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BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF CARLOS MORILLO  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
CASE NO. 040130-TP  
JANUARY 10, 2005

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Carlos Morillo. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from West Virginia University in 1984 with Bachelor of Science degrees in Economics & Geology. In 1986, I received a Masters in Business Administration with concentrations in Economics and Finance from West Virginia University. After graduation, I began employment with Andersen Consulting supporting various projects for market research, insurance, and hospital holding companies. In 1990, I joined MCI, Inc. as a Business Analyst. My responsibilities included supporting the implementation of processes and systems for various business products and services. In addition to my Business

1 Analyst duties, I worked as a Financial Analyst evaluating the financial  
2 performance of various price adjustments as well as promotion deployment,  
3 including the state and Federal tariff filings. I was also a Product Development  
4 Project Manager supporting the deployment of business services. In 1994, I  
5 joined BellSouth International, as a Senior Manager of IT planning, and later  
6 became Director of Business Development. In 1999, I became Director of  
7 eCommerce in BellSouth's domestic operations and in 2002, Director of  
8 International Audit. I assumed my current position in May of 2004.

9  
10 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

11  
12 A. On August 19, 2004, the Florida Public Service Commission (the  
13 "Commission") issued its written order granting participant parties' Joint  
14 Motion to hold the Joint CLEC arbitration proceedings in abeyance for ninety  
15 days. The Parties had asked for 90-day abatement of the arbitration proceeding  
16 so that the parties could include and address issues relating to *United States*  
17 *Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Circuit 2004) ("USTA II") in this  
18 proceeding. During the 90-day abatement, the parties continued to negotiate,  
19 and as a result, several of the initial issues identified for arbitration have been  
20 resolved. The purpose of my testimony is to provide BellSouth's position on  
21 the remaining, unresolved policy issues in this proceeding pertaining to  
22 Attachments 6 and 7 of the Interconnection Agreement. Specifically, my  
23 testimony addresses Issues 6-5, 7-1, 7-3, 7-5, 7-6, 7-7, 7-8, 7-9, and 7-10.  
24 These issues are summarized in the Revised Joint Issues Matrix filed by  
25 BellSouth and NewSouth Communications Corporation ("NewSouth"),

1 NuVox Communications, Inc. (“NuVox”), KMC Telecom V., Inc. (“KMC V”)
2 and KMC Telecom III LLC (“KMCIII”) (together, “KMC”), and Xspedius
3 Communications, LLC on behalf of its operating subsidiaries Xspedius
4 Management Company Switched Services, LLC and Xspedius Management
5 Company of Jacksonville, LLC (“Xspedius”) on October 15, 2004. I
6 henceforth refer to these companies as the “Petitioners.”
7

8 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

9
10 A. Yes. There are numerous unresolved issues in this arbitration that have
11 underlying legal arguments. Because I am not an attorney, I am not offering a
12 legal opinion on these issues. I respond to these issues purely from a policy
13 perspective. BellSouth’s attorneys will address issues requiring legal
14 argument. From a policy perspective, for many of the issues that I will
15 address, BellSouth has tariff provisions relating to its own retail customers that
16 are comparable to provisions that the Joint Petitioners find objectionable in this
17 arbitration. Stated differently, the Joint Petitioners want more favorable terms
18 than BellSouth provides to its own retail customers. From a policy and parity
19 perspective, the Joint Petitioners’ requests for more favorable treatment should
20 be rejected by this Commission as contrary to the concept and requirement that
21 BellSouth should provide its services in a non-discriminatory manner.
22

23 *Item 88; Issue 6-5: What rate should apply for Service Date Advancement (a/k/a*
24 *service expedites)? (Attachment 6, Section 2.6.5)*

25

1 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

2

3 A. BellSouth's obligations under Section 251 of the 1996 Act are to provide  
4 certain services in non-discriminatory ("standard") intervals at cost-based  
5 prices. There is no Section 251 requirement that BellSouth provide service in  
6 less than the standard interval. Nor is there any requirement for BellSouth to  
7 provide faster service to its wholesale customers than to its retail customers.  
8 Because BellSouth is not required to provide expedited service pursuant to the  
9 1996 Act, the Petitioners' request is not appropriate for Section 251 arbitration,  
10 and it should not, therefore, be included in the Agreement. Moreover, because  
11 it is not a Section 251 requirement, TELRIC rates should not apply.

