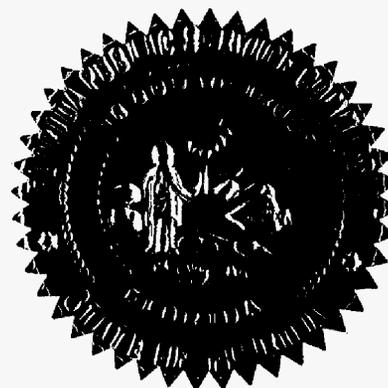


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040130-TP

In the Matter of

JOINT PETITION BY 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, FOR
ARBITRATION OF CERTAIN ISSUES ARISING
IN NEGOTIATION OF INTERCONNECTION
AGREEMENT WITH BELLSOUTH
TELECOMMUNICATIONS, INC.



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THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 3

Pages 403 through 468

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON
COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, April 26, 2005

TIME: Commenced at 11:00 a.m.

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PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

APPEARANCES: (As heretofore noted.)

I N D E X

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NUMBER:

ID. ADMTD.

19 SQM Report Billing Invoice
Timeliness

418 427

20 KMC Tariff List

424 427

7

427

CERTIFICATE OF REPORTER

468

P R O C E E D I N G S

(Transcript follows in sequence from Volume 2.)

JAMES MERTZ

continues his testimony under oath from Volume 2:

CONTINUED DIRECT EXAMINATION

BY MR. HORTON:

Q Mr. Mertz, do you have a summary of your testimony, please, sir?

A Yes, I do. In my testimony, I will be dealing with two issues. The first issue that I will be dealing with is Item Number 65.

Issue 65 is about the TIC, which is BellSouth's attempt to impose an additive transit intermediary charge on top of the Commission-approved TELRIC-based rates that we have already agreed to pay when BellSouth provides transient service functions to the Joint Petitioners. This issue is not about whether BellSouth will provide transit service. The parties have already agreed that it will continue to provide such services under the agreement. What the parties have not agreed to is whether BellSouth may impose a new TIC charge over and above the TELRIC-based charge Joint Petitioners already have agreed to pay for the functionalities provided by BellSouth.

The TIC is a non-TELRIC based additive charge which should be rejected by the Commission. If there are additional functionalities provided by BellSouth upon CLEC request,

1 BellSouth should conduct a cost study and propose a rate for
2 the Commission to review in its next UNE proceeding.

3 The second item is Issue Number 97. Issue Number 97
4 is about the payment due date. We believe that the payment
5 should be due 30 calendar days from receipt of a complete and
6 fully readable bill, rather than 30 days from the date of
7 invoice as proposed by BellSouth. We receive BellSouth bills
8 on an average of seven or more days after the date posted on
9 the bill, giving us about 22 days to review and dispute and/or
10 pay invoices.

11 NuVox alone receives more than 1,100 invoices each
12 month from BellSouth. Our proposal allows a reasonable amount
13 of time to review BellSouth invoices which are routinely dated
14 about a week prior to the date upon which they actually are
15 delivered electronically.

16 That concludes my summary.

17 MR. HORTON: Thank you, sir. Mr. Mertz is available.

18 COMMISSIONER BRADLEY: Thank you.

19 MR. MEZA: Mr. Chairman, I'm going to be crossing Mr.
20 Mertz on Issue 65, while my colleague, Mr. Culpepper, will be
21 crossing him on 97. I would ask for permission to go to the
22 easel. I would like to draw a few pictures for Mr. Mertz for
23 his cross.

24 COMMISSIONER BRADLEY: You have permission.

25 MR. MEZA: Thank you, sir.

CROSS EXAMINATION

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BY MR. MEZA:

Q Good afternoon, Mr. Mertz.

A Good afternoon, Mr. Meza.

Q It is a pleasure seeing a fresh face in this band of weary travelers.

A Thank you.

Q I would like to talk to you about Issue 65, if I could.

A Okay.

Q I believe you testified that your current position with KMC is director of government relations?

A Government affairs.

Q Government affairs.

A Yes.

Q In that position, do you have experience in dealing with transit traffic issues?

A Yes, I do.

Q Can you please describe that briefly?

A I'm very familiar with the routing issues of associated traffic. I have represented KMC on the intercarrier compensation forum that has been meeting dealing with compensation issues, not only for recip comp, for switched access, for transit traffic, et cetera.

Q Are you familiar with the transit intermediary

1 charge?

2 A I am familiar with the transit function.

3 Q I'm going to draw a picture here to explain the
4 dispute between the parties, and I would like to see if you and
5 I can agree on what I'm trying to represent.

6 First, can you see this?

7 A Yes, I can.

8 Q Okay. What I'm attempting to draw here is a call
9 flow from a KMC end user that is terminated by a NuVox end
10 user. Would you agree that that is depicted in this call flow?

11 A Yes.

12 Q And the call is first carried to KMC's switch,
13 transited to BellSouth's tandem and then transited to the NuVox
14 switch and ultimately to the NuVox end user. Do you agree with
15 that?

16 A Yes.

17 Q And as a practical matter, KMC, if the sale to
18 CenturyTel and Telco --

19 A Correct.

20 Q -- goes forward, you won't be having anymore of these
21 end users, will you?

22 A Not the current end users that we have.

23 Q Okay. But as of today you still have retail end
24 users?

25 A Correct.

1 Q Businesses?

2 A Yes.

3 Q Okay. What this issue is about is the rate that
4 BellSouth should charge or can charge KMC for getting this call
5 from the KMC end user to the NuVox end user. Would you agree
6 with that?

7 A Yes.

8 Q BellSouth wants to charge you something other than
9 TELRIC for this transitting function, is that right?

10 A They want to charge us the TELRIC rates and then an
11 additive of the TIC charge that is not TELRIC-based.

12 Q All right. Now, you would agree with me that KMC
13 could avoid using BellSouth's service by directly
14 interconnecting with NuVox, correct?

15 A Correct.

16 Q And KMC actually does interconnect with several
17 different carriers, is that right?

18 A Yes.

19 Q Can you name a few?

20 A I know we connect with Cox Communications. I know we
21 direct connect with a couple of wireless companies.

22 Q And when you interconnect with the terminating
23 carrier, you avoid this charge in its entirety, right?

24 COMMISSIONER BRADLEY: Mr. Mertz, let me ask you to
25 speak into the microphone, please.

1 MR. MEZA: I'm sorry.

2 COMMISSIONER BRADLEY: No, Mr. Mertz.

3 THE WITNESS: I'm sorry. What was the question
4 again?

5 BY MR. MEZA:

6 Q When you directly interconnect with the terminating
7 carrier, you avoid the BellSouth transitting function?

8 A Yes, we do.

9 Q Okay. Now, you are aware of third-party providers,
10 aren't you, that claim to be able to provide this transit
11 service that BellSouth is performing?

