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February 22, 2005

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 040130-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of New South Communications, Corp., NuVox Communications, Inc., KMC Telecom, Inc. and Xspedius Communications, Inc., enclosed is an original and 15 copies of Prehearing Statement of Joint Petitioners in the above referenced docket. Also enclosed is a 3 ½" diskette with the documents on it in MS Word97/2000.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

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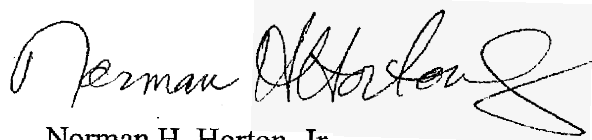
Sincerely yours,



Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

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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 its Operating Subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, Of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended	)	Docket No. 040130-TP Filed: February 22, 2005

PREHEARING STATEMENT OF JOINT PETITIONERS

NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC (hereinafter "Joint Petitioners"), pursuant to Order Nos. PSC-04-0488-PCO-TP, issued May 12, 2004 and PSC-05-0065-PCO-TP, issued January 19, 2005, hereby submit their prehearing statement in the above captioned matter.

A. APPEARANCES

Norman H. Horton, Jr..
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Counsel to Joint Petitioners

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B. WITNESSES

Witness	Main Witness Issues
Marva Brown Johnson (Direct and Rebuttal)	2, 23, 26, 36A, 36B, 65, 108, 109A, 109B, and 110
Jerry Willis (Direct and Rebuttal)	37 and 38
Hamilton E. Russell, III (Direct and Rebuttal)	4, 5, 6, 7, 12, 51B, 51C, 97, 100, 101, 103, 104, 112A, 112B, 114A, and 114B
James C. Falvey (Direct and Rebuttal)	9, 46, 63, 86B, 88, 94A, 94B, 94C, 96A, 96B, 102, 111, 113A, and 113B

Pursuant to the Commission's May 12, 2004 Order Establishing Procedure, the Joint Petitioners have identified one witness as the main witness for each issue. The main witness has presented testimony on the identified issues and a company witness for each of the other Joint Petitioners arbitrating that issue has adopted that testimony to the extent that it is common and not company specific.

Company specific testimony is included in certain instances in the testimony of the main witness. In one instance, with respect to Issue 97, company specific testimony is offered by a witness who is not the main witness. Although Mr. Russell is the main witness for Issue 97, Mr. Falvey offers additional testimony that is specific to Xspedius. Joint Petitioners note that a section of the Mr. Russell's Direct Testimony (Russell at 42:1-9) on this issue reflects circumstances that are specific to Xspedius. Therefore, this section of Mr. Russell's Direct Testimony should be incorporated into Mr. Falvey's Direct Testimony (Joint Petitioners will file an errata to effectuate this correction), and any questions regarding Xspedius' company-specific testimony which relates to the subject matter of Issue 97 should be directed to Mr. Falvey

With the exception of Issue 63 (which KMC is not arbitrating), each of the Joint Petitioners is arbitrating the remaining issues.

C. EXHIBITS

Witness	**I.D. No.**	**Description**
Marva Brown Johnson	MBJ-1	Disputed Contract Language by Issue
Hamilton E. Russell, III	HER-1	Disputed Contract Language by Issue
James C. Falvey	JCF-1	Disputed Contract Language by Issue

D. BASIC POSITION

Joint Petitioners and BellSouth have diligently negotiated to arrive at a new interconnection agreement between the parties. Although scores of issues have been resolved since the Joint Petitioners filed a Petition for Arbitration seeking Commission resolution of outstanding issues, approximately 30 issues remain unresolved and are in need of Commission resolution. The Joint Petitioners' seek contract provisions that preserve rights afforded by applicable law (e.g., Issues 2, 9, 12, 26, 36, 37, 38, 51, 65, 88, 94, 96, 108, 111, 113, 114). To the extent there are no directly controlling provisions of applicable law, Joint Petitioners propose reasonable and fair provisions designed in some cases to eliminate lopsided, unfair provisions proposed by BellSouth (e.g., Issues 4, 5, 6, 7, 23, 65, 97, 100, 101, 102, 103, 104) and, in other cases, to eliminate the recurrence of disputes that have plagued CLEC relationships with BellSouth in the past (e.g., Issues 12, 51). Joint Petitioners also seek to preserve due process afforded by the dispute resolution provisions of the Agreement (and by applicable law) and, for that reasons and others, Joint Petitioners reject proposals wherein BellSouth seeks the ability to unilaterally and coercively resolve known disputes in its favor by suspending access to ordering and provisioning systems and terminating services to Joint Petitioners (and their entire Florida customer base)(e.g., Issues 86, 103). Where the parties are unable to resolve disputes amicably, this Commission, the FCC, or a court of competent jurisdiction must decide such disputes.