12

13 ***Item 95; Issue 7-1: What time limits should apply to backbilling, over-billing, and***  
14 ***under-billing issues? (Attachment 7, Section 1.1.3)***

15

16 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

17

18 A. BellSouth's issue statement reflects that all charges incurred under the  
19 agreement should be subject to the state's statute of limitations or applicable  
20 Commission rules. Billing in arrears, whether back billing (billing for services  
21 never previously billed), over-billing (issuing credits for services previously  
22 billed) or under-billing (billing additional amounts for services previously  
23 billed), should be subject to the same limitations as other billing issues. It is  
24 not appropriate to parse out certain situations. All billing issues should be  
25 subject to the same time limitations. The Commission has already made such a

1 finding in the Verizon/Covad Arbitration<sup>1</sup> when it found that the five-year  
2 statute of limitations set forth in Florida Statutes § 95-11(2)(b) applied to the  
3 parties' rights to assess previously unbilled charges for services rendered.

4

5 Q. THE CLECS STATE THAT BACKBILLING SHOULD BE LIMITED TO 90  
6 CALENDAR DAYS. IS THIS REASONABLE?

7

8 A. The CLECs' proposal is impractical. Due to the complexity of BellSouth's  
9 billing systems, 90 days is not a sufficient amount of time for the retrieval of  
10 billing data and records and any system programming to substantiate and  
11 support the back billing of under-billed charges. While BellSouth strives to  
12 bill incurred charges in a timely manner, it should not be forced to limit back  
13 billing to 90 days. Further, state statutes and/or Commission rules were  
14 instituted because these governmental bodies recognized that there are many  
15 legitimate situations in which back billing 6 months, one year or longer is  
16 appropriate to ensure that companies that provide services are allowed to be  
17 properly compensated. In the spirit of compromise, BellSouth has agreed to  
18 use the same limitations period that the CLECs have agreed to use for the  
19 filing of billing disputes – that is two (2) years. Since all billing issues should  
20 be handled under the same conditions, a two-year period for all billing issues is  
21 a reasonable compromise. It would be inherently unfair to allow one party to  
22 raise billing issues for 2 years and the other to only be allowed to raise billing  
23 issues for 90 days, 6 months or any period less than two years.

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<sup>1</sup> Order No. PSC-03-1139-FOF-TP, Docket No. 020960-TP, dated October 13, 2003, at pp. 14-15.

1

2 ***Item 97; Issue 7-3: When should payment of charges for service be due?***  
3 ***(Attachment 7, Section 1.4)***

4

5 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

6

7 A. Payment for all services identified on the bill should be due on or before the  
8 next bill date (Payment Due Date) in immediately available funds.

9

10 Q. PLEASE PROVIDE RATIONALE FOR BELLSOUTH'S POSITION.

11

12 A. First, BellSouth cannot provide multiple due dates on a single bill - the due  
13 date requirements as listed in the Access Tariff cannot be differentiated from  
14 the due dates for contract rates, both of which appear on the bill. Further, all  
15 customer due dates and treatments are generated the same way; therefore, it is  
16 not possible to do something different for one customer versus another. In  
17 addition, BellSouth has no way to know when the customer actually receives  
18 the bill; thus, it is not reasonable to expect that treatment could be based upon  
19 the date the customer receives the bill. Furthermore, BellSouth offers  
20 electronic transmission of bills, which would allow Petitioners to receive bills  
21 sooner and allow more time for review.

22

23 ***Item 99; Issue 7-5: What recourse should a Party have if it believes the other Party***  
24 ***is engaging in prohibited, unlawful or improper use of its facilities or services,***  
25 ***abuse of the facilities or noncompliance with the Agreement or applicable tariffs?***

1     *(Attachment 7, Section 1.7.1)*

2

3     Q.     WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

4

5     A.     Each Party should have the right to suspend or terminate service in the event it  
6           believes the other party is engaging in one of these practices and the other  
7           party does not cease such activity promptly.

8

9     Q.     WHAT ACTION WOULD BELLSOUTH TAKE IN THE EVENT IT HAS  
10           EVIDENCE THAT A CLEC IS ENGAGING IN PROHIBITED,  
11           UNLAWFUL OR IMPROPER USE OF BELLSOUTH'S FACILITIES OR  
12           SERVICES, ABUSE OF THE FACILITIES OR NONCOMPLIANCE WITH  
13           THE AGREEMENT OR APPLICABLE TARIFFS?