12 A I'm not aware of any in Florida.

13 Q Have you heard of Neutral Tandem?

14 A Yes, I have.

15 Q And isn't it true, sir, that they claim to be able to
16 provide this service?

17 A I don't believe they claim to provide that service in
18 Florida.

19 Q Do you disagree with the fact that they claim to be
20 an alternative transit provider?

21 A They do claim to be an alternative transit provider,
22 but I'm not aware that they provide that service in Florida.

23 Q And isn't it true, sir, that KMC has actually looked
24 at the possibilities of providing this transit function?

25 A Yes, we have looked at that. And at this time we are

1 not providing that function because we are not interconnected
2 with all of those other companies.

3 Q And if you did provide that service, isn't it true
4 that KMC would not offer it at TELRIC?

5 A Well, if we offer that service, we will offer that
6 service at TELRIC or less than BellSouth's TELRIC rates,
7 because we would be competing with BellSouth for that service,
8 and I don't think another carrier would buy that service from
9 us at a higher rate.

10 Q Mr. Mertz, did you read Ms. Johnson's deposition
11 testimony in this case?

12 A Yes, I did.

13 Q Did you read her Tennessee transcript?

14 A Yes, I did.

15 Q Do you have that with you?

16 A Yes, I do. I have portions of it. I believe I have
17 that portion of it.

18 Q Do you have Page 231 to 232?

19 A Yes, I do.

20 Q Isn't it true, sir, that in that colloquy between
21 myself and Ms. Johnson on Page 232, Lines 8 through 11, where I
22 asked her:

23 "Question: Would you be providing that function,
24 assuming that you decided to do it, at a TELRIC price?

25 "Answer: I don't provide any of my service at

1 TELRIC."

2 A The answer I gave was I would be providing that
3 service at BellSouth's TELRIC rate or less, because I would be
4 competing. KMC has done no TELRIC studies, so I don't know
5 what my TELRIC rates would be.

6 Q Does KMC offer any TELRIC-based price for any service
7 that it competes with BellSouth?

8 A KMC has not done any TELRIC studies, so I don't have
9 any rates that are at TELRIC, as far as I know.

10 Q You are aware, aren't you, sir, that the Georgia
11 Commission recently found that BellSouth does not have an
12 obligation to perform that transit function at TELRIC?

13 A I am aware of the interim rate that has been put in
14 place in Georgia, but I am -- that is just an interim rate.

15 Q Aren't you aware, sir, that in ordering the interim
16 rate, the Georgia Commission refused to order a TELRIC rate?

17 A I do not recall that.

18 Q Isn't it also true, sir, that the FCC's Wireline
19 Competition Bureau in the Virginia arbitration order refused to
20 find that ILECs have an obligation to provide the transit
21 function that we are discussing at TELRIC?

22 A I believe that you did ask Ms. Johnson that same
23 question, and I believe that the Wireline Competition Bureau
24 declined to address that issue, because it was not the full
25 Commission.

1 Q So the answer to my question is they declined to
2 find, yes, that is correct, they declined to find a TELRIC
3 obligation?

4 A They didn't find either way, TELRIC or not.

5 Q Isn't it also true that the Kansas Commission
6 recently found that ILECs don't have an obligation to provide
7 this transit function at TELRIC?

8 A I'm not aware.

9 MR. MEZA: I have no further questions for this
10 witness. Thank you.

11 CROSS EXAMINATION

12 BY MR. CULPEPPER:

13 Q Mr. Mertz, let's talk about Issue 97, payment due
14 date. Would you agree with me that BellSouth wants to be paid
15 on or before the payment due date?

16 A As does KMC. Yes, as does KMC.

17 Q So it's your testimony that BellSouth's proposed
18 language is acceptable to the Joint Petitioners?

19 A No, it is not.

20 Q And would you agree with me that the Joint
21 Petitioners want to be able to pay within 30 days of a bill
22 receipt?

23 A Yes. The Joint Petitioners do want to be paid within
24 30 days of bill receipt.

25 Q Do you know whether or not BellSouth's billing

1 systems can actually calculate a payment due date from a
2 customer's receipt of a bill?

3 A I am not aware of BellSouth's billing systems and
4 their capabilities of calculating a due date.

5 Q Assume for me that BellSouth's billing systems cannot
6 calculate a payment due date from the customer's receipt of a
7 bill. Will you assume that for me?

8 A I don't know that either way.

9 Q Well, will you assume it?

10 A They may be able to do it. I'm reluctant to assume
11 that their systems can't do that.

12 Q Well, are the Joint Petitioners willing to pay if
13 there are, in fact, modifications that must be made to
14 BellSouth's billing systems to accommodate the Joint
15 Petitioners' request for a billing period to commence on the
16 receipt of a bill?

17 A No, we are not willing to pay for BellSouth's
18 modifications to its billing systems. And I imagine BellSouth
19 would not be willing to pay for modifications to our billing
20 systems, either.

21 Q In granting BellSouth long distance authority in
22 Florida, would you agree with me that the FCC and this
23 Commission both found that BellSouth provides CLECs with
24 nondiscriminatory access to its billing system?

25 A I'm not aware of that.

1 Q Mr. Mertz, your company, KMC, receives most of its
2 bills electronically, correct?

3 A Yes, today we do.

4 Q Your company hasn't conducted any formal bill study
5 regarding how long it takes to receive BellSouth's bills, has
6 it?

7 A Not that I'm aware of, no.

8 Q Are you familiar with BellSouth's performance
9 measurement plan in Florida known as the SQM and SEEM plan?

10 A No, I'm not.

11 Q Do you know whether or not the SQM and SEEM plan
12 measures the time it takes for BellSouth to deliver bills to
13 CLECs?

14 A I have seen in the testimony that I reviewed
15 preparing for this that there has been an alleged -- that that
16 is the case.

17 Q Do you know that the CLEC aggregate for all bills
18 delivered to CLECs in Florida over the last 12 months, April
19 2004 through March 2005, shows that CLECs are receiving their
20 bills on average in about three or four days?

21 A No, I do not know that.

22 MR. CULPEPPER: Mr. Chairman, I would like to
23 approach the witness with a performance measurement document
24 showing CLEC aggregate results for Florida for mean time to
25 deliver CLEC bills. And I would ask that it be marked as the

1 next hearing exhibit.

2 COMMISSIONER BRADLEY: Okay. Exhibit 19. And how do
3 you want to title it?

4 MR. CULPEPPER: SQM Report Billing Invoice
5 Timeliness.

6 (Exhibit 19 marked for identification.)

7 BY MR. CULPEPPER:

8 Q Mr. Mertz, have you been able to review the SQM
9 report?

10 A I have looked at it quickly, yes.

11 Q Would you agree with me that for interconnection
12 bills delivered to CLECs from the time period of April 2004
13 through March of 2005, that the average days to deliver the
14 bills varies from 3.34 days to 4.52 days?

