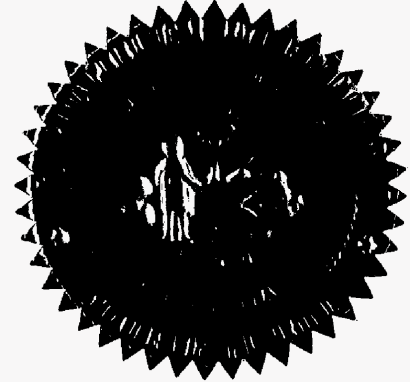


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040130-TP

In the Matter of

JOINT PETITION BY NEWSOUTH  
COMMUNICATIONS CORP., NUVOX  
COMMUNICATIONS, INC., KMC TELECOM  
7, 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 8  
Page 1013 through 1111

PROCEEDINGS: HEARING

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

DATE: Thursday, April 28, 2005

TIME: Commenced at 9:30 a.m.  
Concluded at 12:05 p.m.

PLACE: Betty Easley Conference Center  
4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR  
Official FPSC Hearings Reporter  
(850) 576-9597

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 04637 MAY 12 05

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I N D E X

WITNESSES

NAME:	PAGE NO.
KATHY BLAKE	
Continued Cross Examination by Mr. Heitmann	1016
Cross Examination by Ms. Scott	1087
Redirect Examination by Mr. Meza	1096

CERTIFICATE OF REPORTER	1111
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## EXHIBITS

NUMBER:		ID.	ADMTD.
26			1107
27			1107
28	Tennessee Testimony Excerpt	1034	1107
29	KMC Study of BellSouth Payment History	1038	1107
30	Global Crossing Contract	1042	1107
31	Georgia Testimony Excerpt	1049	1107
32	DeltaCom Excerpt	1066	1107
33	(Confidential)BellSouth's Confidential Discovery List	1109	1109

(REPORTER'S NOTE: Exhibit 12 was withdrawn - see Page 1108)

## P R O C E E D I N G S

(Transcript follows in sequence from Volume 7.)

COMMISSIONER BRADLEY: We are officially reconvened. Where did we leave -- I think we left off with you, Ms. Blake, and you were asking -- you had finished asking her about one issue.

MR. HEITMANN: Yes, Mr. Chairman. We just finished with Issue 65.

COMMISSIONER BRADLEY: Okay.

MR. HEITMANN: And we're ready to move to Issue, excuse me, Issue 88.

COMMISSIONER BRADLEY: Okay. Thank you. You may proceed.

MR. HEITMANN: Thank you very much.

KATHY BLAKE

having been previously sworn, resumed the stand, and testified as follows:

## CONTINUED CROSS EXAMINATION

BY MR. HEITMANN:

Q Good morning, Ms. Blake.

A Ms. Blake.

Q Ms. Blake, let's move to Issue 88. And would you agree with me that this issue is not about whether or not BellSouth will perform expedites as part of its obligations under the interconnection agreement?

1           A       BellSouth has agreed to provide expedite service at  
2 the request of the Joint Petitioners; however, BellSouth does  
3 not believe it is an obligation under 251.

4           Q       Right. But the parties already have agreed to  
5 contract language which will be included in the agreement that  
6 results from this arbitration; correct?

7           A       Yes. That's correct.

8           Q       Okay. So, instead, this issue is simply an issue  
9 about the rate that BellSouth must charge when it performs  
10 those expedites; correct?

11          A       Yes, that's correct.

12          Q       And Joint Petitioners say this rate must be TELRIC  
13 because expediting is simply a part of provisioning 251 UNEs,  
14 and 251 UNEs such as OSS and loops carry a mandatory TELRIC  
15 pricing obligation; correct?

16          A       That's the Joint Petitioners' position, yes.

17          Q       And BellSouth says, no, not TELRIC; let's charge  
18 federal access charge rates again. Correct?

19          A       BellSouth's position is it would charge at the same  
20 rates that it charges its own customers for the expediting  
21 service request.

22          Q       And you charge your Florida customers federal access  
23 charge rates for expediting those service requests?

24          A       Yes, for services that they purchase out of the  
25 access tariff. If they wish to expedite their service interval

1 or provisioning interval, it would be at those same rates that  
2 we're offering the Joint Petitioners.

3 Q And those federal access charge rates are not TELRIC  
4 rates; correct?

5 A That is correct.

6 Q And the Joint Petitioners, you would agree with me,  
7 are not BellSouth's retail customers; correct?

8 A No, they're not BellSouth's retail customers. We  
9 provide wholesale services to the Joint Petitioners consistent  
10 with what we provide to other customers.

11 Q Is it fair to characterize your testimony as that  
12 BellSouth has no legal requirement to perform expedites?

13 A Yes. From a nondiscriminatory access we provide the  
14 Joint Petitioners what we provide our own customers in that  
15 regard. The obligations pursuant to 251 pertain to providing  
16 services at standard intervals, the costs that were developed,  
17 the TELRIC rates are consistent for providing services at  
18 standard intervals.

19 Q Ms. Blake, you can't show me any language in Section  
20 251 or the FCC's rules implementing that section of the Act  
21 where it has been said explicitly that BellSouth or any ILEC  
22 does not have to perform expedites on UNEs at TELRIC rates.

23 A I don't believe I've seen anything that specific.  
24 There was some discussion in the Florida/Tennessee 271 decision  
25 by the FCC that did find that BellSouth's \$200 expedite charge

1 is nondiscriminatory.

2 Q Now, Ms. Blake, in your testimony I believe you  
3 say -- or actually it was in Mr. Morillo's testimony which  
4 you're adopting; correct?

5 A Correct.

6 Q The testimony was that this issue should not be an  
7 issue in this arbitration; correct?

8 A The issue as to whether the Florida Commission should  
9 establish a nonTELRIC rate, that is the portion that should not  
10 be part of this arbitration.

11 Q Is it your testimony the Florida Commission does not  
12 have authority to establish a nonTELRIC rate?

13 A BellSouth believed the just and reasonable standards  
14 of Section 201, 202 would apply to this offering that we would  
15 make to the Joint Petitioners, and I believe that's under the  
16 jurisdiction of the FCC.

17 Q And so if the Florida Commission cannot establish a  
18 nonTELRIC rate, would you agree with me that they can't approve  
19 a nonTELRIC rate either?

20 A I'm not saying necessarily BellSouth is seeking their  
21 approval of BellSouth's nonTELRIC rate, the rate -- what we are  
22 seeking for is the rate that we are charging is not -- the  
23 service we're providing through expedites is not an obligation  
24 to be provided at TELRIC, and as such it can be provided  
25 pursuant to just and reasonable terms under 201 and 202 of the

1 Act.

2 Q Are the loops the Joint Petitioners might seek to get  
3 expedited located in the state of Florida?

4 A Yes.

5 Q Are you aware of any legislation that strips the  
6 Florida PSC of jurisdiction with respect to Section  
7 252 arbitration such as this one?

8 A No, I'm not.

9 Q Now, Ms. Blake, if the Florida PSC doesn't decide  
10 what rate should apply, who would?

11 A I believe the FCC would take that matter up based  
12 upon a complaint by a Joint Petitioner or another party that  
13 says our rates are not just and reasonable that we're willing  
14 to charge pursuant to our FCC tariff.

15 Q Does the FCC have jurisdiction over this  
16 252 arbitration?

17 A I believe they've delegated that authority to the  
18 state commissions. However, BellSouth's position is that this  
19 is not an obligation pursuant to 251 that we have to provide it  
20 at TELRIC. Therefore, it takes it out of the 252 arbitration  
21 determination.

22 Q But, Ms. Blake, isn't it true that we did, in fact,  
23 try to negotiate a rate for expedites?

24 A Yes, that's very much true. We offered the Joint  
25 Petitioners the same rate that another CLEC has accepted as



1 just and reasonable and appropriate. They refused that offer.

2 Q Okay. Now, Ms. Blake, elsewhere in other states, in  
3 North Carolina and Tennessee, I believe, it's your testimony  
4 that TELRIC rates constitute a penalty. Is that still your  
5 testimony?

6 A I believe it, it constitutes a penalty when we're not  
7 obligated to provide services at TELRIC. And I guess it could  
8 be argued that depending on the adjustments certain states may  
9 have made to our proposed TELRIC rates could be deemed a  
10 penalty if it's not recovering its cost.

11 Q Do you know if any of the TELRIC rates established by  
12 this Commission constitute a penalty in your mind?

13 A I think we've gone on record that we don't agree with  
14 all the rates the Florida Commission has established as being  
15 TELRIC compliant.

16 Q Do you understand that TELRIC rates include a  
17 reasonable profit?

18 A I believe that's part of the standard. Again, the  
19 end result of the ordered rates may be different than what the  
20 rates BellSouth proposed as being cost-based in our cost  
21 studies.

22 Q And, again, you're not a TELRIC expert. You're not  
23 familiar with those studies, are you?

24 A Not intimately familiar, but I'm somewhat familiar  
25

1 Q Has BellSouth done a TELRIC study for expediting?

2 A No, we have not.

3 Q Now BellSouth demands that the service expedite  
4 charge be the same charge applied to the retail customers.  
5 That rate, would you agree with me, is \$200 per circuit per  
6 day?

7 A Yes, it would be per day expedited.

8 Q And so if a Joint Petitioner has a new customer and  
9 that customer wants to add ten lines and for whatever reason we  
10 see their request to expedite for two days, how much would that  
11 cost?

12 A Again, based on your hypothetical, I think you said

13 --

14 Q Ten lines.

15 A Ten lines?

16 Q Yes.

17 A If there's just basic 1FB type lines or stand-alone  
18 loop type charges or services, those intervals on those types  
19 of loops are like, I believe, two to three days or very short.  
20 So the chances of expediting something shorter than, depending  
21 on the standard interval --

22 Q Ms. Blake --

23 A Uh-huh.

24 Q -- let's assume that they're DS1 loops because that  
25 is, in fact, the lion's share of the loop facilities that these

1 three Joint Petitioners order from BellSouth. Can you agree  
2 with me for the purposes of this exercise?

