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December 14, 1998

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 981642-TP (Intermedia Petition for Arbitration)

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications Inc.'s Response to Intermedia Communications, Inc.'s Petition for Arbitration, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

*Nancy B White*  
Nancy B. White (ms)

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 4
- LS 5
- QED \_\_\_\_\_
- RCR \_\_\_\_\_
- SEL 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

*NBWM*  
Enclosures

cc: A. M. Lombardo  
William J. Ellenberg II

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

14017 DEC 14 98

FPSC RECORDS/REPORTING

**CERTIFICATE OF SERVICE  
Docket No. 981642-TP**


**I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Federal Express this 14<sup>th</sup> day of December, 1998 to the following:**

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**Nancy B. White (H)**

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:

Petition of Intermedia Communications, )  
 Inc. for Arbitration with BellSouth )  
 Telecommunications, Inc. Pursuant to )  
 the Telecommunications Act of 1996. )

Docket No. 981642-TP

Filed: December 14, 1998

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE**  
**TO INTERMEDIA COMMUNICATIONS, INC.'S PETITION FOR ARBITRATION**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth") responds to the Petition of Intermedia Communications, Inc. ("Intermedia") for Arbitration under the Telecommunications Act of 1996 ("1996 Act") as follows:

**I. INTRODUCTION**

Sections 251 and 252 of the 1996 Act encourage negotiations between parties to reach voluntary local interconnection agreements. Section 251(c)(1) requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in §§ 251(b) and 251(c)(2-6).

Since passage of the 1996 Act on February 8, 1996, BellSouth has successfully conducted negotiations with numerous certified alternative local exchange carriers ("ALECs") in Florida. Currently, BellSouth has reached agreements with numerous ALECs in Florida. To date, the Florida Public Service Commission ("the Commission") has approved ninety-two agreements between BellSouth and certified ALECs. The nature and extent of these agreements varies depending on the individual needs of the companies, but the conclusion is inescapable. BellSouth has a record of embracing competition and reaching agreement to interconnect on fair and reasonable terms.

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BUREAU OF TELECOMMUNICATIONS REPORTING

During the negotiation process, the 1996 Act allows a party to petition a state commission, such as the Commission, for arbitration of unresolved issues.<sup>1</sup> The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.<sup>2</sup> The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties."<sup>3</sup> A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the Commission receives the petition.<sup>4</sup> The 1996 Act limits the Commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.<sup>5</sup>

BellSouth and Intermedia entered into a two-year Interconnection Agreement ("Agreement") on June 21, 1996. Through mutual consent, the parties began renegotiating the Agreement on June 13, 1998. Although BellSouth and Intermedia negotiated in good faith, the parties were unable to reach agreement on some issues. As a result, Intermedia filed this petition for arbitration. Pursuant to the 1996 Act, when parties cannot successfully negotiate an interconnection agreement, either may petition a state commission for arbitration of unresolved

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<sup>1</sup> 47 U.S.C. § 252(b)(2).

<sup>2</sup> *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

<sup>3</sup> 47 U.S.C. § 252(b)(2).

<sup>4</sup> 47 U.S.C. § 252(b)(3).

<sup>5</sup> 47 U.S.C. § 252(b)(4).

issues between the 135th and 160th day from the date a request for negotiation was received.<sup>6</sup> It is clear from the 1996 Act that Intermedia's Petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.<sup>7</sup>

Through the arbitration process, the Commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once the Commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the Commission for approval.<sup>8</sup>

BellSouth will respond to each subheading identified in the Petition in a manner that will attempt to clearly reflect what unresolved issues remain to be arbitrated by the Commission:

## II. SPECIFIC RESPONSE

In accordance with Section 252(b)(3) of the 1996 Act, BellSouth responds to each specifically numbered allegation in Intermedia's Petition and says:

1. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Petition.

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<sup>6</sup> 47 U.S.C. § 252(b)(1). Intermedia initially requested renegotiation of the Agreement on March 20, 1998. However, as the parties were in the process of resolving a number of issues, they mutually agreed that June 13, 1998 was the start date for negotiations under Section 252(b) of the 1996 Act. The 160<sup>th</sup> day from the start date of negotiations was November 20, 1998. Intermedia filed its petition for arbitration on November 19, 1998.

<sup>7</sup> See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252(b)(4).