15 A No, I would not agree that that is -- well, are you
16 asking -- please repeat the question.

17 Q Okay. Fair enough. Look at August. Go to the far
18 left column, look at the measure month of August '04. Do you
19 see that?

20 A Yes.

21 Q All right. And if you keep going on, would you agree
22 with me that it is showing that for Florida for a CABs billing
23 system -- do you mean what CABs is?

24 A I'm very familiar with CABs.

25 Q And would you agree with me if you keep going across

1 the columns you will see a CLEC metric that shows 3.34?

2 A I see the metric. This could be deceptive in the
3 time of receiving bills. In one of my previous jobs with KMC,
4 I was actually responsible for processing invoices from
5 BellSouth. And oftentimes some invoices would come in in two
6 or three days -- well, they never came in in two or three days,
7 but they would come in like four, five, eight or ten days. And
8 I have had invoices that didn't show up until four days before
9 they were due.

10 Q Mr. Mertz, is it your testimony that the reports
11 produced in the SQM plan are somehow inaccurate?

12 A No, but they don't accurately reflect outliers. They
13 just show an average.

14 Q Mr. Mertz, are you aware that a third-party auditor,
15 Liberty Consulting Group, just finished auditing the SQM and
16 SEEM plan in Florida?

17 A This report here shows an average for delivery. It
18 doesn't show outliers. So, for instance, you could have where
19 the report, the reports are coming and the bills are coming in
20 for four days on average, but you could have a couple of
21 invoices, you could have a thousand invoices come in in four,
22 but you could have two or three large invoices that were huge
23 invoices coming in, and they come in after 20 days, and it
24 would distort these numbers.

25 Q Mr. Mertz, can you testify to any specifics regarding

1 any alleged inaccuracies in the accuracy of this report, the
2 SQM report?

3 A I'm not testifying about this report is either
4 accurate or inaccurate. I'm testifying about what this report
5 shows, and that it shows averages. It doesn't show all the
6 individual bills when they may have come in. Some of them may
7 have come in actually late. But if they came in late 30 days
8 and you had quite a few other bills that came in on time, it is
9 not reflected on this report.

10 Q And, of course, we have already established, have we
11 not, that your company hasn't conducted any bill study, has it?

12 A Not recently, no, it hasn't.

13 Q Are you familiar with Ms. Johnson's deposition
14 testimony?

15 A I have reviewed her testimony.

16 Q All right. Do you have it with you?

17 A Her deposition? No, I do not.

18 Oh, we are talking North Carolina. I did have the
19 North Carolina.

20 Q That's all right.

21 A You said Florida.

22 Q Let's go to Page 297 of Ms. Johnson's Deposition,
23 Lines 14 through 17.

24 A I'm sorry, I think the copy that you gave me doesn't
25 have Ms. Johnson's in it here. I'm sorry. Okay. What page?

1 BY MR. CULPEPPER:

2 Q 297, Line 14. You are adopting Ms. **Johnson's**
3 testimony today, right?

4 A Yes, I am.

5 Q Okay. Have you found it, Page 297?

6 A 297, yes, I have.

7 Q And you agree with me the question there is:

8 "Question: Has KMC ever taken any type of study to
9 determine how long it takes to receive a BellSouth bill?"

10 What is the answer?

11 A "Not a formal study."

12 Q Are you changing your testimony today?

13 A No, I'm not. I am talking from personal experience.
14 In the previous assignment, I was responsible for the payment
15 of KMC's invoices. And, specifically, I can recall instances
16 where, like, the Q invoices didn't come in until they were four
17 or five days before they were due.

18 Q Are you familiar with KMC's SQM results for the past
19 three months?

20 A No, I'm not.

21 Q Would you agree with me without disclosing any
22 proprietary information that they are substantially similar to
23 the aggregate results I just showed you?

24 A I have no way of knowing that.

25 MR. CULPEPPER: Mr. Chairman, I would ask that -- I

1 would ask to show the witness KMC's results for billing invoice
2 timeliness for the first three months of 2005. It is
3 proprietary data. I do not intend to disclose any proprietary
4 information, but I want him to be able to answer the question
5 either yes or no.

6 COMMISSIONER BRADLEY: Fine; yes or no.

7 BY MR. CULPEPPER:

8 Q Have you had an opportunity to review the reports?

9 A Yes, I have.

10 Q Without disclosing any proprietary data, my question,
11 again, is would you agree that the billing invoice timeliness
12 results for your company, KMC, for the first three months of
13 2005 are substantially similar to the CLEC aggregate results?

14 A As I said earlier, the average number of days here
15 shows. However, there could be outliers. For instance, in the
16 past when KMC sent bills to BellSouth, we had issues with
17 BellSouth where they did not actually -- where they actually
18 claimed they didn't receive certain invoices, even though we
19 mailed them all on the same day. So those invoices were mailed
20 from the same location to the same location, and BellSouth said
21 they didn't receive them. This here doesn't show me any
22 invoices that may or may not come in under this average. It
23 could have been one over 30 days. Yes, this is an average.

24 Q Again, my question is, would you agree that the
25 results for your company for billing invoice timeliness are

1 substantially similar to the CLEC aggregate results, yes or no,
2 and you can explain your answer.

3 A Yes, the average number of days is similar.

4 Q Now, Mr. Mertz, you assert that BellSouth uses its
5 monopoly legacy and bargaining position to force CLECs to remit
6 payment faster than almost any other business; isn't that
7 correct?

8 A I have reviewed the testimony. I don't recall where
9 that was stated.

10 Q Okay. It is the direct testimony of Mr. Russell on
11 Page 43, which Ms. Johnson adopted in her direct testimony at
12 Page 40, if you want to check it out. For ease of reference,
13 you may want to look at Mr. Russell's testimony, that's the
14 testimony you are adopting, it is on Page 43.

15 A Page 43, what line?

16 Q Seven through 9.

17 A Okay. I see that language.

18 Q Do you consider KMC to be a monopoly?

19 A No.

20 Q Are you familiar with KMC's price list number one
21 tariff here in Florida?

22 A I haven't reviewed it recently, but I am familiar
23 with it.

24 MR. CULPEPPER: Mr. Chairman, I would ask that we
25 mark KMC's price list number one tariff as the next hearing

1 exhibit, and that we be allowed to approach the witness and
2 provide him with a copy of the KMC tariff.

3 COMMISSIONER BRADLEY: KMC tariff list?

4 MR. CULPEPPER: I would ask that it be marked as the
5 next hearing -- strike that. It's already a part of the
6 record.

