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215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE: (904) 222-0720
TELECOPIERS: (904) 224-4359; (904) 425-1942

July 17, 1997

Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 960786-TL

Dear Ms. Bayo:

Enclosed for filing on behalf of American Communications Services of Jacksonville, Inc. are an original and 15 copies of the Direct Testimony of Riley M. Murphy in the above-referenced docket.

Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,


Norman H. Horton, Jr.

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AFA _____
APP _____
CAF _____
CMI _____
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Enclosures
cc: James C. Falvey, Esq.
Parties of Record

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the Direct Testimony of Riley M. Murphy on behalf of American Communications Services of Jacksonville, Inc. in Docket No. 960786-TL have been served upon the following parties by Hand Delivery (*) and/or Overnight Delivery (**) this 17th day of July, 1997:

Monica Barone, Esq.*
Division of Legal Services, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Ms. Nancy White*
c/o Ms. Nancy Sims
BellSouth Telecommunications, Inc.
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301

Joseph A. McGlothlin, Esq.*
Vicki Gordon Kaufman, Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden St.
Tallahassee, FL 32301

Patrick K. Wiggins, Esq.*
Donna Canzano, Esq.
Wiggins & Villacorta, P. A.
501 E. Tennessee St., Suite B
Tallahassee, Florida 32302

Patricia Kurlin, Esq.**
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33169-1309

Richard D. Melson*
Hopping Green Sams & Smith
123 S. Calhoun St.
Tallahassee, FL 32301

Martha McMillin**
MCI Telecommunications
780 Johnson Ferry Road, Suite 700
Atlanta, GA 30342

Tracy Hatch, Esq*
AT&T
101 N. Monroe St., Suite 700
Tallahassee, Florida 32301

Marsha E. Rule, Esq.*
AT&T
101 N. Monroe St., Suite 700
Tallahassee, Florida 32301

Mr. Andrew O. Isar**
Director- Industry Relations
Telecommunications Resellers
Association
4312 92nd Avenue, NW
Gig Harbor, WA 98335

Mr. Jeffrey J. Walker**
Regulatory Counsel
Preferred Carrier Services, Inc.
500 Grapevine Highway, Suite 300
Hurst, TX 76054

Benjamin Fincher, Esq.**
Sprint Communications Co., L.P.
3065 Cumberland Circle
Atlanta, GA 30339

C. Everett Boyd, Jr.*
Ervin, Varn, Jacobs, Odom & Ervin
305 S. Gadsden St.
Tallahassee, FL 32301

Richard M. Rindler**
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, DC 20007

Sue E. Weiske, Esq.**
Time Warner Communications
3rd Floor North
160 Inverness Drive West
Englewood, CO 80112

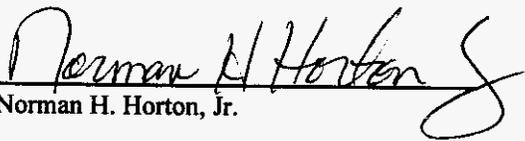
Peter M. Dunbar, Esq.*
Robert S. Cohen, Esq.
Pennington, Culpepper, Moore, Wilkinson,
Dunbar & Dunlap, P.A.
2nd Floor
215 S. Monroe St.
Tallahassee, FL 32301

Ms. Carolyn Marek
Vice President Regulatory Affairs, Southeast
Time Warner Communications
2828 Old Hickory Blvd, S.E., Apt. #713
Nashville, TN 37221

Kenneth A. Hoffman*
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

Mr. Paul Kouroupas**
TCG - Washington
2 Lafayette Centre, Suite 400
1133 Twenty First Street, N.W.
Washington, DC 20036

Benjamin Fincher**
3100 Cumberland Circle
Atlanta, GA 30339


Norman H. Horton, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of BellSouth)
Telecommunications, Inc.'s entry into)
InterLATA services pursuant to Section)
271 of the Federal Telecommunications)
Act of 1996.)

Docket No. 960786-TL
Filed: July 17, 1997

DIRECT TESTIMONY

OF

RILEY M. MURPHY

ON BEHALF OF

AMERICAN COMMUNICATIONS SERVICES, INC.

AND IT SUBSIDIARIES

1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Riley M. Murphy. I am the Executive Vice President — Legal
4 and Regulatory Affairs, General Counsel and Secretary of American
5 Communications Services, Inc. (“ACSI”). My business address is 131
6 National Business Parkway, Suite 100, Annapolis Junction, Maryland 20701.

7 **Q. PLEASE DESCRIBE YOUR BUSINESS EXPERIENCE AND**
8 **BACKGROUND.**

9 A. I joined ACSI in April 1994 to serve as Executive Vice President — Legal
10 and Regulatory Affairs and Secretary. Prior to joining ACSI, I had twelve
11 years of experience in the private practice of telecommunications regulatory
12 law for interexchange, cellular, paging and other competitive
13 telecommunications services. Since February 1995, I have served as an
14 officer and director of the Association for Local Telecommunications
15 Services. I was senior counsel to Locke Purnell Rain Harrell, a Dallas-based
16 law firm through December, 1994. From 1987 to 1992, I was a partner of
17 Wirpel and Murphy, a telecommunications law firm I co-founded. From
18 1992 to 1993, I was a sole practitioner. I had a B.A. degree from the
19 University of Colorado and a J.D. from the Catholic University of America,
20 and I am admitted to practice law in the District of Columbia and South
21 Carolina.

DIRECT TESTIMONY OF RILEY MURPHY
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FROM HEARINGS/REPORTING

1 **Q. PLEASE BRIEFLY DESCRIBE THE OPERATIONS OF ACSI AND**
2 **ITS OPERATING SUBSIDIARIES.**

3 A. ACSI is a provider of integrated local voice and data communications
4 services to commercial customers primarily in mid-size metropolitan markets
5 in the south and southwest United States. ACSI is a rapidly growing ALEC,
6 supplying businesses with advanced telecommunications services through its
7 digital SONET-based fiber optic local networks.

8 ACSI is a Delaware corporation that is traded publicly on the
9 NASDAQ market under the symbol "ACNS." ACSI, through its operating
10 subsidiaries, including ACSI Local Switched Services, Inc., American
11 Communication Services of Jacksonville, Inc., and American
12 Communications Services of Tampa, Inc. already has constructed and is
13 successfully operating networks and offering dedicated services in many
14 states. At present, ACSI has 28 operational networks and an additional 8
15 networks under construction.

16 **Q. PLEASE DESCRIBE ACSI'S OPERATIONS IN FLORIDA.**

17 A. ACSI is currently offering local services in Jacksonville, Florida under a
18 resale agreement with BellSouth. ACSI has plans to extend services in other
19 BellSouth areas.

20 **Q. WHAT SERVICES DOES ACSI PROVIDE IN FLORIDA?**

1 A. ACSI currently provides, or is actively implementing plans to provide, a wide
2 range of telecommunications and data services, including dedicated and
3 private line, high-speed data service solutions, including IP switching and
4 managed services, local switched voice services, and Internet services.

5 **Q. HAS ACSI ENTERED INTO AN INTERCONNECTION**
6 **AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS INC.**
7 **(“BELLSOUTH”) IN FLORIDA?**

8 A. Yes. ACSI and BellSouth finalized an interconnection agreement which
9 provides for mutual traffic exchange and access to unbundled network
10 elements, including unbundled loops. The Florida Public Service
11 Commission (“Commission”) approved the ACSI/BellSouth Interconnection
12 Agreement (“ACSI Interconnection Agreement”) on 960969. ACSI and
13 BellSouth also entered into a resale agreement in 960969.

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. The purpose of my testimony is to present ACSI’s response to BellSouth’s
16 Statement of Generally Available Terms and Conditions (“Statement”) and
17 BellSouth’s apparent position that it has met the requirements of the
18 competitive checklist contained in Section 271(c)(2)(b) of the
19 Communications Act of 1934, as amended (the “Act”). Although ACSI is
20 reselling local exchange service to a small number of customers in Florida as
21 are other providers under the Telecommunications Act of 1996, competition

1 from a reseller is not sufficient to constitute competition in the market nor is
2 it adequate to assess BellSouth's procedures in place for the implementation
3 of facilities-based competition for the purposes of Section 271.

4 ACSI has become a facilities-based provider of local exchange service
5 to a small number of business customers in isolated pockets in other states,
6 but it is not a facilities-based provider in Florida at this time. ACSI is a
7 facilities-based provider in Columbus, Georgia, Montgomery, and
8 Birmingham, Alabama, and Louisville, Kentucky and (as well as 4 other non
9 Bell areas) as such, has critical first-hand experience in dealing with
10 BellSouth in the local exchange markets. ACSI's experience demonstrates
11 that BellSouth still has great strides to make in opening the local markets to
12 competition before BellSouth's entry into in-region long distance service.
13 Based upon ACSI's experience, BellSouth's request to provide in-region
14 interLATA service is premature. The Commission should withhold support,
15 under its consulting role pursuant to Section 271 of the Act, for BellSouth's
16 anticipated FCC application to provide in-region interLATA service until
17 significant facilities-based competition has developed and the necessary
18 safeguards are in place to ensure that local competition will continue to
19 develop.

20 **Q. AS A THRESHOLD MATTER, WHAT STANDARD SHOULD THE**
21 **COMMISSION APPLY IN DETERMINING WHETHER**

1 **BELLSOUTH HAS FULFILLED THE REQUIREMENTS OF**
2 **SECTION 271 OF THE ACT?**

3 A. The Commission should not endorse BellSouth's compliance with Section
4 271 of the Act or reentry into the long distance market until actual, effective,
5 facilities-based competition exists in both the residential and business market
6 for local exchange services and exchange access services in the State of
7 Florida. This standard requires BellSouth not only to have entered into
8 interconnection agreements but also to have fully implemented such
9 agreements.

10 **Q. DO YOU BELIEVE THAT THE SO-CALLED TRACK B (Section**
11 **271(c)(1)(B)) IS APPROPRIATE?**

12 A. No. Despite various creative interpretations of Track B by RBOCs across the
13 country, the language of Section 271(c)(1)(B) is only available under certain
14 very limited circumstances which do not apply here. The plain language of
15 Section 271(c)(1)(B) states that BellSouth can pursue Track B if "no such
16 provider has requested the access and interconnection described in
17 subparagraph (A)"

18 Because ACSI and several other carriers have requested access and
19 interconnection, Track B simply does not apply. The development of actual,
20 effective facilities-based local competition must therefore be the measure of
21 BellSouth's entry into long distance under Track A. The Department of

1 Justice and the FCC have rejected BellSouth's interpretation of Track A and
2 Track B, and endorsed that of ACSI and other ALECs.

3 **Q. DOES ACSI OPPOSE BELL SOUTH'S REENTRY INTO THE**
4 **MARKET FOR IN-REGION INTERLATA SERVICES AT THIS**
5 **TIME?**

6 A. Yes. BellSouth has not complied with the requirements of the checklist and
7 BellSouth's reentry at this time could have devastating and irreversible
8 effects on the development of competition in local markets. Competition in
9 the markets for local exchange and exchange access services in Florida to the
10 extent it exists, is still nascent. Furthermore, network construction is a time-
11 consuming, complex and expensive undertaking.

12 Although ACSI is expanding its networks at a phenomenal pace, it
13 cannot possibly replicate the BellSouth network in the short term. BellSouth
14 built its ubiquitous local network over the course of a century with a
15 monopoly revenue stream derived from ratepayer dollars, while ALECs have
16 existed for only a few years and have been funded as competitive start-up
17 enterprises. Moreover, BellSouth's unreliable unbundled loop processes have
18 to date made it difficult for ACSI to serve customers not located on ACSI's
19 network.

20 The Commission should err on the side of caution in permitting
21 BellSouth's entry into in-region long distance. Once Section 271 approval

1 is granted, it will be impossible to revoke that approval without serious
2 disruptions to Florida consumers.

3 **Q. IS ACSI PROVIDING LOCAL SERVICES TO RESIDENTIAL**
4 **CUSTOMERS IN FLORIDA?**

5 A. No. From a business perspective, ACSI is unable to provide local service to
6 residential customers largely because BellSouth's pricing policies have
7 created a price squeeze that makes it economically infeasible to serve the
8 residential market. ACSI is technically able to provide residential services,
9 however.

10 **Q. WHAT IS IT ABOUT BELLSOUTH'S PRICING POLICIES THAT**
11 **EFFECTIVELY PRECLUDES ACSI FROM PROVIDING LOCAL**
12 **SERVICE TO RESIDENTIAL CUSTOMERS?**

13 A. In order to serve residential customers with its own facilities, ACSI must
14 purchase local loops and related facilities as unbundled network elements
15 from BellSouth. While ACSI will be able to overbuild and thereby replace
16 BellSouth's interoffice transport facilities, tandem switching, local switching
17 and signaling over time, there is no economical substitute for the ubiquitous
18 local loop constructed by BellSouth with a century-long monopoly revenue
19 stream. The out-of-pocket cost to ACSI of purchasing these loops from
20 BellSouth as unbundled network elements constitute a direct cost of service
21 to ACSI. ACSI has additional costs that it must bear in order provide end-to-

1 end service to the end user. ACSI must be able to recover its loop and other
2 costs in its retail pricing. Significantly, in order to compete, ACSI must also
3 offer service at rates competitive with those of BellSouth. Unfortunately,
4 BellSouth has demanded a price for unbundled loops and associated facilities
5 that exceeds the corresponding price charged by BellSouth for residential
6 retail local exchange services.

7 Specifically, ACSI must pay the following for unbundled network
8 elements: \$18.00 for 2-wire loops, \$0.30 for the cross connect, and \$1.15 per
9 loop for interim number portability. Thus, ACSI's total out-of-pocket cost
10 to BellSouth per line is \$19.45, even *before* ACSI pays for its own network
11 and overhead. In comparison, BellSouth's residential retail price is \$16.45.
12 Obviously, *since the BellSouth unbundled price to ACSI exceeds BellSouth's*
13 *residential prices*, ACSI -- or any other competitive carrier -- has no prospect
14 of providing service in the residential market at competitive rates.

15 **Q. WHAT WOULD HAVE TO HAPPEN TO OPEN THE RESIDENTIAL**
16 **MARKET IN FLORIDA TO LOCAL SERVICE?**

17 **A.** BellSouth would have to lower its prices for unbundled loops substantially.
18 ACSI believes that permanent, deaveraged cost-based rates are necessary in
19 order for ALECs to begin to consider offering facilities-based service in the
20 residential market. Once market participants have available cost-based
21 residential loop rates -- which necessarily include deaveraged unbundled loop

1 rates -- they can determine whether residential competition is economically
2 feasible.

3 **Q. HAS ANY OTHER BELLSOUTH REGION COMMISSION FOUND**
4 **THAT PERMANENT COST-BASED RATES MUST BE**
5 **ESTABLISHED PRIOR TO SECTION 271 REENTRY?**

6 A. Yes. The Georgia Commission recently found that permanent cost-based
7 rates must be established before it could recommend that BellSouth should
8 be permitted to reenter the in-region long distance market. (See Georgia
9 Public Service Commission order rejecting BellSouth's Statement of
10 Generally Available Terms and Conditions, dated March 20, 1997, Docket
11 No. 7253-U).

12 **Q. DO CONDITIONS EXIST THAT ALSO PREVENT YOU FROM**
13 **COMPETING EFFECTIVELY IN THE BUSINESS MARKET?**

14 A. Yes. In addition to the limited reach of our network, which I discussed
15 previously, we have experienced considerable difficulty in implementing the
16 ACSI Interconnection Agreement in Georgia, Alabama, and Kentucky, as
17 well as other BellSouth states.

18 **Q. WHAT PROBLEMS HAS ACSI EXPERIENCED?**

19 A. ACSI's efforts to make competitive alternatives available to consumers have
20 been undermined by significant problems with the provisioning of unbundled
21 loops which have delayed, or precluded altogether, ACSI's attempt to bring

1 its services to market. This problem is sufficiently severe so that ACSI has
2 been forced to file two separate formal complaints against BellSouth, one
3 before the Georgia Public Service Commission (filed December 23, 1996;
4 refiled July 9, 1997; attached as Exhibit 1) and one before the Federal
5 Communications Commission (filed January 6, 1997; attached as Exhibit 2),
6 based on BellSouth's continuing failure to provide unbundled loops to ACSI
7 on a timely basis pursuant to the terms of the ACSI Interconnection
8 Agreement. These complaints are in addition to a complaint ACSI filed with
9 the FCC based upon BellSouth's discriminatory application of non-recurring
10 charges for access service rearrangements (attached as Exhibit 3).

11 The principal problem is the difficulty we have experienced in
12 obtaining unbundled loops, provisioned on a timely basis. Our customers
13 have experienced severe service disruptions as a result of BellSouth's
14 inability to cut over unbundled loops. This could potentially damage (and
15 has likely already damaged) ACSI's reputation as a provider of high quality
16 telecommunications services as well as its ability to market to new customers
17 in ACSI's markets.

18 **Q. PLEASE DESCRIBE THE PROBLEMS THAT YOU HAVE**
19 **EXPERIENCED IN BELLSOUTH'S PROVISIONING OF**
20 **UNBUNDLED LOOPS.**

1 A. In November and December 1996, ACSI submitted its initial orders for
2 unbundled loops in Columbus, Georgia. On these orders, BellSouth failed
3 to comply with the installation standards required by Section IV.D of the
4 ACSI Interconnection Agreement. Severe service disruptions resulted to
5 local exchange customers that had selected ACSI as their carrier.

6 On November 19 and 20, 1996, ACSI placed its first three orders for
7 unbundled loops in Columbus, Georgia, requesting cutover of the customers
8 to ACSI on November 27, 1996. The cutover of these customers involved
9 conversion of one or two POTS lines, the simplest possible cutover. Each of
10 the three orders included an order for SPNP. ACSI submitted each of these
11 orders in accordance with the process established in the ACSI
12 Interconnection Agreement and BellSouth guidelines. These orders were
13 confirmed by BellSouth on November 25 and 26, 1996. BellSouth's
14 processing of these orders completely failed to comply with the cutover
15 standards required by Section IV.D of the ACSI Interconnection Agreement.

16 In general, the processing of the orders was not coordinated between
17 ACSI and BellSouth, as the ACSI Interconnection Agreement contemplated,
18 because BellSouth *unilaterally* administered the cutover without contacting
19 ACSI. Moreover, BellSouth failed to install properly the unbundled loops
20 ACSI requested, and caused severe disruptions in service to the local
21 exchange customers that had selected ACSI as their carrier. Two of ACSI's

1 initial three customers were disconnected entirely for several hours. No
2 outgoing calls could be placed, and customers calling the number received an
3 intercept message indicating that the number no longer was in service.
4 Service was disconnected for these customers for 4-5 hours each, or
5 approximately 50 to 60 times longer than permitted under the ACSI
6 Interconnection Agreement. Even after the improper disconnection was
7 remedied and the intercept message was removed for these two customers,
8 BellSouth failed to implement SPNP as ordered by ACSI, causing further
9 delay and disruption to ACSI's first new customers. As a result, these
10 customers could not receive any incoming calls on their lines. As to the third
11 customer, his service was completely disconnected for the entire day of
12 Wednesday, November 27, 1996.

13 **Q. HOW DID ACSI REACT?**

14 **A.** On December 3, ACSI held back orders to protect its reputation. But for
15 BellSouth's provisioning problems, these orders would have been processed
16 on a timely basis. For example, by December 23, 1996, ACSI had received
17 customer orders for 113 access lines. Assuming a five day turnaround, these
18 113 access lines would have been cut over by December 28, 1996. In fact,
19 BellSouth had cut over far fewer lines by that date.

20 Each day of delay in having unbundled loops installed jeopardized
21 our ability to retain the customers we have, not to mention our ability to

1 attract new customers. Moreover, BellSouth's failure to process our orders
2 allowed BellSouth to retain customers that had signed up for ACSI service.

3 **Q. DOES THE ACSI INTERCONNECTION AGREEMENT INCLUDE**
4 **REQUIREMENTS FOR THE PROVISIONING OF UNBUNDLED**
5 **LOOPS?**

6 A. Yes. The ACSI Interconnection Agreement provides, among other things,
7 that BellSouth will: (1) provide mechanized order processing procedures
8 substantially similar to current procedures for the ordering of special access
9 services (Section IV.C.2); (2) install unbundled network elements in a time
10 frame equivalent to that which BellSouth provides for its own local exchange
11 services (Section IV.D.1.); (3) establish a seamless customer cutover process
12 in which ACSI and BellSouth will agree to a cutover time 48 hours in
13 advance, the conversion will occur within a designated 30 minute window,
14 and service to the customer will be interrupted for no longer than 5 minutes
15 (Section IV.D.2, D.3, D.6); and (4) coordinate implementation of Service
16 Provider Number Portability ("SPNP") to coincide with loop installation
17 (Section IV.D.8).

18 **Q. HOW DID BELL SOUTH'S PERFORMANCE IN PROVISIONING**
19 **THESE UNBUNDLED LOOPS IMPACT ACSI'S MARKETING OF**
20 **ITS SERVICES?**

1 A. ACSI customers routinely ask questions about ACSI's ability to deliver
2 service. While ACSI has been able to reassure customers and is signing up
3 new customers in multiple markets every day, BellSouth's provisioning
4 problems have not helped ACSI.

5 **Q. IS THE PROBLEM RESOLVED?**

6 A. No. As explained in the Georgia Complaint (Exhibit 1), the basic problem
7 is that BellSouth still cannot -- or will not-- install loops for ACSI at the same
8 intervals as they do for their own retail customers. In fact, BellSouth has yet
9 to provide satisfactory statistics as to what those intervals are. ACSI's
10 unbundled loop cutover intervals are still completely unsatisfactory. Cutover
11 intervals of over two hours are still routine occurrences. ACSI has also
12 experienced extensive outages across virtually all of its customers in
13 Columbus, Georgia due to a failure of BellSouth's number portability
14 systems. The prevalence of BellSouth system failures in Georgia, Alabama,
15 and Kentucky is completely unacceptable at this time. The Commission
16 should not recommend Section 271 approval until BellSouth's systems are
17 significantly improved, and facilities-based competition takes root in Florida.

18 **Q. IS BELLSOUTH CURRENTLY PROVISIONING THE SMALL**
19 **NUMBER OF LOOPS ORDERED BY ACSI IN GEORGIA?**

20 A. Yes. It is unclear, however, whether BellSouth's procedures are reliable and
21 capable of handling the increased volume of loops as ACSI and other ALECs

1 increase their marketing efforts. Although BellSouth has processed certain
2 new orders without incident in recent weeks, BellSouth's refusal to give
3 adequate assurances that it will be able to comply with the provisioning
4 standards set forth in the ACSI Interconnection Agreement makes it
5 impossible for ACSI to be confident that BellSouth has a reliable system in
6 place to unbundle the local loop. For example, in addition to further ACSI
7 volume in Columbus, BellSouth must handle loop orders from Montgomery,
8 Louisville, Birmingham, New Orleans and possibly additional ACSI cites by
9 year's end. BellSouth's regional ordering and provisioning systems must
10 also handle significant volumes of loop orders from other ALECs. Before
11 ACSI can effectively compete against BellSouth, it must be able to order and
12 have installed a significant volume of unbundled loops on a reliable basis.
13 To date, BellSouth has demonstrated no capability of handling high volumes
14 of access lines. Indeed, ACSI has every indication that BellSouth still has not
15 put systems into place for provisioning unbundled loops that by law should
16 have been in place months ago.

17 Additionally, ACSI has not requested loops in Florida. Because
18 BellSouth appears to have inadequate training, each new market appears to
19 be a fresh start for BellSouth, with little or not notable improvement over the
20 last. Therefore, it is impossible to know if BellSouth's procedures for
21 provisioning loops will be reliable in Florida. Although ACSI is working

1 closely with BellSouth and hopes its processes will improve, ACSI's
2 experience in Georgia, Alabama, and Kentucky leads us to believe that
3 BellSouth's procedures are not reliable. Consequently, ACSI has no reason
4 to expect that BellSouth will be able to cut over scores of customers a day
5 once ACSI's services establish even a modest foothold in Florida. Under
6 these circumstances, the Commission's support for BellSouth's Section 271
7 Application would be premature.

8 **Q. DOES THE INTERCONNECTION AGREEMENT REQUIRE**
9 **ACCESS TO OSS?**

10 A. Yes, in Sections IV.C and IV.D of the ACSI Interconnection Agreement.
11 Given the initial difficulties with BellSouth's loop provisioning, ACSI
12 believes that BellSouth's electronic interfaces must be fully developed prior
13 to BellSouth's entry into the inregion interLATA market.

14 **Q. PLEASE EXPLAIN ACSI'S CURRENT ACCESS TO BELL SOUTH'S**
15 **OPERATIONAL SUPPORT SYSTEMS.**

16 A. ACSI is currently utilizing the BD-Telis (or EXACT) system, which was
17 designed for special access, to place orders. Only initial ordering of
18 unbundled loops is electronic at this time. ACSI submits an electronic order
19 to BellSouth, and BellSouth responds with an electronic firm order
20 confirmation. Other than that, processes such as pre-ordering, order tracking,
21 billing, and repair and maintenance are not yet electronic.

1 **Q. HAS ACSI REQUESTED BETTER OSS?**

2 A. Yes. Since ACSI began speaking with BellSouth at the operational level in
3 July 1996, ACSI has continually requested the best interfaces available. Only
4 recently has BellSouth offered an interface designed for local service. On
5 May 27, 1997, BellSouth visited ACSI to demonstrate the Local Exchange
6 Navigation System ("LENS"). It now appears that ACSI will not be able to
7 utilize this system until mid-August at the earliest. ACSI has already lost
8 customers across the BellSouth region on both resale and unbundled loops
9 due to BellSouth's inexcusable delay in implementing this system. As with
10 other critical interconnection arrangements, BellSouth must demonstrate
11 proven performance and not just paper promises in order for BellSouth to
12 meet the Section 271 checklist. ACSI recommends extensive experience
13 with live customer orders before this Commission passes judgment on LENS.
14 Mere testing cannot successfully emulate live orders and ACSI will provide
15 its analysis of LENS once it is up and running for a period of time.

16 **Q. ARE THERE ANY LIMITATIONS TO THIS SYSTEM OF WHICH**
17 **YOU ARE AWARE?**

18 A. Yes. There is at least one critical limitation that I am aware of at this time.
19 According to BellSouth, LENS cannot process unbundled loop orders at this
20 time. To the extent that facilities-based competition is one of the key
21 prerequisites to Section 271 approval, a positive Section 271

1 recommendation for BellSouth should not be considered at least until such
2 time as unbundled loops can be ordered and installed as quickly as the
3 equivalent BellSouth business services with which ACSI will compete when
4 it employs the unbundled loops.

5 **Q. IS LENS CURRENTLY FUNCTIONING FOR OTHER CARRIERS**
6 **AT THIS TIME?**

7 A. ACSI has heard in hearings in Louisiana that two publicly undisclosed
8 carriers are using or testing LENS at this time. This limited test does not
9 satisfy the Department of Justice's standard for OSS as described in its recent
10 brief to the FCC. Evaluation of the Department of Justice, In the Matter of
11 SBC Communications Inc. et al. Pursuant to Section 271 of the
12 Telecommunications Act of 1996 to Provide In-Region, InterLATA Services
13 in the State of Oklahoma, CC Docket No. 97-121, at 28-30. Furthermore, to
14 the extent that ACSI currently has significant numbers of backlogged resale
15 orders that are slowing the development of local competition, scalability
16 must be an integral part of the Commission's examination of BellSouth OSS.

17 **Q. HOW DOES THAT AFFECT YOUR ABILITY TO COMPETE**
18 **EFFECTIVELY WITH BELL SOUTH IN THE LOCAL MARKETS?**

19 a. It has the ability to greatly affect ACSI's ability to compete with BellSouth
20 in the local markets. In ACSI's experience in Georgia, the current electronic
21 fax/manual processes are extremely cumbersome and have caused ACSI to

1 lose customers across the region. In order to expand further, ACSI will have
2 to increase its volume of orders exponentially in the near future. Moreover,
3 large volume ALECs, such as MCI and AT&T, will soon be entering the
4 local market. Electronic bonding to BellSouth's OSS is absolutely critical to
5 support that growth. Without it, ACSI and other ALECs cannot hope to
6 garner significant market share. Interexchange carriers ("IXCs"), for
7 example, simply could not function if the ILECs refused to accept electronic
8 submissions of changes in customers' selections of their primary
9 interexchange carrier ("PIC"). The numbers are simply too great for manual
10 processing.

11 **Q. HAS THE FCC INDICATED THAT ELECTRONIC INTERFACES**
12 **WILL BE SCRUTINIZED IN THE SECTION 271 APPROVAL**
13 **PROCESS?**

14 A. Yes. FCC Chairman Reed Hundt has indicated that this issue is relevant to
15 the FCC's decision-making process. TR. Daily, Vol. 3, No. 30, February 13,
16 1997. The Department of Justice has likewise emphasized the critical
17 importance of electronic interfaces.

18 **Q. CAN ACSI COMPETE EFFECTIVELY IF BELLSOUTH'S**
19 **STANDARD INSTALLATION INTERVALS EXCEED THOSE**
20 **WHICH BELLSOUTH AVERAGES FOR ITS OWN CUSTOMERS?**

1 A. No. Service quality is as or more important than price in the local market.
2 If an ILEC, such as BellSouth, can guarantee quicker installation, either by
3 longer standard intervals for ALECs or by expediting installation for its own
4 customers, then ALEC service will be viewed as inferior. BellSouth will use
5 such advantages to differentiate its product in the market. Notably, the
6 problem is even worse when, as has been the case in Georgia, Kentucky,
7 Alabama, and throughout the BellSouth region, ACSI is unable to meet
8 promised delivery dates due to BellSouth's inability or unwillingness to
9 perform consistent with the Telecommunications Act and under the ACSI
10 Interconnection Agreement. The fact that BellSouth can embarrass its
11 competitor in front of customers whenever it so chooses simply by dragging
12 its feet is a very disturbing feature of the emerging market structure for
13 competitive local exchange services. There is no significant, immediate,
14 enforceable penalty in place today to act as a competitive safeguard when
15 such incidents occur. I see no remedy for this inherently discriminatory
16 circumstance other than specified provisioning intervals and a strong
17 enforcement role by state and federal regulatory authorities.

18 **Q. HAVE YOU ASKED BELLSOUTH TO PROVIDE PARITY IN**
19 **INSTALLATION INTERVALS?**

20 A. Yes. ACSI has asked BellSouth to agree to specific installation intervals with
21 prescribed penalties for failure to meet them. BellSouth has refused.

1 **Q. YOU TESTIFIED EARLIER THAT BELLSOUTH ALSO IS**
2 **ENGAGING IN ACTIVITIES THAT ARE IMPEDING ACSI'S**
3 **ABILITY TO COMPETE EFFECTIVELY IN THE MARKET FOR**
4 **LOCAL SERVICES. CAN YOU EXPLAIN?**

5 A. ACSI is seeing an emerging pattern of BellSouth activities seemingly
6 intended to lock in existing BellSouth local customers and prevent new
7 entrants from freely competing for their business. For example, BellSouth
8 has been signing up business customers to multi-year contracts before
9 opening its local markets. These customers will not be available for ALEC
10 competition.

11 BellSouth has established entrances to all office buildings in the
12 downtown business districts while ACSI and other companies have had great
13 difficulty in gaining access to some buildings, either due to limited space or
14 requests for large sums of money to enter the building. ACSI would
15 encourage the Commission to implement rules to require nondiscriminatory
16 building access to all certificated local exchange providers requesting such
17 access.

18 BellSouth has also established an extremely troubling program that
19 appears intended to effectively lock ALECs out of major office buildings,
20 office parks, shopping centers and other similar locales. Specifically,
21 BellSouth is enticing property management companies to enter *exclusive*

1 marketing arrangements with BellSouth under which the property managers
2 are paid handsomely for promoting BellSouth's services to tenants of the
3 property, and for refusing to establish similar promotional agreements with
4 ALECs. BellSouth provided copies of its Letter Agreement for Property
5 Management Services in response to a hearing request in a Georgia
6 proceeding (Georgia PSC Docket 6863-U), copies of which are attached to
7 my testimony marked Exhibit 5.

8 Under the terms of BellSouth's standard form Property Management
9 Services Agreement, BellSouth obtains access -- free-of-charge -- to building
10 entrance conduits, equipment room space and riser/horizontal conduits for
11 placement of BellSouth equipment and other telecommunications facilities
12 needed to serve building tenants. The property manager also commits to
13 designate BellSouth as the local telecommunications "provider of choice" to
14 building tenants and to promote BellSouth as such. Many building tenants
15 may not understand that they could choose to order service from a ALEC
16 competitor. In return, BellSouth agrees to establish a "Credit Fund" which
17 the property manager can use itself or distribute to tenants. The Credit Fund
18 is usable to pay for selected BellSouth services (*i.e.*, seminars, non-recurring
19 installation charges, etc.).

20 This program has at least two anticompetitive effects, largely
21 attributable to the fact that this arrangement is expressly an *exclusive* one.

1 First, since BellSouth is given "free" (no cash payment) access to the
2 building conduit and riser, BellSouth is given an inherent cost advantage in
3 obtaining use of these essential bottleneck facilities. Second, since the
4 property manager must agree to promote BellSouth services exclusively in
5 order to be compensated, BellSouth has created an incentive for property
6 managers to refuse to cooperate with ACSI and other ALECs in promoting
7 services to building tenants.

8 The property manager is a critical gatekeeper in obtaining access to
9 business end users, and BellSouth has conspired with them in these instances
10 to prevent ACSI from obtaining unfettered access to building tenants.
11 Interestingly, BellSouth argued strenuously a few years ago that regulators
12 must prevent shared tenant service ("STS") providers from impeding their
13 access to end users in STS-controlled office buildings -- now, BellSouth itself
14 is engaging in the same activity about which it protested so vociferously.
15 The Commission should ensure that such arrangements have not been and are
16 not established in Florida.