14

15     A.     BellSouth's agreement language states that BellSouth reserves the right to  
16           suspend or terminate service - not that BellSouth will take such action. If the  
17           CLEC fails to address the problem, then action will likely be taken.  
18           BellSouth's tariffs define the type of activity addressed by this issue and such  
19           activity should not be taken lightly or allowed to continue for a protracted  
20           period of time. Listening in on party lines, impersonation of another with  
21           fraudulent intent, harassing phone calls, threatening calls, use of profane or  
22           obscene language, etc., are a few examples of the activities that could cause  
23           suspension or termination of service if not immediately ceased or corrected.  
24           Because BellSouth cannot suspend access to its Local Exchange Navigation  
25           System ("LENS") on a service-by-service basis, suspension would necessarily

1 impact the CLEC on all services. On the other hand, termination of service  
2 can be accomplished on a service-by-service basis. BellSouth may decide to  
3 take action with respect to a specific service, but at the same time, if the  
4 situation is serious enough and the CLEC fails to take appropriate action or  
5 gives no indication that it intends to take action, BellSouth needs the ability to  
6 take the appropriate correction action through suspension or termination of the  
7 service. Moreover, since BellSouth will provide notice to the CLEC in the  
8 event it intends to suspend or terminate service as a result of such egregious  
9 activity, in the event that the parties are unable to reach an amicable solution to  
10 curb the activity, the CLEC may file a complaint at the Commission.

11

12 ***Item 100; Issue 7-6: Should CLEC be required to pay past due amounts in addition***  
13 ***to those specified in BellSouth's notice of suspension or termination for***  
14 ***nonpayment in order to avoid suspension or termination? (Attachment 7, Section***  
15 ***1.7.2)***

16

17 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

18

19 A. Yes, if the CLEC receives a notice of suspension or termination from  
20 BellSouth as a result of the CLEC's failure to pay timely, the CLEC should be  
21 required to pay all amounts that are past due as of the date of the pending  
22 suspension or termination action.

23

24 Q. PLEASE PROVIDE SUPPORT FOR YOUR POSITION.

25



1 A. By definition, the collections process is triggered when a customer does not  
2 pay their bills according to the terms of the Agreement. Once a CLEC fails to  
3 meet its financial obligations and the matter is referred to collections, the risk  
4 associated with the customer is higher, based on the customer's own behavior.  
5 Under the Petitioners' proposed language, BellSouth would be limited to  
6 collecting the amount that was stated in the past due letter regardless of the  
7 customer's payment performance for subsequent bill cycles. Often, after  
8 receipt of a notice of past-due charges, the Parties will enter into discussions  
9 related to payment arrangements in an effort to resolve the issue without the  
10 need for suspension or termination. During this time, while BellSouth is  
11 working with the CLEC to avoid disruption of service to end users, even  
12 though the CLEC has not paid for the services, BellSouth is continuing to  
13 provide service to the CLEC and any additional payments that become past  
14 due subsequent to the first notice should be rectified by the CLEC at the same  
15 time as it pays for the original past due charges. This situation only arises  
16 when a CLEC fails to fulfill its most fundamental contractual obligation,  
17 paying for the services it receives, and BellSouth should not be penalized for  
18 its efforts in continuing to provide services while payment arrangements are  
19 worked out. Indeed, it would not be in the end users' best interests to incent  
20 BellSouth to take a stricter approach to suspending or discontinuing service  
21 when a CLEC fails to make the payments that it is contractually obligated to  
22 make in a timely manner. BellSouth has the right and responsibility to protect  
23 itself from the higher risk associated with non-payment by insuring that  
24 customers are not allowed to continue to stretch the terms of the contract and  
25 increase the likelihood of bad debt.

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*Item 101; Issue 7-7: How many months of billing should be used to determine the maximum amount of the deposit? (Attachment 7, Section 1.8.3)*

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. It is BellSouth's position that the average of two (2) months of actual billing for existing customers or estimated billing for new customers should be used to determine the maximum amount of the deposit. Such a deposit is consistent with the standard practice in the telecommunications industry and BellSouth's practice with its end users.