<sup>8</sup> 47 U.S.C. § 252(a).

2. **BellSouth admits the allegations in paragraph 2 of the Petition.**

3. **BellSouth denies that it is a monopoly provider of telecommunications services.**

**BellSouth admits the remaining allegations in paragraph 3 of the Petition.**

4. **BellSouth admits the allegations in paragraph 4 of the Petition.**

5. **BellSouth admits the allegations in paragraph 5 of the Petition.**

6. **BellSouth admits that both parties negotiated in good faith and, as a result, have been able to reach agreement on a number of issues. BellSouth admits that Exhibit "B" to the Petition is Intermedia's overview of the issues on which tentative agreement was reached. BellSouth admits that there were a number of issues not resolved during negotiations. BellSouth also admits that Exhibit "C" to the Petition is Intermedia's list of unresolved issues. Although BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Intermedia's expectations, BellSouth affirmatively asserts that Section 252(b) of the 1996 Act precludes the Commission from considering any issue not specifically raised by Intermedia in its Petition. The remaining allegations in paragraph 6 of the Petition are denied.**

7. **BellSouth admits the allegations in paragraph 7 of the Petition.**

8. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 8 of the Petition are denied.**

9. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in**

response to paragraph 22 of the Petition. The remaining allegations in paragraph 9 of the Petition are denied.

10. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 10 of the Petition are denied.**

11. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 11 of the Petition are denied.**

12. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 12 of the Petition are denied.**

13. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 13 of the Petition are denied.**

14. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 14 of the Petition are denied.**

15. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 15 of the Petition are denied.**

16. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 16 of the Petition are denied.**

17. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 17 of the Petition are denied.**

18. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 18 of the Petition are denied.**

19. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 19 of the Petition are denied.**

20. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in**



response to paragraph 22 of the Petition. The remaining allegations in paragraph 20 of the Petition are denied.

21. **BellSouth admits that Intermedia raised a number of issues during the negotiations to which BellSouth could not agree. BellSouth's position on these issues is set forth in detail in response to paragraph 22 of the Petition. The remaining allegations in paragraph 21 of the Petition are denied.**

22. **BellSouth accepts as true Intermedia's position on the issues raised by Intermedia. BellSouth denies Intermedia's interpretations of BellSouth's position on these issues. The remaining allegations in paragraph 22 of the Petition are denied.**

### **III. POSITIONS OF THE PARTIES**

**In accordance with Section 252(b)(3) of the 1996 Act, BellSouth sets forth its position on each of the issues raised by Intermedia in its Petition:**

#### **ISSUE 1**

**BellSouth has agreed to provide Intermedia (as well as any other ALEC) with access to the following unbundled loops: two-wire ISDN, two-wire ADSL compatible, two-wire HDSL compatible, four-wire HDSL compatible, four-wire DS0 (a four-wire 56/64 kbps loop), and four-wire DS1. With the exception of the four-wire DS0 (a four-wire 56/64 kbps loop), these network elements are and have been available in Florida for some time. BellSouth must complete, however, a cost study for the four-wire DS0 (a four-wire 56/64 kbps loop), in order to determine the applicable price that it proposes to charge for this unbundled loop.**

**BellSouth will consider providing Intermedia with access to DS3, OC3, OC12, and OC48 unbundled loops, where technically feasible and subject to the FCC's pending proceeding in CC Docket 98-147.**

It is not clear to BellSouth what Intermedia is requesting when it refers to “two-wire and four-wire digitally conditioned ‘clean copper’ loops” or “unbundled optical fiber loops.” Also, there is no such element as a “four-wire DS3,” as DS3s are provisioned on fiber. Without more information from Intermedia, however, BellSouth cannot respond completely to Intermedia’s request. Intermedia’s proposal for “loop equivalents” is inefficient, technically problematic, and inconsistent with the requirements of Section 252(d)(1).

## ISSUE 2

### (2)(a) Dedicated interoffice transport

BellSouth has agreed to provide Intermedia with dedicated interoffice transport for DS0, DS1, DS3, OC3, OC12, and OC48. The DS1 is already available at a cost based rate approved by the Commission. BellSouth has not developed prices for DS0, DS3, OC3, OC12, and OC48 unbundled dedicated interoffice transport. The interim prices BellSouth proposes to charge for these services are existing tariff rates.