7 COMMISSIONER BRADLEY: Mark that as Exhibit 20?

8 MR. CULPEPPER: Let's go ahead and mark it,
9 Mr. Chairman.

10 COMMISSIONER BRADLEY: Okay. It's marked as Exhibit
11 20.

12 (Exhibit Number 20 marked for identification.)

13 BY MR. CULPEPPER:

14 Q And, Mr. Mertz, I would ask that you turn to first
15 revised sheet, Number 34, and go to Section 2.5.2, entitled,
16 Billing and Collection of Charges.

17 Would you agree with me that in KMC's Florida tariff,
18 KMC is requiring for its customers to pay charges within 30
19 days of invoice date?

20 A Yes, that's true for retail customers.

21 Q Thank you, Mr. Mertz. Mr. Mertz, are you familiar
22 with Joint Petitioners' discovery responses, in particular
23 responses to Florida staff interrogatories?

24 A I have reviewed them. I don't have all of those in
25 front of me.

1 MR. CULPEPPER: Mr. Chairman, I would ask to approach
2 the witness with the Joint Petitioners' response to
3 Interrogatory Number 69?

4 COMMISSIONER BRADLEY: You may.

5 BY MR. CULPEPPER:

6 Q Mr. Mertz, in this staff discovery request, staff is
7 asking to each of the Joint Petitioners whether BellSouth has
8 suspended or terminated service to any petitioner because of a
9 deposit dispute, and I ask you to focus on KMC's response. Do
10 you see it?

11 A Yes, I do.

12 Q And will you agree with me that KMC's response is
13 that BellSouth had sent a letter dated January 20th, 2005,
14 demanding a deposit to be paid or services to be terminated by
15 February 20th, 2005? Do you see that?

16 A Give me just a second and let me read this, please.

17 Yes, I see that language.

18 Q Are you aware whether KMC paid any additional deposit
19 amount?

20 A No, I'm not.

21 Q Are you aware whether or not BellSouth suspended and
22 terminated service to KMC?

23 A No, I'm not.

24 MR. CULPEPPER: I have no further questions.

25 COMMISSIONER BRADLEY: Thank you.

1 MR. SUSAC: Staff has one question, Chairman. Thank
2 you.

3 COMMISSIONER BRADLEY: You're recognized.

4 CROSS EXAMINATION

5 BY MR. SUSAC:

6 Q Good afternoon, Mr. Mertz. My name is Jeremy Susac.
7 I'm an attorney here with the Florida Commission. I just have
8 one quick question, it's more of a clarification.

9 In response to Mr. Culpepper's questions, you used
10 the word "average," and the word "mean" was also put out there
11 as well. In your opinion are those two words the same? If
12 different, please elaborate.

13 A No, they are not the same. The average would be just
14 you take the sheer number and add them together and divide them
15 by the denominator. And that is the problem with SQM, is it
16 shows just the average. It doesn't show any of the outliers.
17 It doesn't show the mean. Those are two different definitions.
18 I don't have the definition of mean in front of me, but from
19 statistics those are two different numbers.

20 MR. SUSAC: We have no further questions, Mr.
21 Chairman.

22 COMMISSIONER BRADLEY: Commissioners.
23 Redirect.

24 MR. HEITMANN: I have no redirect for this witness,
25 Mr. Chairman.

1 MR. HORTON: May the witness be excused?

2 COMMISSIONER BRADLEY: Well, we need to do exhibits.

3 MR. HORTON: Move Exhibit 7.

4 COMMISSIONER BRADLEY: Without objection, show
5 Exhibit 7 is admitted into the record.

6 (Exhibit Number 7 admitted into evidence.)

7 COMMISSIONER BRADLEY: And I believe BellSouth has
8 what, two?

9 MR. CULPEPPER: We move Exhibits 19 and 20.

10 COMMISSIONER BRADLEY: Without objection, show
11 Exhibits 19 and 20 admitted into the record.

12 (Exhibit Numbers 19 and 20 admitted into the record.)

13 COMMISSIONER BRADLEY: And the witness is excused.

14 MR. HORTON: Thank you.

15 Joint Petitioners would call Mr. Willis.

16 Whereupon,

17 JERRY WILLIS

18 was called as a witness, having been previously sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HORTON:

22 Q Good afternoon, Mr. Willis. You were here this
23 morning and were sworn in, were you not?

24 A Yes, I was.

25 Q Could you please state your name and address for the

1 record?

2 A Jerry Willis. My address is 301 North Main Street,
3 Greenville, South Carolina.

4 Q And by whom are you employed and in what capacity?

5 A I'm employed by NuVox Communications as a consultant,
6 and previously I was a full-time employee with NuVox as
7 executive director of cost and budget management.

8 Q Have you prepared and prefiled direct and rebuttal
9 testimony in this proceeding?

10 A I have.

11 Q And other than any changes or corrections as
12 reflected in the errata sheet, which has been prefiled, do you
13 have any other changes or corrections to make?

14 A No, I do not.

15 Q If I were to ask you the questions in your direct and
16 rebuttal testimony today, would your answers be the same?

17 A Yes, they would.

18 Q And I don't believe you had an exhibit to your
19 testimony, did you?

20 A No.

21 MR. HORTON: Mr. Chairman, could we have Mr. Willis'
22 direct and rebuttal testimony inserted into the record as
23 though read?

24 COMMISSIONER BRADLEY: Without objection, show the
25 prefiled testimony of Mr. Willis is admitted into the record as

1 though read.

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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 August1, 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 Telemangement 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.

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<p><i>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?</i></p>

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

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

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.

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

1

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

3 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth
4 herein, and associated contract language on the issues indicated in the chart above by
5 rebutting the testimony provided by various BellSouth witnesses.

6

90/6-7, 91/6-8, 92/6-9, 93/6-10, 95/7-1, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

1 **Q. PLEASE EXPLAIN WHY THE AGREEMENT SHOULD REQUIRE**
2 **BELLSOUTH TO REMOVE LOAD COILS, REGARDLESS OF LOOP**
3 **LENGTH.**

4 **A.** Rule 51.319(a)(iii) states that load coils are a type of device that ILECs should
5 remove from a loop at a CLEC's request. It does not state that load coils on loops
6 over 18,000 feet in length are exempt from removal. The FCC's *Line Sharing Order*
7 held that ILECs are required to condition loops, *regardless of the loop length*, to
8 allow requesting carriers to offer advanced services. Such line conditioning must be
9 done at Commission-approved TELRIC-compliant rates. BellSouth's proposed
10 language thus once again fails to follow the FCC's line conditioning rule.