The language proposed by Joint Petitioners is reasonable, consistent with applicable statutes and rules and decisions.

In each instance, this Commission has jurisdiction to approve the contract language proposed by Joint Petitioners and to address the issues related to these proposals.

E. ISSUES OF FACT, LAW, AND POLICY AND JOINT PETITIONERS' POSITIONS

ISSUE 1 This issue has been resolved.

ISSUE 2 How should "End User" be defined?

JOINT PETITIONERS' POSITION: "End user" should be defined as the "customer of a Party." This is a simple definition and is a natural definition unlike the BellSouth definition which invites ambiguity and confusion and recognizes that the Petitioners have a variety of telecommunications services customers. (Main Witness: Johnson)

ISSUE 3 This issue has been resolved.

ISSUE 4 What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

JOINT PETITIONERS' POSITION: In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day on which the claim arose. (Main Witness: Russell)

ISSUE 5 If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?

JOINT PETITIONERS' POSITION: Petitioners should not be required to indemnify BellSouth in any suit based on BellSouth's failure to perform its obligations under this contract or to abide by Applicable Law. To the extent that a CLEC does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable in the particular circumstances, that CLEC should not be required to indemnify and reimburse BellSouth for the portion of any loss that BellSouth might somehow incur that would have been limited as to the CLEC (but not as to non-contracting parties such as BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability terms that BellSouth was

successful in including in its tariffs at the time of such loss. Petitioners cannot limit BellSouth's liability in contractual arrangements wherein BellSouth is not a party and there is no legal obligation or compelling reason for them to attempt to do so. BellSouth's failure to perform as required is its own responsibility and BellSouth should bear any and all risks associated with such failures. (Main Witness: Russell)

ISSUE 6 How should indirect, incidental or consequential damages be defined for purposes of the Agreement?

JOINT PETITIONERS' POSITION: The limitation of liability terms in the Agreement should not preclude damages that CLECs' End Users incur as a foreseeable result of BellSouth's performance of its obligations, including its provisioning of UNEs and other services. Damages to End Users that result directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement that were not otherwise caused by or are the result of BellSouth's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage should be considered direct and are not indirect, incidental or consequential. BellSouth should be responsible for reasonably foreseeable damages that are directly and proximately caused by BellSouth. This Agreement is a contract for wholesale services and, therefore, liability to customers must be contemplated and expressly included in the contract language. In our view, these types of damages are not incidental, indirect or consequential. (Main Witness: Russell)

ISSUE 7 What should the indemnification obligations of the parties be under this Agreement?

JOINT PETITIONERS' POSITION: The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's

own communications. Additionally, customary provisions should be included to specify that the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss or damage to the extent reasonably arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the providing Party's negligence, gross negligence or willful misconduct. (Main Witness: Russell)

ISSUE 8 This issue has been resolved.

ISSUE 9 Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a Court of law for resolution first?

JOINT PETITIONERS' POSITION: No legitimate dispute resolution venue should be foreclosed to the Parties and either Party should be able to petition the Commission, the FCC, or a court of competent jurisdiction for resolution of a dispute. (Main Witness: Falvey)

ISSUE 10 This issue has been resolved.

ISSUE 11 This issue has been resolved.

ISSUE 12 Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?

JOINT PETITIONERS' POSITION: Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Moreover, silence with respect to any issue, no matter how discrete, should not construed to be such a limitation or exception. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past. (Main Witness: Russell)

ISSUE 13 This issue has been resolved.

ISSUE 14 This issue has been resolved.

ISSUE 15 This issue has been resolved.

ISSUE 16 This issue has been resolved.

ISSUE 17 This issue has been resolved.

ISSUE 18 This issue has been resolved.

ISSUE 19 This issue has been resolved.

ISSUE 20 This issue has been resolved.

ISSUE 21 This issue has been resolved.

ISSUE 22A and B These issues have been resolved.

