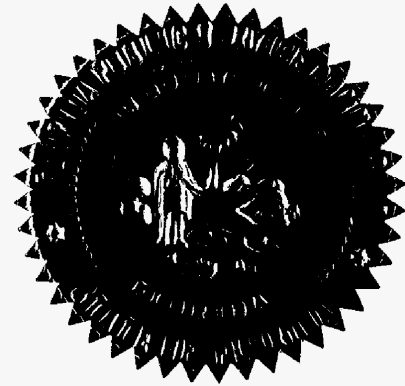


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 6

Pages 725 through 790

PROCEEDINGS: HEARING

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

DATE: Wednesday, April 27, 2005

TIME: Commenced at 9:30 a.m.

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

04635 MAY 12 2005

FPSC-COMMISSION CLERK

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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

WITNESSES

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EXHIBITS

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25 BellSouth Deposit Letter

785

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 5.)

COMMISSIONER BRADLEY: Call the hearing back to order. Next witness.

MR. CULPEPPER: Thank you, Mr. Chairman.

BellSouth would call Scot Ferguson.

Whereupon,

P.L. (SCOT) FERGUSON

was called as a witness on behalf of BellSouth Telecommunications, Inc., having been previously sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. CULPEPPER:

Q Mr. Ferguson, will you please state your name and your business address?

A Yes. My name is Scot Ferguson. I work for BellSouth Telecommunications at 675 West Peachtree Street in Atlanta.

Q Mr. Ferguson, did you cause to be filed in this docket direct and rebuttal testimony?

A I did.

Q Are you also adopting the direct testimony of Carlos Morillo on Issue 103?

A Yes.

Q Do you have any changes to your testimony or any changes to the testimony that you are adopting?

1 A No.

2 Q If I were to ask you the questions contained in your
3 testimony, including the adopted testimony, would your answers
4 be the same?

5 A Yes.

6 MR. CULPEPPER: Mr. Chairman, we would ask that
7 Mr. Ferguson's direct and rebuttal testimony, as well as his
8 adopted testimony, be entered into the record.

9 COMMISSIONER BRADLEY: Thank you. Without objection,
10 the prefiled testimony of Mr. Scot Ferguson is admitted into
11 the record as though read.

12 MR. CULPEPPER: Thank you, Mr. Chairman.

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1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF CARLOS MORILLO
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 CASE NO. 040130-TP
5 JANUARY 10, 2005
6

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

10
11 A. My name is Carlos Morillo. I am employed by BellSouth as Director – Policy
12 Implementation for the nine-state BellSouth region. My business address is
13 675 West Peachtree Street, Atlanta, Georgia 30375.
14

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

17
18 A. I graduated from West Virginia University in 1984 with Bachelor of Science
19 degrees in Economics & Geology. In 1986, I received a Masters in Business
20 Administration with concentrations in Economics and Finance from West
21 Virginia University. After graduation, I began employment with Andersen
22 Consulting supporting various projects for market research, insurance, and
23 hospital holding companies. In 1990, I joined MCI, Inc. as a Business Analyst.
24 My responsibilities included supporting the implementation of processes and
25 systems for various business products and services. In addition to my Business

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

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

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

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

7

8 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

9

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

22

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

25

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

2

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

12

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

15

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

17

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

1 finding in the Verizon/Covad Arbitration¹ when it found that the five-year
2 statute of limitations set forth in Florida Statutes § 95-11(2)(b) applied to the
3 parties' rights to assess previously unbilled charges for services rendered.

4
5 Q. THE CLECS STATE THAT BACKBILLING SHOULD BE LIMITED TO 90
6 CALENDAR DAYS. IS THIS REASONABLE?

7
8 A. The CLECs' proposal is impractical. Due to the complexity of BellSouth's
9 billing systems, 90 days is not a sufficient amount of time for the retrieval of
10 billing data and records and any system programming to substantiate and
11 support the back billing of under-billed charges. While BellSouth strives to
12 bill incurred charges in a timely manner, it should not be forced to limit back
13 billing to 90 days. Further, state statutes and/or Commission rules were
14 instituted because these governmental bodies recognized that there are many
15 legitimate situations in which back billing 6 months, one year or longer is
16 appropriate to ensure that companies that provide services are allowed to be
17 properly compensated. In the spirit of compromise, BellSouth has agreed to
18 use the same limitations period that the CLECs have agreed to use for the
19 filing of billing disputes – that is two (2) years. Since all billing issues should
20 be handled under the same conditions, a two-year period for all billing issues is
21 a reasonable compromise. It would be inherently unfair to allow one party to
22 raise billing issues for 2 years and the other to only be allowed to raise billing
23 issues for 90 days, 6 months or any period less than two years.

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

1

2 ***Item 97; Issue 7-3: When should payment of charges for service be due?***

3 ***(Attachment 7, Section 1.4)***

4

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

6

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

9

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

11

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

22

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

1 *(Attachment 7, Section 1.7.1)*

2

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

4

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

8

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

14

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

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

11

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

16

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

18

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

23

24 Q. PLEASE PROVIDE SUPPORT FOR YOUR POSITION.

25

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

1

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

4

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

6

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

12

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

16

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

19

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

23

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

25

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

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

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

1

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

6

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

8

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

13

14 Q. PLEASE EXPLAIN BELLSOUTH'S POSITION.

15

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

22

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

1

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

3

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

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A. Yes.

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 040130-TP
5 JANUARY 10, 2005
6
7

8 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
9 TELECOMMUNICATIONS, INC., AND YOUR BUSINESS ADDRESS.
10

11 A. My name is Scot Ferguson. I am employed by BellSouth Telecommunications,
12 Inc. ("BellSouth") as Manager – Network Interconnection Operations. In this
13 position, I handle certain issues related to local interconnection matters, primarily
14 operations support systems ("OSS"). My business address is 675 West Peachtree
15 Street, Atlanta, Georgia 30375.
16

17 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.
18

19 A. I graduated from the University of Georgia in 1973, with a Bachelor of
20 Journalism degree. My professional career spans over 30 years with Southern
21 Bell, AT&T, BellSouth Corporation and BellSouth Telecommunications. During
22 that time, I have held positions of increasing responsibility in sales and marketing,
23 customer system design, product management, training, public relations, CLEC
24 support, and my current position in Network Interconnection Operations.
25

1 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

2

3 A. On July 20, 2004, the Parties filed a Joint Motion for Abeyance with the Florida
4 Public Service Commission (“Commission”) where the Parties asked for a 90-day
5 abatement of the arbitration proceeding so that they could include and address
6 issues relating to *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C.
7 Circuit 2004) (“USTA II”) in this proceeding. During the 90-day abatement, the
8 Parties continued to negotiate, and, as a result, a number of issues have been
9 resolved.

10

11 My Direct Testimony provides BellSouth's position on two (2) of the remaining
12 unresolved arbitration issues related to Attachments 2 and 6 of the
13 Interconnection Agreement (BellSouth witnesses Blake, Morillo, Fogle and
14 Owens provide testimony as to the others). Specifically, I provide testimony on
15 Matrix Item 43 (Issue 2-25) – Access to Loop Makeup Information, and Matrix
16 Item 86(b) (Issue 6-3(b)) – Disputes Over Alleged Unauthorized Access to CSRs.

