

DOCKET FILE COPY ORIGINAL

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

RECEIVED

DEC 31 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

BellSouth Comparably Efficient)
Interconnection Plan for Payphone)
Service Providers)

CC Docket No. 96-128

ERRATA

On December 30, 1996, Inmate Calling Service Providers Coalition ("ICSPC"), by its attorneys, submitted its Comments on the BellSouth CEI Plan, filed by BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc., and its affiliated companies ("BellSouth") on November 22, 1996. ICSPC's Comments did not include a cover page, table of contents, and summary. These are attached. In addition, ICSPC would like to correct the following inadvertent errors and omissions (corrected copies of the entire filing are attached).

Amend page 1, paragraph 1, line 3 by changing "...CEI Plan,
..." to "...comparably efficient interconnection ("CEI") Plan,
...";

No. of Copies rec'd _____
List ABCDE

Amend page 3, footnote 3, line 2, by changing "...will be necessary..." to "...will be a necessary...";

Amend page 3, footnote 4, line 3, by changing "...Declaratory Ruling...." to "...Declaratory Ruling in Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, FCC 96-34, released February 20, 1996...."

Amend page 4, line 3, by adding the following footnotes after the word "filing" and after the phrase ("CAM")":

See BellSouth Transmittal No. 385, filed December 11, 1996.
See CAM Revisions filed November 25, 1996.

Amend page 5, paragraph 1, line 3, by changing "...BellSouth Public's ICS,..." to "...BellSouth Public Communications' ("BSPC")...";

Amend page 5, paragraph 1, line 6, by changing "...BellSouth Public...." to "...BSPC...." Also the following footnote is added to the end of the line.

"Amendment of Section 64.702 of the Commission's Rule and Regulations (Third Computer Inquiry), Report and Order, 104 FCC 2d 958, 1054-55 (1986) (subsequent list history omitted)."

Amend page 6, paragraph 3, line 3, by deleting the comma at the end of the sentence;

Amend page 7, line 4, by changing "...for Bell, companies'..." to "...for Bell companies'...";

Amend page 7, paragraph 1, line 3, by changing "...Bell Companies ICS..." to "...Bell Companies' ICS...";

Amend page 7, paragraph 1, line 5, by changing "...Company's bad debt..." to "...Company's costs associated with bad debt...";

Amend page 8, footnote 8, line 7 by changing "...[] ..." to "[] 7...";

Amend page 9, paragraph 1, line 11, by changing "...would do nothing to prevent..." to "...would fail to prevent...";

Amend page 9, paragraph 3, line 3, by changing "...BellSouth..." to "...BellSouth. See Attachment 3....";

Amend page 10, paragraph 2, line 2, by changing "...advantage of this seemingly..." to "...advantage of BellSouth's seemingly...";

Amend page 10, paragraph 2, line 2, by changing "...generous offer..." to "...generous commission plan offer..."

Amend page 11, paragraph 1, line 10, by deleting the "s" on the word provisions;

Amend page 12, paragraph 1, line 5, by deleting the "'s" from the word BellSouth's;

Amend page 13, line 1, by changing "...to BellSouth Public and..." to "...to BSPC and...";

Amend page 15, line 1, by changing "BOCs" to "Bell Companies";

Amend page 15, paragraph 1, line 4, by changing "...whether BellSouth Public relies..." to "...whether BSPC relies...";

Amend page 16, paragraph 1, line 1, by deleting the word "public";

Amend page 16, footnote 12, by changing "...Why CLEC's market..." to "...While CLECs' market..." and "...very last..." to "...very low,...";

Amend page 17, paragraph 3, line 4, by deleting the words "any call for which";

Amend page 17, footnote 13, line 1, by changing "BOC" to Bell company and "BOCs" to "Bell companies";

Amend page 18, line 3, by changing "...average bade debt,..." to "...average bad debt,...";

Amend page 18, line 5, by changing "...other bade debt..." to "...other bad debt...";

Amend page 18, paragraph 1, line 2, by changing "BOC" to Bell company;

Amend page 18, footnote 14, lines 2 and 3, by changing "BOC" to "Bell company" and "BOC's" to "Bell company's";

Amend page 20, paragraph 1, line 5, by deleting "BellSouth Public" and inserting "BSPC";

Amend page 20, paragraph 2, line 2, by changing "...while BellSouth Public merely..." to "...while BSPC merely....";

Amend page 20, paragraph 2, line 4, by changing "...to BellSouth Public and/or..." to "...to BSPC and/or...";

Amend signature page by changing "December 30, 1997" to December 30, 1996."