17 **Q. DO YOU HAVE OTHER EXAMPLES OF ANTICOMPETITIVE**
18 **CONDUCT ON THE PART OF BELL SOUTH?**

19 A. Yes. Based on our experience in other states, BellSouth has been
20 aggressively promoting the use of customer-specific Contract Service
21 Arrangements ("CSAs") where it competes with ACSI for the business of a

1 specific business customer. While there is nothing inherently wrong with
2 CSAs, ACSI does not believe that, given the other competitive advantages of
3 BellSouth in the switched services market, that BellSouth should be
4 permitted to lock in customers to long term contracts at this time. ACSI is
5 principally concerned that BellSouth could engage in pricing below cost.
6 The Commission should implement a "fresh look" policy to ensure that all
7 Florida end users receive the benefits of choosing from competitive
8 providers. The Commission should also ensure that termination liability
9 provisions are not applied when a "fresh look" policy is implemented, or
10 when CSAs are resold by ALECs.

11 **Q. DO YOU HAVE MORE EXAMPLES OF BELLSOUTH'S**
12 **ANTICOMPETITIVE ACTIVITY?**

13 A. Yes. For example, in other states, BellSouth has been requiring sales agents
14 to sell BellSouth local services *exclusively*. Indeed, BellSouth's sales agency
15 agreements routinely prevent sales agents from selling ALEC services for a
16 year *after* their BellSouth contract is terminated. Thus, if a sales agent
17 wishes to market ACSI's services, the agent must terminate his or her
18 BellSouth representation and then forego selling ACSI services for at least
19 one year to satisfy the non-compete provisions of BellSouth's exclusive
20 agency agreement. Clearly, this deprives ACSI of access to an important
21 sales channel. BellSouth provided copies of its authorized Sales

1 Representative Agreements in response to a request made in a Georgia
2 proceeding (Georgia PSC Docket 6863-U), a copy of which is attached to my
3 testimony marked Exhibit 4.

4 **Q. IN ADDITION TO THESE EXAMPLES OF ANTICOMPETITIVE**
5 **CONDUCT ENCOUNTERED IN THE END-USER MARKET, HAVE**
6 **YOU HAD SIMILAR PROBLEMS WHEN COMPETING WITH**
7 **BELLSOUTH FOR CARRIER BUSINESS?**

8 A. Yes, particularly with reference to BellSouth's application of nonrecurring
9 reconfiguration charges ("RNRCs") to access channel termination ("ACTL")
10 moves. In fact, in February 1996, ACSI filed a Formal Complaint with the
11 FCC with reference to the grossly excessive RNRCs that BellSouth imposed
12 on IXCs, attempting to make an ACTL move to ACSI.

13 ACTL moves are required whenever an IXC agrees to switch all or
14 part of its direct trunked access transport services on a given route from the
15 BellSouth network to the network services offered by ALECs, such as ACSI.
16 ILECs typically require the payment of RNRCs to accomplish such ACTL
17 moves. Unfortunately, BellSouth's RNRCs are applied inconsistently and
18 have effectively shut ACSI, and all other CAPs, out of the customer facility
19 market in BellSouth territory.

20 In ACSI's experience, BellSouth has applied the RNRCs for ACTL
21 moves in a manner which prevents IXCs from switching to ACSI transport

1 services. As we explained in our Formal Complaint, which is appended
2 hereto as Exhibit 3 the charges imposed on IXCs are not reasonably related
3 to the direct costs incurred by BellSouth in making the ACTL move. Indeed,
4 they are inconsistent with the tariff rates included in BellSouth's interstate
5 access tariff. Even more troubling, the RNRCs imposed by BellSouth for
6 IXC access network reconfigurations to connect to ACSI services routinely
7 far exceed the reconfiguration charges imposed by BellSouth when an IXC
8 orders reconfigurations from one BellSouth service to another.

9 This circumstance presents prospective customers with three equally
10 unattractive choices: (1) not to reconfigure; (2) to reconfigure with BellSouth
11 so as to avoid or minimize the excessive RNRCs; or (3) to move to ACSI and
12 pay the RNRC costs or force ACSI to absorb such costs. Often, the only way
13 for ACSI to make a reasonable bid for the business of a potential access
14 customer, therefore, is to offer to pay for the significant and unreasonable
15 reconfiguration costs imposed by BellSouth. Unfortunately, this is almost
16 always infeasible. As a result, ACSI's efforts to convince otherwise ready,
17 willing and able access customers to switch from BellSouth transport services
18 have been stymied.

19 **Q. CAN YOU OFFER ANY SPECIFIC EXAMPLES OF WHEN**
20 **BELLSOUTH'S RNRCs HAVE BEEN A PROBLEM?**

1 A. Yes. In one instance, an IXC agreed to move thirteen (13) DS3 circuits from
2 BellSouth to ACSI. ACSI proceeded to prepare for the reconfiguration,
3 including the purchase of OC12 equipment to accommodate the rollover.
4 However, as a result of BellSouth's excessive RNRCs, ACSI lost this five-
5 year contract worth an expected \$500,000 in revenues.

6 **Q. WHAT IS THE RELATIONSHIP BETWEEN THE PROBLEMS ACSI**
7 **HAS EXPERIENCED AND BELL SOUTH'S DESIRE TO REENTER**
8 **THE MARKET FOR INTERLATA SERVICES?**

9 A. BellSouth's interest in obtaining permission to reenter the interLATA
10 services market constitutes the principal incentive BellSouth has to
11 interconnect with local competitors and to correct anticompetitive abuses.
12 ACSI's experience in other states has shown that even before BellSouth has
13 obtained its interLATA approvals, it has been unable to resist engaging in a
14 variety of activities designed to protect its current dominance in the
15 marketplace. Once BellSouth has passed through the turnstile and has been
16 authorized to reenter the market for interLATA services, it will be nearly
17 impossible to retract this authority. Thus, it is absolutely imperative to
18 ensure that BellSouth has fully complied with all of the requirements of
19 Section 271 of the Act, and that BellSouth is not hindering the development
20 of a competitive local market, before this Commission supports BellSouth's
21 FCC application for in-region interLATA service. The provision of

1 unbundled loops, OSS, and number portability are three deficiencies
2 preventing BellSouth from meeting the fourteen-point competitive checklist
3 of Section 271 of the Act. Regardless of the terms of BellSouth's Statement
4 of Generally Available Terms and Conditions ("SGAT"), ACSI's complaints
5 filed with the Georgia Commission and the FCC demonstrate that BellSouth
6 has not met these items. BellSouth should be denied reentry into the in-
7 region interLATA market on this basis alone. Furthermore, BellSouth's
8 attempts through various other practices to insulate its markets from
9 competition demonstrate that it is not in the public interest for BellSouth to
10 be allowed to reenter the interLATA market until it has implemented actual
11 and effective competition in its local markets.

12 **Q. SHOULD THE COMMISSION APPROVE BELLSOUTH'S SGAT?**

13 **A.** No. The SGAT does not include permanent cost-based rates and should not
14 be approved on that basis. This would be inconsistent with the approach of
15 the Georgia Commission. If the Commission believes that approval will
16 promote local competition, the SGAT should only be permitted to go into
17 effect with the explicit caveat that it does not meet the 14-point checklist.
18 This approach was taken by the Illinois Public Service Commission and is a
19 fallback alternative to the Georgia Commission's approach. Moreover
20 BellSouth has demonstrated across the region that its number portability and

1 unbundled loop elements are of highly inferior quality which renders them
2 noncompliant for purposes of the checklist.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A. Yes.**

RILEY MURPHY DIRECT TESTIMONY

EXHIBIT NO. 1

**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION**

**COMPLAINT OF AMERICAN)
COMMUNICATION SERVICES OF)
COLUMBUS, INC. AGAINST BELL SOUTH)
TELECOMMUNICATIONS, INC.)
REGARDING ACCESS TO UNBUNDLED)
LOOPS)**

DOCKET NO. 7818-U

**COMPLAINT OF AMERICAN COMMUNICATION
SERVICES OF COLUMBUS, INC.**

American Communication Services of Columbus, Inc. ("ACSI") hereby files this complaint against BellSouth Telecommunications, Inc. ("BellSouth") and as grounds therefor states as follows:

I. PRELIMINARY

1.

Federal and State laws intended to promote competition in the telecommunications industry require incumbent local exchange companies, such as BellSouth, to provide nondiscriminatory access to unbundled loops. ACSI is one of the earliest providers of competitive switched service in Georgia and is the first competitor to request a significant number of unbundled loops from BellSouth. ACSI has experienced excessive delays in obtaining unbundled loops from BellSouth, unreasonable service interruptions in switching customers to those loops, and frequent service disruptions to customers connected to those loops. In addition, ACSI recently began serving customers in Georgia by reselling BellSouth services. While ACSI's resale experience to date is limited, ACSI has already experienced some of the same provisioning delays and service disruptions. BellSouth's failure to provide proper competitive interconnection

and access jeopardizes the ability of competitive service providers to attract and retain customers and, therefore, threatens the development of competitive markets in Georgia.

2.

On December 23, 1996, ACSI filed a complaint with the Commission against BellSouth based on the difficulties ACSI experienced with BellSouth's provisioning of ACSI's initial orders for unbundled loops in November and December, 1996. The Commission designated that complaint Docket No. 7212-U. ACSI also filed a complaint with the FCC based on the same facts. Because of the ongoing difficulties suffered by ACSI with unbundled loops purchased from BellSouth, and efforts by ACSI and BellSouth to settle the complaints, the procedural schedule for Docket No. 7212-U could not be completed within the 180 days mandated by O.C.G.A. § 46-5-168(c). Accordingly, on June 19, 1997, ACSI filed a Motion to Withdraw its Complaint Without Prejudice. This Complaint seeks redress of the same unbundled loop problems complained of in Docket No. 7212-U and the continuing difficulties experienced by ACSI as a CLEC providing competitive services in BellSouth's Georgia territory.

II. STATEMENT OF FACTS

3.

ACSI is a competitive local exchange carrier certificated to provide switched and dedicated local exchange service in Georgia. ACSI's parent company, American Communications Services, Inc., through its subsidiaries, operates 28 fiber optic networks throughout the United States, primarily in the southern and southwestern states, and has 8 such networks under construction.

4.

On December 12, 1995, the Commission granted Certificate of Authority No. 960 to ACSI for the provision of interLATA intrastate telecommunications in Georgia. More specifically, the Commission granted ACSI authority to provide special access and dedicated private line service in the Columbus, Georgia area. In addition, on June 21, 1996, the Commission granted to ACSI Interim Certificate of Authority No. L-015 to provide switched local exchange services.

5.

BellSouth is a Regional Bell Operating Company that provides switched local exchange and other telecommunications services in Georgia and eight other Southern states. BellSouth is the incumbent provider of switched local exchange service in Columbus, Georgia.

6.

ACSI operates a fiber optic network in Columbus, Georgia. Columbus is the first city to be offered competitive switched local exchange service by ACSI.

7.

On July 25, 1996, ACSI and BellSouth entered into an Interconnection Agreement ("Interconnection Agreement"). On August 13, 1996, ACSI filed a Petition for Arbitration with this Commission, Docket No. 6854-U, requesting the Commission to resolve certain unbundling pricing issues. On October 17, 1996, ACSI and BellSouth signed an Amendment ("Amendment") to the Interconnection Agreement addressing all outstanding issues and, in particular, the pricing of unbundled loops, as a settlement of ACSI's Petition for Arbitration. The Interconnection Agreement between ACSI and BellSouth, including the Amendment, was approved by Order of the Georgia Public Service Commission ("Commission") in Docket No. 6881-U signed by the

Chairman and Executive Secretary on November 8, 1996.

8.

On December 20, 1996, ACSI and BellSouth entered into an agreement regarding the resale of BellSouth's services by ACSI (the "Resale Agreement"). The Resale Agreement between ACSI and BellSouth was approved by order of the Commission in Docket No. 7250-U, signed by the Chairman and Executive Secretary on March 14, 1997.

9.

The Interconnection Agreement provides specific detail as to the provisioning of unbundled loops (Section IV), including Order Processing (Section IV.C), Conversion of Exchange Service to Network Elements (Section IV.D), and Service Quality (Section IV.E). The relevant provisions of the Interconnection Agreement are attached hereto as Exhibit A. Section IV.C.2 of the Interconnection Agreement provides that "Order processing for unbundled loops shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services."

10.

The Interconnection Agreement also explicitly requires certain processes for the Conversion of Exchange Service to Network Elements (Section IV.D). This conversion process is designed to be a seamless process according to which a half-hour cutover window is agreed upon by the parties 48 hours in advance, ACSI and BellSouth coordinate the cutover, and the customer is not disconnected for more than 5 minutes. BellSouth also must coordinate implementation of Service Provider Number Portability (SPNP) as part of an unbundled loop installation. The following are among the key provisions of Section IV.D:

D.1 Installation intervals must be established to ensure that service can be established via unbundled loops in an equivalent timeframe as BellSouth provides services to

its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.

- D.2 On each unbundled network element order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.
- D.3 Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.
- D.6 The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the ACSI collocation arrangement is 5 minutes. If BellSouth causes an Exchange Service to be out of service due solely to its failure for more than 15 minutes, BellSouth will waive the non-recurring charge for that unbundled element.
- D.7 If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated out-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of ACSI.
- D.8 If ACSI has ordered Service Provider Number Portability (SPNP) as part of an unbundled loop installation, BellSouth will coordinate implementation of SPNP with the loop installation.

11.

Since placing its initial orders for unbundled loops in November 1996, ACSI has experienced numerous problems with the quality of service for unbundled loops it purchases from BellSouth, including excessive service disruptions during loop provisioning, lack of coordination of number portability with loop provisioning, excessive volume losses and unexplained service disruptions.

12.

On or before November 19, 1996, ACSI placed its first three orders for unbundled loops in Columbus, Georgia, requesting cutover of the customers to ACSI service on November 27, 1996. All three customers involved Plain Old Telephone Service ("POTS") lines, the simplest possible cutover. Each of the three orders included an order for Service Provider Number Portability ("SPNP"). Pursuant to the process established in the Interconnection Agreement, ACSI submitted its first orders for unbundled loops through completion and submission of the Service Order form specified in the Facilities Based Carrier Operating Guide ("FBOG"). These orders were confirmed by BellSouth on November 25 and 26. In cutting over these three customers on November 27, 1996, BellSouth completely failed to comply with the cutover procedures established in Section IV.D of the Interconnection Agreement. As described more fully in the following paragraphs, the affected customers on those orders are Corporate Center, Jefferson Pilot and Mutual Life Insurance Company.

13.

On October 29, 1996, ACSI submitted a request that BellSouth assign Corporate Center to ACSI in its Line Information Data Base ("LIDB"). An Access Service Report ASR to provision of unbundled loop to ACSI for serving this customer was submitted on November 25, 1996. BellSouth confirmed the request due date of November 27, 1996, and attempted to cut over the customer at that time. BellSouth's initial attempt to provision an unbundled loop to ACSI failed on November 27, 1996, causing the customer to be disconnected from all local services for over 24 hours. The customer was returned to BellSouth local exchange service on November 28, 1996, and the due date for loop provisioning to ACSI rescheduled. Ultimately, BellSouth re-attempted installation on January 7, 1997, and the cutover occurred in less than one

hour.

14.

On November 19, 1996, ACSI submitted a request that BellSouth assign Jefferson Pilot to ACSI in its LIDB database. An ASR to provision an unbundled loop to ACSI for serving this customer was submitted on November 20, 1996. BellSouth confirmed the requested due date of November 27, 1996, and attempted to cut over the customer at that time. During BellSouth's attempt to provision an unbundled loop to ACSI on this date, however, the customer was disconnected for approximately 4-5 hours. When the unbundled loop order was implemented and ACSI began provisioning local exchange service to the customer it was discovered that BellSouth failed to implement ACSI's order for SPNP on this line. Calls placed to the customer's old (BellSouth) telephone number were not being routed to the new (ACSI) number. As a result, the customer—a business selling insurance services—was able to place outgoing calls, but could not receive any incoming calls. Calls dialed to the old telephone number received a BellSouth intercept message stating that the number had been disconnected.

15.

On November 19, 1996, ACSI submitted a request that BellSouth assign Mutual Life Insurance Company to ACSI in its LIDB database. An ASR to provision an unbundled loop to ACSI for serving this customer was submitted on November 20, 1996. BellSouth confirmed the requested due date of November 27, 1996, and attempted to cut over the customer at that time. During BellSouth's attempt to provision an unbundled loop to ACSI on this date, the customer was disconnected for approximately 6-7 hours. As with Jefferson Pilot, after the unbundled loop order was implemented, it was discovered that BellSouth failed to implement ACSI's order for SPNP. Thus, Mutual Life was also unable to receive calls placed to its old telephone number, and

callers instead received an intercept message stating that the number had been disconnected.

16.

Columbus, Georgia is a relatively small and close-knit community. This litany of service failures quickly threatened to permanently poison ACSI's business reputation for being able to provide high quality local telecommunications services. Faced with the prospect of such permanent injury, ACSI was forced to suspend the submission of unbundled loop orders until it could be comfortable that BellSouth's provisioning problems were rectified, despite the fact that ACSI had invested heavily in constructing a competitive local exchange network and deploying a sales force. Therefore, on or about December 4, 1996, ACSI informed BellSouth of its specific concerns arising from these provisioning failures and instructed it to place all of its pending orders on hold until the problems could be rectified. After ACSI's request to put further orders on hold, however, three BellSouth customers for whom ACSI had requested conversion to ACSI service were nonetheless disconnected by BellSouth, resulting in severe service impacts for these customers. As described more fully in the following paragraphs, these additional problems affected ACSI customers Joseph Wiley, Jr., Cullen & Associates, and Carrie G. Chandler.

17.

The order for Joseph Wiley, Jr. was initially submitted as a LIDB storage request on November 19, 1996 and an ASR was submitted on December 2, 1996. Service was requested to be installed on December 4, 1996. BellSouth confirmed the requested due date and time. On December 4, 1996, the customer experienced multiple disruptions in his BellSouth service, which continued through December 5, 1996. BellSouth was unable on this attempt to establish service through the use of unbundled local loops. Ultimately, an unbundled loop was provisioned but not until January 3, 1996.

18.

The order for Cullen & Associates was initially submitted as a LIDB storage request on November 19, 1996 and an ASR was submitted on December 2, 1996. Service was requested to be installed on December 4, 1996. BellSouth confirmed the requested due date and time. On December 4, 1996, the customer experienced multiple disruptions in its BellSouth service, and BellSouth's initial cutover attempt ended without establishing service through unbundled loops. Ultimately, an unbundled loops was provisioned but not until December 23, 1996.

19.

The order for Carrie G. Chandler was initially submitted as a LIDB storage request on November 19, 1996 and an ASR was submitted on December 2, 1996. Service was requested to be installed on December 5, 1996. BellSouth confirmed the requested due date and time. On December 5, 1996, the customer experienced multiple disruptions in its BellSouth service, which were unexplained. BellSouth did not successfully install an unbundled loop until January 7, 1997.

20.

As a result of BellSouth's failure to implement the procedures agreed upon in the Interconnection Agreement with regard to provisioning of unbundled loops, BellSouth itself retained customers that signed-up for ACSI service. In addition to causing damage to ACSI's reputation as a provider of high quality telecommunications services, BellSouth has directly caused ACSI to lose the revenues associated with its planned unbundled loop orders.

21.

In the process of responding to ACSI's inquiries on unbundled loops, BellSouth revealed severe shortcomings in its loop provisioning procedures. On December 4, during a conference call with ACSI, a BellSouth Executive Vice President, Ann Andrews, informed ACSI that

BellSouth will not provide basic provisioning functions (such as order status, jeopardies against the due date, etc.) that are routinely provided to special access customers. Ms. Andrews stated that these functions would not be performed because they are not performed for BellSouth end users. These statements were in direct contravention of Section IV.C.2 of the Interconnection Agreement which ensures similar order processing to that currently used for special access services. BellSouth's entire approach to unbundling indicates that the company has failed to commit the resources to establish the unbundled loop processes agreed to on July 25, 1996 with ACSI. Furthermore, it indicates that the personnel implementing the Interconnection Agreement at the time either did not understand or did not intend to comply with that agreement.

22.

Until December 12, 1996, BellSouth also refused, despite repeated requests, to provide provisioning intervals for: a) the time between the placement of an order by ACSI and firm order confirmation by BellSouth and b) the time between the placement of an order by ACSI and cutover of the customer to ACSI. On December 12, 1996, BellSouth committed to: a) 48 hours between the placement of an order and firm order confirmation and b) offered to agree to 5 days from the placement of an order by ACSI to cutover. Of course, these timeframes were not put into practice at that time. BellSouth has not agreed to these intervals in writing, and ACSI continues to have significant problems with both firm order confirmations and BellSouth cutover intervals.

23.

ACSI has worked diligently to advise BellSouth of the difficulties it encountered in obtaining unbundled loops. Since December 1996, ACSI has been in almost constant communication with BellSouth including correspondence, phone calls and meetings at various

levels within both organizations.

24.

In addition to the problems ACSI experienced in provisioning loops for new customers, ACSI's customers have experienced quality of service problems following provisioning with unbundled loops ACSI purchased from BellSouth. In February, 1997, three of ACSI's customers suffered unexplained service disconnection. The three customers that suffered such disconnection are Country's Barbecue, Jefferson Pilot, and Columbus Tire

25.

The disconnection by BellSouth of Country's Barbecue, a restaurant with five locations in Columbus, took place on Friday, February 21, 1997 at approximately 4:45 p.m., just prior to the dinner hour. The owner of Country's Barbeque is an active member of the Chamber of Commerce and a highly visible citizen of the Columbus, Georgia community. Country's Barbecue takes orders by phone, and relies upon phone orders to provide take-out service at the dinner hour. Service was disconnected for two hours at all five locations. In addition to service disruption, Country's Barbeque experienced excessive volume losses, apparently because BellSouth designed ACSI's unbundled loops to have excessive (8 decibels) of loss. BellSouth has explained that the service disruptions were the result of taking the lines down for maintenance regarding the volume loss problem. BellSouth has offered no explanation, however, for its failure to notify ACSI or its customers prior to such disconnection for maintenance. As a result of the volume problem and service disruption, Country's Barbecue terminated ACSI service and returned to BellSouth service.

26.

The disconnection of Jefferson Pilot took place on Friday, February 21, 1997, also in the evening. Jefferson Pilot receives facsimiles from its home office on Friday afternoon. This disconnection prevented Jefferson Pilot from receiving such facsimiles on Friday and over the weekend and significantly disrupted its business. The following week Jefferson Pilot terminated ACSI service and returned to BellSouth service.

27.

The disconnection of Columbus Tire took place on Monday, February 24, 1997 and, as with the other two disconnections, significantly disrupted its business. The customer's service was disrupted in the late afternoon, was down for almost an hour, and was restored only as a result of aggressive efforts on the part of ACSI employees. BellSouth has admitted to ACSI that this disruption was the result of human error.

28.

Despite the fact that six months have passed since the filing of ACSI's initial complaint,¹ BellSouth continues to be unable to meet cutover intervals, causing significant disruption for ACSI's customers and causing additional damage to ACSI's reputation in Columbus. ACSI's Interconnection Agreement with BellSouth requires a 5-minute cutover interval. Attached is a chart marked Exhibit B which shows the cutover intervals for ACSI unbundled loops provisioned by BellSouth during mid-April. This chart demonstrates that not only has BellSouth continued to exceed the 5-minute cutover interval, but several of the cutover intervals have exceeded two hours. Even considering that these orders involve multiple lines, such intervals are excessive and completely unacceptable. ACSI cannot achieve provisioning parity, and parity in customer

¹ Docket No. 7212-UJ.

satisfaction, if it takes significantly longer for BellSouth to cut over its CLEC customer loops than it takes to cutover its own customers' lines. Customers are likely to be reluctant to switch to competitive providers when faced with the prospect of such lengthy disruptions. Moreover, customers that begin their ACSI service experience with longer cutovers often receive a poor first impression of ACSI service, which is in fact merely a reflection of BellSouth's substandard cutover process. Despite the passage of six months' time, BellSouth still has not conformed its loop cutover intervals to the Interconnection Agreement, and is still routinely cutting customers over in unacceptable intervals. BellSouth is also routinely starting cutovers late (a mere matter of punctuality) which exacerbates lengthy cutovers when they occur.

29.

ACSI has recently experienced acute problems with number portability that have led to lengthy service disruptions across roughly 90 percent of ACSI's customer base. Like ACSI's other negative experiences with BellSouth's interconnection and unbundling services, these problems could potentially have a devastating impact on ACSI's service reputation in Columbus, Georgia and elsewhere. On Monday, April 21, 1997 at 10:00 a.m., BellSouth was scheduled to port four lines for an ACSI customer. At 11:15 a.m., BellSouth called to say that they could not reach the number. The problem, which proved to be a number portability problem, was resolved at approximately 12:15 p.m. The problem has since recurred at least twice.

30.

The first recurrence was on the morning of Wednesday, April 23 when ACSI was deluged with calls from across its customer base due to an outage that lasted at least an hour and a half starting at approximately 8:00 a.m. During this period, ACSI customers could make calls (as they did to ACSI), but incoming calls received a busy signal. An ACSI service representative verified

the problem in the midst of the crisis by calling all her customer numbers; she received the same busy signal on all her customer lines. Despite the fact that ACSI had given this problem high priority with BellSouth, including describing it in detail in publicly-filed testimony,² BellSouth still did not correct the problem.

31.

The second recurrence was on Thursday, May 22, 1997. At about 3:00 p.m. on May 22, ACSI began to receive trouble reports from its Columbus customers of "can't be called" and "false busies." ACSI immediately contacted BellSouth and told it to check for the same number portability problem that had caused ACSI customer crises on two prior occasions. At about 5:00 p.m., BellSouth reported that the problem had been corrected. Again, the problem affected almost the entire ACSI customer base.

32.

BellSouth has since admitted that the problem was the result of human error. ACSI conducted lengthy discussions with BellSouth concerning this issue during which BellSouth explained that the problem emanates from the Simulated Facilities Group ("SFG"), a required field in the switch translators when building remote call forwarding. This field tells the switch how many incoming paths are allowed to be ported to a particular telephone number.³ According to BellSouth, the Columbus Main IAESS switch has an upper limit of 256 SFGs per switch. In order to circumvent this limitation, BellSouth somehow reset the number of SFGs to "unlimited." According to BellSouth, on April 23, a BellSouth craft level employee reset the SFG on the Columbus Main IAESS to zero, making it impossible for ACSI customers to receive incoming

² Rebuttal Testimony of C. William Stipe III filed in Docket No. 7212-U, April 30, 1997, pp. 4-5.

³ For example, on a given three line hunt group, three incoming paths would need to be allowed on the lead number.

calls. As to the May 22 incident, the SFG was reset to 10, permitting only 10 ported numbers off of that switch. BellSouth has reportedly revised its procedures to include a second switch for overflow, added periodic inspection of the switch and provided additional training for its personnel in attempt to prevent further such occurrences.

33.

In addition to the significant problems described above affecting many of ACSI's customers, a number of customer-specific problems have also been suffered by individual ACSI customers. When these problems are combined with more global problems, such as number portability, they become a significant source of customer dissatisfaction that ultimately results in the loss of customers. A cross-section of customers experiencing these problems is presented below:

- Wendell's Hair was dropped from directory assistance following cutover on May 21, 1997. Customers calling directory assistance were informed that no listing was available for Wendell's Hair. Directory assistance for this ACSI customer was not established until early June.
- Omega Finance was an ACSI resale customer that ordered two additional lines for its hunt group. ACSI submitted the order three times: on May 9, May 12 and on May 16. BellSouth then delayed adding the two new lines by five days, finally provisioning them on May 21. A hunt group consists of a number of lines accessed by a single incoming phone number. The lines ring in sequence, past the busy lines, "hunting" for an available line. A mailbox is often provided at the end of the sequence of lines for voice messages when no line is available. When BellSouth provisioned the two new lines to the hunt group, they were assigned at the end of the hunt group, after the mailbox. Because of this arrangement, these lines were not available for incoming calls -- calls reached the mailbox prior to reaching the new lines. ACSI reported the hunting problem to BellSouth. On May 27, Omega Finance reported that the problem persisted. ACSI again contacted BellSouth and BellSouth finally corrected the problem. However, based on this experience, Omega Finance left ACSI service shortly thereafter and returned to BellSouth.
- Service to the Law Firm of Agnew, Schlam and Bennett ("ASB") was established incorrectly in a manner such that incoming collect calls were blocked. Clients calling collect received a message that the line was out-of-service. The firm could

not afford the disruption of its business and this problem therefore caused ACSI to lose the customer to BellSouth.

Problems such as these affect customers which often have multiple locations and multiple access lines. These are generally the customers with the potential to generate the greatest revenue. While ACSI is vitally concerned with retaining such high revenue customers, the satisfaction of every customer is critical to ACSI's success. ACSI cannot expand in Columbus -- a smaller market in which word of mouth means everything -- if a significant percentage of its customers experience service breakdowns.

34.

BellSouth's problems in provisioning customers for CLECs are dramatically demonstrated by ACSI's experience serving Victory Auto Parts ("VAP"). VAP received service over a total of 37 access lines at eight locations. Nine of these lines were served using unbundled loops and the remaining twenty-eight were served by resale. BellSouth initially failed to provide due dates for provisioning VAP's lines, forcing ACSI to escalate the matter with BellSouth. When BellSouth finally provisioned this customer, lines for two locations were crossed resulting in service disruption. Shortly after provisioning, the customer suffered service disruptions as a result of the BellSouth number portability problems, described above, that affected virtually all of ACSI's customers. On May 28, 1997, as a result of these combined problems, VAP attempted to return to BellSouth service. BellSouth made several unsuccessful attempts to reconnect VAP to BellSouth Service during the next week, each of which resulted in service disruption. VAP became so dissatisfied with BellSouth that VAP contacted ACSI and agreed to continue service if ACSI would intervene on its behalf with BellSouth. However, subsequent service disruptions by BellSouth caused VAP to eventually terminate ACSI service and return to BellSouth. Revenue from this customer account is more than \$16,000 annually.

The loss of business to ACSI as a result of the termination of service by Omega Finance, ASB and VAP represents a total of 48 access lines.

III. JURISDICTION

The Commission has jurisdiction to hear this complaint pursuant to the Telecommunications and Competition Development Act of 1995 ("S.B. 137), O.C.G.A. §§ 46-5-160 *et seq.*, and Commission Rule 515-2-1-.04. Specifically, O.C.G.A. § 46-5-168(a) grants the Commission jurisdiction to implement and administer the express provisions of S.B. 137. Further, the Commission has jurisdiction to resolve complaints regarding a local exchange company's service, O.C.G.A. § 46-5-168(b)(5), and jurisdiction to direct telecommunications companies to make investments and modifications necessary to enable portability. O.C.G.A. § 46-5-168(b)(10). The jurisdictional provisions of S.B. 137 also require that the Commission consider prevention of anticompetitive practices in any rulemaking under S.B. 137. O.C.G.A. § 46-5-168(d)(2).

IV. ARGUMENT

In enacting S.B. 137, the Georgia General Assembly clearly stated its finding that the public interest is best served by market based competition for telecommunications services. O.C.G.A. § 46-5-161(a)(1). BellSouth's failure to provide unbundled loops is anticompetitive and will prevent competition from flourishing in Georgia. Without access to unbundled loops, competitive providers of telecommunications services cannot provide services to customers and cannot effectively compete with the incumbent provider. Similarly, delaying access to unbundled loops, and disrupting customers' service during the transition, and thereafter damages the

competitive provider's reputation for quality of service.

38.

Part of the General Assembly's intent in enacting S.B. 137 was to protect the consumer during the transition to competitive markets. O.C.G.A. § 46-5-161(b)(2). BellSouth's failure to provide unbundled loops not only damages the competitive service provider but also directly harms the consumers. The prospect of being denied service for hours or entire days in order to change telecommunications providers will be unacceptable to many business and residential customers.

39.

BellSouth has known that it would be required to unbundle local loops since the passage of S.B. 137 by the Georgia General Assembly, which was effective July 1, 1995. BellSouth has had a year and a half to implement procedures for the unbundling of the local loop, yet the procedures to do so are clearly not formalized within BellSouth, are not tested to ensure adequate performance, and are not implemented to function as required by Georgia and Federal law. S.B. 137 states:

- (a) All local exchange companies shall permit reasonable interconnection with other certificated local exchange companies. This subsection includes all or portions of such services as needed to provide local exchange services.
...
- (d) Such interconnection services shall be provided for intrastate services on an unbundled basis similar to that required by the FCC for services under the FCC's jurisdiction.
...
- (g) The commission shall have the authority to require local exchange companies to provide additional interconnection services and unbundling.

O.C.G.A. § 46-5-164. S.B. 137 incorporates by reference the Federal unbundling standards contained in the Telecommunications Act of 1996 ("Federal Act"), signed into law on February 8,

1996. The passage of the Federal Act gave further notice to BellSouth that it must implement procedures for the unbundling of the local loop. Section 251(c)(3) of the Federal Act creates a duty on incumbent LECs such as BellSouth:

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.

40.

BellSouth has breached this duty to provide ACSI unbundled loops "in accordance with the terms and conditions of the agreement" negotiated by ACSI and BellSouth and approved by this Commission on November 8, 1996 and has thereby violated O.C.G.A. § 46-5-164(d), as well as Section 251(c)(3) of the Federal Act. BellSouth has failed to comply with several sections of the Interconnection Agreement as approved by the Commission, including but not limited to Sections IV.C, IV.D, and IV.E.

41.

BellSouth was directed to provide unbundled loops by the Commission's Interim Order in Docket Nos. 6415-U and 6537-U, signed by the Chairman and Executive Secretary on August 21, 1996. By delaying the provision of unbundled loops, or making their acquisition prohibitive to the CLFC and its customers, BellSouth has violated the express provisions of this order.

42.

The Commission has the authority to allow local exchange companies to resell services purchased from other local exchange companies. O.C.G.A. § 46-5-164(e). Section 251(c)(4) of the Federal Act imposes the duty upon incumbent local exchange companies, such as BellSouth,

to offer telecommunication services for resale. Pursuant to its authority, the Commission directed BellSouth to provide services for resale, at discount rates set by the Commission, by Order dated June 12, 1996, in Docket No. 6352-U. The delays in provisioning and service disruptions experienced by ACSI in reselling BellSouth services demonstrate that BellSouth has violated its statutory obligation to provide services for resale, as well as the Commission's order in Docket No. 6352-U, and breached its Resale Agreement with ACSI.

43.