It is not clear to BellSouth what Intermedia is requesting when it refers to dedicated interoffice transport for “unbundled optical fiber.” Without more information from Intermedia, BellSouth cannot respond completely to Intermedia’s request.

### (2)(b) Local channels

BellSouth has agreed to provide Intermedia with local channel for DS0, DS1, DS3, OC3, OC12, and OC48. The DS1 is already available at a cost based rate approved by the Commission. BellSouth has not developed prices for DS0, DS3, OC3, OC12, and OC48 local channel. The interim prices BellSouth proposes to charge for these services are existing tariff rates.

It is not clear to BellSouth what Intermedia is requesting when it refers to a local channel for "unbundled optical fiber." Without more information from Intermedia, BellSouth cannot respond completely to Intermedia's request.

**(2)(c) Packet switching elements**

BellSouth has agreed to provide Intermedia with packet switching unbundled network elements, including User-to-Network Interfaces ("UNI"), Network-to-Network Interfaces ("NNI") and Data Link Control Identifiers ("DLCI") at Committed Information Rates ("CIR"). However, the bit rates identified in Intermedia's arbitration petition for these requested elements differ from those discussed during negotiations and do not correspond to the bit rates presently offered by BellSouth. Because BellSouth has not completed cost studies for the packet switching unbundled network elements requested by Intermedia, the prices BellSouth proposes to charge for these services are existing tariff rates, with the understanding that such prices will be adjusted consistent with the results of BellSouth's completed cost studies.

**(2)(d) Interconnection (collocation) at BellSouth's remote terminals**

BellSouth opposes Intermedia's proposal that it be allowed to collocate in BellSouth's remote terminals. In most remote terminals, space is quite limited, which makes collocation impossible. Furthermore, remote terminals (specifically digital loop carrier cabinets) have severe power and heat dissipation limitations, which makes collocation impractical even if space were available. Requiring BellSouth to prove in each case that denial of collocation in remote terminals was proper would impose an enormous burden on BellSouth without increasing significantly the level of access that Intermedia can obtain.

Moreover, collocation in remote terminals is unnecessary and is not "the only means for Intermedia to access loops that pass through integrated digital loop carrier systems or similar

remote concentration devices.” BellSouth has been able to successfully negotiate agreements that provide competitors access to sub-loop elements without providing collocation at the remote terminals. Instead of collocation, a cross-box to cross-box interconnection arrangement is the established method of providing ALECs with full access to all necessary sub-loop elements. Not only is this solution technically feasible, but it has the additional advantage of allowing Intermedia to access the unbundled network elements that it needs without compromising the security or integrity of its (or BellSouth’s) network. Furthermore, because Intermedia would be utilizing its own DSL equipment with its own housing, Intermedia would have greater control over the technical characteristics of the DSL service it offers.

(2)(e) Unbundled Multiplexing

BellSouth has agreed to provide Intermedia with unbundled 1/0 and 3/1 multiplexing. However, because BellSouth has not completed cost studies for these services, the prices BellSouth proposes to charge for 1/0 and 3/1 multiplexing are existing tariff rates, with the understanding that such prices will be adjusted consistent with the results of BellSouth’s completed cost studies.

ISSUE 3

Intermedia’s request that BellSouth be required to provide combinations of network elements is contrary to the Eighth Circuit’s decision in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *cert. granted* 118 S. Ct. 879 (1998). The Eighth Circuit squarely held that the 1996 Act “does not permit a new entrant to purchase the incumbent [local exchange carrier’s] assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunication services.” 120 F.3d at 813. Until the Supreme Court rules on the pending appeal of that decision, the Eighth Circuit’s

interpretation of the 1996 Act is controlling, which means that Intermedia, not BellSouth, must combine the unbundled network elements. *See id.* (1996 Act “unambiguously indicates that requesting carriers will combine ... unbundled elements themselves”); *see also MCI Metro Access Transmission Services, Inc. v. GTE Northwest, Inc.*, No. C97-742WD, at 7 (W.D. Wash. July, 1998); *AT&T Communications, Inc. v. BellSouth Telecommunications, Inc.*, No. 5:97-CV-405-BR at 19 (E.D. N.C. May 22, 1998) (striking down provision in interconnection agreement that purported to obligate BellSouth to provide combinations of elements to AT&T because it required BellSouth “to do something it does not have to do under the Act”).