11 **Q. IS IT RELEVANT THAT BELLSOUTH ASSERTS THAT IT DOES NOT**
12 **REMOVE LOAD COILS FROM LOOPS OVER 18,000 FEET IN LENGTH**
13 **FOR ITS OWN CUSTOMERS? [FOGLE AT 7:17-19]**

14 **A.** No. As explained above with respect to Item 36/Issue 2-18, FCC Rule 51.319(a)(iii)
15 does not state that line conditioning is a routine network modification. Accordingly,
16 BellSouth is not entitled to limit TELRIC-priced line conditioning activities to only
17 those that it does to provide xDSL to its retail customers. Notably, BellSouth claims
18 that it will not remove load coils on long loops, even though it concedes that load
19 coils impair DSL service. *See* Fogle at 4:11-14. BellSouth should not foist its
20 unwillingness to innovate on its competitors (or their customers).

1 **Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE**
2 **YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

3 **A.** No. Once again, we urge the Commission to reject BellSouth's attempt to impose
4 upon Joint Petitioners its own reduced obligation re-write of the FCC's line
5 conditioning requirements.

6

1

*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?*

2

3 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 38/ISSUE 2-**
4 **20.**

5 **A.** Any copper loop being ordered by CLEC which has over 6,000 feet of combined
6 bridged tap will be modified, upon request from CLEC, so that the loop will have a
7 maximum of 6,000 feet of bridged tap. This modification will be performed at no
8 additional charge to CLEC. Line Conditioning orders that require the removal of
9 other bridged tap should be performed at the rates set forth in Exhibit A of
10 Attachment 2.

11 **Q. WHAT IS THE PRIMARY DISAGREEMENT REGARDING THIS ISSUE?**

12 **A.** The primary disagreement is over BellSouth's desire to charge non-TELRIC Special
13 Construction rates when Joint Petitioners request the removal of "any unnecessary
14 and non-excessive bridged tap (bridged tap between 0 and 2,500 feet that serves no
15 network design purpose)". See Fogle at 9:5-7. As we explained in our direct
16 testimony, these terms are unacceptable. They leave the determination of what
17 "serves no network design purpose" entirely to BellSouth's discretion. BellSouth
18 would decide whether Joint Petitioners' customers can receive quality DSL or other
19 advanced services that require clean copper. In addition, the rates contained in
20 BellSouth's Special Construction tariff, those that Joint Petitioners are able to
21 discern, are prohibitively expensive. Application of such rates would in effect

1 preclude us from obtaining a loop with less than 2,500 feet of bridged tap, thus
2 leading to the impairment of DSL or other advanced services that we could provide
3 (as BellSouth recognizes and seeks to ensure is the case). *See* Fogle at 4:10-15.

4 **Q. DO YOU AGREE WITH MR. FOGLE'S ASSERTION THAT "LINE**
5 **CONDITIONING BEYOND WHAT BELLSOUTH PERFORMS FOR ITS**
6 **OWN CUSTOMERS (WHICH IS BELLSOUTH'S ONLY OBLIGATION) OR**
7 **IS WILLING TO VOLUNTARILY PROVIDE" TO CLECS IS NOT**
8 **APPROPRIATELY PART OF THIS ARBITRATION, BUT SHOULD**
9 **INSTEAD BE THE SUBJECT OF A SEPARATE AGREEMENT? [FOGLE**
10 **AT 9:11-13]**

11 **A.** No. Repetition of a false position does not make it right. BellSouth's line
12 conditioning obligation is not limited to what BellSouth decides it will routinely do
13 for its own customers. Under Mr. Fogle's theory, BellSouth would be free to
14 eliminate any line conditioning obligations, and based on his testimony, it appears
15 that BellSouth thinks that it has just about done that (there is very little line
16 conditioning that BellSouth will do on behalf of its own customers). We see nothing
17 in Mr. Fogle's testimony or in the FCC's rule or orders that supports BellSouth's
18 position that it unilaterally can determine the scope of its line conditioning
19 obligations. Moreover, since line conditioning is part of the FCC's rules
20 implementing section 251, it is plain to see that Mr. Fogle's claim that certain types
21 of line conditioning are outside the scope of this arbitration is without merit. Joint
22 Petitioners do not embrace BellSouth's attempt to undermine and avoid its
23 agreement filing obligations under section 252.

1 **Q. BELLSOUTH CLAIMS THAT BRIDGED TAP THAT IS LESS THAN 2,500**
2 **FEET DOES NOT IMPAIR THE PROVISION OF HIGH SPEED DATA**
3 **TRANSMISSION. [FOGLE AT 9:25-10:13] PLEASE RESPOND.**

4 **A.** BellSouth makes this assertion without any justification or support. Indeed, Mr.
5 Fogle said previously that bridged taps may diminish the capacity of the loop or
6 subloop to transmit high-speed telecommunications. *See Fogle at 4:11-14.*
7 Nevertheless, BellSouth is entitled to its opinions (regardless of whether they
8 conflict). Those opinions, however, do not change BellSouth's obligations. Joint
9 Petitioners should not be caged by what aspects of line conditioning BellSouth thinks
10 is or is not necessary – or by what BellSouth is reluctantly willing to offer its own
11 retail customers. And, just because BellSouth's policy was established in
12 conjunction with the Shared Loop Collaborative, and BellSouth claims it is
13 consistent with "industry standards for xDSL services," *see Fogle at 10:1-13*, it does
14 not mean that it does not harm the Petitioners. The Petitioners are attempting to
15 preserve their rights to use new technologies to deploy new and innovative services
16 to Floridians – regardless of whether BellSouth seeks to take advantage of new
17 technologies or decides to offer similar services. The services we are seeking to
18 preserve the ability to develop are not Shared Loop services. For example, as
19 discussed in our direct testimony, some of the Petitioners are exploring technologies
20 that may need bridged taps longer than 2,500 feet such as "Etherloop" and
21 "G.SHDSL Long" technologies. *See Willis at 6:11-14.*

1 **Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE**
 2 **YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

3 **A.** No. Items 36, 37 and 38/ Issues 2-18, 2-19 and 2-2- essentially turn on one question:
 4 do Joint Petitioners' have the right to insist upon full and unqualified compliance
 5 with the FCC's line conditioning rule or is BellSouth permitted to re-write the rule
 6 and impose its reduced obligation re-write on Joint Petitioners. To us, the answer is
 7 obvious: Joint Petitioners need not accept less than full compliance with the FCC's
 8 line conditioning rule.

9

<p><i>Item No. 65, Issue No. 3-6 [Section 10.8.1, 10.10. 1]: 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?</i></p>
--

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

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

15

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

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

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

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

5 A. Yes, for now, it does. Thank you.

1 BY MR. HORTON:

2 Q And, Mr. Willis, do you have a summary?

3 A Yes, I do.

4 COMMISSIONER BRADLEY: Mr. Horton, you said he has no
5 exhibits, right?

6 MR. HORTON: He has no exhibit. That's right.

7 COMMISSIONER BRADLEY: Okay. Because I didn't see
8 any on the list.

9 Mr. Willis.

10 A I'm addressing two issues today. Issue Number 37 is
11 about whether BellSouth's obligation to remove load coils is
12 limited to loops of 18,000 feet or less, and how costs, if any,
13 should be determined. Load coil removal is a type of line
14 conditioning. Nothing in the FCC rules or orders supports
15 limiting load coil removal or other aspects of Section 251 line
16 conditioning obligations to loops of a certain length.

