

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

IN RE:

**JOINT PETITION FOR ARBITRATION OF NEWSOUTH)
COMMUNICATIONS CORP., NUVOX COMMUNICATIONS,)
INC., KMC TELECOM V, INC., KMC TELECOM III LLC,)
AND XSPEDIUS COMMUNICATIONS, LLC ON BEHALF OF) DOCKET NO.
ITS OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT) 040130-TP
CO. SWITCHED SERVICES, LLC AND XSPEDIUS)
MANAGEMENT CO. OF JACKSONVILLE, LLC)**

TESTIMONY OF THE JOINT PETITIONERS

**Jerry Willis on behalf of NuVox Communications, Inc. and
NewSouth Communications Corp.**

January 10, 2005

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1 **PRELIMINARY STATEMENTS**

2 **WITNESS INTRODUCTION AND BACKGROUND**

3 **NuVox/NewSouth: Jerry Willis**

4 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

5 **A.** My name is Jerry Willis. I was formerly the Executive Director — Network Cost and
6 Budgeting for NuVox, from May 2000 until July 31, 2003. Since August 1, 2003 I
7 have been retained as a consultant to NuVox. I can be reached care of NuVox
8 witness Hamilton Russell at 2 North Main Street, Greenville, SC 29601.

9 **Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.**

10 **A.** While at NuVox I assisted in matters such as implementation of switches,
11 collocations, engineering, power and other elements needed to build the company's
12 telecommunications network. While I served as Executive Director – Network Cost
13 and Budgeting, I directed company and vendor employees in equipment installation
14 and testing of sixty-one collocations, completing all sites in three months for an
15 average of one site completion per day. I participated in the negotiation of certain
16 aspects of the Agreement that is the subject of this arbitration.

17 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
18 **BACKGROUND.**

19 **A.** I have over thirty-five (35) years of experience in the telecommunications business
20 and have worked with Competitive Local Exchange Carriers (“CLECs”), Incumbent
21 Local Exchange Carriers (“ILECs”), Interexchange Carriers (“IXCs”) and consulting
22 firms.

1 I have held positions at several telecommunications companies. From 1997 to
2 November of 1998 I was Director, Network Services for IXC Communications, an
3 interexchange carrier located in Austin, Texas. From 1996 to January of 1997 I was
4 the Director of Provisioning for McLeod USA. Prior to that I served as Director of
5 International Business Development with Corporate Telemanagement Group, Inc.
6 (“CTG”) and was responsible for identifying and developing new business
7 opportunities as well as recruiting and managing in-country agents. From October of
8 1986 until January of 1991, I was employed with Telecom USA as Network Director.
9 1970 until 1986 I was employed by Contel, an ILEC headquartered in St. Louis, MO.
10 While with Contel I served in various capacities, including stints as Special Services
11 Technician, Division Transmission Engineer, District Superintendent, Division
12 Planning Engineer and Manager, Proposal and Contract Development. From 1965-
13 1970 I was an engineer in the Bell system.

14 **Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE**
15 **SUBMITTED TESTIMONY.**

16 **A.** I have submitted testimony to the Public Service Commission of South Carolina.

1 **Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING**
2 **TESTIMONY.**

3 **A.** I am sponsoring testimony on the following issues:¹

General Terms and Conditions	None
Attachment 2: Unbundled Network Elements	23/2-5, 37/2-19, 38/2-20
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	88/6-5
Attachment 7: Billing	None
Supplemental Issues	None

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

5 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth
6 with respect to each unresolved issue subsequently herein, and associated contract
7 language on the issues indicated in the chart above.

8

¹ The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

1 NETWORK ELEMENTS (ATTACHMENT 2)²

2 *Item No. 23, Issue No. 2-5 [Section 1.5]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?*

3 **Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY**
4 **ANOTHER COMPANY'S WITNESS?**

5 **A.** Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting
6 the pre-filed testimony of Marva Brown Johnson on this issue, as though it were
7 reprinted here.

8 *Item No. 37, Issue No. 2-19 [Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?*

9 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 37/ISSUE 2-**
10 **19.**

11 **A.** The answer to the question posed in the issue statement is "NO". The Agreement
12 should not contain specific provisions limiting the availability of Line Conditioning
13 (in this case, load coil removal) to copper loops of 18,000 feet or less in length.

14 **Q. WHAT IS THE RATIONALE FOR YOUR POSITION?**

15 **A.** Petitioners will not agree to language that provides them no right to order Line
16 Conditioning (in this case, load coil removal) on loops that are longer than 18,000
17 feet. Nothing in Applicable Law would support such a limitation. Petitioners are

² Please note that the disputed contract language for all issues has been attached to the direct testimony of NuVox witness, Hamilton E. Russell III, as Exhibit A.