Intermedia’s request for “Enhanced Extended Link” is equally untenable. As Intermedia candidly acknowledges, its request would require BellSouth to provide a “combination of unbundled loop, multiplexing, and transport.” Petition at 14. Requiring BellSouth to do so would violate the Eighth Circuit’s decision in *Iowa Utilities Board*. Although Intermedia argues that the Commission can simply redefine this combination as an “unbundled network element,” this argument cannot be squared with the plain language of the 1996 Act, which specifically requires BellSouth to provide requesting carriers with access to unbundled local loops (47 U.S.C. § 271(c)(2)(B)(iv)), as well as access to unbundled local transport (47 U.S.C. § 271(c)(2)(B)(v)). Furthermore, the FCC specifically identified local loops and interoffice transmission facilities (transport facilities) as separate unbundled network elements that incumbents are required to provide. First Report and Order, ¶ 366. Thus, Intermedia’s request for an “Enhanced Extended Link” impermissibly seeks to blur the obvious distinction between unbundled loops and unbundled transport.

#### ISSUE 4

(a)(1) Shared or subleasing collocation space

BellSouth is willing to permit Intermedia to share collocation space with another ALEC when the central office in which Intermedia seeks to collocate is in an exhaust situation. In such a situation, BellSouth will poll existing collocators and determine if any of them will share a portion of their collocation space with Intermedia. If the existing collocator agrees, BellSouth agrees to handle the administrative functions associated with implementing the sharing arrangement. BellSouth opposes Intermedia's request that it be permitted to sublease a portion of its collocation space.

(a)(2) Interconnecting with other ALECs

BellSouth has agreed to allow Intermedia to interconnect with other ALECs consistent with the terms and conditions of their Collocation Agreement.

(a)(3) Cageless collocation

BellSouth has agreed to provide Intermedia with unenclosed physical collocation, which is the Secure Collocation Open Physical Environment (SCOPE) type requested by Intermedia in its petition. The only difference would be that BellSouth or one of its certified vendors must install all collocation arrangements in order to ensure network reliability and maintain quality standards.

BellSouth opposes Intermedia's request for collocation arrangements by which its equipment can be commingled with BellSouth's equipment. Allowing Intermedia (or any other ALEC) to commingle its equipment with BellSouth's involves constitutional problems, as the FCC's limited authority under the 1996 Act cannot support the intrusion upon BellSouth's property rights that Intermedia demands. See *Bell Atlantic Tel. Co. v FCC*, 24 F.3d 1441 (D.C. Cir. 1994); see 47 U.S.C. § 251(c)(6); H.R. Rep. No. 104-204, at 73 (1995) ("House Report"). In addition, Intermedia's proposal raises network safety and reliability issues, as commingling of equipment could cause significant service disruptions.

**(a)(4) Type and cost of security for physical collocation arrangements**

Under 47 C.F.R. 51.323, BellSouth is permitted to impose reasonable security arrangements in connection with physical collocation. Intermedia's proposal that it, and not BellSouth, should determine the type and cost of such security arrangements is inconsistent with the FCC's rules. As Intermedia does not question the reasonableness of the security measures instituted by BellSouth, its position must be rejected.

**(a)(5) Other collocation issues.**

*Physical collocation.* There is no limitation on the number of physical collocation requests that Intermedia can submit to BellSouth. However, when multiple physical collocation requests are submitted by a single ALEC, BellSouth establishes a schedule that sets forth time parameters for BellSouth to respond to each of these requests. BellSouth commits to responding to five physical collocation requests within 30 business days. The remaining physical collocation requests will be handled as expeditiously as possible.

*Reserving collocation space.* All ALECs, including Intermedia, that submit a bona fide request for physical collocation can include a request for space to meet their needs for up to two years by submitting a written forecast certified as correct.

*Using vendors to extend power cabling.* BellSouth does not understand the basis for Intermedia's apparent position that the work involved in extending power cabling should not be performed by BellSouth-certified vendors. It is the responsibility of the BellSouth-certified vendor to size correctly the power feed to the equipment being installed in the collocation space. As the power feed is an integral part of the equipment to be installed, it is appropriate that a BellSouth-certified vendor perform this function.