17

18 These issues are summarized in the Joint Issues Matrix filed on October 15, 2004
19 by BellSouth and NewSouth Communications Corporation (“NewSouth”),
20 NuVox Communications, Inc. (“NuVox”), KMC Telecom V, Inc. (“KMC V”)
21 and KMC Telecom III, LLC (“KMC III”)(together, “KMC”), and Xspedius
22 Communications, LLC, on behalf of its operating subsidiaries, Xspedius
23 Management Co. Switched Services, LLC (“Xspedius Switched”), and Xspedius
24 Management Co. of Jacksonville, LLC (“Xspedius Jacksonville”) (together,
25 “Xspedius”). I henceforth refer to these companies as “Joint Petitioners.”

1

2

Further, I will provide supporting evidence that the interconnection agreement language proposed by BellSouth for these issues is the appropriate language that should be adopted for this interconnection agreement by the Commission.

3

4

5

6

Q. DO YOU HAVE ANY PRELIMINARY COMMENTS REGARDING THE UNRESOLVED ISSUES IN THIS PROCEEDING?

7

8

9

A. Yes. The issues for which I provide testimony may or may not have underlying legal arguments. Because I am not an attorney, I offer no legal opinions on the issues. I offer testimony purely from an operations and policy perspective. If these issues require any legal arguments, BellSouth's attorneys will provide them in the appropriate briefs in this proceeding.

10

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Item 43 (Issue 2-25): Under what circumstances should BellSouth be required to provide a CLEC with Loop Makeup information on a facility used or controlled by another CLEC? (Attachment 2, Section 2.18.1.4)

17

18

19

20

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

21

22

A. Very simply, this issue belongs in BellSouth's Change Control Process ("CCP"). The CCP implemented the current process for shared loop applications by requiring a Letter of Authorization ("LOA") for one Competitive Local Exchange Carrier ("CLEC") to view the loop makeup ("LMU") information of a loop that is

23

24

25

1 leased by another CLEC from BellSouth. Practically speaking, this means that all
2 requests by CLECs to view the LMU information for the loops of other carriers
3 for any application require an LOA. Importantly, the CLEC community has
4 embraced this process, and, to my knowledge, no CLEC has ever complained
5 about it.

6
7 As referenced above and as I explain later in this testimony, CLECs in 2001 –
8 through the Shared Loop Collaboratives – determined the need for the current
9 LOA process. Because of that CLEC request, and in conjunction with the
10 Georgia Public Service Commission (“GPSC”) order in Docket 11900-U to
11 implement electronic ordering of line splitting, a change request was properly
12 submitted through the CCP, was reviewed by members of the CCP, and was
13 implemented according to the guidelines of the CCP.

14
15 Consequently, the CCP is the body that should decide if a change to the existing
16 process is warranted, but *only* if a CCP member submits a change request asking
17 for such a change. Until such time as the CCP has been fully utilized with the
18 result being a decision to change the existing process, BellSouth should not be
19 required to provide a CLEC's loop information without an LOA to these few
20 CLECs that are parties to this arbitration proceeding.

21
22 BellSouth's proposed interconnection agreement language properly defines the
23 need for an LOA as a means to protect CLEC information, and is consistent with
24 the practice of the industry in BellSouth's region for approximately the last three

1 years. Interestingly, the Joint Petitioners do not propose *any* interconnection
2 agreement language regarding protection of LMU information.

3
4 Q. THE JOINT PETITIONERS' POSITION ON THIS ISSUE SEEMS TO IMPLY
5 THAT BELLSOUTH DOES NOT PROVIDE A PROPER LMU PROCESS.
6 PLEASE RESPOND.

7
8 A. As the state regulatory bodies and the FCC all have previously ruled, BellSouth
9 complies with the nondiscriminatory access requirements to provide to CLECs
10 access to LMU information for loops owned by BellSouth. The LMU/LOA
11 requirement that was properly implemented through the CCP was in place when
12 BellSouth's LMU process was reviewed and ruled compliant by this Commission
13 during the Commission's consideration of BellSouth's Section 271 application.
14 With respect to BellSouth's OSS (including access to LMU information), this
15 Commission stated in its *Consultative Opinion*, "We believe that BellSouth
16 provides ALECs nondiscriminatory access to its OSS."¹

17
18 To protect *all* CLECs and to comply with the change request implemented
19 through the CCP, BellSouth does not provide so-called "third-party" loop
20 information without an LOA, nor should it. The first time BellSouth did so, any
21 CLEC – including the Joint Petitioners – likely would be standing on this
22 Commission's doorstep to complain about BellSouth's actions. If the Joint
23 Petitioners want a change in the existing process, they should submit a change

¹ Florida Public Service Commission *Consultative Opinion No. PSC-02-1305-FOF-TL* in Docket No. 960768B-TL, at page 84.

1 request through the CCP, and if the other member CLECs agree with them,
2 BellSouth will support the change request in accordance with the CCP guidelines.

3
4 Q. HOW DID THE CURRENT LOA REQUIREMENT EVOLVE?

5
6 A. As background, BellSouth first developed the electronic LMU process to comply
7 with the *1999 UNE Remand Order* (“*Order*”) that required incumbent local
8 exchange carriers (“ILECs”) to allow CLECs to view LMU information for loops
9 owned by the ILEC.² In the same timeframe as the *Order*, a CLEC submitted
10 through the CCP a change request (CR0361) for BellSouth to provide the same
11 pre-order functionality for viewing LMU information as mandated by the *Order*.
12 BellSouth met its obligation to the *Order* through the implementation of CR0361
13 in Release 7.0 on July 29, 2000. I have included CR0361 as Exhibit SF-1.

14
15 BellSouth implemented CR0361 with the capability that allowed CLECs to: 1)
16 view LMU information for BellSouth loops in use for a BellSouth retail end user
17 or spare loops in the BellSouth inventory; or, 2) view loops leased from BellSouth
18 and in service for that CLEC’s own end users.

19

² See *FCC 99-238* at ¶¶ 426-427.

1 In early 2001, CLECs *themselves*, within the Shared Loop Collaboratives,³
2 recognized that CLECs and Data Local Exchange Carriers (“DLECs”) had a need
3 to view each other’s LMU information for joint marketing efforts in line splitting
4 and line sharing scenarios. In laying out the guidelines to allow that viewing, the
5 Collaboratives members specified that such viewing should be available to
6 CLECs/DLECs *only if there is an LOA*. The Collaboratives members – following
7 the ground rules established in the Collaboratives – took the change-of-process
8 request to the CCP as the appropriate venue for implementation of any system
9 and/or process changes related to the CLEC interfaces.

10
11 In the same timeframe as the request from the Collaboratives members to the
12 CCP, the GPSC issued its order in Docket 11900-U requiring BellSouth to
13 implement electronic ordering of line splitting. To implement that order
14 technically, BellSouth had to develop a process to allow a CLEC to view LMU
15 information for a loop leased from BellSouth by another CLEC. As it happened,
16 the LOA process under development at the request of the Collaboratives members
17 provided the technical solution to satisfy the GPSC order.

18
19 Accordingly, BellSouth combined the two issues and developed CR0409 in May
20 2001 to both implement the change to the process conceived by the Collaboratives
21 members and to satisfy the GPSC order to implement electronic ordering of line

³ On January 26, 2000, a Line Sharing Collaborative was established to develop, with the mutual agreement of the so-called Data Local Exchange Carriers (“DLECs”) and BellSouth, the processes and procedures required to implement Line Sharing to meet the requirements of the FCC *3rd Report and Order* in CC Docket No. 98-147, and *4th Report and Order* in CC Docket No. 96-98 released December 9, 1999 (Line Sharing Order). In response to CC Docket 98-147, the “Line Share Reconsideration Order,” also known as the Line Splitting Order, the Line Splitting Collaborative was established on April 19, 2001. Due to similarities in issues between Line Sharing and Line Splitting, it was agreed mutually in May 2001 to combine what was then seven outstanding central office-based/Remote Terminal based Line Sharing/Line Splitting collaboratives into a single “Shared Loop Collaborative.”