3 A Okay. Sure. Okay. Okay.

4 Q If the Joint Petitioners sought to expedite ten DS1s  
5 for two days, how much would that cost?

6 A It would be ten times \$200 times two, so \$4,000.

7 Q And that's BellSouth's cost or is that BellSouth's  
8 price that it seeks to impose upon the Joint Petitioners?

9 A That is the nondiscriminatory price BellSouth is  
10 proposing to charge the Joint Petitioners for expediting  
11 service intervals shorter than the standard consistent with the  
12 way we offer it to other customers that order DS1 circuits out  
13 of our access tariff.

14 Q Is it the nondiscriminatory cost that BellSouth  
15 incurs in providing that UNE function?

16 A I said previously that's not a TELRIC price, not  
17 based on a TELRIC study. The rate is, the rate from the  
18 tariff -- maybe I'm not understanding your question.

19 Q So in order to provision these particular loops  
20 BellSouth is trying to impose a rate on the Joint Petitioners  
21 that is, in fact, much higher than its actual costs; correct?

22 A It could be. We have not, like I said, not performed  
23 a TELRIC study. I think it's -- on your example you gave, the  
24 \$4,000 for ten lines, \$400 a line, based on Mr. Falvey's  
25 testimony yesterday he has the ability or he does charge or can

1 charge his customers \$800. So there's, there's means to  
2 recover, for the Joint Petitioners to recover that cost that  
3 they're incurring for expediting services.

4 Q Now, Ms. Blake, in Louisiana I believe you testified  
5 that you simply did not know how often BellSouth waives  
6 expedite charges for its own retail customers; correct?

7 A Correct.

8 Q And your response to the staff's interrogatory and  
9 similar question was similar; correct?

10 A Yes.

11 Q And so as you stand here today, you cannot testify in  
12 any meaningful way as to the manner in which BellSouth charges  
13 its retail customers for expedites here in Florida; right?

14 A We apply the tariff charges to our end user customers  
15 or wholesale customers consistent with our obligations under  
16 the tariff.

17 Q Except when you waive them; correct?

18 A There could be occasions where we might waive a  
19 charge for any customer, including the Joint Petitioners. If  
20 there was a reason we failed to expedite and we had  
21 requested -- the Joint Petitioner or any customer had requested  
22 to be expedited and we failed to honor that request or  
23 something happened and it didn't get expedited, we would waive  
24 that.

25 On the converse, if they had asked for us to expedite

1 or ordered something and we missed the due date or we're not  
2 going to be able to make it, we could expedite that request and  
3 waive it at the same time. A consistent process would be  
4 applied to both -- all customers.

5 Q Now, Ms. Blake, would you agree with me that  
6 generally what the Joint Petitioners will be seeking to  
7 expedite are UNE loops?

8 A Yes. Predominantly probably DS1 loops, as you said.

9 Q And would you agree with me that the Joint  
10 Petitioners have a right to order those DS1 loops at TELRIC  
11 prices?

12 A And they do order those loops at TELRIC prices based  
13 on the rates approved by this Commission and consistent with  
14 the standard intervals that those loops were priced at.

15 Q And do your Florida retail customers have the right  
16 to order DS1 loops at TELRIC prices?

17 A No. Our customers, besides CLECs, order DS1 circuits  
18 pursuant to our access tariffs.

19 Q And the reason for the distinction, Ms. Blake, is  
20 251(c)(3), nondiscriminatory access requirements; correct?

21 A Yes. That's the reason the Joint Petitioners can  
22 obtain DS1 loops at TELRIC prices in standard intervals.

23 Q And isn't that the same reason why Joint Petitioners  
24 should be able to expedite provisioning of those loop  
25 facilities at TELRIC prices?

1           A     No. I don't agree with that. I believe we're  
2 meeting our nondiscriminatory access obligations pursuant to  
3 251 by providing UNEs at TELRIC rates at standard intervals.  
4 The Joint Petitioners want something above and beyond the  
5 standard interval, an expedited order. That should be  
6 consistent and nondiscriminatory with what we do with our other  
7 customers, and that's exactly what we've offered.

8           Q     Ms. Blake, would you agree with me -- actually, Ms.  
9 Blake, isn't it true that nowhere in Section 251 or the FCC's  
10 rules implementing Section 251 does it say that incumbent LECs  
11 such as BellSouth are only obligated to provide loops in  
12 standard intervals?

13          A     I believe that's inherent in the nondiscriminatory  
14 axis (phonetic) of how we provision services to the Joint  
15 Petitioners consistent -- and all the retail, the measures that  
16 are out there as far as making sure it's nondiscriminatory and  
17 at parity.

18          Q     And when BellSouth's retail services unit needs to  
19 expedite for its customer, BellSouth provides that expedite for  
20 its retail operations; correct?

21          A     BellSouth provides the service to its retail  
22 customers at the customers' request, just like we honor the  
23 request or may honor the request of the Joint Petitioners as  
24 well. If we can't honor the expedite request, which there are  
25 occasions for our customers as well as Joint Petitioners we, we

1 cannot provision the expedite or provision in an expedite  
2 manner. If it was an obligation, we'd have to always honor the  
3 expedite request. That's not the case. The language in the  
4 contract has provisions that say if we can't honor the request,  
5 then we won't charge the expedite. If we were obligated to  
6 expedite, then we wouldn't have the ability to say no to an  
7 expedite request.

8 Q And so, Ms. Blake, it sounds like you would agree  
9 with me that the contract does not have a firm obligation for  
10 BellSouth, the expedite upon request. It's upon ability  
11 essentially.

12 A And that's exactly the same process we have with our  
13 retail customers. If we can honor the expedite request, we  
14 will. However, if it was an obligation, we can't say, no, we  
15 can't do it. Just like a standard interval, we've got to  
16 install the service at standard intervals pursuant to our  
17 nondiscriminatory access.

18 Q Right. And so you would agree with me that if  
19 BellSouth denied 75 percent of the Joint Petitioners' expedite  
20 requests yet performed 90 percent of its own, by way of  
21 example, BellSouth would be engaging in unlawful discriminatory  
22 conduct; correct?

23 A No. I wouldn't agree with that. Each expedite  
24 request is going to be handled on an individual case basis. If  
25 the resources are in place to honor the expedite request, we

1 have to look at what other orders are in the pipeline to be  
2 worked, what would it take to fulfill that expedite request.  
3 We don't want to jeopardize other orders that are due to be  
4 worked on a standard interval. That would jeopardize other  
5 customers as well, CLEC, other CLECs and retail customers.

6 Q Now, Ms. Blake, based on your testimony here how is  
7 your statement in your rebuttal testimony true that essentially  
8 if there are TELRIC rates for expedites, it will force SEEMS  
9 penalties on BellSouth?

10 A If we had to expedite every -- let me back up. If we  
11 were required to provide an expedite request to a CLEC at  
12 TELRIC rates, say, very cheaply, below cost, impossibly, that  
13 may incent all the CLECs to request expedite provisioning of  
14 all their orders. And in that case, that would put -- that  
15 would become the new standard. And that is not the way the  
16 performance measures were established. My understanding of it,  
17 that we are measured against -- the standard interval is  
18 measured against what we do for our retail customers. If we're  
19 expediting, having an obligation to expedite all of our orders,  
20 that could jeopardize standard intervals for other services.

21 Q Ms. Blake, even if TELRIC pricing applies to  
22 expedites, there's no firm requirement that you provide them  
23 every single time they're requested in this contract; correct?

24 A That's correct. But I think just the practicality of  
25 it would be that everybody would want their order worked as



1 fast as, as fast as we would do it.

2 That's kind of the analogy I gave in my testimony of  
3 the postage stamp. You know, if 37 cents is what it costs to  
4 get the mail delivered and but you could get it expedited for  
5 that same 37 cents, same-day delivery or next-day delivery,  
6 everybody is going to say, okay, I'll get next-day delivery for  
7 37 cents and not pay the typical \$10 FedEx type charge or  
8 U.S. Post Office charge.

9 Q Ms. Blake, if a Joint Petitioner wants UNE loop  
10 expedited, can it go to FedEx, UPS or the United States Postal  
11 Service to get that loop expedited?

12 A I don't believe they offer those services.

13 Q Does any other company provide the service of  
14 expediting BellSouth's UNE loop other than BellSouth?

15 A No, I don't believe they do. But the point is as far  
16 as trying to somewhat have a disincentive for everybody  
17 expediting an order when it may not be necessary, it's up to  
18 the individual customer to determine are they willing to pay  
19 the cost to expedite their order, just like Xpedius has in  
20 their tariffs. If their customer wants to expedite the order,  
21 they're going to charge them \$800 according to the discussion  
22 yesterday. And I believe it's appropriate for BellSouth to be  
23 able to recover the costs and charge an appropriate rate for  
24 expediting service requests.

25 Q Now, Ms. Blake, the appropriate rate in BellSouth's

1 view is \$200 per circuit per day. And your testimony was that  
2 that reflects the value of the expedited service being  
3 provided; is that right?

4 A I think the value could be in the eye of the  
5 beholder, but, yes, that would be a value added to being able  
6 to honor a customer's request to get their service installed  
7 sooner. It would be a value to the provider and to the  
8 customer.

9 Q There is -- and so that statement is just your  
10 opinion and you're the beholder of that statement? There's no  
11 study or foundation for that statement, is there?

12 A No. That's my opinion, yes.

13 Q Okay. And you've not done any analysis on the effect  
14 that a rate change on expedites would have on the CLEC  
15 propensity to request those expedites; correct?