December 31, 1996

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Robert F. Aldrich", is written over a solid horizontal line.

Albert H. Kramer
Robert F. Aldrich
David M. Janas
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037

Attorneys for the American Public
Communications Council

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

RECEIVED

DEC 31 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	
Provisions of the Telecommunications)	CC Docket No. 96-128
Act of 1996)	
)	
BellSouth Comparably Efficient)	
Interconnection Plan for Payphone)	
Service Providers)	

**COMMENTS OF THE
INMATE CALLING SERVICE PROVIDERS COALITION**

Dated: December 30, 1996

Albert H. Kramer
Robert F. Aldrich

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for the Inmate Calling Service
Providers Coalition

SUMMARY

BellSouth's CEI plan must be rejected because it fails to describe at all the manner in which BellSouth intends to provide inmate calling services ("ICS") and the manner in which it will provide network support for those services and independent ICS providers. An acceptable CEI plan from BellSouth is especially critical because the extremely low rate ceilings, based on BellSouth rates, that are currently applicable in BellSouth territory make it impossible to provide ICS without subsidies and discrimination. If BellSouth is able to continue subsidizing its ICS operation and discriminating against independent ICS providers, a competitive ICS market will not be achieved as Congress intended.

BellSouth's plan also fails to describe how it intends to value the ICS assets transferred to BellSouth Public Communications, Inc. ("BSPC").

Because BellSouth has not provided any specific information about its ICS or the CEI applicable to ICS, it is impossible to determine whether BellSouth has complied with CEI requirements or even whether BellSouth has properly distinguished between its deregulated ICS operation and regulated network functions. The ICS environment is quite different from the public payphone environment. Collect calling is fundamental to ICS just as coin calling is fundamental to public payphones. ICS requires sophisticated call control systems, which is a discrete set of equipment dedicated to a particular facility. Whether located on the confinement facility premises or in the central office, this system must be defined as part of nonregulated ICS. Processing of collect calls is typically integrated with, and in any event closely coordinated with call control. Finally, bad debt represents a far higher proportion of ICS calls than of other calls.

Bad debt is a significant risk associated with the ICS business and must be defined as a responsibility of the Bell companies' ICS operations.

BellSouth's CEI plan provides no indication of whether BellSouth properly defines its ICS call processing and call control system as part of its ICS. Regardless of where those systems are physically located, they must be defined as part of ICS. Section 276 requires deregulation of "payphone service," defined to include, "the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d) (emphasis added). However, in light of BellSouth's recent offer of 45% commissions to other independent ICS providers, it appears that BellSouth intends to continue defining its ICS as an unseparated regulated service, to which its BSPC affiliate and independent ICS providers may presubscribe their inmate telephones in return for a commission.

This approach makes a mockery of Section 276 and the CEI requirement. To define ICS as a regulated service means that all the costs associated with the high level of bad debt incurred by ICS would continue to be subsidized by BellSouth's regulated services. Further, established ICS providers would be unable to accept BellSouth's commission plan offer without stranding their investment in their own ICS systems. Especially in light of the acute "price squeeze" potential resulting from low rate ceilings in BellSouth territory, it is critical that BellSouth's ICS be removed from regulation and associated subsidies as Congress intended.

BellSouth must be required to refile its CEI plan showing how its ICS operation will be fully unbundled from regulated services and how CEI will be made available to independent ICS providers. Specifically, for example, BellSouth must detail (1) how it will offer physical or "virtual" collocation to ICS providers to the extent that any of BellSouth's call processing and

call control systems are located in central offices; (2) how it will ensure that fraud protection information is available equally to BSPC and other ICS providers; (3) how it will ensure that validation is provided on a nondiscriminatory basis; and (4) how bad debt is treated for its own and competing ICS.

Finally, even if BellSouth's ICS call processing systems could legally be treated as part of regulated services, BellSouth must refile its CEI plan to show how those regulated call processing systems interface with nonregulated ICS and independent providers, how they are tariffed for resale by BSPC and independent provider, and how the validation and fraud prevention services discussed above will be made available on an unbundled basis.