ISSUE 23 What rates, terms, and conditions should govern the CLECs' transition of exiting network elements that BellSouth is no longer obligated to provide as UNEs to other services?[1]

JOINT PETITIONERS' POSITION: In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, including any transition plan set forth therein, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other pursuant to Attachment 2. There should be no service order, labor, disconnection or other nonrecurring charges associated with the transition of section 251 UNEs to other services. (Main: Johnson)

JOINT PETITIONERS' POSITION:

ISSUE 24 This issue has been resolved.

ISSUE 25 This issue has been resolved.

ISSUE 26 Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

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1 This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

JOINT PETITIONERS' POSITION: Yes, BellSouth should be required to "commingle" UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to section 271 of the Act. Elements provided under section 271 are provided pursuant to a method other than unbundling under section 251(c)(3). Therefore, the FCC's rules unmistakably require BellSouth to allow the Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to section 271. (Main Witness: Johnson)

ISSUE 27 This issue has been resolved.

ISSUE 28 This issue has been resolved.

ISSUE 29 This issue has been resolved.

ISSUE 30 This issue has been resolved.

ISSUE 31 This issue has been resolved.

ISSUE 32 This issue has been resolved.

ISSUE 33 This issue has been resolved.

ISSUE 34 This issue has been resolved.

ISSUE 35A and B These issues have been resolved.

ISSUE 36A How should line conditioning be defined in the Agreement?

JOINT PETITIONERS' POSITION: Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). (Main Witness: Johnson)

ISSUE 36B What should BellSouth's obligations be with respect to line conditioning?

JOINT PETITIONERS' POSITION: BellSouth should perform Line Conditioning in accordance with FCC Rule 47 CFR 51.319 (a)(1)(iii). (Main Witness: Johnson)

ISSUE 37 Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

JOINT PETITIONERS' POSITION: No. There should not be any specific provisions limiting the availability of TELRIC-rated Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in length. Rule 51.319(a)(iii) states that load coils are a type of device that ILECs should remove from a loop at a CLEC's request. It does not state that load coils on loops over 18,000 feet in length are exempt from removal. The FCC's *Line Sharing Order* held that ILECs are required to condition loops, ***regardless of the loop length***, to allow requesting carriers to offer advanced services and such line conditioning must be done at Commission-approved TELRIC-compliant rates. (Main Witness: Willis)

ISSUE 38 Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

JOINT PETITIONERS' POSITION: Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap should be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification should be performed at no additional charge to the CLEC. Line Conditioning orders that require the removal of other bridged tap should be performed at the Commission-approved TELRIC-compliant rates set forth in Exhibit A of Attachment 2 of the Agreement. (Main Witness: Willis)

ISSUE 39A and B These issues have been resolved.

ISSUE 40 This issue has been resolved.

ISSUE 41A through E These issues have been resolved.

ISSUE 42 This issue has been resolved.

ISSUE 43 This issue has been resolved.

ISSUE 44 This issue has been resolved.

ISSUE 45 This issue has been resolved.

ISSUE 46 Should the CLEC be permitted to incorporate the Fast Access language from the FDN and/or Supra interconnection agreements, respectively docket numbers 010098-TP and 001305-TP, for the term of this Agreement?

JOINT PETITIONERS' POSITION: Yes. Joint Petitioners should not be forced to re-litigate the same issue before the Commission. (Witness: Falvey)

ISSUE 47 This issue has been resolved.

ISSUE 48 This issue has been resolved.

ISSUE 49 This issue has been resolved.

ISSUE 50 This issue has been resolved.

ISSUE 51A This issue has been resolved.

ISSUE 51B Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

JOINT PETITIONERS' POSITION: In order to invoke its limited right to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria, BellSouth should send a Notice of Audit to the CLECs, identifying the particular circuits for which BellSouth alleges non-compliance and demonstrating the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to the CLECs with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit. (Main Witness: Russell)

ISSUE 51C Who should conduct the audit and how should the audit be performed?

JOINT PETITIONERS' POSITION: The audit should be conducted by a third party independent auditor mutually agreed upon by the Parties. (Main Witness: Russell)

ISSUE 52 This issue has been resolved.

ISSUE 53 This issue has been resolved.

ISSUE 54 This issue has been resolved.

ISSUE 55 This issue has been resolved.

ISSUE 56 This issue has been resolved.

ISSUE 57A and B These issues have been resolved.

ISSUE 58 This issue has been resolved.

ISSUE 59 This issue has been resolved.

ISSUE 60 This issue has been resolved.