16 A No. We have not done any study. Just as a practical  
17 matter that would seem to be an outcome. If you can get  
18 something faster for a cheaper price, it would possibly change  
19 your business decision to order things more often on an  
20 expedited basis.

21 Q Ms. Blake, when BellSouth offers to waive expedite  
22 charges for its wholesale and retail customers, do you think  
23 that provides them with incentive to request expedites?

24 A Incentive for who to request expedites? I'm sorry.

25 Q One of your customers. When you're offering to waive

1 the charges associated with an expedite, do you think that  
2 provides the customer with an incentive to ask for it?

3 A The situations by which I've mentioned earlier that  
4 we would waive a charge would be limited to certain  
5 circumstances that, where we messed up an order. I don't see  
6 that as an ability to incent somebody to, to continue to order  
7 expedite.

8 Q Ms. Blake, you can't sit here today and say that the  
9 only situations where BellSouth waives an expedite is where  
10 BellSouth messed up an order, can you? You don't know that, do  
11 you?

12 A No, I can't say that.

13 Q Okay.

14 A As I can't say that it doesn't happen. I mean, that  
15 would be the process. And as we said in our discovery  
16 responses, a supervisor, a managerial personnel would need to  
17 be involved in granting the waivers and understanding the  
18 circumstances that surrounded that need to waive that charge on  
19 both for our retail customers and for CLECs.

20 Q Ms. Blake, let's move to Issue 97. And on this issue  
21 you're adopting the written and deposition testimony of  
22 Mr. Carlos Morillo; correct?

23 A Yes.

24 Q Would you agree with me that this issue is about  
25 whether payment due dates should be set based on the date an

1 invoice is dated by BellSouth or the date upon which an invoice  
2 is received by the Joint Petitioner?

3 A Yeah. That's the gist of the dispute.

4 Q And BellSouth's position is that Joint Petitioners  
5 must pay BellSouth's invoices within approximately 30 days of  
6 the date stamped on that invoice; correct?

7 A Yes. The due date is typically the bill date, the  
8 next month after the bill date.

9 Q And so in a short month it could actually be less  
10 than 30 days; correct?

11 A Yes. In February it would be shorter than 30 days.  
12 Every other month would be 30 days or longer.

13 Q So BellSouth wants the payment due date to be marked  
14 from the date of the invoice, not the date of receipt?

15 A Correct. It's a set date that customers know,  
16 providers know. It's the same date that our retail customers  
17 have -- the process that our retail customers use on their  
18 bills.

19 Q And Joint Petitioners want the payment due date to be  
20 set 30 days from posting or receipt of that invoice; correct?

21 A Yes, from when they may receive it.

22 Q Now, Ms. Blake, isn't it true that this issue has  
23 been arbitrated before in the ITC^DeltaCom arbitrations that  
24 have taken place in this state and several others across the  
25 region?

1 A Yes. There was a similar issue there.

2 Q And isn't it true that each panel or commission that  
3 has ruled on this issue to date has found in favor of  
4 ITC^DeltaCom and has ordered BellSouth to do it in a different  
5 way than BellSouth proposes in this arbitration?

6 A I will agree that they've ordered it, ordered us in  
7 those states where we do have orders to do it differently.  
8 I'll disagree that they've ordered it, that they've ruled in  
9 favor of DeltaCom in all cases. They did some tweaking to it  
10 and made it a, maybe a shorter interval from receipt date, but  
11 the receipt date is still problematic.

12 Q And so the Alabama panel, for example, ruled that  
13 payments should be due 30 days from receipt of the invoice;  
14 correct?

15 A I don't have that in front of me. That may be  
16 correct. But I think it's important to point out that is a  
17 panel recommendation that has not been approved by the Alabama  
18 Public Service Commission.

19 Q How about the Georgia Public Service Commission?  
20 Isn't it true that the Georgia Public Service Commission ruled  
21 that the payment due date should be 30 days from the date of  
22 posting of an electronic invoice; correct?

23 A I believe that's correct. I'll take that subject to  
24 check. However, the parties, I will note, for all the DeltaCom  
25 arbitrations, we did reach a regional settlement that agreed to

1 something different than the commission ordered in those states  
2 where we do have orders that was agreed to by both parties and  
3 was not -- it was consistent with what BellSouth was seeking  
4 and is not based upon receipt date.

5 Q And the North Carolina Commission ruled 26 days from  
6 receipt; correct?

7 A I'll take that subject to check without looking at  
8 the actual order again. North Carolina, again, we came to a  
9 different conclusion with DeltaCom in the language that the  
10 parties ultimately agreed to for inclusion in their agreement.

11 Q Now, Ms. Blake, if I may, I'd like to pass out an  
12 exhibit and talk about this with you.

13 MR. HEITMANN: Mr. Chairman, if I could have this  
14 marked as the next exhibit. It is an excerpt, it's a Tennessee  
15 transcript, excuse me, "Tennessee Testimony Excerpt."

16 COMMISSIONER BRADLEY: We'll mark it as Exhibit 28.

17 MR. SUSAC: Yes, Chairman. I'm showing Exhibit 28.

18 (Exhibit Number 28 marked for identification.)

19 MR. HEITMANN: Mr. Chairman, may I proceed?

20 COMMISSIONER BRADLEY: Yes, you may.

21 MR. HEITMANN: Thank you.

22 BY MR. HEITMANN:

23 Q Now, Ms. Blake, for purposes of this arbitration, at  
24 least in other states BellSouth has measured payment timeliness  
25 based on BellSouth's date of receipt of the bill; isn't that

1 correct?

2 A No. I wouldn't agree with that.

3 Q Ms. Blake, in the Tennessee testimony offered by your  
4 colleague Mr. Morillo and adopted by you, do you see on Page  
5 20, for example, Lines 8 through 9, where it says, "In the past  
6 12 months BellSouth has paid or disputed 38 percent of the  
7 invoices received from KMC within 30 days of receipt of these  
8 invoices"?

9 A Yes, I see where it says that.

10 Q And in that same paragraph you measure BellSouth's  
11 payment record to Xspedius and to NuVox based on 30 days of  
12 receipt; correct?

13 A Yes, that was what was caveated here.

14 Q And that's the standard the Joint Petitioners are  
15 asking that this Commission approve for this agreement;  
16 correct?

17 A Well, that is what the Joint Petitioners are asking  
18 for in this proceeding. However, this testimony that you're  
19 discussing here was relative to Issue 102. I think it's very  
20 important to point out that based on some information provided  
21 last week in Alabama it's very clear BellSouth has a good  
22 payment history with the Joint Petitioners. As was discussed  
23 yesterday with Mr. Falvey in the bills, some of the current  
24 billing invoices from Xspedius, we are current.

25 Another factor that needs to be considered, the

1 definition of good payment history is agreed upon by the  
2 parties in the contract, and good payment is that no more than  
3 10 percent of the bills are paid 30 days beyond the due date.  
4 You can't -- from this data -- this is just an example of data  
5 that was provided in response to a question.

6 Q Now, Ms. Blake, were you present in Alabama when  
7 Ms. Johnson testified with respect to BellSouth's assertion  
8 that it has a good payment history with KMC?

9 A Yes, I was.

10 Q And do you recall Ms. Johnson's testimony that in the  
11 time frame stretching from February 1st, 2004, to March 13th,  
12 2005, BellSouth paid late 91 percent of the time?

13 MR. MEZA: Mr. Chairman, I'm going to lodge an  
14 objection to this line of questioning. He is attempting to  
15 enter into the record the testimony of a witness in another  
16 proceeding from another transcript through this line of  
17 questioning. Ms. Johnson is not here to testify. They've put  
18 on their direct case, they never raised this point. They never  
19 provided any proof in their direct case as to this point. So I  
20 think it's improper through cross-examination to establish a  
21 fact that they have not proven.

22 MR. HEITMANN: Mr. Chairman, Ms. Blake opened up this  
23 line of cross-examination by referring to the discussion of  
24 BellSouth's payment history and then referring to what  
25 transpired in this issue in the state of Alabama in particular.



1 MR. MEZA: But to ask her, do you remember  
2 Ms. Johnson testifying in another state, that's attempting to  
3 establish a fact that they have not established and they can't  
4 establish.

5 COMMISSIONER BRADLEY: Okay. Well, let me try it  
6 this way. Can you ask your question using -- in a different  
7 manner to get to what, what you're trying to get to without --

8 MR. HEITMANN: I suppose I could, Mr. Chairman, and I  
9 will. But if Ms. Blake remembers, she remembers, regardless of  
10 whether her counsel wants her to remember or not.

11 COMMISSIONER BRADLEY: Okay. But I think the issue  
12 is that it's not a part of the record. So can you rephrase  
13 your question?

14 MR. HEITMANN: Yes. In order to rephrase my  
15 question, Mr. Chairman, I'm going to pass out another exhibit.

16 Mr. Chairman, if I may, I'd like to have this exhibit  
17 marked "KMC Study of BellSouth Payment History."

18 COMMISSIONER BRADLEY: KMC Study of BellSouth --

19 MR. HEITMANN: Payment History.

20 BY MR. HEITMANN:

21 Q Now, Ms. Blake, have you studied this document?

22 COMMISSIONER BRADLEY: Just a minute. Just a minute.

23 MR. HEITMANN: I apologize.

24 COMMISSIONER BRADLEY: We will mark this as Exhibit

25 29.

1 (Exhibit 29 marked for identification.)

2 COMMISSIONER BRADLEY: Now you may proceed.

3 MR. HEITMANN: Thank you, Mr. Chairman.

4 BY MR. HEITMANN:

5 Q Ms. Blake, have you studied this document?

6 A I reviewed it from last week.

7 Q Do you see in the third from the last column a column  
8 marked "Days Late"?

9 A Yes.

10 Q And do you see next to the vast majority of invoices  
11 on this spreadsheet that there are numbers underneath that  
12 column indicating BellSouth payment is late?

