|------------------|
| Pre-Ordering - OSS                                | 1. Average OSS Response Time and Response Interval                                | 2      |                               |   |                      |                  |
|   | 2. OSS Interface Availability   | 4      |                               |   |                      |                  |
| Ordering  | 1. Percent Flow-through Service Requests (Summary)                                | 5      | x                             | x   |                      | x                |
|   | 2. Percent Flow-through Service Requests (Detail)                                 | 7      | x                             | x   |                      | x                |
|   | 3. Flow-through Error Analysis  | 9      |                               |   |                      |                  |
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|   | 5. Reject Interval  | 14     | x                             |   |                      |                  |
|   | 6. Firm Order Confirmation Timeliness   | 15     | x                             | x   |                      |                  |
|   | 7. Speed of Answer in Ordering Center   | 17     | x                             |   |                      |                  |
| Provisioning                                      | 1. Mean Held Order Interval & Distribution Intervals                              | 18     | x                             |   | x                    | x                |
|   | 2. Average Jeopardy Notice Interval & Percentage of Orders Given Jeopardy Notices | 20     | x                             |   | x                    | x                |
|   | 3. Percent Missed Installation Appointments                                       | 22     | x                             |   | x                    | x                |
|   | 4. Average Completion Interval Order Completion Interval Distribution             | 24     | x                             |   | x                    | x                |
|   | 5. Average Completion Notice Interval   | 26     | x                             |   | x                    | x                |
|   | 6. Coordinated Customer Conversions   | 28     | x                             | x   |                      |                  |
|   | 7. Percent Provisioning Troubles w/i 30 days                                      | 29     | x                             |   | x                    | x                |
|   | 8. Total Service Order Cycle Time   | 31     | x                             | x   |                      | x                |
| Maintenance & Repair                              | 1. Missed Repair Appointments   | 33     | x                             |   | x                    | x                |
|   | 2. Customer Trouble Report Rate   | 35     | x                             |   | x                    | x                |
|   | 3. Maintenance Average Duration   | 37     | x                             |   | x                    | x                |
|   | 4. Percent Repeat Troubles w/i 30 days)   | 39     | x                             |   | x                    | x                |
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|   | 6. OSS Interface Availability   | 43     | x                             |   |                      |                  |
|   | 7. OSS Response Interval and Percentages  | 44     | x                             |   |                      |                  |
|   | 8. Average Answer Time - Repair Centers   | 45     |                               |   |                      |                  |
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|   | 2. Mean Time to Deliver Invoices  | 47     |                               |   |                      |                  |
|   | 3. Usage Data Delivery Accuracy   | 48     |                               |   |                      |                  |
|   | 4. Usage Data Delivery Completeness   | 49     |                               |   |                      |                  |
|   | 5. Usage Data Delivery Timeliness   | 50     |                               |   |                      |                  |
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|   | 2. Percent Answered within "X" Seconds (Toll)                                     | 53     |                               |   |                      |                  |
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\* These reports are subject to change due to regulatory requirements or to correct errors and etc.



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Creighton E. Mershon, Sr.  
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January 21, 2000

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

RECEIVED  
JAN 21 2000  
PUBLIC SERVICE  
COMMISSION

Re: Petition by ICG Telecom Group, Inc. for Arbitration of  
an Interconnection Agreement with BellSouth  
Telecommunications, Inc. pursuant to Section 252(b) of  
the Telecommunications Act of 1996  
PSC 99-218

Dear Mr. Huelsmann:

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

Sincerely

Creighton E. Mershon, Sr.

Enclosure

cc: Parties of Record

194046

interim inter-carrier compensation mechanism prior to the FCC's decision, BellSouth proposes that such a mechanism be either track and true up, or a bill and keep arrangement. Whichever course the Commission chooses to pursue, it is clear that reciprocal compensation is not an appropriate cost-recovery mechanism.

The parties resolved Issue 3 regarding unbundling of packet switching, and thus the Commission need not consider this issue.

The next issue (Issue 4) regarding the availability of Enhanced Extended Loops ("EELs") is one of the subjects of the FCC's recent Order in the UNE Remand Docket (CC Docket 96-98) (hereinafter "*Third Report and Order*") wherein the FCC developed the national list of UNEs to be provided by the Incumbent Local Exchange Companies ("ILECs"). In light of the FCC's findings, the Commission should deny ICG the relief it seeks on this issue and order the parties simply to comply with the FCC's Order.

ICG withdrew Issue 6 regarding volume and term discounts from the arbitration and thus the Commission need not consider this issue.

With respect to the issue of tandem switching (Issue 7), the Commission should conclude that Competitive Local Exchange Carriers ("CLECs") are entitled to the tandem switching elemental rate only in those circumstances where the CLEC switch actually performs the same tandem switching functions as the ILEC switch and actually serves a geographic area comparable to the ILEC switch. BellSouth submits that ICG's switch fails this two-pronged test, and therefore, ICG's request for the tandem switching rate should be denied.

As to the next issue, binding forecasts (Issue 11), such forecasts are not required under Section 251 or Section 252 of the 1996 Act. Thus, ICG is not entitled to forecasts under Section 252 of the 1996 Act and the Commission should deny the relief requested by ICG.

The final issues (Issues 5 and 19-26) concern performance measures and performance penalties. BellSouth believes that its Service Quality Measurements ("SQMs") are more substantively appropriate and more likely to lead to the further development of competition in Kentucky than the "Texas Plan" put forth by ICG. With respect to performance penalties, the Commission has concluded on two previous occasions that performance penalties are unnecessary. The Commission should reiterate that position here, particularly because ICG's proposal is arbitrary and unsupportable.

### DISCUSSION

***Issue 1 & 8: Until the FCC adopts a rule with prospective application, should dial-up calls to Internet Service Providers (ISPs) be treated as if they were local calls for purposes of reciprocal compensation?***

No serious dispute exists that ISP-bound traffic is "non-local interstate traffic." *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, ¶ 26, n.87 (Feb. 26, 1999) (hereinafter "Declaratory Ruling"); see also Order on Remand, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-71, ¶ 16 (Dec. 23, 1999) (hereinafter "Order on Remand") ("we conclude that typically ISP-bound traffic does not originate and terminate within an exchange and, therefore, does not constitute telephone exchange service within the meaning of the Act."). The Commission should decline to require the payment of reciprocal compensation for ISP-bound traffic because "reciprocal compensation obligations should apply only to traffic that originates and terminates within a local calling area ...." *First Report and Order*, CC Docket 96-98, ¶¶ 1034-35 (Aug. 8, 1996). The South Carolina Public Service Commission recently concluded, in an arbitration involving ITC^DeltaCom, that reciprocal compensation is not an appropriate compensation mechanism for

ISP-bound traffic. *In the matter of Petition of ITC^DeltaCom for arbitration of an interconnection agreement with BellSouth pursuant to Section 252(b) of the Telecommunications Act of 1996*, South Carolina Public Service Commission, Docket No. 99-259-C, at 64 (1999) (“Further, since Section 251 of the 1996 Act requires that reciprocal compensation be paid for local traffic, the Commission further finds that the 1996 Act imposes no obligation on parties to pay reciprocal compensation for ISP-bound traffic”).

Indeed, because the FCC intends to establish an inter-carrier compensation mechanism for ISP-bound traffic, there is no requirement that the Commission establish an interim compensation arrangement at this time, nor is there any policy reason the Commission needs to do so. However, to the extent the Commission decides to establish a compensation mechanism, the Commission should select one of the interim mechanisms proposed by BellSouth. These include: (1) bill and keep; (2) tracking and holding any compensation in abeyance pending the establishment of an inter-carrier compensation mechanism by the FCC; or (3) the establishment of a compensation arrangement similar to that which exists for other access traffic. Any of these three interim inter-carrier compensation mechanisms would be consistent with the 1996 Act and applicable FCC rules. The same cannot be said about ICG’s proposal that reciprocal compensation be paid for ISP-bound traffic.<sup>1</sup>

**1. Reciprocal Compensation Is Not An Appropriate Cost Recovery Mechanism for ISP-Bound Traffic.**

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<sup>1</sup> Because ISP-bound traffic is “non-local interstate traffic” not governed by the reciprocal compensation requirements of Section 251(b)(5) of the 1996 Act or the FCC’s rules, *Declaratory Ruling*, ¶ 26, n.87, BellSouth submits that the establishment of an inter-carrier compensation mechanism for ISP-bound traffic is not properly the subject of arbitration under the 1996 Act. Although the FCC purported to empower state commissions to regulate ISP-bound traffic in the context of Section 252 arbitration, the FCC’s authority to do so is being challenged in court. *See Bell Atlantic Telephone Companies, et al. v. FCC*, Action No. 99-1094 (D.C. Cir. March 8, 1999).

Although both parties agree that there are costs associated with calls by BellSouth end users to ISPs served by ICG, the question before the Commission is the appropriate mechanism to allow ICG to recover such costs. (Starkey, Prefiled Direct at 16; Taylor, Tr. at 151-152). Notwithstanding ICG's claims to the contrary, reciprocal compensation is not an appropriate cost recovery mechanism, interim or otherwise. By its very nature, reciprocal compensation is a *cost-based mechanism* designed to provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination" of local traffic. 47 U.S.C. § 251(b)(5). Reciprocal compensation rates should compensate a carrier for the forward-looking costs it incurs. Even ICG recognizes that reciprocal compensation, as provided for in Sections 251(b)(5) and 252(d)(2) of the 1996 Act, is a cost recovery mechanism. (See Starkey, Tr. at 104) ("reciprocal compensation rates. . . should be based on the costs of the carriers.").

Nevertheless, while insisting that reciprocal compensation will allow it to recover its costs of handling ISP-bound traffic, ICG has never actually determined its costs. (Starkey, Tr. at 99). As ICG witness Starkey explained, ICG "did not produce a cost study for ISP-bound traffic." (Starkey, Tr. at 99). Mr. Starkey could not, therefore, despite his best efforts to avoid the question, assure the Commission that reciprocal compensation for ISP-bound traffic would not create a windfall for ICG. (See Starkey, Tr. at 99-103). Without cost studies or some determination of ICG's costs in handling ISP-bound traffic, it is entirely possible that the payment of reciprocal compensation for ISP-bound traffic would result in ICG overrecovering its costs.

Simply, ICG can give no assurances that it would not receive a windfall from the payment of reciprocal compensation for ISP-bound traffic. The potential for such a windfall is very real, which explains why CLECs use reciprocal compensation to "pass along price breaks to the ISP

that would not normally occur in a non-distorted, competitive market.” (Hendrix, Prefiled Rebuttal at 7).

ICG tries to overcome its failure to prove that it would recover only its costs if reciprocal compensation were paid for ISP-bound traffic by contending that ICG can rely upon BellSouth's costs rather than developing a cost study of its own. (Starkey, Tr. at 100). This argument fails for two reasons. First, BellSouth has not studied the costs associated with ISP-bound traffic. BellSouth's cost studies, which may be used by the Commission to establish reciprocal compensation rates for local traffic, examined the costs of transporting and terminating voice traffic, not the costs of handling ISP-bound traffic. The distinction is important because ISP-bound traffic has, on average, significantly longer hold times than traditional voice traffic. See *Report of the NARUC Internet Working Group, Pricing and Policies for Internet Traffic on the Public Switched Network*, at 2 (March 1998); Atai and Gordon, *Impacts of Internet Traffic on LEC Networks and Switching Systems*, at 3-4 (Bellcore 1996); Exhibit \_\_\_\_, Starkey Testimony, North Carolina Public Service Commission at 4 (“that average length of call has generally been assumed to be 3 to 4 minutes in length compared to the approximately 20 minutes in length for an average ISP-bound call”). These longer hold times make ISP-bound traffic a different animal in terms of cost than traditional local voice traffic, and the reciprocal compensation rates currently in place do not account for those cost differences. (Starkey, Tr. at 99).

Because of the longer hold times for ISP calls, the payment of reciprocal compensation for ISP-traffic based upon rates for transporting and terminating local voice traffic will result in an over-recovery of call set up costs. (Taylor, Prefiled Rebuttal at 11). In its *Declaratory Ruling*, the FCC recognized that “efficient rates for inter-carrier compensation for ISP-bound traffic are not likely to be based entirely on minute-of-use pricing structures.” *Declaratory Ruling*

¶ 29. The FCC expressed concern that “pure minute-of-use pricing structures are not likely to reflect accurately how costs are incurred for delivering ISP-bound traffic.” *Id.* ICG's reciprocal compensation proposal cannot be reconciled with the FCC's concerns.

Second, ICG's argument that FCC rules permit ICG to use BellSouth's costs as a proxy rests on a misinterpretation of the rules. The rule upon which ICG relies – 47 C.F.R. § 51.711 – governs symmetrical reciprocal compensation rates for local traffic, not ISP-bound traffic. The FCC has made clear that these rules do not govern ISP-bound traffic. *See Declaratory Ruling*, ¶ 26 n.87. As a result, the FCC's rules do not and cannot excuse ICG for failing to come forward with any evidence that reciprocal compensation for ISP-bound traffic only would allow ICG to recover its costs rather than generating a windfall for ICG at the expense of BellSouth customers.

## **2. Reciprocal Compensation For ISP-Bound Traffic Is Bad Public Policy.**

ICG wants the Commission to focus solely on the effect on ISPs of a decision not to require the payment of reciprocal compensation for ISP-bound traffic. However, when considering the establishment of an interim inter-carrier compensation mechanism for ISP-bound traffic, the Commission should focus on the effect that mechanism would have on the *overall* development of competition in Kentucky, rather than on only *one* segment of the market. ICG and other CLECs should be encouraged to serve all market segments, a result that does not occur when reciprocal compensation is paid for ISP-bound traffic.

A number of adverse consequences to competition will result from the payment of reciprocal compensation for ISP-bound traffic. Specifically, such payment harms competition by: (1) reducing CLECs' incentive to service residence and business end user customers; (2) further subsidizing ISPs; (3) encouraging uneconomic preferences for CLECs to serve ISPs due



to the fact that CLECs can choose the customers they want to serve and CLECs could offer lower prices to ISPs without reducing the CLECs' net margin; (4) establishing unreasonable discrimination among providers (interexchange carriers versus ISPs); and (5) creating incentives to arbitrage the system, such as schemes designed solely to generate reciprocal compensation. (Taylor, Prefiled Direct at 17; Hendrix, Prefiled Rebuttal at 18). None of these results is desirable in Kentucky or anywhere else.

Several state commissions have recognized the market distortion caused by reciprocal compensation for ISP-bound traffic. Most notably, the Commonwealth of Massachusetts Department of Telecommunications and Energy made the following findings of relevance here:

The unqualified payment of reciprocal compensation for ISP-bound traffic, implicit in our October Order's construing of the 1996 Act, *does not promote real competition in telecommunications. Rather, it enriches competitive local exchange carriers, Internet service providers, and Internet users at the expense of telephone customers or shareholders.* This is done under the guise of what purports to be competition, but is really just an unintended arbitrage opportunity derived from regulations that were designed to promote real competition.

Order, D.T.E. 97-116-C, p. 32 (May 19, 1999) (emphasis added). The Massachusetts Commission saw through the veneer of the reciprocal compensation argument advanced by ICG, and the Commission should do likewise.

The market distortions recognized by the Massachusetts Commission have occurred in Kentucky and elsewhere in BellSouth's region. Between November 1998 and October 1999, the total minutes of use from BellSouth end users to ISP customers served by CLECs in Kentucky was over 9 times the local minutes of use from BellSouth end users to non-ISP customers served by CLECs in Kentucky. (Hendrix, Prefiled Rebuttal at 6). Likewise, some CLECs have billed BellSouth more in reciprocal compensation than the revenues these CLECs receive from their own end-user customers. (Starkey, Tr. at 109-110)(KMC generated approximately \$636,000 in

revenues from ten ISP customers in Louisiana, while billing BellSouth approximately \$2 million in reciprocal compensation for traffic to those ten ISPs). Such evidence vividly demonstrates that CLECs are targeting ISPs at the expense of non-ISP customers and are attempting to make reciprocal compensation from ISPs a separate line of business. Such a result is hardly consistent with this Commission's mission to promote competition in all market segments.

**3. Consistent With Cost Causation Principles, ICG Should Recover The Costs Associated With ISP-Bound Traffic From ISPs, Not BellSouth.**

In seeking reciprocal compensation for ISP-bound traffic, ICG wants BellSouth to pay the cost of calls to the Internet rather than the ISPs whose customers generate such calls. ICG's position violates basic principles of cost-causation, which dictate that the cost of ISP-bound traffic should be recovered from the ISPs ICG serves, not from BellSouth.

BellSouth and ICG do not dispute the notion that costs should be borne by the cost causer. (Starkey, Tr. at 111-112; Taylor, Prefiled Direct at 6-7). The question becomes who is the cost causer when a call is placed to the Internet through an ISP. The logical answer to this question is that when an end user places a call to an ISP, that end user is acting as a customer of the *ISP*, much as when that end user places a long distance call as a customer of the interexchange carrier. (Taylor, Prefiled Direct at 8-9). As Dr. Taylor noted, "the same subscriber that acts in the capacity of a customer of the originating ILEC when making a local voice call is seen to act in the capacity of a customer of the ISP when making an Internet call." (Taylor, Prefiled Direct at 9). As a result, the carrier whose customer originates the call, prices the service, and receives the money, ought to charge the full cost of that call to the customer. Thus, according to Dr. Taylor, the price the ISP charges ought to cover the full cost that the end user causes. (Taylor, Prefiled Direct at 3).

ICG's primary defense to BellSouth's position is its alleged inability to compete in the marketplace if it is required to recover the cost of ISP-bound traffic from its ISP customers. (See Schonhaut, Prefiled Direct at 6; Prefiled Direct at 12; Prefiled Rebuttal 4) ("e.g. in addition, without reciprocal compensation for calls to ISPs precluded as a source of revenue, ICG would find it necessary to weigh whether it would be a wise business decision to expand its investment and provide increased services in Kentucky;" "if reciprocal compensation for calls to ISPs were foreclosed as a source of revenue for several months or more, ICG would be forced to rethink its options concerning its further investment in this state.") ICG's alleged fears ignore the fact that the prices BellSouth charges its ISP customers do not reflect receipt of any reciprocal compensation, and it is those prices against which ICG is competing. (Hendrix, Prefiled Rebuttal, at 3-4). Thus, ICG should be able to charge its ISP customers for the costs associated with ISP-traffic, as BellSouth attempts to do, and still compete successfully for ISP customers.

A decision by the Commission not to award ICG reciprocal compensation would *not* mean that ICG would have uncompensated costs. Rather, the crucial point that ICG attempts to gloss over is that *the CLECs' ISP customers compensate the CLECs for services that are provided just like an ILEC's ISP customer compensates the ILEC.* (Hendrix, Tr. at 183; Prefiled Direct at 39-40). If ICG does not recover its costs from the ISP it serves, it is likely charging the ISP rates that are below cost. Furthermore, according to Mr. Hendrix, paying ICG reciprocal compensation for ISP-bound traffic would result in BellSouth's end user customers subsidizing ICG's operations. (Hendrix, Prefiled Rebuttal at 13). The subsidy stems from the fact that ICG is the only party compensated in the two-carrier arrangement because ICG receives revenue from its ISP customer, while BellSouth receives no compensation.

Consistent with principles of cost causation, BellSouth has proposed that the Commission direct the parties to implement a bill and keep mechanism for ISP-bound traffic pending the establishment of an inter-carrier compensation mechanism by the FCC. Under a bill-and-keep arrangement, neither of the two interconnecting carriers would charge the other for ISP-bound traffic that originates on the other carrier's network. (Hendrix, Prefiled Direct at 24-25). Instead, it would ensure that the parties recover their costs from the cost causer, namely the ISP.

**4. Any Interim Inter-Carrier Compensation Mechanism Should Recognize That ISP-Bound Traffic Is Interstate In Nature And Will Be Regulated As Such By The FCC.**

In its *Declaratory Ruling*, the FCC confirmed that ISP-bound traffic is not local, and ISP-bound traffic does not terminate at the ISP's local server, but continues over the Internet to host computers that may be located in another state or another nation. *Declaratory Ruling* ¶ 12. The FCC also made clear that ISPs are users of exchange access service. *Id.* ¶ 5. In a more recent Order, the FCC reiterated this fact. In its Order on Remand, the FCC held that "xDSL-based advanced services that are used to connect ISPs with their subscribers to facilitate Internet bound traffic typically constitute exchange access service because the call initiated by the subscriber terminates at Internet websites located in other exchanges, states, or foreign countries." *Order on Remand*, ¶ 33. Rather than paying local carriers for their use of such exchange access service through the payment of access charges, as do interexchange carriers, however, ISPs pay for exchange access that is equal to the rate for local exchange service. *Id.* The FCC made clear that its decision to exempt ISPs from the payment of access charges does not change the nature of the service ISPs receive – it is exchange access service for which ISPs pay local exchange rates. *Id.* at ¶ 16.

Because ISPs use exchange access service, BellSouth also has proposed an interim inter-carrier compensation mechanism premised upon the revenue sharing arrangement that exists in the access world. (Hendrix, Prefiled Direct at 16-17). The fact that the FCC has exempted enhanced service providers, including ISPs, from paying access charges and instead allowed them to purchase service out of the business exchange tariff is precisely the reason that a separate sharing plan is necessary. Unlike other access services, which are billed on a usage-sensitive basis, ISPs purchase flat rate basic business local exchange services. Only one carrier can bill the ISP, and the business exchange rate billed to the ISP is the only source of revenue to cover any of the costs incurred in provisioning access service to the ISP. (Hendrix, Prefiled Direct at 18-19). Thus, a plan to share the access revenue paid by the ISP among all the carriers involved in handling the traffic is appropriate.

Because of the FCC's plans to establish an inter-carrier compensation mechanism of its own, the Commission may decline to establish reciprocal compensation as proposed by ICG, or the sharing plan proposed by BellSouth, particularly since either is likely to be preempted once the FCC rules. Under the circumstances, the Commission may decide simply to require that the parties track ISP-bound traffic originating on each parties' network on a going-forward basis. Once there is an effective order from the FCC establishing an inter-carrier compensation mechanism for ISP-bound traffic, the parties will "true-up" any payments retroactively from the effective date of the interconnection agreement. (Hendrix, Prefiled Direct at 15). *See Order, In re: Petition of Birch Telecom of Missouri, Inc.*, Case No. TD-98-278 (Mo. Pub. Service Comm'n April 16, 1999) (no reciprocal compensation for ISP-bound traffic, but requiring parties to track ISP traffic and "true up" once FCC rules).<sup>2</sup>

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<sup>2</sup> At least two state commissions in BellSouth's region have adopted a variation of this proposal. *See In re: Petition by ICG Telecom Group, Inc. for Arbitration*, Docket No. 27069 (Nov. 10, 1999), and *In re: Petition by ICG*

**Issue 3: Should BellSouth be required to make available as UNEs packet-switching capabilities, including but not limited to:**

- a) *user-to-network interface (UNI) at 56 kbps, 64 kbps, 128 kbps, 256 kbps, 384 kbps, 1.544 Mbps and 44.736 Mbps.*
- b) *network-to-network interface (NNI) at 56 kbps, 64 kbps, 1.544 Mbps and 44.736 Mbps.*
- c) *data link control identifiers ("DLCIs") at committed information rates ("CIRS") of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 384 kbps, 448 kbps, 512 kbps, 576 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps, 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472 Mbps, 1.536 Mbps, 1.544 Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps, 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 3.896 Mbps, 15.440 Mbps, 16.984 Mbps, 18.528 Mbps and 20.072 Mbps*

Although ICG declined to remove this issue from the arbitration, Mr. Holdridge testified on cross-examination that "I believe that the issue is settled." (Holdridge, Tr. at 9). Thus, there is no need for the Commission to consider this issue further.

**Issue 4: Should BellSouth be required to provide as a UNE "Enhanced Extended Link" Loops ("EELs")?**

The issue concerning extended loops and loop-port combinations was largely resolved by the FCC's *Third Report and Order* in CC Docket 96-98 (Nov. 5, 1999), as modified by the FCC's Supplemental Order issued on November 24, 1999. The FCC confirmed that BellSouth presently has no obligation to combine network elements for CLECs such as ICG, when those elements are not currently combined in BellSouth's network. The FCC rules, 51.315(c)-(f), that purported to require incumbents to combine unbundled network elements were vacated by the Eighth Circuit Court of Appeals and were not appealed to or reinstated by the Supreme Court.

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*Telecom Group, Inc. for Arbitration*, Docket No. P-582, Sub 6 (NPSC Nov. 4, 1999). The Alabama Public Service Commission and the North Carolina Public Service Commission required BellSouth and ICG to pay reciprocal compensation for ISP-bound traffic pending a decision from the FCC. However, such payments are to be retroactively "trued-up" to the level of inter-carrier compensation ultimately adopted by the FCC."

The question of whether those rules should be reinstated is pending before the Eighth Circuit, and the FCC declined to revisit those rules at this time. *Third Report and Order*, ¶ 481.

The FCC also confirmed that when unbundled network elements, as defined by the FCC, are currently combined in BellSouth's network, BellSouth cannot separate those elements except upon request. 47 C.F.R. § 51.315(b). For example, when a loop and a port (at least for certain customers with fewer than four access lines) are currently combined by BellSouth to serve a particular customer, that combination of elements must be made available to CLECs, such as ICG. According to the FCC, requesting carriers are entitled to obtain such combinations "at unbundled network element prices." *Id.* at ¶ 480. Under the circumstances, it is not clear what additional relief ICG is seeking from the Commission with respect to this issue.

To the extent ICG wants the Commission to adopt an expansive view of "currently combined" so as to obligate BellSouth to combine elements for ICG, the Commission should reject ICG's request. ICG witness Holdridge opined that BellSouth is required to provide combinations of elements so that ICG can serve a customer, even if that customer is not served by BellSouth and even though BellSouth has no existing facilities in place to serve that customer. (Holdridge, Tr. at 15). According to Mr. Holdridge, "until the FCC rules further," BellSouth is obligated to provide ICG with a combination to serve a customer BellSouth does not serve today. (Holdridge, Tr. at 16).

However, the FCC does not share Mr. Holdridge's views. As the FCC made clear in its *Third Report and Order*, Rule 51.315(b) applies to elements that are "in fact" combined. *See id.* ¶ 480 ("To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form"). The FCC declined to adopt the definition of "currently combined,"

espoused by ICG that would include all elements "ordinarily combined" in the incumbent's network. *Id.* (declining to "interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are 'ordinarily combined' ..."). Thus, Mr. Holdridge's view that BellSouth should be required to provide combinations anywhere, even for customers not currently served by BellSouth, cannot be reconciled with the FCC's *Third Report and Order*. Even Ms. Schonhaut appeared to recognize that Mr. Holdridge's view was without merit. In order to "correct the record," Ms. Schonhaut testified that BellSouth is correct that ILECS have no current obligation to combine new UNEs. (Schonhaut, Tr. at 127). She testified as follows:

Q: ...Ms. Schonhaut, is it the company's position that BellSouth has a current obligation to combine new unbundled network elements?

A: No. We believe that BellSouth, at this time, has no such current obligation.

(Schonhaut, Tr. at 127). She further testified, however, that ICG expressly is asking the Commission to go "a step beyond what the FCC did" and order BellSouth to provide uncombined combinations. *Id.* Such a step is one the Commission should decline to take.

Likewise, to the extent ICG wants the Commission to define an EEL as a separate unbundled network element that BellSouth must provide, the Commission also should reject this request. In its *Third Report and Order*, the FCC expressly declined "to define the EEL as a separate network element in this Order. As discussed above, the Eighth Circuit is currently reviewing whether rules 51.315(c)-(f) should be reinstated. We see no reason to decide now whether the EEL should be a separate network element, in light of the Eighth Circuit's review of those rules." *Third Report and Order*, ¶ 478. Accordingly, except to the extent where currently combined elements in BellSouth's network that comprise an EEL are located, BellSouth currently has no legal obligation to provide ICG with the EEL.