S.B. 137 provides that "all local exchange companies shall make necessary modifications to allow portability of local numbers between different certified providers of local exchange service" O.C.G.A. § 46-5-170. The Commission is conducting proceedings under Docket No. 5840-U to assure that the goals of number portability are achieved. Number portability is intended to make switching telecommunications providers as effortless and transparent as possible for the consumer. Number portability encourages the development of competition by minimizing the impact to the consumer of switching providers. The difficulties that ACSI's customers in Columbus are experiencing in switching from BellSouth demonstrate that BellSouth has not made required modifications to assure effective interim number portability.

44.

BellSouth has additional obligations as a company that has elected alternative regulation in Georgia. BellSouth applied to the Commission for alternative regulation on July 5, 1995 in Docket No. 5946-U. Pursuant to O.C.G.A. § 46-5-169(4), a company that has elected alternative regulation "[s]hall not, either directly or through affiliated companies, engage in any anticompetitive act or practice" BellSouth is a direct competitor of ACSI for switched local exchange service customers. BellSouth has engaged in anticompetitive practices by denying

access to its essential facilities through its refusal to unbundle local loops. ACSI revenues have been diverted to BellSouth by BellSouth's anticompetitive practices. BellSouth has therefore violated O.C.G.A. § 46-5-169(4).

45.

Furthermore, pursuant to O.C.G.A. § 46-5-163(d), "[a]ny certificate of authority issued by the commission is subject to revocation, suspension, or adjustment where the commission finds upon complaint and hearing that a local exchange company has engaged in unfair competition or has abused its market position." BellSouth is the dominant monopoly provider of switched local exchange service within its service area in Columbus, Georgia. BellSouth has clearly abused its market position and engaged in unfair competition, as discussed above. BellSouth has therefore violated O.C.G.A. § 46-5-163(d).

46.

S.B. 137 prohibits any company electing alternative regulation from giving unreasonable preference or advantage to any customer. O.C.G.A. § 46-5-169(3). BellSouth's failure to provide unbundled loops for the provision of service to ACSI's customers provides an unreasonable preference against ACSI's customers, who have elected to switch service providers, in favor of those customers that elect to remain with BellSouth.

47.

While ACSI will continue to pursue its rights before the FCC, such relief will not be effective or timely in preventing damage to the development of competitive markets in Georgia, while such remedies may compensate ACSI. BellSouth's failure to provide access to unbundled loops will damage all competitive providers and consumers in Georgia. Therefore, ACSI requests that the Commission employ the fullest extent of its authority to protect competitive markets by

compelling BellSouth and other incumbent local exchange companies to provide unbundled loops in a timely and efficient manner that does not hinder the conversion of customers to competitive providers such as ACSI.

48.

ACSI's experiences in Docket No. 7212-U demonstrate that interconnection agreements and Commission orders to date do not provide a sufficient enforcement mechanism to assure that the Commission can respond to CLECs' complaints regarding BellSouth's statutory obligation to make its facilities available for local competition. In Docket No. 7212-U, ACSI requested the Commission adopt objective rules governing the provisioning of unbundled loops. On March 20, 1997, the Commission issued a Notice of Inquiry ("NOI") to obtain responses from interested parties regarding performance standards. ACSI, BellSouth and several other parties provided comments in response to the NOI. ACSI reiterates its request for performance standards rules in this complaint. The slow development of local competition in Georgia, as discussed in proceedings to consider BellSouth's entry into in-region interLATA service,⁴ demonstrates the need for such rules. Performance standards have become a major issue in those proceedings.

WHEREFORE, ACSI hereby prays that the Commission issue the following relief in response to this Complaint:

1. order BellSouth to cease and desist from its anticompetitive practices in the provision of unbundled loops;
2. order BellSouth to cease and desist from violating the Commission's Order in Docket Nos. 6352-U, 6415-U and 6537-IJ by failure to provide reasonable access to unbundled loops and services for resale;

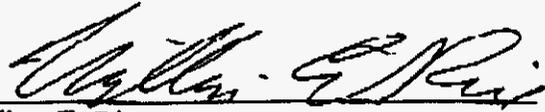
⁴ Docket Nos. 6863-U and 7253-U.

3. impose penalties on BellSouth, as provided in O.C.G.A. § 46-2-91, for violations of S.B. 137 and orders of the Commission;
4. include a discussion of this complaint in its annual report to the General Assembly, as required by O.C.G.A. § 46-5-174, on the status of the transition to alternative regulation of telecommunications services in Georgia;
5. adopt interim or permanent rules for unbundled loop provisioning, including civil penalties;
6. require BellSouth to report its current provisioning intervals for BellSouth customers and to demonstrate that competitive services are provided in parity with services provided to BellSouth customers;
7. require BellSouth to file periodic reports detailing its actual performance in providing services to CLECs;
8. require BellSouth to notify the CLEC prior to performing work on facilities serving the CLEC's customer's lines;
9. require BellSouth to establish expedite and escalate procedures for loop order processing;
10. provide for a Staff Ombudsman or Administrative Law Judge to facilitate informal mediation of CLEC disputes; and
11. issue any other relief that the Commission deems meet and proper.

This 9th day of July, 1997.

Respectfully submitted,


L. Craig Dowdy *by WSR*



William E. Rice

For LONG ALDRIDGE NORMAN LLP
One Peachtree Center
303 Peachtree Street, N.E., Suite 5300
Atlanta, Georgia 30308
(404) 527-4000

Riley M. Murphy
Executive Vice President and General Counsel
James C. Falvey
Vice President Regulatory Affairs
American Communication Services of
Columbus, Inc.
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701
(301) 617-4215

Attorneys for American Communication
Services Of Columbus, Inc.

CERTIFICATE OF SERVICE

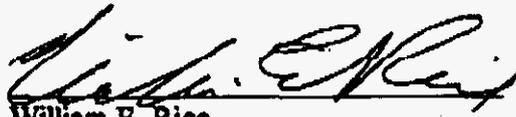
I certify that I have this day served a copy of the foregoing Complaint by American Communication Services, Inc. in Docket No. 7818-U upon the following persons by causing copies of the same to be placed in an envelope with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

Helen O'Leary
Assistant Attorney General
Counsel for the Commission Advisory Staff
40 Capitol Square, Suite 132
Atlanta, Georgia 30334

Jim Hurt, Director
Consumers' Utility Counsel
Office of Consumer Affairs
2 Martin Luther King Drive
Plaza Level East, Suite 356
Atlanta, Georgia 30334

Fred McCallum, Jr.
BellSouth Telecommunications, Inc.
Room 376
125 Perimeter Center West
Atlanta, Georgia 30346

This 9th day of July, 1997.


William E. Rice

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C. Order Processing

- C.1 ACSI shall place orders for unbundled loops (and other network elements) through completion and submission of the Service Order form specified in the FBOG. The installation time intervals which shall apply thereto are as expressed in subsection IV.D hereafter.
- C.2 Order processing for unbundled loops shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services. Automated interfaces shall be provided into a centralized operations support systems database for determining service availability on loops (e.g., ISCON), confirmation of order acceptance and ongoing order status. If made available by BellSouth to any other telecommunications carrier, automated interfaces shall be provided in a centralized operations support systems database for installation scheduling, confirmation of circuit assignments and completion confirmation.
- C.3 Particular combinations of elements, hereafter referred to as combinations, identified and described by ACSI can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order, consistent with OBF or other mutually agreed upon procedures.
- C.4 Appropriate ordering/provisioning codes will be established for each identified combination, consistent with OBF or other mutually agreed upon procedures.
- C.5 When combinations are ordered where the elements are currently interconnected and functional, those elements will remain interconnected and functional (except for the integrated SLC).
- C.6 When the open network access platform is available, BellSouth will provide ACSI with the ability to have the BellSouth end office AIN triggers initiated via an appropriate service order from ACSI.
- C.7 ACSI and BellSouth will negotiate in good faith to create a mutually acceptable standard service order/disconnect order format, consistent with OBF or other mutually agreed upon procedures.
- C.8 BellSouth shall exercise best efforts to provide ACSI with the "real time" ability to schedule installation appointments with the customer on-line and access to BellSouth's schedule availability beginning in the second calendar quarter of 1997. In the interim, BellSouth will install unbundled loops and other network elements by the Customer Desired Due Date (CDDD) where facilities permit.

C.9 When available to any other telecommunications carrier or other customer, BellSouth shall provide "real time" response for firm order confirmation, due date availability/scheduling, dispatch required or not, identify line option availability by Local Service Office (LSO) (such as digital copper, copper analog, ISDN), completion with all service order and time and cost related fees, rejections/errors on service order data element(s), jeopardies against the due date, missed appointments, additional order charges (construction charges), order status, validate street address detail, and electronic notification of the local line options that were provisioned. This applies to all types of service orders and all network elements.

C.10 The Parties will negotiate in good faith to establish expedite and escalation procedures for ordering and provisioning, including establishment of a process for ACSI to request the expedite an order on a customer's behalf.

D. Conversion of Exchange Service to Network Elements

D.1 Installation intervals must be established to ensure that service can be established via unbundled loops in an equivalent timeframe as BellSouth provides services to its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.

D.2 On each unbundled network element order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.

D.3 Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.

D.4 If the ACSI contact fails to call or is not ready within the appointed interval and if ACSI has not called to reschedule the work at least two (2) hours prior to the start of the interval, BellSouth and ACSI will reschedule the work order.

D.5 If the BellSouth contact is not available or not ready at any time during the 30-minute interval, ACSI and BellSouth will reschedule and BellSouth will waive the non-recurring charge for the unbundled elements scheduled for that interval.

- D.6 The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the ACSI collocation arrangement is 5 minutes. If BellSouth causes an Exchange Service to be out of service due solely to its failure for more than 15 minutes, BellSouth will waive the non-recurring charge for that unbundled element.
- D.7 If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of ACSI.
- D.8 If ACSI has ordered Service Provider Number Portability (SPNP) as part of an unbundled loop installation, BellSouth will coordinate implementation of SPNP with the loop installation.
- D.9 The conversion/installation time intervals which shall apply to unbundled loops and other network elements shall be as expressed herein.

E. Service Quality

- E.1 At a minimum, the service quality of leased network elements should match that of BellSouth's own elements and conform to all Bellcore and ANSI requirements applicable to the type of service being provided. In addition, BellSouth will provide maintenance services on network elements purchased by ACSI which are timely, consistent and at parity with that provided when such elements are used for its own purposes.
- E.2 Maintenance support shall be available 7 days a week, 24 hours a day. Provisioning support shall be available at the same times at which BellSouth installs its own bundled local exchange services.
- E.3 Installation and service intervals shall be the same as when BellSouth provisions such network elements for use by itself, its affiliates or its own retail customers.
- E.4 In facility and power outage situations, BellSouth agrees to provide network elements leased by ACSI the same priority for maintenance and restoration as similar elements used by BellSouth for itself or its affiliates.
- E.5 The Parties agree that all interconnection arrangements and services will at a minimum be subject to technical standards which are equal to those that BellSouth affords to itself, other LECs or other telecommunications carriers. This must, at a minimum, include parity in:

- Port features
- Treatment during overflow/congestion conditions
- Equipment/Interface protection
- Power redundancy
- Sufficient spare facilities to ensure provisioning, repair, performance and availability
- Mediation functions
- Standard interfaces
- Real time control over switch traffic parameters
- Real time access to integrated test functionality
- Real time access to performance monitoring and alarm data

F. Network Information Exchange

- F.1 BellSouth shall provide ACSI with information sufficient to determine an end user's existing service and feature configurations.
- F.2 BellSouth agrees to provide ACSI with all necessary engineering information regarding all unbundled network elements and combinations thereof, including information normally provided on records such as the detailed design layout records (DLR) for unbundled loops and circuits.
- F.3 BellSouth shall provide information to ACSI on a continuing basis required to keep ACSI apprised of engineering changes associated with BellSouth's network elements and its deployment of new technologies.
- F.4 BellSouth shall provide ACSI with a detailed description of the criteria and procedures used for handling facility and power outages.
- F.5 Where permitted by law, BellSouth will make available to ACSI electronic (magnetic tape and/or diskette) and hard copies of its Master Street Address Guide (MSAG), and any regular updates thereof.
- F.6 BellSouth will provide ACSI with access to a listing and description of all services and features available down to street address detail, including: Type of Class 5 switch by CLLI, line features availability by LSQ, and service availability by LSQ, as well as the data elements required by BellSouth to provision all such services and features.

G. Maintenance and Trouble Resolution

- G.1 BellSouth shall provide automated interfaces to ACSI for field dispatch scheduling, status of repairs and confirmation of repair completion. The mean time to repair unbundled loops shall be equivalent to the mean time to repair reported by BellSouth for its retail customers.

RILEY MURPHY DIRECT TESTIMONY

EXHIBIT NO. 2

DUPLICATE

EXHIBIT NO. _____ (ACSI-2)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
AMERICAN COMMUNICATIONS SERVICES, INC.)	
Complainant)	FCC File No. E-97-____
)	
v.)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
Defendant)	

FORMAL COMPLAINT

American Communication Services, Inc. ("ACSI"), by its undersigned counsel and pursuant to 47 U.S.C. § 208, hereby files this complaint against BellSouth Telecommunications, Inc. ("BellSouth") and as grounds therefor states as follows:

I. PRELIMINARY

1. Federal and State laws intended to promote competition in the telecommunications industry require incumbent local exchange companies, such as BellSouth, to provide nondiscriminatory access to unbundled loops. ACSI, through its local exchange operating subsidiaries, is one of the earliest providers of competitive switched service in a number of states, and is the first competitor to request a significant number of unbundled loops from

BellSouth. ACSI has submitted over 130 orders for unbundled loops, most of which remain pending with BellSouth. On the handful of orders fulfilled thus far, ACSI has experienced unwarranted and unexplained delays in receiving unbundled loops and number portability from BellSouth and unreasonable service interruptions in switching customers to those loops. BellSouth's approach to unbundling indicates that the company either does not understand the provisions of the approved interconnection agreement it negotiated with ACSI, or that it does not intend to comply with such agreement. This failure to provide unbundled loops jeopardizes the ability of competitive service providers to attract and retain customers and, therefore, threatens the development of competitive markets in the BellSouth territory. Immediate action is required by the Commission in order to avoid irreparable harm to ACSI and these emerging competitive markets.

II. STATEMENT OF FACTS

2. ACSI, through its operating subsidiaries, is a competitive local exchange carrier certificated to provide dedicated local exchange service in 14 states and switched local exchange service in 11 states. ACSI is certificated to provide switched local exchange service in a number of states in the BellSouth region, including the state of Georgia. ACSI operates a total of 20 fiber optic networks throughout the South and Southwestern United States and has 30 such networks under construction.

3. BellSouth is a Regional Bell Operating Company that provides switched local exchange and other telecommunications services in nine Southern states. It is an incumbent

local exchange carrier as defined in 47 U.S.C. § 251(h). BellSouth is the incumbent provider of switched local exchange service in most ACSI operating territories in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

4. ACSI's first operational fiber optic network providing switched local exchange services is located in Columbus, Georgia, a location within BellSouth's local exchange operating territory.

5. On July 25, 1996, ACSI and BellSouth entered into an Interconnection Agreement ("Interconnection Agreement"). The Interconnection Agreement, which is appended at Exhibit A, set forth the terms and conditions for BellSouth's provision of interconnection, unbundled network elements, and local traffic exchange services, and expressly acknowledged that certain pricing issues would be submitted for arbitration before the state PUCs. In August 1996, ACSI filed petitions for arbitration with several state Commissions in the BellSouth region, requesting these Commissions to resolve certain unbundling and pricing issues.

6. Prior to the conclusion of these arbitrations, however, ACSI and BellSouth reached an agreed-upon settlement of these pricing issues. On October 17, 1996, ACSI and BellSouth signed an Amendment ("Amendment") to the Interconnection Agreement, which negotiated a resolution to all of the outstanding issues raised in the arbitrations. The Amendment is appended as Exhibit B.

7. The Interconnection Agreement between ACSI and BellSouth, including the Amendment, has been approved by the Georgia Public Service Commission and other commissions in BellSouth states pursuant to Section 252(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 252(e)(1).

The Interconnection Agreement provides specific detail regarding BellSouth's obligation to provide unbundled loops (Section IV), including Order Processing (Section IV.C.), Conversion of Exchange Service to Network Elements (Section IV.D.), and Service Quality (Section IV.E.). These provisions require, *inter alia*, that:

- BellSouth provide mechanized order processing procedures substantially similar to current procedures for the ordering of special access services (Sect. IV.C.2);
- BellSouth install unbundled network elements in a timeframe equivalent to that which BellSouth provides for its own local exchange services (Sect. IV.D.1);
- BellSouth establish a seamless customer switching process in which ACSI and BellSouth will agree to a cut-over time 48 hours in advance, the conversion will occur within a designated 30 minute window, and service to the customer will be interrupted for no longer than 5 minutes (Sect. IV.D.2, D.3, D.6); and
- BellSouth coordinate implementation of Service Provider Number Portability (SPNP) to coincide with loop installation (Sect. IV.D.8).

9. On November 19 and 20, 1996, ACSI placed its first three orders for unbundled loops in Columbus, Georgia, requesting cutover of the customers to ACSI service on November 27, 1996.¹ All three customers involved conversion of a single Plain Old

¹ ACSI's initial loop orders, and the events subsequent to those orders are described in the Declaration of ACSI Vice President, Network Service and Administration, Brenda Renner. See Exhibit C.

Telephone Service ("POTS") line, the simplest possible cutover. Each of the three orders included an order for SPNP.

10. ACSI submitted each of these orders in accordance with the process established in the Interconnection Agreement. These orders were confirmed by BellSouth on November 25 and 26.

11. BellSouth's processing of each of these three orders completely failed to comply with the cutover standards required by Section IV.D of the Interconnection Agreement. In general, the processing of these orders was not coordinated between ACSI and BellSouth, as the Interconnection Agreement contemplated, because BellSouth unilaterally administered the cutover without contacting ACSI. Moreover, as described below, BellSouth failed to install properly the unbundled loops ACSI requested, and caused severe disruptions in service to local exchange customers that had selected ACSI as their carrier.

12. Two of ACSI's initial three customers were disconnected entirely for several hours. No outgoing calls could be placed, and customers calling the number received an intercept message indicating that the number no longer was in service. Service was disconnected for these two customers for 4-5 hours each, or approximately 50 to 60 times longer than permitted under the Interconnection Agreement.

13. Even after the improper disconnection was remedied and the intercept message was removed for these two customers, BellSouth failed to implement SPNP as ordered by ACSI,

causing further delay and disruption to ACSI's new customers. As a result, these customers could not receive any incoming calls on their lines. BellSouth's failure to implement SPNP in a timely manner violated its duty under the Interconnection Agreement to "coordinate implementation of SPNP with the loop installation." Section IV.D.8.

14. As to the third customer, his service was completely disconnected for the entire day of Wednesday, November 27, 1996.

15. As a result of BellSouth's complete failure to implement these orders, ACSI decided that it could not afford further damage to its customers' service availability, nor to ACSI's reputation, as a result of further service outages and attenuated cutovers. ACSI cannot market its local exchange services if potential customers will lose service for periods of 4 to 24 hours each time an order is placed, and if there is no assurance that customers will receive incoming calls through number portability. Therefore, ACSI informed BellSouth on Wednesday, December 4, 1996, to immediately place all orders on hold until these serious order processing and cutover problems could be resolved. After ACSI's request to put further orders on hold, however, BellSouth nonetheless disconnected three customers with pending ACSI orders, resulting in severe service impacts for these customers and further damage to ACSI's reputation.

16. Since December 4, 1996, ACSI has been unable to obtain any significant quantity of unbundled loops from BellSouth because BellSouth has not implemented procedures to ensure that ACSI customers do not experience severe service disruption. As of the date of

this Complaint, ACSI has submitted orders for 131 unbundled loops in Columbus, Georgia, and approximately 100 of those remain to be cut-over.

17. Since the November 27 service disruptions, ACSI has attempted to resolve these problems with BellSouth. ACSI held a conference call with BellSouth on December 4, 1996, in order to inform BellSouth of the problems and to discuss possible solutions to them. On December 11, 1996, Riley Murphy, General Counsel for ACSI, sent a letter to Richard Teel, Vice President, Regulatory for BellSouth, confirming in writing the problems encountered. A copy of Ms. Murphy's letter is attached hereto marked as Exhibit D. On December 17, 1996, Mr. Teel responded to Ms. Murphy's letter, assuring her that BellSouth was working to fix the problems ACSI had detailed. A copy of Mr. Teel's letter is attached hereto marked as Exhibit E. However, as demonstrated in the letter dated December 18, 1996 from James Falvey, Vice President - Regulatory Affairs for ACSI, to Jerry Hendrix of BellSouth, virtually all of these issues remain unresolved. A copy of Mr. Falvey's letter is attached hereto marked Exhibit F. Mr. Hendrix responded to Mr. Falvey's letter, on December 19, 1996, summarizing the time frames in which BellSouth will endeavor to provide ACSI with firm order confirmation and to coordinate a cutover of a BellSouth customer to ACSI after receiving a good order. A copy of Mr. Hendrix's letter is attached hereto marked Exhibit G.

18. In short, BellSouth's very recent attempts to correct its loop installation failures have fallen far short of ACSI's expectations. ACSI would have expected to have had all of its backlogged access lines cut over by this time; instead, it has only 30 lines cut over to

ACSI customers. Until ACSI has succeeded in cutting over all of its lines, ACSI revenues will continue to be diverted to BellSouth.

19. The problems ACSI has encountered are systemic and appear to be the result of an unwillingness by BellSouth to comply with its obligations under the Interconnection Agreement it reached with ACSI and under the 1996 Act. For example, a BellSouth Executive Vice President, Ann Andrews, informed ACSI on the December 4 conference call that BellSouth will not provide basic provisioning functions (such as order status, jeopardies against the due date, etc.) that are routinely provided to special access customers. Ms. Andrews stated that these functions would not be performed because they are not performed for BellSouth end users. BellSouth made similar statements in a December 11, 1996 conference call with Mary Jo Peed and Jerry Hendrix. These statements are in direct contravention of Section IV.C.2 of the Interconnection Agreement which ensures similar order processing to that currently used for special access services. While other BellSouth personnel have recently stated that ACSI is entitled to order processing similar to special access, ACSI has not yet received operational confirmation that it will enjoy such provisioning.

20. Since late November 1996, BellSouth has succeeded in cutting over a small number customers to ACSI without significant disruption. However, BellSouth has demonstrated no capability of ongoing performance, has failed to cut over the vast majority of ACSI's backlogged access lines, and has not shown that the factors that led to the earlier difficulties have been corrected. Rather, ACSI has every indication that BellSouth still has not put

systems into place for provisioning unbundled loops that should have been in place months (if not over one year) ago. ACSI has no reason to expect that BellSouth will be able to cut over scores of customers a day once ACSI's services establish even a modest foothold in Georgia and other BellSouth states.

In addition to causing damage to ACSI's reputation as a provider of high quality telecommunications services, BellSouth has directly caused ACSI to lose the revenues associated with its planned unbundled loop orders. As a result of BellSouth's failure to implement the procedures agreed upon in the Interconnection Agreement, BellSouth is retaining customers that have signed up for ACSI service.

22. Each day of additional delay jeopardizes ACSI's ability to retain the customers it has currently signed up for service and its ability to attract additional customers. Moreover, by occupying ACSI personnel, BellSouth's failure to provision ACSI's unbundled loops has delayed the rollout of ACSI switched local exchange service in other markets.

III. JURISDICTION

23. As detailed below, BellSouth's behavior violates Sections 251 and 252 of the Communications Act of 1934, as amended. Accordingly, the Commission has jurisdiction over ACSI's Formal Complaint pursuant to Section 208(a) of the Act. 47 U.S.C. § 208(a). See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, FCC 96-325, § 127 (1996).

IV. CLAIMS

CLAIM ONE

BELLSOUTH HAS FAILED TO NEGOTIATE IN GOOD FAITH

24. ACSI incorporates herein by reference thereto paragraphs 1 to 23 of this Formal Complaint as though fully set forth in this paragraph.

25. Section 251(c)(1) of the Act imposes upon BellSouth the duty to negotiate agreements for interconnection and unbundled network elements in good faith with other telecommunications carriers. 47 U.S.C. § 251(c)(1).

26. At the time BellSouth negotiated and executed its Interconnection Agreement with ACSI, it knew or should have known that it could not provision unbundled loops with ACSI in compliance with the negotiated terms and conditions of the Interconnection Agreement. ACSI negotiated the Interconnection Agreement in good faith reliance upon BellSouth's representations of the terms and conditions under which it would provision unbundled loops.

27. BellSouth's negotiation of an agreement to terms and conditions that it knew it could not meet was negotiation in bad faith in violation of Section 251(c)(1) of the Act and damaged ACSI, which relied upon BellSouth's ability to meet such terms and conditions.

CLAIM TWO

**BELLSOUTH HAS FAILED TO
PROVIDE INTERCONNECTION
TO ACSI EQUAL TO THAT
PROVIDED BY BELLSOUTH TO ITSELF**

28. ACSI incorporates herein by reference thereto paragraphs 1 to 23 of the Formal Complaint as though fully set forth in this paragraph.

29. Section 251(c)(2) of the Act requires incumbent local exchange carriers such as BellSouth to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with its network for the transmission and routing of telephone exchange services, "that is at least equal in quality to that provided by the local exchange carrier to itself."

30. To date, a significant percentage of ACSI's customers for whom ACSI has ordered BellSouth unbundled loops (to be interconnected with ACSI's facilities and equipment for the transmission and routing of telephone exchange service) have experienced serious service outages and delays.

31. These service outages and delays have resulted in ACSI's interconnection with BellSouth to be of a quality inferior to that provided by BellSouth to itself.

32. Such inferior interconnection violates Section 251(c)(2) of the Act and has impeded competition in the BellSouth market, harmed ACSI's customers, and caused ACSI damage.

CLAIM THREE

**BELLSOUTH HAS FAILED TO PROVIDE
INTERCONNECTION TO ACSI IN ACCORDANCE
WITH THE TERMS AND CONDITIONS OF THE
BELLSOUTH-ACSI INTERCONNECTION AGREEMENT**

33. ACSI incorporates herein by reference hereto paragraphs 1 to 23 of this Formal Complaint as though fully set forth in this paragraph.

34. Section 251(c)(2)(D) of the Act requires incumbent local exchange carriers to provide interconnection to other carriers "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory and in accordance with the terms and conditions of [an interconnection] agreement" approved under Section 252 of the Act. 47 U.S.C. § 251(c)(2)(D).

35. The Interconnection Agreement sets forth terms and conditions under which BellSouth is to provide interconnection to ACSI's facilities and equipment.

36. BellSouth has refused or failed to provide interconnection to ACSI pursuant to just and reasonable terms and conditions, or in accordance with the terms and conditions in the Interconnection Agreement.

37. BellSouth's refusal and failure is a violation of Section 251(c)(2)(D) of the Act and has impeded competition in BellSouth's territory, has harmed ACSI's customers, and has caused ACSI's damages.

CLAIM FOUR

BELLSOUTH HAS FAILED TO PROVIDE ACSI WITH UNBUNDLED LOOPS AS REQUIRED BY THE 1996 ACT

38. ACSI incorporates herein by reference thereto paragraphs 1 to 23 of this Formal Complaint as though fully set forth in this paragraph.

39. Section 251(c)(3) requires BellSouth to provide to ACSI nondiscriminatory access to unbundled network elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the Interconnection Agreement. 47 U.S.C. § 251(c)(3).

40. BellSouth has refused or failed to provide access to ACSI to unbundled loop network elements on terms and conditions that are just and reasonable or are in accordance with the Interconnection Agreement.

41. BellSouth's refusal and failure is in violation of Section 251(c)(3) of the Act and has impeded competition in BellSouth's territory, has harmed ACSI's customers, and has caused ACSI damage.

V. DAMAGES

42. ACSI reserves its right, pursuant to Section 1.722(h) of the FCC's Rules, to request the award of damages upon a supplemental complaint based upon a finding of liability against

BellSouth in this proceeding. ACSI hereby requests the recovery of damages, although, to the extent BellSouth's actions are ongoing, the full amount is currently unknown.

VI. OTHER ACTIONS

43. ACSI filed an action based upon the transactions alleged herein under state and federal law stating similar causes of action before the Georgia Public Service Commission on October 23, 1996. The Georgia Public Service Commission complaint, however, does not request an award for damages. No other suits have been filed before any other governmental agency or court stating the same or similar causes of action.

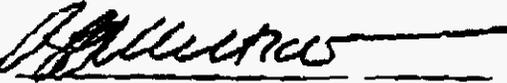
VII. PRAYER FOR RELIEF

WHEREFORE, ACSI requests the FCC to issue an Order

1. Finding BellSouth's behavior described herein to constitute (a) bad faith negotiation in violation of Section 252(c)(1); (b) the failure to provide interconnection in accordance with Section 252(c)(2); and (c) the failure to provide access to unbundled loops in accordance with Section 252(c)(3),
2. Directing BellSouth to provision unbundled loops in accordance with the Interconnection Agreement,
3. Requiring BellSouth to compensate ACSI for the damages ACSI has suffered from BellSouth's violations of Sections 251(c)(1)-(3) and the Interconnection Agreement,
4. Requiring BellSouth to compensate ACSI for its attorney's fees, costs, and expenses in prosecuting this matter, and
5. Granting such other relief as the FCC deems just and proper.

Respectfully submitted,

AMERICAN COMMUNICATIONS
SERVICES, INC.

By 

Riley M. Murphy
James C. Falvey
AMERICAN COMMUNICATIONS
SERVICES, INC.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701
301-617-4215

Brad E. Mutschelknaus
Edward A. Yorkgitis, Jr.
Steven A. Augustino
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036
202-955-9600

Its Attorneys

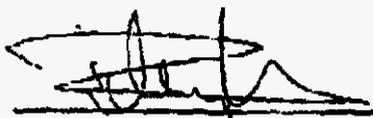
January 6, 1997

VERIFICATION

I, Riley M. Murphy, declare under penalty of perjury that the following is true and correct:

1. That I am the Executive Vice President of Legal and Regulatory Affairs, General Counsel and Secretary of American Communications Services, Inc.
2. That I have carefully read the foregoing "Formal Complaint," that I have personal knowledge of the matters discussed therein, and with the exception of those matters that are subject to judicial notice on the part of the Commission, find that the facts and representations stated therein are true and accurate to the best of my knowledge and belief.

Signed:



Riley M. Murphy

Dated:

1/2/97

RILEY MURPHY DIRECT TESTIMONY

EXHIBIT NO. 3

DUPLICATE

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**AMERICAN COMMUNICATIONS
SERVICES, INC.
131 National Business Pkwy.
Suite 100
Annapolis Junction, MD 20701
(301) 617-4200**

Complainant,

v.

**BELLSOUTH TELECOMMUNICATIONS, INC.)
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 614-4904**

Defendant.

File No. E-

**To: The Common Carrier Bureau
Enforcement Division
Formal Complaints and Investigations Branch**

FORMAL COMPLAINT

American Communications Services, Inc. ("ACSI"), by and through its attorneys, and pursuant to Section 208(a) of the Communications Act of 1934, as amended, (the "Act") and Section 1.720 of the Federal Communications Commission's

Rules, brings this Formal Complaint against BellSouth Telecommunications, Inc. ("BellSouth").

INTRODUCTION

This complaint challenges BellSouth's unjust, unreasonable, discriminatory, and anticompetitive application of nonrecurring reconfiguration charges ("RNRCs") to access channel termination location moves ("ACTL moves"). BellSouth routinely imposes grossly excessive RNRCs on customers attempting to make an ACTL move, *i.e.*, switch from BellSouth and purchase ACSI's direct trunked transport ("DTT") access services.

The manner in which BellSouth applies these RNRCs is inconsistent with the terms of BellSouth's own access tariff in contravention of Section 203 of the Act. Moreover, in violation of Section 201(b) of the Act and the Commission's expanded interconnection rules and orders, these RNRCs bear no reasonable relation to the underlying costs incurred by BellSouth in accommodating an ACTL move. The unreasonably high RNRCs unfairly penalize customers that, in the nascent access transport marketplace, desire to replace BellSouth-provided DTT access with DTT access services offered by collocated competitive access providers ("CAPs"), such as ACSI, and thus impede the development of competition. In addition, and exacerbating this situation, BellSouth's RNRCs in some situations discriminate unreasonably between customers that reconfigure on BellSouth's own network and those that switch from BellSouth to CAPs, thereby violating Section 202(a) of the Act. BellSouth's practices

have caused and continue to cause significant harm to ACSI by effectively foreclosing it from obtaining business from existing BellSouth customers that are reconfiguring their access transport facilities.

PARTIES

1. Plaintiff ACSI is a Delaware corporation with its principal place of business located at 131 National Business Pkwy., Suite 100, Annapolis Junction, MD 20701.

2. ACSI -- a so-called competitive access provider -- is engaged in the business of providing competitive access services to carriers and end-user customers located primarily in the southern and southwestern regions of the United States. ACSI, through its subsidiaries, currently operates nine fiber access networks in six states, including Kentucky (Louisville), Alabama (Mobile and Montgomery), and South Carolina (Columbia and Greenville) in the BellSouth region. Construction of additional networks is underway in Birmingham, Alabama; Lexington, Kentucky; Columbus, Georgia; Jackson, Mississippi; and Charleston and Spartanburg, South Carolina. ACSI offers services both directly to customers and by means of collocating and interconnecting with local exchange telephone companies ("LECs") such as BellSouth.

3. BellSouth is a New York corporation with its principal place of business located at 4300 Southern Bell Center, 675 West Peachtree Street, N.E., Atlanta, Georgia 30375.

4. BellSouth is the dominant LEC in the southeastern United States, serving the substantial majority of end-user and access customer traffic in nine states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

FACTS

5. Interstate access occurs on both the originating and terminating ends of an interstate call. In its simplest terms, "originating access" consists of the originating LEC, *i.e.*, the LEC serving the subscriber's line from which the call originates, delivering the call from the end office serving the caller to the facilities of the interstate long-distance carrier that will carry the call to its destination. "Terminating access" is simply the termination of an interstate call by the LEC serving the called party, *i.e.*, the carriage of the call from the long-distance carrier's facilities to the end office serving the called party.