13 A Yes. I see those numbers there. However, I think  
14 it's important to point out the definition of good payment  
15 history that the parties have agreed to, and I can read it to  
16 you. It's Section 1.8.5.1 from Attachment 7. Must have a good  
17 payment history based upon -- a good payment history shall mean  
18 that less than 10 percent of the nondisputed receivable balance  
19 is received over 30 calendar days past the due date. I'm  
20 assuming, and based on this chart, which I have no real details  
21 on, that the days late would be days past the due date. If you  
22 look at this chart, February '04 and March '04 are months 13  
23 and 14. If you look at the remaining pages, none of the dates  
24 are over 30 days. From the 12 months that's reflected on here  
25 from March '05 through April '04, 12 months of history, none of

1 the dates are over 30 days. BellSouth has, pays 100 percent of  
2 the bills in accordance with the definition of good payment  
3 history that the parties have agreed to.

4 Q Ms. Blake, would you agree with me that all the  
5 February '04 and March '04 dates indicating days late are, in  
6 fact, greater than 30?

7 A Yes, but this is April '05. That would not be  
8 considered in defining good payment history for purposes of the  
9 agreement.

10 Q And that's the new agreement; correct?

11 A Correct.

12 Q But even under the new agreement BellSouth still  
13 insists on the same payment due date provision that is, in  
14 fact, included in the old agreement, Ms. Blake; correct?

15 A Absolutely. And it's the same payment due date  
16 process that we use for our retail customers, that our systems  
17 were developed on, that this Commission and the FCC has found  
18 to be nondiscriminatory and compliant through our 271 process.

19 Q Now, Ms. Blake, under the current agreement would you  
20 agree with me that it includes a payment due date provision  
21 identical or substantially similar to the one BellSouth is  
22 proposing in this arbitration; correct?

23 A Yes.

24 Q And under that standard BellSouth is still late every  
25 single time there's a number in that column; correct?

1           A       Well, again, not knowing what the other provisions of  
2 the contract are, if we are late, the CLECs can charge us late  
3 payment charges and they do. And if we fail to pay on time, we  
4 should be subject to those late payment charges just like the  
5 Joint Petitioners.

6           Q       Ms. Blake, would you agree with me that by looking at  
7 this column that stretches out over the past year or so and  
8 looking at all of those entries in the "Days Late" column that  
9 include payments as late as 37 days late, that BellSouth, and  
10 perhaps as late as 47 days late, that BellSouth has difficulty  
11 paying within 30 days of the invoice date on KMC's bills?

12          A       No, I would not agree with that. And I believe, as I  
13 discussed in my testimony, we had quite a bit of difficulties  
14 with KMC, receiving the bills from KMC, as I stated in my  
15 testimony that you, we just talked about.

16          Q       Right. And let's review that testimony again, and  
17 that is the Tennessee excerpt that we pointed to. You, you  
18 caveat or you explain BellSouth's payment history, which again  
19 you say in the past 12 months BellSouth has paid or disputed  
20 38 percent of the invoices received from KMC within 30 days of  
21 receipt of these invoices.

22                   Ms. Blake, isn't it true that if you are calculating  
23 payment based on receipts, any problems you might have had in  
24 getting them have been already factored out of that statistic?

25          A       Yes, it could have been. However, there could have

1 been disputes. I think it states there following that sentence  
2 you just, just read, there have been numerous delays in  
3 providing the invoices and delays in payments and additional  
4 work effort. I mean, we've worked together and we've resolved  
5 that. I think you can see from the current data that BellSouth  
6 has a good payment history. And as was discussed -- and,  
7 again, I can't validate this report that Ms. Johnson provided  
8 in Alabama -- there's no dispute of disputed amounts that may  
9 be contained in these, these figures. So, again, that needs to  
10 be factored into the validity of this data.

11 Q Now, Ms. Blake, you can validate your own testimony  
12 in the state of Tennessee where, in fact, you did factor out  
13 disputed amounts, and you still only paid 38 percent of the  
14 time within 30 days of receipt; correct?

15 A And, again, that was just the basis of a calculation  
16 used here. BellSouth is not supporting a payment due date of  
17 30 days from receipt. We are consistent with the invoice dates  
18 or whatever the payment due date. I believe there was an  
19 invoice we discussed yesterday from Xspedius that had a 20-day  
20 due date interval, payment due date. The bill date was  
21 April 1st. It showed pay by April 20th. We're fine with that.  
22 We're not seeking to even make that 30 days. Whatever the  
23 invoice the Joint Petitioners send us and there's a due date on  
24 it, we will pay it. If we don't pay it by that due date, we're  
25 subject to late payment charges.

1           Q     Ms. Blake, I'd like to pass another exhibit out to  
2 you.

3                     Now, Ms. Blake, it's your position, I believe, that  
4 having invoices due 30 days from the date BellSouth stamps on  
5 them, regardless of whether BellSouth sends them out on that  
6 date or a week or so later or three days later, what have you,  
7 that it's some sort of industry standard; is that correct?

8           A     It's the standard BellSouth has used for a very long  
9 time as far as our billing systems goes. It's the same  
10 standard billing processes we use for all of our customers.

11                    MR. HEITMANN: Mr. Chairman, if I could have this  
12 marked "Global Crossing Contract."

13                    COMMISSIONER BRADLEY: Okay. We will mark this as  
14 Exhibit 30.

15                    (Exhibit 30 marked for identification.)

16                    COMMISSIONER BRADLEY: You may proceed.

17                    MR. HEITMANN: Thank you, Mr. Chairman.

18 BY MR. HEITMANN:

19           Q     Ms. Blake, would you agree with me that this is an  
20 excerpt from a telecommunications contract between Global  
21 Crossing and TriVergent Company now known as NuVox?

22           A     It says it's a telecommunications services agreement,  
23 yes, between those companies. It's an excerpt.

24           Q     And do you see on the second page that this  
25 particular agreement includes payment terms that are net 45

1 days?

2 A I see that that's what that subparagraph (c) says  
3 there. Again, this is a, appears to be a 2000 agreement. I'd  
4 also point out that I don't believe this is a 251  
5 interconnection agreement pursuant to the obligations of the  
6 Act. I don't see there's a -- I don't see this as a standard  
7 industry contract.

8 Q Now, Ms. Blake, in your testimony I think one of your  
9 main criticisms of the Joint Petitioners' contract proposal to  
10 have payments due 30 days from receipt is that BellSouth would  
11 have no idea of knowing when the Joint Petitioners would  
12 actually receive their bills from BellSouth; is that correct?

13 A That's generally correct. When a bill is produced,  
14 there's a bill date on it. It's a set bill date. We pull the  
15 data onto the bill and it is the same each month. At the time  
16 we produce the bill it's got the date on there, that same date.  
17 When it's released, whether electronically or manually, that  
18 date is already on the bill. And it's the same date every  
19 month; there's no guesswork. The Joint Petitioners as well as  
20 our customers will know what the due date is every month.

21 Q Now, Ms. Blake, in your direct testimony here you  
22 state, "BellSouth has no way to know when the customer actually  
23 receives the bill." Yet in your deposition testimony that you  
24 adopted for Mr. Morillo in North Carolina, Mr. Morillo, in  
25 fact, conceded that the electronic bill has a confirmation the

1 other side received the bill. How can that be consistent, Ms.  
2 Blake?

3 A I believe in the testimony we're predominantly  
4 talking about manually -- post office -- bills sent via the  
5 post office. We would have no way to know that the bill was  
6 received -- when the date the bill was received. I believe Mr.  
7 Morillo was correct, definitely was correct, and we do know  
8 when an electronic bill is sent. However, at the time that is  
9 sent and received, the bill already has a posted date on it.  
10 It's printed. It's like if you fax something, it's still got  
11 the same data on the record that shows the payment due date.  
12 The ability to modify the calculation of a payment due date  
13 upon the time we transmit the bill is not technically doable at  
14 this juncture, and I don't believe the Joint Petitioners are  
15 willing to pay for the system modifications that would be  
16 needed to affect their request.

17 Q Ms. Blake, isn't it true the United States Postal  
18 Service has handy products that would allow you to determine  
19 when the Joint Petitioners received a bill if you happen to  
20 mail it?

21 A I think they are handy and costly. There's a cost  
22 associated with that. Are the Joint Petitioners willing to pay  
23 the cost of return receipt requested?

24 Q Ms. Blake, isn't it true the Joint Petitioners  
25 receive a vast majority of their bills from BellSouth in



1 electronic format?

2 A I believe I've heard that testimony. And, again,  
3 that, back to what I just said, it doesn't change the fact that  
4 when we transmit the bill, the bill already has a date posted,  
5 printed, included in it that cannot be modified at the point in  
6 time that we transmit the bill.

7 Q Now, Ms. Blake, you have offered testimony in this  
8 proceeding, I believe in response to a Florida staff depo,  
9 saying that CLECs receive their bills an average between 4.8 to  
10 8.5 days; is that correct?

11 A I think I needed to do an errata for that 8 point. I  
12 had not had an opportunity to look at that depo transcript to  
13 that detail on the 8.5. I think I was referring to an  
14 attachment to Interrogatory 16, I believe, that had information  
15 reflected in there that indicated the aggregate measure for  
16 CLECs in Florida.

17 Q And you also provided an answer to an interrogatory,  
18 Staff Interrogatory Number 16, that said that your average was  
19 as high as five days in 2004; correct?

20 A If you can give me a second, I'd like to look at that  
21 16 response.

22 Q Yes.

23 A Can you ask your question again?

24 Q Ms. Blake, in response to Staff's Interrogatory  
25 Number 16 your answer was that BellSouth's average time frame

1 for delivering bills in 2004 was as high as roughly five days;  
2 correct?