1 entitled to obtain loops that are engineered to support whatever service we choose to
2 provide. In refusing to condition loops (in this case, load coil removal) over 18,000
3 feet in length, BellSouth may preclude Petitioners from providing innovative services
4 to a significant number of customers. In unreasonably attempting to restrict its Line
5 Conditioning obligations, BellSouth is attempting to dictate the service that
6 Petitioners may provide by limiting those services to those that *BellSouth* chooses to
7 provide. This result is contrary to the 1996 Act, is anticompetitive, and may deprive
8 Florida consumers of innovative services that CLECs may choose to provide and that
9 BellSouth would prefer not to.

10 **Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED**
11 **INADEQUATE?**

12 **A.** BellSouth has proposed language stating that it “will remove load coils only on
13 copper loops and sub loops that are less than 18,000 feet in length” as a matter of
14 course, but that it will remove load coils on longer loops only at the CLEC’s request
15 and at the rates in “BellSouth’s Special Construction Process contained in
16 BellSouth’s FCC No. 2”. This language is unacceptable. First, it has no basis in
17 Applicable Law. Nothing in any FCC order allows BellSouth to treat Line
18 Conditioning in different manners depending on the length of the loop. Second,
19 BellSouth’s imposition of “special construction” rates for Line Conditioning is
20 inappropriate. As Petitioners have explained with respect to several issues in this
21 arbitration, the work performed in connection with provisioning UNEs must be priced
22 at TELRIC-compliant rates. BellSouth’s special construction rates are not TELRIC-
23 compliant. Indeed, BellSouth’s Tariff FCC No. 2 does not include rates for Line

1 Conditioning, but rather lists the charges imposed on specific carriers for hanging or
2 burying cable, adding UDLC facilities, and the like. Petitioners therefore do not
3 know what rates they would pay for Line Conditioning under this section. Such
4 ambiguity is unacceptable. Accordingly, the Agreement should state that TELRIC-
5 compliant rates shall apply to Line Conditioning for loops over 18,000 feet in length.
6 For all these reasons, BellSouth's language should be rejected.

7 **Q. ARE YOU CURRENTLY CONTEMPLATING THE DEPLOYMENT OF**
8 **TECHNOLOGIES THAT MIGHT REQUIRE THE TYPE OF LINE**
9 **CONDITIONING THAT BELL SOUTH SEEKS TO EXCLUDE FROM THE**
10 **AGREEMENT?**

11 **A.** Yes. We are currently exploring at least two technologies designed to derive
12 additional bandwidth from "long" loops. One is called "Etherloop" which should
13 work on loops up to 21,000 feet in length and another is called "G.SHDSL Long"
14 which should work on loops up to 26,000 feet in length.

*Item No. 38, Issue No. 2-20 [Sections 2.12.3, 2.12.4]:
Under what rates, terms and conditions should BellSouth be
required to perform Line Conditioning to remove bridged
taps?*

15 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 38/ISSUE 2-**
16 **20.**

17 **A.** Any copper loop being ordered by CLEC which has over 6,000 feet of combined
18 bridged tap will be modified, upon request from CLEC, so that the loop will have a
19 maximum of 6,000 feet of bridged tap. This modification will be performed at no
20 additional charge to CLEC. Line Conditioning orders that require the removal of

1 other bridged tap should be performed at the rates set forth in Exhibit A of
2 Attachment 2.

3 **Q. WHAT IS THE RATIONALE FOR YOUR POSITION?**

4 **A.** Petitioners seek to ensure that BellSouth will, at their request, remove bridged tap
5 from loops as necessary to enable the loop to carry Petitioners' choice of service.
6 Federal law provides, without limitation, that CLECs may request this type of Line
7 Conditioning, insofar as they pay for the work required based on TERC-compliant
8 rates. Petitioners' language comports exactly with these parameters, stating simply
9 that they may request removal of bridged tap at the rates already provided in the
10 Agreement, excepting bridged tap of more than 6,000 feet, which the Parties agree
11 should be removed without charge. Petitioners have the right to provide the service
12 of their choice, and to obtain loops that can carry those services. The Commission
13 should reject BellSouth's attempt to limit CLEC service offerings to those BellSouth
14 also chooses to provide.