6. Interstate access may be "special" or "switched." Through "special access" the originating or terminating traffic of high volume users is delivered directly (*i.e.*, without LEC switching) to or from the customer's premises to the end office (*i.e.*, the serving wire center ("SWC")) closest to the IXC's "point of presence" over dedicated, *i.e.*, DTT, circuits.

7. "Switched access" uses LEC transport facilities that are not dedicated to the traffic of a single end-user. Rather, the traffic of multiple end-users is aggregated at the LEC's central office and tandem switches and transported to the SWC, or from

the SWC to the LEC tandem switches and central office. The traffic that is being delivered to or from a particular IXC over switched access between the end-office serving the end-user and the SWC serving the IXC's point of presence may be aggregated on facilities with that of other IXCs, so-called "tandem switched transport," or may be carried on facilities dedicated to the transport of a single IXC's traffic.

8. Until the 1990's, LECs faced little or no competition in providing the local access facilities and services used in the provision of interstate telecommunications. Recent technological and regulatory changes have facilitated the development of competition in the provision of interstate special and switched access services. Several years after fiber optic-based CAPs began to offer access services to larger business customers in the central business districts of a number of major cities, the FCC adopted rules and policies to expand the ability of CAPs to interconnect with LEC end office facilities and to enlarge the universe of interstate access customers that the CAPs could service. A principal purpose of the FCC's *Expanded Interconnection* orders was to encourage local access competition by ensuring competitively neutral interconnection practices by the LECs.¹

¹ See *Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Red 7369, 7465 (1992), (requiring nonrecurring reconfiguration charges to be applied in neutral manner for special access services), vacated in part and remanded sub nom., *Bell Atlantic Telephone Company v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994) on remand, *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Red 5154 (1994) ("Expanded Interconnection Remand Order"), appeal docketed sub nom., *Southwestern Bell Telephone Corp. v. FCC*, Case No. 94-1547 (D.C. Cir. Aug. 10, 1994); *Expanded Interconnection with Local Telephone Company Facilities*, Second Report and Order (continued...)

9. ACSI has constructed local fiber networks in selected markets that enable it to establish expanded interconnection arrangements with BellSouth in order to provide dedicated transport access services, both switched and special, in competition with BellSouth.

10. When an access customer of BellSouth wishes to reconfigure existing access facilities to take access from an interconnector or CAP, such as ACSI, the reconfiguration involves a change in the access channel termination location ("ACTL"). Such ACTL moves are referred to by BellSouth in its tariff simply as a "move." BellSouth charges the customer nonrecurring reconfiguration charges for the ACTL move. See BellSouth Tariff F.C.C. No. 1, §§ 6.7.7(B) and 7.4.5(B), attached hereto as part of Exhibit A. BellSouth considers all reconfigurations by its customers with a CAP as a change in customer location, warranting the imposition of RNRCs, even if the CAP is collocated in the BellSouth office currently serving the customer. The unjust, unreasonable, and discriminatory manner in which these charges are applied and the failure of these charges to reflect costs, as required by the FCC's orders, constitute the heart of ACSI's Complaint.

¹(...continued)
and Third Notice of Proposed Rulemaking, 8 FCC Red 7374, 7438 (1993) ("Switched Access Second Report and Order"), *per. for review pending sub nom. Bell Atlantic v. FCC*, No. 93-1743 (D.C. Cir., Filed Nov. 12, 1993) (citing *Expanded Interconnection with Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Red 7341, 7362 (1993) ("Special Access Second Reconsideration Order")) (requiring same neutrality to be applied to expanded interconnection for switched transport).

11. The Commission has recognized that RNRCs "raise special competitive concerns."² Indeed, so concerned was the Commission that the LECs might frustrate the introduction of competition through expanded interconnection by the levels at which RNRCs were set and how they were applied, that the FCC withheld the presumption of lawfulness generally accorded to within-band, within-cap rates under the price cap rules.³

12. In its *Expanded Interconnection* proceedings, the Commission announced clear directives designed to prevent RNRCs from being manipulated to erect "serious barrier[s] to entry."⁴ Specifically, in order to ensure that RNRCs are just, reasonable, and nondiscriminatory under the Communications Act, the FCC specified that

all nonrecurring reconfiguration charges paid by interconnectors or their customers must be set no higher than cost-based levels. In addition, the difference between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be cost-based.⁵

² *Expanded Interconnection Remand Order*, 9 FCC Rcd 5154, 5210.

³ *Id.*, affirming *Special Access Second Reconsideration Order*, 8 FCC Rcd at 7362 (explaining that withholding the presumption of lawfulness to NRCs "will permit [the FCC] greater ability to review the reasonableness of, and any differential between, the charges assessed on customers reconfiguring their service with the LEC and those taking advantage of service using an expanded interconnection arrangement").

⁴ *Switched Access Second Report and Order*, 8 FCC Rcd at 7438.

⁵ *Id.* at 7439 (citing *Special Access Second Reconsideration Order*, 8 FCC Rcd at 7362). The *Special Access Second Reconsideration Order* stressed that "[nonrecurring reconfiguration] charges are to reflect only the costs incurred for the particular type of reconfiguration being implemented." *Id.*

13. Moreover, while the Commission noted that "[t]he LECs incur legitimate costs in making service changes, and in general should be able to recover these costs from interconnectors and their customers," the FCC also emphasized that

(there is an) exception . . . when the LEC does not recover non-recurring reconfiguration costs from its own special access or switched transport customers. In that case, the LEC must not charge customers who reconfigure in order to take service from an interconnector more than an amount reflecting the difference between the costs of the two different types of reconfigurations.⁶

14. In short, if BellSouth offers waivers of RNRCs to any of its customers that reconfigure while remaining with BellSouth, the RNRCs charged to customers that switch to interconnectors must reflect *only the differences* in the costs of the two different types of reconfiguration.

15. BellSouth has tariffed distinct RNRCs that apply to reconfigurations, and reflect the capacity of the dedicated transport circuits that are redirected: DS0, DS1, and DS3. DS1 circuits have 24 times the capacity of a DS0 circuit. DS3 circuits have 28 times the capacity of a DS1 circuit and 672 times the capacity of a DS0 circuit. The BellSouth tariffs establish two rates for each type of circuit that is reconfigured in addition to a cross-connect charge: (1) a "per customer request" rate for any number of circuits of a given type that are reconfigured and (2) a "per circuit reconfigured" charge for each circuit of a given type that is reconfigured. See §§ 6.8.8(J) and 7.5.17 of BellSouth's Tariff FCC No. 1 for the RNRCs for ACTL moves, attached hereto as part of Exhibit A.

⁶ *Expanded Interconnection Remand Order*, 9 FCC Red 5154, ¶ 212 (emphases added).

16. Since launching its competitive access networks in 1994, ACSI's business has been harmed by BellSouth's failure to apply RNRCs for ACTL moves in the fashion provided for in its tariff. Moreover, BellSouth's RNRCs for ACTL moves are unjust and unreasonable because, upon information and belief, they do not reflect BellSouth's costs of accommodating the reconfiguration. In addition, upon information and belief, BellSouth's RNRCs are discriminatory. In some cases, BellSouth charges customers that reconfigure with BellSouth RNRCs but calculates them in a manner much different than that used when a customer moves to a CAP. In other cases, BellSouth actually waives some or all RNRCs for customers reconfiguring with BellSouth or a CAP, but not with other CAPs. In each of these situations, the RNRCs BellSouth imposes on customers choosing to reconfigure with ACSI do not reflect the cost differences between such reconfigurations and reconfiguration with BellSouth (or with another CAP), as the FCC and the Act require.

COUNT I

(Violation of Section 203 of the Communications Act by
Failing to Apply RNRCs as Specified in Its Own Tariff)

17. ACSI repeats and incorporates herein the allegations made in paragraphs 1 through 16 of this Complaint.

18. Section 203(a) of the Act requires that every carrier, except connecting carriers, file schedules

showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the

system of its connecting carriers or points on the system of any other carrier subject to this Act [47 U.S.C. §§ 151 et seq.] when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges.

47 U.S.C. § 203(a) (emphasis added).

19. BellSouth has violated Section 203(a) by not publishing in its Tariff FCC No. 1 all of the practices and regulations affecting the charges for ACTL moves by customers rearranging access service with a CAP.

20. Section 203(c) of the Act further requires that a carrier shall not charge, demand, collect, or receive a greater or less or different compensation from that specified in its tariff. 47 U.S.C. §203(c).

21. BellSouth has violated Section 203(c) by charging, demanding, collecting and receiving greater compensation than that specified in its Tariff F.C.C. No. 1 for RNRCs applicable to customers that request ACTL moves so that they may obtain their access service from a CAP.

22. The rate regulations in BellSouth's Tariff F.C.C. No. 1 provide that, in the case of an ACTL move, "service reconfiguration charges are applicable per customer request and circuits moved as contained in 6.8.8. following." See Exhibit A, BellSouth Tariff F.C.C. No. 1, § 6.7.7(B) (emphasis added). See also *id.*, § 7.4.5(B). Thus, if an ACTL move involves the reconfiguration of a switched access DTT DS3 circuit, then the "per request" and "per circuit" charge for DS3s should be applied.

23. However, BellSouth is in fact charging, demanding, collecting, and receiving multiple DS1 RNRCs and DS0 RNRCs in addition to a DS3 RNRC when an

IXC customer redirects a DS3 circuit to a CAP's collocated facilities. This practice was explained to ACSI in BellSouth's response to an ACSI inquiry. See Letter from Bill French to Scott Layman, dated July 14, 1995, attached as Exhibit 1 to the Affidavit of Scott Layman, which is attached hereto as Exhibit B.

24. As explained in the letter from Mr. French, the number of DS0 or voice grade RNRCs BellSouth applies in calculating the total RNRC depends upon the capacity and utilization of the circuits the customer reconfigures. If the customer reconfigures a DS3 with a CAP, then up to 672 DS0 RNRCs and 28 DS1 RNRCs could be imposed in addition to one DS3 RNRC and the cross-connect charge. Upon information and belief, up to twenty-four voice grade RNRCs, plus one "per request" and one "per circuit" DS1 RNRC and the cross-connect charge, would be imposed by BellSouth if the customer reconfigures a DS1 circuit with a CAP. Exhibit B, ¶ 4.

25. Thus, when a customer reconfigures with a CAP, BellSouth is imposing multiple RNRCs per circuit in a manner which is *not* described in the rate regulations of its tariff on file with the FCC. *Id.*, ¶ 7.

26. At the very least, the BellSouth tariff is ambiguous about how the RNRCs are applied. Provisions in BellSouth's tariffs that are ambiguous must be construed against BellSouth consistent with well-settled principles of tariff

construction.⁷ Thus, BellSouth may not charge RNRCs in excess of the RNRC for the actual circuit being reconfigured, *i.e.*, DS3 or DS1 in the case of an ACTL move.

27. A single switched access DS3 RNRC applicable to ACTL moves is \$240.90 under a plain reading of BellSouth's currently effective tariff. As illustrated in Mr. French's letter, if BellSouth applies RNRCs at the DS0 and DS1 levels for moving a fully utilized DS3, the cost becomes \$9,900.90 -- an increase of over 4000%. A single special access DS3 RNRC applicable to ACTL moves is \$151.90, *i.e.*, the cross-connect charge, under BellSouth's currently effective tariff. As explained in the French Letter, if RNRCs are applied at the DS0 and DS1 levels for moving a fully utilized DS3, the total RNRC becomes \$16,531.90 -- an increase of over 10,000%. A DS1 special access reconfiguration, calculated as per paragraph 24, would be \$788.90. See Exhibit B, ¶¶ 5-6. The level of these charges when multiple DS0 and DS1 RNRCs are included -- which calculation is *not* set out clearly in BellSouth's tariff -- imposes a significant disincentive on IXCs or other large customers that desire to reconfigure with ACSI for DTT access. Thus, ACSI has been severely hindered in its ability to sell its services by this regulation and practice which is not set forth in BellSouth's tariff. *Id.*, ¶¶ 7-8.

⁷ See, *e.g.*, AT&T Communications, 10 F.C.C. Rcd. 1664, 1665 (1995); American Satellite Corporation v. MCI Telecommunications Corporation, 57 F.C.C. 2d 1165, 1167 (1976, *citing* United States v. Gulf Refining Co., 268 U.S. 542 (1925) ("It is well settled that where there is an ambiguity, uncertainty, or reasonable doubt as to which of two constructions should prevail in a tariff schedule, the ambiguity should be resolved against the maker of the tariff and in favor of the customer.")).

28. BellSouth's calculations of RNRCs for ACTL moves constitutes a violation of Section 203(c) of the Act. These actions have harmed ACSI by: a) foreclosing ACSI from profitable business opportunities with existing BellSouth customers that are reconfiguring their entrance facilities, and b) increasing ACSI's costs and reducing or eliminating the profitability to ACSI of reconfigurations for customers who utilize ACSI's services only on the condition that ACSI absorb all or part of the resulting excessive, and untariffed, RNRCs.

COUNT II
(Violation of Section 201(b) of the Communications Act
and the Expanded Interconnection Orders
by Charging Unjust and Unreasonable RNRCs)

29. ACSI repeats and incorporates herein the allegations made in paragraph 1 through 28 of this Complaint.

30. Not only does BellSouth's access charge tariff fail to set forth the exact manner in which the LEC will apply RNRCs to customers that choose to reconfigure with ACSI and other CAPs, but BellSouth is violating Section 201(b) Act which dictates that the LECs impose just and reasonable charges for their services. 47 U.S.C. § 201(b).

31. In addition, BellSouth's tariff contravenes the *Expanded Interconnection* orders of the Commission which require that all nonrecurring reconfiguration charges

paid by interconnectors or their customers must be set no higher than cost-based levels.⁸ The Commission's *Expanded Interconnection* orders survive the enactment of the Telecommunications Act of 1996. New 47 U.S.C. §§ 251(g) and (i).

32. As explained above, BellSouth has stated that it would impose multiple DS0 RNRCs when an IXC customer redirects DS1 and DS3 entrance facility circuits to collocated facilities. See paragraphs 24-27, *supra*.

33. The tremendous practical and monetary impact of imposing multiple DS0 RNRCs and DS1 RNRCs for an ACTL move involving DS3s is described in paragraph 27 above. With RNRCs applied at the DS0 and DS1 levels, the charge for "moving" a switched access DS3 to an interconnector is \$9,900.90, while the charge for "moving" a special access DS3 to an interconnector is \$16,531.90.

34. As explained in the attached affidavit of Scott Layman, Director of Program Management, for ACSI, no cost justification exists for the enormous charges that result from the application of multiple DS0 and/or DS1s RNRCs to a customer's ACTL move of DS3 or DS1 circuits from BellSouth to a CAP. See Exhibit B, ¶¶ 9-13.

⁸ *Switched Access Second Report and Order*, 8 FCC Rcd at 7439 (citing *Expanded Interconnection with Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341, 7362 (1993) ("*Special Access Second Reconsideration Order*"). See also *Expanded Interconnection Remand Order*, 9 FCC Rcd at 3154, ¶ 212. The *Special Access Second Reconsideration Order* stresses that "[nonrecurring reconfiguration] charges are to reflect only the costs incurred for the particular type of reconfiguration being implemented."

35. An ACTL move of a customer's LEC-provided dedicated circuits to a collocated CAP facility involves labor, engineering, and recordkeeping changes that do not justify the level of the applicable RNRCs. *Id.*, ¶ 9.

36. When an IXC customer seeks to reconfigure a DS3 (or DS1) DTT transport circuit to a collocated CAP facility, as illustrated in Diagram 1 attached to Exhibit B, a LEC technician must physically detach the DS3 (or DS1) jumper cable from the cross-connect panel or multiplexer attached to the facility that goes to the IXC's point of presence, and must attach the cable to the CAP's cross-connect panel or multiplexer that is collocated within the LEC central office. An experienced technician should be able to accomplish this task in under 2 hours. No other physical labor is required. Exhibit B, ¶ 10.

37. The LEC has recordkeeping requirements associated with an ACTL move. The LEC will have to input changes in two databases. One is its Carrier Access Billing System ("CABS"), which maintains and updates customer billing data, to reflect the changes in the customer's billing information. These recordkeeping adjustments are keyed in manually, typically by a single employee within a circuit provisioning center. *Id.*, ¶ 11. The CABS inputs reflect changes to individual DS0 circuits.

38. The LEC must also update its Trunk Inventory Record Keeping System (TIRKS) database, an on-line recordkeeping system for circuit provisioning. In processing the IXC's ACTL move request, TIRKS records the change in the "Z" (terminating) coordinates of the circuit; determines the transmission facilities and

equipment needed for the new circuit; updates the assignment status of the equipment, facilities and circuits as the order is processed; specifies the test requirements for the new circuit; and modifies the equipment inventory, accordingly. These TIRKS adjustments reflect changes to the high-capacity entrance facility trunks, and are made at the DS1 level for a DS1 ACTL move and at the DS3 level for a DS3 ACTL move. A competent BellSouth terminal operator should be able to input the TIRKS and CABS changes for a DS1 in under 1.5 hours. The database changes for a DS3 should take under 40 hours for a competent operator. *Id.*, ¶ 12.

39. The RNRCs that BellSouth imposes for an ACTL move involving a DS1 or DS3 dedicated circuit bear no reasonable relation to the direct costs imposed on a LEC by a customer's reconfiguration to a CAP facility. Virtually no capital expenditures are required. Pursuant to the RNRCs stated in paragraph 27 and the time to complete database changes in paragraph 38, the charges assessed by BellSouth amount to approximately \$225 per estimated hour of labor required to accomplish a DS1 move, and almost \$400 per estimated hour for a DS3 move. *Id.*, ¶ 13. Thus, the RNRCs BellSouth imposes on DS1 or DS3 level when moving DS1 or DS3 entrance facility circuits to a collocated CAP facility are on their face unreasonable and unsupportable on cost grounds.

40. Because the RNRCs so far exceed any reasonable measure of costs, they are unjust and unreasonable in violation of § 201(b) of the Communications Act. In addition, because these RNRCs do not reflect the underlying cost to BellSouth of making the service rearrangements, they impede competition and contravene the

Commission's *Expanded Interconnection* orders. See paragraphs 11-13, *supra*. Indeed, because of these unjust and unreasonable RNRCs, ACSI effectively has been foreclosed from winning the business of BellSouth customers that have reconfigured or are planning to reconfigure their transport facilities.

COUNT III

(Violation of Section 202(a) of the Communications Act and the *Expanded Interconnection Orders by Engaging in Unjust and Unreasonable Discrimination in the Application of RNRCs*)

41. ACSI repeats and incorporates herein the allegations made in paragraphs 1 through 40 of this Complaint.

42. Section 202(a) of the Communications Act declares that:

[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

47 U.S.C. § 202(a).

43. The *Expanded Interconnection* orders specifically prohibit discrimination between the application of RNRCs when a customer shifts to an interconnector's services versus the application of RNRCs when a customer reconfigures its services with the LEC. Specifically, the *Expanded Interconnection* orders require that any

differences between these two types of RNRCs be cost-based.⁹ Moreover, if a LEC waives RNRCs when a customer reconfigures with the LEC, the RNRCs that are charged a customer who reconfigures to this service from an interconnector may not exceed "an amount reflecting the difference between the costs of the two different types of reconfigurations."¹⁰

44. BellSouth's unjust and unreasonable discrimination in the application of RNRCs is not readily apparent because its tariff does not contain explicitly discriminatory terms regarding the application of RNRCs.

45. Rather, the ostensibly neutral RNRC rate structure is ambiguous. The ambiguity allows BellSouth to apply the RNRCs in an unreasonably discriminatory manner. *See* Exhibit I to Exhibit B (Mr. French's Letter).

46. Upon information and belief, in assessing RNRCs for ACTL moves, BellSouth imposes, at most, a single DS1 or DS3 RNRC per circuit when redirecting switched access circuits for customers that reconfigure with BellSouth. Upon information and belief, BellSouth has assessed such single circuit RNRCs for ACTL moves by at least two of the five largest interexchange carriers. *See* Affidavit of Deborah Sellers, Vice President of Carrier Sales for ACSI, ¶ 3, attached as Exhibit C hereto.

⁹ *Switched Access Second Report and Order*, 8 FCC Rcd at 7439 (citing *Special Access Second Reconsideration Order*, 8 FCC Rcd at 7362).

¹⁰ *Id.*

47. BellSouth's tariff provides further that, if a BellSouth customer reconfigures its access configuration with BellSouth to take BellSouth's LightGate or SmartRing service, BellSouth waives the RNRCs altogether, in what it calls the Network Optimization Waiver. See BellSouth Tariff F.C.C. No. 1, §§ 7.4.20(A) and (B) attached as part of Exhibit A. On information and belief, BellSouth has used this waiver to accommodate ACTL moves by interexchange carriers with multiple points of presence ("POPs") in the same market, for example following the acquisition of one IXC by another. Specifically, BellSouth has allowed IXCs to move circuits from one POP to the other without paying an RNRC. This waiver policy has created a non-cost-based disincentive to customers that desire to reconfigure their networks to take transport service from collocated CAPs. See Exhibit C, ¶ 4.

48. Section 7.4.20 of BellSouth's Tariff No. 1 permits an IXC with one or more POPs in the same market to achieve what is, for all practical purposes, an ACTL move without incurring an RNRC. Specifically, it is my understanding that BellSouth has placed the multiple IXC POPs on a ring topology along with a BellSouth serving wire center. (At least two IXC locations are necessary in order for the IXC to opt for the ring topology.) Once the IXC is on the ring, the IXC can redirect all of the access traffic to one of its points of presence *without* incurring any RNRCs by virtue of the Network Optimization Waiver. Thus, the IXC can reconfigure all of its traffic to a single POP and avoid the RNRCs that would otherwise apply. However, were that IXC to seek to reconfigure all of its traffic from its multiple POPs to that same POP through a CAP, BellSouth would apply RNRCs down to the DSO level. Exhibit C, ¶ 5.

49. As noted above, under BellSouth's interpretation of the tariff language, a customer is faced with not only a DS3 RNRC, but multiple DS0 and DS1 RNRCs, if it rolls over a DS3 to a CAP. In comparison, if the customer reconfigures with BellSouth, then only a single DS3 RNRC is applied or the nonrecurring reconfiguration charge may be waived entirely. If the customer rolls over a DS1 to a CAP, it may face multiple DS0 RNRCs in addition to one DS1 RNRC (despite the silence of the tariff on this point), whereas one DS1 RNRC, or none, in the case of a waiver, would be imposed to reconfigure a DS1 from one BellSouth service to another.

50. In addition, BellSouth does not treat all collocated CAPs in an equal fashion. See Letter from Joseph R. Wilson, Sales-Vice President, Industry Services, BellSouth, to Thomas P. Byrnes, Regional Vice President, TeleCommunications Group, Inc. ("TCG"), dated June 30, 1994 ("Wilson Letter"), attached as part of Exhibit C. At pages 2-3 of the *Wilson Letter*, BellSouth informed TCG, a CAP, that it would pay, at most, a single DS3 RNRC for the rollover, *i.e.*, ACTL move, of DS3 service from BellSouth to TCG. Similar treatment has not been available to ACSI's potential customers when they contemplate reconfiguring their networks to take DS3 service from ACSI rather than BellSouth. Exhibit C, ¶ 6.

51. As discussed in paragraph 27, under BellSouth's application of DS0, DS1, and DS3 RNRCs to DS3 ACTL moves, the price to reconfigure a special access DS3 with a CAP, as explained to ACSI, is \$16,531.90 -- over 10,000% above the price if the RNRCs for a single DS3 is applied, *i.e.*, the cross-connect charge. The cost to roll

over a special access DS1 to a CAP is \$788.90, over three times the price to reconfigure a DS1 if the RNRCs for a single DS1 circuit are imposed.

52. If the customer receives a waiver when it reconfigures with BellSouth, the situation is exacerbated. In particular, the disparity between a reconfiguration to take service from a CAP and a reconfiguration with BellSouth is equal to the *full amount of the RNRC* applied in the BellSouth-to-CAP situation. Under the FCC's *Expanded Interconnection Orders*, however, the disparity in charges must be equal to the disparity in costs for two types of ACTL moves. Section 202(a) requires the same result.

53. Upon information and belief, from an operational and cost standpoint, there are no significant differences between redirecting high capacity (DS1 or DS3) dedicated transport circuits to a different customer location through BellSouth, and redirecting them to a collocated CAP's facilities. Similarly, there are no significant differences in BellSouth's costs when an IXC reconfigures with one collocated CAP as with another CAP. In all cases physical rerouting of circuits is done at the DS1 or DS3 level. Exhibit B (Layman Affidavit), ¶ 14.

54. Moreover, the database programming necessary to reflect changes in trunk assignments is similar for traffic rerouted to a different location on the customer's premises through BellSouth, and for traffic rerouted to any collocated CAP's facilities. *Id.* ¶ 15.

55. Finally, while there may be differences in the modifications made in the carrier billing database, the cost differences are *de minimis*. *Id.* ¶ 16.

56. As a result, no cost justification exists for the enormous difference in RNRCs imposed on a CAP reconfiguration versus a similar BellSouth reconfiguration, or among CAP reconfigurations. Without a cost justification for the difference in RNRCs, BellSouth has clearly violated the prohibition in Section 202(a) of the Communications Act against engaging in "unjust or unreasonable discrimination in charges . . . for or in connection with like communication service . . ." 47 U.S.C. § 202(a). Further, BellSouth has violated the Commission's requirements that "all nonrecurring charges applicable to customers shifting to an interconnector's services are to be set no higher than cost-based levels. . . . [and] the *difference* between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be *cost-based*."¹¹ Moreover, where waivers are available for BellSouth's customers, BellSouth's application of RNRCs violates the requirement of the FCC that RNRCs may be set only to recover an amount equal to the *difference* in the costs of reconfiguration between reconfigurations for which RNRCs are collected, and those for which they are waived, such as where BellSouth customers reconfigure to BellSouth LightGate or Smart Ring service and take advantage of the Network Optimization Waiver to move traffic to a new point of presence. This requirement would also apply under Section 202(a) of the Act where BellSouth waives some or all RNRCs for

¹¹ 8 FCC Rcd at 7362 (emphasis added).

customers that reconfigure to take access from some CAPs but not from others, as described in paragraph 49.

57. BellSouth's discrimination imposes an often insurmountable disincentive to DXCs or other large customers that desire to reconfigure with ACSI. Thus, potential ACSI customers have been dissuaded by this discriminatory application of RNRCs from switching to ACSI-provided access services, and ACSI has been hindered in its ability to sell its services.

58. In turn, BellSouth's practices jeopardize the growth and viability of BellSouth's competitors. ACSI has been effectively foreclosed from competing for the business of BellSouth's customers that have reconfigured or are planning to reconfigure their DTT facilities. The end result is that BellSouth has harmed ACSI, has artificially limited the access choices of BellSouth's existing customers, and has frustrated the FCC's interconnection policy objectives.

DAMAGE TO ACSI

59. ACSI has suffered, and continues to suffer, direct damages from BellSouth's unjust, unreasonable, and discriminatory RNRCs and its application of such charges.

60. Potential ACSI customers have faced horrendous RNRCs that do not reflect BellSouth's underlying costs. Moreover, these RNRCs are far in excess of the RNRCs, if any, the customer would pay were it to reconfigure with BellSouth in a manner that imposes comparable costs on BellSouth to accommodate.

61. In ACSI's experience, the potential customer faces three choices: (1) do not reconfigure, (2) reconfigure with BellSouth so as to avoid or minimize the excessive RNRCs, or (3) move to ACSI and pay the RNRC costs or have ACSI absorb such costs. Exhibit C, ¶ 7.

62. In these situations, the only way for ACSI to make a reasonable bid for the business of the potential customer has been to offer to pay for the significant and unreasonable reconfiguration costs imposed by BellSouth. This is typically not an economically feasible option, and the lack of alternatives has effectively foreclosed ACSI from obtaining the business of existing BellSouth customers that are reconfiguring their entrance facilities. Therefore, as a result of BellSouth's practices, ACSI has lost, and will continue to lose, significant business opportunities. *Id.*, ¶ 8.

63. For example, last year, one interexchange carrier had agreed to move thirteen (13) DS3 circuits from BellSouth to ACSI. ACSI proceeded to prepare for the reconfiguration, including the purchase of OC12 equipment to accommodate the rollover. About three months after reaching agreement, the IXC canceled the order, citing the excessive RNRCs of BellSouth. As a result, ACSI lost a five-year contract worth an expected \$500,000 in revenues. *Id.*, ¶ 9.

64. As ACSI expands its operations, the magnitude of the adverse impact resulting from BellSouth's illegal practices will only mount. Operations in three of the nine markets in which ACSI has networks commenced in the last two months. Construction is currently underway in six additional markets. See paragraph 2, *supra*.

65. In addition, ACSI suffers a loss of goodwill when it is unable to process a customer's reconfiguration.

66. The exact amount of ACSI's damages have not yet been determined but are in excess of \$2,000,000.00 to date. More specific information on damages will be provided in a supplemental complaint as permitted by the Commission's rules.

PRAYER FOR RELIEF

67. WHEREFORE, ACSI requests that the Commission declare BellSouth's RNRCs for, and their application to, ACTL moves to be unlawful, unjust, unreasonable, discriminatory and anticompetitive in contravention of the Act and the Commission's orders, rules, and policies governing expanded interconnection.

68. ACSI requests that the Commission order BellSouth to cease engaging in the unjust, unreasonable, and discriminatory practices alleged herein by filing tariffs that clearly set out cost-based and nondiscriminatory RNRCs applicable to ACTL moves. The standard for cost-based RNRCs should be direct costs. The Commission should order BellSouth to unbundle its RNRCs for ACTL moves to reflect cost-based charges for labor, TIRKS database updating, and CABS recordkeeping in order to allow the Commission to monitor BellSouth's compliance with its *Expanded Interconnection* orders and to ensure customers pay RNRCs that reflect the costs only of the services they receive when their networks are reconfigured.

69. ACSI also requests that the Commission order BellSouth to compensate ACSI for ACSI's expenses and damages suffered from paying the unjust, unreasonable,

and discriminatory RNRCs of its potential customers and for its lost business opportunities.

70. The Commission should declare that

- the imposition of multiple DS0 and/or DS1 RNRCs on a customer that uses an expanded interconnection arrangement with a collocated CAP when an otherwise similar customer reconfiguring its service with BellSouth or another CAP pays only one DS1 or DS3 RNRCs is unlawfully unjust, unreasonable, and discriminatory, unless the difference in the total charges paid by the two customers equates to direct cost differences, if any; and
- if BellSouth waives RNRCs for a customer that reconfigures with BellSouth, it is unlawful for BellSouth to assess RNRCs against customers that switch to collocated CAP-provided transport circuits. At a minimum, if RNRCs for customers switching to CAPs are not waived, BellSouth must not charge RNRCs that reflect more than the direct cost differences between the BellSouth-provided and CAP-provided reconfiguration.

71. ASCI requests its attorney's fees, costs, and expenses in prosecuting this matter.

72. Plaintiff further requests such other relief as the Commission deems just and proper.

73. This suit has not been filed in any court or other government agency on the basis of the same cause of action.

Respectfully submitted,

**AMERICAN
COMMUNICATIONS SERVICES,
INC.**

Riley Murphy
General Counsel
**AMERICAN COMMUNICATIONS
SERVICES, INC.**
131 National Business Pkwy.
Suite 100
Annapolis Junction, MD 20701
(301) 617-4200

By: 
Brad E. Mutschelknalus
Edward A. Yorkgillis, Jr.
of
KELLEY, DRYE & WARREN
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9668

Its Attorneys

February 15, 1996

RILEY MURPHY DIRECT TESTIMONY

EXHIBIT NO. 4

LETTER OF AGREEMENT

THIS AGREEMENT, which is dated and effective as of _____, 19__, is made between BellSouth Telecommunications, Inc. ("BellSouth"); and _____ ("Property Management"); hereinafter referred to collectively as the "Parties"; in contemplation of the following:

- A. The real estate property covered by this agreement is described as the _____, which is located at _____.
- B. Property Management is engaged in the leasing and management of office space to tenants and desires to retain and attract building tenants with high-quality, value-added local telecommunications technologies and support services.
- C. BellSouth intends to provide reliable, high-quality, value added, telecommunications technologies and support services to building tenants as requested as Property Management's designated provider of choice for communications products and services to the _____ property.
- D. The Parties wish to engage jointly in improving the quality of the collective services provided to building tenants and in promoting the property and the BellSouth telecommunications products, services, and support as value-added amenities to tenants.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, BellSouth and Property Management hereby mutually agree as follows:

1. The term of this Agreement shall be one (1), two (2) or three (3) years (delete as appropriate) commencing on _____. Inasmuch as close cooperation between the Parties is essential to the success of the alliance, if either Party shall, in its sole discretion, find that the alliance is not satisfactory, either Party shall have the right to terminate this Agreement by giving thirty (30) days written notice, one to the other. Upon such termination, Property Management shall forfeit all remaining incentive credits as described in Paragraph 3, shall immediately cease using BellSouth registered names and marks as described in Paragraph 10, and shall return, or certify destruction of, any media bearing BellSouth names and marks. This agreement may be extended at any time by mutual written agreement. Property Management agrees to provide BellSouth with access to building entrance conduits, equipment room space, and riser/horizontal conduits as required for placement of telecommunications facilities to meet the needs of building tenants. Such access shall be provided at no cost to BellSouth.
2. BellSouth agrees to establish and maintain an incentive Credit Fund for use by Property Management consisting of (1) an annual signing bonus of \$_____ beginning with the execution of this agreement and on the anniversary of each subsequent year for the term of this agreement, and (2) annual occupancy space credits of \$.05 per square foot of tenant occupied space (rentable area) using BellSouth services. For purposes of this agreement rentable area refers to that actual usable measured space within a tenants space. The tenant occupied space credits shall be computed once each year based on the tenants existing occupied space upon the execution of this Agreement, and on the anniversary of each subsequent year, in the building (s) covered by this Agreement. The Credit Fund shall be used in a manner consistent with the objectives and goals of this plan. Credit Fund amounts can be used by Property Management, or upon Property Management request, by specified tenants of the building to be applied to purchases of BellSouth requested services including service installation charges and/or monthly service fees; towards Property Management and/or building tenant attendance at BellSouth-sponsored seminars; or, for reimbursement of Property Management costs for advertisements or newsletters, or other promotional efforts mutually agreed upon by BellSouth and Property Management. Billing credits shall not be accrued from year to year with respect to this Agreement. Unused annual credit amounts will expire at midnight on the day preceding the anniversary date of each year. BellSouth further agrees to provide Quarterly reports to Property Management regarding the current status of the credit fund, and remaining credits. All provisions of this paragraph are subject to compliance with all applicable state and federal laws and regulations governing BellSouth's participation in these activities.
3. Property Management agrees to designate BellSouth as the provider of choice for local telecommunications services to building tenants at _____ and promote BellSouth as such. Property Management further agrees not to enter into a similar agreement with any other telecommunications vendor to perform the activities provided for in this Agreement for the term of this Agreement.
4. BellSouth shall designate a management representative as a point-of-contact for Property Management and building tenants with responsibility for management and administration of all BellSouth responsibilities in connection with the implementation of this Agreement. Property Management shall designate an appropriate contact to work with the BellSouth representative.