Table of Contents

	<u>Page</u>
Discussion.	2
I. Valuation	3
II. BellSouth's Plan Fails to Describe The Manner In Which It Will Provide Network Support For Its Inmate Calling Services	5
A. BellSouth's Failure to Discuss ICS Requires Rejection of Its CEI Plan	5
B. BellSouth's Failure to Add in ICS Preempts the Commission from Determining Whether BellSouth is Complying with Section 276	5
C. The Commission Must Not Allow BellSouth to Define Its ICS As Part of Regulated Network Services	8
III. Assuming That The Inmate Call Processing System Is Part Of BSPC's ICS, BellSouth's Plan Is Severely Deficient	13
A. The Plan Fails to Provide for Collocation of Competitors' Call Control Systems	13
B. The Plan Fails To Discuss The Types Of Fraud Protection Functions That Are Available To BSPC and Other ICS Providers	14
C. The Plan Fails to Discuss Validation	16
D. The Plan Fails to Provide For Nondiscriminatory Treatment of Bad Debt	18
IV. Even If Call Processing Systems Could Legally Be Included As Part of Regulated Facilities, BellSouth's Plan is Deficient	19
A. The Plan Fails to Provide Technical Interface Informaion	19
B. Resale Or Commission Arrangements For BellSouth Operator Services Are Not Specified	20
C. The Validation And Fraud Prevention Services Discussed Above Must Be Unbundled	21
Conclusion	21

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

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	
Provisions of the Telecommunications)	CC Docket No. 96-128
Act of 1996)	
)	
BellSouth Comparably Efficient)	
Interconnection Plan for Payphone)	
Service Providers)	

To: The Commission

**COMMENTS OF THE
INMATE CALLING SERVICE PROVIDERS COALITION**

Pursuant to the Commission's November 27, 1996 Public Notice, the Inmate Calling Service Providers Coalition ("ICSPC") submits these comments on the BellSouth comparably efficient interconnection ("CEI") Plan, filed by BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc., and its affiliated companies ("BellSouth") on November 22, 1996.

ICSPC generally concurs with and adopts the comments filed by the American Public Communications Council ("APCC") on service order processing, installation and

maintenance, volume discounts, and other issues that are not specific to coin-paid calling. ICSPC's comments focus on the issues that are specific to inmate calling services ("ICS").

DISCUSSION

BellSouth's CEI Plan does not say anything at all about the manner in which BellSouth intends to comply with CEI parameters with respect to inmate calling services, as distinct from public payphone services. Overall, BellSouth's CEI Plan is so vague with respect to inmate calling services ("ICS") that the Commission (and interested parties) cannot evaluate whether the Commission's nondiscrimination requirements will be met. Essentially, BellSouth merely recites the CEI equal access parameters and nonstructural safeguards, and states that it will meet them. It does not, however, specify how it plans to implement them. Thus, the plan provides virtually no assurance that BellSouth will not subsidize or discriminate in favor of its ICS.

The importance of providing adequate safeguards against discrimination and subsidy is especially critical with respect to BellSouth's ICS. In the Payphone Order,¹ the Commission decided not to prescribe compensation for ICS providers for ICS calls, even though ICSPC had argued that ICS providers were subject to rate ceilings in numerous states that failed to provide a rate element for the recovery of ICS costs. The Commission indicated that ICS providers should pursue relief at the state level. Nowhere in the United States is relief from unreasonably low rate ceilings needed more than in BellSouth territory.

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (Sept. 20, 1996) ("Payphone Order"), and Order on Reconsideration, FCC 96-439 (Nov. 8, 1996) ("Payphone Reconsideration Order").

Attached is a table of current local and intraLATA local exchange carrier ("LEC") rates and/or rate ceilings for ICS calls in each state. See Attachment 1. As shown, the lowest rates are virtually all BellSouth rates which represent rate ceilings for ICS providers in those states.

As long as these artificially low rate ceilings are in place, the incentive for BellSouth to subsidize and discriminate in favor of its ICS is particularly intense, since it is impossible to operate profitably without such subsidies or discrimination.² Further, the rate ceilings are unlikely to be increased without an initiative from BellSouth.³ Therefore, as long as these rate ceilings are in place, the utmost vigilance from this Commission is necessary to guard against violations of Section 276 of the Act.