15 **Q. WHY IS THE LANGUAGE THAT BELL SOUTH HAS PROPOSED**
16 **INADEQUATE?**

17 **A.** BellSouth's proposed language would require it to remove only bridged tap "that
18 serves no network design purpose" and is between "2500 and 6000 feet". This
19 language substantially restricts Petitioners' ability to obtain loops that are free of
20 bridged tap, in two ways. First, it leaves entirely to BellSouth's discretion which
21 bridged tap "serves no network design purpose", which is an arbitrary and
22 unworkable standard. Moreover, it is not for BellSouth to unilaterally roll-back its
23 federal regulatory obligations. Second, BellSouth's language precludes the removal

1 of bridged tap that is less than 2500 feet in length, which may significantly impair the
2 provision of high-speed data transmission. Nothing in federal law supports a refusal
3 to remove bridged tap, regardless of the length of or their location on the loop.
4 BellSouth's language would have the effect of depriving consumers of competitive
5 choice of service, and would improperly gate Petitioners' entry into the broadband
6 market. This proposal is unlawful, anticompetitive, and should be rejected.

7
8 BellSouth makes two points in its position statement that require comment. First,
9 BellSouth claims that removing bridged tap that either "serves no network purpose"
10 or is "between 0 and 2500" feet constitutes "creation of a superior network". This
11 position is flatly incorrect, as the FCC has expressly held that Line Conditioning does
12 not result in a "superior network". Rather, it is the work necessary to ensure that
13 existing loops can support the services that a CLEC chooses to provide. BellSouth is
14 not building a "superior network" in this instance, it is merely modifying its existing
15 network. Moreover, removing bridged tap pursuant to the CLEC's request is
16 absolutely required by Rule 51.319(a)(1)(iii) (Line Conditioning). Second, BellSouth
17 states that this issue is "not appropriate for arbitration" because it somehow involves
18 "a request by the CLECs that is not encompassed within ... section 251". Yet, the
19 FCC established the Line Conditioning rule under its section 251 authority.

20
21 Moreover, in response to CompSouth's petition for a ruling regarding the need for
22 public review and approval of so-called "commercial agreements" (Docket No.
23 18948-U), this Commission found that an interconnection agreement may encompass

1 more than an ILEC's obligation under section 251. Specifically, the Commission
2 agreed with CompSouth's analysis that "a request pursuant to 251' is not limited to
3 services or UNEs related solely to an ILEC's legal obligations set forth in section
4 251, but rather, is 'the vehicle provided by the Act that requires ILECs to negotiate at
5 all with CLECs.'" Therefore, an interconnection agreement is by no means confined
6 to reflect only the requirements of section 251. In sum, this issue is squarely within
7 the Commission's jurisdiction.

8 *Item No. 65, Issue No. 3-6 [Section 10.8.1, 10.10. 1, and 10.13]: Should BellSouth be allowed to charge the CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?*

9 **Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY**
10 **ANOTHER COMPANY'S WITNESS?**

11 **A.** Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting
12 the pre-filed testimony of Marva Brown Johnson on this issue, as though it were
13 reprinted here.

14 *Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?*

15 **Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY**
16 **ANOTHER COMPANY'S WITNESS?**

17 **A.** Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting
18 the pre-filed testimony of James Falvey on this issue, as though it were reprinted here.

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

2 **A.** Yes, for now, it does. Thank you.

CERTIFICATE OF SERVICE

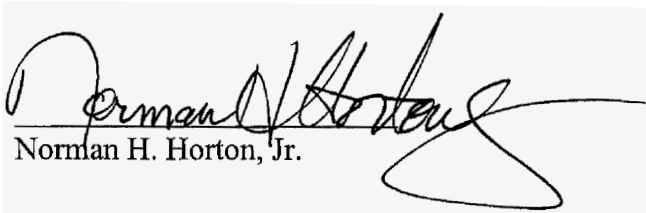
I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by Hand Delivery (*), and/or U. S. Mail this 10th day of January, 2005.

Jeremy Susac, Esq.*
General Counsel's Office, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

James Meza, III
Nancy B. White, Esq.
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

J. Phillip Carver
General Attorney
BellSouth Telecommunications, Inc.
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Chad Pifer, Esq.
Regulatory Counsel
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30034-8119.


Norman H. Horton, Jr.

CERTIFICATE OF SERVICE

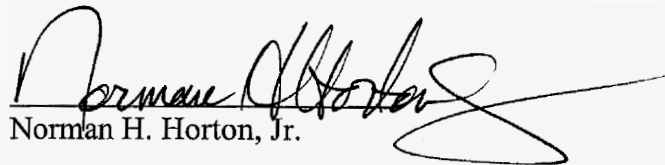
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Jeremy Susac, Esq.*
General Counsel's Office, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

James Meza, III
Nancy B. White, Esq.
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

J. Phillip Carver
General Attorney
BellSouth Telecommunications, Inc.
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Chad Pifer, Esq.
Regulatory Counsel
KMC Telecom
1755 North Brown Road
Lawrenceville, GA 30034-8119.


Norman H. Horton, Jr.