Upon commencement of the Agreement, each Party will give written notice of the identity of their designated contact to the other Party.

5. Upon commencement of this Agreement, Property Management, at its expense, shall provide to BellSouth, all contact information, introductions, and, as permitted, all information about tenant occupied space and number of employees for all existing tenants at _____. As lease proposals are submitted to prospective tenants, Property Management, will ask for the prospect's approval to provide BellSouth's designated representative the name, address, telephone number, and contact person of such prospect. BellSouth shall hold all such information as strictly confidential and shall not divulge such information to any third party or utilize such information for any purposes not contemplated by this Agreement. In the event a prospective tenant declines to have certain information provided to BellSouth at the time of lease proposal, Property Management agrees to provide all information authorized by the tenant to BellSouth as soon as such information is made available to Property Management.
6. BellSouth shall, at its expense, develop tenant survey media and conduct tenant quality review surveys on a semi-annual basis to determine ways to improve tenant telecommunications service at _____. Property Management, at its option, may elect to participate jointly in BellSouth quality surveys at no cost. To the extent legally permitted, BellSouth agrees to provide Property Management with survey results. Subject to the foregoing, following each survey, BellSouth and Property Management agree to discuss and for joint surveys, develop coordinated plans to improve tenant satisfaction. BellSouth, at its expense, agrees to undertake a personal contact program with all tenants upon commencement of this Agreement and, thereafter, agrees to periodic contacts and follow up as necessary as a result of feedback from tenants.
7. BellSouth shall, at its expense, develop and provide promotional materials including, but not limited to, brochures and newsletters which describe advanced telecommunications services available to tenants and benefits of the alliance, and will provide ongoing information to tenants about the alliance and new BellSouth products and services. Upon request by Property Management, and if feasible, BellSouth shall, at its expense, provide telecommunications planning/consulting, sales proposal, presentation, and contact support to Property Management for requested tenant lease proposals. The parties understand that BellSouth does not provide InterLATA services. Property Management agrees to never infer or represent that BellSouth provides InterLATA services, designs InterLATA networks, or recommends any InterLATA service providers.
8. Property Management, at its expense, shall distribute all promotional materials provided by BellSouth to existing and prospective or new tenants during and after lease negotiations. Property Management and BellSouth further agree to cooperate in the development and distribution of introductory letters, tenant surveys, and other tenant communications as required to effectively promote the objectives of the alliance.
9. Property Management agrees to submit to BellSouth all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement or mentioning or implying the trade names, logos, trademarks or service marks (hereinafter "Marks") of BellSouth Corporation and/or any of its affiliated companies or language from which the connection of said Marks therewith may be inferred or implied, or mentioning or implying the names of any personnel of BellSouth Corporation and/or any of its affiliated companies, and Property Management further agrees not to publish or use such advertising, sales promotions, press releases, or publicity matters without BellSouth's prior written consent. BellSouth shall have the right to use Property Management's name and associated marks for _____ in BellSouth publicity and advertising materials subject to the prior review and written approval of Property Management.
10. Even though Property Management shall recommend BellSouth as the provider of choice for local telecommunications services to tenants, nothing in this Agreement shall be construed to preclude any building tenant from obtaining telecommunications services from others legally authorized to provide such services.
11. Both Parties agree to hold this Agreement, and all specific details and compensation provisions of such agreement as confidential, proprietary information not to be divulged to any third party for a period of three (3) years from the termination of this agreement unless with the express written consent of the other Party. Other aspects of this Agreement may be disclosed as mutually agreed upon in writing.
12. This Agreement shall not be construed to create a joint venture, general partnership, or create the relationship of principal and agent between the Parties hereto. This Agreement is strictly for the purpose of permitting joint promotional and marketing activities as well as to provide for the installation of telecommunications facilities and services.
13. Each party agrees to indemnify and hold harmless the other party from and against any loss, costs, damages, claims, expenses (including attorneys' fees) or liabilities by reason of any injury to or death or disease of any person, damage to or destruction of

loss of any property or any other damages arising out of, resulting from, or in connection with the performance or nonperformance of the obligations contemplated by this Agreement which is caused in whole or in part by an act, omission, default or negligence of the party or its employees, the failure of the party to comply with any of the terms and conditions herein or the failure to conform to statutes, ordinances, or other regulations or requirements of any governmental authority in connection with the performance of the obligations provided for in the Agreement. Each party shall, at its own cost, expense, and risk, defend any claim, suit, action or other legal proceeding for which that party is hereunder obligated to indemnify an indemnitee.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective duly authorized representative as of the date first written above.

For BellSouth Telecommunications, Inc.:

For Property Management:

By its Authorized Agent, BellSouth Business Systems Inc.

By: _____
(Signature)

By: _____
(Signature)

By: _____
(Printed Name)

By: _____
(Printed Name)

Title: _____

Title: _____

RILEY MURPHY DIRECT TESTIMONY

EXHIBIT NO. 5

Georgia PSC Docket 6863-U
BST Hearing Request
January 30, 1997
Page 1 of 1

REQUEST: Please provide a copy of BellSouth Telecommunications' Authorized Sales Representative Agreements.

RESPONSE: Please see the attached samples of BST's Authorized Sales Representative Agreements. Both an exclusive and nonexclusive agreement is provided.

**AUTHORIZED SALES REPRESENTATIVE
AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND**

This AGREEMENT ("Agreement") is entered into by and between BellSouth Telecommunications, Inc., a Georgia corporation with its principal place of business at 1800 Century Boulevard, Atlanta, Georgia 30345 ("COMPANY") and _____ a _____ corporation with its principal place of business at _____ ("REPRESENTATIVE").

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WHEREAS, COMPANY is engaged in the business of marketing and providing basic telecommunications services; and, WHEREAS, REPRESENTATIVE is in the business of marketing and providing customer premises equipment (CPE) and desires to become an authorized marketing representative of COMPANY for the sale of certain services pursuant to this Agreement with COMPANY, and, WHEREAS, COMPANY wishes to engage REPRESENTATIVE to promote the sale of certain services herein. NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby mutually agree as follows:

I. APPOINTMENT OF REPRESENTATIVE

1. COMPANY hereby appoints REPRESENTATIVE as an authorized representative in the geographic area(s) designated in Appendix A of this Agreement to promote the retail sale of and to solicit orders for such service offerings and related services set forth in Appendix B of this Agreement ("Service").
2. Any changes to the geographic area(s) designated in Appendix A of this Agreement must be agreed to and approved in writing by the parties. Such written approval will take the form set forth in Appendix A.1 of this Agreement. Any additional terms and conditions set forth in Appendix A.1 shall control, to the extent they do not conflict with this Agreement.
3. COMPANY reserves the right to alter the terms, conditions or rates, or apply for regulatory approval as may be necessary to alter such terms, conditions or rates for the described Service at any time. In the event any of the described Services are altered either with respect to the terms, conditions, qualifications or prices relating thereto, COMPANY reserves the right to alter or eliminate the amount of commissions paid for sale of such services at the COMPANY in its sole discretion deems appropriate. REPRESENTATIVE has the option to terminate this Agreement if it does not desire to continue the relationship as altered.

B. REPRESENTATIVE hereby accepts such appointment and agrees to exert reasonable efforts to promote, on COMPANY's behalf, the marketing of Service and to service, in the manner described in Section III of this Agreement, all customers purchasing service through REPRESENTATIVE.

C. COMPANY is legally prohibited from engaging in any interLATA service or business. REPRESENTATIVE expressly acknowledges COMPANY's legal obligations and agrees to only offer COMPANY's network services in conjunction with COMPANY-permitted activities. REPRESENTATIVE agrees never to represent or infer to the customer that COMPANY provides any interLATA service, recommends any interLATA service or service provider, or designs interLATA services. Any such marketing or design of interLATA services shall be conducted separately from the activities governed under this Agreement. If, in the future, COMPANY is permitted to engage in integrated intraLATA and interLATA services or businesses, COMPANY reserves the right to amend this Agreement to include such services, and to the extent permitted by law, all terms and conditions relating to REPRESENTATIVE's sale of all other COMPANY services shall automatically apply thereafter to each interLATA services that may be offered by COMPANY.

D. It is also understood between the parties that COMPANY may actively continue to market, promote, and obtain contracts for Services in the geographic areas designated in Appendix A through COMPANY's own sales force, its affiliates and/or subsidiaries or through other representatives.

COMPANY and REPRESENTATIVE agree that the relationship between them arising from this Agreement is that of independent contractor. Except for the rights retained by or granted to, and the

obligations undertaken by, each party pursuant to this Agreement, neither has any right or any authority to enter into any contract or undertaking in the name of or for the account of the other or to assume or create any obligation of any kind, expressed or implied, on behalf of the other, nor shall the acts or omissions of either create any liability for the other. REPRESENTATIVE shall business at its own initiative, responsibility, and expense. All persons furnished by REPRESENTATIVE to perform the obligations required or permitted under this Agreement shall be considered solely REPRESENTATIVE's employees unless otherwise authorized by COMPANY. REPRESENTATIVE shall at all times remain responsible for compliance with all terms, conditions and obligations of this Agreement. Subcontracting by REPRESENTATIVE, in any form, of any of REPRESENTATIVE's obligations, in whole or in part, without COMPANY authorization, is expressly prohibited and constitutes breach of this Agreement. For purposes of this section, the term subcontracting means delegating the work required or permitted under this Agreement to any person or third party not employed by REPRESENTATIVE. REPRESENTATIVE is not authorized to unilaterally abdicate its active sales and support obligations through relationships with third party individuals or companies operating independently of REPRESENTATIVE.

II. TERM.

IF REPRESENTATIVE chooses option A or B in Section XIII, the term of this Agreement shall commence when executed by both parties, and shall continue thereafter through December 31, 1998, or until terminated as provided for under this Agreement. If REPRESENTATIVE chooses option C in Section XIII, then the term of this Agreement shall commence when executed by both parties. In either case this Agreement will be automatically renew at the end of the original term and on the same date annually thereafter for successive one year terms unless either party indicates its intent not to renew the Agreement. Notice of such intent must be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. COMPANY may cancel this Agreement for cause immediately upon giving notice as provided in Section XI.C

III. REPRESENTATIVE'S RESPONSIBILITIES

A. REPRESENTATIVE agree that:

1. It will employ and train a sufficient communications sales force and staff as agreed upon by COMPANY and REPRESENTATIVE to market COMPANY - specific services and to provide adequate marketing coverage for prospective Service customers;
2. It will provide customer relations and Service support functions including, where applicable, but not limited to: i) coordination of adequate initial customer training on proper use of Services; ii) continuing Service system consulting; iii) periodic personal contacts with customers; iv) provision to customers of available information regarding technical, functional, and other Service developments; and v) handling of requests from customers for network service revenues; and

3. It will provide marketing services satisfactory to COMPANY and that REPRESENTATIVE will take action as needed to meet customers' service requirements and to ensure that customers' service is properly coordinated in customers' satisfaction. REPRESENTATIVE further agrees that it will, in good faith, use its best efforts to take all reasonable steps necessary to ensure the customer is satisfied at all times, with regard to COMPANY's Service.
4. It will specify, in Section XIII of this Agreement, whether in the state of intralATA network services, in the areas served by COMPANY, it elects to market such intralATA services exclusively on behalf of COMPANY or to also market or otherwise promote some or all of the intralATA network services of other providers.
5. If REPRESENTATIVE elects to market some or all of the intralATA network services exclusively for COMPANY, pursuant to its election of option A or B in Section XIII REPRESENTATIVE will not market the applicable intralATA services of another provider, except in those instances where COMPANY does not provide a similar functional service in the area served by COMPANY, in which case REPRESENTATIVE may, with COMPANY's written consent, and only for so long as COMPANY does not have a similar functional service, in the area served by COMPANY, market the applicable intralATA service of another provider, and REPRESENTATIVE will not take any action, in return for compensation of any type from another provider, which would result in an end user's applicable intralATA service being provided in any way using the services of any provider other than COMPANY. Failure to comply with the above commitment shall be grounds for conversion of REPRESENTATIVE to non-exclusive status or termination of this Agreement, at the COMPANY's discretion.
6. If REPRESENTATIVE elects to market and otherwise promote exclusively some or all of the intralATA network services of COMPANY pursuant to its election of A or B, in Section XIII, REPRESENTATIVE may, in addition to non-recurring commissions, receive payment of performance bonuses and/or residual commissions as set forth in Appendix B, so long as REPRESENTATIVE satisfies the criteria for receipt of such bonuses, and/or residual commissions as further described in COMPANY's then existing operations standards. For purposes of this Agreement, residual commissions shall mean quarterly or monthly, at COMPANY's discretion, payments to REPRESENTATIVE for services sold by REPRESENTATIVE for as long as the customer retains such service or REPRESENTATIVE remains an authorized sales representative under option A or B, in Section XIII, whichever is shorter, but not, in any event, to exceed the term of this Agreement. Also COMPANY support levels will vary depending on the option chosen by REPRESENTATIVE. General support level categories applicable to the various options available in Section XIII are found at Appendix D. More specific explanations of the support levels will be provided in COMPANY's then existing operations standards.
7. REPRESENTATIVE acknowledges that COMPANY grants certain of the rights herein in material part in consideration of REPRESENTATIVE's Agreement to act exclusively for COMPANY in marketing some or all of COMPANY's intralATA network service. As a consequence, during the term of this Agreement, and any extensions thereof, any REPRESENTATIVE electing exclusive option A or B in Section XIII agrees that neither REPRESENTATIVE nor its affiliates, or persons owing a controlling interest in REPRESENTATIVE or an affiliate shall, directly or indirectly, (a) solicit, call, offer or accept offers for any applicable Competitive Service in the Area served by COMPANY, (b) induce or refer any actual or prospective Subscriber of COMPANY network services to subscribe to any applicable Competitive Service of another in the Area served by COMPANY, (c) provide any subscriber leads to any applicable Competitive Service in the Area, or (d) activate Subscribers through a reseller or act as a reseller of Service, whether for applicable telecommunications as any person, entity, or business (other than COMPANY) in the Area, including without limitation any facilities-based carrier, any reseller, or any agent thereof, which uses technology technically capable of providing the functional equivalent of COMPANY's services in any way. These provisions and covenants shall apply so long as Representative remains an intralATA exclusive sales representative under either option A or B in Section XIII. Also, upon termination of this Agreement, or upon an exclusive REPRESENTATIVE's conversion to non-exclusive status, or attempt to assignment this Agreement, paragraph 10 shall apply.
8. If REPRESENTATIVE elects to also market or otherwise promote the intralATA network services of other providers, in the areas not served by COMPANY, the compensation and general support levels associated with each option shall be as set forth in Appendices B and D. More specific explanations of the support levels applicable to the specific option chosen will be provided in COMPANY's then existing operation standards. Such support levels shall be offered solely at COMPANY's discretion and shall be offered when and to the extent deemed appropriate.
9. During the effective period of this Agreement, or any extension thereof, a REPRESENTATIVE may change its status from non-exclusive to exclusive and vice versa. However, such change shall be prospective only. For changes from non-exclusive to exclusive status, this occurs, but is not limited to, payment of residual commissions will be made for applicable network services sold by REPRESENTATIVE after the change, but no residual commissions will be paid for REPRESENTATIVE's base of otherwise applicable network services in place at the time the change is made. For changes from exclusive to non exclusive status, any residual commissions previously being paid shall be discontinued after

the date REPRESENTATIVE's status changes to non-exclusive.

- 10. If this Agreement is terminated by COMPANY in accordance with the provisions of this Agreement or by an exclusive firm/LATA REPRESENTATIVE for any reason, or if this Agreement is transferred or assigned by an exclusive firm/LATA REPRESENTATIVE, or if REPRESENTATIVE converts from exclusive to non-exclusive status, REPRESENTATIVE shall in no way, directly or indirectly, take any action to cause customers to whom COMPANY'S Service was sold by REPRESENTATIVE under this Agreement to divert such existing Service to another network provider in competition with COMPANY. This provision shall extend for a period of one (1) year from the effective date of such termination or change in status.

- B. If in a particular sales case the REPRESENTATIVE has failed to satisfactorily provide adequate customer service, as defined by the COMPANY in written guidelines and shared with REPRESENTATIVE, or has received communications that were not earned, the COMPANY may recapture any sales commissions paid to the REPRESENTATIVE for such sale or deduct any from previously paid for such sale from any future amounts owed to the REPRESENTATIVE. Repeated instances of inadequate customer service shall be grounds for termination, at the sole discretion of COMPANY.

All activities of REPRESENTATIVE shall be in compliance with any applicable provisions of COMPANY tariffs and such sales, service, engineering, performance and operations standards promulgated by COMPANY as may be in effect from time to time and provided to REPRESENTATIVE. Failure of REPRESENTATIVE to comply with any of the above-stated provisions shall be grounds for termination, at

discretion of COMPANY.

- D. REPRESENTATIVE warrants and represents to COMPANY that any and all orders submitted to COMPANY for Service for a customer shall be at the direction of and at the request of the customer. Any service placed without a letter of agency from the customer, which letter of agency must be signed by the customer, may be immediately discontinued by COMPANY as soon as COMPANY is aware that the service order was not so authorized by the Customer. COMPANY shall be entitled to recapture any commissions paid to REPRESENTATIVE for the improperly ordered Service, any and all costs, charges and administrative expenses incurred by COMPANY in adjusting the customer's account. REPRESENTATIVE also acknowledges that placement of an order, without authorization from the customer will cause COMPANY irreparable harm and damage to its good will. Any orders placed without authorization will constitute a breach of this Agreement.

REPRESENTATIVE agrees to successfully complete any training or certification or program(s) outlined or required from time to time by COMPANY. COMPANY reserves the right to modify any

such requirements from time to time, without prior notice to REPRESENTATIVE. REPRESENTATIVE may terminate the Agreement if the terms of any revised certification requirements are deemed unacceptable to REPRESENTATIVE.

- F. REPRESENTATIVE'S sales volume or other value-added performance targets may consist of a net revenue objective or other value-added performance objectives, which shall be determined on an annual basis by COMPANY. REPRESENTATIVE agrees to exert its best efforts to meet these performance objectives. Continued failure to attain the performance levels set by COMPANY shall be grounds for termination of this Agreement, at the sole discretion of COMPANY.

IV. PRICES, TERMS OF SALE, COMMISSIONS

A. PRICES.

- 1. The prices at which Services will be provided by COMPANY to customers shall be the prices authorized by COMPANY'S tariffs in effect from time to time. COMPANY reserves the right at any time to seek regulatory approval to change the specifications of Service as shown in COMPANY'S state tariffs to conform to current characteristics of Service, to alter or eliminate Service or any aspect thereof, or to change any Service rates. In the event of such a change, COMPANY reserves the right to alter or withhold commissions pursuant to Section I.A.3. and Section IV.C.2.
- 2. COMPANY shall inform REPRESENTATIVE, from time to time, and at least thirty (30) days before the effective date of such change(s), of any change(s) in the terms upon which it is willing to accept orders for Service, including payment and standards of credit worthiness, physical availability of Service, order format, data requirements, and other specifications.

B. ORDERS AND ACCEPTANCE.

- 1. ORDER PROCESS. All orders entered by REPRESENTATIVE from its customers shall be in conformance with the terms specified by COMPANY. REPRESENTATIVE shall determine availability of Service on the basis of information received from COMPANY. All orders shall be placed through COMPANY'S Vendor Service Center ("VSC") and shall be subject to availability, approval, and acceptance by COMPANY. Only orders originating COMPANY'S VSC will be eligible for payment of compensation as provided in subparagraph C. In the event an order submitted by REPRESENTATIVE is rejected, COMPANY will supply REPRESENTATIVE with a specific reason therefor.
- 2. CREDIT INFORMATION. At COMPANY'S request, and with customer permission, REPRESENTATIVE shall obtain economic and appropriate credit information from any customer as specified by COMPANY, which REPRESENTATIVE shall forward to COMPANY with the order. All credit must be approved by COMPANY and COMPANY reserves the right to

deny credit to any customer, to require deposits, or to modify its credit terms as it deems appropriate, or in accordance with the rules and regulations approved by the Public Service Commission of the state in which this Agreement is to be performed. REPRESENTATIVE does not hereby guarantee the credit of any customer, but does warrant that it will use reasonable efforts to obtain, and believes that it will obtain, accurate credit information from reliable sources.

3. REPRESENTATIVE shall coordinate any necessary installation of REPRESENTATIVE's Customer Pacemaker Equipment (CPE) with installation of any Service to be provided by COMPANY, and shall perform feature tests upon completion of installation in a manner acceptable to COMPANY.

C. COMMISSIONS.

1. Except as otherwise provided below and in Section I.A.3. and IV.C.2. of this Agreement, COMPANY shall pay REPRESENTATIVE compensation in accordance with the applicable Commission Schedule terms enshrined in Appendix B of this Agreement, which shall apply depending on the option chosen by REPRESENTATIVE in Section XIII herein. Notwithstanding the foregoing, for all sales of ESSEX services with contractual periods, COMPANY reserves the right to recapture any recurring or non-recurring commissions, on a pro rata basis, for sales made to a customer who orders Service removed prior to the expiration of a contractual agreement. Amounts due hereunder shall be paid by COMPANY to REPRESENTATIVE in no less than thirty (30) days and no later than forty-five (45) days from the end of the month in which an order is considered to be "firm". A "Firm" order shall be defined as the date the order for service is accepted by COMPANY and input into COMPANY's ordering system.
2. COMPANY may, from time to time, offer specially discounted services, services for special purposes, or services with changed terms and conditions, either at its own initiative or pursuant to applicable laws or commission orders. Due to the unique circumstances surrounding the provision and pricing of such services, commissions for sales of these special services will not be offered, unless expressly authorized by COMPANY. Specially discounted services or special services are defined as service provided pursuant to special tariffs, i.e., special assemblies, or service offerings that otherwise differ in terms, conditions, qualifications or prices from the non-discounted Services listed in Appendix B.
3. Sales commissions may not be earned by REPRESENTATIVE, or by any other authorized sales representative, and shall not be paid by COMPANY for sales of services to REPRESENTATIVE for its own use, for sales of services to REPRESENTATIVE's affiliate's use, or for sales of services on behalf of, or to be used by, another sales representative participating in COMPANY's sales agency program.

4. Sales commissions may not be earned by REPRESENTATIVE, and shall not be paid by COMPANY for "sales" of Service negotiated by a third party for a prospective customer and REPRESENTATIVE is acting as a consultant for such previously negotiated sale.
5. Initial commissions will be due and payable to REPRESENTATIVE only for sales made for Service which results in additional revenue to COMPANY. No commissions will be paid for the sale of any Service which merely replaces existing revenues. Residual commissions shall be earned and limited as set forth in Section III.

V. QUALITY OF SERVICE

A. QUALITY.

REPRESENTATIVE agrees that at all times it will maintain a level of quality of service to its customers satisfactory to COMPANY, in accordance with reasonable standards promulgated by COMPANY and then in effect, and will take and permit to be taken by COMPANY all actions reasonably requested in order to ensure adequate opportunity for review of REPRESENTATIVE's performance by COMPANY, including, but not limited to, periodic review and analysis by COMPANY of the customer service provided by REPRESENTATIVE. Failure to maintain a level of quality satisfactory to COMPANY may, at COMPANY's option, result in termination of this Agreement as provided herein.

B. TRAINING.

In order to ensure the level of quality of service to its customers as required by Section V.A. above, REPRESENTATIVE agrees to attend any training or certification required from time to time by COMPANY. REPRESENTATIVE acknowledges its responsibility and obligation to maintain a high level of expertise, through whatever training is needed, in order to effectively market Service to COMPANY's customers. Any special training required by REPRESENTATIVE will be made reasonably available to REPRESENTATIVE. REPRESENTATIVE may be responsible for the costs associated with such training, including travel, room and board.

VI. ADVERTISING AND PROMOTION

- A. COMPANY may supply REPRESENTATIVE from time to time, at its current charge, if any, with a reasonable number of brochures, price lists, and other material necessary for promoting the sale of Service. Any portion of the foregoing material which remains unused at the time COMPANY makes changes in Service pursuant to the provisions of this Agreement or upon the termination of this Agreement for any reason by either party, shall be promptly returned to COMPANY or certified as destroyed. Company may, in its sole discretion, enter into advertising and promotional campaigns with REPRESENTATIVE under terms and conditions agreed to by the

parties. Under no circumstances is COMPANY obligated or required to advertise, market or promote for or on behalf of REPRESENTATIVE.

- B. As part of its efforts to market Service, REPRESENTATIVE may develop and undertake, at its own expense, an advertising campaign including any Service advertising theme as may be adopted by COMPANY. All Advertising programs of REPRESENTATIVE referring to Service must be approved in advance by COMPANY, or COMPANY's representative, and clearly comply with the advertising guidelines as developed by COMPANY from time to time, with respect to any reference to Service. REPRESENTATIVE agrees that COMPANY shall have the right, without further compensating REPRESENTATIVE, to include in advertising by COMPANY or any of COMPANY's affiliates reference to REPRESENTATIVE's status as a Service representative and REPRESENTATIVE'S involvement with Service.
- C. Notwithstanding the foregoing, failure of REPRESENTATIVE to obtain prior written approval by COMPANY, or its designated representative, of REPRESENTATIVE'S advertising program or any specific advertising mentioning COMPANY or its Service shall result in breach of this Agreement. REPRESENTATIVE acknowledges and agrees that COMPANY will suffer irreparable injury and harm by any improper advertising or use of COMPANY'S name or logo and that such damages will be difficult to calculate. REPRESENTATIVE agrees and acknowledges that in the event such improper use does occur, in addition to all other rights and/or remedies COMPANY may have under this Agreement, COMPANY shall be entitled to seek all legal and equitable remedies as it may deem appropriate.
- D. COMPANY may provide supporting advertising and promotional assistance as deemed appropriate depending on the option chosen by REPRESENTATIVE in Section XIII

VII. COMPANY'S MARKS

A. USE OF MARKS.

Depending on the option chosen by REPRESENTATIVE in Section XIII, COMPANY may from time to time provide a list of Names and Marks (collectively, the "Marks") which REPRESENTATIVE is authorized to use under this Agreement in conjunction with the sale of COMPANY'S Services. Whether and to what extent COMPANY'S Marks may be used by REPRESENTATIVE shall be further defined in Appendix D and in the COMPANY'S then existing operations manuals. COMPANY may periodically update the list of Marks REPRESENTATIVE is authorized to use under this Agreement. The most currently updated list will always supersede any previously issued list. Such list will also be supplemented with rules and regulations pertaining to the Marks which REPRESENTATIVE agrees to follow. COMPANY authorizes REPRESENTATIVE to use the Marks solely in conjunction with the advertising and sale of COMPANY'S Services bearing the Marks pursuant to the terms hereof. REPRESENTATIVE shall strictly comply with all graphic standards for the Marks which may be

furnished from time to time and shall place appropriate trademark and service mark notices relating to the Marks as instructed. All media advertising and printed material in which the Marks are used shall be submitted to COMPANY for review in advance and shall not be distributed or used in any manner without the prior written approval of COMPANY. Any use of the Marks which is not authorized herein or by an authorized representative of COMPANY shall be strictly prohibited. Any use of the Marks which is inconsistent with the terms hereof shall be grounds for immediate termination of this Agreement. REPRESENTATIVE agrees and acknowledges that in the event such improper use does occur, in addition to all other rights and/or remedies COMPANY may have under this Agreement, COMPANY shall be entitled to seek all legal and equitable remedies as it deems appropriate. Any failure to select any of these remedies on any occasion shall not constitute a waiver of COMPANY'S rights under this paragraph.

B. PROCEDURE ON TERMINATION.

Upon the expiration, termination or cancellation of this Agreement, REPRESENTATIVE shall immediately cease all uses of the Marks and shall promptly return to COMPANY or destroy all printed material and other tangible items bearing the Marks and shall certify same in writing to COMPANY within thirty (30) days of the expiration, termination or cancellation date.

C. LIMITATION TO U.S.

Services bearing the Marks are being distributed through REPRESENTATIVE for sale in the United States only. These Services shall not be distributed by REPRESENTATIVE for sale in other countries without the prior written consent of COMPANY.

D. NO INTEREST IN MARKS.

REPRESENTATIVE recognizes that nothing contained in this Agreement is intended as an assignment or grant to REPRESENTATIVE of any right, title or interest in or to the Marks or the goodwill attached thereto and that this Agreement does not convey the right to REPRESENTATIVE to grant sublicense and is not assignable. No license or other intellectual property rights, express or implied, are granted by either party to the other, except as provided for in this Agreement. REPRESENTATIVE further recognizes that all use of the Marks by REPRESENTATIVE shall inure to the benefit of, and be on behalf of, COMPANY and its parent, BellSouth Corporation. REPRESENTATIVE recognizes the validity of, and will do nothing inconsistent with, BellSouth Corporation's ownership of the Marks, and acknowledges that COMPANY shall have the right to immediately terminate this Agreement in the event that, in COMPANY'S opinion, REPRESENTATIVE acts in a manner which would negatively impact the reputation of BellSouth Corporation or any of its affiliates or would infringe or dilute the value of any of the Marks.

VIII. TERMINATION

- A. Except as set forth in Section XI.G. herein, and subject to the post

termination obligations, including but not limited to, Section III.A.10. This Agreement may be terminated without cause by either party at any time, immediately upon the giving of 30 days written notice, pursuant to Section XLC., to the non-terminating party. The COMPANY may terminate this Agreement for cause immediately upon notice to REPRESENTATIVE.

- B. No failure or delay by either party in sending any notice specified in paragraph A. above shall constitute a waiver of rights to terminate this Agreement.
- C. COMPANY may, at its option, terminate this Agreement if at any time during the term of this Agreement or any extension hereof, REPRESENTATIVE attempts, without COMPANY approval, to subcontract, assign or transfer any of the rights and obligations under this Agreement to a third party, or REPRESENTATIVE has any change in ownership made by merger, acquisition, or otherwise or if REPRESENTATIVE or any principal owner of REPRESENTATIVE has or acquires a 5% or greater ownership interest in any company providing or capable of providing services in competition with COMPANY in the areas served by COMPANY. REPRESENTATIVE agrees to promptly notify COMPANY in writing and in advance of any proposed changes in ownership or of any proposal to subcontract, assign or transfer any of the rights and obligations under this Agreement to a third party. No new owners or successor companies shall have any right to expect a continuation of this Agreement, or any transfer of the rights or obligations of REPRESENTATIVE under this Agreement without the prior written consent of COMPANY.
- D. No termination of this Agreement shall affect an obligations of either party as of the effective date of such termination, nor shall it affect any rights or obligations of either party which are intended by the parties to survive any such termination. In particular, but not by way of limitation, no such termination shall act to nullify or discharge the post-agreement rights and obligations of the parties contained in this Agreement, including, but not limited to the indemnification and non-competition provisions of this Agreement.
- E. Neither party possesses nor shall be deemed to possess any right of property in or incident to this Agreement, and the parties agree that any termination of this Agreement according to the formalities specified herein, and based on the conditions required by the provision under which such termination is effected, shall not constitute an unfair or abusive termination or create any liability of the terminating party to the terminated party not set forth in this Agreement.
- F. The right of either party to terminate this Agreement is not an exclusive remedy, and either of them shall be entitled, alternatively or cumulatively, to damages for breach of the Agreement, injunction, or other court order requiring performance of obligations of this Agreement or other remedy under the laws of the state of Georgia.
- G. REPRESENTATIVE and COMPANY agree that upon the expiration or termination of this Agreement: (1) REPRESENTATIVE will not thereafter use any actual or similar trade name, service mark,

trademark, logo, insignia, symbols or decorative designs theretofore used by REPRESENTATIVE in the conduct of its business pursuant to this Agreement, in any manner or for any purpose except that REPRESENTATIVE may use or continue to use any trade name, service mark, trademark, logo, insignia, symbols or decorative designs REPRESENTATIVE or its owners lawfully used in any business prior to the date of this Agreement; (2) neither REPRESENTATIVE nor COMPANY will utilize for any purpose any actual or similar trade name, trade or service mark or other commercial symbol that in any manner might cause either party or any part of their business to be identified as associated with the other party; and (3) REPRESENTATIVE and COMPANY will return to each other party, or certify in writing the destruction of, all advertising and marketing materials, forms, and other materials identifying or relating to the other party or the other party's Service.

IX. PROTECTION PROVISIONS

A. CONFIDENTIALITY/NONDISCLOSURE.

- 1. All information disclosed by COMPANY to REPRESENTATIVE pursuant to this Agreement, other than such information as may be generally available to the public or the industry or as may be intended by COMPANY to be disclosed by REPRESENTATIVE pursuant to Section V. hereof, is and will be disclosed to REPRESENTATIVE in confidence solely for REPRESENTATIVE's use in the conduct of its business as a Service representative. REPRESENTATIVE agrees to keep such information ("Information") secret and confidential indefinitely and not to disclose it to any other person or use it during the term of this Agreement or for one year after its termination except in carrying out its obligations hereunder or in response to obligations imposed by COMPANY's state tariffs or order of a court or regulatory body.
- 2. REPRESENTATIVE shall take effective precautions, contractual and otherwise, reasonably calculated to prevent unauthorized disclosure or misuse of such information by any of its employees or by any other person having access to such information.
- 3. Within sixty (60) days after the expiration or the termination of this Agreement by either party for any reason, REPRESENTATIVE agrees promptly to return to COMPANY, or to certify the destruction of, any physical or confidential information provided by COMPANY to REPRESENTATIVE. In addition, REPRESENTATIVE shall return any signage or other printed materials containing any BallSouth names, logos, or Marks, and shall there after cease using any such information or materials.
- 4. If REPRESENTATIVE is served with process to obtain such information, REPRESENTATIVE shall immediately notify COMPANY which shall, in addition to REPRESENTATIVE's efforts, if any, have the right to seek to quash such process, or to take such other actions necessary to protect the confidentiality of the information.