1 splitting. CR0409 was placed in 'Pending Status' (denoting approval by the CCP)
2 on June 19, 2001, scheduled on September 6, 2001 for implementation in Release
3 10.3, and was implemented in that Release on January 5, 2002 – all steps in
4 accordance with CCP guidelines. I have included CR0409 as Exhibit SF-2.

5
6 As I mentioned earlier, from an operational standpoint, the LOA requirement
7 implemented for shared loop applications means that all requests for third-party
8 LMU information require an LOA, regardless of the reason for the request (and
9 this has been the case for the last three years). BellSouth's LMU process does not
10 ascertain the intent of a CLEC's request and can provide no determination as to
11 whether an LOA should be required because it is a shared loop application request
12 or another type of request. Thus, all third-party LMU requests are treated the
13 same.

14
15 By way of example, when a CLEC inputs either the telephone number or street
16 address for which LMU information is being requested, the process (in simple
17 terms) compares the company code of the requesting CLEC to the company code
18 of the entity using the loop. If the company code on the loop record belongs to
19 either BellSouth or to the requesting CLEC, LMU information is provided. If the
20 code belongs to another CLEC, the LOA screen will appear and the correct
21 authorization information must be populated before the LMU information will be
22 provided, regardless of the CLEC's reason for wanting to view the LMU
23 information.

24

1 Q. DID ALL CCP MEMBERS HAVE AN OPPORTUNITY TO REVIEW AND
2 PROVIDE INPUT TO THE CHANGE REQUESTS THAT WERE
3 IMPLEMENTED BY BELLSOUTH?
4

5 A. Absolutely. While it is my understanding that none of the Joint Petitioners are, or
6 were, active members of the Shared Loop Collaboratives, they are CCP members.
7 CCP members are given an opportunity to receive and review a number of
8 different documents related to change requests and the software releases in which
9 those change requests are to be implemented. Additionally, these documents can
10 be found at BellSouth's interconnection website.
11

12 Such was certainly the case with CR0361 and CR0409. In fact, an examination of
13 Exhibit SF-2 reveals that, during September 2001, the CLECs received draft user
14 requirements, had a "walk-through" discussion meeting for those user
15 requirements, and received the final user requirements. All of those documents
16 and meetings contained information about the functional capabilities for
17 electronic ordering of line splitting and the LOA requirement.
18

19 As other examples of what was made available to CCP members for these change
20 requests, I have attached the following documents as exhibits:
21

22 Exhibit SF-3 Letter of Authorization (LOA) for Line Splitting CLEC
23 Information Package; also found at
24 www.interconnection.bellsouth.com/guides/unedocs/loa.pdf
25 Exhibit SF-4 User Requirements for Mechanization of Loop Makeup

1 Exhibit SF-5 Letter of Authorization for LMU to Support Line Splitting; also
2 found at
3 [www.interconnection.bellsouth.com/markets/lec/ccp_secure/docs/f](http://www.interconnection.bellsouth.com/markets/lec/ccp_secure/docs/final_user_req/10.3_CLEC_LMU_cr0409.pdf)
4 [inal_user_req/10.3_CLEC_LMU_cr0409.pdf](http://www.interconnection.bellsouth.com/markets/lec/ccp_secure/docs/final_user_req/10.3_CLEC_LMU_cr0409.pdf) (password secured
5 for CCP members)
6

7 In addition to the documents provided as exhibits, all change requests and releases
8 are discussed in monthly CCP meetings, according to the Release Management
9 processes outlined in the CCP guidelines. CCP-member CLECs are invited to
10 voice any comments and/or concerns at these meetings, or at any of the meetings
11 where draft and final user requirements are discussed. The meetings are open to
12 all interested CCP members.
13

14 Q. HAS THE LMU/LOA PROCESS BEEN AN ISSUE IN OTHER
15 ARBITRATION PROCEEDINGS?
16

17 A. This LOA process has been in place for almost three years, and, to the best of my
18 knowledge, this is the first time that it has been an arbitration issue.
19

20 Q. IS IT CLEAR TO BELLSOUTH WHY THE JOINT PETITIONERS BELIEVE
21 BELLSOUTH IS OBLIGATED TO PROVIDE A CLEC'S LMU
22 INFORMATION TO ANOTHER CLEC WITHOUT A LETTER OF
23 AUTHORIZATION?
24

1 A. No, and they have not presented any evidence proving any such obligation. What
2 *is* clear, however, is that Joint Petitioners want certain information they feel they
3 cannot get apparently because other CLECs might refuse to give permission via
4 an LOA. If that were to be proven true, that lack of cooperation or agreement
5 among CLECs does not – and should not – involve BellSouth.

6
7 Any disagreement among the CLECs with respect to the viewing of LMU
8 information should be worked out among the CLECs, or brought before this
9 Commission independent of this Section 252 arbitration proceeding. If there is, in
10 fact, a problem between CLECs that inhibits the attainment of an LOA, it is *not*
11 the result of any action by BellSouth. If the Joint Petitioners believe that their
12 inability to access the information of other CLECs has some anticompetitive
13 effect, then the Joint Petitioners' quarrel is with those other CLECs – not with
14 BellSouth.

15
16 Although BellSouth has been placed in a curious 'gatekeeper' position by the
17 rules of the Telecommunications Act, BellSouth should not be required to provide
18 information without an LOA simply because the Joint Petitioners now disagree
19 with the policy established by the CLECs or because they now have concerns
20 about asking another CLEC for permission to view such information.

21
22 Q. HOW DOES BELL SOUTH WANT THIS COMMISSION TO RESOLVE THIS
23 ISSUE?
24

1 A. BellSouth requests that the Commission order that BellSouth's proposed language
2 on this issue be adopted as the appropriate language for this interconnection
3 agreement. There is nothing to support the Joint Petitioners' position that
4 BellSouth should be required to provide this information in the absence of
5 authorization from the CLEC that is leasing the loop from BellSouth and that has
6 a business relationship with BellSouth.

7

8 This Commission certainly should not order BellSouth to implement a change to
9 an existing process (to satisfy only the Joint Petitioners) that countermands the
10 current regional operating process that was developed by the CLECs within the
11 CCP. To do so would undermine the legitimacy of the decisions made by the
12 very change management process that this Commission has previously found to
13 be a compliant and collaborative process.

14

15 Further, this Commission should support BellSouth's suggestion that if the Joint
16 Petitioners wish to pursue this issue, they should submit a change request to the
17 CCP. To do otherwise would affect every other CLEC that does not have a voice
18 in this arbitration proceeding. If the CLECs, through the CCP, agree that a
19 change is appropriate, BellSouth will certainly support that change in accordance
20 with the CCP guidelines.