I. VALUATION

BellSouth has chosen a separate affiliate as its means of complying with the CEI requirements and nonstructural safeguards adopted in the Commission's Payphone Order BellSouth CEI Plan at 3. The Commission has ruled that if a LEC chooses to provide its deregulated payphone services through a separate affiliate, then when the LEC transfers its ICS assets, the transfer must be recorded on the books at the higher of fair market value or net book cost, under Section 32.27(c) of the Commission's Rules. Payphone Order,

² The Commission also awarded BellSouth per-call compensation of 35 cents per call on interLATA calls, while awarding no compensation to independent ICSPs, thus making them even more vulnerable to a cross-subsidized BellSouth ICS.

³ Members of ICSC have had informal discussions with some regulators in BellSouth states who have said BellSouth support will be a necessary (but not sufficient) condition for any rate relief.

¶ 164.⁴ Going concern value, which includes "intangible assets such as location contracts that add value to the [ICS] business," should be accounted for when determining fair market value.⁵ *Id.* However, BellSouth has not stated how will it ascertain fair market value. Indeed, BellSouth's CEI plan, tariff filing⁶ and cost allocation manual ("CAM")⁷ omit any discussion at all of asset valuation. Based on BellSouth's filings, it does not appear that BellSouth has conducted any valuation or made the necessary exogenous cost adjustment to credit regulated revenue requirements with any excess of fair market value over net book cost, as the Commission's rules and the Payphone Order require.

BellSouth's CEI plan should be rejected and BellSouth should be ordered to refile a plan that fully describes the method to be used to value BellSouth's ICS assets. The Commission must place the refiled plan on public notice, so that parties can comment on

⁴ BellSouth must conduct a fair market valuation even though BellSouth may have previously reassigned its ICS premises equipment to nonregulated status pursuant to the Declaratory Ruling in Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, FCC 96-34, released February 20, 1996. The ICS premises equipment that was previously reclassified as nonregulated pursuant to the Declaratory Ruling is now being transferred to a nonregulated affiliate -- and to nonregulated books of account -- for the first time. Based on the Commission's rulings in the Payphone Order, valuation is now appropriate for this equipment. Further, as discussed below, under Section 276, any ICS assets that are physically located in the network must also be reclassified as nonregulated. Since these network-based assets were not affected by the Declaratory Ruling, they are now being reclassified for the first time, and are clearly subject to valuation on the same basis as BellSouth's newly deregulated public payphone equipment.

⁵ With or without contracts, there is "going concern" value derived from transferring the business with ICS facilities already in place, with no need to build market share, and with a network of "goodwill" relationships with confinement facilities.

⁶ See BellSouth Transmittal No. 385, filed December 11, 1996.

⁷ See CAM Revisions filed November 25, 1996.

whether the proposed method of valuation is adequate to capture and credit to regulated revenue requirements any excess of fair market value over cost.

II. BELLSOUTH'S PLAN FAILS TO DESCRIBE THE MANNER IN WHICH IT WILL PROVIDE NETWORK SUPPORT FOR ITS INMATE CALLING SERVICES _____

A. BellSouth's Failure To Discuss ICS Requires Rejection of Its CEI Plan _____

BellSouth is required to "explain how it will provide basic payphone services and unbundled functionalities."⁸ However, the plan fails to explain what network support, if any, is being provided to BellSouth Public Communications' ("BSPC") ICS, because BellSouth has not described its ICS operations at all. There is no description. In order for BellSouth to show how it is offering CEI to other ICS providers, it has to say how it is offering CEI to its own ICS and what support services BellSouth Telecom is providing or not providing to BSPC.⁹

B. BellSouth's Failure to Add in ICS Preempts the Commission from Determining Whether BellSouth is Complying with Section 276 _____

Because BellSouth has not provided any specific information about its ICS or the CEI applicable to ICS, it is impossible to determine whether BellSouth is complying with the Payphone Order's CEI requirement, or even whether BellSouth has properly distinguished its ICS, which Section 276 classifies as nonregulated from regulated network

⁸ Payphone Reconsideration Order at ¶ 213.

⁹ Amendment of Section 64.702 of the Commission's Rule and Regulations (Third Computer Inquiry), Report and Order, 104 FCC 2d 958, 1054-55 (1986) (subsequent history omitted).

function. The Commission is required to guess at whether BellSouth's ICS and the CEI supporting it have been properly defined.