*Fused capacity.* BellSouth contends that Intermedia's monthly power usage is appropriately based on the amount of fused capacity dedicated solely to Intermedia. However, if Intermedia will agree to pay for the costs incurred by BellSouth in order to measure Intermedia's actual power usage, BellSouth will agree to such an arrangement.

(b) Exhaust situations

BellSouth is willing to allow Intermedia a reasonable opportunity to tour BellSouth premises when there is an exhaust situation, but only after BellSouth files for an exemption with the Commission pursuant to §251(c)(6) of the 1996 Act. BellSouth objects to Intermedia's request that BellSouth be required to provide combinations of network elements in exhaust situations, for the reasons outlined in Issue 3.

(c) Collocation rates

BellSouth must complete updated cost studies in order to determine the applicable price that it proposes to charge for physical collocation. BellSouth does not propose to "assess unnecessary and hidden charges," notwithstanding Intermedia's claim to the contrary. There may be circumstances when engineering work may be required in connection with installing or expanding a collocation arrangement requested by Intermedia. Any such charges will be discussed and approved by Intermedia in advance of the engineering work being performed.

(d) Virtual collocation

Intermedia's objections to BellSouth's virtual collocation offering are not properly the subject of this arbitration. BellSouth offers virtual collocation to Intermedia (and any other ALEC) consistent with the terms of FCC tariff Number 1, which sets forth the rates, terms, and conditions for virtual collocation by BellSouth. BellSouth also provides access to virtual collocation arrangements consistent with the terms of its FCC tariff.



## ISSUE 5

Although it is not entirely clear what Intermedia is requesting, BellSouth is willing to work with Intermedia on a project management basis by which Intermedia would use unbundled network elements to serve its existing customers. However, the details of such work are not properly the subject of an interconnection agreement because the specific terms, conditions, prices, and time-frames involved will depend on the location of the customers affected, the facilities involved, and the nature of the work required.

## ISSUE 6

Neither the 1996 Act nor any rule or order of the FCC requires that BellSouth offer "volume and term" discounts when Intermedia purchases unbundled network elements and resold services "in significant volumes and/or terms longer than one month ...," as requested by Intermedia. With respect to unbundled network elements, the recurring rates that Intermedia will pay will be cost-based in accordance with the requirements of Section 252(d) and will be derived using least-cost, forward looking technology in accordance with the 1996 Act. The fallacy in Intermedia's proposal is that there are no "economies" affecting the individual recurring rate for unbundled network elements, and BellSouth's nonrecurring rates already reflect the economies involved when multiple unbundled network elements are ordered and provisioned at the same time.

With respect to resold telecommunications services, the rates Intermedia will pay will reflect the wholesale discount established by the Commission in accordance with Section 252(d)(3). Because this discount already reflects the costs avoided by BellSouth in providing an existing retail service to Intermedia for resale, there are no "economies" that will affect these costs, regardless of how many resold services Intermedia purchases or the length of time

Intermedia commits to purchasing such services. Of course, existing tariffs and Contract Service Arrangements by which BellSouth offers its retail customers a volume and term discount under specified circumstances are available for resale at the applicable wholesale discount.

#### ISSUE 7

BellSouth is prohibited from discriminating against Intermedia under federal and state law, and, to the extent Intermedia believes it is necessary, BellSouth is willing to commit in its agreement that it will comply with such laws. BellSouth also is obligated under federal law and applicable rulings of this Commission to make its retail telecommunications services available for resale. However, BellSouth is not required, nor should it be, to provide Intermedia with the "pricing proposals" BellSouth intends to offer a retail customer, as Intermedia requests. Such information would undoubtedly give Intermedia an unfair competitive advantage when both BellSouth and Intermedia are competing for that customer's business.

#### ISSUE 8

BellSouth is willing to provide to Intermedia those performance measurements that BellSouth has been required to provide to other ALECs by order of any state commission. BellSouth should not be required to further disaggregate the performance data in the fashion proposed by Intermedia; such disaggregation is costly, administratively burdensome, and unnecessary to determining whether BellSouth is providing nondiscriminatory access.

Although Intermedia has proposed specific "target intervals," Intermedia has not offered the factual basis for these proposed intervals. The FCC declined to establish specific benchmark intervals under similar circumstances in its Notice of Proposed Rulemaking, concluding that it had not "developed a sufficient record to consider proposing performance standards at this time." *In re: Performance Measurements and Reporting Requirements for Operations Support Systems,*

*Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56 ¶ 125 (April 17, 1998). According to the FCC, “any model performance standards should be grounded in a historical experience to ensure that such standards are fair and reasonable. Because our present record lacks the necessary historical data, we believe that it would be premature to develop standards at this point.” *Id.* The same is true here, as Intermedia has presented no historical data to suggest that its proposed intervals are grounded in historical experience and thus are fair and reasonable.