**Q. DO THE PETITIONERS HAVE ESTABLISHED POLICIES REGARDING THE EQUIVALENT AMOUNT OF DEPOSIT THAT MAY BE REQUIRED?**

A. Yes. As memorialized in their state tariffs, the Joint Petitioners have established deposit requirements for their customers.

*Item 102; Issue 7-8: Should the amount of the deposit BellSouth required from CLEC be reduced by past due amounts owed by BellSouth to the CLEC? (Attachment 7, Section 1.8.3.1)*

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

1 A. No, a CLEC's deposit should not be reduced by past due amounts owed by  
2 BellSouth to the CLEC. The CLEC's remedy for addressing non-disputed late  
3 payment by BellSouth should be suspension/termination of service or  
4 assessment of interest/late payment charges similar to BellSouth's remedy for  
5 addressing late payment by the CLEC. KMC has already pursued one of these  
6 options with BellSouth – it can bill BellSouth for late payment charges today.

7  
8 BellSouth is within its rights to protect itself against uncollectible debts on a  
9 non-discriminatory basis. BellSouth *must* protect against unnecessary risk  
10 while providing service to all requesting CLEC providers. The Petitioners are  
11 not faced with the same obligation.

12  
13 BellSouth is willing to agree that, in the event that a deposit or additional  
14 deposit is requested of the CLEC, such deposit request shall be reduced by an  
15 amount equal to the undisputed past due amount, if any, that BellSouth owes  
16 the CLEC for reciprocal compensation payments pursuant to Attachment 3 of  
17 the Interconnection Agreement at the time of the request by BellSouth for a  
18 deposit. However, when BellSouth pays CLEC the undisputed past due  
19 amount, BellSouth would be unsecured to the extent of that amount unless  
20 there is an obligation on the CLEC's part to provide the additional security  
21 necessary to establish the full amount of the deposit that BellSouth originally  
22 required. Consequently, any such obligation to offset undisputed past due  
23 amounts owed by BellSouth against a deposit request would only be  
24 reasonable if BellSouth would be secured in the full amount upon payment by  
25 BellSouth of any undisputed past due amount.

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***Item 103; Issue 7-9: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days? (Attachment 7, Section 1.8.6)***

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. Yes, BellSouth should be permitted to terminate service to a CLEC if the CLEC refuses to remit any deposit required by BellSouth within 30 calendar days. Thirty calendar days is a reasonable time period within which a CLEC should meet its fiscal responsibilities.

Q. PLEASE EXPLAIN BELLSOUTH'S POSITION.

A. The purpose of the deposit is to help mitigate BellSouth's risk as it provides services worth millions of dollars every month to CLECs. BellSouth has incurred losses on several occasions over the past few years where a CLEC, for one reason or another, did not or was unable to pay its bills. CLECs are valued customers; however, BellSouth has a responsibility to its shareholders and to its other customers to not assume unnecessary risk.

***Item 104; Issue 7-10: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit? (Attachment 7, Section 1.8.7)***

1

2 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

3

4 A. If a CLEC does not agree with the amount or need for a deposit requested by  
5 BellSouth, the CLEC may file a petition with the Commission for resolution of  
6 the dispute and BellSouth would cooperatively seek expedited resolution of  
7 such dispute. BellSouth shall not terminate service during the pendency of  
8 such a proceeding provided that the CLEC posts a payment bond for the  
9 amount of the requested deposit during the pendency of the proceeding. It  
10 would not be reasonable to expect BellSouth to remain completely unsecured,  
11 or inadequately secured, during the pendency of a proceeding the purpose of  
12 which is to determine if there is a need for a deposit. In fact, to allow such a  
13 situation to exist would simply encourage CLECs that are on the verge of filing  
14 bankruptcy, and that have been determined to pose a high risk to BellSouth  
15 based on the very specific and objective criteria set forth in the  
16 Interconnections Agreement, to file a complaint in order to delay the payment  
17 of a deposit while they ready themselves for bankruptcy filing. A requirement  
18 that the CLEC post a payment bond takes into consideration the disagreement  
19 between the parties with respect to the need for or the amount of a deposit  
20 request but also protects BellSouth during the resolution of any dispute over  
21 the amount of the deposit.

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A. Yes.