Furthermore, even if there are circumstances when ICG has purchased currently combined elements that may comprise the EEL, ICG's ability to convert special access facilities to unbundled elements should be constrained until the FCC completes its Fourth Notice of Proposed Rulemaking. *Third Report and Order*, ¶ 489. Constraints on the conversion of special access to UNEs are necessary in order to allow the FCC to develop an adequate record to examine the concern "that allowing requesting carriers to obtain combinations of loop and transport unbundled network elements based on forward-looking cost would provide opportunities for arbitrage of special access services," and thereby negatively impact universal service. *Third Report and Order*, ¶ 494; November 24 Supplemental Order ¶ 4. Until that rulemaking is complete, the FCC has made clear that carriers may not convert special access services to combinations of unbundled network elements unless the carrier uses combinations of network elements to provide a significant amount of local exchange service, in addition to exchange access service to a particular customer. November 24 Supplemental Order ¶¶ 2 & 4.

Finally, ICG complains that it needs the EEL to be able to serve customers who otherwise might not have competitive alternatives. (Holdridge, Tr. at 17-18). Despite the fact that he did not mention it in his prefiled testimony, Mr. Holdridge acknowledged on cross-examination that resale was available for similar situations, such as those where it would not be economically efficient to deploy facilities. (Holdridge, Tr. at 18). He was adamant, however, that resale was not "economically viable." (*Id.* at pp. 28-29). Mr. Holdridge apparently is unaware of the fact that there are approximately 49 CLECs providing resold services today in Kentucky. Most of those resellers are presumably making money reselling those services. His vehement protestations about the lack of feasibility of resale carry little weight in light of a viable resale market in Kentucky.

The resolution of this issue is relatively straightforward: ICG should be entitled to purchase extended loops and loop and port combinations to the extent permitted by and consistent with the FCC's *Third Report and Order* as modified by its November 24, 1999 Supplemental Order. Nothing more, and nothing less.

**Issue 6:**      *Should volume and term discounts be available to ICG for UNEs?*

ICG withdrew this issue prior to the hearing and thus the Commission need not address it. (Kramer, Tr. at 5) ("ICG has voluntarily withdrawn the issue of volume and term discounts").

**Issue 7:**      *For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch?*

A tandem switch interconnects end offices. (Hendrix, Prefiled Rebuttal at 26; 29). An end office switch, on the other hand, connects trunks to customer lines. (Hendrix, Prefiled Rebuttal at 29). If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. (Hendrix, Prefiled Direct at 17). In other words, ICG's switch is an end-office switch, and is handling calls that originate from or terminate to customers served by that local switch. Thus, it is not providing a tandem function. (Hendrix, Prefiled Direct at 46). ICG is seeking to be compensated for the cost of equipment it does not own and for functionality it does not provide. (Hendrix, Prefiled Direct at 46).

Under Section 251(b)(5) of the 1996 Act, all local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). The terms and conditions for reciprocal compensation must be "just and reasonable," which requires the recovery of a reasonable approximation of the "additional cost" of terminating calls that originate on the network of another carrier. 47 U.S.C. § 252(d)(2)(A). According to the FCC, the "additional costs" of

transporting terminating traffic vary depending on whether or not a tandem switch is involved. See First Report and Order, *In re: Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, CC Docket No. 96-98, ¶ 1090 (Aug. 8, 1996) (hereinafter referred to as "*First Report and Order*"). As a result, the FCC determined that state commissions can establish transport and termination rates that vary depending on whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch. *Id.*

The FCC directed state commissions to consider two factors in determining whether a CLEC should receive the same reciprocal compensation rate as would be the case if traffic were transported and terminated via the incumbent's tandem switch. First, the FCC directed state commissions to "consider whether new technologies (e.g., fiber ring or wireless network) performed functions similar to those performed by an incumbent LEC's tandem switch and thus whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." *First Report and Order* ¶ 1090. Second, in addition to the functionality comparison, the FCC instructed state commissions to consider whether the new entrant's switch serves a geographic area comparable to that served by the incumbent local exchange carrier's tandem switch, in which case the appropriate proxy for the new carrier's costs is the incumbent's tandem interconnection rate. *Id.*; see also 47 CFR § 51.711(a)(3). Therefore, in order to evaluate whether a CLEC should receive the same reciprocal compensation rate as would be the case if traffic were transported and terminated via the incumbent's tandem switch, "it is appropriate to look at both the function and geographic scope of the switch at issue." See *U.S. West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d 968, 977 (D. Minn. 1999) (emphasis added) (copy attached).

Turning first to the issue of geographic comparability, the evidence in this record (or lack thereof) on the question of whether ICG's switch serves a comparable geographic area is similar to the record evidence confronted by the federal district court in *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc.*, 1999 U.S. Dist. LEXIS 11418, \*19 (N.D. Ill, June 22, 1999) (copy attached). In that case, MCI argued that it should be compensated at the tandem rate for its switch in Bensonville, Illinois. The Illinois Commerce Commission ("ICC") rejected MCI's argument, finding that MCI had failed to provide sufficient evidence to support a conclusion that it was entitled to the tandem interconnection rate.<sup>3</sup>

In affirming the ICC on the tandem switching issue, the federal district court found that MCI's "intentions for its switch" were "irrelevant." According to the court, MCI was required to identify the location of its customers and the geographical area "actually serviced by MCI's switch," which MCI had utterly failed to do. *Id.* at \*22-23 n.10. The district court reasoned that:

The "Chicago area" is large, yet MCI offered no evidence as to the location of its customers within the Chicago area. Indeed, an MCI witness said that he "doubted" whether MCI had customers in every "wire center territory" within the Chicago service area. MCI's customers might have been concentrated in an area smaller than that served by an Ameritech tandem switch or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. These are questions that MCI could have addressed, but did not.... In short, *MCI offered nothing but bare, unsupported conclusions that its switch currently served an area comparable to Ameritech tandem switch or was capable of serving such an area in the future.* The ICC's determination that "MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate" was not arbitrary and capricious.

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<sup>3</sup> Although the ICC did not make express findings regarding the comparable functions of MCI's switch and Ameritech's tandem switches or the comparative geographical areas served by the various switches, the ICC did discuss the evidence offered by each party on these issues. *Id.* at \*20. According to the district court, "[t]he issue of comparable functionality apparently was not in serious dispute" as MCI presented evidence that its switch performed similar functions as Ameritech's tandem switches -- evidence that Ameritech did not dispute. *Id.* Indeed, Ameritech did not even raise the comparable functionality issue on appeal, which led the district court to conclude that "only at issue is the geographical areas served by the respective switches." *Id.*

*Id.* at \*22-23 (emphasis added).

The district court's reasoning applies equally here. ICG has offered nothing but "bare, unsupported conclusions" from its consultant (who is not an employee of ICG) that its single Kentucky switch currently serves an area comparable to BellSouth's tandem switch. (See, e.g., Starkey, Prefiled Direct at 27; Starkey, Prefiled Rebuttal at 53). ICG did not provide the location of its customers in Kentucky, a fact which would be essential for the Commission to determine the geographic area ICG's Kentucky switch actually serves and whether that area is comparable to the area served by BellSouth's tandem switch. For example, assume ICG has ten customers in Kentucky, all of which are located in a single office complex located next door to ICG's single switch. Under no set of circumstances could ICG seriously argue that in such a case its switch serves a comparable geographic area to BellSouth's switch. See Decision 99-09-069, *In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom*, Application 99-03-047, 9/16/99, at 15-16 (finding "unpersuasive" MFS's showing that its switch served a comparable geographic area when many of MFS's ISP customers were actually collocated with MFS's switch). Absent such evidence, ICG has clearly failed to satisfy its burden of proof on this issue.

Turning to the issue of functionality, several federal district court and state commission decisions plainly hold that the functions performed by another carrier's switch should be considered in determining whether that carrier is entitled to receive compensation for end-office, tandem, and transport elements in transporting terminating traffic. See, e.g., *U.S. West Communications, Inc. v. Minnesota Public Utilities Commission*, 55 F. Supp. 2d at 977; *U.S. West Communications, Inc. v. Public Service Commission of Utah*, 1999 U.S. Dist. LEXIS 18148, \*12 (D. Utah, Nov. 23, 1999) (affirming commission requirement that U.S. West

compensate Western Wireless at the tandem switching rate after concluding that Western Wireless's "switches perform comparable functions and serve a larger geographic area") (copy attached); *MCI Telecommunications Corp. v. Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc., Id.* (in deciding whether MCI was entitled to the tandem interconnection rate, the commission correctly applied the FCC's test to determine whether MCI's switch "performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch") (copy attached).

Here, ICG again depends on the unsubstantiated testimony of Mr. Starkey to assert that ICG's switch performs the same functionality as BellSouth's tandem. (Starkey, Prefiled Rebuttal at 54). At the most basic level, however, contrary to Mr. Starkey's conclusory opinions, one switch cannot operate as a tandem switch -- the very nature of a tandem switch requires that the network have at least two switches. ICG has only one switch in Kentucky. (Hendrix, Prefiled Rebuttal at 28). Moreover, Mr. Starkey's protestations to the contrary notwithstanding, while ICG's switch may be capable of performing tandem switching functions when connected to an end-office switch, ICG's 5ESS switch does not perform the functions identified by BellCore as tandem switching functions. (Hendrix, Prefiled Rebuttal at 28). Most importantly, ICG does not interconnect end offices or perform trunk-to-trunk switching; rather, ICG performs line-to-trunk or trunk-to-line switching. (*Id.*). As Mr. Starkey's schedule I diagram demonstrates, all ICG is doing is sending end user customer lines, in the form of long loops, to its switch from its collocation sites -- "[l]ong loop facilities do not qualify as facilities over which local calls are transported and terminated as described by the Act and therefore are not eligible for reciprocal compensation." (Hendrix, Prefiled Rebuttal at 29). Collocation arrangements simply are not switching points or end offices. (Hendrix, Prefiled Rebuttal at 30).

The relevance of the functions the switch is performing is that reciprocal compensation is not paid for loop costs, but rather only for the cost of transporting and terminating local calls. (Hendrix, Prefiled Rebuttal at 30-31; *First Report and Order*, ¶ 1057). Specifically, the FCC held that the "costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities. We conclude that such non-traffic sensitive costs should not be considered 'additional costs' when a LEC terminates a call that originated on the network of a competing carrier." (*First Report and Order*, ¶ 1057). Thus, the loops that ICG uses to serve its customers do not qualify for compensation because they are not "additional costs" incurred in transporting or terminating local calls. (Hendrix, Prefiled Rebuttal at 32-33). ICG is, therefore, seeking unwarranted compensation.

The Florida Public Service Commission has previously reached the same conclusion recommended by BellSouth in the Commission's Metropolitan Fiber Systems of Florida, Inc. ("MFS") and Sprint arbitration orders. The Commission determined that "MFS should not charge Sprint for transport because MFS does not actually perform this function." (Order No. PSC-96-1532-FOF-TP, issued December 16, 1996.) The Commission reaffirmed this conclusion when it issued its Order in the MCI/Sprint arbitration case in Docket No. 961230-TP. (Order No. PSC-97-0294-FOF-TP, issued April 14, 1997.) The circumstances in the MFS/Sprint arbitration case can be logically extended to the issue raised by ICG in this arbitration proceeding. The evidence in the record does not support ICG's position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually provide the network facility for which it seeks compensation.<sup>4</sup>

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<sup>4</sup> For purposes of a complete record, it is important to note that the Alabama and North Carolina Public Service Commissions have ruled against BellSouth on this issue, although the North Carolina decision is only a

More recently and in this identical case, by Order dated January 14, 2000, the Florida Commission re-affirmed its above-stated position in BellSouth's arbitration with ICG and found in favor of BellSouth on this issue. In doing so, the Florida Commission expressly considered the functions performed and geographical area served by ICG's switch. The Commission thus approved its Staff's Recommendation, denying the request of ICG as follows:

Because ICG currently does not have a network in place in Florida, we cannot determine if ICG's network will, in fact, serve a geographic area comparable to one that is served by a BellSouth tandem switch...Similarly, the evidence of record in this arbitration does not show that ICG will deploy both a tandem and end office switch in its network. In addition, since tandem switching is described by both parties as performing the function of transferring telecommunications between two trunks as an intermediate switch or connection, we do not believe this function will or can be performed by ICG's single switch. As a result, we cannot at this time require that ICG be compensated for the tandem element of termination.<sup>5</sup>

The California Public Utilities Commission also reached a conclusion similar to Florida on this issue. In an arbitration proceeding before MFS/WorldCom and Pacific Bell, the CPUC held that "a party is entitled to tandem and common transport compensation only when the party actually provides a tandem or common transport function." *See* Decision 99-09-069, *In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom*, Application 99-03-047, 9/16/99, at 16. The CPUC further found unpersuasive MFS/WorldCom's argument that its network served a geographic area comparable in size to that served by Pacific Bell's tandem switch.

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recommended decision rather than a final decision. BellSouth objected to the North Carolina decision on this issue, and, in fact, on January 3, 2000, the Public Staff recommended that the Commission reconsider and reverse its findings on this issue. A copy of the Staff's Response is attached. In Alabama, BellSouth filed a motion for reconsideration of the Alabama Commission's Order, and a final decision is pending.

<sup>5</sup> Order, *In re Petition of ICG Telecom Group, Inc. for arbitration of unresolved issues in interconnection negotiations with BellSouth Telecommunications, Inc.*, Docket No. 990691-TP, Order No. PSC-00-0128-FOF-TP, at 10-11 (Fla. Pub. Serv. Comm. 1/14/00)(copy attached hereto).



For the foregoing reasons, this Commission should deny ICG's request for tandem switching compensation when ICG proved neither that its switch is performing tandem switching nor that its switch serves a geographic area comparable to BellSouth's switch.

**Issue 11:** *Should BellSouth be required to commit to provisioning the requisite network buildout and necessary support when ICG agrees to a binding forecast of its traffic requirements in a specified period?*

The Commission should not create a duty or obligation that is not delineated in Section 251 of the 1996 Act in an arbitration proceeding under Section 252 of the 1996 Act. Specifically, Section 252(c) requires that:

In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—  
(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission, pursuant to Section 251;

Clearly, BellSouth is not required by Section 251 of the 1996 Act to commit to binding forecasts with any CLEC, including ICG.<sup>6</sup>

Although not required under the Act or by FCC rules, BellSouth recently has completed development of a service (Trunk Port Commitment Service), whereby BellSouth will commit to provisioning the necessary DS1 trunk ports when the parties agree to the requirements of a CLEC-provided DS1 trunk port forecast. BellSouth is now in the process of developing implementation procedures and contract language, upon completion of which, it will begin offering the service. (Hendrix Prefiled Direct at 49-50; Prefiled Rebuttal at 49-50).

BellSouth is agreeable to continue to negotiate with ICG to meet their forecasting needs. It should be noted, however, that at this point in time, BellSouth is not offering binding forecast

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<sup>6</sup> Order, *In re Petition of ICG Telecom Group, Inc. for arbitration of unresolved issues in interconnection negotiations with BellSouth Telecommunications, Inc.*, Docket No. 990691-TP, Order No. PSC-00-0128-FOF-TP, at 11 (Fla. Pub. Serv. Comm. 1/14/00) (“BellSouth is not required by the Act, FCC rule, FCC Order or FPSC Order to enter into a binding forecast arrangement with ICG. Therefore, we shall not here require them to do so”)

commitments for network services and facilities other than DS1 trunk ports. (Hendrix, Prefiled Rebuttal at 50).

The simple fact remains, however, that binding forecasts are not required by Sections 251 or 252 of the 1996 Act. Consequently, binding forecasts are outside the scope of BellSouth's requirements under the law, and the Commission should reject the imposition of such on BellSouth.

**Issue 5:** *Should BellSouth be subject to liquidated damages for failing to meet the time intervals for provisioning UNEs? If so, what level of damages, concessions or remedies are appropriate? What time intervals?*

**Issue 19:** *Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the Parties?*

**Issue 20:** *Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?*

**Issue 21:** *Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?*

**Issue 22:** *Should BellSouth continue to be responsible when the duration of service's failure exceeds certain benchmark?*

**Issue 23:** *Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?*

**Issue 24:** *Should BellSouth continue to be responsible when the duration of service's failure to meet the grade of service requirements exceeds certain benchmarks?*

**Issue 25:** *Should BellSouth be required to pay liquidated damages when BellSouth fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?*

**Issue 26:** *Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmark?*

The parties do not dispute the importance of or need for performance measurements in the parties' interconnection agreement. The only dispute is which performance measures should be included. BellSouth submits that the appropriate performance measures are BellSouth's Service Quality Measurements ("SQMs"), which are comprehensive measures covering BellSouth's performance in nine separate categories: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; (5) billing; (6) operator services and directory assistance; (7) E911; (8) trunk group performance; and (9) collocation. BellSouth's SQMs were developed as a result of proceedings before several state Public Service Commissions (particularly Georgia and Louisiana) and input from the CLECs. (Coon, Prefiled Rebuttal at 4-5).

ICG is advocating the implementation of performance measurements based on a plan adopted by Texas Public Service Commission (Rowling, Tr. at 70-71). The Commission should decline to adopt performance measurements based upon a proposal in Texas that has no relevance to BellSouth or to Kentucky. As Ms. Rowling admitted on cross-examination, the Texas Plan proposed by ICG might need to be "readjusted" to be applicable to BellSouth in Kentucky. (Rowling, Tr. at 71). For example, as Chairman Helton pointed out, ICG's proposal does not in any way account for the fact that the number of CLECs in Texas could be far different than the number of CLECs in Kentucky. (Rowling, Tr. at 72). The BellSouth SQMs are designed for BellSouth and the BellSouth region and thus are more appropriate, particularly when the Louisiana and Georgia Public Service Commissions and numerous interested parties have devoted countless hours to developing comprehensive performance measures suitable to the industry in BellSouth's region.

As a result of these countless hours, BellSouth's SQMs are available to ICG and every other CLEC in Kentucky today. Moreover, the measurements are being used every month, and data from the measures is being posted on BellSouth's CLEC website. While BellSouth recognizes that the SQMs will continually evolve to meet the needs of the market, the SQMs today are more than adequate to allow the Commission to assess nondiscriminatory access. (Coon, Tr. at 166). The same cannot be said about ICG's proposed performance measurements. In a similar arbitration between BellSouth and ITC^DeltaCom in South Carolina, the fact that BellSouth's SQMs have undergone rigorous review and currently are available for use were reasons cited by the South Carolina Public Service Commission for adopting BellSouth's SQMs rather than ICG's proposed performance measures. Order No. 1999-690, *In re: Petition of ITC^DeltaCom Communications for Arbitration with BellSouth Telecommunications, Inc.*, Docket No. 1999-259-C, at 11 (Oct. 4, 1999) ("*South Carolina Order*"). The South Carolina Commission found that the SQMs "have undergone two years of review and formulation by the FCC and several state commissions and input from various CLECs. As such, the Commission recognizes that these performance measurements are in place and ready to be implemented within the context of this agreement until the Commission can conclude its generic proceedings." *Id.* at 11-12.

Finally, as was demonstrated in late filed Exhibit 3, the comparison of the SQMs and the "Texas plan," BellSouth's proposal clearly includes all relevant and important measures. The SQMs are comprehensive, compare favorably to the Texas measures and should be adopted. One of ICG's specific criticisms of the SQMs is that they do not contain benchmarks. (Rowling, Tr. at 61). This argument, as Mr. Coon demonstrated, is a red herring. For the majority of the SQMs, BellSouth proposed a set of retail analogues as early as March 1999 in the Louisiana

proceeding against which BellSouth's performance to the CLECs could be measured. (Coon, Tr. at 160). As soon as the CLECs can reach consensus on such analogues, BellSouth hopes to use them region-wide. (Coon, Tr. at 160). With respect to benchmarks, it is first crucial to note that benchmarks are only necessary in those situations in which there is no retail analogue. (Coon, Tr. at 166). BellSouth recently produced a set of benchmarks to the Louisiana Commission for those measures for which there is no retail analogue. (Coon, Tr. at 159). The reason the benchmarks were only recently developed is that BellSouth needed adequate performance data to establish appropriate benchmarks. (Coon, Tr. at 160). As soon as the Louisiana proceeding can reach consensus, BellSouth will have both retail analogues and benchmarks that are applicable to BellSouth in the BellSouth region.

ICG also claims that BellSouth's SQMs are not sufficiently disaggregated. (Rowling, Tr. at 61). As Mr. Coon explained, "96 percent of the measurements today are readily identifiable by a unique product set." (Coon, Tr. at 165). Thus, further disaggregation at this point is unnecessary. Finally, with respect to ICG's claim that additional measures are needed, Mr. Coon explained that BellSouth currently has almost 8,000 numbers that it produces. (Coon, Tr. at 163). "If [BellSouth] continues to add more and more and more things to it, the question you have to ask yourself is does it clarify or does it confuse the situation in detecting non-discriminatory access." (Coon, Tr. at 163). BellSouth submits that ICG's proposal would only confuse and delay while the SQMs are capable today of giving the Commission a clear picture of BellSouth's performance.

ICG's criticisms of the SQMs should be taken with a large grain of salt. First, ICG accepted the SQMs in Georgia. (Coon, Prefiled Rebuttal at 4). Why ICG believes the SQMs were adequate in Georgia but not in Kentucky has yet to be explained. Moreover, despite its

alleged concern about performance data, it was not until the week prior to the hearing that Ms. Rowling endeavored to review BellSouth's performance data on PMAP. (Rowling, Tr. at 50). While she tried to blame her obvious lack of interest on an inability to access the system, she was forced to admit that when she experienced difficulties, she never called the BellSouth Help Desk or the BellSouth WebMaster. (Rowling, Tr. at 53). When she finally called ICG's Account Team, the problem was resolved. (Rowling, Tr. at 53). Thus, while ICG claims it must have performance measurements to compete, it never even took the time to look at the data BellSouth currently is producing.

Turning to the issue of "performance guarantees," regardless of the performance measures the Commission adopts, the Commission should not order so-called performance "guarantees." The "guarantees" that ICG seeks to impose on BellSouth are in the nature of penalties or damages. Even ICG recognizes that the amounts sought are damages in the nature of penalties. (Holdridge, Tr. at 20; Rowling, Tr. at 64-5).<sup>7</sup> The Commission does not have the power to impose penalties in the context of an arbitration under federal law. The actions of the Commission in this arbitration are governed by the 1996 Act. The Act does not empower the Commission to impose penalties whenever a party to an interconnection agreement misses a performance measure. Section 251 sets forth a specific series of topics regarding which incumbent local exchange carriers such as BellSouth must negotiate. In particular, Section 251(c)(1) obligates incumbents to "negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section." If those negotiations do not result in an agreement, the State commission that arbitrates the matter must ensure that its resolution of the

remaining “open issues” “meet[s] the requirements of section 251” – that is, that the incumbent has fulfilled the duties enumerated in sections 251(b) and (c). 47 U.S.C. § 252(c)(1). None of the requirements of Section 251 involves a duty to agree to penalties. Thus, the Act does not require an arbitrated agreement to contain such provisions. *See, e.g. MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 40 F. Supp. 2d 416, 428 (E.D. Ky. 1999) (argument that Act requires that state commission establish “penalty provisions” must fail); *MCI Telecommunications Corp. v. U.S. West Communications, Inc.*, 31 F. Supp.2d 859, 861 (D. Oregon 1998) (commission decision to reject proposed standards and remedies “was not arbitrary and capricious and does not violate the Act).<sup>8</sup>

Even if the Commission had the authority to award penalties under federal law, it is precluded from ordering that ICG’s proposal be included in the interconnection agreement because Kentucky law disfavors the inclusion of penalties in contracts. *See Mattingly Bridge Co. v. Holloway & Son Construction Co.*, 694 S.W.2d 702, 706 (1985) (“while we respect the right of the parties here to fix liquidated damages by contract, we do not abandon our previous rule that forbids their award when nothing more than a penalty or forfeiture.”) The key question is whether the contract in question provides for just compensation, or for a penalty. *Fidelity & Deposit Co. of Ma. v. Jones*, 75 S.W.2d 1057, 1060 (1934). As the court concluded:

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<sup>7</sup> When Mr. Holdridge realized that his admission that ICG was seeking penalties would be fatal to his case, he tried to withdraw his answer. (Holdridge, Tr. at 30). His testimony that he didn’t know what “incentive” meant when he put it in his testimony, however, is far from persuasive.

<sup>8</sup> The court in *MCI Telecommunications* indicated that a state commission’s decision to adopt “performance standards and specific remedies” is discretionary. 41 F. Supp.2d at 1182. In *US West Communications, Inc. v. Hix*, 57 F. Supp. 2d 1112, 1121 (D. Colo. 1999), the federal court suggested in dicta that requiring “liquidated damages and penalties provisions” was within a state commission’s authority, although it was not clear to the court that the issue was “ripe for full consideration, as the agreements state only that the parties ‘remain subject to any applicable liquidated damages provision that may be adopted by this Commission.’” *Id.* at 1122. However, there is a significant difference between the “penalties” at issue here and the “specific remedies” and “liquidated damages” at issue in *MCI Telecommunications* and *Hix*. BellSouth is not aware of a case that upholds the imposition of penalties such as proposed by ICG.

[i]f the actual damage sustained by the party complaining can not be reached or determined by any known rule of law, then the courts are disposed to look alone to the measure of damages fixed by the contract; but as a general rule where the actual damage can be ascertained from the nature of the contract itself, the courts are always inclined to disregard the language of the contract so far as it fixes the damages, and particularly in cases where a strict construction of the language used would result in oppression to the party against whom the claim is asserted, by giving the complaining party more damages than he has really sustained.

*Id.*

There is no question that ICG's proposal is for penalties; and thus, the proposal is disfavored by Kentucky law. ICG's proposed enforcement mechanisms are totally arbitrary and are *not* intended to compensate ICG for any damages that it reasonably anticipates will arise from an alleged breach. They are not based on cost. They do not have any relationship to damages ICG would expect to incur as a result of any BellSouth "failure" to meet a performance measurement. In fact, Ms. Rowling explicitly acknowledged that the penalties are not in any way related to ICG's costs or alleged damages. (Rowling, Tr. at 65-66). Because ICG's proposal is not tied in any way to actual damages, there is a strong likelihood that the proposal "would result in oppression to the party against whom the claim is asserted." *Fidelity & Deposit Co. of Ma. v. Jones*, 75 S.W.2d at 1060.

Second, the purpose of ICG's proposal is to fine or penalize BellSouth for its failure to perform. The stated purpose of ICG's proposal is to provide an adequate incentive for proper performance. (Holdridge, Tr. at 20). ICG has no support for the appropriateness of the levels of its proposed penalties other than that it believes they would provide an appropriate "incentive." The fact that all of the so-called Tier II payments would be paid to the state, and not to ICG, is clear evidence that its proposal is not for liquidated and/or anticipated damages, but rather for penalties. As concluded by Dr. Taylor,



ICG provides no insight whatsoever into the level of economic "harm" that it might suffer from non-party performance at either level. In other words, ICG makes no attempt to link the size of the penalty at either [Tier I or Tier II] to the actual financial loss or damage it would supposedly suffer. Without such an accounting it is impossible to determine whether ICG has proposed fair compensation or created a lucrative non-market unearned revenue opportunity for itself.

(Taylor, Prefiled Rebuttal at 31).