21

22

23 *Item 86 (Issue 6-3) (B): How should disputes over alleged unauthorized access to CSR*
24 *information be handled under the agreement? (Attachment 6, Sections 2.5.6.2 and*
25 *2.5.6.3)*

1

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

3

4 A. The Party providing notice of the alleged impropriety should notify the offending
5 Party that additional applications of service may be refused, that any pending
6 orders for service may not be completed, and/or that access to ordering systems
7 may be suspended if such use is not corrected or ceased by the fifth (5th) calendar
8 day following the date of the notice. In addition, the alleging Party may, at the
9 same time, provide written notice to the person(s) designated by the other Party to
10 receive notices of noncompliance that the alleging Party may terminate the
11 provision of access to ordering systems to the other Party and may discontinue the
12 provisioning of existing services if such use is not corrected or ceased by the tenth
13 (10th) calendar day following the date of the initial notice. If the other Party
14 disagrees with the alleging Party's charges of unauthorized use, the other Party
15 should proceed pursuant to the dispute resolution provisions set forth in the
16 General Terms and Conditions of the Agreement.

17

18 Q. WHY DOES BELLSOUTH BELIEVE IT IS IMPORTANT TO HAVE SUCH
19 DEADLINES AS PART OF THE INTERCONNECTION AGREEMENT
20 LANGUAGE?

21

22 A. CLECs are well aware that BellSouth does not suspend or terminate access to
23 OSS interfaces on a whim. If the problem is the result of an isolated instance, the
24 problem can usually be easily corrected. However, if circumstances indicate a
25 systemic problem with unauthorized CSR access, then the Joint Petitioners want

1 BellSouth to file a complaint with the Commission, which could take months, or
2 even years, to resolve before suspending service to the CLEC.

3
4 This means that a CLEC could continue to access the Customer Proprietary
5 Network Information (“CPNI”) of untold numbers of CLEC and BellSouth
6 customers – without proper authority – while BellSouth waits for the regulatory
7 process to run its course. BellSouth is obligated to protect this information under
8 federal CPNI rules as well as under Florida state law.⁴ Without recourse against
9 the offending CLEC for such an extended period as the Joint Petitioners’ language
10 would allow, BellSouth no doubt would be subject to customer complaints to this
11 Commission for our not being able to do so.

12
13 BellSouth’s proposed language, on the other hand, balances the Joint Petitioners’
14 right not to be suspended or terminated versus BellSouth’s right to protect its
15 network, information and processes in the most expedient manner.

16
17 Q. HAS BELLSOUTH EVER SUSPENDED OR TERMINATED A CLEC’S
18 ACCESS AND/OR USE OF OSS INTERFACES BECAUSE OF ABUSIVE OR
19 UNAUTHORIZED ACCESS TO CSR INFORMATION?

20
21 A. I am aware of only one circumstance. In that particular case, the offending CLEC
22 had developed an automatic program that continuously accessed the CSR
23 database requesting CSR information on a series of telephone numbers, with and
24 without proper authorization. That activity not only violated CPNI regulations,

⁴ Section 364.24(2), *Florida Statutes*.

1 but it also caused a degradation of service in the performance of BellSouth's OSS
2 that materially impacted the CLECs' ability to access CSR information. That is
3 clearly the type of abuse and resulting impacts that BellSouth hopes to avoid in
4 the future.

5
6 Generally speaking, other past CLEC abuse of CSR access was isolated and not
7 systemic within the operations of the offending CLECs. When the CLECs were
8 notified, the problems were resolved, and BellSouth did not have to revoke CSR
9 access.

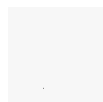
10
11 Q. HOW DOES BELLSOUTH WANT THIS COMMISSION TO RESOLVE THIS
12 ISSUE?

13
14 A. BellSouth would like for the Commission to rule that the interconnection
15 agreement language proposed by BellSouth for this issue is the appropriate
16 language to protect both BellSouth and the Joint Petitioners. BellSouth must be
17 given the opportunity to protect the information that BellSouth is obligated to
18 protect, and to ensure that all of its CLEC customers have the nondiscriminatory
19 OSS access that BellSouth is obligated to provide. There must be a reasonable
20 and timely remedy in the event that the actions of individual CLECs jeopardize
21 BellSouth's abilities in that regard, and BellSouth believes that its proposed
22 language provides just that.

23
24
25 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

1

2 A. Yes.



1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 040130-TP
5 FEBRUARY 7, 2005
6
7

8 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
9 TELECOMMUNICATIONS, INC. AND YOUR BUSINESS ADDRESS.
10

11 A. My name is Scot Ferguson. I am employed by BellSouth Telecommunications,
12 Inc. ("BellSouth") as Manager – Network Interconnection Operations. In this
13 position, I handle certain issues related to local interconnection matters, primarily
14 operations support systems ("OSS"). My business address is 675 West Peachtree
15 Street, Atlanta, Georgia 30375.
16

17 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?
18

19 A. Yes. I filed Direct Testimony with five (5) exhibits on January 10, 2005.
20

21 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?
22

23 A. The purpose of my Rebuttal Testimony is to address various concerns and issues
24 raised in the Direct Testimony filed by KMC Telecom V, Inc. and KMC Telecom
25 III, LLC, (together, "KMC"), NuVox Communications, Inc. and NewSouth

1 Communications Corp. (together, “NuVox/NewSouth”), and the Xspedius
2 Companies. I refer to these companies collectively as the “Joint Petitioners.”

3
4 This Rebuttal Testimony should be read in conjunction with my Direct
5 Testimony.

6
7 Q. ARE YOU ADOPTING ANY ISSUES IN THIS REBUTTAL TESTIMONY
8 THAT WERE ADDRESSED BY ANOTHER BELLSOUTH WITNESS IN
9 BELLSOUTH’S DIRECT TESTIMONY FILED ON JANUARY 10, 2005?

10
11 A. Yes. I am adopting Item 103 that was originally addressed by BellSouth Witness
12 Carlos Morillo in his Direct Testimony filed on January 10, 2005.

13
14 Q. ARE THERE ANY CHANGES TO THE STATUS OF ANY ISSUES FOR
15 WHICH YOU SUBMITTED DIRECT TESTIMONY ON JANUARY 10, 2005?

16
17 A. Yes. The Parties settled Item 43.

18
19 ***Item 86(B) (Issue 6-3(B)): How should disputes over alleged unauthorized access to***
20 ***CSR information be handled under the agreement? (Attachment 6, Sections 2.5.6.2***
21 ***and 2.5.6.3)***

22
23 Q. **IN HIS TESTIMONY AT PAGE 24, LINES 17-19, JOINT PETITIONERS’**
24 **WITNESS JAMES FALVEY CHARACTERIZES BELLSOUTH’S POSITION**

1 ON THIS ISSUE AS ONE OF "SELF HELP," AND SUGGEST THAT IT IS
2 "INAPPROPRIATE AND COERCIVE." PLEASE RESPOND.

3
4 A. If anything, BellSouth's proposed language is that of self-protection. As I
5 described in my Direct Testimony, BellSouth simply wants to ensure that it can
6 properly protect the proprietary CSR information that it is obligated to protect. If
7 BellSouth has reason to believe that any CLEC is abusing access to CSR
8 information, and, therefore, is violating a law, BellSouth needs to have necessary
9 and *timely* recourse to limit that CLEC's access to protect BellSouth's customers
10 and the customers of other CLECs.

11
12 Further, BellSouth's language gives the Joint Petitioners an opportunity to cure
13 unauthorized access to CSR information before terminating such access.
14 BellSouth presented this language for two reasons. First, the fact that the Joint
15 Petitioners have an opportunity to cure the unauthorized access establishes that
16 BellSouth will not unilaterally invoke this right without notice to the offending
17 CLEC. Second, the language encourages the offending CLEC to take appropriate
18 measures to stop its improper actions, thereby obviating the need for BellSouth to
19 suspend or terminate access. As I discussed in my Direct Testimony, BellSouth
20 has resorted to termination only once in its region to my knowledge as a means to
21 curb abusive CSR access by a CLEC.