17 BellSouth tries to develop its own line conditioning
18 definition by citing one sentence in TRO Paragraph 643. Not
19 only does BellSouth conveniently ignore the FCC's definition of
20 line conditioning in 51.319(a)(1)(iii)(a), but also fails to
21 acknowledge that in TRO Paragraph 642 the FCC re-adopted the
22 Commission -- these exact line and loop conditioning rules.

23 These are the very rules that in Item 36, which Mr.
24 Falvey will address, should be rejected -- BellSouth states
25 should be rejected. Contrary to BellSouth's assertion, its

1 position is not consistent with the TRO or FCC rules. The FCC
2 does not provide or recognize length limitations for line
3 conditioning. Still BellSouth wants to charge tariff special
4 access construction rates for load coil removal on loops of
5 over 18,000 feet. These rates will be prohibitively expensive
6 as they are, in fact, no set rates in the special construction
7 tariff. Each request under a special construction tariff is
8 handled on an individual case basis with regard to cost and
9 interval. Adoption of BellSouth's position would effectively
10 inhibit CLECs' ability to cost effectively provide innovative
11 services to Florida customers served by long loops.

12 My second issue also deals with line conditioning,
13 Issue Number 38, the removal of bridged taps as part of the FCC
14 requirements for line conditioning. The FCC's line
15 conditioning rules require BellSouth to remove bridged taps
16 from any loops, as necessary, to enable the loop to carry the
17 Joint Petitioners' choice of service. The FCC rules provide
18 that the incumbent LEC shall condition the copper loop to
19 ensure that the loop is suitable for providing DSL service,
20 whether or not the ILEC offers advanced services.

21 TRO Paragraph 642 re-adopted the line conditioning
22 rules and states, in particular, bridged taps, load coils, and
23 other equipment disrupt xDSL transmissions, and that loops
24 without conditioning for xDSL would fail to address impairment
25 faced by CLEC. The rules also require that BellSouth perform

1 this work at TELRIC rates.

2 BellSouth, however, refuses to remove bridged taps
3 between zero and 2,500 feet at TELRIC rates, and instead seeks
4 to impose rates out of a tariff. Again, these rates will be
5 prohibitively expensive as there are, in fact, no set rates in
6 the special construction tariff. Each request under the tariff
7 is handled on an individual case basis with regard to cost and
8 interval.

9 BellSouth's proposal is asking the Joint Petitioners
10 to forego their rights provided by the Act and the FCC rules.
11 The Commission should reject BellSouth's proposal because it
12 would prevent CLECs offering advanced services and the
13 flexibility to deploy new technologies by making it
14 unreasonably expensive to obtain a loop capable of supporting
15 them.

16 That ends my summary.

17 MR. HORTON: Mr. Willis is available.

18 MR. MEZA: Thank you, Mr. Chairman.

19 CROSS EXAMINATION

20 BY MR. MEZA:

21 Q Good afternoon, Mr. Willis.

22 A Good afternoon, Mr. Meza.

23 Q Pleasure to --

24 A Old face this time.

25 Q Right. Pleasure to see you again, sir.

1 Mr. Willis, isn't it true that you are a consultant
2 for NuVox?

3 A Yes, it is. I was formerly the executive director of
4 cost and budget management for NuVox.

5 Q You are not currently employed by NuVox, is that
6 right?

7 A Only as a consultant.

8 Q Now, isn't it true, sir, that your duties as a
9 consultant do not involve the development of new technologies
10 for either NuVox or NewSouth?

11 A Some of my duties involve the research and
12 recommendation of new technologies to NuVox.

13 Q But they don't involve the development, is that
14 correct?

15 A Not the development. The development of new products
16 is handled by engineering and the sales organization. And the
17 development of the technology to support that, of course, is
18 developed by the manufacturers.

19 Q And isn't it also true, sir, that you are not
20 involved in the planning process or the evaluation process with
21 engineering at NuVox to know if and when NuVox intends to
22 deploy new technologies in the next two years?

23 A I'm not involved in the official planning or
24 decision-making capacity to know when they would deploy new
25 technology.

1 Q And isn't it also true that you don't even know if
2 NuVox is intending to deploy new technologies in the next six
3 weeks?

4 A No. To my knowledge today that decision has not been
5 made.

6 Q And the reason for your lack of knowledge is that you
7 just don't participate in those types of decisions; is that
8 right?

9 A Right. Other than making recommendations and looking
10 at the cost that would be the base for developing a product,
11 I'm not involved in the final decision.

12 MR. MEZA: Mr. Chairman, if I may have permission to
13 go back to the board, it would help me facilitate this cross.

14 COMMISSIONER BRADLEY: You may.

15 MR. MEZA: Thank you.

16 BY MR. MEZA:

17 Q Generally, we do Issue 37 and 38 after 36, but today
18 is a little different so you get the benefit of my great
19 drawing.

20 A Oh, great.

21 Q Now, you would agree with me that Issue 37 deals with
22 the rates that the Joint Petitioners should pay for the removal
23 of load coils beyond 18,000 feet, right?

24 A Correct.

25 Q And there is no disagreement that the Joint

1 Petitioners will pay TELRIC rates for the removal of load coils
2 up to 18,000 feet, right?

3 A Correct.

4 Q And a load coil, would you agree with me, sir, is a
5 device that network owners place on their network to enhance
6 voice services on loops that are longer than 18,000 feet?

7 A Yes.

8 Q And is it also true, sir, that without the placement
9 of load coils -- and I'm going to represent to you that this
10 little dot right here is a load coil on this line.

11 A Okay.

12 Q That without the placement of load coils on long
13 loops, voice service will degrade as the loop gets longer?

14 A That is correct.

15 Q And can you explain why that happens?

16 A Capacities between the two pairs of wires that make
17 up the cable pair causes a higher loss in the voice frequency
18 range, in the high end of the voice frequency range.

19 Q So the longer the loop is the more likely you are
20 going to have some type of interference with the voice services
21 unless load coils are placed on the line, right?

22 A Yes.

23 Q And you would agree with me that the placement of
24 load coils starting around 18,000 feet is the industry
25 standard?

1 A Yes. The placement of load coils on loops that are
2 18,000 feet or longer is the industry standard. The load coil
3 actually gets placed 3,000 feet from the CO and then every
4 6,000 feet thereafter.