3 A I think there was one month for one type of billing  
4 of the three different bill types, the different -- the two  
5 bill types and the three different products that are reflected  
6 on this report, there was one month in January '04 where it was  
7 over five.

8 Q And in Exhibit Number 19 BellSouth distributed an  
9 aggregate SEEMs report, correct, where you indicated that  
10 BellSouth had average delivery time frames from three to four  
11 or so days; correct?

12 A I don't have that. Is that something handed out  
13 during the course or is it the same Exhibit 16?

14 Q I believe it's Exhibit 19 handed out.

15 A Unless it's up here.

16 Q Yeah. We can show it to you. That's fine.

17 Are you familiar with that document, Ms. Blake?

18 A Yes. It's similar to the response we provided to  
19 Item Number 16. It's just more current, April '04 through  
20 March '05.

21 Q So, Ms. Blake, in support of your position on  
22 Issue 97 you have testified within this very proceeding at  
23 various times that BellSouth averages between 4.8 days to 8.5,  
24 as high as five days and three to four days?

25 A Well, as I mentioned earlier, I disagree with the

1 correctness of the Florida depo transcript which I have not  
2 done my errata on. I need to do that. But the 8 -- I think it  
3 was probably referring to another number in this report that  
4 was attached to Number 16 that we were discussing in the depo.

5           The measurements that are reflected on this report  
6 are the measures that this Commission has approved, and this  
7 reflects whether we're providing service at parity. As you can  
8 see in the far, far right column, we met the measure or  
9 provided, delivered the bills in essentially the same time and  
10 manner as we do for our own retail customers, which is the  
11 measure.

12           Q     Now, Ms. Blake, I believe you testified that you  
13 don't actually know what actually goes into the actual  
14 measurements that are used to formulate those calculations in  
15 that SEEMs report; correct? And that was in your Florida depo  
16 again?

17           A     Correct. Not to any great detail I'm not familiar  
18 with all the, the inputs to the results.

19           Q     Do you know if all bills issued by BellSouth in  
20 Florida are included in that report or do any drop out?

21           A     I don't know.

22           Q     If any drop out, does BellSouth still expect payment  
23 on those bills?

24           A     If any drop out?

25           Q     Yes. If any BellSouth bills are excluded from its

1 SEEMs calculation there, does BellSouth still expect payment on  
2 those bills?

3 A I would imagine we expect payment on every bill we  
4 send out. As far as what's in the SQM, I think it's fully  
5 documented before this Commission what's in the SQM and  
6 applicable for SEEMs penalties.

7 Q Now, Ms. Blake, would you agree with me that that  
8 SEEMs report does not show variances or ranges in the time  
9 frames which BellSouth delivered bills; correct?

10 A The report shows what the report is intended to  
11 measure consistent with the SQM measurements this Commission  
12 has approved.

13 Q And so it would not show, for instance, that in any  
14 given month whether NuVox, for example, received a bill 30 days  
15 after invoice date; correct?

16 A I don't believe that would show. This is a mean,  
17 mean time, which would be the average of all the bills sent  
18 out.

19 Q And in your testimony, your rebuttal testimony, I  
20 believe you state that if there were instances where a bill had  
21 been delivered late, a CLEC could request an extension of the  
22 payment due date; is that correct?

23 A Yes. Absolutely. We have contact with the Joint  
24 Petitioners, and probably every, every one of our customers  
25 that need to call us can call us and work out arrangements. If

1 there's an extenuating circumstance that the bill was delivered  
2 late for some reason, we will work with them. I think it's,  
3 it's just the normal part of the process. We've got collection  
4 reps that talk daily with these particular Joint Petitioners'  
5 collection folks and billing folks multiple times a day.

6 Q And when I asked you about this in Alabama, you were  
7 unable to tell me whether that extension would come with a  
8 waiver of the late payment charges; correct?

9 A Well, I need to correct you because we haven't had  
10 this cross-examination in Alabama yet.

11 Q Louisiana. I apologize.

12 A As far as any waiver of late payment charges, if  
13 there was a reason that it was BellSouth's delay in getting the  
14 bill and they needed more time, we would work those, those  
15 situations out.

16 Q Now, Ms. Blake, I'm going to pass another exhibit out  
17 to you, and this is going to be an excerpt from the Georgia  
18 testimony.

19 MR. HEITMANN: Mr. Chairman, if I could have this  
20 marked and labeled "Georgia Testimony Excerpt."

21 COMMISSIONER BRADLEY: We'll give it Exhibit Number  
22 31.

23 MR. SUSAC: That is correct, Chairman.

24 (Exhibit Number 31 marked for identification.)

25 COMMISSIONER BRADLEY: You may proceed.

1 MR. HEITMANN: Thank you, Mr. Chairman.

2 BY MR. HEITMANN:

3 Q Ms. Blake, is this -- would you agree with me that  
4 this is an excerpt of the rebuttal testimony of Carlos Morillo  
5 filed in the companion arbitration proceeding to this one  
6 before the Georgia commission?

7 A Yes.

8 Q And this testimony is testimony that you adopted;  
9 correct?

10 A Yes.

11 Q And do you see on Page 9 of this excerpt, beginning  
12 at Line 11, you provide yet another measure of the timeliness  
13 in which BellSouth delivers bills by stating, "CLECs generally  
14 have 22 days to review and pay bills"?

15 A Yes, I see that.

16 Q Would you agree with me that if CLECs generally have  
17 22 days to pay their bills and if most months have 30, that  
18 that seems to point to an 8-day delivery time frame?

19 A Yes. That, that would be the math to get there, yes.  
20 I agree with that.

21 Q And would you agree with me that that 8-day delivery  
22 time frame actually is relatively in line with the 7-day  
23 delivery time frame that NuVox and Xspedius arrived at in their  
24 own studies which they included in their direct testimony in  
25 this case?

1           A       Hang on one second. I need to check something.  
2 Because I think we've corrected this 22 days to be more  
3 appropriately 26 days.

4           Q       So your sworn testimony in Georgia and Tennessee and  
5 elsewhere is 22 days, but now in Florida you're swearing it's  
6 something else?

7           A       Well, when you look at the -- it could -- no, I'm not  
8 changing anybody's testimony. I'm saying it's more accurate to  
9 reflect, based on the parentheses there, generally four to six  
10 days after the bill period. I think it may have been just a  
11 calculation of the 22 days. I mean, the data is based on the  
12 SQM and the measures that we have, we are getting the bills out  
13 at parity with what our retail customers are.

14                   The Joint Petitioners are seeking something greater  
15 than what we offer our own customers, other retail customers as  
16 well as what they offer themselves and what they offer us in  
17 the invoices we saw yesterday.

18           Q       Ms. Blake, can you read the first sentence of that  
19 answer beginning on Page 9, Line 11?

20           A       Yes. "Answer. Regarding the allegation of untimely  
21 bills, from the time the electronic bill goes out generally  
22 four to six days after the bill period, the CLEC generally has  
23 22 days to review and pay its bills." There's the disconnect  
24 between the 22 -- if you add 22 plus four or plus six, it does  
25 not get you to 30. It could have been for the month of

1 February. That's 28 days.

2 Q And how much is 28 minus 6, Ms. Blake?

3 A 22. That's what I'm saying. This could have been an  
4 example based on a month that only had -- that worst case of  
5 February that only has 28 days.

6 Q So in February CLECs would have 22 days to pay their  
7 bills?

8 A Possibly. If they didn't get their bill until six  
9 days after the bill date.

10 Q And this is for electronic bills; correct?

11 A That's what this is reflecting. I think our  
12 experience is that electronic bills are received faster than  
13 U.S. Mail bills.

14 Q In fact, your testimony is that paper bills will  
15 certainly take longer; correct?

16 A Yes. Then I believe you said the Joint Petitioners  
17 would get the majority of their bills electronically.

18 Q Right. And so let's understand, I want to understand  
19 this process is that BellSouth stamps a bill date on a bill,  
20 and then it's not until four to six days later that it will  
21 electronically release that bill; correct?

22 A I think the six is very much an outlier. I think  
23 probably the normal is more three to four.

24 Q And this is still your testimony; correct?

25 A Yes. The testimony says what the testimony says.



1 Yes.

2 Q Okay. Ms. Blake, let's move to Issue Number 100.

3 Ms. Blake, would you agree with me that this is yet  
4 another of those pull-the-plug provisions where the ultimate  
5 remedies of suspension of access to OSS and termination of  
6 services are at stake?

7 A No. I will not agree with your characterization of  
8 the pull-the-plug and self-help. I believe this issue is, is  
9 the responsibility of the Joint Petitioners to pay their bills  
10 in accordance with when they're due and the treatment processes  
11 that BellSouth has to collect its rightfully owed charges.

12 Q Ms. Blake, if BellSouth suspended access to ordering  
13 systems for the Joint Petitioners, would the Joint Petitioners  
14 be able to continue to process service orders for their own  
15 customers?

16 A No. If the Joint Petitioners failed to pay their  
17 bills according to the contract and according to the notices  
18 that are sent, then BellSouth would be able to suspend access  
19 to the ordering systems.

20 Q Ms. Blake, if BellSouth terminated service to the  
21 Joint Petitioners, isn't it true that the Joint Petitioners'  
22 services would go down and their customers, in turn, would go  
23 down?

24 A If that was the step that it came to. And I believe  
25 it's been discussed, you know, the Commission would be fully

1 involved in that process to that point. If the Joint  
2 Petitioners had not paid their bill, had continued to not meet  
3 their financial obligations to BellSouth, we need the ability,  
4 as we do with our own retail customers, to stop providing  
5 services for which we're not getting paid.

6 Q And in this context BellSouth's pull-the-plug  
7 provision is not, not reciprocal, is it?

8 A As far as the -- maybe I'm not following what your  
9 question is --

10 Q BellSouth's proposed language wouldn't give the Joint  
11 Petitioners this right to pull the plug on BellSouth if  
12 BellSouth didn't pay, would it?