22
23 Q. MR. FALVEY STATES, AT PAGE 25, LINES 5-7, THAT DISPUTES
24 "SHOULD BE HANDLED IN ACCORDANCE WITH THE DISPUTE
25 RESOLUTION PROVISIONS OF THE CONTRACT." FURTHER, AT LINES

1 9-10, HE STATES THAT BELLSOUTH “ SHOULD NOT CONTINUE TO
2 OPPOSE INCLUDING A COURT OF LAW AS AN APPROPRIATE VENUE
3 FOR DISPUTE RESOLUTIONS.” WHAT IS THE RELEVANCE OF THESE
4 CLAIMS?

5
6 A. As I described in my Direct Testimony, BellSouth needs timely resolution of a
7 situation that places BellSouth, other CLECs and end-user customers at risk.
8 BellSouth does not suspend or terminate access to OSS interfaces on a whim, and,
9 generally speaking, CLECs have corrected problems when BellSouth notified
10 them of the need to do so.

11
12 The Joint Petitioners seem to suggest that they want BellSouth to file a complaint
13 with an undefined “court of law.” Of course, a court of law may be unfamiliar
14 with interconnection agreements and the rules and regulations that apply to such
15 agreements. Thus, it could take a prolonged period of time before a court could
16 resolve a dispute and thus allow BellSouth to stop a CLEC’s prohibited activities.

17
18 Further, I explained that a CLEC could continue to access the Customer
19 Proprietary Network Information (“CPNI”) of untold numbers of CLEC and
20 BellSouth customers – unlawfully without proper authority – while BellSouth
21 waits for the legal process to run its course. Of course, during a protracted legal
22 process, this Commission would probably have to handle numerous CLEC and
23 customer complaints about CPNI violations by BellSouth.

24

1 BellSouth is obligated to protect this information as quickly and expeditiously as
2 possible when abuse is discovered. BellSouth's proposed language balances the
3 Joint Petitioners' concerns with BellSouth's right to protect its network,
4 information and processes in the most expedient manner.

5
6 Mr. Falvey's suggestion, at page 25, lines 14-15, that BellSouth would use
7 suspension and termination "regardless of its potential impact on its competition
8 or customers who have been disloyal to BellSouth" is pure imagination and
9 without merit. BellSouth's past performance indicates that BellSouth is not
10 predisposed to suspending or terminating a CLEC's OSS access during a good-
11 faith effort on the part of the CLEC to resolve an issue of CSR access.

12
13 ***Item 103 (Issue 7-9): Should BellSouth be entitled to terminate service to a CLEC***
14 ***pursuant to the process for termination due to non-payment if the CLEC refuses to***
15 ***remit any deposit required by BellSouth within 30 calendar days? (Attachment 7,***
16 ***Section 1.8.6)***

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

19
20 A. BellSouth should be permitted to terminate service to a CLEC if the CLEC
21 refuses to remit within 30 calendar days any deposit required by BellSouth. Thirty
22 calendar days is a reasonable time period within which a CLEC should meet its
23 fiscal responsibilities.

24
25 Q. PLEASE EXPLAIN BELLSOUTH'S POSITION.

1

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

8

9 Q. AT PAGE 51, LINES 9-10 OF HIS TESTIMONY, JOINT PETITIONERS'
10 WITNESS RUSSELL STATES THAT BELLSOUTH'S LANGUAGE "WOULD
11 ALLOW BELLSOUTH TO CIRCUMVENT THE DISPUTE RESOLUTION
12 PROVISIONS OF THE AGREEMENT." DO YOU AGREE?

13

14 A. No. The CLEC has 30 days to dispute the deposit request and BellSouth has
15 proposed language for Item 104 that will address disputes relating to deposits.
16 The Petitioners should first send their dispute issue to BellSouth in writing, and
17 BellSouth will respond in writing, outlining the criteria for the deposit amount
18 and why BellSouth believes the deposit amount matches the business risk. The
19 dispute would likely go to arbitration; however, in such a case, BellSouth's
20 position is that the deposit should be placed in escrow until the dispute is
21 resolved. CLECs should not have the ability to go to a state commission with no
22 legitimate reason to dispute the deposit request, but do so only to delay paying the
23 deposit.

24

25 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

1

2 A. Yes.

1 BY MR. CULPEPPER:

2 Q Do you have a summary of your testimony?

3 A Yes, I do.

4 Q Would you please provide it?

5 A Yes.

6 Good afternoon, Commissioners and staff. Item 86B is
7 about the obligation of the parties to protect customer records
8 that contain customer proprietary network information, or CPNI.
9 Both parties have a legal and contractual obligation to protect
10 CPNI. As this Commission knows, the unauthorized access of
11 customer service record, or CSR information, can result in
12 slamming, an intolerable and illegal act. Not surprisingly,
13 the parties have agreed to refrain from viewing and copying
14 customer records without customer permission.

15 Further, the parties have agreed that they will
16 access customer records only in strict compliance with
17 applicable laws, rules, and regulations; that is, the parties
18 have agreed that they will have in hand prior to viewing
19 customer records, the proper authorization to view those
20 records.

21 Since the beginning of these arbitration proceedings
22 the Joint Petitioners have spent a lot of energy trying to
23 convince state commissions that BellSouth is seeking, quote,
24 self-help, unquote, options that would allow BellSouth to,
25 quote, pull the plug, unquote, on CLECs, and further suggesting

1 all manner of anticompetitive actions on BellSouth's part.

2 More than two months ago, after the filing of direct
3 and rebuttal testimony in this docket, BellSouth proposed
4 modified reciprocal language on this issue that should have
5 calmed the Joint Petitioners' fears that BellSouth would employ
6 such so-called self-help measures to terminate a CLECs access
7 to services. BellSouth agreed that the alleging party should
8 provide immediate e-mail notification to the accused party's
9 designated contact person or persons in an effort to provide
10 maximum time to cure the concern.

11 Further, BellSouth agreed that the alleging party
12 would seek, through the appropriate regulatory body, expedited
13 dispute resolution in the event that there is a disagreement as
14 to an allegation of unauthorized access. And, finally,
15 BellSouth agreed through the provisions of the dispute
16 resolution process that the alleging party would not terminate
17 services to the accused party prior to the conclusion of any
18 such dispute resolution proceeding. Even though BellSouth has
19 addressed all of the Joint Petitioners' concerns on this issue,
20 the Joint Petitioners curiously have remained silent on this
21 offer.

22 Item 103 is about BellSouth's rights in the event
23 that a CLEC fails to respond to a BellSouth deposit request;
24 and, therefore, exposes BellSouth to financial risks.
25 BellSouth needs the right to protect itself from financial

1 Q Mr. Ferguson, would you agree with me that Item 86 is
2 an issue about whether BellSouth can engage in self-help and
3 pull the plug if it believes it has detected unauthorized
4 access to CSR information?

5 A I don't agree that it is a self-help or pull-the-plug
6 issue. I agree it is about the rights of what BellSouth can do
7 in the event that a CLEC does not respond to requests or if
8 BellSouth -- it is reciprocal language, so if either party
9 doesn't respond to a request by the requesting party, then
10 there needs to be some rights to termination. And, again, as I
11 mentioned in my summary, we have given the CLECs all three of
12 the items that they have asked for during this string of
13 proceedings, and we are still kind of wondering why we are here
14 arbitrating and they have not responded to our language.