ISSUE 61A, B and C These issues have been resolved.

ISSUE 62 This issue has been resolved.

ISSUE 63 Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic? (Not an issue in this proceeding for KMC)

JOINT PETITIONERS' POSITION: In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, the CLEC should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is obligated to pay pursuant to contract or Commission order. However, CLECs should not be required to reimburse BellSouth for any charges or costs related to Transit Traffic for which BellSouth has assumed responsibility through a settlement agreement with a third party. BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies. (Main Witness: Falvey)

ISSUE 64 This issue has been resolved.

ISSUE 65 Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

JOINT PETITIONERS' POSITION: No, BellSouth should not be permitted to impose upon Joint Petitioners a Transit Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC-based additive charge which exploits BellSouth's market power and is discriminatory. (Main Witness: Johnson)

ISSUE 66A and B These issues have been resolved.

ISSUE 67 This issue has been resolved.

ISSUE 68 This issue has been resolved.

ISSUE 69A and B These issues have been resolved.

ISSUE 70 This issue has been resolved.

ISSUE 71 This issue has been resolved.

ISSUE 72 This issue has been resolved.

ISSUE 73 This issue has been resolved.

ISSUE 74A and B These issues have been resolved.

ISSUE 75 This issue has been resolved.

ISSUE 76 This issue has been resolved.

ISSUE 77 This issue has been resolved.

ISSUE 78 This issue has been resolved.

ISSUE 79 This issue has been resolved.

ISSUE 80A and B These issues have been resolved.

ISSUE 81A and B These issues have been resolved.

ISSUE 82 This issue has been resolved.

ISSUE 83 This issue has been resolved.

ISSUE 84 This issue has been resolved.

ISSUE 85 This issue has been resolved.

ISSUE 86A This issue has been resolved.

ISSUE 86B How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

JOINT PETITIONERS' POSITION: If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the due process contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement. (Main Witness: Falvey)

ISSUE 87 This issue has been resolved.

ISSUE 88 What rate should apply for Service Date Advancement (a/k/a service expedites)?

JOINT PETITIONERS' POSITION: Rates for Service Date Advancement (a/k/a service expedites) of UNEs, interconnection or collocation must be set consistent with federal TELRIC pricing rules. (Main Witness: Falvey)

ISSUE 89 This issue has been resolved.

ISSUE 90 This issue has been resolved.

ISSUE 91 This issue has been resolved.

ISSUE 92 This issue has been resolved.

ISSUE 93A and B These issues have been resolved.

ISSUE 94A Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?

JOINT PETITIONERS' POSITION: Mass migration of customer service arrangements (*e.g.*, UNEs, Combinations, resale) is an OSS functionality that should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used. (Main Witness: Falvey)

ISSUE 94B If so, what rates should apply?

JOINT PETITIONERS' POSITION: An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge Petitioners a TELRIC-based records change charge, such as the one set forth in Exhibit A of Attachment 2 of the Agreement, for migrations of customers for which no physical re-termination of circuits must be performed. Similarly, BellSouth should establish and only charge Petitioners a TELRIC-based charge, which would be set forth in Exhibit A of Attachment 2 of the Agreement, for migrations of customers for which physical re-termination of circuits is required. (Main Witness: Falvey)

ISSUE 94C What should be the interval for such mass migrations of services?

JOINT PETITIONERS' POSITION: Migrations should be completed within 10 calendar days of an LSR or spreadsheet submission. (Main Witness: Falvey)

ISSUE 95 This issue has been resolved.

ISSUE 96A What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?

JOINT PETITIONERS' POSITION: Charges for updating OSS to reflect such changes as corporate name, OCN, CC, CIC, ACNA and similar changes ("LEC Changes") should be TELRIC-compliant. (Main Witness: Falvey)

ISSUE 96B What intervals should apply to such changes?

JOINT PETITIONERS' POSITION: "LEC Changes" should be accomplished in thirty (30) calendar days. Furthermore, "LEC Changes" should not result in any delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. Finally, with regard to a Billing Account Number ("BAN"), the CLECs proposed language provides that, at the request of a Party, the other Party will establish a new BAN within ten (10) calendar days. (Main Witness: Falvey)

ISSUE 97 When should payment of charges for service be due?

JOINT PETITIONERS' POSITION: Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill, in those cases where correction or retransmission is necessary for processing. (Main Witness: Russell; additional company specific testimony offered by Falvey)

ISSUE 98A and B These issues have been resolved.