BellSouth's failure to provide a specific description of how its network supports its ICS is critical because the ICS environment is quite different from the regular public payphone environment. A discussion of the special characteristics of ICS was included in ICSPC's comments in CC Docket No. 96-128, and is attached to these Comments. See Attachment 2.

Some of the distinctive characteristics of the ICS environment, and their legal and public policy consequences, can be summarized as follows. First, coin payphones are generally not allowed. The predominant method of calling is collect calling, which is generally the only method allowed.¹⁰ Thus, collect calling is clearly "incidental" to -- and indeed represents the very essence of -- the "payphone service" business in the ICS environment. See 47 U.S.C. § 276(d).

Second, because confinement facilities have special needs to control inmate calling and because the incidence of fraudulent and uncollectible calls from confinement facilities is especially high, ICS requires a sophisticated call control system which is customized to the facilities' particular needs.

This system is usually located on the premises of the confinement facility, and in any event, is dedicated to the particular facility. Therefore, the call control system must be defined as part of a Bell Company's nonregulated ICS facility.

¹⁰ In jails, which generally are located relatively close to the inmates' homes, the calls are predominantly local and intraLATA.

Third, there is necessarily an integral relationship between the call control system and the processing, billing and collection of ICS calls. Without a good call control system, which effectively prohibits calling to numbers known to be involved in fraudulent and uncollectible calls, the incidence of bad debt is likely to reach unacceptable levels that preclude the ICS business from being profitable. Therefore, call control and call processing are typically integrated in a single system under the ICS provider's control. Even if call processing is provided separately - e.g., through ordinary network collect calling features - it must be subject to special restrictions and must be coordinated with the call control system. Therefore, it is critical for Bell companies' CEI plans to describe in detail the manner in which their networks support the processing, billing and collection of the collect calling services provided by their ICS operations.

Fourth, even with an effective call control system, bad debt is substantially higher for ICS than for ordinary collect calling. Therefore, if subsidies and discrimination in favor of Bell Companies' ICS are to be eliminated, as Section 276 requires, the Bell company's ICS must be defined in such a way that the nonregulated entity has responsibility for uncollectible calls. Otherwise, the Bell Company's costs associated with bad debt from ICS will continue to be subsidized by other regulated services.

BellSouth's CEI plan fails to provide any information enabling the Commission to determine whether BellSouth's ICS and supporting CEI are configured consistently with these criteria. Therefore, BellSouth must be ordered to refile its plan.

C. The Commission Must Not Allow BellSouth to Define Its ICS As Part of Regulated Network Services

As discussed above, the central components of an inmate calling service are (1) the call control system, which implements restrictions on the timing and permissible destinations of inmate calls, and contains mechanisms to monitor and detect fraudulent or prohibited calls, and (2) the call processing system, which validates, rates, completes, and prepares billing information for inmate calls. Independent ICS providers typically provide both components on-premises as part of a single, integrated system. Even if the two components are not integrated, they must be closely interrelated. For example, the call processing system must be configured so that calls never default to a live operator unless the operator is specially trained and dedicated to handling inmate calls. Further, the call processing system should be capable of transmitting information received in the course of billing and collecting inmate calls so that the call control system can use such information as appropriate to implement additional restrictions on inmate calling.

BellSouth's CEI plan gives no indication of whether the call control and call processing functions that are central to the provision of ICS are considered by BellSouth to be part of BSPC's ICS or part of BellSouth's regulated network offerings. Since the call processing and call control system is the essential component of an inmate calling service, it is subject to deregulation on the same basis as the terminal equipment, regardless of whether the call processing and call control system is located on-premises or attached to the LEC's network in the central office.¹¹ The Commission did not rule on this issue in the

¹¹ As discussed in earlier filings (see ICSPC's Docket 96-128 Comments at 18),
(Footnote continued)

Payphone Order or Order on Reconsideration. Therefore, it must be resolved in the context of deciding whether to approve BellSouth's CEI plan.