15 Q Now, Mr. Ferguson, included even in your new language
16 are a series of remedies and sanctions which BellSouth can help
17 itself to at any given time, correct?

18 A I don't agree that we can help ourself to it at any
19 time, no.

20 Q Will you agree with me that your language continues
21 to include some sanctions such as refusal to accept new orders,
22 suspension of pending orders, suspension of access to ordering
23 and provisioning systems, as well as the ultimate remedy, as
24 you like to call it, which is termination of all services,
25 correct?

1 A I agree that it contains those provisions. And the
2 reason that we have put them in there is to cover situations
3 with CLECs who just simply ignore any request that we might
4 make of them to provide letters of authorization or proof that
5 there was no unauthorized access. We are trying to cover all
6 situations, not just those with the Joint Petitioners in this
7 arbitration.

8 Q Now, Mr. Ferguson, how would you tie these remedies
9 to the alleged violation?

10 A Well, Mr. Heitmann, unauthorized access of CSR
11 information is a violation of law, and it's a violation of
12 contractual obligations. I would say that if we are looking at
13 the difference between systemic and onesy/twoisy type of
14 instances, we are certainly more concerned about any systemic
15 unauthorized access. And as our -- as our provisions in our
16 revised language have stated, we would certainly bring it to
17 the Commission for, hopefully, expedited resolution and follow
18 their guidance on the issue. So it would be determined by,
19 ultimately, the Commission as to what level and to what degree
20 the resolution would be.

21 Q And if it was going to be determined by the
22 Commission, couldn't the Commission decide which remedies it
23 wanted to impose?

24 A The Commission can decide whatever it chooses to. It
25 has that authority to do so, yes.

1 Q Now, you mentioned the unauthorized access to CSR
2 nformation is a violation of federal law, I believe, is that
3 correct?

4 A Yes.

5 Q And did the FCC delegate its enforcement authority to
6 BellSouth?

7 A Not to BellSouth, but to the Commission. But as I
8 said earlier -- the state commissions. But as I said earlier
9 in my discussion, both parties have an obligation to uphold
10 those laws. And in our case we also have obligations, along
11 with the CLECs, to uphold contractual obligations of the
12 interconnection agreement.

13 Q Would you agree with me that those laws are federal
14 laws including and stemming from Section 222 of the Federal
15 Telecommunications Act?

16 A Mr. Heitmann, I can't recall exactly which number of
17 the FCC rules that it comes from, but it does come from the
18 FCC.

19 Q Would you agree with me that those rules are part and
20 parcel of applicable law?

21 A I'm not an attorney, Mr. Heitmann. I would just say
22 that it's on the books. It is something that we have an
23 obligation to follow along with the CLECs, and I would let my
24 attorneys determine whether or not there was any applicable law
25 issue there.

1 Q Do you recall your answer to those questions in
2 Alabama?

3 A Not specifically. We don't have the transcripts yet,
4 so, no.

5 Q You don't recall that they were different?

6 A I'm not sure that they were different.

7 Q Okay. Now, Mr. Ferguson, I believe you testified
8 that the Florida Public Service Commission has the authority to
9 enforce the CPNI rules, is that correct?

10 A That is what I believe, yes. I believe that the FCC
11 did suggest at some point that the states were the authorities
12 to rule on such things, yes.

13 Q And did the Florida Public Service Commission
14 delegate its enforcement authority to BellSouth?

15 A I would say that they did not delegate anything to
16 BellSouth, other than BellSouth's obligation to uphold the
17 FCC's laws. They didn't delegate that to us. We have that
18 from -- straight from the FCC, but I think they expect that we
19 will do so.

20 Q Now, Mr. Ferguson, you mentioned earlier that if
21 there is a dispute about the allegations of unauthorized access
22 to CSR information, the alleging party would seek dispute
23 resolution at the Commission, is that correct?

24 A That is correct. That is part of our revised
25 language.

1 Q Is it any dispute or is it a legitimate dispute? How
2 does that work?

3 A Well, if you will let me take a look here at
4 Attachment A under that provision, I just want to make sure of
5 our actual exact wording.

6 According to our language, and I'm just going to read
7 it so that we can have a framework. If the other party
8 disagrees with the alleging party's allegations of unauthorized
9 use, the alleging party shall proceed pursuant to the dispute
10 resolution procedures.

11 And what I would say in response to your question,
12 Mr. Heitmann, is that in reality there are negotiations that
13 take place during any sort of disputes, and it has been our
14 experience with most CLECs. We have negotiations over disputes
15 before anything actually goes to a Commission or a court or
16 wherever. And that in response to your question on this
17 particular one, I would say that it could be any disagreement
18 the alleging party would, in fact, take the disagreement to the
19 Commission, regardless of its position on whether they thought
20 it was a legitimate dispute or not. And as I said earlier, we
21 would let the appropriate commission determine the legitimacy
22 of the dispute and the resolution of the dispute.

23 Q Now, with respect to the sanctions that still remain
24 in this proposal that appear earlier in your proposed language,
25 Mr. Ferguson, would you agree with me that the inability to

1 place orders could result in lost customers for the Joint
2 Petitioners?

3 A Yes.

4 Q And would you agree with me that losing customers
5 could have a significant impact on a company's business?

6 A Yes.

7 Q And would you agree with me that having all your
8 services terminated could have a significant impact on one of
9 the Joint Petitioners?

10 A Yes, it could. And going through the motions of
11 having to do that would have a significant impact on BellSouth,
12 as well. And, you know, we have stated numerous times that it
13 is not BellSouth's intent to suspend or terminate, because it
14 is -- it is a time-consuming process on both parties. But I
15 will assure you that if it ever gets to a point where we need
16 to act in such a manner, that this Commission will be brought
17 along every step of the way, and they will be notified of any
18 position that we have and any actions we plan on taking.

19 Q If that is the case, Mr. Ferguson, isn't it true that
20 you do not need the language that continues to remain in your
21 proposal regarding suspension of access ordering systems and
22 termination of service?

23 A I think we do need it, Mr. Heitmann, simply because,
24 as I referred to earlier, there is the potential for CLECs out
25 there who may or may not bring the situation to the dispute

1 resolution process. They may simply ignore us. And we have to
2 be able to take a course of action. But even under those
3 circumstances, we would continue to make sure that the
4 Commission knew every step of the way what we proposed, whether
5 or not there was dispute resolution for the Commission to act
6 upon or not. We would notify them and follow any rules or
7 regulations that this state commission has in place regarding
8 termination of CLECs and/or end users. So it would be no
9 surprise to anyone that anything had taken place.

10 Q Is it your position that the Florida Commission's
11 rules regarding termination of services to CLECs and their end
12 users is part of the parties' obligations under this
13 interconnection agreement?

14 A Whether or not this -- well, yes, I would say that we
15 will follow the rules whatever they are, and whether or not
16 they are included specifically in this agreement.

17 Q Now, have you ever had a problem with the Joint
18 Petitioners regarding unauthorized access to CSR information?

19 A No. And I will say when you say problem, we think
20 systemic problems. I can think of one time where we made a
21 request of one of the Joint Petitioners to simply provide a
22 letter of authorization to show that they did, in fact, have
23 authorization, and they produced it and the case was pretty
24 much closed. And that is the way we like for things to go when
25 there is a question. Simply show us a letter of authorization,

1 and the solution is there.