5 Q Okay. Now, this chart, or this drawing depicts two
6 loops coming from the central office. Would you accept that?

7 A Yes.

8 Q On my left-hand side is a loop that exceeds 18,000
9 feet. Will you accept that?

10 A Yes.

11 Q The loop on the right-hand side stops at 18,000 feet.
12 Will you accept that?

13 A Yes.

14 Q Okay. Now, just so that the Commission knows where
15 we differ, it is what happens when there is load coils after
16 18,000 feet, right?

17 A Yes.

18 Q And what BellSouth wants the Joint Petitioners to pay
19 is a special construction charge based out of its FCC tariff;
20 is that right?

21 A That's my understanding.

22 Q And the Joint Petitioners want to pay TELRIC for the
23 removal of these load coils after 18,000 feet, correct?

24 A Correct.

25 Q And would you agree with me that the basis for

1 BellSouth's position is that it has no obligation to remove
2 load coils after 18,000 feet at TELRIC because it does not
3 remove those same load coils for its own customers?

4 A I would agree that that is my understanding of
5 BellSouth's position, and I would believe, also, that that is
6 simply because BellSouth currently doesn't offer high speed
7 service beyond 18,000 feet or even at 18,000 feet; therefore,
8 they are not removing any load coils because they don't have
9 any customers at that distance.

10 Q But you are not disputing the argument that BellSouth
11 is putting forth in this arbitration?

12 A No, it is my understanding that it is the basis.

13 Q That is the reason why we can't agree?

14 A Yes.

15 Q Okay. Now, are you aware of the percentage of NuVox
16 loops in Florida that exceed 18,000 feet?

17 A No, I'm not.

18 Q Are you aware of the percentage of BellSouth's loops
19 in Florida that exceed 18,000 feet?

20 A No.

21 Q And isn't it true, sir, that over the last year,
22 2004, NuVox did not ask BellSouth to perform any line
23 conditioning for any loops in Florida that were on DS-0s?

24 A That's true. Because currently we are using T-1
25 service to provide our service to customers both above 18,000

1 feet and below 18,000 feet. And in the cost of T-1 service
2 under TELRIC pricing, load coil removal is included.

3 Q And just to make this complete, a T-1 is essentially
4 a DS-1?

5 A Yes.

6 Q And a T-1 is essentially 24 DS-0s?

7 A Yes.

8 Q So a T-1 would be 24 of these loops, or the capacity
9 of 24 of those loops?

10 A A T-1 would be the capacity of 24 individual loops.

11 Q So isn't it true, sir, that you are not even ordering
12 the services that would require the removal of load coils over
13 18,000 feet?

14 A Today we are not ordering the services that would
15 require load coils removed over 18,000 feet with the exception
16 of T-1s.

17 Q And BellSouth removes load coils at TELRIC for T-1s,
18 correct?

19 A Yes. The line conditioning is included in the TELRIC
20 pricing for T-1.

21 Q Regardless of the length of the loop?

22 A Yes.

23 Q Now, bridged taps is Issue 38, right?

24 A Correct.

25 Q And would you agree with me that bridged tap is

1 another network enhancement that is common in the industry?

2 A I would agree it is a line conditioning activity that
3 is common in the industry.

4 Q Okay. Let's talk about the placement of bridged tap
5 rather than removal of bridged tap. Bridged tap is placed on
6 the network to increase the use of a two pair copper pair?

7 A Yes. It increases the distribution capability of a
8 copper pair in a feeder cable.

9 Q Can you give a real world example of when BellSouth
10 would install bridged tap, if you know?

11 A A real simple example would be there is a feeder
12 cable that comes from the CO, and let's say it has 600 pairs in
13 it, at some point those pairs would be spliced into a smaller
14 cable that would go up a side road, into a subdivision, into an
15 office park, to allow the use of the feeder cable pairs in
16 multiple locations.

17 Q And it is an acceptable practice, isn't it?

18 A Yes.

19 Q You are not disputing the fact that BellSouth places
20 bridged tap, is that right?

21 A No, it is a common practice. It's a common
22 engineering standard.

23 Q Okay. Now, the parties don't disagree on the removal
24 of all levels of bridged tap, is that right?

25 A Correct.

1 Q If there is bridged tap exceeding 6,000 feet,
2 BellSouth will remove that for free, right?

3 A Correct.

4 Q And free is better than TELRIC, right?

5 A Always.

6 Q So you are okay with that?

7 A We're okay with that.

8 Q All right. Between 6,000 and 2,500 feet, BellSouth
9 will remove the bridged tap at TELRIC, right?

10 A Correct.

11 Q And that is not in dispute, correct?

12 A Correct.

13 Q The only area in dispute in relation to Issue 38 is
14 the removal of bridged tap between zero and 2,500 feet; is that
15 right?

16 A Correct.

17 Q You want to pay TELRIC for it. BellSouth wants to
18 charge you special construction rates, right?

19 A That's correct.

20 Q Now, isn't it true, sir, that you have no proof that
21 the placement of bridged taps between zero and 2,500 feet will
22 impede your ability to provide advanced services?

23 A Well, the placement of bridged taps can -- short
24 bridged taps can effect DSL and can essentially kill the
25 operation of DSL. A bridged tap is an unterminated pair of

1 wires. An energy signal is sent down the main feeder cable and
2 also goes up any bridged taps. Because there is no termination
3 to absorb that energy on the bridged tap, the energy is
4 reflected. And although there is some attenuation on the
5 bridged tap, the energy is reflected back to the main cable
6 pair, and can interfere with the signal from the DSL unit
7 either at the customer's premise or from the CO. It is more
8 likely to occur at the customer -- near the customer premise
9 because it is more likely to have bridged taps near the
10 customer premise.

11 Q Now, Mr. Willis, isn't it true, sir, that NuVox is
12 currently providing service to its customers that would require
13 the removal of bridged tap between zero and 2,500 feet?

14 A T-1s would require the removal of bridged taps
15 between zero and 2,500 feet.

16 Q And, again, that is not in dispute, right?

17 A No.

18 Q T-1s are not in dispute?

19 A No.

20 Q No, they are not, or, yes, they are?

21 A No, they are not in dispute.

22 Q Okay. So, let's take out T-1s. Isn't it true, sir,
23 that NuVox is deploying services today or providing services
24 that in your opinion would require the removal of bridged tap
25 between zero and 2,500 feet?

1 A Today, we are not deploying those services. They are
2 still under evaluation.

3 Q All right. So if I understand your testimony
4 correctly, NuVox has no experience in relation to the removal
5 of bridged tap between zero and 2,500 feet because they are not
6 deploying the services that you believe require the removal of
7 those bridged taps, is that correct?

8 A We have no experience in deploying those services,
9 correct. But the rules that govern the way the electronic
10 signals perform and what affects those signals remain constant.

11 Q Remain constant, meaning they don't change?

12 A Meaning the rules don't change. If you send a signal
13 down a cable pair, and there's a bridged tap on the cable pair,
14 and the bridged tap is unterminated, part of the signal is
15 reflected back down the bridged tap to the main signal and can
16 interfere with the main signal.