ISSUE 99 This issue has been resolved.

ISSUE 100 Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

JOINT PETITIONERS' POSITION: CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination. Rather, if a Petitioner

receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amounts past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors. (Main Witness: Russell)

ISSUE 101 How many months of billing should be used to determine the maximum amount of the deposit?

JOINT PETITIONERS' POSITION: The maximum amount of a deposit should not exceed two months' estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance. Alternatively, the maximum deposit amount should not exceed one month's billing for services billed in advance and two months' billing for services billed in arrears. This maximum deposit is reasonable and has been agreed to by BellSouth in other interconnection agreements. (Main Witness: Russell)

ISSUE 102 Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

JOINT PETITIONERS' POSITION: Yes. The amount of security due from an existing CLEC should be reduced by amounts due to CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7 of the Agreement. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor. (Main Witness: Falvey)

ISSUE 103 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?

JOINT PETITIONERS' POSITION: No. BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth **only** in cases where: (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help". (Main Witness: Russell)

ISSUE 104 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?

JOINT PETITIONERS' POSITION: If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute. (Main Witness: Russell)

ISSUE 105 This issue has been resolved.

ISSUE 106 This issue has been resolved.

ISSUE 107A and B These issues have been resolved.

ISSUE 108 How should the final FCC unbundling rules be incorporated into the Agreement?[2]

JOINT PETITIONERS' POSITION: The Agreement should not automatically incorporate the "Final FCC Unbundling Rules." After release of the Final FCC Unbundling Rules, the Parties should negotiate contract language that reflects an agreement to abide by those

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[2] This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

rules, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. (Main Witness: Johnson)

ISSUE 109A Should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? If so, how?[3]

JOINT PETITIONERS' POSITION: The Agreement should not automatically incorporate an "intervening FCC order" adopted in CC Docket 01-338 or WC Docket 04-313. After release of an intervening FCC order, the Parties should negotiate contract language that reflects an agreement to abide by the intervening FCC order, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. (Main Witness: Johnson)

ISSUE 109B Should any intervening State Commission Order relating to the unbundling obligations, if any, be incorporated into the Agreement? If so, how?[4]

JOINT PETITIONERS' POSITION: The Agreement should not automatically incorporate an intervening State Commission order. After release of an intervening State Commission order, the Parties should negotiate contract language that reflects an agreement to abide by the intervening State Commission order, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be

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[3] If the FCC's Triennial Review Order on Remand (FCC 04-290) becomes effective as released, this issue will become moot as of March 11, 2005, the effective date of that order.

[4] If the FCC's Triennial Review Order on Remand (FCC 04-290) becomes effective as released, this issue will become moot as of March 11, 2005, the effective date of that order.

the same as all others – ten (10) calendar days after the last signature executing the Agreement. (Main Witness: Johnson)

ISSUE 110 If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?[5]

JOINT PETITIONERS' POSITION: In the event that FCC 04-179 is vacated or modified, the Agreement should not automatically incorporate the court order. Upon release of such a court order, the Parties should negotiate contract language that reflects an agreement to abide by the court order (to the extent the court order effectuates a change in law with practical consequences), or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. (Main Witness: Johnson)

ISSUE 111 At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superseded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order? If not, what post Interim Period transition plan should be incorporated into the Agreement?[6]

JOINT PETITIONERS' POSITION: The Agreement should not automatically incorporate the "Transition Period." The "Transition Period" or plan proposed by the FCC for the six months following the Interim Period has not been adopted by the FCC, but was merely proposed in FCC 04-179. The FCC sought comment on the proposal and on transition plans in general. After release of the Final FCC Unbundling Rules, the Parties should endeavor to

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[5] If the FCC's Triennial Review Order on Remand (FCC 04-290) becomes effective as released, this issue will become moot as of March 11, 2005, the effective date of that order.