Furthermore, the Commission has twice considered the question of performance penalties in the context of the AT&T and MCI arbitrations and declined to impose penalties in either instance. In the MCI arbitration, for example, the Commission concluded that "as BellSouth is required to provide the same quality of service to MCI as it provides to itself, and since BellSouth has agreed to do so, there does not appear to be any reason to assume that BellSouth will not in good faith comply with this requirement. Consequently, specific certification, assurance, and performance requirements are unnecessary." Order, *In the Matter of Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Case No. 96-431, 12/20/96 at 24. On appeal, the district court for the Eastern District of Kentucky upheld the Commission's decision on this issue. *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 40 F. Supp. 2d 416, 428 (E.D. Ky. 1999) (argument that Act requires that state commission establish "penalty provisions" must fail). In the AT&T arbitration, the Commission reaffirmed its position on penalties. Specifically, the Commission held as follows:

The Commission agrees that negotiated terms for alternative dispute resolution, objective measurements of the parties' expectations, and mutual liability provisions may be useful to both parties to any contract. However, it is unnecessary for the Commission to require any such terms and conditions. The service parity requirements of the Act are clear, and BellSouth has not indicated that it will fail to abide by them. There is no reason for this Commission to

assume that BellSouth will not in good faith comply with its obligations under the law. Should problems arise regarding the quality of service provided, AT&T may bring the matter to the Commission's attention.

Order, *In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc.* Pursuant to 47 U.S.C. § 252, Case No. 96-482, 1/29/97 at 27-8.

In addition to the Commission's previous decisions declining to impose penalties, the Commission should not adopt ICG's performance penalty proposal because it is inherently flawed. As Dr. Taylor explained, because the Tier I payments are made directly to ICG, ICG's proposal poses a great risk of moral hazard. (Taylor, Prefiled Rebuttal at 29). Moral hazard is a form of gaming by which one party to a contract may resort to actions – within the framework of the existing contract – that create an unanticipated competitive or financial advantage for that party at the expense of the other party to the contract. (*Id.*) Among other problems with the proposal, a serious problem with ICG's plan is that it will have the effect of directly enriching ICG, and thus will create a moral hazard. (Taylor, Prefiled Rebuttal at 30). As Dr. Taylor explained, the Tier I penalties would be a direct source of unearned income for ICG given that ICG has made no attempt to link the size of the penalty at either Tier I or Tier II to the actual financial damage it would supposedly suffer. (Taylor, Prefiled Rebuttal at 31). Other conditions that ICG may create as a result of this moral hazard include a reward for lack of cooperation between the parties; decreased investment by ICG given that it will earn income from the penalties; entrapment by ICG; and inefficient entry into the market. (Taylor, Prefiled Rebuttal at 31-32). Furthermore, as Dr. Taylor explained, not every service failure by BellSouth or failure to adhere to a specified performance measure would cause a customer to leave ICG. (Taylor, Tr. at 582-3). Thus, even if the penalties were tied in some way to a loss of revenue, in the case in

which the customer did not leave ICG, ICG would not lose such revenue and the penalties would be unjustified income to ICG. (Taylor, Prefiled Rebuttal at 33).

Finally, ICG's proposed "performance guarantees" would take effect irrespective of whether the fault was BellSouth's, ICG's, the customer's, or no one in particular. (Taylor, Prefiled Rebuttal at 33). Even if rewritten to apply only when fault can be unambiguously ascertained, the measures do not compare the service BellSouth supplies other CLECs or its own retail customers with the service it provides ICG, and the measures do not account for statistical variation in those measures. As a result, under ICG's proposal, BellSouth would pay "performance guarantees" when even the level of service it supplies ICG is the same as that which it supplies itself.

In the event BellSouth fails to comply with its obligations under the interconnection agreement with ICG, ICG has adequate remedies under Kentucky and federal law and is free to seek relief from this Commission or the courts. (Hendrix, Prefiled Direct at 52). Although ICG claims that requiring it to do so would effectively thwart competition in the local telephone market, (Rowling, Prefiled Direct at 15), the lack of "performance guarantees" in Kentucky has not hindered local competition in Kentucky. Indeed, such competition has been robust, at least in those market segments where competitors have chosen to compete.

ICG's predictions of "a quagmire" of individual complaints absent "performance guarantees" ring hollow. (Rowling, Prefiled Direct at 17). CLEC complaints filed with the Commission concerning BellSouth's performance have been relatively few and far between. Furthermore, rather than reducing litigation, adopting ICG's "performance guarantees" would likely have the opposite effect. Given the substantial sums at risk, the parties would have substantial incentive to litigate whether the conditions have been satisfied so as to warrant the

large payments envisioned by ICG. Consequently, adopting ICG's "performance guarantees" will not save the parties a considerable expenditure of time and money, as ICG contends, but rather will only change the type of regulatory proceeding upon which time and money must be spent.

In summary, BellSouth's SQMs comply with decisions of two of the Commission's sister commissions on the issue of performance measurements. Because the SQMs are presumably sufficient for the CLEC industry in Georgia and Louisiana as a whole, they should be sufficient for ICG in Kentucky as well. It is important to remember also that ICG accepted BellSouth's SQMs in Georgia, arguing only over the alleged need for "performance guarantees," (Coon, Prefiled Rebuttal at 4), and voluntarily withdrew the issue entirely in Alabama. (Schonhaut, Tr. at 127-8). ICG has not articulated any legitimate bases for adopting an individualized set of performance measurements that would apply only to ICG, particularly when performance measurements should be consistent across all CLECs in order for the Commission to monitor whether BellSouth is providing nondiscriminatory access. Accordingly, the Commission should resolve this issue by directing the parties to incorporate BellSouth's SQMs into their interconnection agreement and reject ICG's request for performance penalties.

Notwithstanding the above, BellSouth has clearly stated that it is willing to include an enforcement mechanism in its agreement with ICG. (Hendrix, Prefiled Direct at 52-3; Hendrix, Prefiled Rebuttal at 48). While not required under Section 251 or 252, the FCC has clearly expressed an interest in self-effectuating enforcement mechanisms in the context of the public interest standard in Section 271 of the Act. (*Id.*) As a result, BellSouth has been working with the FCC to develop a set of performance penalties that BellSouth would offer voluntarily, and that would only be effective coincident with a grant of 271 relief in a state. (*Id.*) BellSouth has recently submitted a new proposal to the FCC Staff that was well received. Consequently,

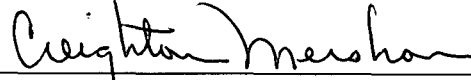
BellSouth is finalizing the contract language for this proposal and will begin to include this proposal in its interconnection agreements, and would like an opportunity to include this proposal in its agreement with ICG. The enforcement mechanism offered by BellSouth is quite substantial, and will include significant payments and fines. At this time, when BellSouth is on the verge of offering contract language with regard to such a substantial enforcement mechanism, it would not be productive or appropriate for this Commission to reach out, in a Section 252 arbitration, and address what is more logically a Section 271 issue. Rather, BellSouth urges the Commission to allow parties to voluntarily include the terms of an enforcement mechanism in interconnection agreements, so that everyone involved can be assured that such a plan is sufficient to satisfy the FCC's concerns under Section 271 of the Act. (Hendrix, Prefiled Rebuttal at 48).

#### CONCLUSION

For the reasons set forth above, BellSouth requests that the Commission (1) find that reciprocal compensation is not due for ISP-bound traffic; (2) reject ICG's request for enhanced extended links; (3) reject ICG's request for tandem switching compensation when tandem switching is not performed; (4) reject the notion that BellSouth should be required to commit to binding forecasts with ICG; and (5) reject ICG's request for performance measurements, performance penalties and/or liquidated damages.

Respectfully submitted this 21st day of January, 2000.

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55 F. Supp. 2d 968 printed in FULL format.

US West Communications, Inc., Plaintiff, vs. Minnesota Public Utilities Commission, Edward A. Garvey, Chairman, Joel Jacobs, Commissioner, Marshall Johnson, Commissioner, Gregory Scott, Commissioner, and Don Storm, Commissioner (In Their Official Capacities as Past or Present Commissioners of the Minnesota Public Utilities Commission); and AT&T Wireless Services, Inc., Defendants.

File No. Civ. 98-914 ADM/AJB

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

55 F. Supp. 2d 968; 1999 U.S. Dist. LEXIS 16224

March 30, 1999, Decided

March 31, 1999, Filed

DISPOSITION: [\*\*1] US West's request Court find MPUC's determinations concerning US West-AWS Agreement violates 47 U.S.C. §§ 251 and 252 GRANTED IN PART, DENIED IN PART and DENIED WITHOUT PREJUDICE IN PART.

CORE TERMS: network, carrier, incumbent, interconnection, switch, tandem, unbundled, telecommunication, burden of proof, arbitration, collocation, state commission, local telephone, negotiation, technically, feasible, switching, entrant, directory, takings claim, state law, rebuttal testimony, traffic, geographic area, wireless, transit, Telecommunications Act, telephone, vacated, duty

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For AT&T Wireless Services, Inc., Defendant: Mark J. Aoyte, Darrin M. Rosh, Briggs and Morgan, P.A.

JUDGES: Ann D. Montgomery, UNITED STATES DISTRICT JUDGE.

OPINIONBY: Ann D. Montgomery

OPINION: [\*970] MEMORANDUM OPINION AND

#### ORDER

Plaintiff US West Communications, Inc., ("US West") brought this action pursuant to the Telecommunications Act of 1996 ("the Telecommunications Act" or "the Act"), specifically 47 U.S.C. § 252(e)(6), seeking judicial review of determinations made by the Minnesota Public Utilities Commission ("MPUC"). US West has named the individual commissioners of the MPUC as Defendants. For purposes of this order, the individual [\*\*2] commissioners and the MPUC, itself, will be referred to collectively as the MPUC.

The above-captioned case is one of eight cases involving review of determinations made by the MPUC presently before this Court. On December 10, 1997, this Court issued an Order in US WEST Communications, Inc. v. Garvey, No. 97-913 ADM/AJB, slip op. at 3 (D.Minn. Dec. 10, 1997), determining the scope of review for cases brought pursuant to § 252(e)(6). The Court found the scope of review limited to an appellate review of the record established before the MPUC. Id. On May 1, 1998, the Court filed an Order addressing the standard of review in the eight Telecommunications Act cases. AT&T Communications of the Midwest, Inc. v. Comel of Minnesota, No. 97-901 ADM/JGL, slip op. at 10-11 (D.Minn. April 30, 1998). Questions of law will be subject to de novo review while questions of fact and mixed questions of fact and law will be subject to the arbitrary and capricious standard. Id. at 11-13.

#### [\*971] I. BACKGROUND

Before 1996, local telephone companies, such as US West, enjoyed a regulated monopoly in the provision

of local telephone services to business and residential customers [\*3] within their designated service areas. *AT&T Communications of the Southern States v. BellSouth Telecomms., Inc.*, 7 F. Supp. 2d 661, 663 (E.D.N.C. 1998). In exchange for legislative approval of this scheme, the local monopolies ensured universal telephone service. *Id.* During this monopolistic period, the local telephone companies constructed extensive telephone networks in their service areas. *Id.*

Congress passed the Telecommunications Act of 1996, in part, to end the monopoly of local telephone markets and to foster competition in those markets. *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 791 (1997), rev'd in part sub nom., *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 834 (1999); *GTE North, Inc. v. McCarty*, 978 F. Supp. 827, 831 (citing Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 104-458, at 113 (1996)). Because the local monopolies, or incumbent local exchange carriers ("ILECs" or "incumbent LECs"), had become so entrenched over time through their construction of extensive facilities, Congress opted "not to simply issue a proclamation opening [\*4] the markets," but rather constructed a detailed regulatory scheme to enable new competitors to enter the local telephone market on a more equal footing. *AT&T Communications of the Southern States*, 7 F. Supp. 2d at 663. The Act obligates the incumbent LECs, like US West: (1) to permit a new entrant in the local market to interconnect with the incumbent LEC's existing local network and thereby use the LEC's own network to compete against it (interconnection); (2) to provide competing carriers with access to individual elements of the incumbent LEC's own network on an unbundled basis (unbundled access); and (3) to sell any telecommunication service to competing carriers at a wholesale rate so that the competing carriers can resell the service (resale). *Iowa Utils. Bd.*, 120 F.3d at 791 (citing 47 U.S.C.A. § 251 (c)(2)-(4)). In order to facilitate agreements between incumbent LECs and competing carriers, the Act creates a framework for both negotiation and arbitration. 47 U.S.C. § 252. Two sections of the Act, 47 U.S.C. §§ 251 and 252, explain the basic structure of the overall scheme for [\*5] opening up the local markets.

#### Section 251

Section 251 describes the three relevant classes of participants effected by the Act: (1) telecommunications carriers, (2) local exchange carriers, and (3) incumbent local exchange carriers. 47 U.S.C. § 251(a), (b), and (c). A telecommunications carrier is a provider of telecommunications services, 47 U.S.C. § 153(44), telecommunication services being "the offering of telecommuni-

cations for a fee directly to the public . . . ." 47 U.S.C. § 153(46), and telecommunications being "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). Both US West and Defendant AT&T Wireless Services, Inc., ("AWS") qualify as telecommunications carriers. A local exchange carrier ("LEC") is "any person that is engaged in the provision of telephone exchange service or exchange access," 47 U.S.C. § 153(26), within an exchange area. 47 U.S.C. § 153(47). An incumbent local [\*6] exchange carrier is a company that was an existent local exchange carrier on February 8, 1996, and was deemed to be a member of the exchange carrier association. 47 U.S.C. § 252(h). In this action, only US West qualifies as an incumbent LEC.

Section 251 establishes the duties and obligations of these categories of participants. For example, all telecommunications carriers have a duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications [\*972] carriers," 47 U.S.C. § 251(a); local exchange carriers have a duty "not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." 47 U.S.C. § 251(b); and incumbent LECs have a duty to negotiate in good faith with telecommunications carriers seeking to enter the local service market, as well as a duty to "offer for resale at wholesale prices any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c). Section 251 requires an incumbent LEC to provide interconnection that [\*7] is at least equal in quality to that provided by the incumbent LEC to itself at any technically feasible point, 47 U.S.C. § 251(c)(2); to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point, 47 U.S.C. § 251(c)(3); and to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier. 47 U.S.C. § 251(c)(6).

#### Section 252

Section 252 delineates the procedures for the negotiation, arbitration, and approval of an interconnection agreement that permits a new carrier's entry into the local telephone market. 47 U.S.C. § 252. Once an incumbent LEC receives a request for an interconnection agreement from a new carrier, the parties can negotiate and enter into a voluntary binding agreement without regard to the majority of the standards set forth in § 251 of the Act. 47 U.S.C. § 252(a). If the parties cannot reach



an agreement by means of negotiation, after a set number of days, a party can petition a State commission, [\*\*8] here the MPUC, to arbitrate unresolved open issues. 47 U.S.C. § 252(b)(1).

An interconnection agreement adopted by either negotiation or arbitration must be submitted for approval to the State commission. 47 U.S.C. § 252(e)(1). The State commission must act within 90 days after the submission of an agreement reached by negotiation or after 30 days of an agreement reached by arbitration. 47 U.S.C. § 252(e)(4). The State commission must approve or reject the agreement, with written findings as to any deficiencies. 47 U.S.C. § 252(e)(1).

#### FCC Regulations

47 U.S.C. § 251(d)(1) directs the FCC to promulgate regulations implementing the Act's local competition provisions within six months of February 8, 1996. "Unless and until an FCC regulation is stayed or overturned by a court of competent jurisdiction, the FCC regulations have the force of law and are binding upon state PUCs [Public Utility Commissions] and federal district courts." *AT&T Communications of California v. Pacific Bell*, 1998 U.S. Dist. LEXIS 10103, 1998 WL 246652, at \*2 (N.D.Cal. May 11, 1998) (citing *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 219-20, 68 L. Ed. 2d 783, 101 S. Ct. 2266 (1981)). [\*\*9] Review of FCC rulings is committed solely to the jurisdiction of the United States Court of Appeals pursuant to 28 U.S.C. § 2342(1) and 47 U.S.C. § 402(a).

On August 8, 1996, the FCC issued its First Report and Order, which contains the Agency's findings and rules pertaining to the local competition provisions of the Act. *Iowa Utils. Bd.*, 120 F.3d at 792 (citing First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, CC Docket No. 96-98 (Aug. 8, 1996) ("First Report and Order")). Soon after the release of the First Report and Order, incumbent LECs and State Commissions across the country filed motions to stay the implementation of the Order, in whole or in part. The cases were consolidated in front of the Eighth Circuit. In Iowa Utilities Board, the Eighth Circuit decided that "the FCC exceeded its jurisdiction in promulgating the pricing rules regarding local telephone service." *Id.* The Eighth Circuit [\*\*973] also vacated the FCC's "pick and choose" rule as being incompatible with the Act. *Id.* at 801. Other [\*\*10] provisions of the First Report and Order were upheld by the Eighth Circuit.

On August 8, 1996, the FCC also promulgated the Second Report and Order, which contains additional

FCC comments and regulations concerning provisions of the Telecommunications Act of 1996 that were not addressed in the First Report and Order. *The People of the State of California v. FCC*, 124 F.3d 934, 939 (8th Cir. 1997), rev'd in part sub nom., *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 834 (1999). Again many local exchange carriers and state commissions filed suit challenging the order. Several cases were combined in front of the Eighth Circuit, which issued another order addressing the FCC's rules. *Id.*

On January 25, 1999, the Supreme Court reversed a significant portion of the Eighth Circuit's decisions. *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. at 721. The Supreme Court ruled that the FCC does have jurisdiction to implement local pricing rules and the FCC's rules governing unbundled access, with the exception of Rule 319, are consistent with the Act. *Id.* at 738. In addition, the Supreme [\*\*11] Court upheld the FCC's "pick and choose" rule as a reasonable, and possibly the most reasonable, interpretation of § 252(i) of the Act. *Id.*

#### Procedural History

In this case, AWS, a Commercial Mobile Radio Service ("CMRS"), sent a letter dated October 3, 1996, to US West making a request for the parties to negotiate an Interconnection Agreement pursuant to the Act. (A1, Ex. 1). The parties failed to reach accord on all issues and AWS petitioned the MPUC for arbitration on March 7, 1997. (A1). In its Petition for Arbitration, AWS noted eleven open issues for arbitration. (A1; Petition for Arbitration at 7-23). On April 1, 1997, US West submitted its response to the MPUC. (A7).

On April 17, 1997, the MPUC granted AWS's petition and established procedures for the arbitration. (A11; MPUC Order Granting Petition at 1-5). The MPUC referred the matter to the Office of Administrative Hearings n1 to designate an Administrative Law Judge (ALJ) to conduct the arbitration proceedings and issue a recommendation. (A11; MPUC Order Granting Petition at 4). In its order, the MPUC noted that the Minnesota Department of Public Service ("DPS") n2 and the Residential Utilities Division of [\*\*12] the Office of the Attorney General ("RUD-OAG") n3 had a right under state law to intervene in all MPUC proceedings. (A11; MPUC Order Granting Petition at 6).

n1 The Office of Administrative Hearings is an independent state agency which employs administrative law judges to conduct impartial hearings on behalf of other state agencies. Minn. Stat. §§ 14.48

and 14.50.

n2 The Minnesota Department of Public Service is a state agency charged with the responsibility of investigating utilities and enforcing state law governing regulated utilities, as well as enforcing the orders of the MPUC. The DPS is authorized to intervene as a party in all proceedings before the MPUC. Minn. Stat. § 216A.07.

n3 The Attorney General of Minnesota is "responsible for representing and furthering the interests of residential and small business utility consumers through participation in matters before the Public Utilities Commission involving utility rates and adequacy of utility services to residential or small business utility consumers." Minn. Stat. § 8.33, subd. 2.

[\*\*13]

The MPUC ordered that: "The burden of production and persuasion with respect to all issues of material fact shall be on US WEST. The facts at issue must be proven by a preponderance of the evidence. The ALJ, however, may shift the burden of production as appropriate, based on which party has control of the critical information regarding the issue in dispute." (A11; MPUC Order Granting Petition at 10). The MPUC reasoned that the federal Telecommunications Act and the Minnesota Telecommunications Act of 1995 (\*974) are designed to create competitive entry into the local telephone market and placing the burden of proof on US West facilitates this purpose. (A11; MPUC Order Granting Petition at 10). The MPUC further explained that US West controlled most of the key information relevant to the proceedings. (A11; MPUC Order Granting Petition at 10).

On May 2, 1997, AWS and US West submitted a matrix of twelve key issues to ALJ Allen Giles and the MPUC. (A15). Those issues included:

- 1) Access to Service Agreements;
- 2) Points of Interconnection;
- 3) Pricing of Services;
- 4) Application of Access Charges;
- 5) Reciprocal Compensation/Symmetrical Compensation;
- 6) Access to Unbundled Network [\*\*14] Elements;
- 7) Items Specific to Paging;
- 8) Access to Poles, Ducts, Conduits, and Rights of Way;
- 9) Reciprocal Compensation Effective Date and Rates;
- 10) Contract Language;
- 11) Service Quality Standards; and
- 12) Transit Traffic.

(A15; Positions on Key Issues at 1-7). US West withdrew from its original list of open issues Wide Area Inbound Calling; Access to Numbering Resources; Dialing Parity; and Procedure for Notice of Change, because those issues were no longer in dispute. (A15; Positions on Key Issues at 5).

ALJ Giles presided over the arbitration hearing on May 6 and 7, 1997. (A17-A19). Attorneys for US West, AWS, and the DPS were present, as well as a member of the MPUC staff. (A17; ALJ Hearing Transcript at 2). Eight witnesses were called and various exhibits were entered. (A17-A19). AWS called Kerri M. Landeis, Director of External Affairs for AWS, (A20); Russell Thompson, Director of Network Planning for AWS, (A22); and Dr. Thomas M. Zepp, economist and Vice-President of Utility Resources, Inc., (A25), as expert witnesses. (A17-A18). US West called Thomas G. Londgren, Director of the Minnesota Regulatory Group for US West, (A28); Denyce Jennings, US West's Manager [\*\*15] of Wireless Interconnection, (A30); Craig Wiseman, a member of US West's technical staff in the Interconnection Planning Group, (A18; ALJ Hearing at 261); and Dean Buhler, a member of US West's technical staff in Information Technologies, (A18; ALJ Hearing at 312), as expert witnesses. (A17-A19). US West also submitted the rebuttal testimony of Robert Harris, Principal at the Law and Economics Consulting Group and Professor Emeritus of Business and Public Policy in the Haas School of Business, University of California, Berkeley. (A39). The DPS called Susan Peirce, Public Utilities Rates Analyst for the MPUC, as an expert witness. (A40, Ex. A). The parties, including the DPS, submitted post-hearing briefs. (A45-A50). On June 6, 1997, the ALJ issued a Report and Recommended Arbitration Decision. (A51).

In early June, both US West and AWS filed exceptions to the Recommended Arbitration Decision. (A53); (A54). By letter dated June 11, 1997, the DPS noted no exceptions would be filed as the ALJ's recommendations were consistent with the positions advocated by the DPS. (A55). The MPUC heard a staff briefing and oral arguments on June 30 and July 2, 1997. (A57). Pursuant to its vote at the [\*\*16] July 2 meeting, the MPUC issued its Order Resolving Arbitration Issues on July 30, 1998. (A58). In its Order, the MPUC took judicial notice of the stayed FCC rules and made the FCC methodologies part of the record. (A58; Order Resolving Arbitration Issues at 2). The MPUC ruled on the following issues:

- 1) Bill & Keep;
- 2) Interim Prices;
- 3) Compensation to AWS from Third-Party Carriers;

- (\*975) 4) Compensation for Traffic Terminated at AWS' Mobile Switching Center (MSC);  
 5) Access Charges for Intra-Major Trading Area (MTA) Roaming Calls;  
 6) Compensation for Terminating Paging Calls;  
 7) Dedicated Paging Facilities;  
 8) The Effective Date for Reciprocal Compensation;  
 9) Rates to Be Applied Between Commencement of Reciprocal Compensation and the Issuance of an Order;  
 10) "Pick and Choose" Option;  
 11) Points of Interconnection;  
 12) Limitation on Distance as to Mid-span Meet Point;  
 13) Collocation of AWS' Remote Switching Units (RSUs) and Digital Loop Carrier Systems (DLCs) at US West's Premises;  
 14) The Definition of "Collocated Premises";  
 15) Denial of Access Due to Space Exhaustion;  
 16) Nondiscriminatory Access to Unbundled Network Elements;  
 17) Access to Operational Support [\*\*17] Systems (OSS);  
 18) Remedies for Service Quality Violations;  
 19) Access to Poles, Ducts, Conduits, and Rights of Way;  
 20) Adoption of Proposed Contract as Template; and  
 21) Arbitration Costs.

(A58; Order Resolving Arbitration Issues at 4-33). The MPUC ordered the parties to submit a final contract, containing all the arbitrated and negotiated terms, no later than 30 days from the service date of the MPUC's Order. (A58; Order Resolving Arbitration Issues at 34). On August 27, 1997, the parties submitted a CMRS Interconnection Agreement in accordance with the Order, but expressly reserved all rights in connection with any future challenges to the Order. (A48; Letter of Mark Ayotte at 2). The parties were unable to resolve the issue of special construction for interconnection facilities and therefore submitted two alternative versions for the portion of the Agreement addressing that issue. (A48; Letter of Mark Ayotte at 2).

On August 11, 1997, AWS filed a Petition for Reconsideration. (A59). On September 18, 1997, the Petition for Reconsideration and the Proposed Contract came before the MPUC. (A66; Order Resolving Issues After Reconsideration at 1). On September 29, 1997, the [\*\*18] MPUC issued its Order Resolving Issues After Reconsideration, Examining Interconnection Agreement, and Requiring Compliance Filing. (A66). In that Order, the MPUC granted in part and denied in part AWS' Petitions for Reconsideration; the MPUC was persuaded that the compensation rate for AWS-terminated traffic should be the tandem switch-

ing rate rather than calculated on a per call basis. (A66; Order Resolving Issues After Reconsideration at 3, 11). The MPUC also corrected an error in its calculation of prices. (A66; Order Resolving Issues After Reconsideration at 4). The MPUC adopted the language submitted by AWS concerning special construction for interconnection facilities as the final contract language. (A66; Order Resolving Issues After Reconsideration at 11). The MPUC required a few further amendments and modifications to the Agreement, such as the addition of a notice provision and a provision concerning US West Dex. (A66; Order Resolving Issues After Reconsideration at 6-11). The MPUC found the rest of the agreement to be generally consistent with the federal Act, Minnesota law, and the public interest. (A66; Order Resolving Issues After Reconsideration at 6).

The MPUC ordered [\*\*19] the parties to submit a final contract that complied with its Order within 30 days; the MPUC noted [\*976] that a final contract with the proposed modifications would meet all applicable legal requirements, and therefore would be approved and effective as of September 18, 1997. (A66; Order Resolving Issues After Reconsideration at 11). The final US West-AWS Agreement was filed with the MPUC on October 30, 1997. (A68). On December 15 and March 4, 1997, the MPUC issued two memorandums noting that the parties filed an Agreement that complied with its Order of September 29, 1997. (A69); (A73).

On March 13, 1998, pursuant to 47 U.S.C. § 252(e)(6), US West filed the instant action seeking review of the MPUC's Orders. US West alleges nine counts in its complaint: (1) Count I, the MPUC violated US West's due process rights and the dictates of the Act and Minnesota law by placing the burden of proof on US West; (2) Count II, the MPUC violated 47 U.S.C. §§ 252(b)(1) and (b)(4)(A) by considering issues not included in AWS' petition or US West's response; (3) Count III, the MPUC violated 47 U.S.C. § 252(d)(2) and (d)(A)(ii) by treating [\*\*20] AWS's Mobile Switching Center ("MSC") as a tandem switch for the purpose of compensation; (4) Count IV, the MPUC violated 47 U.S.C. § 251(c)(6) when it required US West to collocate RSUs and DLCs on its premises; (5) Count V, the MPUC violated 47 U.S.C. § 252(i) by ordering the inclusion of a provision in the Interconnection Agreement referencing the "unsettled state of the law" concerning the "pick and choose" rule; (6) Count VI, the MPUC violated § 251(c)(2) when it ordered US West to provide interconnection at any technically feasible point, even if construction is involved; (7) Count VII, the MPUC exceeded its authority when it imposed conditions on US West Dex; (8) Count VIII, the MPUC exceeded its authority under § 252(b)(4)(C) and (c) of the Act when it

imposed requirements not expressly contained in the Act or state law; and (9) Count IX, the MPUC violated the Takings Clause by taking US West's property without just compensation.