#### ISSUE 9

The only remedies that should be included in an interconnection agreement between BellSouth and Intermedia are those mutually agreed upon by the parties. BellSouth is willing to waive nonrecurring charges under a number of circumstances when it fails to provide a certain level of service to Intermedia. However, Intermedia is requesting that the Commission mandate a system of penalties that would apply every time BellSouth fails to meet a specified performance standard, even though Intermedia may be receiving nondiscriminatory access. Intermedia’s proposed penalties are not required by the 1996 Act and represent a supplemental enforcement scheme that is wholly unnecessary. Intermedia has adequate recourse before the Commission or in a court of law in the event BellSouth were to breach its interconnection agreement.

#### ISSUE 10

Contrary to Intermedia’s position, neither the 1996 Act nor any rule or order of the FCC requires the payment of reciprocal compensation to a local exchange carrier when it delivers to information service providers, including Internet service providers, traffic originated by an interconnecting local exchange carrier (hereinafter referred to as “ISP traffic”). While the issue of reciprocal compensation under existing interconnection agreements has been litigated in a number

of states, Intermedia is seeking a contractual right to the payment of reciprocal compensation for ISP traffic, which BellSouth does not believe is appropriate as a matter of fact, law, or policy. ISP traffic is not "local" for purposes of reciprocal compensation.

Intermedia is not entitled to the relief it seeks under existing FCC rulings, which, for more than a decade, have treated services such as ISP traffic as interstate, not local. *See, e.g., Memorandum Opinion and Order, MTS and WATS Market Structure*, 97 F.C.C.2d 682, 715 ¶ 83 (1983); *Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Red 2631, ¶ 2 (1988) (describing companies that provide such services as "providers of interstate services"); *Notice of Proposed Rulemaking, Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 2 FCC Red 4305, 4306, ¶ 7 (1987); ("[e]nhanced service providers . . . use the local network to provide interstate services").

That ISP traffic is not "local" was underscored by the FCC in its October 30, 1998 decision in CC Docket No. 98-79, *In re: GTE Telephone Operating Cos., GTOC Tariff No. 1*, which involved the FCC's investigation of an access offering filed by GTE which permits ISPs to provide to their end user customers high-speed access to the Internet. In its order, the FCC found that this service is an interstate service and is properly tariffed at the federal level. While the FCC was careful to note that it was not addressing whether local exchange carriers are entitled to reciprocal compensation when they deliver to ISPs circuit-switched traffic originated by interconnecting carriers, the FCC's analysis is fatal to Intermedia's position.

With respect to the rates for reciprocal compensation, BellSouth must complete updated cost studies in order to determine the applicable rates it proposes to charge.

### ISSUE 11

BellSouth is willing to agree to language setting forth the parties' obligations concerning local number portability. However, such language should be consistent with applicable FCC rules and regulations and should make clear the service being provided, which is not the case with Intermedia's proposal.

### ISSUE 12

BellSouth is willing to provide to Intermedia those performance measurements that BellSouth has been required to provide to other ALECs by order of any state commission. BellSouth should not be required to further disaggregate the performance data in the fashion proposed by Intermedia; such disaggregation is costly, administratively burdensome, and unnecessary to determining whether BellSouth is providing nondiscriminatory access. BellSouth is willing to consider implementing Intermedia's Frame Relay measurement proposal if Intermedia is willing to pay the costs of such implementation.

23. BellSouth admits the allegations in paragraph 25 of the Petition.<sup>9</sup>

24. Any allegation of the Arbitration Petition not specifically admitted herein is denied.

WHEREFORE, BellSouth requests that the Commission arbitrate this proceeding and grant the relief requested by BellSouth.

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<sup>9</sup> The Petition does not contain a Count VI or paragraphs 23 and 24. To the extent those paragraphs exist, BellSouth denies the allegations.

Respectfully submitted this 14<sup>th</sup> day of December, 1998,

BELLSOUTH TELECOMMUNICATIONS, INC.

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