[6] If the FCC's Triennial Review Order on Remand (FCC 04-290) becomes effective as released, the first part of this issue (first question) will become moot as of March 11, 2005, the effective date of that order. The second part of this issue (second question) is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

negotiate contract language that reflects an agreement to abide by the transition plan adopted therein or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. (Main Witness: Falvey)

ISSUE 112A What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were frozen by FCC 04-170?[7]

JOINT PETITIONERS' POSITION: The rates, terms and conditions relating to switching, enterprise market loops and dedicated transport from each CLEC's interconnection agreement that was in effect as of June 15, 2004 were "frozen" by FCC 04-179. (Main Witness: Russell)

ISSUE 112B How should these rates, terms and conditions be incorporated into the Agreement?[8]

JOINT PETITIONERS' POSITION: The frozen rates, terms and conditions should be incorporated into the Agreement as they appeared in each Joint Petitioner's interconnection agreement that was in effect as of June 15, 2004. In so doing, it should be made clear that the switching rates, terms and conditions that were frozen apply only with respect to mass market switching and not with respect to enterprise market switching. It also should be made clear that the loop provisions are frozen with respect to DS1 and higher capacity level loop facilities, including dark fiber. The Parties agree that these constitute "enterprise market loops". The modified definitions proposed by BellSouth should be rejected. The frozen provisions should

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[7] If the FCC's Triennial Review Order on Remand (FCC 04-290) becomes effective as released, this issue will become moot as of March 11, 2005, the effective date of that order..

[8] If the FCC's Triennial Review Order on Remand (FCC 04-290) becomes effective as released, this issue will become moot as of March 11, 2005, the effective date of that order.

not be modified to reflect BellSouth's proposed more restrictive definition of dedicated transport. (Main Witness: Russell)

ISSUE 113A Is Bellsouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops?[9]

JOINT PETITIONERS' POSITION: Yes. BellSouth is obligated to provide DS1, DS3 and dark fiber loop UNEs. *USTA II* did not vacate the FCC's rules which require BellSouth to make available DS1, DS3 and dark fiber loop UNEs. *USTA II* also did not eliminate section 251, CLEC impairment, section 271 or the Commission's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber loop UNEs. (Main Witness: Falvey)

ISSUE 113B If so, under what rates, terms and conditions?[10]

JOINT PETITIONERS' POSITION: BellSouth is obligated to provide access to DS1, DS3 and dark fiber loop UNEs at TELRIC-compliant rates approved by the Commission. DS1, DS3 and dark fiber loops unbundled on other than a section 251 statutory basis should be made available at TELRIC-compliant rates approved by the Commission until such time as it is determined that another pricing standard applies and the Commission establishes rates pursuant to that standard. (Main Witness: Falvey)

ISSUE 114A Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport?[11]

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[9] This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

[10] This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

JOINT PETITIONERS' POSITION: Yes. BellSouth is obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport. *USTA II* did not eliminate section 251, CLEC impairment, section 271 or the Commission's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber transport. (Main Witness: Russell)

ISSUE 114B If so, under what rates, terms and conditions?[12]

JOINT PETITIONERS' POSITION: Pursuant to section 251, BellSouth is obligated to provide access to DS1, DS3 and dark fiber transport UNEs at TELRIC-compliant rates approved by the Commission. DS1, DS3 and dark fiber transport unbundled on other than a section 251 statutory basis should be made available at TELRIC-compliant rates approved by the Commission until such time as it is determined that another pricing standard applies and the Commission establishes rates pursuant to that standard. (Main Witness: Russell)

ISSUE 115 This issue has been resolved

F. STIPULATED ISSUES

Other than those issues which have been identified as resolved, there are no other stipulated issues at this time.

G. PENDING MOTIONS

None.

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[11] This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

[12] This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

H. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

Joint Petitioners request confidentiality of certain portions of the deposition testimony of Hamilton Russell, which was filed on February 18, 2005 with the deposition testimony of the Joint Petitioners' witnesses.

I. REQUIREMENTS THAT CANNOT BE COMPLIED WITH

None.

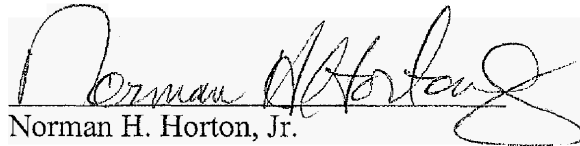
J. DECISIONS PREEMPTING THE COMMISSION'S ABILITY TO RESOLVE THIS MATTER

None.

K. OBJECTIONS TO WITNESSES QUALIFICATIONS AS AN EXPERT

None.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by e-mail and/or U. S. Mail this 22nd day of February, 2005.

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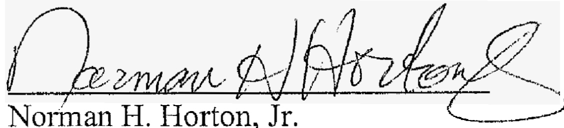

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