17 Q We have done this a couple of times, haven't we, sir?

18 A Yes.

19 Q This exchange. So you are aware of the CLEC shared
20 loop collaborative that we have talked about before?

21 A We have talked about it before.

22 Q And aren't you aware, sir, that BellSouth has offered
23 the Joint Petitioners the same terms and conditions that the
24 CLECs in the shared loop collaborative agreed to for the
25 removal of bridged tap?

1 A That's my understanding, and I'm not sure what those
2 terms and conditions are in any detail.

3 Q Okay. Do you have any reason to dispute that those
4 CLECs agreed to pay special construction rates for the removal
5 of bridged tap between zero and 2,500 feet?

6 A I believe in our previous discussions you have
7 indicated they agreed to that.

8 Q And NuVox wasn't a party to the shared loop
9 collaborative, was it?

10 A No, we were not.

11 Q Neither was KMC?

12 A No.

13 Q And neither was Xspedius?

14 A Not to my knowledge.

15 Q Assuming that my assertions to you are correct, would
16 it be fair -- and which they are, by the way -- is it fair to
17 say, sir, that the Joint Petitioners' position is that what was
18 agreed to in the shared loop collaborative between BellSouth
19 and a group of CLECs regarding the removal of bridged taps is
20 not acceptable to the Joint Petitioners?

21 A No, it is not acceptable.

22 MR. MEZA: I have no further questions for this
23 witness.

24 COMMISSIONER BRADLEY: Staff.

25 MR. SUSAC: Staff has no questions.

1 COMMISSIONER BRADLEY: Redirect.

2 REDIRECT EXAMINATION

3 BY MR. HEITMANN:

4 Q Good afternoon, Mr. Willis. I have a brief line of
5 redirect.

6 Do you recall your discussion with Mr. Meza regarding
7 BellSouth's desire to impose special access construction
8 pricing from BellSouth's FCC tariff?

9 A Yes.

10 Q Can you explain whether the removal of load coils is
11 line conditioning or special construction?

12 A The removal of load coils is line conditioning as
13 defined by the FCC rules.

14 Q Can you explain whether the removal of bridged taps
15 is line conditioning or special construction?

16 A Once again, the removal of bridged taps is defined,
17 again, in the FCC rules, and it is line conditioning and not
18 special construction. The special construction tariff, in the
19 beginning of the tariff there is a paragraph that states what
20 the tariff is for, and it is for just that, special
21 construction. The extension of the telephone company's
22 facilities, a geographic extension, or building facilities for
23 a special use for a customer. A good example of that would be
24 NuVox paid special construction charges to have BellSouth build
25 fiber into its switch in Greenville, South Carolina, as well as

1 Miami, Jacksonville.

2 Q Could you explain for us how the special construction
3 charge process works?

4 A Basically, a request is submitted, and an engineer
5 would evaluate the project and the scope of the project, and
6 there is a charge for doing that. It is called an
7 administrative charge. After that work, preliminary work is
8 done, a cost and preliminary interval would be provided to
9 actually construct the facility, whether it be cable or fiber.
10 And once that is agreed to between the customer and BellSouth
11 and the contract is signed, they move ahead to start the
12 construction.

13 Q Mr. Willis, do you know how much that administrative
14 charge is?

15 A I have looked at the tariff filings on the web site,
16 and they generally range from \$1,400 to about 25 or \$2,600.

17 Q And is it your understanding that any work that would
18 be done pursuant to the request would be in addition to that?

19 A Yes, anything that was done would be in addition to
20 that.

21 Q Mr. Willis, how do those charges compare to the
22 TELRIC-based rates this Commission already has set for load
23 coil removal?

24 A The Florida PSC has already set load coil removal for
25 loops under 18,000 feet and over 18,000 feet. The charge for

1 load coil removal on loops over 18,000 feet is, if I remember
2 correctly, about \$710, I believe.

3 Q And how do those FCC tariff charges compare to the
4 TELRIC compliant rates this Commission already has set for the
5 removal of bridged taps?

6 A The removal of bridged taps, I believe this
7 Commission has set at \$65 for removal of bridged taps per pair.

8 Q Mr. Russell -- excuse me, Mr. Willis, in provisioning
9 T-1s, does BellSouth routinely remove load coils and loops
10 greater than 18,000 feet?

11 A Yes.

12 Q And does it do so at TELRIC pricing?

13 A Yes.

14 Q In provisioning T-1s, does BellSouth routinely remove
15 bridged taps between 0 and 2,500 feet?

16 A Yes.

17 Q And does it do so at TELRIC pricing?

18 A Yes, it does.

19 MR. HEITMANN: I have nothing further for this
20 witness.

21 COMMISSIONER BRADLEY: Thank you. You were going to
22 say something? I don't think there were any exhibits.

23 MR. HORTON: That is correct, there are no exhibits,
24 and I was just going to ask if he could be excused.

25 COMMISSIONER BRADLEY: He may be excused.

1 MR. HORTON: Thank you.

2 THE WITNESS: Thank you.

3 COMMISSIONER BRADLEY: I will tell you what, we have
4 made a fair amount of progress today, and I would be amenable
5 to recessing until tomorrow morning at 9:30 sharp. And,
6 hopefully, at that point -- at that beginning point can maybe
7 get through the rest of the witnesses and finish tomorrow.
8 That would be my desire.

9 MR. MEZA: Yes, sir. I can assure you that BellSouth
10 will be finished with its cross of Mr. Falvey by no later than
11 11:00 if we start at 9:30. Probably sooner than that.

12 COMMISSIONER BRADLEY: Good.

13 MR. HEITMANN: Mr. Chairman, I can predict that it
14 would be unlikely for the Joint Petitioners to get through
15 their cross of all of BellSouth's witnesses between 11:00 and
16 closing time tomorrow, but we will endeavor to get through it
17 as quickly as possible.

18 COMMISSIONER BRADLEY: Okay. Fine. And with that,
19 we will recess until tomorrow at 9:30.

20 MR. HEITMANN: Thank you, sir.

21 COMMISSIONER BRADLEY: Have a good evening.

22 (The hearing adjourned at 5:10 p.m.)

23

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25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

9
10 IT IS FURTHER CERTIFIED that I stenographically
11 reported the said proceedings; that the same has been
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13 transcript constitutes a true transcription of my notes of said
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16 I FURTHER CERTIFY that I am not a relative, employee,
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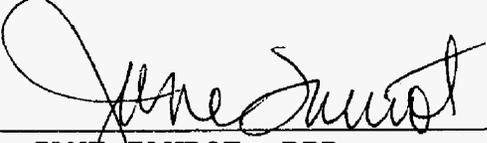
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