## II. OPERATIONAL SUPPORT SYSTEMS AS AN OPEN ISSUE

US West argues that the MPUC improperly required US West to provide AWS access to its operational support systems ("OSS"). US West alleges [\*\*21] the MPUC had no authority to require this access because this was not an open issue before the MPUC.

Section 252(c) ("Standards for arbitration") states that:

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall-

- (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

47 U.S.C. § 252(c) (emphasis added). Standing alone, this provision could arguably be read as ambiguous concerning the MPUC's ability to impose any condition of its choosing. However, when read in conjunction with 47 U.S.C. § 252(b) ("Agreements arrived at through compulsory arbitration"), there is a clear indication that any condition that the MPUC decides to impose on [\*\*22] the agreement must relate to an "open issue," that is an issue raised by the parties themselves. Section 252(b)(4)(A) states that "the State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any . . . ." This subsection indicates that the MPUC cannot independently [\*\*23] raise an issue not raised by one of the parties. This interpretation is further reinforced by subsection (b)(4)(C) which states that "the State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement . . . ." In this context, the imposition of conditions is expressly limited to resolving open issues. Therefore, § 252(c) cannot be read as a grant of authority to a state commission to impose any requirement of its choosing; under § 252(c) state commissions are limited

to arbitrating open issues.

The MPUC and AWS argue, in turn, that the issue of access to unbundled network elements was clearly before the MPUC as an open issue and that because the OSS [\*\*23] is a network element to be made available to new entrants on an unbundled basis according to 47 C.F.R. § 15.319, the issue of access to the OSS was also clearly before the MPUC.

After the MPUC issued its order and the parties submitted their briefs in this case, the Supreme Court vacated § 15.319. *AT&T Corp., 119 S. Ct. at 736*. The Supreme Court stated that the FCC, in determining which network elements an incumbent LEC must make available, should give greater weight to the terms "necessary" and "impair" in § 252(d)(2). *Id.* The issue of access to OSS was an open issue only to the extent it could be considered a network element to be made available on an unbundled basis. In light of the Supreme Court's decision vacating 47 C.F.R. § 15.319, whether OSS can be considered an unbundled network element is now in doubt and § 15.319 cannot serve as the basis for its being considered such. Because the singular basis asserted by the MPUC for its considering access to OSS an open issue has now been removed by the Supreme Court, this Court concludes that the MPUC lacked authority under § 252(c) to require US West to make access to its OSS available to AWS. This issue [\*\*24] is remanded to the MPUC for further consideration in light of this Order.

n4

n4 As was noted by the Eastern District of North Carolina, the Act does not explain what should occur if a district court finds that an Interconnection Agreement violates the Act. *AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., 7 F. Supp. 2d 661, 668 (E.D.N.C. 1998)*. Given the appellate nature of the proceeding, a remand to the state commission is the most appropriate option. *Id.*

## III. TANDEM TRANSPORT AND TERMINATION

US West argues that a provision of the Agreement imposed by the MPUC unlawfully compensates calls terminated at AWS's MSC at the tandem switching rate. US West alleges that the MPUC failed to consider actual function, that is that the MSC actually operates like an end-office switch rather than a tandem switch, in making its determination.

Section 251(b)(5) of the Act directs that all local exchange carriers are obligated to establish reciprocal com-

pensation [\*\*25] arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). The terms and conditions for reciprocal compensation must be just and reasonable and, to meet this standard, they must allow for the recovery of a reasonable approximation of the "additional cost" of transporting and terminating a call begun on another carrier's network. 47 U.S.C. § 252(d)(2)(A). The FCC found that the "additional cost" will vary depending on whether or not a tandem switch is involved. First Report and Order, P 1090. The FCC, therefore, determined that state commissions can establish transport and termination rates that vary depending on whether the traffic is routed through a tandem switch or directly to a carrier's end-office switch. *Id.* The FCC directed state commissions to "consider whether new technologies (e.g. fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's [\*978] tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." *Id.* The FCC [\*\*26] further instructed that where the new carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the new carrier's costs is the LEC tandem interconnection rate. First Report and Order, P 1090; 47 C.F.R. § 51.711(a)(3).<sup>n5</sup> Therefore, in order to evaluate whether a switch performs as a tandem switch, it is appropriate to look at both the function and geographic scope of the switch at issue.

<sup>n5</sup> The Eighth Circuit vacated 47 C.F.R. § 51.711(a)(3) on the ground that the FCC lacked jurisdiction to issue pricing rules. *Iowa Utils. Bd., 120 F.3d at 800, 819 n.39*. However, the Supreme Court reversed this determination and reinstated the FCC's pricing rules, including 47 C.F.R. § 51.711, finding that "the Commission has jurisdiction to design a pricing methodology." *AT&T Corp., 119 S. Ct. at 733*.

Whether a switch performs as a tandem or end-office switch is a factual determination that has been expressly delegated [\*\*27] to the state commissions by the FCC. Because this is a question of fact, the MPUC's determination is reviewed using the arbitrary and capricious standard of review. *AT&T Communications of the Midwest, Inc. v. Contel of Minnesota, No. 97-901 ADM/JGI, slip op. at 10-11 (D.Minn. April 30, 1998)* (order denying motions to dismiss and determining standard of review); see *TCG Milwaukee, Inc. v. Public Service Commission of Wisconsin, 980 F. Supp.*

*992, 1004 (W.D. Wisc. 1997)*.

The fundamental technical differences between wireless and landline telephone systems greatly complicate the comparison of the functions of their component elements. It is to some extent like comparing the proverbial apples and oranges.

Russell Thompson, Director of Network Planning for the Western Region of AWS, testified that the MSC performs duties similar to both a tandem and an end-office switch. (A23; Rebuttal Testimony of Russell Thompson at 1). Thompson described landline networks as being characterized by hierarchical switching centers with both tandem and end-office switches often being involved in the routing of calls. (A23; Rebuttal Testimony of Russell Thompson at 2). Wireless networks [\*\*28] were explained as being hierarchical involving IS 41 Tandems, Cell Site Control ("CSC") switches, and cell sites in the routing of calls. (A23; Rebuttal Testimony of Russell Thompson at 2). The IS 41 and CSC are both located in the MSC. (A23; Rebuttal Testimony of Russell Thompson at 2). The CSC switches and cell sites together perform end office-like functions. (A23; Rebuttal Testimony of Russell Thompson at 7-8), while the IS 41 Tandem provides tandem-switch functions. (A23; Rebuttal Testimony of Russell Thompson at 3). "Tandem switching systems perform trunk switching and generally provide two basic network functions - traffic concentration and centralization of services." (A23; Rebuttal Testimony of Russell Thompson at 9 (citing BOC Notes on Network, Section 4, Network Design and Configuration, 4.1.3.3, Tandem Switching Systems, pp. 4-6)). Thompson testified that the IS 41 Tandem performs both these functions. (A23; Rebuttal Testimony of Russell Thompson at 9).

Thomas Zepp, economist and Vice President of Utility Resources, Inc., confirmed Thompson's assessment that the MSC functions as a tandem switch. (A25; Direct Testimony of Thomas Zepp at 38-41). Zepp gave a number of examples [\*\*29] as to how a MSC performs tandem functions, for example storing the location of and tracking a wireless customer in a "Home Location Register," routing calls to another MSC while a customer is in transit, and routing phone calls to a landline in the most cost-effective manner. (A25; Direct Testimony of Thomas Zepp at 38-40).

US West, in turn, presented strong evidence that the MSC functions as an end-office [\*\*979] switch rather than a tandem switch. (A42; Direct Testimony of Craig Wiseman at 9). US West's expert Craig Wiseman, a member of US West's technical staff in the Interconnection Planning Group, testified that the MSC only connected AWS subscribers to each other or to other

local service provider networks in order to deliver calls to or receive calls from AWS subscribers. (A42; Direct Testimony of Craig Wiseman at 9). AWS depends on US West tandems to send calls to or receive calls from the vast majority of subscribers in Minnesota and the rest of the United States. (A42; Direct Testimony of Craig Wiseman at 9). Wiseman also testified that other wireless companies, such as GTE Mobilenet, SouthWestco, and Aliant, had recognized their switching offices as end offices in arbitrated agreements, [\*\*30] and that other state arbitration panels had determined that wireless companies are not entitled to tandem switching and transport compensation. (A42; Directory of Craig Wiseman at 13).

On the issue of the geographic scope of the switches, there was evidence that the MSC serves a geographic area similar to that of a landline tandem switch. US West's tandem switches are limited by the LATA n6 boundaries in Minnesota and therefore there are several tandem switches within the state. (A18; ALJ Hearing at 209-10). AWS' MSC directly serves sixty-six percent of Minnesota's population. (A17; ALJ Hearing at 33). Although percentage of population is not precise as to geographic area covered, it indicates that the MSC covers at least an area comparable to one of Minnesota's LATAs and therefore covers an area comparable to a US West tandem switch. US West argues that AWS' MSC fails to reach the same geographic area as all of US West's tandem switches. (A42; Direct Testimony of Craig Wiseman at 11-12). However, that comparison is irrelevant. The issue is not whether the MSC covers the same geographic area as all of the tandem switches in Minnesota, but rather whether it covers the same geographic [\*\*31] area as one tandem switch.

n6 A Local Access and Transport Area ("LATA") is "a contiguous geographic area" established by a Bell operating company pursuant to a consent decree. 47 U.S.C. § 153(25). Generally a state will have more than one LATA.

Based on the evidence before the ALJ and the MPUC, it appears that the MSC performs functions comparable to both end-office and tandem switches. Although there was conflicting evidence concerning the function of the MSC, the testimony of Thompson and Zepp provided a sufficient basis for the MPUC's finding that the MSC performs a tandem switch function. n7 This is particularly true in light of the FCC's admonition to consider the capabilities of new technology such as wireless networks. While there may be no exact corollaries between the wireless and landline systems, there is evidence to

suggest that the MSC has capabilities and reach that are of a certain equivalence to a tandem switch. The evidence also indicates that the MSC covers a geographic [\*\*32] area comparable to that covered by a tandem switch. Pursuant to the FCC rules, this alone provides sufficient grounds for a finding that the appropriate rate for the MSC is the tandem switch rate. n8

n7 US West indicated that the MPUC should have been limited by the definition of tandem switch found in 47 C.F.R. § 51.319(c)(2). However, since the MPUC made its decision, 47 C.F.R. § 51.319 was vacated by the Supreme Court. *AT&T Corp., 119 S. Ct. at 736*. US West's argument is now moot in light of the Supreme Court's recent decision.

n8 The MPUC stated that it did not base its final decision on FCC Rule 51.711(a)(3) and the geographic reach of the switches, although its preliminary ruling may have taken geographic reach into consideration. (MPUC's Brief at 4). Even though the MPUC may not have relied on FCC Rule 51.711(a)(3), the reinstated rule and the comparable geographic reach of the switches reinforces the MPUC's final decision.

The MPUC's finding that calls terminated at AWS's MSC should [\*\*33] be compensated [\*\*980] at the tandem switching rate is not arbitrary and capricious.

#### IV. COLLOCATION OF EQUIPMENT

US West argues that the MPUC erred by requiring US West to permit AWS to physically collocate RSUs on US West's premises because such equipment is not necessary for access to unbundled network elements under § 251(c)(6). n9

n9 US West briefed only the issue of collocating RSUs, although its complaint referenced both RSUs and DLCs in connection with this issue.

Section 251(c)(6) states that an incumbent LEC has a duty to provide "for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier . . . ." 47 U.S.C. § 251(c)(6) (emphasis added). The FCC found that § 251(c)(6) "generally requires that incumbent LECs permit the collocation of equipment used for interconnection or access to unbundled network elements." First Report and Order, P 579. In reaching that conclusion, the [\*\*34] FCC interpreted and defined the term "necessary": "Although the term

'necessary,' read most strictly, could be interpreted to mean 'indispensable,' we conclude that for the purposes of section 251(c)(6) 'necessary' does not mean 'indispensable' but rather 'used' or 'useful.'" Id. The FCC decided that a more expansive interpretation of the term "necessary" would further the competitive motivation behind the Act. Id.

The FCC then determined whether specific equipment could or could not be collocated on the incumbent LEC's premises, essentially deciding whether the equipment is "useful" for interconnection or access to unbundled elements. Id. P 580-82. Concerning the collocation of switching equipment, the FCC stated:

At this time, we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements. We recognize, however, that modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is [\*\*35] in dispute, that state commissions will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements.

Id. P 581. The FCC left the factual determination as to whether "switching equipment" is used for interconnection to the discretion of the state commissions.

When allotting the burden of proof, the FCC placed the burden on the incumbent LEC to prove that specific equipment is not "necessary," meaning useful, for interconnection to unbundled network elements. Id. P 580. In explaining this standard, the FCC stated that:

Whenever a telecommunication carrier seeks to collocate equipment for purposes within the scope of Section 251(c)(6), the incumbent LEC shall prove to the state commission that such equipment is not "necessary," as we have defined that term, for interconnection or access to unbundled network elements.

Id. P 580.

In addition to defining "necessary" in the context of § 251(c)(6), the FCC also interpreted the term "necessary" in relation to § 251(d)(2). n10 The FCC determined [\*\*981] that within the context of § 251(d)(2) the term "necessary" means "that an element is a prerequisite for competition. [\*\*36]" First Report and Order, P 282. Without a necessary element, a new entrant's "ability to compete would be significantly impaired or thwarted."

Id. The FCC stated that finding that a proprietary element is not "necessary" for purposes of § 251(d)(2)(A), requires an incumbent LEC to establish that "a new entrant could offer the same proposed telecommunications service through the use of other, nonproprietary unbundled elements within the incumbent's network." Id. P 283. The FCC would view the "necessary" requirement as having been met even if the "'requesting carriers can obtain the requested proprietary element from a source other than the incumbent,'" since "'requiring new entrants to duplicate unnecessarily even a part of the incumbent's network could generate delay and higher costs for new entrants, and thereby impede entry by competing local providers and delay competition, contrary to the goals of the 1996 Act.'" *AT&T Corp., 119 S. Ct. at 735* (citing *First Report and Order*, P 283). By means of these lexicographical permutations, the FCC created a similar definition for the term "necessary" within the context of § 251(d)(2) and § 251(c)(6); in both cases, [\*\*37] the word means something akin to "useful."

n10 47 U.S.C. § 251(d)(2) provides:

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether- (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer. (emphasis added).

In *AT&T Corp.*, the Supreme Court vacated the FCC's interpretation of the word "necessary" within the context of § 251(d)(2), finding that the FCC had given the term too broad a definition and robbed it of all of its teeth as a limiting standard. *AT&T Corp., 119 S. Ct. at 736*. The Court stated that "the Act requires the FCC to apply some limiting standard, rationally related to the goals of the Act, which it has simply failed to do. [\*\*38]" Id.

By rejecting the FCC's definition of the term "necessary" within the context of § 251(d)(2), the Supreme Court implicitly rejected the same overly broad definition given to the word by the FCC in relation to § 251(c)(6). "Presumptively, 'identical words used in different parts of the same act are intended to have the same meaning.'" *United States National Bank of Oregon v. Independent Insurance Agents of America*, 508 U.S. 439, 460, 124 L. Ed. 2d 402, 113 S. Ct. 2173 (1993) (quoting *Commissioner v. Keystone Consol. Industries*,

*Inc.*, 508 U.S. 152, 159, 124 L. Ed. 2d 71, 113 S. Ct. 2006 (1993)). As "necessary" does not mean "useful" in the context of § 251(d)(2), it cannot mean "useful" in § 251(c)(6). In making its factual determination about whether to permit the collocation of RSUs, the MPUC utilized the "used" or "useful" standard originally promulgated by the FCC. n11 In light of the rejection of this standard by the Supreme Court, collocation must be remanded to the MPUC for redetermination using a more stringent meaning of the term "necessary."

n11 In its Order, the MPUC stated that it will allow the collocation of RSUs and DLCs on US West's premises "consistent with its reasoning and action in the Consolidated Arbitration Order." (A58; Order Resolving Arbitration Issues at 22). In the Consolidated Arbitration Order, the MPUC ordered collocation of RSUs and DLCs based on US West's failure "to meet its burden of proving that these types of equipment are not 'necessary,' as interpreted by the FCC, for interconnection or access to unbundled elements." (A168 from US West Communications, Inc. v. Garvey, No. 97-913 ADM/AJB; Consolidated Arbitration Order at 16) (emphasis added).

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#### V. "PICK AND CHOOSE" PROVISION

In its reply brief, US West seeks to withdraw, without prejudice, its Count V request for declaratory relief concerning AWS's rights under § 252(i)'s most favored nation provision. (Pl.'s Reply Brief at 1 n.1). Therefore, the Court will dismiss Count V without prejudice. It should be noted, however, that in light of the recent Supreme Court ruling, the provision concerning § 252(i) that the MPUC chose now seems prescient.

#### [\*982] VI. INTERCONNECTION AT ANY TECHNICALLY FEASIBLE POINT

The MPUC ruled that US West must build facilities necessary for AWS to connect to US West's network at any technically feasible point of AWS's choosing. (A66; Order Resolving Issues After Reconsideration at 7). n12 The MPUC approved the following language in the US West-AWS Agreement: "USWS shall provide the facilities and arrangements herein described to AWS in order to establish the physical connection and permit the interchange of traffic between the Parties, as well as any other facilities AWS may require for operation of AWS's System." (A68; CMRS Interconnection Agreement at § 2.B). The MPUC also approved § 2.D of the Agreement,

which would [\*\*40] require US West to build a DS1 or DS3 facility any place where one is not available. (A68; CMRS Interconnection Agreement at § 2.D).

n12 The parties do not dispute that AWS would pay for the construction of any new facilities.

US West claims that the MPUC erred when it required US West to construct new facilities. US West argues that this requirement over extends the Act's directive that incumbent LECs need to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself." 47 U.S.C. § 251(c)(2)(C).

The MPUC claims that § 251(c)(2)(C) is not controlling and urges that the focus should instead be on the Act's directive that incumbent LECs must provide interconnection to new entrants "at any technically feasible point within the [incumbent] carrier's network." 47 U.S.C. § 251(c)(2)(B). In support of the MPUC's ruling that US West must build facilities, AWS similarly cites to § 251(c)(2)(B), as well as relying [\*\*41] on the FCC's order stating that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements." First Report and Order, P 198.

Section 251(c)(2) states that an incumbent LEC has:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; . . .

47 U.S.C. § 251(c)(2). The FCC originally interpreted § 252(c)(2)(C) as requiring incumbent LECs to provide superior quality interconnection when such interconnection was requested by new entrants. *Iowa Utils. Bd.*, 120 F.3d at 812. The Eighth Circuit, however, vacated this FCC interpretation of § [\*\*42] 251(c)(2)(C), finding that it was not supported by the Act's language. *Id.* The Eighth Circuit explained that:



Although we strike down the Commission's rules requiring incumbent LECs to alter substantially their networks in order to provide superior quality interconnection and unbundled access, we endorse the Commission's statement that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements."

*Id.* at 813 n.33 (quoting First Report and Order, P 198). The Eighth Circuit specifically upheld the FCC's definition of the term "technically feasible" from § 251(c)(2)(B). *Id.* at 810. In defining "technically feasible," the FCC stated:

[\*983] Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, [\*43] or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except the space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible.

47 C.F.R. § 51.5.

In reaching its decision concerning the construction of facilities, the MPUC stated that the issue was not whether AWS can demand a superior quality interconnection, but rather whether US West can be required to modify its network to permit interconnection at existing quality levels. (A66; Order Resolving Issues After Reconsideration at 7). The MPUC did not rely on the FCC's vacated interpretation of § 251(c)(2)(C), but rather what it considered to be the FCC's upheld interpretation of § 251(c)(2)(B).

The MPUC is correct that construction of a new facility does not necessarily mean superior interconnection. New facilities could be necessary just to create equivalent quality interconnection and access. Therefore, [\*44] in making its ruling, the MPUC did not violate § 251(c)(2)(C).

The question therefore becomes did the MPUC have the power under § 251(c)(2)(B) to order US West to provide new facilities upon request or did the construction of new facilities exceed the modifications envisioned by

the FCC in its interpretation of "technically feasible." The answer is dependent on whether the concept of modifying facilities is interpreted broadly or narrowly. Three factors favor a broad construction. First, the FCC stated that site concerns should not be determinative of technical feasibility except to the extent space could not be expanded. In this statement that site concerns should not be determinative, there is an implication that the parties should look beyond any specific site, e.g. to new facilities, when resolving interconnection issues. In addition, construction of new facilities falls under the rubric of space expansion and therefore ensures technical feasibility. Second, so long as the new entrant pays for the costs associated with the new facility, the incumbent LEC should not be unduly burdened. Third, the purpose of the Act is to promote the opening up of local telephone markets to competition [\*45] in a speedy manner. Because the incumbent LEC has the relevant expertise and knowledge for building facilities to interconnect with its network, it would be expedient to require it to build the facilities.

Based on the foregoing, the Court concludes that the MPUC had the necessary authority under § 251(c)(2)(B) to order US West to provide new facilities on request.

## VII. US WEST DEX

US West claims the MPUC exceeded its authority when it rejected the parties' agreement to defer directory and yellow page issues to later negotiations and instead required the parties to adopt a provision that regulated US West Dex. US West argues that the MPUC does not have the authority, under either state law or the Act, to impose obligations on US West Dex.

In response, the MPUC and AWS claim that the Commission did not directly regulate US West Dex. They argue that the MPUC did what it was required to do by the Act, ensure that AWS had nondiscriminatory access to telephone numbers and [\*984] listings, and that US West provide AWS with services that are "at least equal in quality to that provided by the incumbent LEC to itself." First Report and Order, P 970.

US West Communications, Inc., [\*46] the party in this case, and US West Dex are wholly owned subsidiaries of US West, Inc. ("US West Parent"). *MCI Telecomms. Corp. v. US West Communications, Inc.*, 1998 U.S. Dist. LEXIS 21585, \*30, Case No. C97-1508R (July 21, 1998 W.D.Wash.). US West Dex is the publishing branch of the parent company and publishes US West's white and yellow page directories. 1998 U.S. Dist. LEXIS 21585, \*30. US West Dex is not a named party to the underlying Agreement in this case.

Contrary to the MPUC's and AWS's argument, the Commission did regulate US West Dex. The MPUC required the parties to include language in the Agreement that placed a direct obligation on US West Dex: "US WEST Dex will give the Carrier the same opportunity to provide directory listings as it provides to US WEST (for example, through some type of bidding process)." (A56; Order Denying Reconsideration at 11). While other portions of the MPUC's Order were explicitly directed only at US West, the MPUC did seek to control US West Dex's business and contract agreements, and therefore to regulate US West Dex: "US WEST shall make its contracts with US WEST DEX available for review by the Carrier, as necessary, to ensure that the Carrier is receiving the same services at [\*\*47] the same terms as US WEST." (A56; Order Denying Reconsideration at 11). The question becomes whether the MPUC had the authority to regulate US West Dex under either state law or the Act, or whether it assumed authority it never had as the Plaintiff claims.

Under state law, the MPUC has only the "powers expressly delegated by the legislature and those fairly implied by and incident to those expressly delegated." In the *Matter of Northwestern Bell Telephone Co.*, 371 N.W.2d 563, 565 (Minn. Ct. App. 1985) (citing *Great Northern Railway Co. v. Public Service Comm'n*, 284 Minn. 217, 169 N.W.2d 732, 735 (Minn. 1969)). Implied powers must be fairly evident from the express powers. *Id.* (quoting *Peoples Natural Gas Co. v. Minnesota Public Utilities Comm'n*, 369 N.W.2d 530 (Minn. 1985)). As the Minnesota Supreme Court held, Chapter 237 was created to resolve issues concerning public utility telephone companies; a business that publishes directories is not a telephone company and therefore does not fall under the regulatory powers of the MPUC. In the *Matter of Northwestern Bell Telephone Co.*, 367 N.W.2d 655, 660 (Minn. 1985). [\*\*48] US West, as a utility, is regulated by the MPUC, while US West Dex, which is in the business of publishing directories, is not. *See id.* The MPUC does not have the power under state law to regulate US West Dex. The Court must therefore analyze federal law as the possible basis of authority for the MPUC's action regulating US West Dex.

The Act states that local exchange carriers have the duty to provide competitors with nondiscriminatory access to telephone numbers, directory assistance, and directory listings. 47 U.S.C. § 251(b)(3). US West Dex is not a local exchange carrier because it does not engage in providing telephone exchange service or exchange access. *See* 47 U.S.C. § 153(26). As US West Dex is not a covered entity under the Act, the MPUC cannot use the statute to regulate US West Dex or impose an obli-

gation on it. *See MCI Telecomms. Corp. v. US West Communications, Inc.*, 1998 U.S. Dist. LEXIS 21585, \*25, Case No. C97-1508R (July 21, 1998 W.D. Wash.). n13

n13 The FCC concluded that the term "directory listings" encompasses directory listings published by a telecommunication carrier and its "affiliates," but then never defines the term "affiliate." 47 C.F.R. § 51.5. Given the Act's express limitation of covered entities to telecommunications carriers, a telecommunications carrier's control of an entity must be a prerequisite for finding that the entity is an affiliate within the meaning of the FCC's rules. Although US West and US West Dex share a parent company that does not equate to exerting control over one another. Without some evidence of US West's control of US West Dex, the Court cannot conclude that US West Dex is an affiliate of US West.

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[\*985] Because it lacked the power under both state law and the Act to regulate US West Dex, the MPUC exceeded its authority by ordering the addition of a provision to § 11 requiring US West Dex to treat US West and its competitors the same with respect to yellow page advertising and white page directory listings. These matters are remanded to the MPUC for further deliberation.

#### VIII. RECORDING AND BILLING SERVICES

US West argues that the MPUC violated § 252(b)(4) and (c) by requiring US West to make its recording and billing services available to AWS to facilitate AWS's collection of termination charges when a third party originates calls that transit US West's network and are then terminated on AWS's network. US West argues that the MPUC did not have the authority under the Act to impose such a requirement.

AWS argues that the MPUC had the necessary authority under § 252(b)(4)(C) as well as § 251(h)(5). The MPUC argues that its authority derived from § 253(b) and state law.

After a request for negotiations has been made, the parties have a duty to negotiate an Interconnection Agreement pursuant to § 251 of the Act. 47 U.S.C. § 252(b)(1). During [\*\*50] their negotiations, the parties are not bound by the directives of subsections (b) and (c) of § 251. *Id.* Essentially, the parties can create an Interconnection Agreement of their choosing that covers any desired aspect of interconnection. In their discussions, the parties are not limited to those matters

explicitly enumerated in § 251 or the FCC's rules. If the parties are unable to resolve the issues that formed the subject of their negotiations, § 252(b)(1) provides that a party "to the negotiation may petition a State commission to arbitrate any open issues." (emphasis added). The parties can bring any unresolved interconnection issue before the state commission for arbitration. The parties are again not limited to issues explicitly enumerated in § 251 or the FCC's rules, but rather are limited to the issues which have been the subject of negotiations among themselves.