13 A I don't believe that part of it is, is in dispute. I  
14 think the parties have agreed that we can deny for nonpayment.

15 Q Ms. Blake, do you have a copy of the revised  
16 Exhibit A, Joint Petitioners?

17 A Yes, I do.

18 Q Can you turn to Pages 16 and 17?

19 A Yes. I'm there.

20 Q Can you see where in your language at the top of  
21 Page 17 it says, "BellSouth reserves the right to suspend or  
22 terminate service for nonpayment"?

23 A Yes.

24 Q Do you see the bolded word "BellSouth"?

25 A Yes, I do.

1 Q Does that indicate disagreement?

2 A Yes, it does.

3 Q Okay. BellSouth doesn't like it when there's a  
4 threat that somebody could turn its services dark, does it?

5 A Well, if BellSouth is not abiding by its obligations  
6 to pay its bills, that should be the consequence that we would  
7 be subject to.

8 Q Now, Ms. Blake, in this context the pull-the-plug  
9 provisions are for bill payment. And in your Florida  
10 deposition, Page 43, I believe you explained that each bill  
11 generates its own notice, and so that for every bill there  
12 could be one of the suspension or termination notices; correct?

13 A I believe I was discussing the previous practice we  
14 had in treating CRIS type billing that is generated through our  
15 CRIS bills that was previously generating a suspension notice  
16 individually per account. However, as was discussed in our  
17 response to Interrogatory 117, it fully lays out the treatment  
18 process at the account level that provides a notice that  
19 identifies all the accounts and the past due amounts,  
20 undisputed past due amounts that are due.

21 Q Ms. Blake, are several accounts usually included on a  
22 bill?

23 A I'm -- can you ask that again? I'm sorry.

24 Q Are several accounts typically included on an  
25 individual bill?

1 A Yes.

2 Q And so would you agree with me that if NuVox, for  
3 example, which gets over 1,100 bills a month from BellSouth,  
4 NuVox would be getting over 1,100 termination notices from  
5 BellSouth?

6 A No, that's not true.

7 Q No?

8 A No. The aging report that would be attached to the  
9 suspension notice and the one we discussed, I know it's a  
10 proprietary document, but in response to 117, identifies the  
11 amount that is due to avoid suspension. And attached to it,  
12 very easy to understand and no guesswork involved, identifies  
13 the account number, what's current charges, 30 days, 60 days,  
14 90 days past due, any disputed amounts. **And that is all netted**  
15 into the last column that identifies the total amount due to  
16 avoid suspension.

17 And within this report and as can be seen by reading  
18 through the entire interrogatory response, we communicate every  
19 other, or weekly at least for this one how much is due, what do  
20 they need to pay, their rep talks to our rep, we give them the  
21 current amount due, they provide payment statements. It's a  
22 very smooth process that is the same process -- we work with  
23 all of our customers, and there's many customers out there that  
24 have more than 1,100 bills a month.

25 Q Ms. Blake, when you first disclosed the modifications

1 to your billing systems during the Georgia hearing, I had asked  
2 you at that time why BellSouth couldn't agree to Joint  
3 Petitioners' language in light of those billing system  
4 modifications, and you weren't able to answer then.

5 Can you explain to us today why you still aren't able  
6 to agree to the Joint Petitioners' proposed language in Issue  
7 100?

8 A Yes. Because it still treats each individual bill.  
9 It does not treat the customer as a customer in trying to  
10 understand what they owe BellSouth for the services rendered  
11 for that entire company and what's all due. The Joint  
12 Petitioners would, would -- basically the position would revert  
13 us back to an individual notice for every invoice as a  
14 stand-alone, on a stand-alone basis, and we needed to treat the  
15 entire customer.

16 Q Ms. Blake, if you can turn to Page 16 of the revised  
17 Exhibit A. Is it still the case that BellSouth on a suspension  
18 or termination notice refuses to indicate on that notice in  
19 dollars and cents the amount that must be paid by the 15th day  
20 in order to avoid suspension?

21 A We do identify on our notice that we are sending out  
22 the amount that must be paid to avoid suspension.

23 Q And so you're saying that there's no reason why  
24 BellSouth can't agree to that language today; correct?

25 A The, the -- my understanding and reading of your

1 language, that each individual account would be in its own  
2 little, as we call it, a treatment process. So you'd send a  
3 notice for owing a thousand dollars. You'd have to pay the  
4 thousand dollars by the due date or 15 days after the due date  
5 to avoid suspension. This -- BellSouth's process as it exists  
6 and as it's been in existence gets the account treated in a  
7 manner consistent with what we do for all of our customers to  
8 treat the entire customer.

9 Q Is there anything from, preventing you from putting  
10 in dollars and cents on the notice that treats the entire  
11 customer?

12 A Well, if we can look at the discovery response, the  
13 notice did -- at that point in time that we sent the notice and  
14 what was going to be due by the suspension date is clearly  
15 reflected on the notice. And attached in the aging report the  
16 CLEC can clearly see what bills will be coming due by that  
17 suspension date. The bill date is part of the account number  
18 that's listed on the aging report. It's very common the Joint  
19 Petitioners, any customer can pick the bill dates as they  
20 desire. It's a very smooth and efficient process that is  
21 consistent with what we do with all of our customers in  
22 treating and getting paid for the services we provide.

23 Q Now, Ms. Blake, do you provide one of these aging  
24 reports with every single suspension or termination notice?

25 A Yes, I believe we do.

1 Q Is that a new policy?

2 A It's been the policy relative to the bills sent,  
3 generated through our CABS billing system. And as our carrier  
4 notification letter that was sent out, I believe it was  
5 February 10th, indicated that that process, the CRIS billing  
6 system would be changed to mirror the CABS treatment process.

7 Q Now if that's the case, Ms. Blake, why does your  
8 proposed language say that this would only be done upon  
9 request?

10 A If the Joint Petitioners only reacted to the initial  
11 notice and they waited until the day of the suspension and they  
12 didn't want to go through trying to figure out what other bills  
13 had become past due, they can call us. We will e-mail or fax,  
14 as we've done throughout this interrogatory response, updated  
15 aging reports that clearly indicates what is due to avoid  
16 suspension by what date.

17 Q Ms. Blake, you didn't answer my question. If you  
18 attached this aging report to every notice, why does your  
19 language say "upon request"?

20 A It's intended to mean upon request after the initial  
21 suspension notice.

22 Q So you're indicating that the aging report is not  
23 actually going to be attached to the initial suspension notice?

24 A No, I'm not saying that. The suspension notice is  
25 the suspension notice, and the aging report at the time the

1 suspension notice is sent is part of the suspension notice.

2 If there's subsequent, maybe they made some payments  
3 or there's some other disputes that have transpired since the  
4 suspension notice was sent, the Joint Petitioners can call us,  
5 as you can see in this discovery response, they call us weekly,  
6 we communicate and provide updated aging reports to give them  
7 the most current based on any payments they made.

8 Q Now, Ms. Blake, is the posting process for payments  
9 in dispute manual?

10 A I'm not familiar with the details of our remittance  
11 process.

12 Q Are you familiar at all with the details of your  
13 dispute recognition process?

14 A I believe that's clearly set forth in Exhibit A. I  
15 mean, excuse me, Attachment 7 lays out the dispute, billing  
16 dispute process that the parties have agreed to.

17 Q So is the answer no to my question?

18 A I'm not familiar with the details of the fundamentals  
19 and the details of how disputes are lodged and communicated  
20 between the parties, no.

21 Q So you can't testify today whether there is potential  
22 for lag in BellSouth's posting of payments or posting of  
23 disputes?

24 A I believe the parties have agreed that payment is --  
25 I might need to look at Attachment 7. There's a provision in



1 the contract where the parties have agreed when payment is  
2 considered received.

3 As far as disputes being posted, I think that's very  
4 clearly laid out or discussed in the agreement as well. And  
5 Attachment 7, I think it's Section 2, lays out the responses  
6 between the parties of when disputes are lodged as far as any  
7 disagreement or concern that a Joint Petitioner may have that a  
8 dispute has been posted or accepted, that can be clearly  
9 resolved through the communication between the companies and an  
10 updated aging report.

11 Q Ms. Blake, would you agree with me that if suspension  
12 of services and termination are potential outcomes, it would be  
13 good to know exactly what it is you need to pay in order to  
14 avoid those outcomes?

15 A Yes. And I think that's very much what we provide  
16 through our aging report and our suspension notices. As you  
17 can see in this discovery response, it's very clear to the  
18 particular CLEC that's involved in this, their representative  
19 talking with our representative on a weekly basis and  
20 reflecting payments posted, any discussion of, well, I've  
21 disputed this amount, I don't see it here, well, you know, they  
22 work that out and check through that. That's normal process,  
23 and that's what we've reflected in our language.

24 Q Ms. Blake, let's move to Issue 101.

25 Would you agree with me that this issue is about the

1 maximum amount of deposit BellSouth may request pursuant to  
2 this interconnection agreement?

3 A Yes.

4 Q And would you agree with me by maximum amount that  
5 BellSouth may request, it means that at times BellSouth may be  
6 entitled to the maximum amount and at other times it might be  
7 entitled to less?

8 A It's the maximum amount that could be obtained and  
9 held by BellSouth for security against the charges or services  
10 being provided to a customer.

11 Q Now BellSouth's position is that it should be  
12 entitled to a two-month maximum deposit; correct?

13 A Yes.

14 Q And in support of this position BellSouth's position  
15 is that that is the industry standard; correct?

16 A Yes. That's in BellSouth's standard agreement that  
17 we offer, it's consistent with what we do for a lot of our  
18 customers, and it's a regional contract.