5. REPRESENTATIVE hereby acknowledges and agrees that in the event of its breach of its obligations of confidentiality under Section VIII.A., COMPANY's remedies at law may be inadequate and COMPANY will be entitled to injunctive relief. Any information furnished or disclosed by REPRESENTATIVE to COMPANY shall not obligate COMPANY to hold such information in confidence, unless marked thereon as "proprietary". In the event that any information is furnished or disclosed by REPRESENTATIVE to COMPANY which is marked "proprietary" then the same rights, obligations, terms, and conditions set forth herein will apply to said information as applies to the information supplied by COMPANY to REPRESENTATIVE.

B. INVENTIONS AND PATENT RIGHTS.

1. REPRESENTATIVE shall not be deemed by anything contained in this Agreement or done pursuant to it to acquire any right, title or interest in or to any design, invention, improvement, process or system now or hereafter embodied in Service, whether or not such design, invention, improvement, process or system is patented or patentable under the law of any country.
2. COMPANY agrees to indemnify, defend, and hold REPRESENTATIVE harmless from any and all liability for any claims, demands or suits (collectively the "claims") against REPRESENTATIVE alleging that Service offerings and related services provided by COMPANY pursuant to the terms of this Agreement and sold by REPRESENTATIVE infringe a United States patent or trade secret, unless such claim is the result of the acts or omissions of the REPRESENTATIVE, and will pay all costs and damages (including reasonable attorney's fees) associated with any such claims or assessed against REPRESENTATIVE on account of such claims. REPRESENTATIVE agrees to immediately notify COMPANY at the time of any such claims and COMPANY reserves the right to personally defend or handle the defense of those claims relevant to it hereunder. Notwithstanding the foregoing, each party agrees to indemnify, defend and hold the other party harmless against any liability for any claims or demands arising out of the conduct of business by the party that are the result of the party's negligent or willful act or failure to act, including, but not limited to, any claims or demands arising out of any allegedly unauthorized use of a trademark, service mark, patent, copyright, process, idea, method or device by the party covered by this Agreement. Each party agrees to immediately notify the other of any claims or demands arising hereunder.

X. AMENDMENTS.

COMPANY may amend this Agreement at any time, upon thirty (30) days notice to REPRESENTATIVE. Such Amendments are specifically intended to include, but not limited to, revisions to the operations standards and Commission Schedules. Such Amendments shall be in effect thirty-one (31) days from the date of such notice or earlier if agreed upon by the parties. For any REPRESENTATIVE election option

A or B in Section XIII. COMPANY shall not reduce any non-recurring or recurring commission rates by more than 20% in any one year period for any particular product or service. REPRESENTATIVE may terminate this Agreement within thirty (30) days of the date of such notice of amendment if REPRESENTATIVE does not desire to continue in the relationship as amended.

XI. MISCELLANEOUS

A. ASSIGNABILITY.

Neither this Agreement, nor any right or obligation hereunder is assignable, in whole or in part, whether by operation of law or otherwise, by REPRESENTATIVE without the prior written consent of the COMPANY. This Agreement may be assigned by COMPANY to any affiliate as defined in Section XIII. of this Agreement, or to any other person, firm or corporation which acquires substantially all of the business of COMPANY relating to Service, whether by purchase, consolidation, merger, or otherwise, upon 30 days' notice to REPRESENTATIVE. If REPRESENTATIVE does not desire to continue in the relationship after such assignment, then REPRESENTATIVE may terminate this Agreement.

B. AFFILIATES.

For the purpose of this Agreement, an "affiliate" of an entity shall mean any corporation or other business entity which owns or controls, is under common ownership or control with, or is owned or controlled by the first entity; and "control" shall mean the ownership of more than fifty percent of the voting stock or more than a fifty percent interest in the profits of any corporation or other business entity.

C. NOTICES AND OTHER COMMUNICATIONS.

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

ASE Contract Administrator
Suite 200
1800 Century Blvd.
Atlanta, Georgia 30345

or at such other address as the intended recipient previously shall have designated by written notice to the other party. Every notice, consent, approval, or other communications required or contemplated by this Agreement by COMPANY shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

or at such other address as the intended recipient previously shall have designated by written notice to the other party. Where specifically required, notices shall be by certified or registered mail.

Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day thereafter, after it was deposited in the mails. Notice not given in writing shall be effective only if acknowledged a duly authorized officer or designated representative of the party in whom it was given.

D. NO WAIVER OF RIGHTS.

Failure of either party at any time to require the other party's performance of any obligation under this Agreement shall not affect the right to require performance of this obligation. Any waiver by either party of any breach of any provision hereof shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under this Agreement.

E. PAYMENTS.

5. If for any reason whatsoever this Agreement is terminated and any amount is due from REPRESENTATIVE to COMPANY, such amount shall be paid to COMPANY in cash, Company check or certified check by REPRESENTATIVE within thirty (30) days after receipt of COMPANY'S final accounting relating to REPRESENTATIVE.

2. Each party shall have the right to set off against any payment due from it hereunder any amounts owed to it by the other party under this Agreement.

3. ANY residual payments being made at the time of termination of this Agreement shall immediately cease to be paid by COMPANY to REPRESENTATIVE and REPRESENTATIVE acknowledges that it will no longer be entitled to residual payments upon termination of the agreement. Residual payments shall also cease in the event a Subscriber discontinues the service to which residual payments would otherwise apply or REPRESENTATIVE ceases to hold exclusive sales representative status under either option A or B of Section XIII.

F. GOVERNING LAW AND REGULATORY CHANGES.

1. The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of Georgia and of the United States. COMPANY reserves the right to amend or terminate this Agreement to conform it to any requirement of such laws or regulations, provided that REPRESENTATIVE shall have the right within thirty (30) days of receipt of notice of such amendment to terminate this Agreement. This Agreement may be immediately terminated by COMPANY if COMPANY becomes subject to any regulatory order from the Federal Communications Commission eliminating or substantially modifying the proposed Service marketing plans previously or hereafter submitted by COMPANY.

2. The validity, construction, and enforceability of any Service contract(s) executed pursuant to this Agreement shall be governed in all respects by COMPANY'S state tariffs and the laws and regulations of the state in which such contracts are entered.

G. DISCONTINUANCE OF PROGRAM.

COMPANY reserves the right upon one hundred eighty (180) days' notice to REPRESENTATIVE to discontinue its Authorized Sales Representative Program as to all its sales representatives on a prospective basis. In such event this Agreement will continue in effect only with respect to REPRESENTATIVE'S Service customers being provided Service pursuant to a long-term contract on the date of such notice, and as to each such customer REPRESENTATIVE'S right to receive commissions and obligation to provide service shall cease upon the expiration of such customer's contract for Service in effect on the date of notice.

H. INDEMNIFICATION.

1. Each party agrees to indemnify and hold harmless the other party and its shareholders, directors, officers, and employees (collectively the "Indemnitees") and each of them from and against any loss, costs, damages, claims, expenses (including attorneys' fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death or disease of any person, damage to or destruction or loss of any property or any other damages arising out of, resulting from, or in connection with (i) the performance or nonperformance of the Services contemplated by this Agreement which is caused in whole or in substantial part by an act, omission, default, or negligence (whether active or passive) of the party or its employees, or regardless of whether the party's liability would otherwise be limited to payments under state worker's compensation or similar laws, or (ii) the failure of the party to comply with any of the terms and conditions herein or the failure to conform to statutes, ordinances, or other regulations or requirements of any governmental authority in connection with the performance of the Services provided for in this Agreement, including actions brought by the party's employees under worker's compensation or similar laws.

2. Each party further agrees to indemnify and hold harmless the Indemnitees from the other against (i) any and all penalties imposed as a result of the violation of any law, ordinance, order, rule, regulation, condition, or requirement, in any way related, directly or indirectly to each party's performance hereunder, compliance with which is left by this Agreement to each party and (ii) any and all claims, liens and/or suits for labor and materials furnished at the party's request.

3. Each party shall, at its own cost, expense, and risk, defend any claims, suit, action or other legal proceeding (collectively "actions") for which that party is hereunder obligated to indemnify an Indemnitee. Subject to the provisions of subparagraph 3. above, the responsible party shall pay and

satisfy any judgment or decree which may be rendered against any of the Indemnities in any such action and shall pay reasonable costs and reasonable attorneys' fees which may be incurred by the Indemnities in connection therewith and/or in enforcing the indemnification provisions set forth above. Should the responsible party in the opinion of the other party, ignore or fail to properly handle or defend any such action, the other party may, at its option, assume and undertake, or join the handling or defense of any such action, and in that event the responsible party will reimburse the other for reasonable attorneys' fees and other reasonable expenses incurred by it in handling or defending same, including any reasonable amounts paid in settlement thereof or satisfaction of any judgment rendered.

I. LIMITATION OF LIABILITY.

Notwithstanding anything contained herein, COMPANY's liability and indemnity obligations are limited by provisions of COMPANY's state tariffs.

J. LIABILITY INSURANCE.

COMPANY represents that it has insurance equal to or exceeding that required of REPRESENTATIVE hereafter.

1. REPRESENTATIVE shall take out, pay for, and at all times during the performance of work hereunder maintain, such public liability, contingent (proactive), worker's compensation and other such liability insurance as will satisfy the foregoing indemnity requirements of this Agreement and protect REPRESENTATIVE and COMPANY from claims arising out of REPRESENTATIVE's performance under this Agreement. Such insurance shall include comprehensive general liability, bodily injury and property damage, including automobile and broad form contractual liability covering liability assumed by the REPRESENTATIVE under this Agreement.

2. Such insurance shall: (i) include COMPANY as an additional insured; (ii) be primary insurance written on an occurrence basis to the full limits of liability hereinafter stated, and should COMPANY have other valid insurance, COMPANY's insurance shall be excess insurance only; and (iii) contain an endorsement stating that cancellation or expiration of the policy to which this endorsement is attached shall not become effective until after thirty (30) days advance written notice has been delivered to COMPANY.

3. Without limiting the requirements set forth in this paragraph J., REPRESENTATIVE shall maintain insurance with coverage and minimal limits of liability as follows:

- a. Worker's compensation and employer's liability providing statutory coverage under the worker's compensation and occupational disease laws of the state whose obligations are being performed under this Agreement and employer's liability coverage with limits of \$500,000.
- b. Comprehensive general liability affording bodily injury

liability (or death) with limits of not less than \$500,000 for each occurrence and \$1,000,000 in the aggregate, such coverage to include \$1,000,000 broad form contractual liability covering liability assumed under this Agreement.

4. In no event shall the provisions of this paragraph J. be construed in any way to limit REPRESENTATIVE's obligations under the preceding paragraph H.

5. The insurance coverage required herein shall be through policies issued by companies authorized to do business under the laws of the state where the work is performed. The insurance carrier must be rated by the latest edition of Best's Insurance Guide, published by Alfred M. Best Company, Inc. at no less than a "B+" Best Policyholder Rating and no less than an "X" rating in Best's Financial Size Category.

6. All of such insurance, including renewals, shall be subject to the approval of COMPANY for adequacy of protection, and evidence of such coverage shall be furnished to COMPANY indicating such insurance to be in force and effect. Completed Certificates of Insurance shall be filed with COMPANY prior to commencement of work hereunder.

7. The foregoing insurance requirements may be waived by COMPANY if REPRESENTATIVE (i) has qualified and is certified as self-insured under the laws of the state(s) in which REPRESENTATIVE is authorized to perform under this Agreement and (ii) has a net worth of at least five million (\$5,000,000.00) dollars or provides a guarantee of liability suitable to COMPANY issued and executed by a company that has a net worth of at least ten million (\$10,000,000.00) dollars. In the event of such waiver by COMPANY, REPRESENTATIVE agrees to provide to COMPANY evidence, satisfactory to COMPANY, of compliance with terms set forth in (i) and (ii) above.

K. NONDISCRIMINATION (COMPLIANCE) ACTIVITIES AND LOBBYING. All the applicable provisions of Appendix E, "NONDISCRIMINATION COMPLIANCE AGREEMENT", are hereby incorporated herein. In addition, Appendix F, "GRATUITIES AND LOBBYING", is hereby incorporated herein.

L. SEVERABILITY. In the event any portion of this Agreement may be determined by any governmental body having jurisdiction hereover, or by any court of competent jurisdiction, to be unenforceable, the balance of the Agreement shall be severed therefrom and shall remain in full force and effect unless a failure of consideration would thereby result.

M. CAPTIONS. All section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

N. PROHIBITED RELATIONSHIPS. REPRESENTATIVE warrants that no person or agency has been employed, retained, or directed to solicit or secure this Agreement

upon an agreement or understanding for a commission percentage, brokerage, contingent fee, or other remuneration. The exchange or offering of any gift item, personal service entertainment or unusual hospitality ("gratuities") by either party of this Agreement to the other is expressly prohibited. This prohibition is equally applicable to each party's officers, employees and immediate family members. COMPANY may, by written notice to REPRESENTATIVE, terminate the right of REPRESENTATIVE to proceed under this Agreement if it is found by COMPANY that gratuities are or have been offered or given by REPRESENTATIVE, its employees or immediate family members, to any employee of COMPANY.

O. LICENSES.

No licenses, express or implied, under any patents are granted by COMPANY to REPRESENTATIVE hereunder nor by REPRESENTATIVE to COMPANY.

P. SPECIAL CONDITIONS.

This contract shall become null and void and terminate upon the filing of bankruptcy, adjudication of bankruptcy or petition for reorganization filed by either party.

Q. SURVIVAL OF OBLIGATIONS.

Any respective obligations of the parties hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration. This includes, but is not limited to, obligations set forth in Sections VII, IX and XE.H.

R. INCORPORATION OF APPENDICES.

Appendices A through F, referred to in this Agreement and attached hereto, are integral parts of this Agreement and all terms and conditions contained therein are fully incorporated herein by reference and REPRESENTATIVE agrees to be bound thereby.

S. AGREEMENT BINDING ON SUCCESSORS IN INTEREST.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective and applicable heirs, legal and personal representatives, successors and permitted assigns, if any.

T. LIMITATION OF ACTIONS.

No action, regardless of its form, arising out of this Agreement, may be brought by either party more than two (2) years after the cause of action has arisen.

XII. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

XIII. ELECTION

REPRESENTATIVE acknowledges that it has read and understands the provisions of Section III and hereby makes an election as required in Subsection III.A.4 by indicating below, its choice and initialing beside the option chosen:

- | | |
|--|-----------|
| Choice: | Initials: |
| <input type="checkbox"/> A. REPRESENTATIVE elects to market or otherwise promote exclusively the intraLATA network services of COMPANY. | _____ |
| <input type="checkbox"/> B. REPRESENTATIVE elects to market or otherwise promote exclusively all COMPANY network services with the exception of intraLATA toll services. | _____ |
| <input type="checkbox"/> C. REPRESENTATIVE elects not to market or otherwise promote exclusively the intraLATA network services of COMPANY. | _____ |

Accepted and Approved: As of _____, 19____

(ABOVE TO BE COMPLETED BY COMPANY REPRESENTATIVE)

BELLSOUTH TELECOMMUNICATIONS, INC.

(REPRESENTATIVE)

BY: _____
(Signature)

BY: _____
(Signature)

NAME: JOHN W. THACKER
(Printed Name)

NAME: _____
(Printed Name)

TITLE: DIRECTOR

TITLE: _____

DATE: _____

DATE: _____

APPENDIX A
Authorized Marketing Areas

I. Terms and Conditions

- A. REPRESENTATIVE shall conduct the marketing activities in this Agreement in the specific geographic areas as indicated below.
- B. If REPRESENTATIVE is appointed as a representative to market Service in an Authorized Marketing Area which boundaries cross into states not primarily served by COMPANY, REPRESENTATIVE shall contact its COMPANY representative to determine whether a prospective customer in the portion of the Authorized Marketing Area that extends beyond such boundary is within REPRESENTATIVE's Authorized Marketing Area. All requests to COMPANY shall be in the format set forth in the attached Appendix A.1.
- C. Areas in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee that are provided exchange services by companies other than COMPANY are not included in REPRESENTATIVE's Authorized Marketing Area and REPRESENTATIVE is not authorized to sell, or to attempt to sell, any Service in those areas.

II. Authorized Marketing Area

Subject to Paragraph I.B. and I.C. above, the Authorized Marketing Area(s) set forth below (is/are) designated as the authorized sales areas for REPRESENTATIVE during the term of this Agreement.

ALABAMA-		KENTUCKY-		NORTH CAROLINA-	
BIRMINGHAM	_____	LOUISVILLE	_____	ASHEVILLE	_____
HUNTSVILLE	_____	OWENSBORO	_____	CHARLOTTE	_____
MOBILE	_____	WINCHESTER	_____	GREENSBORO	_____
MONTGOMERY	_____			RALEIGH	_____
				WILMINGTON	_____
FLORIDA-		LOUISIANA-		SOUTH CAROLINA-	
DAYTONA BEACH	_____	BATON ROUGE	_____	CHARLESTON	_____
GAINESVILLE	_____	LAFAYETTE	_____	COLUMBIA	_____
JACKSONVILLE	_____	NEW ORLEANS	_____	FLORENCE	_____
ORLANDO	_____	SHREVEPORT	_____	GREENVILLE	_____
PANAMA CITY	_____				
PENSACOLA	_____				
SOUTHEAST	_____				
GEORGIA-		MISSISSIPPI-		TENNESSEE-	
ALBANY	_____	BLOOM	_____	CHATTANOOGA	_____
ATLANTA	_____	JACKSON	_____	KNOXVILLE	_____
AUGUSTA	_____			MEMPHIS	_____
MACON	_____			NASHVILLE	_____
SAVANNAH	_____				

OTHER _____

* All areas marked are LATA-wide unless otherwise indicated in "Other" section.

APPENDIX A.I

Request to Market in Unnumbered Area

DATE	Request Made By	Area	Customer
-------------	------------------------	-------------	-----------------

Note: If granted, permission to market in the above area is granted for one time only. REPRESENTATIVE must separately apply to market as a BellSouth representative in the above area if additional opportunities arise to market in said area.

APPROVED: _____

DENIED: _____

EFFECTIVE: _____ **TERM OF EXPIRATION:** _____

ASR SALES CENTER MANAGER

CONTRACT ADMINISTRATOR

DATE: _____

DATE: _____

APPENDIX B

I. Sales Commissions

- A. Sales commissions for each Service sold by REPRESENTATIVE under this Agreement are only due and payable where the specific terms and conditions, applicable to the Service, set forth in this Agreement have been met.
- B. Sales commissions may be altered or withheld pursuant to Section I.A.3. and IV.C.2. at the COMPANY's sole discretion, for sales of services subject to special terms, conditions or prices.
- C. If ASR has elected option A or B in Section XIII, then both non-recurring and residual compensation, as set forth in the appropriate portion of the Commission Schedule, shall be paid to REPRESENTATIVE.
- D. If ASR has elected option C in Section XIII, then only the non-recurring compensation set forth in the Commission Schedule shall be paid to REPRESENTATIVE.

APPENDIX B

I. Sales Commissions Schedule

* Must be Certified to Receive Commissions

BUSINESS LINE (A.3)	YEARLY REVENUE	MONTHLY COMMISSION	MONTHLY EXCLUSIVITY	MONTHLY EXCLUSIVITY
	COLUMN A	COLUMN B	COLUMN A	COLUMN B
BUSINESS LINES (New) (A.3)				
Flat Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Back-Up Line	\$ 20.00	\$ 40.00	\$ 1.00	\$ 1.00
Message Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Measured Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
NAR- Network Access Register	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Measured Rate FX (+A.9)	\$ 267.00	\$ 267.00	\$ 4.00	\$ 4.00
Trunk	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
UBExp Local Calling Plan	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
* ISDN-Individual Business line (A.42)				
Mo to Mo	\$ 100.00	\$ 175.00	\$ 5.00	\$ 5.00
59 Months	\$ 100.00	\$ 200.00	\$ 5.00	\$ 5.00
60-120 Months	\$ 100.00	\$ 250.00	\$ 5.00	\$ 5.00
* ISDN-Primary Rate	\$ 1,800.00	\$ 1,250.00	\$ 90.00	\$ 90.00
* PATHLINK SM				
Voice/Data				
Mo to Mo	\$ 1,800.00	\$ 1,600.00	\$ 90.00	\$ 90.00
24-48 Months	\$ 1,800.00	\$ 2,000.00	\$ 90.00	\$ 90.00
49-72 Months	\$ 1,800.00	\$ 2,500.00	\$ 90.00	\$ 90.00
Data Only				
Mo to Mo	\$ 900.00	\$ 800.00	\$ 30.00	\$ 30.00
24-48 Months	\$ 900.00	\$ 1,000.00	\$ 30.00	\$ 30.00
60-120 Months	\$ 900.00	\$ 1,250.00	\$ 30.00	\$ 30.00
Hunting-Rotary (A.13-NC ONLY)	\$ 17.00	\$ 68.00		
DATA - New Line (B.7)				
* SynchroNet®				
Subrate Drop/19.2 (per drop)				
Mo to Mo	\$ 73.20	\$ 119.80	\$ 3.66	\$ 3.66

APPENDIX B

I. Sales Commissions Schedule

* Must be Certified to Receive Commissions

DESCRIPTION	REVENUE	NET REVENUE	COMMISSION	NET COMMISSION
56K Drop (per drop)				
Mo to Mo	\$ 123.40	\$ 293.60	\$ 6.17	\$ 6.17
Contracted	\$ 123.40	\$ 645.92	\$ 6.17	\$ 6.17
* Megalink® InterOfc Channel (B.7)				
Mo to Mo	\$ 286.00	\$ 514.25	\$ 14.30	\$ 14.30
Contracted	\$ 286.00	\$ 1,114.07	\$ 14.30	\$ 14.30
* MegaLink® Local Channel/DS1				
Mo to Mo	\$ 132.50	\$ 75.25	\$ 6.63	\$ 6.63
Contracted	\$ 132.50	\$ 218.03	\$ 6.63	\$ 6.63
* MegaLink® Channel Svc (Per 24 Channels)				
Mo to Mo	\$ 190.37	\$ 187.16	\$ 9.52	\$ 9.52
Contracted	\$ 190.37	\$ 608.27	\$ 9.52	\$ 9.52
ESSX SERVICE (A.12)				
ESSX NAR - see BUSINESS LINES				
ESSX Main Station	\$ 14.04	\$ 31.50		
ESSX Station netting				
Addition	\$ 14.04	\$ 31.50		
Deletion (Maintenance Fee)	\$ 14.04	\$ 15.75		
Station Features - per station (A.12)				
3-Way Calling	\$ 1.00	\$ 2.00		
Repeat Dialing	\$ 1.50	\$ 3.50		
Call Return	\$ 2.00	\$ 4.00		
Call Tracing	\$ 5.00	\$ 8.25		
Caller ID	\$ 3.88	\$ 7.76		
3-Feature Pkg	\$ 1.30	\$ 2.60		
4-Feature Pkg	\$ 1.37	\$ 2.74		
5-Feature Pkg	\$ 1.44	\$ 2.88		
6-Feature Pkg	\$ 1.51	\$ 3.02		
7-Feature Pkg	\$ 1.75	\$ 3.50		

APPENDIX B

1. Sales Commissions Schedule

* Must be Certified to Receive Commissions

DESCRIPTION	BASE RATE	COMMISSION	NET RATE	NET RATE
8-Feature Pkg	\$ 2.01	\$ 4.02		
9-Feature Pkg	\$ 2.31	\$ 4.62		
10-Feature Pkg	\$ 2.66	\$ 5.90		
ECAS/DCAS Line	\$.10	\$ 4.50		
System Features - per system (A.12)				
Call Fwd Var	\$ 1.00	\$ 3.90		
Call Fwd BL	\$ 4.50	\$ 17.40		
Call Fwd DA	\$ 2.50	\$ 7.90		
Permanent and Call Hold	\$ 2.00	\$ 7.90		
Uniform Call Dist-Per hunt Group	\$ 8.00	\$ 18.00		
Uniform Call Dist-Per Announcement	\$ 33.00	\$ 67.00		
Call Park	\$.50	\$ 2.20		
Call Pickup	\$.50	\$ 2.20		
Waiting Originating	\$ 3.50	\$ 7.00		
Call Waiting Terminating	\$ 1.20	\$ 4.60		
ECAS/DCAS	\$ 6.25	\$ 18.00		
ARS	\$ 11.00	\$ 40.70		
ARS Pattern	\$.60	\$ 1.20		
ARS Trunk	\$ 2.00	\$ 4.00		
Speed Calling	\$ 3.50	\$ 7.00		
System Terminations - each (A.12)				
Interexchange Carrier Access line/SFG	\$ 2.50	\$ 8.70		
Dedicated Facility group	\$ 2.50	\$ 8.70		
Analog Termination	\$ 14.75	\$ 29.50		
Digital Termination	\$ 5.00	\$ 10.00		
Analog tie line	\$ 26.00	\$ 52.00		
Digital tie line	\$ 16.00	\$ 32.00		
Analog FX	\$ 26.00	\$ 52.00		
Digital FX	\$ 16.00	\$ 32.00		
Log FCO	\$ 26.00	\$ 52.00		

APPENDIX B

I. Sales Commissions Schedule
 * Must be Certified to Receive Commissions

SERVICE	MONTHLY REVENUE	MONTHLY COMMISSION DOLLARS	MONTHLY COMMISSION PERCENTAGE	MONTHLY COMMISSION DOLLARS
Digital FCO	\$ 16.00	\$ 32.00		
DST Termination = MegaLink	\$ 350.00	\$ 350.00		
Direct Inward Dialing (A.12)	\$ 29.00	\$ 87.00		
* MULTISERV SERVICE (A.12)				
Links (Mo to Mo)	\$ 50.00	\$ 170.00	\$ 2.50	\$ 2.50
Contracted	\$ 50.00	\$ 204.00	\$ 2.50	\$ 2.50
* MULTISERV PLUS (A.12)				
Links (Mo to Mo)	\$ 23.00	\$ 46.00	\$ 1.15	\$ 1.15
Contracted	\$ 23.00	\$ 57.00	\$ 1.15	\$ 1.15
AdWatch (Pilot) (A.34)	\$ 32.00	\$ 48.00		
E911 Pinpoint SM (A.13/A.24)	\$ 155.00	\$ 200.00		
CrisisLinkSM (A.34.5)				
1st Plan(Mo to Mo)	\$ 85.00	\$ 200.00	\$ 4.25	\$ 4.25
Contracted (36 Months)	\$ 85.00	\$ 240.00	\$ 4.25	\$ 4.25
Add Plan (Mo to Mo)	\$ 85.00	\$ 30.00	\$ 4.25	\$ 4.25
Contracted (36 Months)	\$ 85.00	\$ 50.00	\$ 4.25	\$ 4.25
Additional Numbers	\$ 7.00	\$ 3.00		
ZipConnect (Pilot) (A.34)				
Mo to Mo- 1,000 Calls/month	\$ 250.00	\$ 200.00	\$ 12.50	\$ 12.50
36 Month Contract- 2,500 Calls/month	\$ 250.00	\$ 400.00	\$ 12.50	\$ 12.50
36 Month Contract-5,000 Calls/month	\$ 250.00	\$ 600.00	\$ 12.50	\$ 12.50
36 Month Contract-25,000 Calls/month	\$ 250.00	\$ 1,500.00	\$ 12.50	\$ 12.50
36 Month Contract-150,00+ Calls/month	\$ 250.00	\$ 5,000.00	\$ 12.50	\$ 12.50

APPENDIX B

I. Sales Commissions Schedule
 * Must be Certified to Receive Commissions

SERVICE (ESSN) REFERENCE	PERCENT	MONTHLY	MONTHLY	MONTHLY
FEATURES (A.13)				
Custom Calling Features				
Call Forwarding	\$ 3.76	\$ 15.04		
CF BL & DA	\$ 3.28	\$ 9.84		
CF BL/DA/VAR Multi Simul	\$ 3.00	\$ 6.00		
Call Waiting	\$ 4.50	\$ 13.50		
Remote Access to CF	\$ 7.65	\$ 22.95		
Speed Calling	\$ 5.06	\$ 10.12		
Three-Way Calling	\$ 4.08	\$ 12.24		
Remote Call Forwarding	\$ 21.00	\$ 42.00		
Packages-Two Features	\$ 6.39	\$ 25.56		
Packages-Three Features	\$ 8.79	\$ 35.16		
Packages-Four Features	\$ 11.15	\$ 44.60		
Customized Code Restriction	\$ 3.89	\$ 11.67		
TOUCHSTAR (A.13)				
Call ID	\$ 10.00	\$ 30.00		
Other Feature (each)	\$ 5.00	\$ 15.00		
RingMaster I (A.13)	\$ 7.00	\$ 14.00		
RingMaster II	\$ 10.00	\$ 20.00		
Prestigo Features -User Transfer (A.12)	\$ 5.00	\$ 15.00		
WATSAVER (East A.18 West A.20)				
4-5 Hours	\$ 42.00	\$ 37.80	\$ 2.10	
10 Hours	\$ 90.00	\$ 81.00	\$ 4.50	
15 Hours	\$ 117.00	\$ 105.30	\$ 5.85	
18 Hours	\$ 162.00	\$ 145.80	\$ 8.10	
20 Hours	\$ 114.00	\$ 102.60	\$ 5.70	
25 Hours	\$ 195.00	\$ 175.50	\$ 9.75	
38 Hours	\$ 319.20	\$ 287.28	\$ 15.96	
48 Hours	\$ 367.00	\$ 330.00	\$ 18.35	

APPENDIX C

Sales Terms and Conditions

I. Eligible Sales

Unless otherwise set forth in this Agreement, the following terms and conditions shall apply to each sale of Service made by REPRESENTATIVE under this Agreement.

II. General Service Offering Terms and Conditions

- A. REPRESENTATIVE acknowledges all applicable provisions of COMPANY's terms as they pertain to the prohibition of, or conditions on, resale of service. REPRESENTATIVE agrees that it will not sell any Service, nor will REPRESENTATIVE entitle to any compensation for sales of service to any person, corporation or entity which is not the end-user of the service.
- B. Unless otherwise set forth in this Agreement, COMPANY shall have the option to disallow commissions on any new sales of Service which remain installed for less than six (6) months. Should the customer have its Service disconnected in six (6) months or less, COMPANY may recover all commissions paid to REPRESENTATIVE for that sale. REPRESENTATIVE shall never sell Service to any customer with the intent of avoiding the application of this provision in order to earn commission payment. In the event service is removed immediately after the six month grace period under circumstances indicating fraud, bad faith or other suspicious circumstances, COMPANY may seek to recover all commissions previously paid to REPRESENTATIVE for such sale. In such cases, COMPANY may investigate the circumstances surrounding the discontinuance of service, and REPRESENTATIVE will fully cooperate in such investigation. If, after the conclusion of the investigation, it is determined by COMPANY that commissions have been improperly received by REPRESENTATIVE, all such commissions previously received shall be voluntarily returned to COMPANY by REPRESENTATIVE.

APPENDIX D

General Support Levels

REPRESENTATIVE electing Option A or B in Section XIII of this Agreement will be entitled to the General Support Levels*, subject to being made available by **COMPANY**, as follows:

- Enhanced on-line tools
- Order entry
- Pricing
- Tariffs
- Applications
- Reference material
- E-Mail
- Training for services/applications/sales
- Enhanced Co-op program
- Leads/referrals
- Information and training on connecting network products
- Marketing/revenue generation bonus programs.

REPRESENTATIVE electing Option C in Section XIII of this Agreement will be entitled to the General Support Levels* as follows:

- On line pricing and order entry
- Sales Literature & selected promotion support
- Service training only
- Limited Co-op advertising

*Note: As indicated in Section III of this Agreement, the support levels provided by **COMPANY** are provided as deemed appropriate by **COMPANY**. **COMPANY** reserves the right to alter the support level if and when it deems such changes necessary or appropriate. **REPRESENTATIVE** may opt out of this Agreement within 30 days or notice of changes to any of the support levels deemed by **REPRESENTATIVE** to be unacceptable.

APPENDIX E

NONDISCRIMINATION COMPLIANCE AGREEMENT

Contractors shall comply with the applicable provisions of the following:

Exec. Order No. 12138, P.L. 95-507, Exec. Order No. 11246, Exec. Order No. 11625, Section 5 of the Small Business Act as amended, Railroad Revitalization and Regulatory Reform Act of 1976, Exec. Order No. 11701, Exec. Order No. 11758, Exec. Order No. 12138, Section 503 of the Rehabilitation Act of 1973 as amended by PL93-516, Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the rules, regulations and relevant Orders of the Secretary of Labor pertaining to the Executive Order and Statute listed above.

For contracts of or which aggregate to \$2,500 or more annually, the following table describes the clauses which are included in the contract:

1. Inclusion of the Equal Employment clause in all contracts and orders;
2. Certification of non-segregated facilities;
3. Certification that an affirmative action program has been developed and is being filed;
4. Certification that an annual Employee Information Report (EEO-1 Standard Form 100) is being filed;
5. Inclusion of the "Utilization of Minority and Women's Business Enterprises" clause in all contracts and orders;
6. Inclusion of the "Minority and Women's Business Enterprise Subcontracting Program" clause in all contracts and orders;
7. Inclusion of the "Listing of Employment Openings" clause in all contracts and orders.

Inclusion of the "Employment of the Handicapped" clause in all contracts and orders;

Contract Value	Clause(s) Required
\$ 2,500 to \$10,000	1, 2, 3, 4, 7, 8
\$10,000 to \$50,000	1, 2, 3*, 4*, 5, 6, 7, 8
\$50,000 or more	1, 2, 3*, 4*, 5, 6, 7, 8

* Applies only for businesses with 50 or more employees

1. Equal Employment Opportunity Provisions
In accordance with Exec. Order No. 11246, dated September 24, 1965 and Part 60-1 of Title 41 of the Code of Federal Regulations (Public Contracts and Property Management, Office of Federal Contract Compliance, Obligations of Contractors and Subcontractors), as may be amended from time to time, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

2. Certification of Non-segregated Facilities
The contractor certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner, or permit its employees to perform their services at any location under its control where segregated facilities are maintained and that it will obtain a similar certification prior to the award of any new contract or subcontracts.