Section 252(b)(4)(C) provides the authority for a state commission to act during arbitration proceedings, "the State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the [\*\*51] parties to the agreement . . . ." Section 252(c) ("Standards for arbitration") states that:

In resolving by arbitration under subsection (h) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall-

- (1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

**47 U.S.C. § 252(c).**

Section 252(b)(4)(C) expressly provides that a state commission "shall resolve each issue set forth in the petition and the response." If an issue has been designated by the parties as in need of resolution by the MPUC, the MPUC has an obligation to address that issue and, as was noted above, the parties may raise any issue concerning which they have attempted [\*986] to negotiate a resolution. The language of § 252(c)(1) stating that the state [\*\*52] commission shall ensure that the resolution of open issues meets the requirements of § 251, does not confine the resolution of the issues to the requirements of § 251. If a state commission ensures that the resolution meets the requirements of a section, it is merely certifying that the resolution meets the affirmative requirements of the section while simultaneously determining that it does not conflict with or violate the section's affirmative and negative requirements. Not every issue included in the resolution necessarily involves

the affirmative requirements of § 251. Thus, the only limitations that § 252(b)(4)(C) and (c) place upon any individual issue addressed by a state commission during arbitration are that the issue must be: (1) an open issue and (2) that resolution of the issue does not violate or conflict with § 251.

Transit traffic was an issue presented by the parties to the ALJ and the MPUC in their matrix of twelve key issues. (A15; Positions on Key Issues at 5). As part of the transit traffic issue, the parties discussed including transit traffic as part of their "bill and keep" arrangement. AWS argued that it should be part of the arrangement and US West argued [\*\*53] that it would not be appropriate to include it because transit traffic does not involve a US West customer originating the call. (A15; Positions on Key Issues at 5). The billing of transit traffic was an open issue between the parties and was expressly presented to the MPUC for resolution. Furthermore, as the billing of transit traffic is not expressly addressed by § 251 or the FCC rules, the MPUC's decision to require US West to make its recording and billing services available to AWS does not conflict with or violate § 251. Because this issue met the two requirements of § 252(b)(4)(C) and (c), the MPUC had the authority under the Act to resolve this open issue.

**IX. BURDEN OF PROOF**

The MPUC created the following burden of proof for the parties: "The burden of production and persuasion with respect to all issues of material fact shall be on US WEST . . . . The facts at issue must be proven by a preponderance of the evidence. The ALJ, however, may shift the burden of production as appropriate, based on which party has control of the critical information regarding the issue in dispute." (A3) (MPUC Order Granting Petition at 10).

When Congress establishes the burden [\*\*54] of proof or production to be applied in an administrative proceedings, the courts must defer to Congress. *Steadman v. S.E.C.*, 450 U.S. 91, 95-96, 67 L. Ed. 2d 69, 101 S. Ct. 999 (1981). However, when Congress is silent as to the issue, it is left to the judiciary to resolve the question. 450 U.S. at 95, 101 S. Ct. at 1004.

The provisions of the Act and the FCC rules, which address the issue, place the burden of proof on the incumbent LEC. See 47 C.F.R. §§ 51.5 ("An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.") and 51.321(d) ("An incumbent LEC that

denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible."). There appears to be no section of the [\*\*55] Act or FCC rules that places the burden of proof on the new entrant. The MPUC has admittedly placed a heavy burden of proof on the incumbent LEC, but no evidence has been adduced that such a standard conflicts [\*\*987] with the Act or the FCC rules. n14 To the extent Congress and the FCC have spoken to the burden of proof, the MPUC's position does not conflict with their directives.

n14 The one apparent exception involves the issue of technical feasibility of interconnection. The FCC rules create a clear and convincing standard in relation to this issue while the MPUC created a preponderance of the evidence standard. As this apparent conflict is not relevant to this case, it will not be addressed here.

As for the burden of proof for the remainder of the statute, normally when a federal statute is silent as to the burden of proof in an administrative proceeding, a court would turn to the Administrative Procedure Act (APA) to fill the void. However the APA does not apply to these proceedings because the MPUC is not a federal [\*\*56] agency. *Franklin v. Massachusetts*, 505 U.S. 788, 800, 120 L. Ed. 2d 636, 112 S. Ct. 2767 (1992). Typically an applicable state statute would determine the proper burden of proof for proceedings before a state agency like the MPUC. In fact, US West argues that the MPUC should have applied the burden of proof for contested case proceedings found in Minnesota Rule 1400.7300, subp. 5. However, because this is a sui generis proceeding, a state agency applying federal law to review telecommunications agreements, at the time of the hearing there was no state law explicitly on point. n15 The MPUC was thus left the task of developing an appropriate burden of proof.

n15 After the hearing, the MPUC adopted Minnesota Rule 7812.1700, subp. 23 to govern the arbitration of intercarrier negotiations. Minnesota Rule 7812.1700, subp. 23 contains the same burden of proof as the one used by the MPUC in this case. Minnesota Statute § 237.16 authorized the MPUC to promulgate rules governing local competition and to define the procedures for competitive entry and exit.

Minn. Stat. § 237.16, subd. 8.

[\*\*57]

The burden of proof the MPUC selected is in accord with the procompetitive purposes of the Act and realistically reflects the parties access to and control of information. Generally, under federal and Minnesota common law, the proponent of an issue - that is the one who wants to prove the affirmative - has the burden of proof as to that issue. *Newport News Shipbuilding and Dry Dock Co. v. Loxley*, 934 F.2d 511, 516 (4th Cir. 1991) (citing *Selma, Rome & C. Railroad v. United States*, 139 U.S. 560, 567, 35 L. Ed. 266, 11 S. Ct. 638 (1891); *Fleming v. Harrison*, 162 F.2d 789, 792 (8th Cir. 1947)); *Holman v. All Nation Insurance Co.*, 288 N.W.2d 244, 248 (Minn. 1980). However, under both federal and Minnesota common law, questions of fairness, such as the control of information, can alter the disposition of the burden of proof. *Fleming*, 162 F.2d at 792; *Holman*, 288 N.W.2d at 248.

In this case, placing the burden of proof on the competitive local exchange carrier ("CLEC") would present an insurmountable barrier to entry into the local telephone market. As the MPUC accurately noted, US West [\*\*58] has held a monopoly in the local telephone market for an extended period of time and as a result largely controls the information about the market. It knows the operation and function of various component elements of its system as well as the costs involved. Thus, fairness supports leveling the playing field by allocating the burden of proof onto the incumbent LEC, the party with the historical advantage.

In addition, the burden of proof established by the MPUC permits for the shifting of the burden in appropriate circumstances, e.g. when the CLEC controls the relevant information. Flexibility is provided to accommodate situations where it would be unjust to leave the burden of proof on the incumbent LEC. Given this flexibility and in light of the control of information as well as the purpose of the Act, the burden of proof standard chosen by the MPUC was appropriate.

#### X. TAKINGS CLAIM

US West makes a general claim that if the US West-AWS Agreement is upheld, [\*\*988] it will result in a taking of US West's property. US West also alleges that requiring US West to permit collocation of RSUs, access to its OSS, and interconnection and access to unbundled elements is a physical [\*\*59] occupation of its property, and therefore constitutes a "per se taking under the Fifth Amendment."

In relation to its takings claim, US West states that it is not seeking compensation for the alleged taking but rather that it wishes an injunction to prevent a taking without just compensation. US West appears to be alleging a violation of the jurisdictional grant of the Act. In making its argument, US West relies on *Bell Atlantic Tel. Cos. v. FCC*, 306 U.S. App. D.C. 333, 24 F.3d 1441 (D.C. Cir. 1994). In *Bell Atlantic*, the D.C. Circuit determined that 47 U.S.C. § 201 did not vest the FCC with the necessary authority to order LECs to provide physical collocation of equipment upon demand. 24 F.3d at 1444-47. It found that because the particular statute did not expressly authorize an order of physical collocation, the FCC could not impose it. *Id.* at 1447. *Bell Atlantic* is, however, inapposite to the present case, because, unlike the general Communications statute at issue in *Bell Atlantic*, 47 U.S.C. § 251(c)(6) expressly provides for limitations being placed on the LECs' property rights, including the requirement [\*\*60] that incumbent LECs have a duty to provide for the physical collocation of equipment. See 47 U.S.C. § 251(c)(6). In fact, Congress was aware of the *Bell Atlantic* decision when it authorized the imposition of physical collocation:

Paragraph 4(B) [of section 251] mandates actual collocation, or physical collocation, of equipment necessary for interconnection at the premises of a LEC, except that virtual collocation is permitted where the LEC demonstrates that actual collocation is not practical for technical reasons or because of space limitations. . . . Finally, this provision is necessary to promote local competition, because a recent Court decision indicates that the Commission lacks the authority under the Communications Act to order physical collocation. (See *Bell Atlantic Tel. Co. v. Federal Communications Commission*, 306 U.S. App. D.C. 333, 24 F.3d 1441 (1994)).

House Rep. No. 104-204, at 73 (1995). Therefore, Congress clearly intended to vest the agencies with authority to place limitations on the LECs' property rights.

US West has not only challenged the MPUC's authority to impose these limitations on US West's [\*\*61] property, but also claimed that the Agreement approved by the MPUC does not fully compensate US West for the taking of its property. This is a traditional takings claim allegation and the Court will therefore apply a traditional takings claim analysis.

The defendants argue that US West's taking claim must fail because: (1) it exceeds the scope of this Court's jurisdiction, which is limited by 47 U.S.C. § 252(e)(6); (2) the claim is not ripe for review; and (3) the agreement contains provisions which allow for full cost recovery

by US West.

The Eighth Circuit explicitly noted that a takings claim can be presented to a federal district court under the review provisions of subsection 252(e)(6). *Iowa Utils. Bd.*, 120 F.3d at 818. Therefore, this Court has jurisdiction to hear the takings claim.

In order for a takings claim to be ripe, two elements must be met: (1) the administrative agency has reached a final, definitive position as to how it will apply the regulation at issue, and (2) the plaintiff has attempted to obtain just compensation through the procedures provided by the State. *Williamson Co. Regional Planning v. Hamilton Bank*, 473 U.S. 172, 191, 194, 87 L. Ed. 2d 126, 105 S. Ct. 3108 (1985). [\*\*62] Here, neither of these elements have been satisfied.

The Fifth Amendment states that, "private property [shall not] be taken for public use without just compensation." The Takings Clause is not meant to limit [\*\*989] the government's ability to interfere with an individual's property rights, but rather to ensure compensation when a legitimate interference that amounts to a taking occurs. *Glosemeyer v. Missouri-Kansas-Texas Railroad*, 879 F.2d 316, 324 (8th Cir. 1989) (quoting *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 315, 96 L. Ed. 2d 250, 107 S. Ct. 2378 (1987)). The compensation does not have to precede the taking; a process for obtaining compensation simply has to exist at the time of the taking. *Id.* (citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1016, 81 L. Ed. 2d 815, 104 S. Ct. 2862 (1984)). If US West ultimately receives just compensation then there has been no violation of the Takings Clause.

Public utilities, which have a hybrid public and private status, must be analyzed in a slightly different manner than other entities under the Takings Clause. n16 *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307, 102 L. Ed. 2d 646, 109 S. Ct. 609 (1989). [\*\*63]

The guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so "unjust" as to be confiscatory. *Covington & Lexington Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597, 17 S. Ct. 198, 205-206, 41 L. Ed. 560 (1896) (A rate is too low if its is "so unjust as to destroy the value of [the] property for all the purposes for which it was acquired," and in so doing "practically deprive[s] the owner of property without due process of law"); *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 62 S. Ct. 736, 742, 86 L. Ed. 1037 (1942) ("By long standing usage in the field of rate regulation, the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense");

*FPC v. Texaco Inc.*, 417 U.S. 380, 391-392, 94 S. Ct. 2315, 2329, 41 L. Ed. 2d 141 (1974) ("All that is protected against, in a constitutional sense, is that the rates fixed by the Commission be higher than a confiscatory level").

488 U.S. at 308. If the state fails to provide sufficient compensation, then the state has [\*\*64] taken the use of a utility without just compensation and thereby violated the Takings Clause. *Id.* The particular theory used to determine whether a rate is fair does not matter. *Id.* at 310 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602, 88 L. Ed. 333, 64 S. Ct. 281 (1944)). If the overall effect cannot be said to be unreasonable then judicial inquiry is at an end. *Id.* (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602, 88 L. Ed. 333, 64 S. Ct. 281 (1944)). Whether a rate is unfair depends on what is a fair rate of return given "the risks under a particular rate-setting system, and on the amount of capital upon which the investors are entitled to earn that return." *Id.* "Rates which enable [a] company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risk assumed certainly cannot be condemned as invalid . . . ." *Hope Natural Gas*, 320 U.S. at 605.

n16 Although the traditional public utility rate model is not a perfect model for § 252(e)(6) cases, it is informative. See J. Gregory Sidak & Daniel F. Spulber, *Deregulatory Takings and Breach of the Regulatory Contract*, 71 *N.Y.U. Law Rev.* 851, 954 (Oct. 1996).

[\*\*65]

The purpose of the Telecommunications Act of 1996 is, in part, to foster competition in the local telephone market. *GTE North, Inc. v. McCarty*, 978 F. Supp. 827, 831 (N.D.Ind. 1997) (citing Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 104-458, at 113 (1996)). Under the Act, US West provides services to its competitors rather than the public. 47 U.S.C. § 251(c). The end goal is not a fair rate of return as in the traditional rate-setting paradigm, but rather the equitable opening up of a market. Neither party to the Agreement is expected to profit in the interconnection or resale processes. See 47 U.S.C. § 251(c)(4)(A) ("to offer for resale at wholesale rates . . ."). Because these transactions are not designed to be profitable, [\*\*990] the analysis cannot be fair rate of return as to any individual provision concerning the sale or access of services to the CLECs. Rather the query must be whether any provision or provisions of the Agreement negatively affect the overall operation of the incumbent

LEC to such a degree that it can no longer receive a fair rate of return from its investment.

In [\*\*66] this case, it is premature to ask this question for two reasons. First, the MPUC has not reached a final decision concerning the prices for unbundled elements; they are still subject to a true-up procedure at the end of the Generic Cost Investigation. Until the MPUC reaches a decision on that issue, the overall effect of the Agreement cannot be determined and the takings claim is not ripe for review. Second, the incumbent LEC still has an opportunity to have its public rates increased in light of the MPUC's Orders made pursuant to §§ 251 and 252. If US West is not earning a sufficient return on its investment in Minnesota, it can petition the MPUC for a rate change. See Minn. Stat. § 237.075. The MPUC is obligated to implement a rate base upon which a telephone company can earn a fair rate of return. See *id.*, subd. 6. US West will not have exhausted its state remedies until it has taken this final step. It would only be after such a hearing that a court could determine whether the overall utility rates are "inadequate to compensate current equity holders for the risk associated with their investments under a modified prudent investment scheme." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 312, 102 L. Ed. 2d 646, 109 S. Ct. 609 (1989). [\*\*67] The MPUC's actions under the Act establish LECs relationships with one another; the equation is not complete until the economic relationship with the public is determined in light of the intercarrier relationships. Because Minnesota offers an opportunity to US West to have its rates readjusted, US West has not yet exhausted its state remedies and its takings claim is ripe for review. US West's takings claim is therefore dismissed without prejudice.

#### CONCLUSION

Based upon the foregoing, and all of the files, records and proceedings herein, IT IS HEREBY ORDERED that:

1. US West's request that this Court find that the MPUC's determinations concerning the US West-AWS Agreement violates 47 U.S.C. §§ 251 and 252 is GRANTED IN PART, DENIED IN PART, and DENIED WITHOUT PREJUDICE IN PART. It is granted with respect to: (1) Count I (operational support systems as an open issue); (2) Count IV (the collocation of RSUs); and (3) Count VII (the regulation of US West Dex). It is denied without prejudice with respect to Count IX (US West's takings claim) and Count V (the "pick and choose" provision). It is denied in all other respects. The matter is [\*\*68] remanded to the MPUC for further determinations consistent with this decision.

Ann D. Montgomery

UNITED STATES DISTRICT JUDGE

DATED: March 30, 1999

agreement be amended accordingly.

Pl. Br. at Ex. 11, § 29.3. But the Third Reconsideration Order did not change [\*16] Rule 319 as that Rule relates to the present issue. The Third Reconsideration Order merely clarified the definition of "shared transport" already contained in Rule 319. As the FCC made clear in the Introduction to the Third Reconsideration Order, "the [First Report and Order] required incumbent [exchange carriers] to provide requesting carriers with access to the same transport facilities . . . that incumbent [exchange carriers] use to carry their own traffic." Pl. Br. at Ex. 4, P 2 (emphasis added). In discussing the issue in depth, the FCC stated:

Some parties have argued that certain aspects of the rules adopted last August were ambiguous which, in our view, were clear. Specifically, in the [First Report and Order], we expressly required incumbent [exchange carriers] to provide access to transport facilities "shared by more than one customer or carrier." The term "carrier" includes both an incumbent [exchange carrier] as well as a requesting telecommunications carrier. We, therefore, conclude that "shared transport," as required by the [First Report and Order] encompasses a facility that is shared by multiple carriers, including the incumbent [\*17] [exchange carrier.]

Id. at Ex. 4, P 22 (citing 47 C.F.R. § 51.319) (emphasis added). The above quotation makes clear that Rule 319's definition of shared transport, as it existed at the time of the ICC's decision, encompassed the concept of common transport.

One might argue, of course, that the ICC was correct in its conclusion that Rule 319 was ambiguous. Even assuming the ICC was correct, there is no need to force MCI to undergo a lengthy bona fide request process. The ICC emphasized that it was "unwilling to conclude that the FCC . . . intended to preclude the provision of 'common transport' as a network element." Pl. Br. at Ex. 7, p. 28. Indeed, the ICC deferred any final resolution of the question until MCI filed a bona fide request so as "to enable the Commission to evaluate the competing contentions of the parties within a more meaningful context." Id. at Ex. 7, p. 29. In other words, the ICC indicated it could not determine the meaning of "shared transport" under Rule 319 on the evidence and arguments before it. The question left open by the ICC has since been answered in the Third Reconsideration Order. To force MCI to undertake a [\*18] bona fide request would unjustifiably delay MCI's access to common transport. Delaying access to a network element to which MCI is clearly entitled is inconsistent with the basic purpose of

the Act.

Accordingly, the ICC's decision denying MCI access to shared transport without undertaking a bona fide request is reversed.

## II. Tandem Interconnection Rate

The Act requires a local exchange carrier to pay mutual and reciprocal compensation for the cost of transporting and terminating calls on another carrier's network. 47 U.S.C. §§ 251(b)(5), 252(d)(2). A variety of methods has been proposed for determining the rates one carrier may charge another. Pl. Br. at 23 (and citation therein). One aspect of the rates the ICC imposed in the Ameritech / MCI interconnection agreement is the "tandem interconnection rate." Id. The tandem interconnection rate is a function of other rates set out in the agreement, including the tandem switching rate, a charge for transport and termination, and the end office switching rate. Id. The tandem interconnection rate is higher than the "end office rate," which includes only the end office switching rate and a [\*19] charge for transport and termination. Id.

In deciding whether MCI was entitled to the tandem interconnection rate, the ICC applied a test promulgated by the FCC to determine whether MCI's single switch in Bensonville, Illinois, performed functions similar to, and served a geographical area comparable with, an Ameritech tandem switch. n9 Id. at 23-24. The ICC determined that MCI was entitled only to the end office rate. MCI contends the ICC's decision imposes reciprocal compensation on terms that are unjust and unreasonable in violation of § 251(c)(2)(d). Because the parties agree that the ICC applied the proper legal standard, its decision rests on factual determinations that are reviewed under an arbitrary and capricious standard.

n9 MCI contends the Supreme Court's decision in IUB affects resolution of the tandem interconnection rate dispute. It does not. IUB upheld the FCC's pricing regulations, including the "functionality / geography" test. 119 S. Ct. at 733. MCI admits that the ICC used this test. Pl. Br. at 24. Nevertheless, in its supplemental brief, MCI recharacterizes its attack on the ICC decision, contending the ICC applied the wrong test. Pl. Supp. Br. at 7-8. But there is no real dispute that the ICC applied the functionality / geography test; the dispute centers around whether the ICC reached the proper conclusion under that test.

[\*20]



[\*12]

## DISCUSSION

The parties agree that the applicable standard of review of the ICC's decisions depends on whether a particular issue is one of fact or of law. Determinations of fact are entitled to substantial deference unless they are arbitrary and capricious. Questions of law are subject to de novo review.

## I. Shared Transport

In the preliminary negotiations between Ameritech and MCI, Ameritech agreed to provide MCI access to interoffice transport facilities on a "shared" basis. n5 At arbitration, the parties disputed the meaning of the word "shared," and looked to Rule 319 for the appropriate definition. Def. Supp. Br. at 6. The ICC concluded Rule 319 was ambiguous, and ultimately adopted Ameritech's proposed contract language. n6 The ICC ruled that if MCI wanted access to common transport, it could seek access through the bona fide request process. After the ICC reached its decision, the FCC issued its Third Reconsideration Order, which left no doubt that "shared transport" under Rule 319 encompassed the industry understanding of "common transport." The FCC explained that incumbents must offer access "to the same interoffice transport facilities that [\*13] the incumbent uses for its own traffic." Pl. Br. at Ex. 4, P 22. The Third Reconsideration Order also amended the text of Rule 319 to expressly include the concept of common transport within the meaning of the term "shared." MCI argues that the Third Reconsideration Order clearly indicates the ICC's decision was erroneous. n7

n5 Although Ameritech has not expressly admitted this assertion, MCI has repeatedly advanced the argument. See Supp. Resp. at 2; Tr. Apr. 15, 1999 at 9-10. Ameritech has not challenged MCI's position.

n6 The ICC's decision was a determination of law, and therefore is subject to de novo review.

n7 Ameritech argues that this court should not consider the Third Reconsideration Order after the Supreme Court's order in *Ameritech Corp. v. FCC*, 119 S. Ct. 2016, 143 L. Ed. 2d 1029, 1999 WL 116994 (U.S. 1999). Ameritech Corp. vacated the Eighth Circuit's decision in *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 597 (8th Cir. 1998), which affirmed the Third Reconsideration Order. However, Ameritech Corp. did not vacate the Third Reconsideration Order, nor did it instruct the Eighth

Circuit to do so. The Supreme Court merely vacated the judgment and remanded for further consideration in light of *IUB. Ameritech Corp.*, 119 S. Ct. 2016, 143 L. Ed. 2d 1029, 1999 WL 116994 (U.S. 1999). The Third Reconsideration Order is still valid.

[\*14]

Ameritech responds that because Rule 319 was vacated by the Supreme Court in *IUB*, there is no basis for reversing the ICC's decision. But the vacation of Rule 319 is irrelevant to the question before this court. MCI need not look to Rule 319 for the authority to compel Ameritech to provide access to shared transport, because Ameritech agreed to do so in preliminary negotiations. Rule 319 merely serves as an external source of definition of the terms in the negotiated interconnection agreement. *IUB* has no effect on the function of Rule 319 in this case. n8

n8 If the continued vitality of Rule 319 were necessary to compel Ameritech to provide access to shared transport, Ameritech presumably would challenge its obligation to provide MCI access to any type of "shared transport," however that term is defined. The fact that Ameritech challenges only its obligation to provide common transport bolsters the conclusion that Ameritech's obligation to provide shared transport stems from the preliminary negotiations rather than from Rule 319.

[\*15]

Ameritech also argues that MCI failed to exhaust its administrative remedies because it did not seek common transport through the bona fide request process recommended by the ICC. But the basis of MCI's claim is that it should not have to undergo the bona fide request process in order to gain access to common transport. Ameritech seeks to bootstrap its way out of MCI's claim by assuming that the ICC's decision to require MCI to undertake a bona fide request is valid. Ameritech's argument is without merit.

Finally, Ameritech contends that the Third Reconsideration Order changed existing law, and that MCI must therefore pursue its remedies under § 29.3 of the interconnection agreement. Section 29.3 provides:

In the event of . . . any final and nonappealable legislative, regulatory, judicial order, rule or regulation or other legal action that revises and reverses . . . the FCC's First Report and Order [which promulgated Rule 319] . . . either party may . . . require that the affected provisions be renegotiated in good faith and this

n2 The precise meanings of these terms are disputed, as explained below.

n3 The following description of a local telephone network is gleaned from the parties' briefs and from statements at oral argument. Because these foundational facts are not in dispute, the court will forego cumbersome citations to the record.

Although Ameritech agreed to provide MCI with "shared transport," the parties could not agree on the meaning of that term. Ameritech argued that "shared transport" refers only to interoffice transmission facilities purchased on a dedicated basis and shared by other carriers or customers, [\*8] but not the incumbent carrier. MCI argued that "shared transport" refers to interoffice facilities shared by customers and other carriers including the incumbent - what the industry refers to as "common transport." At the heart of the parties' dispute is the interpretation of "shared transport" as used by the Federal Communications Commission (FCC) in 47 C.F.R. § 51.319 ("Rule 319"). The ICC determined the FCC regulations were ambiguous. Pl. Br. at Ex. 7, p. 28. Accordingly, the ICC concluded MCI was entitled to shared transport as defined by Ameritech, but MCI could seek access to common transport only through a bona fide request process set out in the interconnection agreement. Id. at Ex. 7, p. 29. MCI contends the ICC violated the Act by requiring it to submit to a lengthy request process in order to gain access to common transport.

MCI's second claim concerns the Act's requirement that local exchange carriers "establish reciprocal compensation arrangements for the party's transport and termination on telecommunications." 47 U.S.C. § 251(b)(5). In other words, MCI must pay Ameritech a fee when an MCI customer calls an Ameritech customer, and Ameritech [\*9] must pay MCI a fee when an Ameritech customer calls an MCI customer. MCI argued before the ICC that it was entitled to the "tandem interconnection rate" set out in the interconnection agreement. However, the ICC determined that MCI was entitled only to the lower "end office switching rate," concluding that MCI had failed to produce sufficient evidence showing it should be paid the higher rate. MCI contends the ICC decision violates § 251(c)(2)(D), which requires that reciprocal compensation be paid on just, reasonable, and nondiscriminatory terms.

MCI asserts in its third claim that the ICC violated § 251(c)(3) when it accepted Ameritech's proposal regarding the amount of time allowed for Ameritech to provide MCI access to local loops. MCI's proposal gave Ameritech two to five days, depending on the number

of requests. Ameritech proposed a five to seven day period. The ICC accepted Ameritech's proposal.

MCI's fourth claim is that the ICC imposed unjust, unreasonable, and discriminatory terms on MCI when it approved Ameritech's proposal for a bona fide request process. The bona fide request process is the vehicle by which MCI may request access to additional network elements. [\*10] Ameritech proposed a request procedure that could take up to four months to conclude. MCI's proposal involved a significantly shorter time period. According to MCI, Ameritech's proposal needlessly and intentionally delays MCI's access to necessary network elements.

Finally, MCI claims the ICC erred when it approved provisions limiting Ameritech's liability to MCI for breaches of the interconnection agreement. The liability limitations were never a subject of arbitration. Instead, the ICC imposed the provisions at Ameritech's request during the approval stage of the negotiation and arbitration process. According to MCI, the ICC had no authority under § 252(e)(2) to impose the liability limitations at that point in the process. MCI also contends the liability limitations violate § 251(c) because the provisions are not just, reasonable, and nondiscriminatory.

Ameritech's counterclaim arises from the ICC's decision to grant MCI access to "dark fiber." Dark fiber is simply optical fiber that has been physically placed in the network but is not attached to electronics that are necessary to "illuminate" the fiber and enable it to carry telecommunications. n4 Ameritech contends the ICC [\*11] had no authority to grant MCI access to dark fiber because the issue was never submitted to the ICC in arbitration. Ameritech next argues the ICC had no authority to identify dark fiber as a network element after the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 834 (1999) (hereafter, "IUB"). Finally, Ameritech argues that even if the ICC had authority to grant MCI access to dark fiber, its decision violated the Act because the ICC failed to determine that denial of access to MCI would impair MCI's ability to provide telecommunications services, as required by § 251(d)(2)(B).

n4 As explained at oral argument, dark fiber is used to save resources. The process of burying cable in the ground or suspending it along poles is very expensive. Therefore, when an exchange carrier lays new cable in the network, it frequently lays more cable than is required. The excess cable is dark fiber, which can be activated if additional carrying capacity is needed.

n1 The Act is codified in scattered sections of Title 47 of the United States Code. Citations to sections of the Act are references to the corresponding sections of the Code.