19 Q Now, Ms. Blake, do you have a copy of Exhibit 14?

20 A What is it?

21 Q It's the GSST. We can give you an excerpt, if you  
22 don't.

23 A No, I don't.

24 MR. HEITMANN: Okay. Mr. Chairman, we'd like to  
25 approach the witness. We have an excerpt from what already is

1 Exhibit 14, which is BellSouth's GSST, so we won't need to mark  
2 this.

3 Mr. Chairman, may I proceed?

4 COMMISSIONER BRADLEY: You may.

5 BY MR. HEITMANN:

6 Q Thank you. Now, Ms. Blake, you say that this is the  
7 industry standard, yet isn't it true that you're requesting of  
8 the Joint Petitioners more than you can request of your Florida  
9 retail customers; correct?

10 A Yeah. I believe there's a Florida rule relative to  
11 the retail customers that matches what BellSouth has in its  
12 tariff that you handed me.

13 Q Right. And so under your tariff and under the  
14 Florida PSC's rules the maximum amount BellSouth can request is  
15 one month.

16 A One month local, two months tolls.

17 Q Right. And isn't it true that that also is the  
18 standard in the state of Alabama?

19 A I believe so.

20 Q And given that it is the standard here and in  
21 Alabama, how can you say it's the industry standard that two  
22 months is required?

23 A It's the standard in the industry that BellSouth has  
24 in its contracts with the customers like the Joint Petitioners.  
25 It's a regional contract, we're negotiating regionally. We'd

1 like the consistent ability to, to collect the maximum amount  
2 of two months. Again, I think it's been testified to we don't  
3 have a maximum of two months, I don't believe, on any of the  
4 Joint Petitioners.

5 Q So a one-month maximum should be good enough;  
6 correct?

7 A It may be good enough as far as one month may be.  
8 But the ability to have, to cover two months of deposits is  
9 what we need. I mean, if you look at the collection process,  
10 by the time we suspend, send a suspension notice, if it  
11 ultimately results in termination, that's another 30 days. So  
12 you've got at least 60 days under your belt. And then the time  
13 to facilitate actually disconnecting the service, you're up to  
14 over two months. So if we have less than two months security  
15 in those cases where there's financial risk, we would be left  
16 with, with not enough deposits to cover that risk.

17 Q Now, Ms. Blake, you would agree with me that this is  
18 one example or one instance where BellSouth is actually seeking  
19 to treat the Joint Petitioners, in fact, much worse than its  
20 own customers here in Florida?

21 A Well, I guess we'd entertain the idea to get two  
22 months from the Georgia commission, I mean, the Florida  
23 commission for our retail customers. But that is the rules of  
24 the Commission and we will abide by those rules for our retail  
25 customers. This is a contract we're entering into with the

1 Joint Petitioners. It's a regional position as far as applying  
2 the maximum deposit amount.

3 Q So you would agree with me that there is no parity  
4 obligation that you treat the Joint Petitioners exactly the  
5 same as your retail customers; correct?

6 A I think that Sections 251 of the Act speak to what  
7 our obligations are for nondiscriminatory access relative to  
8 UNEs and interconnection and resale. I believe these are the  
9 terms and conditions and the billing requirements that we're  
10 trying to establish to protect ourselves, and it's consistent  
11 with what we do with, with our other business type customers  
12 that, that may have financial risk.

13 Q Speaking of other business customers, Ms. Blake,  
14 isn't it true that BellSouth has agreed to a one-month maximum  
15 deposit cap with ITC^DeltaCom regionally?

16 A Yes, we have. But that needs to be considered in  
17 concert with the other provisions that the parties have agreed  
18 to relative to the deposit. The entire deposit and billing  
19 section that DeltaCom and BellSouth agreed to contained other  
20 provisions that made it appropriate for a one-month with  
21 DeltaCom. And, in fact, BellSouth has offered the Joint  
22 Petitioners the exact language we agreed to with DeltaCom and  
23 they refused.

24 MR. HEITMANN: Mr. Chairman, I'd like to pass another  
25 exhibit out and have it marked "DeltaCom Excerpt."

1 COMMISSIONER BRADLEY: We'll give it Number 32.

2 (Exhibit Number 32 marked for identification.)

3 MR. HEITMANN: Mr. Chairman, may I proceed?

4 COMMISSIONER BRADLEY: You may.

5 MR. HEITMANN: Thank you.

6 BY MR. HEITMANN:

7 Q Now, Ms. Blake, will you agree with me that this is  
8 an excerpt from the current interconnection agreement between  
9 BellSouth and ITC DeltaCom?

10 A Yes.

11 Q And would you agree with me that this interconnection  
12 agreement was finalized and filed with the Georgia Public  
13 Service Commission in some point in August of 2004?

14 A I believe so. I don't know the exact time frame, but  
15 around there.

16 Q Now in the deposition testimony of Carlos Morillo,  
17 which you adopt, on Pages 202 to 203 Mr. Morillo is asked  
18 whether BellSouth had ever agreed to a one-month maximum  
19 deposit cap and he didn't know. Do you have any idea why he  
20 wouldn't have known of such things as this DeltaCom agreement  
21 or Florida tariffs?

22 MR. MEZA: Mr. Chairman, I'm going to object to that  
23 line of questioning. He's asking Ms. Blake why Mr. Morillo,  
24 who is not here, didn't know an answer to a deposition  
25 question.

1 MR. HEITMANN: And Ms. Blake adopted that testimony.  
2 Mr. Morillo, let the record reflect, is a 30(b)(6) witness. He  
3 was the company's person with the most knowledge about this  
4 particular issue that BellSouth put out.

5 COMMISSIONER BRADLEY: Okay. But I don't think she  
6 can answer the question as to why he didn't answer it. So can  
7 you rephrase your question?

8 MR. HEITMANN: Yes. I'll simply move on to save  
9 time.

10 BY MR. HEITMANN:

11 Q Ms. Blake, will you agree with me that in, on Page  
12 6 of this excerpt, looking at the pagination on the top  
13 right-hand side, in Section 1.11.4 BellSouth has agreed to  
14 security deposit provisions with DeltaCom that say, "The amount  
15 of the security deposit shall not exceed one month's estimated  
16 billing for services billed in advance and two months' billing  
17 for services billed in arrears"?

18 A Yes, I see that. And as I mentioned previously, this  
19 agreement was based upon a settlement of numerous issues of  
20 which the maximum amount of deposit was one. Financial  
21 criteria that will be used to evaluate the need for a deposit  
22 is different, as well as the agreed upon payment due date. All  
23 of those factors went in to reaching a settlement with DeltaCom  
24 that resulted in this, this agreement. And as I stated  
25 earlier, we offered the Joint Petitioners this exact, the same

1 provisions all totalled that we offered to DeltaCom and they  
2 refused.

3 Q Ms. Blake, when you offered these provisions to the  
4 Joint Petitioners, isn't it true that the Joint Petitioners  
5 already had settled with you on financial criteria that would  
6 be used to establish deposit?

7 A Yeah, I believe they have. But, again, that's the  
8 point of negotiations. It was gives and takes. As I believe  
9 Mr. Falvey said numerous times, you get something for something  
10 else.

11 Q And, Ms. Blake, isn't it true that the Joint  
12 Petitioners have conveyed to you that if you are willing to  
13 give them this Section 1.11.4 on its own, we can settle  
14 Issue 101?

15 A Yes, I have heard you say that. Again, that's not --  
16 the intent of a negotiation is to give and take, and BellSouth  
17 had offered the exact same gives and takes that it offered to  
18 DeltaCom, and you can't take out this one provision without  
19 looking at the others. That's how it got into DeltaCom's.  
20 They made changes to the financial criteria that would be  
21 assessed to determine the need for the deposit, they agreed to  
22 a payment due date, we agreed jointly, and that's how it ended  
23 up in their agreement as it is.

24 Q So, Ms. Blake, just to be clear, the DeltaCom  
25 agreement in Florida when it is finalized will include this



1 provision, this one-month maximum deposit provision?

2 A As well as the other provisions that we negotiated  
3 and settled with DeltaCom on a regional basis including payment  
4 due date and including any other financial criteria that the  
5 parties will use to evaluate the need for a deposit.

6 Q And so, Ms. Blake, would you agree with me that at  
7 least in the states of Florida and Alabama it's certainly not  
8 BellSouth's standard practice to have a two-month maximum  
9 deposit?

10 A From the tariffs that we have and the rules and the  
11 requirements that are put upon us by the joint -- by the  
12 Commission relative to our retail customers, it's different  
13 than what we're proposing with the Joint Petitioners and what  
14 we currently have in all of our agreements and what we propose  
15 in our standard.

16 Q Ms. Blake, let's move to Issue 102. Would you agree  
17 with me that this issue is one that has evolved into an issue  
18 that is not about whether a deposit offset provision will be  
19 included in the agreement, but rather about what kind of  
20 deposit offset provision will be included; correct?

21 A Yes. I believe our initial position is that it's not  
22 appropriate at all. However, in an effort to compromise,  
23 BellSouth offered language that we think should be acceptable  
24 to the Joint Petitioners and that we would agree to an offset  
25 on certain charges and making sure those charges account for

1 disputed amounts.

2 Q Now, Ms. Blake, initially you had objected to the  
3 offset proposal on grounds that it was not administrable; is  
4 that correct?

5 A Yes, it could be quite cumbersome. I think, you  
6 know, our druther is to not have any offset; however, in an  
7 effort to compromise, we offered the language we have proposed.

8 Q Now, Ms. Blake, in response to the Florida staff's  
9 50th interrogatory, you suggested that this offset provision  
10 could result in monthly conflicts over deposits; is that right?

11 A Can you say that again? I didn't understand one of  
12 the words you said.

13 Q In response to the Florida Staff's Interrogatory  
14 Number 50, I believe you responded to the effect that an offset  
15 provision could create monthly conflicts regarding deposits; is  
16 that right?