In resolving this issue, the Commission is not bound by pre-Telecommunications Act precedent that demarcated the distinction between regulated "basic" service and nonregulated "CPE" and "enhanced service." Section 276 does not prohibit BellSouth only from subsidizing or discriminating in favor of enhanced services or CPE. It prohibits BellSouth from subsidizing or discriminating in favor of its "payphone service," defined as, among other things, "the provision of inmate telephone service in correctional institutions, and any ancillary services." 47 U.S.C. § 276(d). BellSouth may not subsidize or discriminate in favor of its inmate calling services anymore than its inmate calling equipment. If the FCC allowed BellSouth to continue defining its inmate calling service as a "regulated" service, rather than part of the deregulated "payphone service" offering as Congress intended, the rules would fail to prevent BellSouth from continuing to subsidize and discriminate in favor of its inmate calling service, and the CEI plan would be

(Footnote continued)

before the emergence of competition, LEC ICSPs provided inmate calling services through the same network systems used to provide regular collect calling services. Increasingly, however, in order to compete with the sophisticated call control systems furnished by independent providers, LECs have migrated to providing the call control and call processing functions through discrete equipment similar to the inmate calling systems employed by independent ICSPs. Declaratory Ruling, ¶ 7. Some LECs, like the independent ICSPs, currently locate that equipment on the confinement facility's premise. Others locate the equipment in their central offices, or may locate the call control system on the premises and the call processing system in the central office.

Since the same functions are provided and are located in discrete pieces of equipment regardless of the equipment's location, it is impermissible to classify the service differently based on the equipment location.

meaningless with respect to inmate calling services. Such an approach would make a mockery of Section 276 and the Commission's CEI policies.

Yet, it appears that this may be exactly the approach that BellSouth intends to take. Attached is a document from BellSouth which offers an independent ICS provider an agreement to pay a 45% commission in return for sending ICS traffic to BellSouth. See Attachment 3. If BellSouth enters into such an arrangement with BSPC, BellSouth will have essentially relieved BSPC of responsibility for the risks associated with the ICS business, and would allow BellSouth to continue subsidizing the costs of the high levels of bad debt associated with the ICS business.

As a result of allowing BellSouth to misdefine its ICS as a regulated service, BellSouth would be able to continue blatantly subsidizing its ICS in violation of Section 276 of the Act. For example, as discussed above, one of the critical differences between ICS and ordinary operator services is the high proportion of "bad debt" associated with ICS due to fraudulent or otherwise uncollectible calls. Monitoring to prevent fraudulent or uncollectible calls is a central function of an ICS call control and call processing system. However, even with sophisticated controls, bad debt from ICS far exceeds bad debt from other operator services as a percentage of billed revenue. In earlier filings in Docket No. 96-128, ICSPC demonstrated that Bell companies currently do not segregate bad debt associated with ICS from bad debt associated with ordinary operator services. Thus, the Bell companies effectively use revenues from other services to subsidize their bad debt from ICS. If BellSouth and other Bell companies are able to continue to define ICS and

associated bad debt as part of regulated service, they will be able to continue subsidizing this bad debt, contrary to the letter and intent of Section 276.

Further, as BellSouth well knows, established independent ICS providers are in no position to take advantage of BellSouth's seemingly generous commission plan offer. Independent ICS providers have sunk investment in their own call processing and call control systems, which would become "stranded" if these providers signed up to route their ICS traffic to BellSouth. Thus, the misinterpretation of Section 276 to require only that BellSouth's competitive ICS be made formally available, through commission arrangements, to other ICS providers, would enable BellSouth to avoid any meaningful unbundling of its competitive ICS from the regulated services that are truly needed by independent ICS providers.

Issues of subsidy and discrimination are particularly acute in BellSouth's case, as discussed above, because of the especially low rate ceilings applicable to ICS in BellSouth territory. See Attachment 1. Allegations of subsidies and a "price squeeze" on ICS providers are the subject of a major complaint filed by the North Carolina Payphone Association against BellSouth before the North Carolina Utilities Commission. See Attachment 4. It is evident from events in North Carolina that BSPC is committed to pay out more money in commissions and equipment expenses than the maximum commission offered by BellSouth Telecom. Id. In addition, ICSPC has prepared a preliminary analysis of BellSouth's likely cost structure for inmate calling services, in North Carolina and South Carolina based on provision of the services in the network with the 45% commission

offered to ICS providers. After paying estimated costs for validation, transmission,¹² billing and collection, bad debt, and applicable taxes, this analysis indicates that BellSouth would at best break even on each local call in North Carolina, and would lose 1.6 cents on each local call in South Carolina, before paying any maintenance and marketing expenses, equipment depreciation, or overhead. See Attachment 5.