2 Q Has BellSouth ever been investigated for improper
3 access to CSR information?

4 A I am not aware fully of anything. I don't know of
5 any specific case or any conclusion of any cases that might
6 have occurred.

7 Q Are you aware of any, or partially aware of any
8 investigation?

9 A Yes. I am aware that in the state of Georgia as
10 part of a hearing there were some allegations, but I don't know
11 any other details, other than I don't believe an order has been
12 issued in that situation.

13 Q And, finally, with respect to this issue,
14 Mr. Ferguson, is it your testimony that in spite of the various
15 remedies included in your proposed language, that if there is
16 any dispute about the allegations BellSouth will not help
17 itself to such remedies prior to the conclusion of a dispute
18 resolution proceeding before this Commission?

19 A That is my testimony. The dispute -- when we say in
20 our proposed language that we will comply with the -- or that
21 the parties shall proceed pursuant to the dispute resolution
22 provisions, if you look in the general terms and conditions
23 where the dispute resolution process is spelled out, it states
24 very clearly that neither party shall terminate services to the
25 other party during the pendency of any sort of dispute

1 resolution hearing, and that is what we are relying on. And we
2 simply wonder what additional assurances are needed other than
3 to refer back to a clause that is not in dispute in the general
4 terms and conditions.

5 Q Mr. Ferguson, do you understand that if there is
6 language in a specific provision enabling you to suspend access
7 ordering systems or terminate services, and it is contrasted
8 with language in a general provision which says you shall not
9 do such things, that there could be a legal issue about a
10 conflict between specific and general provisions of the
11 contract?

12 MR. CULPEPPER: Objection, Mr. Chairman. The witness
13 is not a lawyer. He is not here to offer a legal opinion as to
14 contract law.

15 MR. HEITMANN: I'm asking him for his opinion as a
16 lay witness or what his understanding is.

17 COMMISSIONER BRADLEY: Can you rephrase your
18 question?

19 MR. HEITMANN: Yes, sure.

20 BY MR. HEITMANN:

21 Q Mr. Ferguson, do you understand that there could be
22 an issue with respect to language that appears in the general
23 provisions that conflicts with language that appears in more
24 specific provisions?

25 A As a layman, yes, I think I understand that that

1 could be the case. I will say in this particular instance that
2 if there is a dispute resolution process or proceeding going
3 on, that in my opinion, that would override any of the other
4 circumstances that had previously been mentioned in
5 Section 2.5.5.3.

6 Again, those provisions of termination, et cetera,
7 generally have more to do with the CLECs that do not take
8 advantage of the dispute resolution capability in the
9 interconnection agreements. And a reminder to you,
10 Mr. Heitmann, that this interconnection agreement could be
11 adopted by others in its entirety, and we want to make sure
12 that all circumstances, or all potential circumstances, are
13 covered, including dispute resolution circumstances and total
14 ignoring of our requests where we would seek to terminate,
15 absent any dispute resolution process.

16 Q Mr. Ferguson, when you refer to the -- or when you
17 remind us that this interconnection agreement will be adopted
18 or could be adopted by others, can you tell us how many
19 interconnection agreements have been adopted by CLECs in the
20 state of Florida this year?

21 A I cannot tell you, but I would suggest that probably
22 none, because I don't believe that any of the current
23 agreements are totally in compliance with -- you know, I know
24 we are going to have the change of law hearings and all, but I
25 don't believe -- I don't believe any have been.

1 Q And when BellSouth worries about adoption, are you
2 worried about CLECs in general or particular CLECs?

3 A No specific CLECs, just the possibility that there
4 are some out there that may or may not be willing to comply
5 ultimately with the terms of their agreement.

6 Q And if there is a CLEC that is not willing to comply
7 with the terms of its agreement, wouldn't you agree with me
8 that the Florida Public Service Commission is completely
9 capable of addressing that situation in a timely fashion?

10 A I would agree that they have the authority, and that
11 we would certainly bring it to them, and we would request
12 expedited resolution, as I believe our language leads both
13 parties to understand.

14 Q Mr. Ferguson, let's move on to Issue Number 103.
15 Would you agree with me that this is yet another issue where
16 BellSouth seeks to preserve for itself a suite of pull-the-plug
17 type remedies if it does not get the deposit it demands under
18 this agreement?

19 A Again, I disagree with your characterization of
20 pull-the-plug and BellSouth taking advantage of certain things
21 to just -- to say that this is about BellSouth's ability to
22 have redress in case a CLEC does not provide a deposit for
23 which BellSouth is entitled.

24 Q Now, this is an issue, Mr. Ferguson, that you adopted
25 the direct testimony of your colleague Carlos Morillo, correct?

1 A Yes.

2 Q And do you also adopt his North Carolina deposition
3 and his live testimony before the North Carolina Utilities
4 Commission?

5 A Yes, I do.

6 Q Would you agree with me that if any of the remedies
7 that BellSouth seeks to be able to impose were imposed upon
8 Joint Petitioners, that they would have a serious and
9 detrimental impact on the Joint Petitioners' business?

10 A I agree that it could. If they do not follow the
11 provisions of their contractual obligations and were forced to
12 seek action that it possibly could, yes.

13 Q Now, if you were to terminate one of the Joint
14 Petitioners' businesses, would you go about checking to see if
15 they were serving any hospitals or responders, first
16 responders? How would you go about making sure that their
17 customers also weren't detrimentally impacted?

18 A Well, again, Mr. Heitmann, this goes back to the same
19 situation as in the other issue we just discussed. While
20 BellSouth believes that we have the right to collect the
21 deposit, and that is not disputed, we believe that, or we are
22 committing that the Commission will be brought in under any
23 circumstance where we are considering termination of a CLEC and
24 end users possibly, and they will be quite aware of what is
25 going on. And if they feel the need to step in and consider,

1 then we feel that they will do so.

2 Q Mr. Ferguson, BellSouth has changed its position with
3 respect to Issue Number 86. And now BellSouth will abide by
4 the standard dispute resolution provisions with respect to
5 Issue 86, but not so for Issue 103, correct?

6 A That is not part of Issue 103. I believe the dispute
7 resolution for deposits is Issue 104, and that is Ms. Blake's
8 testimony.

9 Q Mr. Ferguson, would you agree with me that nonpayment
10 for services rendered is different than nonpayment of a deposit
11 requested?

12 A I'll agree that they are different, but they are no
13 less important, one versus the other. One is to pay for
14 services rendered. The other is to mitigate financial risk.
15 And both are extremely important to our company. So, yes, they
16 are different, but no difference in importance.

17 Q Can you turn -- do you have a copy of Joint
18 Petitioners' Revised Exhibit A with you?

19 A Yes, I do.

20 Q Can you turn to Page 18 of that proposal?

21 A I have it.

22 Q Do you see the Joint Petitioners' language?

23 A I do.

24 Q Can you explain to us why you cannot agree with that
25 language?

1 A I can give you two reasons. First of all, as it
2 compares to the BellSouth version, it does not relate to
3 Section 1.87, which our proposed language does. And 1.87 is
4 the language that is under arbitration in Issue 104. And I
5 think it is very important that those two be linked, that we
6 will ultimately have a dispute resolution process, and that
7 this section here, 1.8.6, that Issue 103 will only be brought
8 into play if all of the other conditions are not met leading up
9 to it.