3. Certification of Affirmative Action Program
The contractor affirms that it has developed and is maintaining an affirmative action plan as required by Part 60-2 of Title 41 of the Code of Federal Regulations.

4. Certification of Filing of Employee Information Reports
The contractor agrees to file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO-1) or such forms as may be promulgated in its place.

5. Utilization of Minority and Women's Business Enterprises
It is the policy of the Government and BellSouth Corporation and its affiliates as a Government contractor, that minority and women's business enterprises shall have the same available opportunity to participate in the performance of contracts.

(b) The contractor agrees in one his or her best efforts to carry out this policy to the award of his or her subcontracts to the fullest extent consistent with the efficient performance of the contract. As used in this context, the term "minority or women's business enterprise" means a business with at least 51 percent of which is owned by minority or women group members or in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority or women group members. For purposes of this definition, minority group members are Blacks, Hispanics, Asians, Pacific Islanders, American Indians and Alaska Natives. Contractors may rely on written representation by subcontractors regarding their status as minority or women's business enterprises in lieu of an independent investigation.

6. Minority and Women's Business Enterprise Subcontracting Program
(a) The contractor agrees to establish and conduct a program which will enable minority and women's business enterprises (as defined in paragraph 5 above) to be considered fairly as subcontractors and suppliers under the contract. In this connection, the Contractor shall:

- (1) Designate a liaison officer who will administer the contractor's minority and women's business enterprises program;
- (2) Provide adequate and timely consideration of the potentialities of known minority and women's business enterprises in all "make-or-buy" decisions;
- (3) Assure that known minority and women's business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority and women's business enterprises;
- (4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority and women's business enterprises, (ii) awards to minority and women's business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority and women's business enterprises;

(5) Include the Utilization of Minority and Women's Business Enterprises clause in subcontracts which offer substantial minority and women's business enterprises subcontracting opportunities;

(6) Cooperate with the Government's Contracting Officer for BellSouth Corporation or its affiliates in any studies and surveys of the contractor's minority and women's business enterprises procedures and practices that the Government's Contracting Officer may from time to time conduct;

(7) Submit periodic reports of subcontracting to known minority and women's business enterprises with respect to the records referred to in sub-paragraph (4) above, in such form and number and at such time (not more often than quarterly) as the Government's Contracting Officer for BellSouth Corporation or its affiliates may prescribe.

(8) The contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 (or in the case of WBR \$1,000,000 in the case of contracts for the construction of any public facility and which offer substantial subcontracting possibilities) provisions which shall conform substantially to the language of this Agreement, including this paragraph (8) and to notify the Contracting Officer of the names of such subcontractors.

7. List of Employment Openings for Veterans
In accordance with Exec. Order 11701, dated January 24, 1973, and Part 60-25 of Title 41 of the Code of Federal Regulations, as it may be amended from time to time, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

8. Employment of the Handicapped
In accordance with Exec. Order 11758, dated January 15, 1974, and Part 60-741 of Title 41 of the Code of Federal Regulations, as it may be amended from time to time, the parties incorporate herein by this reference the regulations and contract clauses required by those provisions to be made a part of Government contracts and subcontracts.

APPENDIX

Gifts and Lobbying

Our Company does business with the Federal Government and with various state and local governments. It is Company policy that, in doing business with governmental agencies, the COMPANY and all of its employees, agents, and other representatives will comply with all applicable laws, rules, and regulations regarding gifts, lobbying, and similar matters. Such laws, rules, and regulations often contain severe civil and criminal penalties for their violation.

By executing this Agreement, you hereby represent and warrant that your company and all employees, agents, consultants, and other representatives are familiar with and will comply with all applicable laws, rules, and regulations concerning the provision of gifts to and lobbying of any officer, employee, consultant, or other representative of a government agency. Where there is any question whether a matter is permitted or not under applicable laws, rules, and regulations, you agree that you will act as if it were not permitted. If you violate any law, rule, or regulation in connection with your dealings with a government agency arising from your work under this Agreement, we may immediately terminate this Agreement. You agree to indemnify, defend and hold us harmless from any claims, damages, any liabilities that may arise from any such violation.

**AUTHORIZED SALES REPRESENTATIVE
AGREEMENT BETWEEN
BELL SOUTH TELECOMMUNICATIONS, INC.
AND**

This AGREEMENT ("Agreement") is entered into by and between BellSouth Telecommunications, Inc., a Georgia corporation with its principal place of business at 1800 Century Boulevard, Suite 200, Atlanta, Georgia 30345 ("COMPANY") and _____ a _____ corporation with its principal place of business at _____ ("REPRESENTATIVE").

**AUTHORIZED SALES REPRESENTATIVE AGREEMENT
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WHEREAS, COMPANY is engaged in the business of marketing and providing basic telecommunications services; and, WHEREAS, REPRESENTATIVE is in the business of marketing and providing customer premises equipment (CPE) and desires to become an authorized marketing representative of COMPANY for the sale of certain services pursuant to this Agreement with COMPANY; and, WHEREAS, COMPANY wishes to engage REPRESENTATIVE to promote the sale of certain services described herein. NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby mutually agree as follows:

APPOINTMENT OF REPRESENTATIVE

- A. 1. COMPANY hereby appoints REPRESENTATIVE as an authorized representative in the geographic area(s) designated in Appendix A of this Agreement to promote the retail sale of and to solicit orders for such service offerings and related services set forth in Appendix B of this Agreement ("Service").
- 2. Any changes to the geographic area(s) designated in Appendix A of this Agreement must be agreed to and approved in writing by the parties. Such written approval will take the form set forth in Appendix A.1 of this Agreement. Any additional terms and conditions set forth in Appendix A.1 shall control, to the extent they do not conflict with this Agreement.
- 3. COMPANY reserves the right to alter the terms, conditions or rates, or apply for regulatory approval as may be necessary to alter such terms, conditions or rates for the described Service at any time. In the event any of the described Services are altered either with respect to the terms, conditions, qualifications or prices relating thereto, COMPANY reserves the right to alter or eliminate the amount of commissions paid for sale of such services as the COMPANY in its sole discretion deems appropriate. REPRESENTATIVE has the option to terminate this Agreement if it does not desire to continue the relationship as altered.
- B. REPRESENTATIVE hereby accepts such appointment and agrees to exert reasonable efforts to promote, on COMPANY's behalf, the marketing of Service and to service, in the manner described in Section III of this Agreement, all customers purchasing service through REPRESENTATIVE.
- C. COMPANY is legally prohibited from engaging in any interLATA service or business. REPRESENTATIVE expressly acknowledges COMPANY's legal obligations and agrees to only offer COMPANY's network services in conjunction with COMPANY-permitted activities. REPRESENTATIVE agrees never to represent or refer to the customer that COMPANY provides any interLATA service, recommends any interLATA service or service provider, or designs interLATA services. Any such marketing or design of interLATA services shall be conducted separately from the activities governed under this Agreement. If, in the future, COMPANY is permitted to engage in integrated interLATA and interLATA services or businesses, COMPANY reserves the right to amend this Agreement to include such services, and to the extent permitted by law, all terms and conditions relating to REPRESENTATIVE's sale of all other COMPANY services shall automatically apply thereafter to such interLATA services that may be utilized by COMPANY.
- D. It is also understood between the parties that COMPANY may actively continue in market, promote, and obtain contracts for Services in the geographic areas designated in Appendix A through COMPANY's own sales force, its affiliates and/or subsidiaries or through other representatives.

COMPANY and REPRESENTATIVE agree that the relationship between them arising from this Agreement is that of independent

contractors. Except for the rights retained by or granted to, and the obligations undertaken by, each party pursuant to this Agreement, neither has any right or any authority to enter into any contract or undertaking in the name of or for the account of the other or to assume or create any obligation of any kind, expressed or implied, on behalf of the other, nor shall the acts or omissions of either create any liability for the other. REPRESENTATIVE shall conduct its business at its own initiative, responsibility, and expense. All persons furnished by REPRESENTATIVE to perform the obligations required or permitted under this Agreement shall be considered solely REPRESENTATIVE's employees unless otherwise authorized by COMPANY. REPRESENTATIVE shall at all times remain responsible for compliance with all terms, conditions and obligations of this Agreement. Subcontracting by REPRESENTATIVE in any form, of any of REPRESENTATIVE's obligations, in whole or in part, without COMPANY authorization, is expressly prohibited and constitutes breach of this Agreement. For purposes of this section, the term subcontracting means delegating the work required or permitted under this Agreement to any person or third party not employed by REPRESENTATIVE. REPRESENTATIVE is not authorized to unilaterally abdicate its active sales and support obligations through relationships with third party individuals or companies operating independently of REPRESENTATIVE.

II. TERM

IF REPRESENTATIVE chooses option A or B in Section XII, the term of this Agreement shall commence when executed by both parties, and shall continue thereafter through December 31, 1998, or until terminated as provided for under this Agreement. This Agreement will be automatically renewed at the end of the original term and on the same date annually thereafter for successive one year terms unless either party indicates its intent not to renew the Agreement. Notice of such intent must be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. COMPANY may cancel this Agreement for cause immediately upon giving notice as provided in Section XLC

III. REPRESENTATIVE'S RESPONSIBILITIES

- A. REPRESENTATIVE agrees that:
 - 1. It will employ and train a sufficient communications sales force and staff as agreed upon by COMPANY and REPRESENTATIVE to market COMPANY - specific services and to provide adequate marketing coverage for prospective Service customers;
 - 2. It will provide customer relations and Service support functions including, where applicable, but not limited to: i) coordination of adequate initial customer training on proper use of Services; ii) conducting Service system consulting; iii) periodic personal contacts with customers; iv) provision to customers of available information regarding technical, functional, and other Service developments; and v) handling of requests from customers for network service revenue; and
 - 3. It will provide marketing services satisfactory to COMPANY and that REPRESENTATIVE will take action as needed to

meet customers' service requirements and to ensure that customers' service is properly coordinated to customers' satisfaction. REPRESENTATIVE further agrees that it will, in good faith, use its best efforts to take all reasonable steps necessary to ensure the customer is satisfied at all times, with regard to COMPANY's Service.

4. It will specify, in Section XIII of this Agreement, whether in the sale of intraLATA network services, in the areas served by COMPANY, it elects to market such intraLATA services exclusively on behalf of COMPANY or to also market or otherwise promote some or all of the intraLATA network services of other providers.
5. If REPRESENTATIVE elects to market some or all of the intraLATA network services exclusively for COMPANY, pursuant to its election of option A or B in Section XIII REPRESENTATIVE will not market the applicable intraLATA services of another provider, except in those instances where COMPANY does not provide a similar functional service in the area served by COMPANY, in which case REPRESENTATIVE may, with COMPANY's written consent, and only for so long as COMPANY does not have a similar functional service, in the area served by COMPANY, market the applicable intraLATA service of another provider, and REPRESENTATIVE will not take any action, in return for compensation of any type from another provider, which would result in an end user's applicable intraLATA service being provided in any way using the services of any provider other than COMPANY. Failure to comply with the above commitment shall be grounds for termination of this Agreement, at the COMPANY's discretion.
6. If REPRESENTATIVE elects to market and otherwise promote exclusively some or all of the intraLATA network services of COMPANY pursuant to its election of A or B, in Section XIII, REPRESENTATIVE may, in addition to non-recurring commissions, receive payment of performance bonuses and/or residual commissions as set forth in Appendix B, so long as REPRESENTATIVE satisfies the criteria for receipt of such bonuses, and/or residual commissions as further described in COMPANY's then existing operations standards. For purposes of this Agreement, residual commissions shall occur quarterly or monthly, at COMPANY's discretion, payments to REPRESENTATIVE for services sold by REPRESENTATIVE for as long as the customer retains such service or REPRESENTATIVE remains an authorized sales representative under option A or B, in Section XIII, whichever is shorter, but not, in any event, to exceed the term of this Agreement. Also COMPANY support levels will vary depending on the option chosen by REPRESENTATIVE. General support level categories applicable to the various options available in Section XIII are found at Appendix D. More specific explanations of the support levels will be provided in COMPANY's then existing operations standards.

7. REPRESENTATIVE acknowledges that COMPANY grants certain of the rights herein in material part in consideration of REPRESENTATIVE's Agreement to not exclusively for COMPANY in marketing some or all of COMPANY's intraLATA network service. As a consequence, during the term of this Agreement, and any extensions thereof, any REPRESENTATIVE electing exclusive option A or B in Section XIII agrees that neither REPRESENTATIVE nor its affiliates, or persons owing a controlling interest in REPRESENTATIVE or an affiliate shall, directly or indirectly, (a) solicit, sell, offer or accept offers for any applicable Competitive Service in the Area served by COMPANY, (b) induce or refer any actual or prospective Subscriber of COMPANY network services to subscribe to any applicable Competitive Service of another in the Area served by COMPANY, (c) provide any subscriber leads to any applicable Competitive Service in the Area, or (d) activate Subscribers through a reseller or act as a reseller of Service, whether for applicable telecommunications service offered by any person, entity, or business (other than COMPANY) in the Area, including without limitation any facilities-based carrier, any reseller, or any agent thereof, which uses technology technically capable of providing the functional equivalent of COMPANY's services in any way. These provisions and covenants shall apply so long as Representative remains an intraLATA exclusive sales representative under either option A or B in Section XIII. Also, upon termination of this Agreement or attempt to assign this Agreement, paragraph 10 shall apply.
8. If this Agreement is terminated by COMPANY in accordance with the provisions of this Agreement or by an exclusive intraLATA REPRESENTATIVE for any reason, or if this Agreement is transferred or assigned by an exclusive/intraLATA REPRESENTATIVE, REPRESENTATIVE shall in no way, directly or indirectly, take any action to cause customers to whom COMPANY's Service was sold by REPRESENTATIVE under this Agreement to divert such existing Service to another network provider in competition with COMPANY. This provision shall extend for a period of one (1) year from the effective date of such termination or change in status.
- B. If in a particular sales case the REPRESENTATIVE has failed to satisfactorily provide adequate customer service, as defined by the COMPANY in written guidelines and shared with REPRESENTATIVE, or has received commissions that were not earned, the COMPANY may recapture any sales commissions paid to the REPRESENTATIVE for such sale or deduct any fees previously paid for such sale from any future amounts owed to the REPRESENTATIVE. Repeated instances of inadequate customer service shall be grounds for termination, at the sole discretion of COMPANY.
- C. All activities of REPRESENTATIVE shall be in compliance with any applicable provisions of COMPANY tariffs and such sales, service, engineering, performance and operations standards.

authorized by COMPANY as may be in effect from time to time and provided to REPRESENTATIVE. Failure of REPRESENTATIVE to comply with any of the above-related provisions shall be grounds for termination, at the sole discretion of COMPANY.

is willing to accept orders for Service, including payment and standards of credit worthiness, physical availability of Service, order format, data requirements, and other specifications.

D. REPRESENTATIVE warrants and represents to COMPANY that any and all orders submitted to COMPANY for Service for a customer shall be at the direction of and at the request of the customer. Any service placed without a letter of agency from the customer, which letter of agency must be signed by the customer, may be immediately disconnected by COMPANY as soon as COMPANY is aware that the service order was not so authorized by the Customer. COMPANY shall be entitled to recapture any commissions paid to REPRESENTATIVE for the improperly ordered Service, any and all costs, charges and administrative expenses incurred by COMPANY in adjusting the customer's account. REPRESENTATIVE also acknowledges that placement of an order, without authorization from the customer will cause COMPANY irreparable harm and damage to its good will. Any orders placed without authorization will constitute a breach of this Agreement.

E. REPRESENTATIVE agrees to successfully complete any training or certification or program(s) outlined or required from time to time by COMPANY. COMPANY reserves the right to modify any such requirements from time to time, without prior notice to REPRESENTATIVE. REPRESENTATIVE may terminate the Agreement if the terms of any revised certification requirements are deemed unacceptable to REPRESENTATIVE.

REPRESENTATIVE's sales volume or other value-added performance targets may consist of a net revenue objectives or other value-added performance objectives, which shall be determined on an annual basis by COMPANY. REPRESENTATIVE agrees to exert its best efforts to meet these performance objectives. Continued failure to attain the performance levels set by COMPANY shall be grounds for termination of this Agreement, at the sole discretion of COMPANY.

IV. PRICES, TERMS OF SALE, COMMISSIONS

A. PRICES.

1. The prices at which Services will be provided by COMPANY to customers shall be the prices authorized by COMPANY's state tariffs in effect from time to time. COMPANY reserves the right at any time to seek regulatory approval to change the specifications of Service as shown in COMPANY's state tariffs to conform to current characteristics of Service, to alter or eliminate Service or any aspect thereof, or to change any Service rates. In the event of such a change, COMPANY reserves the right to alter or withhold commissions pursuant to Section I.A.3. and Section IV.C.2.
2. COMPANY shall inform REPRESENTATIVE, from time to time, and at least thirty (30) days before the effective date of such change(s), of any change(s) in the terms upon which it

B. ORDERS AND ACCEPTANCE.

1. ORDER PROCESS. All orders entered by REPRESENTATIVE from its customers shall be in conformance with the terms specified by COMPANY. REPRESENTATIVE shall determine availability of Service on the basis of information received from COMPANY. All orders shall be placed through COMPANY's designated Order entry center ("OEC") and shall be subject to availability, approval, and acceptance by COMPANY. Only orders coordinated through COMPANY's OEC will be eligible for payment of compensation as provided in subparagraph C. In the event an order submitted by REPRESENTATIVE is rejected, COMPANY will supply REPRESENTATIVE with a specific reason therefor.
2. CREDIT INFORMATION. At COMPANY's request, and with customer permission, REPRESENTATIVE shall obtain accurate and appropriate credit information from any customer as specified by COMPANY, which REPRESENTATIVE shall forward to COMPANY with the order. All credit must be approved by COMPANY and COMPANY reserves the right to deny credit to any customer, to require deposits, or to modify its credit terms as it deems appropriate, or in accordance with the rules and regulations approved by the Public Service Commission of the state in which this Agreement is to be performed. REPRESENTATIVE does not hereby guarantee the credit of any customer, but does warrant that it will use reasonable efforts to obtain, and believes that it will obtain, accurate credit information from reliable sources.
3. REPRESENTATIVE shall coordinate any necessary installation of REPRESENTATIVE Customer Premises Equipment (CPE) with installation of any Service to be provided by COMPANY, and shall perform fixture tests upon completion of installation in a manner acceptable to COMPANY.

C. COMMISSIONS.

1. Except as otherwise provided below and in Section I.A.3. and IV.C.2. of this Agreement, COMPANY shall pay REPRESENTATIVE compensation in accordance with applicable Commission Schedule terms contained in Appendix D of this Agreement, which shall apply depending on the option chosen by REPRESENTATIVE in Section XIII herein. Notwithstanding the foregoing, for all sales of ESSX services with contractual periods, COMPANY reserves the right to recapture any recurring or non-recurring commissions, on a per rate basis, for sales made to a customer who orders Service removed prior to the expiration of a contractual agreement. Amounts due hereunder shall be paid by COMPANY to REPRESENTATIVE in no less than thirty (30) days and no later than sixty-five (65) days from the end of the month in which an order is considered to be "firm". A "Firm" order shall

to defined as the date the order for service is accepted by COMPANY and input into COMPANY's ordering system.

2. COMPANY may, from time to time, offer specially discounted services, services for special purposes, or services with changed terms and conditions, either at its own initiative or pursuant to applicable laws or commission orders. Due to the unique circumstances surrounding the provision and pricing of such services, commissions for sales of these special services will not be offered, unless expressly authorized by COMPANY. Specially discounted services or special services are defined as service provided pursuant to special tariffs, i.e., special assemblies, or service offerings that otherwise differ in terms, conditions, qualifications or prices from the non-discounted Services listed in Appendix D.
3. Sales commissions may not be earned by REPRESENTATIVE, or by any other authorized sales representative, and shall not be paid by COMPANY for sales of services to REPRESENTATIVE for its own use, for sales of services to REPRESENTATIVE's affiliate's use, or for sales of services on behalf of, or to be used by, another sales representative participating in COMPANY's sales agency program.
4. Sales commissions may not be earned by REPRESENTATIVE, and shall not be paid by COMPANY for "sales" of Service negotiated by a third party for a prospective customer and REPRESENTATIVE is acting as a conduit for such previously negotiated sale.
5. Initial commissions will be due and payable to REPRESENTATIVE only for sales made for Service which results in additional revenue to COMPANY. No commissions will be paid for the sale of any Service which merely replaces existing revenue. Residual commissions shall be earned and limited as set forth in Section III.

V. QUALITY OF SERVICE

A. QUALITY.

REPRESENTATIVE agrees that at all times it will maintain a level of quality of service to its customers satisfactory to COMPANY, in accordance with reasonable standards promulgated by COMPANY and then in effect, and will take and permit to be taken by COMPANY all actions reasonably requested in order to ensure adequate opportunity for review of REPRESENTATIVE's performance by COMPANY, including, but not limited to, periodic review and analysis by COMPANY of the customer service provided by REPRESENTATIVE. Failure to maintain a level of quality satisfactory to COMPANY may, at COMPANY's option, result in termination of this Agreement as provided herein.

B. TRAINING.

In order to ensure the level of quality of service to its customers as required by Section V.A. above, REPRESENTATIVE agrees to attend any training or certification required from time to time by COMPANY. REPRESENTATIVE acknowledges its responsibility and obligation to maintain a high level of expertise, through whatever training is needed, in order to effectively market Service to COMPANY's customers. Any special training required by COMPANY will be made reasonably available to REPRESENTATIVE. REPRESENTATIVE may be responsible for the costs associated with such training, including travel, room and board.

VI. ADVERTISING AND PROMOTION

- A. COMPANY may supply REPRESENTATIVE from time to time, at its current charge, if any, with a reasonable number of brochures, price lists, and other material necessary for promoting the sale of Service. Any portion of the foregoing material which remains unused at the time COMPANY makes changes in Service pursuant to the provisions of this Agreement or upon the termination of this Agreement for any reason by either party, shall be promptly returned to COMPANY or certified as destroyed. Company may, in its sole discretion, enter into advertising and promotional campaigns with REPRESENTATIVE under terms and conditions agreed to by the parties. Under no circumstances is COMPANY obligated or required to advertise, market or promote for or on behalf of REPRESENTATIVE.

- B. As part of its efforts to market Service, REPRESENTATIVE may develop and undertake, at its own expense, an advertising campaign including any Service advertising theme as may be adopted by COMPANY. All Advertising programs of REPRESENTATIVE referring to Service must be approved in advance by COMPANY, or COMPANY's representative, and clearly comply with the advertising guidelines as developed by COMPANY from time to time, with respect to any reference to Service. REPRESENTATIVE agrees that COMPANY shall have the right, without further compensating REPRESENTATIVE, to include in advertising by COMPANY or any of COMPANY's affiliates reference to REPRESENTATIVE's status as a Service representative and REPRESENTATIVE'S involvement with Service.

- C. Notwithstanding the foregoing, failure of REPRESENTATIVE to obtain prior written approval by COMPANY, or its designated representative, of REPRESENTATIVE'S advertising program or any specific advertising mentioning COMPANY or its Service shall result in breach of this Agreement. REPRESENTATIVE acknowledges and agrees that COMPANY will suffer irreparable injury and harm by any improper advertising or use of COMPANY'S name or logo and that such damages will be difficult to calculate. REPRESENTATIVE agrees and acknowledges that in the event such improper use does occur, in addition to all other rights and/or remedies COMPANY may have under this Agreement, COMPANY shall be entitled to seek all legal and equitable remedies as it may deem appropriate.

- D. COMPANY may provide supporting advertising and promotional assistance as deemed appropriate depending on the option chosen by REPRESENTATIVE in Section XIII.

VII. COMPANY'S MARKS

A. USE OF MARKS.

Depending on the option chosen by REPRESENTATIVE in Section XIII, COMPANY may from time to time provide a list of Names and Marks (collectively, the "Marks") which REPRESENTATIVE is authorized to use under this Agreement in conjunction with the sale of COMPANY'S Services. Whether and to what extent COMPANY'S Marks may be used by REPRESENTATIVE shall be further defined in Appendix D and in the COMPANY'S then existing operations standards. COMPANY may periodically update the list of Marks REPRESENTATIVE is authorized to use under this Agreement. The most currently updated list will always supersede any previously issued list. Such list will also be supplemented with rules and regulations pertaining to the Marks which REPRESENTATIVE agrees to follow. COMPANY authorizes REPRESENTATIVE to use the Marks solely in conjunction with the advertising and sale of COMPANY'S Services bearing the Marks pursuant to the terms hereof. REPRESENTATIVE shall strictly comply with all graphic standards for the Marks which may be furnished from time to time and shall place appropriate trademark and service mark notices relating to the Marks as instructed. All media advertising and printed material in which the Marks are used shall be submitted to COMPANY for review in advance and shall not be distributed or used in any manner without the prior written approval of COMPANY. Any use of the Marks which is not authorized herein or by an authorized representative of COMPANY shall be strictly prohibited. Any use of the Marks which is inconsistent with the terms hereof shall be grounds for immediate termination of this Agreement. REPRESENTATIVE agrees and acknowledges that in the event such improper use does occur, in addition to all other rights and/or remedies COMPANY may have under this Agreement, COMPANY shall be entitled to seek all legal and equitable remedies as it deems appropriate. Any failure to seek any of these remedies on any occasion shall not constitute a waiver of COMPANY'S rights under this paragraph.

B. PROCEDURE ON TERMINATION.

Upon the expiration, termination or cancellation of this Agreement, REPRESENTATIVE shall immediately cease all uses of the Marks and shall promptly return to COMPANY or destroy all printed material and other tangible items bearing the Marks and shall certify same in writing to COMPANY within thirty (30) days of the expiration, termination or cancellation date.

C. LIMITATION TO U.S.

Services bearing the Marks are being distributed through REPRESENTATIVE for sale in the United States only. These Services shall not be distributed by REPRESENTATIVE for sale in other countries without the prior written consent of COMPANY.

D. NO INTEREST IN MARKS.

REPRESENTATIVE recognizes that nothing contained in this Agreement is intended as an assignment or grant to REPRESENTATIVE of any right, title or interest in or to the Marks or the goodwill attached thereto and that this Agreement does not convey the right to REPRESENTATIVE to grant sublicense and is not assignable. No licenses or other intellectual property rights, express or implied, are granted by either party to the other, except as provided for in this Agreement. REPRESENTATIVE further recognizes that all use of the Marks by REPRESENTATIVE shall inure to the benefit of, and be on behalf of, COMPANY and its parent, BellSouth Corporation. REPRESENTATIVE recognizes the validity of, and will do nothing inconsistent with, BellSouth Corporation's ownership of the Marks, and acknowledges that COMPANY shall have the right to immediately terminate this Agreement in the event that, in COMPANY'S opinion, REPRESENTATIVE acts in a manner which would negatively impact the reputation of BellSouth Corporation or any of its affiliates or would infringe or dilute the value of any of the Marks.

VIII. TERMINATION

- A. Except as set forth in Section XI.G. herein, and subject to the post termination obligations, including but not limited to, Section III.A.10, this Agreement may be terminated without cause by either party at any time, immediately upon the giving of 30 days written notice, pursuant to Section XI.C., to the non-terminating party. The COMPANY may terminate this Agreement for cause immediately upon notice to REPRESENTATIVE.
- B. No failure or delay by either party in seeking any relief specified in paragraph A. above shall constitute a waiver of rights to terminate this Agreement.
- C. COMPANY may, at its option, terminate this Agreement if at any time during the term of this Agreement or any extension hereof, REPRESENTATIVE consents, without COMPANY approval, to subcontract, assign or transfer any of the rights and obligations under this Agreement to a third party, or REPRESENTATIVE has any change in ownership made by merger, acquisition, or otherwise or if REPRESENTATIVE or any principal owner of REPRESENTATIVE has or acquires a 5% or greater ownership interest in any company providing or capable of providing services in competition with COMPANY in the areas served by COMPANY. REPRESENTATIVE agrees to promptly notify COMPANY in writing and in advance of any proposed changes in ownership or of any proposal to subcontract, assign or transfer any of the rights and obligations under this Agreement to a third party. No new owners or successor companies shall have any right to expect a continuation of this Agreement, or any transfer of the rights or obligations of REPRESENTATIVE under this Agreement without the prior written consent of COMPANY.
- D. No termination of this Agreement shall affect any accrued rights or obligations of either party as of the effective date of such termination, nor shall it affect any rights or obligations of either party which are intended by the parties to survive any such termination. In particular,

but not by way of limitation, no such termination shall act to nullify or discharge the post-agreement rights and obligations of the parties contained in this Agreement, including, but not limited in the indemnification and non-competition provisions of this Agreement.

- E. Neither party possesses nor shall be deemed to possess any right of property in or incident to this Agreement, and the parties agree that any termination of this Agreement according to the formalities specified herein, and based on the conditions required by the provision under which such termination is effected, shall not constitute an unfair or abusive termination or create any liability of the terminating party to the terminated party not set forth in this Agreement.
- F. The right of either party to terminate this Agreement is not an exclusive remedy, and either of them shall be entitled, alternatively or cumulatively, to damages for breach of the Agreement, injunction, or other court order requiring performance of obligations of this Agreement or other remedy under the laws of the state of Georgia.
- G. REPRESENTATIVE and COMPANY agree that upon the expiration or termination of this Agreement: (1) REPRESENTATIVE will not thereafter use any actual or similar trade name, service mark, trademark, logo, insignia, symbols or decorative designs thereto used by REPRESENTATIVE in the conduct of its business pursuant to this Agreement, in any manner or for any purpose except that REPRESENTATIVE may use or continue to use any trade name, service mark, trademark, logo, insignia, symbols or designs REPRESENTATIVE or its owners lawfully used in any business prior to the date of this Agreement; (2) neither REPRESENTATIVE nor COMPANY will utilize for any purpose any actual or similar trade name, trade or service mark or other commercial symbol that in any instance might cause either party or any part of their business to be identified as associated with the other party; and (3) REPRESENTATIVE and COMPANY will return to each other party, or certify in writing the destruction of, all advertising and marketing materials, forms, and other materials identifying or relating to the other party or the other party's Service.

IX. PROTECTION PROVISIONS

A. CONFIDENTIALITY/NONDISCLOSURE.

1. All information disclosed by COMPANY to REPRESENTATIVE pursuant to this Agreement, other than such information as may be generally available to the public or the industry or as may be intended by COMPANY to be disclosed by REPRESENTATIVE pursuant to Section V. hereof, is and will be disclosed to REPRESENTATIVE in confidence solely for REPRESENTATIVE'S use in the conduct of its business as a Service representative. REPRESENTATIVE agrees to keep such information ("information") secret and confidential indefinitely and not to disclose it to any other person or use it during the term of this Agreement or for one year after its termination except in carrying out its obligations hereunder or in response to obligations imposed by COMPANY's state tariffs or order of a court or regulatory body.

2. REPRESENTATIVE shall take effective precautions, contractual and otherwise, reasonably calculated to prevent unauthorized disclosure or misuse of such information by any of its employees or by any other person having access to such information.
3. Within ninety (90) days after the expiration or the termination of this Agreement by either party for any reason, REPRESENTATIVE agrees promptly to return to COMPANY, or to certify the destruction of, any physical or confidential information provided by COMPANY to REPRESENTATIVE. In addition, REPRESENTATIVE shall return any signage or other printed materials containing any BellSouth names, logos, or Marks, and shall thereafter cease using any such information or materials.
4. If REPRESENTATIVE is served with process to obtain such information, REPRESENTATIVE shall immediately notify COMPANY which shall, in addition to REPRESENTATIVE'S efforts, if any, have the right to seek to quash such process, or to take such other actions necessary to protect the confidentiality of the information.
5. REPRESENTATIVE hereby acknowledges and agrees that in the event of its breach of its obligations of confidentiality under Section VIII.A., COMPANY'S remedies at law may be inadequate and COMPANY will be entitled to injunctive relief. Any information furnished or disclosed by REPRESENTATIVE to COMPANY shall not obligate COMPANY to hold such information in confidence, unless marked thereon as "proprietary". In the event that any information is furnished or disclosed by REPRESENTATIVE to COMPANY which is marked "proprietary" then the same rights, obligations, terms, and conditions set forth herein will apply to said information as applies to the information supplied by COMPANY to REPRESENTATIVE.

B. INVENTIONS AND PATENT RIGHTS.

1. REPRESENTATIVE shall not be deemed by anything contained in this Agreement or done pursuant to it to acquire any right, title or interest in or to any design, invention, improvement, process or system now or hereafter embodied in Service, whether or not such design, invention, improvement, process or system is patented or patentable under the law of any country.
2. COMPANY agrees to indemnify, defend, and hold REPRESENTATIVE harmless from any and all liability for any claims, demands or suits (collectively the "claims") against REPRESENTATIVE alleging that Service offerings and related services provided by COMPANY pursuant to the terms of this Agreement and used by REPRESENTATIVE infringe a United States patent or trade secret, unless such claim is the result of the acts or omissions of the REPRESENTATIVE, and will pay all costs and damages (including reasonable attorney's fees) associated with any such claims or assessed against REPRESENTATIVE on account of such claims.

REPRESENTATIVE agrees to immediately notify COMPANY at the time of any such claims and COMPANY reserves the right to personally defend or handle the defense of those claims relevant to it hereunder. Notwithstanding the foregoing, each party agrees to indemnify, defend and hold the other party harmless against any liability for any claims or demands arising out of the conduct of business by the party that are the result of the party's negligent or willful act or failure to act, including, but not limited to, any claims or demands arising out of any allegedly unauthorized use of a trademark, service mark, patent, copyright, process, idea, method or device by the party covered by this Agreement. Each party agrees to immediately notify the other of any claims or demands arising hereunder.

contemplated by this Agreement by REPRESENTATIVE shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

ASR Contract Administrator
Suite 200
1800 Century Boulevard
Atlanta, Georgia 30345

or at such other address as the intended recipient previously shall have designated by written notice to the other party. Every notice, consent, approval, or other communication required or contemplated by this Agreement by COMPANY shall be in writing and shall be delivered in person or given by postage prepaid mail, addressed to:

or at such other address as the intended recipient previously shall have designated by written notice to the other party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day thereafter, after it was deposited in the mail. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized officer or designated representative of the party to whom it was given.