[\*3]

### BACKGROUND

Historically, local telecommunications services were dominated by state-sanctioned monopolies granted to local exchange carriers such as Ameritech. H. R. Rep. No. 104-204, at 49 (1995) (hereafter, "H. Rep."). The Act imposes a scheme designed to end monopolies in local telecommunications services. The Act recognizes that incoming exchange carriers must be able to make use of the incumbent carrier's existing network in order to compete effectively. *Id.* The primary mechanisms for opening access to the incumbent carrier's network are found in §§ 251 and 252. Section 251 establishes three methods that the incoming exchange carriers may use to access the incumbent carrier's network. The first method, called "interconnection," allows incoming carriers to construct their own networks and interconnect with the incumbent carrier's facilities on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2). The second method requires incumbent carriers to provide incoming carriers with "nondiscriminatory access to network elements on an unbundled basis." *Id.* at § 251(c)(3). However, the incumbent [\*4] carrier need make available unbundled network elements only if the failure to provide access to the network element would "impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." *Id.* at § 251(d)(2)(B). Finally, the Act allows "resale," by which incoming carriers may purchase the incumbent carrier's services at wholesale rates and resell the services to retail customers under a different brand name. *Id.* at § 251(c)(4).

Section 252 establishes the procedures for determining the terms under which incoming carriers will access the incumbent carrier's network. First, incumbent carriers must negotiate in good faith over the terms of interconnection, access to network elements, and resale. *Id.* at §§ 251(c)(1) and 252(a)(1). If the parties reach a satisfactory agreement, any open issues are submitted to compulsory arbitration conducted by state public utility commissions. *Id.* at § 252(b). The state commissions are required to apply the substantive requirements of the Act and any implementing regulations in resolving open issues. *Id.* at § 252(c). Once an agreement has been reached through negotiation and arbitration, [\*5] the proposed agreement must be submitted to the state commission for final approval. *Id.* at § 252(e)(1). A

party who believes the state commission failed to properly apply the Act may seek judicial review of the commission's determinations. *Id.* at § 252(e)(6).

On March 26, 1996, MCI requested negotiations with Ameritech, the incumbent carrier, for access to Ameritech's network in the Chicago area. Def. Br. at Ex. 2, p. 1-2. On August 30, 1996, MCI filed a petition with the ICC for arbitration of unresolved issues. Pl. Br. at Ex. 6. Ameritech filed a timely response. Def. Br. at Ex. 2, p. 2. The ICC assigned a hearing examiner, who conducted an evidentiary hearing and issued a proposed arbitration decision. *Id.* Both MCI and Ameritech filed exceptions to the proposed decision. *Id.* On December 17, 1996, the ICC issued an arbitration decision. *Id.* On January 28, 1997, MCI presented a proposed interconnection agreement for the ICC's approval. Pl. Br. at 12; Def. Br. at 5. The ICC determined the proposed agreement could only be approved if it was amended in certain respects. The parties submitted an amended interconnection agreement in accordance with the ICC's directives. [\*6] Pl. Br. at Ex. 11.

MCI brings this action under § 252(c)(6) challenging specific aspects of the agreement. First, MCI contends the agreement does not require Ameritech to provide MCI with nondiscriminatory access to the network element "shared transport" or "common transport." n2 In order to fully understand MCI's claim, it is necessary to briefly describe the structure of the local telephone network. n3 A telephone customer's home is connected to the network through wires called a "local loop." The local loop connects the customer's home to an "end office," which consists largely of a "local switch." The local switch serves a routing function - it reads the telephone number dialed by the customer and, based on programmed instructions, directs the call on a transmission path to its final destination. If the party receiving the call is connected to the same end office as the caller, the local switch connects the call directly. However, if the caller and the receiving party are connected to different end offices, the call must be "transported" from one end office to another. End offices are connected to one another by "interoffice transmission facilities," which generally consist of [\*7] fiber-optic cables capable of carrying hundreds of calls at once. End offices are also connected to "tandem switches" by a type of interoffice transmission facility called a "trunk." Tandem switches are connected to numerous end offices in a hub-and-spoke arrangement, and connect end offices that are not directly connected. MCI's request for "shared transport" refers to Ameritech's interoffice transmission facilities.

1999 U.S. Dist. LEXIS 11418 printed in FULL format.

MCI TELECOMMUNICATIONS CORPORATION, a Delaware Corporation, and MCIMETRO ACCESS TRANSMISSION SERVICES, INC., a Delaware CORPORATION, Plaintiffs, v. ILLINOIS BELL TELEPHONE COMPANY d/b/a AMERITECH ILLINOIS, INC., an Illinois Corporation, the ILLINOIS COMMERCE COMMISSION; and DAN MILLER, RICHARD HOLHAUSER, RUTH KRETSCHMER, KARL McDERMOTT and BRENT BOHLEN, in their official capacities as Commissioners of the Illinois Commerce Commission, Defendants.

NO. 97 C 2225

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN  
DIVISION

1999 U.S. Dist. LEXIS 11418

June 22, 1999, Decided

June 28, 1999, Docketed

DISPOSITION: [\*1] Illinois Commerce Commission's decision of December 17, 1996 affirmed in part and reversed in part.

COUNSEL: For MCI TELECOMMUNICATIONS CORPORATION, MCIMETRO ACCESS TRANSMISSION SERVICES, INC., plaintiffs: Terri Lynn Mascherin, Darryl Mark Bradford, Eric Andrew Sacks, Andrew Malen Spangler, Jr., David Charles Layden, Kristina Marion Entner, John J. Hamill, Jr., David Zev Smith, Jenner & Block, Chicago, IL.

For ILLINOIS BELL TELEPHONE COMPANY, defendant: Theodore A. Livingston, Matthew Aloysius Rooney, Christian Frederick Binnig, Dennis G. Friedman, Kira Elizabeth Druyan, Mayer, Brown & Platt, Chicago, IL.

For ILLINOIS BELL TELEPHONE COMPANY, counter-claimant: Theodore A. Livingston, Matthew Aloysius Rooney, Christian Frederick Binnig, Dennis G. Friedman, Kira Elizabeth Druyan, Mayer, Brown & Platt, Chicago, IL.

For MCI TELECOMMUNICATIONS CORPORATION, MCIMETRO ACCESS TRANSMISSION SERVICES, INC., counter-defendants: Terri Lynn Mascherin, Darryl Mark Bradford, Jenner & Block, Chicago, IL.

For UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS COMMISSION, intervenor

plaintiffs: AUSA, United States Attorney's Office, Chicago, IL.

For UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS [\*2] COMMISSION, intervenor plaintiffs: Theodore C. Hirt, Jonathan T. Foot, United States Department of Justice, Washington, DC.

Deborah A. Golden, AMERITECH CORPORATION, Chicago, IL.

Thomas R. Stanton, ILLINOIS COMMERCE COMMISSION, Chicago, IL.

JUDGES: Suzanne B. Conlon, United States District Judge.

OPINIONBY: Suzanne B. Conlon

OPINION: DECISION ON THE MERITS

MCI Telecommunications Corporation and MCIMetro Access Transmission Services, Inc. (collectively, "MCI") sue Illinois Bell Telephone Company d/b/a Ameritech Illinois, Inc. ("Ameritech"), the Illinois Commerce Commission (the "ICC"), and five ICC commissioners in their official capacities under § 252(e)(6) of the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. § 252(e)(6). n) Ameritech asserts a counterclaim against MCI and a cross-claim against the ICC and the individual commissioners under § 252(e)(6) of the Act.

The ICC did not make express findings regarding the comparable functions of MCI's switch and Ameritech's switches or the comparative geographical areas served by the various switches. However, the ICC did discuss the evidence offered by each party on these issues, and concluded from the "totality of the evidence" that MCI had failed to establish it was entitled to the tandem interconnection rate. Pl. Br. at Ex. 7, p. 12. The issue of comparable functionality apparently was not in serious dispute. MCI presented evidence and arguments that its switch served to aggregate calls that could then be distributed to any MCI customer within the switch's service area, and that Ameritech's tandem switches served the same function. Id. at Ex. 7, p. 10. Ameritech offered no counter-arguments to the ICC, nor does it offer any to this court. See Id. at Ex. 7, p. 11 (discussing Ameritech's arguments and evidence only as to the question of geographical area); Def. Resp. at 23-25. Therefore, only at issue is the geographical areas served by the respective switches. The ICC summarized MCI's evidence regarding the geographical area served by its switch as follows:

MCI maintains that its [\*21] switch in Bensonville, Illinois serves a geographical area comparable to the area served by [Ameritech's] tandem switch. MCI is authorized to provide local exchange service in the Chicago [service area.] MCI plans to use its Bensonville switch to provide service to any customer in the Chicago [service area] where such service is feasible. [Ameritech] currently serves the Chicago [service area] with three tandem switches . . . . Thus, MCI claims that its switch covers approximately the same geographic area as three . . . Ameritech tandem switches.

Id. at Ex. 7, p. 10 (emphasis added). As the highlighted portions of the quotation make clear, much of MCI's evidence focused on the company's intentions for its switch, which of course are irrelevant to the question whether the switch is capable of servicing the area as intended. However, MCI argued that because its switch currently served the entire Chicago area - the same area that Ameritech served with three tandem switches -- its switch must serve an area comparable to any one of Ameritech's switches.

MCI's argument has surface appeal, but fails under closer scrutiny. During arbitration, [\*22] MCI had less than 50,000 customers in the Chicago area. Id. at Ex. 7, p. 11. The "Chicago area" is large, yet MCI offered no evidence as to the location of its customers within the Chicago area. Indeed, an MCI witness said that he "doubted" whether MCI had customers in every "wire center territory" within the Chicago service

area. Pl. Br. at Ex. 28, p. 207. MCI's customers might have been concentrated in an area smaller than that served by an Ameritech tandem switch. Or MCI's customers might have been widely scattered over a large area, which raises the question whether provision of service to two different customers constitutes service to the entire geographical area between the customers. n10 These are questions that MCI could have addressed, but did not. The ICC compared MCI's proof with the proof offered by an incoming exchange carrier in a different case, noting that the other carrier produced "a map showing geographically widespread deployment of various nodes in its network" and "some discussion of the location of [the carrier's] local exchange customers." Id. at Ex. 7, p. 12. In contrast, MCI had expressly refused to provide "specific empirical data, including maps, [\*23] to demonstrate that it serves an area comparable to Ameritech's tandem network." Id. at Ex. 21, p. 13. In short, MCI offered nothing but bare, unsupported conclusions that its switch currently served an area comparable to an Ameritech tandem switch or was capable of serving such an area in the future. The ICC's determination that "MCI has not provided sufficient evidence to support a conclusion that it is entitled to the tandem interconnection rate" was not arbitrary and capricious.

n10 MCI argues that it is patently unfair to look to the number of customers served by the switch, since Ameritech, as a long time beneficiary of a state-sanctioned monopoly, will almost always have more customers than incoming exchange carriers. However, nothing in the ICC's opinion indicates that it improperly relied on the number of MCI customers in reaching its decision. Furthermore, as the discussion in the text makes clear, identification of MCI customers is relevant to the question of the location of the customers and the geographical area actually serviced by MCI's switch.

[\*24]

### III. Timing of Connections to Local Loops

"Local loops" are the portions of the network connecting the exchange carrier's end office or switch to the customer's premises. Ameritech submitted to the ICC a proposal allowing Ameritech five to seven days to provide MCI with local loops. MCI's proposal allowed Ameritech two to five days to provide local loops. MCI contends the ICC violated the Act by adopting Ameritech's proposal. MCI argues that the time required to obtain local loops is critical because it determines how long a customer must wait before being switched to MCI's service. During the change-over in-

terval, MCI contends the customer will be subjected to Ameritech's targeted efforts to win back the customer. According to MCI, the ICC's decision violates 47 U.S.C. § 257(c)(3), which requires an incumbent carrier to provide unbundled network elements on "just, reasonable, and nondiscriminatory" terms, and 47 C.F.R. § 51.313 ("Rule 313"), which requires an incumbent carrier to provide access to network elements on terms "no less favorable" than the terms under which the incumbent carrier provides the elements to itself. n11

n11 In its reply, MCI argues that § 51.311(b) ("Rule 311"), which requires that elements given an incoming carrier must be "equal in quality" to the elements the incumbent carrier supplies itself, also applies to timing of access to local loops. But Rule 313 specifically refers to "the time within which the incumbent [exchange carrier] provisions such access to unbundled network elements," while Rule 311 refers generally to the "quality" of access to unbundled network elements. Rule 313 provides the applicable standard for determining whether the ICC's acceptance of Ameritech's proposal is permissible under the Act.

[\*25]

Rule 313(b) provides,

Where applicable, the terms and conditions pursuant to which an incumbent [exchange carrier] offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent [exchange carrier] provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent [exchange carrier] provides such elements to itself.

47 C.F.R. § 51.313(b). For present purposes, the most important phrase in Rule 313 is the qualifier "where applicable." This phrase makes the "no less favorable" standard conditional on the applicability of the regulation. The difficult question is whether the incoming carrier bears the burden of demonstrating the regulation applies, or whether the incumbent carrier bears the burden of demonstrating the regulation does not apply. In this court's view, the regulation places the burden on the incoming carrier. In understanding this conclusion, it is helpful to contrast Rule 313 with the closely analogous Rule 311. Rule 311 requires incumbent carriers to provide incoming carriers [\*26] access to network elements "equal in quality" to the access the incumbent carrier provides to itself. 47 C.F.R. § 51.311(b). However,

the incumbent carrier is held to this strict standard only when it is "technically feasible" to provide access of equal quality. *Id.* If the incumbent carrier does not provide access meeting the requisite standard, Rule 311 unequivocally places the burden of demonstrating technical infeasibility on the incumbent carrier - "the incumbent carrier must prove to the state commission that it is not technically feasible . . ." *Id.* Rule 311 demonstrates that in crafting the rules regarding parity of access to network elements, the FCC carefully considered which party should bear the burden of proof. Rule 311 also demonstrates that the FCC chose when to place that burden on the incumbent carrier. Yet Rule 313, a companion to Rule 311, contains no comparable language placing the burden on the incumbent; Rule 313 simply mandates provisioning intervals to be congruent "where applicable." The sharp contrast between the language of these two closely analogous rules indicates the FCC did not intend that the incumbent carrier bear the burden of showing [\*27] Rule 313 is inapplicable.

This conclusion comports with common sense when one considers the differences between the quality of access addressed in Rule 311 and the timing of access addressed in Rule 313. In considering quality of access, it is difficult to imagine a situation in which an incumbent carrier could not provide incoming carriers access to network elements equal in quality to that the incumbent provides itself. The quality of access presumably is a function of the technologies, services, and physical facilities that comprise the network element. There is no apparent reason why the quality of the technologies, services, or physical facilities would decline simply because the facilities are to be used by a different telecommunications carrier. Therefore, Rule 311 properly forces the incumbent to prove it cannot provide access equal in quality to that which it provides itself. But the timing of access to network elements presents an entirely different situation. As Ameritech points out, it does not unbundle local loops, or any other network element, for its own use. See *Def. Resp.* at 28. The process of providing access to unbundled network elements to competing carriers [\*28] that often operate on a different network is different, and presumably more time-consuming, than the process of provisioning network elements for the incumbent's own use. MCI's witness recognized there are differences between processing orders for unbundled network elements and processing orders for retail services. *Def. Resp.* at Ex. 15, p. 155; *Pl. Br.* at Ex. 7, p. 57. Of course, some network elements might be provided to incoming carriers through the same processes through which the incumbent carrier supplies itself. Rule 313 logically places the burden on incoming carriers to demonstrate that the incumbent

carrier can provide unbundled elements to the competing carrier in the same time frame that the incumbent provides elements to itself.

The ICC concluded MCI did not sufficiently demonstrate that Ameritech could feasibly provide access to local loops in two to five days. n12 MCI admitted that its pleadings in the arbitration proceedings lacked data supporting its proposal. Def. Resp. at Ex. 15, p. 180. MCI merely argued that Ameritech should be forced to provide access to unbundled local loops in a comparable amount of time to that required to provide local loops for resale. Pl. [\*29] Br. at Ex. 7, p. 57. The ICC stated that "MCI does little more than point to its own proposals and allege in the most general of terms that they are necessary for 'parity' or 'nondiscrimination' or that [Ameritech's] proposals are 'inadequate.'" Pl. Br. at Ex. 7, p. 62. The ICC concluded that "MCI's claims regarding provisioning benchmarks mix apples and oranges" because the "procedures for provisioning an unbundled loop and a resale loop are different and the respective provisioning intervals are not comparable." Id. The ICC's decision was not erroneous under Rule 313.

n12 The ICC's decision is a mixed determination of law and fact, and is subject to de novo review.

#### IV. Timing of Bona Fide Request Process

Both MCI and Ameritech presented the ICC with proposals for a "bona fide request" process by which MCI could request access to additional network elements not specified in the interconnection agreement. MCI proposed an 85-day process, while Ameritech proposed 120 days. MCI's proposal allowed [\*30] Ameritech fifteen days from the time of the request to determine if the request was technically feasible. Pl. Br. at 33 (and citations therein). If Ameritech determined the request was technically feasible, it would provide MCI a price quote within an additional twenty business days. Id. MCI would then have thirty days to accept or reject the quote. Id. In the event of a dispute, the ICC would decide within twenty days of Ameritech's response whether Ameritech should be required to provide the element. Id. at 34. Ameritech proposed a more lengthy process. Under Ameritech's plan, Ameritech would have thirty days to evaluate whether a request was required by the Act and, if so, whether the request was technically feasible. Def. Br. at 32 (and citations therein). If Ameritech determined the request was feasible, it then would have ninety days to prepare a quote that includes a complete product description, proposed rates, ordering intervals,

methods and procedures for ordering the requested item, and a statement of Ameritech's development costs. Id. Ameritech also agreed to completely process certain less complicated bona fide requests within thirty days of receipt. [\*31] Id. MCI would have thirty days to accept or reject the quote, or to seek a remedy under the dispute resolution terms of the interconnection agreement. Pl. Br. at 34 (and citations therein). Dispute resolution could occupy as much as an additional thirty days. Id. Under Ameritech's plan, Ameritech would not be required to provide unbundled network elements until more than four months after MCI's initial request. Id. The ICC ultimately rejected MCI's proposal and adopted Ameritech's proposal. MCI claims the ICC violated § 251(c)(3) of the Act because Ameritech's proposal was not "just, reasonable, and nondiscriminatory."

In support of its position, MCI relies heavily on a statement in a report of the House of Representatives that the Act was designed to promote competition in local telecommunications markets "as quickly as possible." See H. Rep. at 89. According to MCI, the ICC applied a "commercial reasonableness" standard to the bona fide request issue. n13 Pl. Rep. at 16. MCI contends the commercial reasonableness standard is inconsistent with the purpose of the Act because it allows the ICC to approve a procedure that does not resolve disputes as quickly as [\*32] possible. MCI goes so far as to say that "a [bona fide request] provision cannot, as a matter of law, satisfy the 1996 Act unless it is as short as possible." Pl. Rep. at 17 (emphasis added). MCI's argument proves too much, and demonstrates that the statement in the House Report cannot be taken literally. It would be possible to resolve bona fide requests in a matter of days or weeks by requiring all parties to immediately dedicate their full attention and resources to the problem. But such a requirement is neither practical nor reasonable. MCI implicitly recognizes that it is not entitled to resolution "as quickly as possible" in its own proposal, which allows a maximum time of eighty-five days. The statement in the House Report reflects a general policy or purpose of the Act, but it does not mean that a bona fide request provision cannot satisfy the Act as a matter of law unless the resolution period is as short as possible. Nor does the statement in the House Report override the plain language of the Act, which requires access to network elements on terms that are just, reasonable, and nondiscriminatory. MCI's attempt to read an "as quickly as possible" [\*33] standard into § 251(c)(3) of the Act does not comport with common sense, the plain language of the statute, or MCI's own proposal. The ICC applied an appropriate analysis.

n13 Apparently, the ICC did not expressly articulate the commercial reasonableness standard, but cited with approval another interconnection arbitration decision that applied the standard. Pl. Rep. at 16.

Having determined that the ICC did not apply an erroneous standard to the issue of the bona fide request process, the court must now determine whether the ICC's factual determination that Ameritech's proposal was more commercially reasonable than MCI's was arbitrary or capricious. MCI argues that Ameritech failed to adduce evidence sufficient to support a finding that the four month period was reasonable. But Ameritech presented the ICC with ample evidence sufficient to support the conclusion that Ameritech's proposal was commercially reasonable. Ameritech presented evidence regarding the unpredictable number, timing, and complexity of [\*34] the bona fide requests it receives from various competing exchange carriers. Def. Br. at 34-35 (and citations therein). Ameritech also presented evidence regarding similar time frames approved by the FCC and other state commissions in analogous situations. Id. at 35-36. In contrast with Ameritech's presentation, MCI presented little evidence in support of its own proposal. MCI's witness conceded that MCI did not do "any type of empirical analysis of the processes, resources, [or] costs" that Ameritech might incur in responding to bona fide requests, but instead "worked backwards" from Ameritech's 120-day proposal. n14 Def. Resp. at Ex. 23, p. 593. The ICC's determination that Ameritech's proposal was the more reasonable of the two plans was not arbitrary and capricious.

n14 Significantly, MCI presents nothing to this court in defense of its plan. MCI merely attacks Ameritech's proposal as unjust, unreasonable, and discriminatory.

MCI also presents, in a footnote, an argument that Ameritech's proposal [\*35] is discriminatory in violation of § 251(c)(3). Pl. Br. at 37, n. 10. MCI contends that § 251(c)(3) requires Ameritech to provide network elements to MCI on the same terms and conditions that it provides the elements to itself. According to MCI, the bona fide request provision is discriminatory because it forces MCI to wait for access to Ameritech's network elements longer than Ameritech must wait. But the "nondiscriminatory" language of § 251(c)(3) has no application here. To say that MCI is entitled to nondiscriminatory access to network elements presupposes that MCI is entitled to any access to the elements. MCI is

not entitled to access to network elements beyond those provided for in the interconnection agreement until it successfully completes the bona fide request process. The purpose of the bona fide request process is to determine whether, and on what terms, Ameritech is required to provide access to additional network elements not addressed in the interconnection agreement. Only after MCI obtains the right to access additional network elements through the bona fide request process does § 251(c)(3) forbid nondiscriminatory access to those elements. [\*36]

#### V. Limitations of Liability

The Act contemplates two distinct functions of state public utilities commissions. First, state commissions conduct arbitration pursuant to § 252(b)(1). Second, state commissions evaluate negotiated or arbitrated agreements against the standards set out in § 252(e)(2) and either approve or reject the agreement. At the approval stage, the state commission's authority is limited to determining whether the agreement meets the requirements of § 252(e)(2). See e.g., *TCG Milwaukee, Inc. v. Public Serv. Comm'n of Wisconsin*, 980 F. Supp. 992, 999 (W.D. Wis. 1997). It is undisputed that liability limitations were not considered until the approval stage; MCI and Ameritech did not agree on liability limitations during preliminary negotiations, nor did they arbitrate the issue. Therefore, unless Ameritech prevails on one of its arguments in support of the ICC's decision to incorporate liability limitations into the agreement, the limitations must be stricken. The court reviews the ICC's decision de novo.

Ameritech first argues that the ICC's decision was appropriate under § 252(e)(3), which allows state commissions to enforce requirements [\*37] of state law in reviewing an agreement. In support of its assertion, Ameritech cites *In re Illinois Bell Switching Station*, 161 Ill. 2d 233, 641 N.E.2d 440, 448-49, 204 Ill. Dec. 216 (Ill. 1994). But Illinois Bell does not establish a state law requiring limitations on Ameritech's liability. In *Illinois Bell*, a single justice of the Illinois Supreme Court states that limitations of liability are an "important part" of a utility company's contracts. 641 N.E.2d at 449 (Miller, J., concurring). This unremarkable statement does not even suggest that limitations of liability must be included in a utility company's contracts. Ameritech's argument is without merit.

Ameritech next contends the ICC was required to include liability limitations under § 252(e)(2)(B) because without the limitations, the pricing provisions of the agreement would violate the standards of § 252(d). Section 252(d) requires that prices set out in intercon-



nection agreements must be based on the incumbent carrier's costs of providing the network elements at issue. According to Ameritech, the prices in the interconnection agreement would not accurately reflect Ameritech's costs unless Ameritech's [\*38] liability was limited. Ameritech initially contended that its liability exposure was a component of its costs. See Def. Resp. at 41-42. However, MCI correctly argued the Act mandates that prices be set according to forward-looking costs, and not according to a rate-of-return analysis. 47 U.S.C. § 252(d)(1)(A)(ii); see also, 47 C.F.R. § 51.105. Under the Act's pricing scheme, the cost of Ameritech's liability to MCI is not recoverable in the prices of unbundled network elements. Recognizing this difficulty, Ameritech changed its strategy and now argues that the liability limitations represent the cost of "gold-plating" Ameritech's network to ensure the network will not fail. Def. Supp. Resp. at 5-6. But the costs of gold-plating the network and the costs of liability are two sides of the same coin. The costs of gold-plating a network element are extraordinary costs incurred solely to avoid liability, and are otherwise unrelated to the cost of producing or supplying the network elements. It is incongruous to say that Ameritech may not charge MCI for the additional cost of Ameritech's liability to MCI, but may charge MCI for the additional cost of avoiding [\*39] that liability. The pricing regulations do not allow Ameritech to recover the cost of gold-plating through the prices it charges MCI.

Ameritech next argues that the ICC was authorized to impose liability limitations under § 252(e), which permits state commissions to reject agreements that discriminate against carriers that are not parties to the agreements. All of Ameritech's interconnection agreements with incoming carriers in Illinois contain liability limitations similar to those Ameritech proposed to the ICC in this case. Ameritech argues that if the ICC approved the MCI agreement without limiting Ameritech's liability, the agreement would discriminate against other Illinois carriers. Ameritech's argument proves too much. Under Ameritech's view of the Act, any provision in an interconnection agreement that is favorable to the incoming carrier is impermissible unless that provision is contained in all the incumbent's other interconnection agreements. Taking Ameritech's argument to its absurd extreme, every interconnection agreement within a region must be identical. Furthermore, the template for all subsequent interconnection agreements would be established by the first incoming [\*40] carrier to negotiate with the incumbent. This result would be at odds with § 252, which contemplates individualized negotiations between the incumbent and each incoming carrier.

Nevertheless, the absence of liability limitations in

MCI's agreement with Ameritech clearly gives MCI an advantage over other incoming carriers. But the anti-discrimination language of § 252(e) does not prevent MCI from gaining this competitive advantage. Whatever the parameters of the discrimination targeted by § 252(e), that section cannot be read to preclude interconnection agreements that give an incoming carrier a competitive advantage over other incoming carriers. n15 As noted above, this interpretation conflicts with the Act's vision of individualized negotiations between the incumbent and each incoming carrier. More importantly, Ameritech's interpretation of § 252(e) is at odds with the very purpose of the Act. The Act was designed to open local telecommunications markets to competition. *Iowa Utilities Board v. FCC*, 120 F.3d 753, 816 (8th Cir. 1997), rev'd in part by *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 142 L. Ed. 2d 834, 119 S. Ct. 721 (1999). In a free market, [\*41] incoming local exchange carriers would compete with each other as well as with the incumbent. Yet under Ameritech's view, § 252 stifles vigorous competition between incoming carriers. The meaning of "discrimination" under § 252(e) is elusive, but that section does not prevent an incoming carrier from gaining a competitive advantage over other incoming carriers by negotiating a more favorable interconnection agreement. n16

n15 In light of the overall purpose of the Act, it is likely that Congress intended § 252(e) to forbid anticompetitive discrimination, i.e., collusive discrimination or oligopolistic behavior among the incumbent and one or more incoming carriers.

n16 Even assuming the absence of liability limitations in MCI's interconnection agreement discriminates against other incoming carriers, Ameritech does not have standing to raise the claims of other carriers.