10 And the other reason why it is not acceptable to
11 BellSouth is that while you have listed two very specific
12 reasons that we would have a right to disconnect, you have left
13 out a few. It is not specific enough. And we would like more
14 general language that allows all circumstances to be covered.
15 And I can give you an example. If we get ignored totally by a
16 CLEC from whom we have asked a deposit, there apparently is not
17 going to be a dispute on that. They are just going to ignore
18 us, and we need to be able to do something about that. Or they
19 could disagree with us, and yet fail to file for a dispute
20 resolution within the 30 days. In that case there seems to be
21 no dispute. They have disagreed, but they haven't filed for a
22 dispute. And situations like that are not covered by this
23 language.

24 Q So, Mr. Ferguson, it is your testimony that unless a
25 CLEC files for dispute resolution with this Florida Public

1 Service Commission and perhaps up to eight others within 30
2 days of your request, you reserve the right to terminate their
3 services and every single customer they serve here in the state
4 of Florida, is that right?

5 A Under the strictest wording, you are absolutely
6 right. But in reality I think it has been our experience that
7 it just never has come to that. We have always had an
8 opportunity to work with the CLEC. And if we ultimately have
9 to take it to the state commission, that is covered in the
10 language of 1.8.7 as far as how to take it to dispute
11 resolution. But at some point -- at some point the CLEC has to
12 step up and take the responsibility of either paying the
13 deposit or taking it to dispute resolution.

14 Q Mr. Ferguson, if it is BellSouth that is seeking the
15 relief and requesting a deposit, and if there is a dispute over
16 whether BellSouth has a right to a particular deposit
17 requested, isn't it BellSouth's obligation to take that dispute
18 to a commission?

19 A Again, Mr. Heitmann, that is Issue 104 as far as who
20 has to file for it. That issue I know is under dispute, and I
21 know the language is, but Ms. Blake can address that more
22 readily.

23 Q Okay. Well, Mr. Ferguson, you were talking about how
24 deposit requests get worked out, weren't you, a minute or so
25 ago?

1 A Yes.

2 Q And is your testimony typically they get negotiated?

3 A My testimony is just based on experience. And,
4 again, Ms. Blake can speak more to this issue about how they
5 get worked out and how they negotiate and what the overall
6 process is. But if the CLEC is willing to cooperate with
7 BellSouth, it is my understanding that they do get -- there are
8 negotiations that take place.

9 Q And is it your understanding that such negotiations
10 take place within 30 days?

11 A I can't answer that. Ms. Blake can speak more to
12 that.

13 Q Mr. Ferguson, I would like to pass an exhibit out to
14 you and talk to you about that for a moment.

15 MR. HEITMANN: Mr. Chairman, if I can have this
16 marked as the exhibit, and it can be labeled BellSouth Deposit
17 Letter.

18 COMMISSIONER BRADLEY: This will be marked as Exhibit
19 25.

20 (Exhibit 25 marked for identification.)

21 BY MR. HEITMANN:

22 Q Now, Mr. Ferguson, you have seen this letter before,
23 isn't that correct?

24 A Yes, I have.

25 Q And, Mr. Ferguson, is this letter not demonstrative

1 of the type of threatening letter that BellSouth typically
2 sends along with a deposit request?

3 A I would say that it is typical of the letters. I
4 don't agree with your characterization. It is what it is and
5 says what it says. But, again, these types of processes are
6 things that Ms. Blake can speak more about. I will add,
7 however, I am aware of the situation that is discussed in this
8 letter.

9 Q Hold on a second, Mr. Ferguson. If Ms. Blake knows
10 more about it --

11 MR. CULPEPPER: Objection, Mr. Chairman.

12 COMMISSIONER BRADLEY: Yes.

13 MR. CULPEPPER: The witness should have an
14 opportunity to complete his answer to the question.

15 MR. HEITMANN: Mr. Chairman, Mr. Ferguson, he seems
16 to know certain things about Section 1.8.7, which is at dispute
17 in Issue Number 104, which is Ms. Blake's issue. And he seems
18 to know certain things about this, and then points to Ms. Blake
19 as being the primary witness on this. I'm happy to hear what
20 BellSouth's witnesses have to say about this letter. However,
21 I need to be able to ask the right witness my question.

22 COMMISSIONER BRADLEY: Okay. But I have an objection
23 that I need rule on.

24 MR. HEITMANN: Okay.

25 COMMISSIONER BRADLEY: What is your objection?

1 MR. CULPEPPER: Mr. Chairman, I would just ask that
2 the witness be allowed to finish his response. And if counsel
3 wants to address a question to Ms. Blake, he is certainly more
4 than -- you know, capable of doing so.

5 COMMISSIONER BRADLEY: Okay. Please allow the
6 witness to answer your question. And is it your concern that
7 the two are being commingled or merged together?

8 MR. CULPEPPER: Yes, Mr. Chairman. He cut him off.
9 He can ask him to answer yes or no or explain, but I think the
10 witness should be allowed to respond to the question asked.

11 COMMISSIONER BRADLEY: That's a simple issue to
12 resolve. Why don't we just allow the witness to answer one
13 question at a time, then I think we will resolve the issue.

14 MR. HEITMANN: Okay. Thank you.

15 COMMISSIONER BRADLEY: Okay. Restate your question,
16 please.

17 MR. HEITMANN: I don't recall the precise question,
18 to be quite frank, Mr. Chairman, so I'll just move on.

19 BY MR. HEITMANN:

20 Q Mr. Ferguson, would you agree with me that the threat
21 of suspension or termination of service is coercive?

22 A No.

23 Q Not at all?

24 A I don't agree that it is. It depends on the -- it
25 could depend on the circumstances. In these circumstances I

1 don't believe it is. It is simply putting into effect our
2 policies and procedures for working with CLECs to help them
3 meet their obligations under the interconnection agreement.

4 Q Now, Mr. Ferguson, under the current KMC contract,
5 isn't it true that BellSouth does not have the right to suspend
6 or terminate service for failure to remit a requested deposit?

7 A I would have to review the current agreement. I do
8 not have a copy of that in front of me.

9 MR. HEITMANN: I have nothing further for this
10 witness.

11 MS. SCOTT: Staff has no questions for this witness.

12 COMMISSIONER BRADLEY: You have none?

13 MS. SCOTT: No, we don't.

14 COMMISSIONER BRADLEY: Commissioners? Redirect.

15 MR. CULPEPPER: No questions.

16 COMMISSIONER BRADLEY: Okay. I think we have several
17 exhibits, don't we?

18 MR. HEITMANN: Mr. Chairman, if we could have Exhibit
19 Number 25 admitted.

20 COMMISSIONER BRADLEY: Is that the only one? Is that
21 the only one?

22 MR. HEITMANN: Yes.

23 COMMISSIONER BRADLEY: Okay. Thank you.

24 MR. CULPEPPER: Mr. Chairman, we would ask for the
25 witness to be excused.

1 COMMISSIONER BRADLEY: Okay. Let me deal with the
2 exhibit first, and then we will excuse the witness.

3 Without objection, Exhibit 25 is admitted into the
4 record.

5 (Exhibit 25 admitted into evidence.)

6 COMMISSIONER BRADLEY: And the witness is now
7 excused. Thank you.

8 THE WITNESS: Thank you, Mr. Chairman.

9 (Transcript continues in sequence with Volume 7.)

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 10th day of May, 2005.



Chief, Office of Hearing Reporter Services