X. AMENDMENTS.

COMPANY may amend this Agreement at any time, upon thirty (30) days notice to REPRESENTATIVE. Such Amendments are specifically intended to include, but not limited to, revisions to the operations standards and Commission Schedules. Such Amendments shall be in writing effective thirty-one (31) days from the date of such notice or earlier if agreed upon by the parties. For any REPRESENTATIVE electing option A or B in Section XIII, COMPANY shall not reduce any non-recurring or recurring commission rates by more than 20% in any one year period for any particular product or service. REPRESENTATIVE may terminate this Agreement within thirty (30) days of the date of such notice of amendment if REPRESENTATIVE does not desire to continue in the relationship as amended.

D. NO WAIVER OF RIGHTS.

Failure of either party at any time to require the other party's performance of any obligation under this Agreement shall not affect the right to require performance of this obligation. Any waiver by either party of any breach of any provision hereof shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver or modification of any right under this Agreement.

VI. MISCELLANEOUS

A. ASSIGNABILITY.

Neither this Agreement, nor any right or obligation hereunder is assignable, in whole or in part, whether by operation of law or otherwise, by REPRESENTATIVE without the prior written consent of the COMPANY. This Agreement may be assigned by COMPANY to any affiliate as defined in Section XII, of this Agreement, or to any other person, firm or corporation which acquires substantially all of the business of COMPANY relating to Service, whether by purchase, consolidation, merger, or otherwise, upon 30 days' notice to REPRESENTATIVE. If REPRESENTATIVE does not desire to continue in the relationship after such assignment, then REPRESENTATIVE may terminate this Agreement.

E. PAYMENTS.

1. If for any reason whatsoever this Agreement is terminated and any amount is due from REPRESENTATIVE to COMPANY, such amount shall be paid to COMPANY in cash. Company check or certified check by REPRESENTATIVE within thirty (30) days after receipt of COMPANY's final accounting relating to REPRESENTATIVE.

B. AFFILIATES.

For the purpose of this Agreement, an "affiliate" of an entity shall mean any corporation or other business entity which owns or controls, is under common ownership or control with, or is owned or controlled by the first entity; and "control" shall mean the ownership of more than fifty percent of the voting stock or more than a fifty percent interest in the profits of any corporation or other business entity.

2. Each party shall have the right to set off against any payment due from it hereunder any amounts owed to it by the other party under this Agreement.

C. NOTICES AND OTHER COMMUNICATIONS.

Every notice, consent, approval, or other communications required or

3. Any residual payments being made at the time of termination of this Agreement shall immediately cease to be paid by COMPANY to REPRESENTATIVE and REPRESENTATIVE acknowledges that it will no longer be entitled to residual payments upon termination of the agreement. Residual payments shall also cease in the event a Subscriber discontinues the service in which residual payments would otherwise apply under either option A or B of Section XIII.

otherwise be limited to payments under state worker's compensation or similar laws, or (ii) the failure of the party to comply with any of the terms and conditions herein or the failure to conform to statutes, ordinances, or other regulations or requirements or any governmental authority in connection with the performance of the Services provided for in this Agreement, including actions brought by the party's employees under worker's compensation or similar laws.

F. GOVERNING LAW AND REGULATORY CHANGES.

1. The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of Georgia and of the United States. COMPANY reserves the right to amend or terminate this Agreement to conform it in any requirement of such laws or regulations, provided that REPRESENTATIVE shall have the right within thirty (30) days of receipt of notice of such amendment to terminate this Agreement. This Agreement may be immediately terminated by COMPANY if COMPANY becomes subject to any regulatory order from the Federal Communications Commission eliminating or substantially modifying the proposed Service marketing plans previously or hereafter submitted by COMPANY.

2. The validity, construction, and enforceability of any Service contract(s) executed pursuant to this Agreement shall be governed in all respects by COMPANY's state tariffs and the laws and regulations of the state in which such contracts are entered.

2. Each party further agrees to indemnify and hold harmless the Indemnities from the other against (i) any and all penalties imposed on account of the violation of any law, ordinance, order, rule, regulation, condition, or requirement, in any way related, directly or indirectly to each party's performance hereunder, compliance with which is left by this Agreement to each party and (ii) any and all claims, liens and/or suits for labor and materials furnished at the party's request.

3. Each party shall, at its own cost, expense, and risk, defend any claim, suit, action or other legal proceeding (collectively "action") for which that party is hereunder obligated to indemnify an Indemnitor. Subject to the provisions of subparagraph 3. above, the responsible party shall pay and satisfy any judgment or decree which may be rendered against any of the Indemnities in any such action and shall pay reasonable costs and reasonable attorneys' fees which may be incurred by the Indemnities in connection therewith and/or in enforcing the indemnification provisions set forth above. Should the responsible party in the opinion of the other party, ignore or fail to properly handle or defend any such action, the other party may, at its option, assume and undertake, or join the handling or defense of any such action, and in that event the responsible party will reimburse the other for reasonable attorneys' fees and other reasonable expenses incurred by it in handling or defending same, including any reasonable amounts paid in settlement thereof or satisfaction of any judgment rendered.

G. DISCONTINUANCE OF PROGRAM.

COMPANY reserves the right upon one hundred eighty (180) days' notice to REPRESENTATIVE to discontinue its Authorized Sales Representative Program as to all its sales representatives on a prospective basis. In such event this Agreement will continue in effect only with respect to REPRESENTATIVE's Service customers being provided Service pursuant to a long-term contract on the date of such notice, and as to each such customer REPRESENTATIVE's right to receive commissions and obligation to provide service shall cease upon the expiration of such customer's contract for Service in effect on the date of notice.

I. LIMITATION OF LIABILITY.

Notwithstanding anything contained herein, COMPANY's liability and indemnity obligations are limited by provisions of COMPANY's state tariffs.

H. INDEMNIFICATION.

1. Each party agrees to indemnify and hold harmless the other party and its shareholders, directors, officers, and employees (collectively the "Indemnities") and each of them from and against any loss, costs, damages, claims, expenses (including attorneys' fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death or disease of any person, damage to or destruction or loss of any property or any other damages arising out of, resulting from, or in connection with (i) the performance or nonperformance of the Services contemplated by this Agreement which is caused in whole or in substantial part by an act, omission, default, or negligence (whether active or passive) of the party or its employees, or regardless of whether the party's liability would

J. LIABILITY INSURANCE.

COMPANY represents that it has insurance equal to or exceeding that required of REPRESENTATIVE hereafter.

1. REPRESENTATIVE shall take out, pay for, and at all times during the performance of work hereunder maintain, such public liability, contingent (protective), worker's compensation and other such liability insurance as will satisfy the foregoing indemnity requirements of this Agreement and protect REPRESENTATIVE and COMPANY from claims arising out of REPRESENTATIVE's performance under this Agreement. Such insurance shall include comprehensive general liability, bodily injury and property damage, including automobile and broad form contractual liability covering liability assumed by the REPRESENTATIVE under this Agreement.

2. Such insurance shall: (i) include COMPANY as an additional insured; (ii) be primary insurance written on an occurrence basis to the full limits of liability hereinafter stated, and should COMPANY have other valid insurance, COMPANY's insurance shall be excess insurance only; and (iii) contain an endorsement stating that cancellation or expiration of the policy to which this endorsement is attached shall not become effective until after thirty (30) days advance written notice has been delivered to COMPANY.

3. Without limiting the requirements set forth in this paragraph J., REPRESENTATIVE shall maintain insurance with coverage and minimal limits of liability as follows:

- a. Worker's compensation and employers' liability providing statutory coverage under the worker's compensation and occupational disease laws of the state where obligations are being performed under this Agreement and employers' liability coverage with limits of \$300,000.
- b. Comprehensive general liability affording bodily injury liability (or death) with limits of not less than \$500,000 for each occurrence and \$1,000,000 in the aggregate, such coverage to include \$1,000,000 broad form contractual liability covering liability assumed under this Agreement.

4. In no event shall the provisions of this paragraph J. be construed in any way to limit REPRESENTATIVE's obligations under the preceding paragraph H.

5. The insurance coverage required herein shall be through policies issued by companies authorized to do business under the laws of the state where the work is performed. The insurance carrier must be rated by the latest edition of Best's Insurance Guide, published by Alfred M. Best Company, Inc. at no less than a "B+" Best Policyholders Rating and no less than an "X" rating in Best's Financial Size Category.

6. All of such insurance, including renewals, shall be subject to the approval of COMPANY for adequacy of protection, and evidence of such coverages shall be furnished to COMPANY indicating such insurance to be in force and effect. Completed Certificates of Insurance shall be filed with COMPANY prior to commencement of work hereunder.

7. The foregoing insurance requirements may be waived by COMPANY if REPRESENTATIVE (i) has qualified and is certified as self-insured under the laws of the state(s) in which REPRESENTATIVE is authorized to perform under this Agreement and (ii) has a net worth of at least five million (\$5,000,000.00) dollars or provides a guarantee of liability suitable to COMPANY issued and executed by a company that has a net worth of at least ten million (\$10,000,000.00) dollars. In the event of such waiver by COMPANY, REPRESENTATIVE agrees to provide to COMPANY evidence, satisfactory to COMPANY, of compliance with terms set forth in (i) and (ii) above.

K. NONDISCRIMINATION COMPLIANCE/GRATUITIES AND LOBBYING.

All the applicable provisions of Appendix E, "NONDISCRIMINATION COMPLIANCE AGREEMENT", are hereby incorporated herein. In addition, Appendix F, "GRATUITIES AND LOBBYING", is hereby incorporated herein.

L. SEVERABILITY.

In the event any portion of this Agreement may be determined by any governmental body having jurisdiction hereover, or by any court of competent jurisdiction, to be unenforceable, the balance of the Agreement shall be severed therefrom and shall remain in full force and effect unless a failure of consideration would thereby result.

M. CAPTIONS.

All section titles or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

N. PROHIBITED RELATIONSHIPS.

REPRESENTATIVE warrants that no person or agency has been employed, retained, or directed to solicit or secure this Agreement upon an agreement or understanding for a commission percentage, brokerage, contingent fee, or other remuneration. The exchange or offering of any gift item, personal service entertainment or unusual hospitality ("gratuities") by either party of this Agreement to the other is expressly prohibited. This prohibition is equally applicable to each party's officers, employees and immediate family members. COMPANY may, by written notice to REPRESENTATIVE, terminate the right of REPRESENTATIVE to proceed under this Agreement if it is found by COMPANY that gratuities are or have been offered or given by REPRESENTATIVE, its employees or immediate family members, to any employee of COMPANY.

O. LICENSES.

No licenses, express or implied, under any patents are granted by COMPANY to REPRESENTATIVE hereunder nor by REPRESENTATIVE to COMPANY.

P. SPECIAL CONDITIONS.

This contract shall become null and void and terminate upon the filing of bankruptcy, adjudication of bankruptcy or petition for reorganization filed by either party.

Q. SURVIVAL OF OBLIGATIONS.

Any respective obligations of the parties hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration. This includes, but is not limited to, obligations set forth in Sections VII, IX and XLH.

R. INCORPORATION OF APPENDICES.

Appendices A through F, referred to in this Agreement and attached hereto, are integral parts of this Agreement and all terms and conditions contained therein are fully incorporated herein by reference and REPRESENTATIVE agrees to be bound thereby.

S. AGREEMENT BINDING ON SUCCESSORS IN INTEREST.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective and applicable heirs, legal and personal representatives, successors and permitted assigns, if any.

T. LIMITATION OF ACTIONS.

No action, regardless of its form, arising out of this Agreement, may be brought by either party more than two (2) years after the cause of action has arisen.

XII. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

XIII SECTION

REPRESENTATIVE acknowledges that it has read and understands provisions of Section III and hereby makes an election as required in Subsection III.A.4 by indicating below, its choice and initialing beside the option chosen:

- | <u>Circle:</u> | <u>Initials</u> |
|--|-----------------|
| <input type="checkbox"/> A. REPRESENTATIVE elects to market or otherwise promote exclusively the IntraLATA network services of COMPANY. | _____ |
| <input type="checkbox"/> B. REPRESENTATIVE elects to market or otherwise promote exclusively all COMPANY network services with the exception of IntraLATA toll services. | _____ |

Accepted and Approved: As of _____, 19____.

(ABOVE TO BE COMPLETED BY COMPANY REPRESENTATIVE)

BELLSOUTH TELECOMMUNICATIONS, INC.

(REPRESENTATIVE)

BY: _____
(Signature)

BY: _____
(Signature)

NAME: JOHN W. THACKER
(Printed Name)

NAME: _____
(Printed Name)

TITLE: DIRECTOR

TITLE: _____

DATE: _____

DATE: _____

APPENDIX A
Authorized Marketing Areas

I. Terms and Conditions

- A. REPRESENTATIVE shall conduct the marketing activities in this Agreement in the specific geographic areas as indicated below.
- B. If REPRESENTATIVE is appointed as a representative to market Service in an Authorized Marketing Area which boundaries cross into states not primarily served by COMPANY, REPRESENTATIVE shall contact its COMPANY representative to determine whether a prospective customer in the portion of the Authorized Marketing Area that extends beyond such boundary is within REPRESENTATIVE's Authorized Marketing Area. All requests to COMPANY shall be in the format set forth in the attached Appendix A.1.
- C. Areas in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee that are provided exchange services by companies other than COMPANY are not included in REPRESENTATIVE's Authorized Marketing Area and REPRESENTATIVE is not authorized to sell, or to attempt to sell, any Service in those areas.

II. Authorized Marketing Area

Subject to Paragraph I.B. and I.C. above, the Authorized Marketing Area(s) set forth below (is/are) designated as the authorized sales areas for REPRESENTATIVE during the term of this Agreement.

ALABAMA-		KENTUCKY-		NORTH CAROLINA-	
BIRMINGHAM	_____	LOUISVILLE	_____	ASHEVILLE	_____
HUNTSVILLE	_____	OWENSBORO	_____	CHARLOTTE	_____
MOBILE	_____	WINCHESTER	_____	GREENSBORO	_____
MONTGOMERY	_____			RALEIGH	_____
				WILMINGTON	_____
FLORIDA-		LOUISIANA-		SOUTH CAROLINA-	
DAYTONA BEACH	_____	BATON ROUGE	_____	CHARLESTON	_____
GAINESVILLE	_____	LAFAYETTE	_____	COLUMBIA	_____
JACKSONVILLE	_____	NEW ORLEANS	_____	FLORENCE	_____
ORLANDO	_____	SHREVEPORT	_____	GREENVILLE	_____
PANAMA CITY	_____				
PENSACOLA	_____				
SOUTHEAST	_____				
GEORGIA-		MISSISSIPPI-		TENNESSEE-	
ALBANY	_____	BILOXI	_____	CHATTANOOGA	_____
ATLANTA	_____	JACKSON	_____	KNOXVILLE	_____
AUGUSTA	_____			MEMPHIS	_____
MACON	_____			NASHVILLE	_____
SAVANNAH	_____				

OTHER _____

• All areas marked are LATA-wide unless otherwise indicated in "Other" section.

APPENDIX A.1

Request to Market in Uncontracted Area

DATE	Request Made By	Area	Customer
-------------	------------------------	-------------	-----------------

Note: If granted, permission to market in the above area is granted for one time only. REPRESENTATIVE must separately apply to market as a BullSouth representative in the above area if additional opportunities arise to market in said area.

APPROVED: _____

DENIED: _____

EFFECTIVE: _____ **TERM OF EXPIRATION:** _____

ASR SALES CENTER MANAGER

CONTRACT ADMINISTRATOR

DATE: _____

DATE: _____

APPENDIX B

I. Sales Commissions

- A. Sales commissions for each Service sold by REPRESENTATIVE under this Agreement are only due and payable where the specific terms and conditions, applicable to the Service, set forth in this Agreement have been met.
- B. Sales commissions may be altered or withheld pursuant to Section I.A.3. and IV.C.2., at the COMPANY's sole discretion, for sales of services subject to special terms, conditions or prices.
- C. If ASR has elected option A or B in Section XIII, then both non-recurring and residual commission, as set forth in the appropriate portion of the Commission Schedule, shall be paid to REPRESENTATIVE.

APPENDIX B

1. Sales Commissions Schedule
 * Must be Certified to Receive Commissions

BUSINESS LINES (New) (A.3)				
Flat Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Back-Up Line	\$ 20.00	\$ 40.00	\$ 1.00	\$ 1.00
Message Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Measured Rate	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
NAR- Network Access Register	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
Measured Rate FX (+A.9)	\$ 287.00	\$ 287.00	\$ 4.00	\$ 4.00
Trunk	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
UBExp Local Calling Plan	\$ 40.00	\$ 80.00	\$ 2.00	\$ 2.00
* ISDN-Individual Business line (A.42)				
Mo to Mo	\$ 100.00	\$ 175.00	\$ 5.00	\$ 5.00
1-59 Months	\$ 100.00	\$ 200.00	\$ 5.00	\$ 5.00
60-120 Months	\$ 100.00	\$ 250.00	\$ 5.00	\$ 5.00
* ISDN-Primary Rate				
	\$ 1,000.00	\$ 1,250.00	\$ 90.00	\$ 90.00
* PATHLINK SM				
Voice/Data				
Mo to Mo	\$ 1,800.00	\$ 1,800.00	\$ 90.00	\$ 90.00
24-48 Months	\$ 1,800.00	\$ 2,000.00	\$ 90.00	\$ 90.00
49-72 Months	\$ 1,800.00	\$ 2,500.00	\$ 90.00	\$ 90.00
Data Only				
Mo to Mo	\$ 900.00	\$ 800.00	\$ 30.00	\$ 30.00
24-48 Months	\$ 900.00	\$ 1,000.00	\$ 30.00	\$ 30.00
60-120 Months	\$ 900.00	\$ 1,250.00	\$ 30.00	\$ 30.00
Hunting-Rotary (A.13-NC ONLY)	\$ 17.00	\$ 68.00		
DATA - New Line (B.7)				
* SynchroNet®				
Subrate Drop/19.2 (per drop)				
Mo to Mo	\$ 73.20	\$ 119.80	\$ 3.66	\$ 3.66
Contracted	\$ 73.20	\$	\$ 3.66	

APPENDIX B

I. Sales Commission Schedule

* Must be Certified to Receive Commissions

58K Drop (per drop)				
Mo to Mo	\$ 123.40	\$ 293.60	\$ 6.17	\$ 6.17
Contracted	\$ 123.40	\$ 645.92	\$ 6.17	\$ 6.17
* MegaLink® InterOfc Channel (B.7)				
Mo to Mo	\$ 288.00	\$ 514.25	\$ 14.30	\$ 14.30
Contracted	\$ 288.00	\$ 1,114.07	\$ 14.30	\$ 14.30
* MegaLink® Local Channel/DS1				
Mo to Mo	\$ 132.50	\$ 75.25	\$ 6.63	\$ 6.63
Contracted	\$ 132.50	\$ 218.03	\$ 6.63	\$ 6.63
* MegaLink® Channel Svc (Per 24 Channels)				
Mo to Mo	\$ 190.37	\$ 187.16	\$ 9.52	\$ 9.52
Contracted	\$ 190.37	\$ 608.27	\$ 9.52	\$ 9.52
ESSX SERVICE (A.12)				
ESSX NAR - see BUSINESS LINES				
ESSX Main Station	\$ 14.04	\$ 31.50		
ESSX Station netting				
Addition	\$ 14.04	\$ 31.50		
Deletion (Maintenance Fee)	\$ 14.04	\$ 15.75		
Station Features - per station (A.12)				
3-Way Calling	\$ 1.00	\$ 2.00		
Repeat Dialing	\$ 1.50	\$ 3.50		
Call Return	\$ 2.00	\$ 4.00		
Call Tracing	\$ 5.00	\$ 8.25		
Caller ID	\$ 3.88	\$ 7.76		
3-Feature Pkg	\$ 1.30	\$ 2.60		
4-Feature Pkg	\$ 1.37	\$ 2.74		
5-Feature Pkg	\$ 1.44	\$ 2.88		
6-Feature Pkg	\$ 1.51	\$ 3.02		
7-Feature Pkg	\$ 1.75	\$ 3.50		

APPENDIX B

I. Sales Commission Schedule
 * Must be Certified to Receive Commissions

8-Feature Pkg	\$ 2.01	\$ 4.02		
9-Feature Pkg	\$ 2.31	\$ 4.62		
10-Feature Pkg	\$ 2.66	\$ 5.90		
ECAS/DCAS Line	\$.10	\$ 4.50		
System Features - per system (A.12)				
Call Fwd Var	\$ 1.00	\$ 3.90		
Call Fwd BL	\$ 4.50	\$ 17.40		
Call Fwd DA	\$ 2.50	\$ 7.90		
Permanent and Call Hold	\$ 2.00	\$ 7.90		
Uniform Call Dist-Per hunt Group	\$ 8.00	\$ 18.00		
Uniform Call Dist-Per Announcement	\$ 33.00	\$ 67.00		
Call Park	\$.50	\$ 2.20		
Call Pickup	\$.50	\$ 2.20		
Waiting Originating	\$ 3.50	\$ 7.00		
Waiting Terminating	\$ 1.20	\$ 4.80		
ECAS/DCAS	\$ 6.25	\$ 18.00		
ARS	\$ 11.00	\$ 40.70		
ARS Pattern	\$.60	\$ 1.20		
ARS Trunk	\$ 2.00	\$ 4.00		
Speed Calling	\$ 3.50	\$ 7.00		
System Terminations - each (A.12)				
Interexchange Carrier Access line/SFG	\$ 2.50	\$ 8.70		
Dedicated Facility group	\$ 2.50	\$ 8.70		
Analog Termination	\$ 14.75	\$ 29.50		
Digital Termination	\$ 5.00	\$ 10.00		
Analog tie line	\$ 26.00	\$ 52.00		
Digital tie line	\$ 16.00	\$ 32.00		
Analog FX	\$ 26.00	\$ 52.00		
Digital FX	\$ 16.00	\$ 32.00		
Analog FCO	\$ 26.00	\$ 52.00		

APPENDIX A

I. Sales Commission Schedule
 * Must be Certified to Receive Commissions

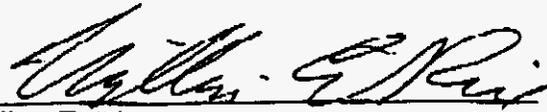
Digital FCO	\$ 16.00	\$ 32.00		
DS1 Termination = Megalink	\$ 350.00	\$ 350.00		
Direct Inward Dialing (A.12)	\$ 29.00	\$ 87.00		
* MULTISERV SERVICE (A.12)				
Links (Mo to Mo)	\$ 50.00	\$ 170.00	\$ 2.50	\$ 2.50
Contracted	\$ 50.00	\$ 204.00	\$ 2.50	\$ 2.50
* MULTISERV PLUS (A.12)				
Links (Mo to Mo)	\$ 23.00	\$ 46.00	\$ 1.15	\$ 1.15
Contracted	\$ 23.00	\$ 57.00	\$ 1.15	\$ 1.15
AdWatch (Pilot) (A.34)	\$ 32.00	\$ 48.00		
E. Pinpoint SM (A.13/A.24)	\$ 155.00	\$ 200.00		
CrisisLinkSM (A.34.5)				
1st Plan(Mo to Mo)	\$ 85.00	\$ 200.00	\$ 4.25	\$ 4.25
Contracted (36 Months)	\$ 85.00	\$ 240.00	\$ 4.25	\$ 4.25
Add Plan (Mo to Mo)	\$ 85.00	\$ 30.00	\$ 4.25	\$ 4.25
Contracted (36 Months)	\$ 85.00	\$ 50.00	\$ 4.25	\$ 4.25
Additional Numbers	\$ 7.00	\$ 3.00		
ZipConnect (Pilot) (A.34)				
Mo to Mo- 1,000 Calls/month	\$ 250.00	\$ 200.00	\$ 12.50	\$ 12.50
36 Month Contract- 2,500 Calls/month	\$ 250.00	\$ 400.00	\$ 12.50	\$ 12.50
36 Month Contract-5,000 Calls/month	\$ 250.00	\$ 600.00	\$ 12.50	\$ 12.50
36 Month Contract-25,000 Calls/month	\$ 250.00	\$ 1,500.00	\$ 12.50	\$ 12.50
36 Month Contract-150,00+ Calls/month	\$ 250.00	\$ 5,000.00	\$ 12.50	\$ 12.50

APPENDIX B

L. Sales Commissions Schedule

* Must be Certified to Receive Commissions

[REDACTED]			
FEATURES	(A.13)		
Custom Calling Features			
Call Forwarding	\$ 3.76	\$ 15.04	
CF BL & DA	\$ 3.28	\$ 9.84	
CF BL/DA/VAR Multi Simul	\$ 3.00	\$ 6.00	
Call Waiting	\$ 4.50	\$ 13.50	
Remote Access to CF	\$ 7.65	\$ 22.95	
Speed Calling	\$ 5.06	\$ 10.12	
Three -Way Calling	\$ 4.08	\$ 12.24	
Remote Call Forwarding	\$ 21.00	\$ 42.00	
Packages-Two Features	\$ 6.39	\$ 25.56	
Packages-Three Features	\$ 8.79	\$ 35.16	
Packages-Four Features	\$ 11.15	\$ 44.60	
Automized Code Restriction	\$ 3.89	\$ 11.67	
TOUCHSTAR (A.13)			
Call ID	\$ 10.00	\$ 30.00	
Other Feature (each)	\$ 5.00	\$ 15.00	
RingMaster I (A.13)	\$ 7.00	\$ 14.00	
RingMaster II	\$ 10.00	\$ 20.00	
Prestige Features -User Transfer (A.12)	\$ 5.00	\$ 15.00	
WATSAVER (East A.18 West A.20)			
4- 5 Hours	\$ 42.00	\$ 37.80	\$ 2.10
10 Hours	\$ 90.00	\$ 81.00	\$ 4.50
15 Hours	\$ 117.00	\$ 105.30	\$ 5.85
18 Hours	\$ 162.00	\$ 145.80	\$ 8.10
20 Hours	\$ 114.00	\$ 102.60	\$ 5.70
25 Hours	\$ 195.00	\$ 175.50	\$ 9.75
38 Hours	\$ 319.20	\$ 287.28	\$ 15.96
60 Hours	\$ 367.00	\$ 330.00	\$ 18.35



William E. Rice

For LONG ALDRIDGE NORMAN LLP
One Peachtree Center
303 Peachtree Street, N.E., Suite 5300
Atlanta, Georgia 30308
(404) 527-4000

Riley M. Murphy
Executive Vice President and General Counsel
James C. Falvey
Vice President Regulatory Affairs
American Communication Services of
Columbus, Inc.
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701
(301) 617-4215

Attorneys for American Communication
Services Of Columbus, Inc.

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Complaint by American Communication Services, Inc. in Docket No. 7818-U upon the following persons by causing copies of the same to be placed in an envelope with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

Helen O'Leary
Assistant Attorney General
Counsel for the Commission Advisory Staff
40 Capitol Square, Suite 132
Atlanta, Georgia 30334

Jim Hurt, Director
Consumers' Utility Counsel
Office of Consumer Affairs
2 Martin Luther King Drive
Plaza Level East, Suite 356
Atlanta, Georgia 30334

Fred McCallum, Jr.
BellSouth Telecommunications, Inc.
Room 376
125 Perimeter Center West
Atlanta, Georgia 30346

This 9th day of July, 1997.


William E. Rice

363608

C. Order Processing

- C.1 ACSI shall place orders for unbundled loops (and other network elements) through completion and submission of the Service Order form specified in the FBOG. The installation time intervals which shall apply thereto are as expressed in subsection IV.D hereafter.
- C.2 Order processing for unbundled loops shall be mechanized, in a form substantially similar to that currently used for the ordering of special access services. Automated interfaces shall be provided into a centralized operations support systems database for determining service availability on loops (e.g., ISCON), confirmation of order acceptance and ongoing order status. If made available by BellSouth to any other telecommunications carrier, automated interfaces shall be provided in a centralized operations support systems database for installation scheduling, confirmation of circuit assignments and completion confirmation.
- C.3 Particular combinations of elements, hereafter referred to as combinations, identified and described by ACSI can be ordered and provisioned as combinations, and not require the enumeration of each element within that combination in each provisioning order, consistent with OBF or other mutually agreed upon procedures.
- C.4 Appropriate ordering/provisioning codes will be established for each identified combination, consistent with OBF or other mutually agreed upon procedures.
- C.5 When combinations are ordered where the elements are currently interconnected and functional, those elements will remain interconnected and functional (except for the integrated SLC).
- C.6 When the open network access platform is available, BellSouth will provide ACSI with the ability to have the BellSouth end office AIN triggers initiated via an appropriate service order from ACSI.
- C.7 ACSI and BellSouth will negotiate in good faith to create a mutually acceptable standard service order/disconnect order format, consistent with OBF or other mutually agreed upon procedures.
- C.8 BellSouth shall exercise best efforts to provide ACSI with the "real time" ability to schedule installation appointments with the customer on-line and access to BellSouth's schedule availability beginning in the second calendar quarter of 1997. In the interim, BellSouth will install unbundled loops and other network elements by the Customer Desired Due Date (CDD) where facilities permit.

C.9 When available to any other telecommunications carrier or other customer, BellSouth shall provide "real time" response for firm order confirmation, due date availability/scheduling, dispatch required or not, identify line option availability by Local Service Office (LSO) (such as digital copper, copper analog, ISDN), completion with all service order and time and cost related fees, rejections/errors on service order data element(s), jeopardies against the due date, missed appointments, additional order charges (construction charges), order status, validate street address detail, and electronic notification of the local line options that were provisioned. This applies to all types of service orders and all network elements.

C.10 The Parties will negotiate in good faith to establish expedite and escalation procedures for ordering and provisioning, including establishment of a process for ACSI to request the expedite an order on a customer's behalf.

D. Conversion of Exchange Service to Network Elements

D.1 Installation intervals must be established to ensure that service can be established via unbundled loops in an equivalent timeframe as BellSouth provides services to its own customers, as measured from the date upon which BellSouth receives the order to the date of customer delivery.

D.2 On each unbundled network element order in a wire center, ACSI and BellSouth will agree on a cutover time at least 48 hours before that cutover time. The cutover time will be defined as a 30-minute window within which both the ACSI and BellSouth personnel will make telephone contact to complete the cutover.

D.3 Within the appointed 30-minute cutover time, the ACSI contact will call the BellSouth contact designated to perform cross-connection work and when the BellSouth contact is reached in that interval, such work will be promptly performed.

D.4 If the ACSI contact fails to call or is not ready within the appointed interval and if ACSI has not called to reschedule the work at least two (2) hours prior to the start of the interval, BellSouth and ACSI will reschedule the work order.

D.5 If the BellSouth contact is not available or not ready at any time during the 30-minute interval, ACSI and BellSouth will reschedule and BellSouth will waive the non-recurring charge for the unbundled elements scheduled for that interval.

- D.6 The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the ACSI collocation arrangement is 5 minutes. If BellSouth causes an Exchange Service to be out of service due solely to its failure for more than 15 minutes, BellSouth will waive the non-recurring charge for that unbundled element.
- D.7 If unusual or unexpected circumstances prolong or extend the time required to accomplish the coordinated cut-over, the Party responsible for such circumstances is responsible for the reasonable labor charges of the other Party. Delays caused by the customer are the responsibility of ACSI.
- D.8 If ACSI has ordered Service Provider Number Portability (SPNP) as part of an unbundled loop installation, BellSouth will coordinate implementation of SPNP with the loop installation.
- D.9 The conversion/installation time intervals which shall apply to unbundled loops and other network elements shall be as expressed herein.

E. Service Quality

- E.1 At a minimum, the service quality of leased network elements should match that of BellSouth's own elements and conform to all Bellcore and ANSI requirements applicable to the type of service being provided. In addition, BellSouth will provide maintenance services on network elements purchased by ACSI which are timely, consistent and at parity with that provided when such elements are used for its own purposes.
- E.2 Maintenance support shall be available 7 days a week, 24 hours a day. Provisioning support shall be available at the same times at which BellSouth installs its own bundled local exchange services.
- E.3 Installation and service intervals shall be the same as when BellSouth provisions such network elements for use by itself, its affiliates or its own retail customers.
- E.4 In facility and power outage situations, BellSouth agrees to provide network elements leased by ACSI the same priority for maintenance and restoration as similar elements used by BellSouth for itself or its affiliates.
- E.5 The Parties agree that all interconnection arrangements and services will at a minimum be subject to technical standards which are equal to those that BellSouth affords to itself, other LECs or other telecommunications carriers. This must, at a minimum, include parity in:

- Port features
- Treatment during overflow/congestion conditions
- Equipment/interface protection
- Power redundancy
- Sufficient spare facilities to ensure provisioning, repair, performance and availability
- Mediation functions
- Standard interfaces
- Real time control over switch traffic parameters
- Real time access to integrated test functionality
- Real time access to performance monitoring and alarm data

F. Network Information Exchange

- F.1 BellSouth shall provide ACSI with information sufficient to determine an end user's existing service and feature configurations.
- F.2 BellSouth agrees to provide ACSI with all necessary engineering information regarding all unbundled network elements and combinations thereof, including information normally provided on records such as the detailed design layout records (DLR) for unbundled loops and circuits.
- F.3 BellSouth shall provide information to ACSI on a continuing basis required to keep ACSI apprised of engineering changes associated with BellSouth's network elements and its deployment of new technologies.
- F.4 BellSouth shall provide ACSI with a detailed description of the criteria and procedures used for handling facility and power outages.
- F.5 Where permitted by law, BellSouth will make available to ACSI electronic (magnetic tape and/or diskette) and hard copies of its Master Street Address Guide (MSAG), and any regular updates thereof.
- F.6 BellSouth will provide ACSI with access to a listing and description of all services and features available down to street address detail, including: Type of Class 5 switch by CLLI, line features availability by LSO, and service availability by LSO, as well as the data elements required by BellSouth to provision all such services and features.

G. Maintenance and Trouble Resolution

- G.1 BellSouth shall provide automated interfaces to ACSI for field dispatch scheduling, status of repairs and confirmation of repair completion. The mean time to repair unbundled loops shall be equivalent to the mean time to repair reported by BellSouth for its retail customers.