Finally, Ameritech argues that MCI waived any challenge to the liability limitations. When MCI protested the imposition of liability [\*42] limitations, the ICC declared it would not approve the agreement without the limitations. MCI was presented with a choice: it could either accept the liability limitations to gain ICC approval, or it could repeat the entire negotiation and arbitration process by refusing the limitations. Ameritech argues that because MCI elected to go forward, it waived its right to challenge the ICC's decision. Ameritech's argument lacks merit. The Act provides for judicial review of state public utilities commission decisions in § 252(e)(6). If liability limitations were improperly imposed on MCI during the approval stage, MCI's remedy

is to challenge the ICC's decision in this court. It is inconsistent with the Act's procedural scheme to conclude that the ICC may deprive MCI of its right to judicial review by forcing MCI either to accept terms that were not arbitrated or to forfeit the considerable time and resources already expended. MCI did not waive its right to challenge the liability limitations.

For the foregoing reasons, the limitations on liability erroneously imposed by the ICC must be stricken.

## VI. Dark Fiber

The ICC ordered Ameritech to provide MCI with access to "dark fiber" [\*43] as an unbundled network element. "Dark fiber" is optical fiber that is not attached to electronics that are necessary to "illuminate" the fiber and enable it to carry telecommunications. Ameritech launches a three-pronged attack against the ICC's ruling. First, Ameritech contends the ICC had no jurisdiction to grant MCI access to dark fiber because the issue was never raised before the ICC in arbitration. Under § 252(b)(4)(A), the ICC was bound to "limit its consideration of any petition . . . (and any response thereto) to the issues set forth in the petition and the response, if any . . ." (emphasis added). Ameritech contends MCI's petition did not set forth dark fiber as an issue for arbitration. MCI responds that it raised the issue of dark fiber under the rubric of "dedicated interoffice transmission" and "shared interoffice transmission." Pl. Resp. at 3. The court need not resolve this dispute, because Ameritech plainly raised the issue of dark fiber in its response to MCI's petition. n17 See Pl. Resp. at 3-4 (and citations therein). Ameritech concedes that its response "discussed" dark fiber. Def. Rep. at 7. However, Ameritech contends it was forced to do so only because [\*44] "it was impossible for Ameritech to be certain that the ICC was not going to address dark fiber" because it was "extremely difficult to tell from MCI's vague Petition just what issues MCI was setting forth." Id. Ameritech contends it faced a dilemma: it could decline to address dark fiber and run the risk that the ICC would erroneously decide the issue without Ameritech having a chance to present its position, or it could address the merits of the dark fiber issue and risk a later ruling that the response set forth the issue for arbitration. Id. Ameritech chose the latter course, thereby raising the dark fiber issue for arbitration under § 252(b)(4)(A). In essence, Ameritech maintains it could argue the merits of the dark fiber issue before the ICC and yet claim in this court that the issue was not before the ICC. Section 252(b)(4)(A) forbids this result.

n17 This fact distinguishes this case from *MCI*

*Telecommunications, Inc. v. Pacific Bell*, 1998 U.S. Dist. LEXIS 17556, No. C 97-0670 SI (N.D. Cal. Sept. 29, 1998), in which the court found that MCI failed to raise the issue of dark fiber in an arbitration petition identical to the petition before the ICC. Ameritech claims MCI is collaterally estopped from arguing it raised the dark fiber issue in its arbitration petition. Collateral estoppel is inapplicable because here, unlike *Pacific Bell*, the response set forth dark fiber as an arbitration issue.

[\*45]

Ameritech next argues the ICC had no authority to identify dark fiber as a network element after the Supreme Court's decision in *IUB*, which vacated Rule 319. Rule 319 enumerated several specific network elements that must be unbundled under the Act. The Court vacated Rule 319 as inconsistent with § 251(d)(2) of the Act. Section 251(d)(2) provides:

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether--

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

The Court examined the FCC's methodology in promulgating Rule 319, and concluded that the agency had failed to properly apply the "necessary and impair" standard. 119 S. Ct. at 734-35.

47 C.F.R. § 51.317 (hereafter, "Rule 317") is a companion to Rule 319. Rule 317 sets forth the standards state public utilities commissions are to apply in determining what network elements [\*46] other than those specified in Rule 319 must be unbundled. Although *IUB* did not expressly vacate Rule 317, the rule purports to allow state commissions to apply the same erroneous standard that was fatal to Rule 319. Therefore, the reasoning of *IUB* applies with equal force to Rule 317. Ameritech contends that Rule 317 was "the sole asserted source of any State commission authority to identify network elements that must be unbundled." Def. Supp. Br. at 9. Because Rule 317 is now a dead letter, Ameritech contends the ICC had no authority to order it to unbundle dark fiber. However, Rule 317 does not grant state

public utilities commissions the power to name additional elements. The rule presupposes that such power exists, and establishes the standards under which the power must be exercised. n18 Nothing in IUB suggests that state public utilities commissions lack power to name additional network elements to be unbundled.

n18 Indeed, Rule 317 is entitled "Standards for identifying network elements to be made available."

[\*47]

Nevertheless, Ameritech's argument has some merit. Although state public utilities commissions have the power to name network elements to be unbundled, they must do so under the standards set forth in the Act as interpreted by the FCC. See *IUB*, 119 S. Ct. at 730, n. 6, and *Id.* at 729-33 (questioning "whether it will be the FCC or the federal courts that draw the lines to which [state commissions] must hew" and concluding that 47 U.S.C. § 201(b) grants the FCC rulemaking authority under the Act). Those standards were set out in rule 317, which no longer governs. In the absence of a standard guiding the state public utilities commission's exercise of its power, the commission might not be able to exercise its power. This court need not decide whether a state public utilities commission may anticipate FCC-promulgated standards and itself undertake to interpret the mandates of the Act. When the ICC rendered its decision on Ameritech's dark fiber, there was a standard in place, albeit the erroneous standard set out in Rule 317. Therefore, Ameritech's attack on the ICC's authority to name dark fiber as a network element is nothing more than an argument [\*48] that the ICC applied the wrong standard in making its determination - precisely the argument Ameritech uses as the third prong of its attack on the ICC's decision.

In the initial briefs on the dark fiber issue, Ameritech maintained that the ICC failed to apply the necessary and impair test in any fashion, concluding its discussion after it determined dark fiber was a network element. Def. Br. at 15. MCI responded that even if the ICC did not articulate a finding of impairment, the evidence provided a reasonable basis for the ICC to conclude that without access to Ameritech's dark fiber, MCI would be impaired under the standards set out in Rule 317. Pl. Resp. at 17-18. But assuming MCI is correct, the ICC applied an erroneous standard under the Act after IUB.

Recognizing this difficulty, MCI urges the court to defer its decision on the dark fiber issue until the FCC promulgates new regulations interpreting the necessary

and impair standard under the doctrine of primary jurisdiction. The goals of the doctrine of primary jurisdiction include ensuring nationally uniform application of the law and promoting deference to agency expertise. *United States v. Western Pacific R.R. Co.*, 352 U.S. 59, 65, 1 L. Ed. 2d 126, 77 S. Ct. 161 (1956). [\*49] The doctrine does not apply here, because this court can render a decision without infringing on the FCC's province. If the court were required to interpret the Act's necessary and impair requirement in order to resolve the dark fiber issue, MCI's argument might have some merit. But the court agrees with Ameritech that the ICC engaged in no analysis of necessity and impairment. The ICC's discussion focuses solely on the question whether dark fiber is a network element; it does not even make passing mention of the necessary and impair standard. Def. Br. at Ex. 2, p. 26-27. The court is not persuaded by MCI's argument that because MCI presented evidence of impairment, and because the law required the ICC to undertake a necessary and impair analysis, a finding of impairment is implicit in the ICC's decision. Pl. Resp. at 17-18. MCI's argument begs the question whether the ICC in fact considered MCI's evidence of impairment as the law required. If MCI's position were correct, there could never be a finding that a state commission failed to apply the necessary and impair test if evidence of impairment was presented. This result would be absurd.

Because the ICC failed to make any determination [\*50] of necessity and impairment as required by 47 U.S.C. § 251(d)(2), its decision compelling Ameritech to provide MCI access to dark fiber was erroneous and must be reversed.

#### CONCLUSION

The ICC's decision is affirmed in part and reversed in part. The ICC's decisions to adopt Ameritech's proposals regarding the time frame for providing access to local loops, to adopt Ameritech's proposed schedule for a bona fide request process, and to deny MCI the tandem interconnection rate are affirmed. The ICC's decisions to deny MCI access to shared transport without undertaking a bona fide request, to incorporate liability limitations in the interconnection agreement, and to grant MCI access to Ameritech's dark fiber are reversed.

ENTER:

Suzanne B. Conlon

United States District Judge

June 22, 1999

Attachment to BellSouth Telecommunications,  
Inc.'s Post-Hearing Brief filed 1-21-2000

1999 U.S. Dist. LEXIS 18148 printed in FULL format.

U S WEST COMMUNICATIONS, INC., a Colorado corporation, Plaintiff, v. PUBLIC SERVICE COMMISSION OF UTAH; STEPHEN F. MECHAM, CONSTANCE B. WHITE, CLARK D. JONES, Commissioners of the Public Service Commission of Utah; and WESTERN WIRELESS CORPORATION, a Washington corporation, Defendants.

Case No. 2: 97 CV 558

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

1999 U.S. Dist. LEXIS 18148

November 23, 1999, Decided

DISPOSITION: [\*1] Western's motion for summary judgment GRANTED. US West's motion for summary judgment DENIED. Matter dismissed.

COUNSEL: For U S WEST COMMUNICATIONS, INC., plaintiff: David J. Jordan, Gregory B. Monson, Mr., STOEI RIVES LLP, SALT LAKE CITY, UT.

For STEPHEN F. MECHAM, CONSTANCE WHITE, CLARK JONES, PUBLIC SERVICE COMMISSION UT, defendants: Sandy J. Mooy, Mr., PUBLIC SERVICE COMMISSION, Michael L. Ginsberg, Mr., UTAH ATTORNEY GENERAL'S OFFICE, SALT LAKE CITY, UT.

For WESTERN WIRELESS, defendant: Alan L. Sullivan, Mr., Bradley R. Cahoon, SNELL & WILMER LLP, SALT LAKE CITY, UT.

For WESTERN WIRELESS, defendant: Joseph A. Boyle, KELLEY DRYE & WARREN, PARSIPPANY, NJ.

For WESTERN WIRELESS, defendant: Douglas P. Lobel, Charles M. Oliver, KELLEY DRYE & WARREN, WASHINGTON, DC.

JUDGES: DALE A. KIMBALL, United States District Judge.

OPINIONBY: DALE A. KIMBALL.

OPINION: ORDER

Before the Court are the cross motions for summary judgment of Plaintiff US West Communications, Inc. ("US West") and Defendant Western Wireless Corporation ("Western").

#### BACKGROUND

On February 8, 1996, Congress passed the Telecommunications Act of 1996 (the "Act") to promote competition and reduce regulation in the [\*2] local telephone market. As part of the Act, existing telephone service providers like US West, referred to as "incumbent local exchange carriers," "incumbent LECs," or "ILECs," are obligated to interconnect with new entrants into the telecommunications market, including wireless or mobile carriers like Western, referred to as "Commercial Mobile Radio Service Providers" or "CMRS providers." Towards that end, the Act obligates ILECs to enter into "reciprocal compensation arrangements" with entrants pursuant to which each carrier compensates the other for local telephone traffic that is transported and terminated on the other carrier's network. 47 U.S.C. § 251(h)(5). Prior to the Act, incumbent LECs were not legally required to compensate other carriers for such usage, but other carriers were required to compensate incumbent LECs.

When an entrant asks an incumbent to provide interconnection, the Act obligates both parties to negotiate in good faith to accomplish the requirements of the Act. *Id.* at §§ 251(c)(1), 252(a)(1). The Act provides further that any entrant with a preexisting agreement with an incumbent may request re-negotiation of the agreement [\*3] to conform it with the Act. To the extent issues remain unresolved, either party may request arbitration by the state public utilities commission. *Id.* at § 252(b). The final agreement between the incumbent and the entrant, whether arrived at through negotiation or arbitration, must be approved by the state commission. *Id.* at § 252(e)(1). Either party may seek review in federal district court. *Id.* at § 252(e)(6). If the state commission fails to act within the timetables provided in the Act, the Federal Communications Commission ("FCC") assumes the state commission's responsibilities. *Id.* at §

252(e)(5).

Prior to the passage of the Act, US West and Western had entered into an interconnection agreement that provided a rate for Western's use of US West's lines and services. On March 29, 1996, Western petitioned US West to renegotiate their agreement to conform with the Act. Negotiations ensued, and, on September 6, 1996, the open issues were submitted to the Utah State Public Service Commission (the "Commission") for arbitration. On January 2, 1997, the Commission ruled that Western was entitled to receive reciprocal compensation retroactively beginning March 29, 1996, the [\*4] date Western requested renegotiation. The Commission also found that Western's mobile switching center ("MSC") should be treated as equivalent to US West's tandem switch system for the purpose of setting the rate of reciprocal compensation US West must pay Western.

US West then filed this lawsuit, challenging the Commission's finding on those two points, namely: (1) the effective date from which Western is entitled to interim reciprocal compensation and (2) the interconnection rate Western is entitled to receive for the transportation and termination on its system of calls originated on US West's system, the "going forward rate." n1

n1 Initially, US West also asserted that an unconstitutional taking had occurred. During oral argument of the motions, counsel for US West stated that US West no longer asserts a Fifth Amendment takings claim as an independent cause of action.

#### STANDARD OF REVIEW

The parties agree that questions of law, such as whether a state commission procedurally and substantively complied [\*5] with the Act, are to be reviewed *de novo*, in accordance with the standard of review enunciated in *US West Communications, Inc. v. Hix*, 986 F. Supp. 13, 18 (D. Colo. 1997). US West and Western disagree as to the standard of review to be applied to other questions, particularly questions involving a state commission's interpretation of the Act.

US West argues that the state commissions are not entitled to deference as are federal agencies pursuant to *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984) (accordance with deference to federal agency's statutory interpretation when Congressional intent is not clear from statute's express language). US West urges this Court to follow *Hix* in this regard. The *Hix* court concluded that state commissions do not function analogously to federal agencies under the Act because they

are not subject to continuous Congressional oversight and do not have "extensive experience or expertise in the specific mandate of the Act -- promoting competition in the local exchange market." *Hix*, 986 F. Supp. at 17-18. The *Hix* court also noted that affording deference [\*6] to the state commissions would be antithetical to the coherent and uniform construction of the Act. *Id.* at 17.

Western argues that *Hix* has been superceded in this regard. Western's argument is based on a footnote in *AT & T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 834 (1999), in which the Supreme Court noted that the Act's delegation of federal policymaking to state administrative agencies created a unique scheme and left open many attendant issues. The Supreme Court said, "Such a scheme is decidedly novel, and the attendant legal questions, such as whether federal courts must defer to state agency interpretations of federal law are novel as well." 119 S. Ct. at 733 n.10.

This Court recognizes that the Supreme Court did not substantively address the issue of the amount of deference district courts are to afford the state commissions. But, in acknowledging the uniqueness of the Act's scheme, the Supreme Court left open the possibility that application of a deferential standard could be warranted. Two considerations persuade this Court to do so, notwithstanding the distinctions between the state commissions and federal [\*7] agencies drawn in *Hix*.

First is the fact that Congress specifically charged the state commissions with interpreting and carrying out the Act in the first instance. At the very least, this suggests that Congress viewed the state commissions as having relevant expertise. Second is the fact that if the FCC were to act for a state commission that did not accept its responsibilities under the Act, a reviewing court would give deference to the FCC, as a federal agency, under *Chevron*. Application of a deferential standard to the state commission's interpretations of the Act avoids this anomaly.

#### DISCUSSION

A. Did the Commission lawfully set the effective date from which Western is entitled to interim reciprocal compensation as March 26, 1996?

US West challenges the Commission's application of one of the administrative rules issued by the FCC to implement the Act. The rules were released on August 8, 1996, but were not effective until November 1, 1996. See *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("First Report and Order"). Section 51.717, commonly known as the interim recip-

rocal [\*8] compensation rule, provides that, as of the date a competing carrier petitions an incumbent LEC to negotiate a new agreement until the time that an interconnection agreement is approved by the state, the competing carrier may charge the incumbent LEC the same rates for termination of telecommunications traffic that the incumbent LEC charges the competing carrier. 47 C.F.R. § 51.717(b) (1998). n2

n2 In its entirety, 47 C.F.R. 51.717 provides:

(a) Any CMRS provider that operates under an arrangement with an LEC that was established before August 8, 1996, and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) of this section until a new arrangement has been either arbitrated or negotiated and has been approved by a state PCS, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

[\*9]

US West argues that the Commission improperly interpreted and applied § 51.717 to require US West to provide reciprocal compensation to Western retroactively to a date that pre-dates the effective date of the rule, namely, March 29, 1996, the date Western petitioned US West to renegotiate the existing agreement.

US West argues that on March 29, 1996, there was no obligation to provide reciprocal compensation to a CMRS provider until after an agreement was approved by a state commission, citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 102 L. Ed. 2d 493, 109 S. Ct. 468 (1988), in which the Supreme Court held that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Id.* at 207.

US West points out that the statutory provisions authorizing the FCC to make implementing rules do not authorize retroactive rulemaking and that the FCC indicated in the First Report and Order that the obligation to provide reciprocal compensation was to attach "as of the effective date of the rules we adopt [\*10] pursuant to this order." P 1094. As further support for its position,

US West argues that retroactive application of § 51.717 is precluded by the language used in the provision itself, which states that a CMRS provider shall be entitled to interim reciprocal compensation from the date a request is made "under paragraph (a) of this section."

Western argues that the effective date of § 51.717 is irrelevant inasmuch as the express language of the Act gives CMRS providers the right to interim reciprocal compensation. Western argues that § 251(b)(5), which was effective on the date on which the Act was signed into law, February 8, 1996, provides that each local exchange carrier has the duty "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." According to Western, § 51.717 merely specifies a date from which each CMRS provider may receive interim reciprocal compensation, a term that does not appear in the Act itself.

Since the Act itself requires reciprocal compensation, the question of when, after the passage of the Act, an incumbent LEC's duty to provide reciprocal compensation begins does not present a question concerning [\*11] the Commission's compliance with the Act. Thus, this Court applies a deferential standard of review to the Commission's interpretation of § 51.717. The Commission's interpretation meets this standard. This is the conclusion reached by three other district courts that have considered the issue -- New Mexico, North Dakota, and Montana. n3

n3 *U.S. West Communications, Inc. v. Reinbold*, No. A1-97-025 (D.N.D. May 14, 1999); *US West Communications, Inc. v. Serna*, Civ. No. 97-124 JP/JHG (D.N.M. Aug. 25, 1999); *US West Communications, Inc. v. Anderson*, CV 97-9-H-CCL (D. Mont. Sept. 14, 1999).

B. Did the Commission act lawfully in requiring US West to compensate Western for the services Western provides to US West at the same rate that Western compensates US West?

As explained above, the Act requires interconnecting carriers to establish reciprocal compensation arrangements for the transport and termination of traffic on each others' networks. 47 U.S.C. § 251(b)(5). The parties [\*12] do not dispute that the tandem switches utilized by US West are different from the MSC switches utilized by Western, and more expensive to operate.

Tandem switches are routing switches and never operate alone. In simplified terms, a tandem switch is used to interconnect "end offices" in a common geographic area. An end office switch generally connects calls from

one caller to another within a smaller geographic area. So, any call delivered to US West's tandem switch must pass through both a tandem switch and an end office switch before reaching its destination.

Western always delivers calls originating on its system and destined for an end user on US West's system to US West's tandem switch. Thus, US West always incurs two switching costs to deliver a call originating on Western's system. In contrast, Western's MSCs only have one switch. So, when a US West customer calls a Western customer's cellular phone, Western incurs only one switching cost.

The Commission adopted a requirement that US West compensate Western for the services Western provides to US West at the same rate that Western compensates US West for the use of US West's tandem switches. The Commission did so after concluding [\*13] that Western's switches perform comparable functions and serve a larger geographic area.

US West's attack begins with the proposition that § 252(d)(2)(A) requires state commissions to arrive at a reasonable approximation of the costs of each carrier associated with the transport and termination on each carrier's facilities of calls originating on the other carrier's network. US West then argues that the fact that Western's system serves a geographic area that is at least as large as the geographic area served by US West is an insufficient basis upon which to sustain the Commission's ruling and that the required functional similarity analysis performed by the Commission was arbitrary and capricious.

At least one court has agreed with US West that a geographic analysis alone is an insufficient basis upon which to uphold a rate determination and that "the rate for a wireless switch should be determined by whether it functions like a tandem switch, and geography should be considered." *US West Communications, Inc. v. Washington Utils. and Transp. Comm'n*, No. C97-5686BJR, slip op. at 6 (W.D. Wash. Sept. 3, 1998). This Court also agrees.

US West argues that the functional similarity [\*14] analysis performed by the Commission was arbitrary and capricious because the Commission compared Western's MSCs, on the one hand, with US West's tandem switches and US West's end operating switches, as they operate together, on the other hand, in violation of the First Report and Order, which, US West argues, instructed the Commission to compare Western's MSCs with US West's tandem switches standing alone.

The First Report and Order provides:

We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced [\*15] the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

P 1090 (emphasis added). US West asks this Court to remand the matter to the Commission to require the Commission to determine whether Western's MSCs perform the same function as US West's tandem switches alone.

In the view of this Court, US West approaches the matter too myopically. The First Report and Order directs "states to establish presumptive symmetrical rates based on the incumbent LEC's costs for transport and termination of traffic when arbitrating disputes under section 252(d)(2)." P 1089. A forward-looking cost study is necessary only when an entrant wants to rebut that presumption by establishing that its costs are greater than the incumbents. *Id.*

In light of these principles, US West has not shown that there is insufficient evidence upon which the Commission could base its conclusion that Western's costs approximate [\*16] US West's. Nor is this Court convinced that the only permissible interpretation of P 1090 is the one advanced by US West, namely, that in performing a functional similarity analysis state commissions are limited to considering only the first layer of an ILEC's system.

#### CONCLUSION

For the reasons set forth herein, Western's motion for summary judgment is **HEREBY GRANTED**. US West's motion for summary judgment is **HEREBY DENIED**. The matter is dismissed; the parties are to bear their own costs.

DATED this 23rd day of November, 1999.

United States District Judge

BY THE COURT:

DALE A. KIMBALL



**OFFICIAL COPY**

Attachment to BellSouth Telecommunications, Inc.'s Post-Hearing Brief filed 1-21-2000

**FILED**

**DOCKET NO. P-582, SUB 6**

**JAN 03 2000**

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**Clerk's Office  
N.C. Utilities Commission**

**In the Matter of**

|  |   |                        |
|--|---|------------------------|
| <b>Petition by ICG Telecom Group, Inc., for Arbitration of</b> | ) | <b>PUBLIC STAFF'S</b>  |
| <b>Interconnection Agreement with BellSouth</b>                | ) | <b>RESPONSE TO</b>     |
| <b>Telecommunications, Inc., Pursuant to Section 252(b)</b>    | ) | <b>REQUEST FOR</b>     |
| <b>of the Telecommunications Act of 1996</b>                   | ) | <b>RECONSIDERATION</b> |

**NOW COMES THE PUBLIC STAFF - North Carolina Utilities Commission, by and through its Executive Director, Robert P. Gruber, and responds to the Objections and Request for Clarification and Reconsideration of portions of the Recommended Arbitration Order entered in this docket on November 4, 1999, which were filed on December 6, 1999, by BellSouth Telecommunications, Inc., (BellSouth), and the Opposition of ICG Telecom Group, Inc. (ICG) to the Request filed on December 22, 1999.**

**The single issue in these filings which the Public Staff wishes to address is whether ICG should be compensated for tandem switching. The Public Staff did not address this issue in its proposed recommended order in this docket. However, the Public Staff now believes that the Commission should reconsider and reverse its finding on this issue on the grounds that ICG failed to demonstrate that its switch provides the tandem function in terminating a call delivered to it by a LEC. The determination of whether ICG's switch performs the tandem functionality on calls delivered to it by BellSouth must be part of the Commission's determination of whether ICG should be compensated for the tandem switching and transport elements. Even if it could be construed that ICG's switch serves an area comparable to that served by BellSouth's tandem switch, that determination, standing alone, is insufficient to qualify ICG to receive compensation for the tandem switching and transport elements.**

**Reading Paragraph 1080 of the FCC's First Report and Order in CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499, as a whole, and as an indication of the FCC's intent in promulgating Section 51.711 of its Rules, it is clear that the functionality of the interconnecting carrier's network must be considered for the purpose of determining whether the carrier should be compensated for tandem switching. The FCC specifically directs the states to consider whether new technologies (e.g., fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch. If the only requirement were that the interconnecting carrier's switch serve an area comparable to the LEC's tandem switch, any consideration of the new technologies would be completely irrelevant.**

**While ICG did indicate that it uses a fiber ring in serving its customers, the ring is apparently a means of connecting its switch to its customers. Fiber rings can also be used to interconnect end office switches and to reroute traffic in the event that an**

interoffice circuit is cut. Such is the case with BellSouth. ICG's ring, on the other hand, does not extend between switches, but between ICG customers, and between ICG customers and the ICG switch from which dial tone is provided. Under normal circumstances, in the termination of a call delivered to ICG by BellSouth, the ICG ring does not perform a function even remotely similar to that of a tandem switch. It actually serves as the loop between the ICG switch, where and office switching is done, and the ICG customer. Tandem switching, if it was involved, would occur at the other end of the circuit, even before the call reached the end office from which dial tone is provided.

ICG's assertions that its switch qualifies as a tandem because it serves as a point of interconnection for traffic to and from IXCs, and as ICG's access point for operator services for its customers are not persuasive. Even if these are considered tandem functions for some purposes, they have no bearing on the issue at hand unless they are actually employed in the process of terminating calls delivered to ICG by BellSouth. Since they are not so employed, they do not qualify ICG for tandem switching and transport compensation.

The principle of symmetry in the service and service area of tandem switching on the one hand and "new technologies" on the other, as a prerequisite for the use of the rates of the one as a proxy for the rates of the other, is more than a simple rule of thumb. In Paragraph 1085 First Report and Order the FCC notes,

Both the incumbent LEC and the interconnecting carriers usually will be providing service in the same geographic area, so the forward-looking economic costs should be similar in most cases. We also conclude that using the incumbent LEC's forward-looking costs for transport and termination of traffic as a proxy for the costs incurred by interconnecting carriers satisfies the requirement of section 252(d)(2) that costs be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls."

Thus parity of service and service area provides both the rational and the legal basis for the use of proxy rates. The Commission should insist that a party requesting such treatment clearly demonstrate this parity. This, ICG has not done.

The Public Staff therefore recommends that the Commission reconsider and reverse Finding of Fact Number Two and Ordering Paragraph Number Two of the Recommended Order dated November 4, 1999.