Congress clearly intended that Bell companies' ICS be removed from all subsidies from regulated revenues, so that the Bell companies' ICS would no longer be insulated from market forces and could no longer benefit from the type of "price squeeze" described in Attachment 4. By allowing BellSouth to continue providing the critical ICS functions (i.e., the transmission validation, billing and collection of ICS calls) as part of a regulated service, exempt from Section 276's ban on subsidies and discrimination, the Commission would violated both the language and the intent of Section 276.

In summary, the reclassification of BellSouth's ICS, including call processing and control functions, as nonregulated is essential to prevent the subsidies and discrimination prohibited by Section 276, and cannot be dependent on whether BellSouth chooses to physically locate the call processing and/or call control system on its own premises or on the premises of its prison facility customer. BellSouth must remove its ICS business from regulation as Congress intended. BellSouth must refile its CEI plan, describing precisely how it will provide nondiscriminatory interconnection to the systems that provide inmate

¹² Transmission costs, however, would be much higher than indicated if BellSouth does not have an automated operator center located near the confinement facility.

calling services, wherever located, and not merely to the terminal equipment that is connected to ICS systems.

III. ASSUMING THAT THE INMATE CALL PROCESSING SYSTEM IS PART OF BSPC'S ICS, BELLSOUTH'S PLAN IS SEVERELY DEFICIENT

As discussed above, ICS cannot be treated as part of BellSouth's regulated LEC operations without running afoul of Section 276 and Commission policies. In this Section, ICSPC assumes that the inmate call processing system is part of BSPC's ICS. BellSouth's plan fails to provide any detail about the manner in which BellSouth Telecom will provide network support to BSPC and how that support will be made available to independent ICS providers.

A. The Plan Fails to Provide for Collocation of Competitors' Call Control Systems

BellSouth's plan does not state whether its ICS call processing and call control systems are located on customer premises or in central office peripherals. If the system is located in the central office, then CEI principles require that BellSouth allow other providers to physically or "virtually" collocate equipment. The plan does not provide any information about how such collocation will be accommodated, including detail on how BellSouth's call processing equipment technically interfaces with its regulated network operations.

B. The Plan Fails To Discuss The Types Of Fraud Protection Functions That Are Available To BSPC and Other ICS Providers

Independent ICSPs have historically been handicapped in their ability to compete with Bell companies' inmate calling services operations because the Bell companies have referred to provide critical account and fraud control information on an unbundled basis and on reasonable terms.

This information includes, among other things:

Customer account information, including Social Security number and customer code;

Service establishment date;

Disconnect Date and reason for disconnect;

Additional lines;

Previous telephone numbers, if any;

Service restrictions;

Class of service;

Payment history;

Calling patterns/returns;

Credit history; and

Features (e.g. call forwarding or three-way calling)

This type of information is especially critical in the ICS environment because of the high incidence of fraud and bad debt incurred by ICS providers. Section 276's

directive that the Bell companies not discriminate in favor of their own operations requires that the account and fraud control information listed above be made available to independent ICSPs if it is provided to or for the benefit of BellSouth's ICS.

However, BellSouth's CEI plan is silent on whether any of this information is provided to, or for the benefit of, BSPC's ICS operation or other ICS providers. The experience of ICSPC members is that this information is available only if the ICS provider enters a billing and collection agreement directly with BellSouth. However, the cost of entering into such a billing arrangement is high.¹³ As a result, the vast majority of independent ICSPs use third-party billing clearinghouses. The billing agreements between the Bell companies and such third-party clearinghouses typically prohibit the use of information supplied to the clearinghouse by any other party. Clearly, it is not permissible for BellSouth to condition the availability of a critical CEI function on the purchase of a nonregulated service (billing and collection) from BellSouth. BellSouth should be required to refile its plan and to disclose (1) what kind of fraud prevention information is provided to, or for the benefit of, its ICS, (2) how such information is provided,¹⁴ and (3) what arrangements have been made to provide the same information on the same basis to independent ICS providers.

¹³ Billing and collection agreements can require up front payments by independent ICSPs of \$75,000 or more.

¹⁴ For example, if this information is available on a real-time basis to validate BellSouth's ICS calls, then BellSouth should make available on-line access to this information to independent ICS providers as an option so that they can check any relevant item before completing an inmate call. Such on-line access would enable an ICS provider to identify potential problems and minimize the bad debt that is incurred.