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March 9, 2000

BY HAND-DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket Number 990691-TP

Dear Ms. Bayo:

Pursuant to the Commission's January 14, 2000 Final Order on Arbitration, the parties' arbitrated interconnection agreement was due for filing on February 14, 2000 for Commission approval. Based upon the time requirements associated with negotiations and internal review, the parties requested an extension to March 9, 2000. Although agreeing on most conforming language, including almost all of the language to govern BellSouth's provision of Enhanced Extended Links ("EELs"), the parties do disagree on conforming language for two issues. The first issue concerns a subpart of the EEL provision, addressing whether or not the FCC has adopted a specific definition for the term "significant amount of local exchange traffic". The second issue concerns the reciprocal compensation provision.

Today, BellSouth is submitting the agreed upon contract provisions to the Commission. Below, ICG submits its proposals for the unresolved issues. ICG also explains why its proposals better conform to the Commission's order than do those of BellSouth. ICG describes BellSouth's objections and contrary language, to the extent ICG understands them.

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I. EELs

In its January 14, 2000 Final Order on Arbitration, the Commission held in pertinent part (at pages 8-9): "...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....[T]he 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."

In its *Third Report and Order and Fourth Notice of proposed Rulemaking, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, FCC 99-238 (released November 5, 1999) ("UNE Remand Order"), the FCC held:

> 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. Thus, although in this order, we neither define the EEL as a separate unbundled network element nor interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are "ordinarily combined", we note that in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.[Fn. Omitted]

BellSouth wants to add the following language to Attachment 2, Section 1.9 of the interconnection agreement. ICG submits that the Commission should reject this additional language:

> 1.9.7.2 EEL combinations for DS1 level and above will be available only when ICG provides and handles at least one third of the end user's local traffic over the facility provided. In addition, on the DS1 loop portion of the combination, at least fifty (50) percent of the activated channels must have at least five (5) percent local voice traffic individually and, for the entire DS1 facility, at least ten(10) percent of the traffic must be local voice traffic.
>
> 1.9.7.3 When combinations of loop and transport network elements include multiplexing, each of the individual DS1 circuits must meet the above criteria.

BellSouth proposes language to the Special Access Service Conversions provisions which would define in technical detail the minimum amount of local exchange traffic that would meet the criterion of a "significant amount of local exchange service". BellSouth argues that such a minimum was declared by the FCC in its UNE Remand Supplemental Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC

99-370 (released November 24, 1999), Par. 5, Footnote 9. To the contrary, the FCC held in Par. 5: "This constraint [on conversion of special access to eels] does not apply if an IXC uses combinations of unbundled loop and transport network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer. " In Footnote 9 to that sentence, the FCC said: "**For example,** we would consider the local service component as described in a joint Ex Parte submitted by Intermedia to be significant....In addition, we 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." (Emphasis added) Rather than promulgating minimum technical standards to meet the definition of "significant local exchange traffic", the FCC merely cited two "examples" that would meet its reference to "significant amount of local exchange traffic." BellSouth's strained reading of what the FCC clearly stated were examples into a detailed technical definition is unfounded.

II. RECIPROCAL COMPENSATION

In its January 14, 2000 Order, the Commission held:

> . . . 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.

In conformance with the Commission's Order, ICG submits the following "agreed to" language for the second paragraph of Attachment 3, Section 6.1.1 of the interconnection agreement. The additional underlined language, "not agreed to", is BellSouth's additional proposed language.:

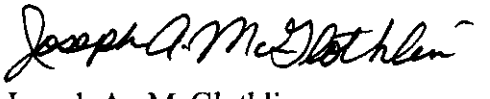
> 6.1.1 In accordance with the January 14, 2000 Order of the Florida PSC in Docket 990691 TP, the Parties shall continue to operate under the terms of their current contract until the FCC issues its final ruling on whether reciprocal compensation is due for this traffic **[AGREED TO]**<u>As such section 8 of Attachment 3 of the Interconnection Agreement between BellSouth Telecommunications, Inc. and ICG Telecom Group, Inc., effective October 7, 1997 and that</u>

> certain Amendment, the subject matter of which was the treatment of enhanced service provider and information provider traffic, executed by ICG on May 8, 1998 and by BellSouth on May 11, 1998 are incorporated herein by this reference. [NOT AGREED TO]

BellSouth proposes language which would specifically incorporate the language of the current contract into this new arbitrated agreement. ICG opposes BellSouth's effort because the Commission did not order that the old contract language be the language of the new contract for *any* period of time. Rather, the Commission held that, until final resolution by the FCC, the terms of the new contract's provisions should be held in abeyance while the parties *operated* under the terms of the old contract. The uncertainty surrounding the current contract language because of pending litigation makes it problematical and confusing to insert the language of the old contract rather than simply inserting the language of the order into the new contract. ICG opposes any reference to including current provisions because in current litigation the parties are not necessarily in agreement as to which provisions apply. For example, the parties are litigating the effect of an amendment to the current contract and which provisions were affected by the amendment.

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

Yours truly,



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