Compensation for tandem switching is also an issue in Docket No. P-500, Sub 10. The Public Staff is confident that the Commission will wish to treat this issue consistently and therefore suggests that the Commission consider this issue in conjunction with its deliberations in that docket.

Respectfully submitted this the 3<sup>rd</sup> day of January, 2000.

**PUBLIC STAFF**  
**Robert P. Gruber**  
**Executive Director**

**Antoinette R. Wike**  
**Chief Counsel**

  
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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of this pleading on all parties of record by placing a copy of the same in the United States Mail, postage prepaid.

This the 3<sup>rd</sup> day of January, 2000.

  
**Robert B. Cauthen, Jr.**

Attachment to BellSouth Telecommunications, Inc.'s Post-Hearing Brief filed 1-21-2000

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of ICG Telecom Group, Inc. for arbitration of unresolved issues in interconnection negotiations with BellSouth Telecommunications, Inc.

DOCKET NO. 990691-TP  
ORDER NO. PSC-00-0128-FOF-TP  
ISSUED: January 14, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

APPEARANCES:

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On behalf of ICG Telecom Group

C. Lee Fordham, Esquire, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870.

On behalf of the Florida Public Service Commission

**RECEIVED**

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

I. CASE BACKGROUND

On October 27, 1997, we approved a one-year agreement between ICG Telecom Group, Inc. (ICG), and BellSouth Telecommunications, Inc. (BellSouth), providing for interconnection services. That agreement expired on October 27, 1998, but the parties mutually agreed to extend it pending finalization of a successor agreement. Negotiations for a successor agreement failed, and on May 27, 1999, ICG filed a Petition for Arbitration, seeking our assistance in resolving the remaining issues. The Petition enumerated 25 issues. Subsequently, 10 of those issues have been resolved and withdrawn by the parties. At the September 21, 1999 Prehearing Conference, the Prehearing Officer granted BellSouth's Motion to Remove Issues From Arbitration, and 9 additional issues were removed from consideration, leaving 6 issues to be addressed at the October 7, 1999 hearing.

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The first matter addressed herein concerns originating and terminating traffic from Internet service providers (ISPs). Specifically, we have been asked to determine whether calls that originate from or terminate to ISPs should be defined as "local traffic" for purposes of the ICG/BellSouth Interconnection Agreement. The parties were also unable to reach agreement on reciprocal compensation arrangements.

We have also been asked to determine whether certain packet-switching capabilities and Enhanced Extended Link Loops (EELs) should be made available to ICG as Unbundled Network Elements (UNEs). Related thereto, the parties have been unable to agree as to whether volume and term discounts should be made available to ICG for UNEs.

We have further been asked to determine whether, for purposes of reciprocal compensation, ICG should be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch.

Finally, we have been asked to decide whether BellSouth should be required to enter into a binding forecast of future traffic requirements for a specified period and, if so, whether BellSouth is then required to provision the requisite build-out and necessary support for that forecast.

## II. ISP ISSUES

In examining this issue, we refer to our recent decision in Order No. PSC-99-2009-FOF-TP, issued on October 14, 1999, in Docket No. 990149-TP, the Petition by MediaOne Florida Telecommunications, Inc. for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. In that case, the issue itself was framed somewhat differently than in this docket, but the assertions are distinctly similar, particularly with respect to BellSouth's position. In the MediaOne case, we decided to maintain the status quo pending the FCC's decision with respect to how ISP traffic should be treated.

The root of the problem in determining whether ISP-bound traffic is local and whether reciprocal compensation is due, stems from the FCC's treatment of this traffic. The FCC, admittedly, has treated ISP-bound traffic as though it were local traffic and has

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exempted ISPs from paying access charges. In its Declaratory Ruling it stated:

Although the Commission has recognized that enhanced service providers (ESPs), including ISPs, use interstate access services, since 1983 it has exempted ESPs from the payment of certain interstate access charges. (FCC 99-38, ¶5).

The FCC explains that the exemption was adopted at the inception of the interstate access charge regime to protect certain users of access services, such as ESPs, that had been paying the generally much lower business service rates, from the rate shock that would result from immediate imposition of carrier access charges. The FCC continues to allow ESPs to purchase their links to the public switched telephone network (PSTN) through intrastate business tariffs rather than through interstate access tariffs. In addition, incumbent LEC expenses and revenues associated with ISP-bound traffic traditionally have been characterized as intrastate for separations purposes.

The FCC has realized the problems that its treatment of this traffic has caused throughout the country.

Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. . . . As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them were left to determine as a matter of first impression how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute. (FCC 99-38, ¶9)

In its Declaratory Ruling, the FCC has concluded that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate. (FCC 99-38, ¶1) However, the FCC stated that it currently has no rule governing inter-carrier compensation for ISP-bound traffic, but believes that adopting such a rule to govern

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prospective compensation would serve the public interest. (FCC 99-38, ¶28) To this end, the FCC has issued a Notice of Proposed Rulemaking, seeking comments on two proposals for a rule. In the meantime, they have left it to state commissions to determine whether reciprocal compensation is due for this traffic.

We find that the FCC has claimed jurisdiction over this traffic and will ultimately adopt a final rule on this matter.

We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes and, hence, to treat ISP-bound traffic as local, does not affect the Commission's ability to exercise jurisdiction over such traffic. FCC 99-38, ¶16

Further, as mentioned earlier, the FCC intends to adopt a final rule to govern inter-carrier compensation for ISP-bound traffic. Therefore, any decision we make would only be an interim decision. For that reason, in the MediaOne and BellSouth arbitration in Docket No. 990149, we ruled that the parties should continue to operate under their current contract pending a decision by the FCC. We still believe this approach to be reasonable under the facts of this case and in view of the uncertainty over this issue. Any decision we might make would, presumably, be preempted if it is not consistent with the FCC's final rule. Accordingly, we find that the parties should continue to operate under the terms of their current contract until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local and whether reciprocal compensation is due for this traffic.

### III. PACKET SWITCHING CAPABILITIES

This issue does not address whether BellSouth will provide the packet-switching capabilities that ICG has requested, but whether these capabilities will be provided as UNEs. According to 47 C.F.R. Section 51(f), Pricing of Elements, certain pricing rules apply to UNEs, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation. Specifically, FCC Rule 47 C.F.R. Section 51.503(b) reads:

An incumbent LEC's rates for each element it offers shall comply with the rate structure



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rules set forth in Sections 51.507 and 51.509, and shall be established, at the election of the state commission.

(1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in Sections 51.505 and 51.511; or

(2) Consistent with the proxy ceilings and ranges set forth in Section 51.513.

Therefore, the real issue before us is how the prices for the packet-switching capabilities should be set. The list of UNEs that an incumbent LEC must provide to requesting telecommunications carriers was provided in FCC Rule 47 C.F.R. Section 51.319. However, this rule was vacated by the United States Supreme Court and remanded back to the FCC. AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366(1999) The FCC recently issued its Order on this rule; however, the Order was not issued until after the hearing in this case was held, and will not likely be final for some time.

Packet-switching capabilities were not a part of the original list of UNEs contained in FCC Rule 47 C.F.R. Section 51.319, which was vacated. However, the FCC did address packet-switching capabilities as a UNE in its First Report and Order. It stated:

At this time, we decline to find, as requested by AT&T and MCI, that incumbent LEC's packet switches should be identified as network elements. Because so few parties commented on the packet switches in connection with section 251(c)(3), the record is insufficient for us to decide whether packet switches should be defined as a separate network element. We will continue to review and revise our rules, but at present, we do not adopt a national rule for the unbundling of packet switches.  
FCC 96-325, ¶427

Further, the FCC mentioned packet switching in its press release regarding the new list of UNEs. Specifically, it stated:

Packet Switching. Incumbent LECs are not required to unbundle packet switching, except in the limited circumstance in which a

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requesting carrier is unable to install its Digital Subscriber Line Access Multiplexer (DSLAM) at the incumbent LEC's remote terminal, and the incumbent LEC provides packet switching for its own use. Packet switching involves the routing of individual data message units based on address or other routing information and includes the necessary electronics (e.g., DSLAMs).

Again, we note that the information contained in the FCC's press release is not legally binding, and is not dispositive by itself of the issue. Nonetheless, we point out that the press release does indicate that the new FCC Rule 47 C.F.R. Section 51.319 will not require incumbent LECs to unbundle their packet-switching capabilities except in a very narrow and limited instance. We do not believe that ICG's argument that innovation and competition necessitate TELRIC-based pricing of packet-switching capabilities sufficiently demonstrates that these capabilities are intended under the Act to be provided as UNEs. ICG has only argued its value to ICG's own business plan. Therefore, the evidence of record indicates that packet-switching capabilities are not UNEs. BellSouth has, however, agreed to provide these capabilities to ICG; therefore, the parties are encouraged to negotiate a price.

The record does not contain substantial evidence regarding the interoffice transport that would be used to connect central offices where a frame relay switch does not exist and where ICG is not physically collocated. ICG states that this element should be provided as a UNE. ICG witness Holdridge states that if ICG must pay special access for interoffice transport, it will not be able to offer a competitively priced frame relay product. BellSouth did not present any evidence on this topic. Therefore, we find that the evidence in the record is insufficient for us to determine that the interoffice transport that ICG seeks is a UNE.

#### IV. ENHANCED EXTENDED LINK LOOPS

Again, the issue is not whether BellSouth will provide the EEL to ICG, but whether the EEL will be provided as a UNE. According to Rule 47 C.F.R., Section 51, (F)-Pricing of Elements, certain pricing rules apply to UNEs, interconnection, and methods of obtaining access to unbundled elements, including physical

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collocation and virtual collocation. Specifically, FCC Rule 47 C.F.R. Section 51.503(b) reads:

An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in Sections 51.507 and 51.509, and shall be established, at the election of the state commission.

(1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in Sections 51.505 and 51.511; or

(2) Consistent with the proxy ceilings and ranges set forth in Section 51.513.

Therefore, the real issue before us is what the price should be for the EEL. The list of UNEs that an incumbent LEC must provide to requesting telecommunications carriers was provided in FCC Rule 47 C.F.R. Section 51.319. This rule was, however, vacated by the United States Supreme Court and remanded back to the FCC. AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366(1999) As indicated earlier, the recently released FCC Order will not be final for some time. We also note that the EEL was not listed in the press release as a mandatory UNE.

BellSouth argues that in order to provide the EEL, it would have to combine the loop and dedicated transport for ICG, and it is not required to do that. We agree that FCC Rule 47 Sections 51.315(c)-(f) regarding incumbent LEC provisioning of combinations were vacated by the Eighth Circuit and remain vacated. Both parties to this case recognized that reconsideration may be given to these rules. Nevertheless, at this time, incumbent LECs are not required to combine network elements for other telecommunications carriers.

ICG also argued that the EEL is a preexisting combination in BellSouth's network. FCC Rule 47 C.F.R. Section 51.315(b) reads:

Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent currently combines.

Therefore, according to this rule, if the elements were currently combined in an incumbent's network, they must be provided in

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combined form to requesting carriers. We note that this rule was vacated by the Eighth Circuit but reinstated by the Supreme Court. AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366(1999)

While ICG argues that the EEL is a UNE combination that currently exists in BellSouth's network, we do not believe that the record of this case supports ICG's argument. In fact, when ICG witness Schonaut was asked if she knew for a fact that the EEL was currently combined in BellSouth's network, she replied "[w]ell, I believe that to be true." The evidence presented in this case, however, demonstrates that the EEL consists of a customer loop and dedicated transport. If a customer is served from one central office and is connected directly to that serving central office by the customer loop, there would normally be no need to be connected to a different central office by dedicated transport unless the customer has requested specific service(s) that would require such a connection, such as foreign exchange service or private line services. At best, the evidence suggests that such a combination would be the exception rather than the rule. Therefore, we find ICG's arguments are unpersuasive on this matter.

We also point out that the EEL was not offered in the existing agreement between BellSouth and ICG. Understanding the pricing benefit of having the EEL at TELPIC rates, we note that ICG has been providing service under its existing agreement without such pricing benefits.

ICG has not demonstrated that the EEL must be provided as a UNE. Further, the state of the law currently does not require an incumbent LEC to combine network elements for requesting telecommunications carriers. Therefore, we shall not require BellSouth to provide EELs to ICG in the interconnection agreement as UNEs. BellSouth has, however, agreed to provide EELs to ICG, and the parties are encouraged to negotiate the price for the EEL.

#### V. VOLUME AND TERM DISCOUNTS FOR UNES

The basis for ICG's request for volume and term discounts rests on the presumption that there will be cost savings associated with BellSouth's provision of such discounts. The record in this docket does not, however, provide sufficient evidence that we should require BellSouth to provide such discounts at this time.

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ICG argues that if BellSouth experiences cost savings due to volume offerings, it is required to reflect such savings in its rates. The threshold question to be answered, however, is whether BellSouth will actually realize any cost savings by providing the requested volume and term discount arrangements. Although ICG provides a few mathematical scenarios demonstrating a potential reduction in costs for BellSouth, BellSouth contends that certain theoretical assumptions made in the analysis are inaccurate. BellSouth witness Varner emphasizes that ICG witness Starkey does not understand the manner in which the cost studies were done. Even if ICG is correct in its assumptions, the record in this docket does not provide persuasive evidence regarding the existence of cost savings that will be achieved through offering volume and term discounts. No cost studies were filed, nor were any specific parts of previous studies filed with us specifically referenced. Since there is no reliable evidence in the record in this proceeding that the provision of volume and term discount plans result in lower UNE costs, ICG's request that volume and term discounts be made available for UNEs is denied.

VI. RECIPROCAL COMPENSATION FOR SWITCHED SERVICES IN A  
GEOGRAPHIC AREA COMPARABLE TO THAT SERVED BY BELLSOUTH'S TANDEM  
SWITCH

The evidence of record shows that ICG presently has no facilities (i.e., switches or transport facilities) in Florida. While ICG states that it will begin facilities-based service in Florida by fourth quarter 1999, the evidence of record does not show that its switch will serve a geographic area comparable to an area served by a BellSouth tandem switch. ICG simply states it is in "start-up mode" in Florida, but plans to develop the type of network in which its switch will serve a geographic area comparable to that of the BellSouth tandem. Because ICG currently does not have a network in place in Florida, we cannot determine if ICG's network will, in fact, serve a geographic area comparable to one that is served by a BellSouth tandem switch.

While FCC Rule 47 C.F.R. Section 51.711 allows us to provide for reciprocal compensation at the tandem rate if the switch of a carrier other than an incumbent LEC serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the evidence of record does not provide an adequate basis to determine that ICG's network will fulfill this geographic criterion.

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Similarly, the evidence of record in this arbitration does not show that ICG will deploy both a tandem and end office switch in its network. In addition, since tandem switching is described by both parties as performing the function of transferring telecommunications between two trunks as an intermediate switch or connection, we do not believe this function will or can be performed by ICG's single switch. As a result, we cannot at this time require that ICG be compensated for the tandem element of termination.

*Transport* is defined in the FCC's Rules as:

the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent. FCC Rule 47 C.F.R. Section 51.701(c).

This definition describes the transmission of local telecommunications traffic from the point of interconnection to the end office of the terminating carrier. While the definition provides for "any necessary tandem switching," transport need not include tandem switching. As such, we believe the record shows that the fiber network ICG intends to deploy will provide a transport and end office function. Therefore, for the purpose of reciprocal compensation, BellSouth shall compensate ICG for the elements of transport and end office switching. The evidence of record, however, does not support ICG's claim that its network serves a geographic area comparable to the area served by BellSouth's tandem switch. Therefore, BellSouth shall not be required to compensate ICG for the tandem element of termination.

#### VII. BINDING FORECAST

Based on the evidence in the record, BellSouth is not required by the Act, FCC rule, FCC Order, or FPSC Order to enter into a binding forecast arrangement with ICG. Therefore, we shall not here require them to do so. Accordingly, BellSouth shall not be required to provide the requisite network build-out and necessary support to accommodate such a forecast.

ICG's argument relies, in large part, upon the language in the KMC/BellSouth Agreement. Though ICG is referring to the

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KMC/BellSouth Agreement for support, we also note that ICG does not believe that Section 20.4 of the KMC/BellSouth Agreement requires the "binding forecast" that it is requesting. The language contained in that provision speaks only to a party's option to request that the other party begin negotiating towards establishing a binding forecast. ICG witness Jenkins recognized this when he stated that "Section 20.4 of the KMC Agreement refers to -- requires that negotiations take place between the forecast provider and the forecast recipient." BellSouth has offered this provision to ICG and is willing to discuss the specifics of such an arrangement. Nevertheless, regardless of what is contained in the KMC/BellSouth Agreement, that was a negotiated agreement between those two parties and has no precedential value in this case. It is not a basis for requiring BellSouth to enter into a binding forecast arrangement with ICG. However, if the parties so choose, they may negotiate such an arrangement.

ICG witness Jenkins described an event where overflow situations resulted because trunks that had been ordered had not been installed in time and no binding forecast existed. He also stated that it is anticipated that "the situation will only get worse as ICG's needs increase, and as we move into other large markets, such as Miami." We believe that BellSouth and ICG have an opportunity to avoid the situation described above by including language similar to the KMC provision in the new agreement. This should allow ICG to make its forecasted needs known to BellSouth and also provide a forum in which the parties could negotiate towards a mutually agreeable binding forecast arrangement. BellSouth has already offered to include the KMC provision in the new agreement with ICG, and to negotiate the details of such an arrangement. BellSouth is not required to enter into a binding forecast of future traffic requirements for a specified period with ICG and, accordingly, will not be required to provision the requisite network build-out and necessary support.

#### VIII. CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been vacated, and the applicable provisions of Chapter 364, Florida Statutes.

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Based on the foregoing, it is therefore

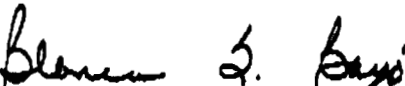
ORDERED by the Florida Public Service Commission that the specific findings set forth in the body of this Order are approved in every respect. It is further

ORDERED that the parties shall submit a written agreement memorializing and implementing our decisions herein within 30 days of the issuance of this Order. It is further

ORDERED that the agreement shall be submitted for approval in accordance with Section 252(e)(2)(b) of the Telecommunications Act of 1996. It is further

ORDERED that this docket shall remain open pending approval of the agreement submitted in compliance with this Order.

By ORDER of the Florida Public Service Commission this 14th day of January, 2000.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CLF

DISSENT

Commissioner Jacobs dissents, with comment, from the decision contained herein regarding reciprocal compensation for traffic to Internet Service Providers (ISP).

Commissioner Jacobs

I share my fellow Commissioners's frustrations over the position in which we find ourselves regarding ISP traffic. The FCC has retained jurisdiction in this subject area and declared as



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"interstate", ISP-bound traffic terminated to alternative local exchange carriers (ALEC) and generated by customers of incumbent local exchange carriers. However, it has given mixed signals as to the ultimate means of cost recovery, and has set no certain date for its final decision. Additionally, in its February 1999 declaratory ruling, the FCC deferred to state commissions the responsibility for resolving disputes among these parties within interconnection agreements over this traffic, pending its final decision.

Historically, the FCC treated ESPs as end-users, allowing them to purchase from retail tariffs, and relieving them of the requirement to pay interstate access charges. ESPs were permitted, and pursuant to the FCC's most recent ruling, will continue to purchase their links to the public switched telecommunications network through intrastate business tariffs, rather than interstate access tariffs.

I believe we clearly have jurisdiction by express authority under the Act, in addition to the FCC's acquiescence and its further direction to treat the traffic for all intents and purposes, as local. More importantly, I believe we are obligated to provide some means by which ALECs may recover their costs for ISP-bound traffic. The FCC directs in its February, 1999 order that either state commissions treat ISP-bound traffic as local for purposes of reciprocal compensation, or find some other alternative means of compensation. (FCC 99-38 ¶26)

I am persuaded that the "cost causer" should bear the reciprocal, proportional responsibility for the delivery of calls to and from their own network. The elimination of reciprocal compensation for traffic to ISPs would not be equitable, and I believe would do harm to the competitive interests of the carriers that would be forced to terminate this traffic without compensation.

For these reasons, I dissent from the majority vote. I would vote to define ISP traffic as local, for purposes of reciprocal compensation.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

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U.S. PATENT & TRADEMARK OFFICE  
†ADMITTED IN INDIANA ONLY

January 12, 2000

RECEIVED

JAN 13 2000

PUBLIC SERVICE  
COMMISSION

Ms. Helen C. Helton  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
730 Schenkel Lane  
Frankfort, Kentucky 40601

Via Federal Express

RE: Petition by ICG TELECOM GROUP, INC. For Arbitration of an  
Interconnection Agreement with BELL SOUTH TELECOMMUNICATIONS,  
INC. Pursuant to Section 252(b) of the Telecommunications Act of 1996  
Case No. 99-218

Dear Helen:

Enclosed are the original and ten (10) copies of ICG Telecom Group, Inc.'s Motion for Extension of Time. I have also enclosed one additional copy and ask that you indicate its receipt by your office by placing your file stamp on it and returning it to me the enclosed, self-addressed, pre-stamped envelope

Thank you for your assistance in this matter.

Sincerely,

  
C. Kent Hatfield

Counsel for ICG Telecom Group, Inc.

enc.

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION  
FRANKFORT, KENTUCKY

RECEIVED

JAN 13 2000

PUBLIC SERVICE  
COMMISSION

In re:

PETITION OF ICG TELECOM GROUP, INC. FOR  
ARBITRATION WITH BELLSOUTH  
TELECOMMUNICATIONS, INC. PURSUANT TO  
SECTION 252 OF THE TELECOMMUNICATIONS  
ACT OF 1996

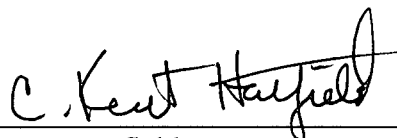
Docket No. 99-218

**MOTION OF ICG TELECOM GROUP, INC  
FOR EXTENSION OF TIME TO FILE BRIEF**

ICG Telecom Group, Inc. ("ICG"), by counsel, moves for an extension of time of one week for both ICG and BellSouth Telecommunications to file their respective briefs in this matter. This short extension of time is made necessary by the unavailability of ICG counsel due to such counsel's jury duty in the District of Columbia.

BellSouth has authorized the undersigned to state that it has no objection to this extension of time. The undersigned is further authorized to represent that ICG and BellSouth consent to a one week extension of time in which the Commission must render its decision in this matter. Accordingly, ICG moves that the date for filing of post-hearing briefs be extended to January 21, 2000, and that the date for the rendering of a decision by the Commission be extended from February 24 to March 2, 2000.

Respectfully submitted,



C. Kent Hatfield  
Counsel for ICG Telecom Group, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served, via first class, U.S. mail, postage pre-paid, upon the parties of record, this 12th day of January, 2000.

  
C. Kent Hayfield  
COUNSEL ICG TELECOM GROUP, INC.

**BELLSOUTH** RECEIVED  
DEC 01 1999  
PUBLIC SERVICE  
COMMISSION

**BellSouth Telecommunications, Inc.** 502 582-8219  
P. O. Box 32410 Fax 502 582-1573  
Louisville, Kentucky 40232 Internet  
or Creighton.E.Mershon@bridge.bellsouth.com

Creighton E. Mershon,  
General Counsel - Kentucky

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

November 30, 1999

Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, KY 40602

Re: Petition by ICG Telecom Group, Inc. for Arbitration of  
an Interconnection Agreement with BellSouth  
Telecommunications, Inc. pursuant to Section 252(b) of  
the Telecommunications Act of 1996  
PSC 99-218

Dear Helen:

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

Sincerely

  
Creighton E. Mershon, Sr.

Enclosure

cc: Parties of Record

188032

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**RECEIVED**  
**DEC 01 1999**  
**PUBLIC SERVICE**  
**COMMISSION**

In the Matter of: )  
 )  
Petition by ICG TELECOM GROUP, INC. for )  
Arbitration of an Interconnection Agreement with )  
BELLSOUTH TELECOMMUNICATIONS, INC. )  
pursuant to Section 252(b) of the Telecommunications )  
Act of 1996 )

Case No. 99-218

Filed: November 30, 1999

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE**  
**TO ICG TELECOM GROUP, INC.'S MOTION TO STRIKE**

ICG Telecom Group, Inc. ("ICG") has moved to strike approximately twelve pages of the prefiled direct testimony of Jerry Hendrix of BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth opposes ICG's Motion, and respectfully requests that the Kentucky Public Service Commission ("Commission") deny same.

ICG contends that certain parts of Mr. Hendrix's testimony that address alternatives to reciprocal compensation for ISP-bound traffic should be struck. The testimony, in pertinent part, provides alternatives to ICG's inter-carrier compensation mechanism. Establishing an appropriate interim inter-carrier compensation mechanism for ISP-bound traffic is a critical issue in this arbitration, as ICG's own witnesses acknowledge. Starkey Direct Testimony at 6 (the reciprocal compensation issue "is of the utmost importance to ICG ..."). The Commission's decision concerning what interim inter-carrier compensation mechanism should be adopted, if any, will have a significant impact on BellSouth, other incumbents, CLECs, Internet users, and residential rate payers. Given the importance of the issue, ICG should want this Commission to consider all the alternatives to reciprocal compensation rather than trying to tie the Commission's hands by limiting the evidence in the record.

ICG's claim that alternatives to reciprocal compensation "are outside the scope of the issues" is wrong. Although ICG phrased the issue as whether dial-up calls to ISPs should be treated as local for purposes of reciprocal compensation, alternatives to reciprocal compensation are necessarily subsumed within this issue. This is clear from the testimony of ICG's own witnesses. For example, in her direct testimony dated October 21, 1999, ICG witness Cindy Schonhaut describes how the lack of reciprocal compensation for ISP-bound traffic would harm ICG and would deny internet service providers the benefit of competition. *See Direct Testimony of Cindy Schonhaut at 6-8.* Likewise, ICG witness Starkey testifies about the results he predicts will occur if reciprocal compensation is not paid for ISP-bound traffic. *Direct Testimony of Michael Starkey at 14-15.* In assessing the credibility of such claims, the Commission must consider whether there are any alternatives to reciprocal compensation that would alleviate ICG's concerns. Some of these alternatives are discussed in the portions of Mr. Hendrix's testimony to which ICG so strenuously objects.

In summary, Mr. Hendrix's testimony does not unlawfully expand the issue raised by ICG in its arbitration petition, but merely provides the Commission with more complete information by which to evaluate ICG's claim for reciprocal compensation. Accordingly, the Commission should deny ICG's motion to strike these portions of Mr. Hendrix's testimony, particularly given the importance of this issue.

Finally, ICG, in its Motion, devotes most of its argument to a discussion of the Florida Public Service Commission's ruling regarding this issue. BellSouth does not deny that the Florida Commission reached a contrary result. However, if ICG wants this Commission to follow blindly decisions of the Florida Commission, then the Commission should also know that the Florida Commission removed from the ICG arbitration all issues related to liquidated damages or penalties -- issues the Florida Commission held were not arbitrable. *See Prehearing*



*Order, in re: Petition of ICG Telecom Group, Inc. for Arbitration of Unresolved Issues in Interconnection Negotiations with BellSouth Telecommunications, Inc., Docket No. 990691-TP, at 14 (Sept. 28, 1999).*

Moreover, ICG conveniently fails to mention in its Motion that like motions filed by ICG were denied in Georgia and Tennessee. Thus the majority of Commissions that have considered this Motion in BellSouth's arbitration with ICG have rejected it.

For the foregoing reasons, ICG's Motion to Strike should be denied, and the parties should be able to present all of their testimony which the Commission can evaluate and assess in resolving the issues in this arbitration.

Respectfully submitted this 30th day of November 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.



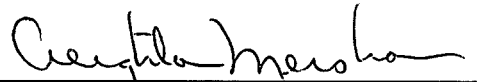
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CERTIFICATE OF SERVICE

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 30th day of November 1999.



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