17 A Based on the Joint Petitioners' proposed language,  
18 that could be -- that's the concern we have, the way their  
19 language would be implemented.

20 Q And can we turn to the Joint Petitioners' proposed  
21 language, which appears on Pages 17 to 18 in the revised  
22 Exhibit A?

23 A Yes.

24 Q Ms. Blake, how often is it that BellSouth requests a  
25 security deposit from its CLEC customers?

1           A       I'm not sure there's a set time that we request them.  
2 We typically do financial analysis no, no more than an annual  
3 basis, of course, unless something dramatic happens that may  
4 cause us concern about the financial stability of a particular  
5 customer.

6           Q       So you would agree with me that typically it's no  
7 more than once a year that BellSouth requests a deposit or an  
8 adjustment to a deposit?

9           A       Yes. That's what I just said.

10          Q       Okay. So if it is only once a year that this happens  
11 and -- actually let me strike that question.

12                   Ms. Blake, you would agree with me also that the  
13 Joint Petitioners have proposed that BellSouth would  
14 essentially get the offset returned once it has established a  
15 good payment history as defined in the contract; correct?

16          A       Yes. That's the Joint Petitioners' language.

17          Q       And this good payment history as defined in  
18 Section 1.8.5.1 is the same definition of good payment history  
19 that you were referring to in your responses to my  
20 cross-examination with regard to Issue 97; correct?

21          A       Yes.

22          Q       Now the bolding in the CLEC language indicates that  
23 you don't agree to be bound by the definition of good payment  
24 history in this context; isn't that right?

25          A       Not in the context of facilitating an offset

1 provision. It's not appropriate.

2 Q Would you agree with me that the definition of good  
3 payment history requires a certain performance over a 12-month  
4 period?

5 A Yes.

6 Q And so if BellSouth requests a deposit once a year  
7 and the refunding of the offset is something that's based on a  
8 12-month performance, how is it possible that it could result  
9 in monthly disputes over deposits?

10 A I guess the way to look at it is if we can't ask for  
11 a deposit or you would be offset by, by what we owe, and if  
12 during a 12-month period we do not exhibit a good payment  
13 history based on the definition in the contract, we would not  
14 be able to receive the deposit that we are owed. There's a big  
15 distinction between slow pay and needing a deposit to pay, to  
16 secure an account.

17 If BellSouth is slow in paying its bills, it would be  
18 billed, appropriately should be billed late payment charges.  
19 We need the security of a deposit to protect our financial risk  
20 of the future.

21 Q Ms. Blake, isn't it true that BellSouth doesn't pay  
22 late payment charges to Xspedius?

23 A I believe I saw a note on one of the bills that was  
24 discussed that there was a settlement agreement for late  
25 payment charges, and I can't speak to what was involved in that

1 settlement agreement. It is what it is.

2 Q But you can agree with me that at least with respect  
3 to one of the Joint Petitioners by agreement BellSouth doesn't  
4 pay late payment charges; correct?

5 A And I would imagine -- correct. And there must have  
6 been something in it for Xspedius to agree to do that. I can't  
7 speak to the details of what was given and taken during that  
8 settlement agreement that may make it appropriate for late  
9 payment charges to be waived and that appeared to be okay with  
10 Xspedius.

11 Q Now, Ms. Blake, just to be clear, you like the  
12 definition of prompt payment history or good payment history as  
13 it's called when you're requesting a deposit from a CLEC, but  
14 you don't agree to be bound by it in this context.

15 A The appropriateness of an offset is, is not needed  
16 relative to a deposit. Offsetting on whether we pay slow or  
17 not, as I stated before, isn't a bearing on the need for a  
18 security deposit if a customer is a financial risk to us. If  
19 we pay slow and withhold that payment and take that amount out  
20 of what the deposit amount is, if that customer goes bankrupt,  
21 we can't use the money we owe that CLEC to pay off their bill.  
22 We still owe the CLEC that money. So it's mixing apples and  
23 oranges basically.

24 Q Ms. Blake, when e.spire, for example, went bankrupt,  
25 isn't it true that BellSouth actually paid e.spire money and

1 not the reverse as a result of the bankruptcy?

2 A I'm not familiar with the particulars of the e.spire  
3 bankruptcy. I would doubt very seriously we get a dollar for  
4 dollar on every bankruptcy.

5 Q But you don't know?

6 A I believe we did find some proprietary discovery  
7 responses on some examples of bankruptcies over the last few  
8 years that shows we didn't come out so, so great on every one  
9 of them.

10 Q Some of them you came out just fine; correct?

11 A I can't speak to every one of them, some of them, all  
12 of them. We may have. I don't know. I don't know the details  
13 of every one of them. I'm speaking based on the discovery  
14 responses we provided and the information I'm aware of.

15 Q Okay. Now -- so there -- within this offset  
16 provision issue there are sort of two subissues. One is when  
17 you get the offset back, and we've discussed at some length the  
18 Joint Petitioners' proposal. Now BellSouth's proposal is that  
19 within ten days of BellSouth's payment of such undisputed past  
20 due amounts to Customer Short Name, which is the name for Joint  
21 Petitioners, Customer Short Name shall provide additional  
22 security deposit necessary to establish the full amount of the  
23 deposit BellSouth originally requested.

24 Isn't it true that under your proposed language here  
25 BellSouth would be entitled to an amount actually greater than

1 the offset?

2 A No, that's not the intent of BellSouth's language.  
3 And I believe we had this discussion in Louisiana. The intent  
4 of BellSouth's language is if we withheld or had not paid  
5 \$10,000 to the Joint Petitioners and we were asking for a  
6 \$50,000 deposit, therefore, they would only pay \$40,000 until  
7 we paid the \$10,000. And once we paid the \$10,000 that we owed  
8 the Joint Petitioner, they would be expected to pay the  
9 remaining \$10,000 to get it to the original \$50,000 deposit  
10 request that the parties would have agreed is appropriate.

11 Q Okay. Now the second aspect of this subissue, the  
12 second subissue of this offset issue is whether or not the  
13 offset should include nondisputed amounts; correct?

14 A Correct.

15 Q It is BellSouth's position that nondisputed amounts  
16 should not be included in the offset and it is the Joint  
17 Petitioners' position that disputed amounts should be included  
18 in the offset; correct?

19 A Yes, which is totally contrary to the Joint  
20 Petitioners' position on Item 100.

21 Q Did the parties agree on Item 100 that nondisputed  
22 amounts should not be included? You say it's Joint  
23 Petitioners' position. It's actually BellSouth's, too;  
24 correct?

25 A Correct. Yeah. Both parties agree -- I probably

1 nisspoke. Both parties have agreed that disputed amounts  
2 should not be expected to be paid.

3 Q And that's a different issue than this one; correct?

4 A Not necessarily. The result is the same. You're  
5 expecting payment from BellSouth on charges you billed us. If  
6 we've got a dispute, we shouldn't be penalized for that dispute  
7 by being responsible for the entire amount or having that  
8 entire amount without netting out disputed amounts.

9 Q And were you here when Mr. Falvey testified that  
10 BellSouth in the past has run up disputed amount tabs as high  
11 as \$25 million with e.spire?

12 A Yes, I heard Mr. Falvey say that. And I disagree  
13 with a lot of what Mr. Falvey said.

14 Q Do you have any basis for disagreeing with  
15 Mr. Falvey's figure other than your lay person's opinion?

16 A I'm not familiar with what transpired back -- I think  
17 he was talking about the ISP complaints and all the processes  
18 years ago. I don't, I don't know the relevance of that where  
19 we are now. I think the current bills that Mr. Culpepper  
20 showed and was part of the record show BellSouth is current on  
21 its bills. There's very small amounts of disputes.

22 Q Can you guarantee to us and this Commission that  
23 BellSouth's performance will be as good once this arbitration  
24 case is settled?

25 A I don't know that that's appropriate for me to



1 guarantee.

2 Q Is the answer no?

3 A I'm not -- it's not my position. I mean, I'm not in  
4 a position to guarantee BellSouth's performance. I think the  
5 contract will dictate BellSouth's performance and what we're  
6 obligated to do.

7 Q So the answer is no; correct?

8 A I'm not sure that requires a yes or no answer. I  
9 think the contract sets forth the obligations of both parties.  
10 If there's language the Joint Petitioners want to propose that  
11 would require BellSouth to guarantee something, that's subject  
12 to negotiations, and that's not something we're arbitrating  
13 here.

14 Q Ms. Blake, you mentioned that the \$25 million  
15 receivable --

16 COMMISSIONER BRADLEY: Let's take a, about a  
17 five-minute recess, give the court reporter time to rest her  
18 hands.

19 (Recess taken.)

20 COMMISSIONER BRADLEY: I'd like to call this meeting  
21 back to order.

22 BY MR. HEITMANN:

23 Q Ms. Blake, would you agree with me that Item  
24 104 involves yet another instance where BellSouth is trying to  
25 circumvent or create an exception to the agreement's dispute

1 resolution provisions; correct?

2 A BellSouth's language sets forth a different process  
3 to use for disputes relating to deposits. Yes.

4 Q And would you agree with me that for the past five,  
5 seven or more years that there has not been a different dispute  
6 resolution provision applicable to deposits; correct?

7 A Yes, that is correct. However, we've had situations  
8 actually here in Florida with a particular -- with IDS that we  
9 were looking for a deposit based on our current agreement with  
10 them. We were not able to secure a bond during the pendency of  
11 that dispute being heard before the Commission. We ended up  
12 prevailing. We were correct in seeking the deposit we were  
13 asking. And this provision in our, that we're proposing here  
14 is to prevent that exact process from having to happen. We  
15 need to have security during the pendency of a deposit -- of  
16 the dispute. Excuse me.

17 Q Ms. Blake, are you alleging that the Florida PSC  
18 didn't resolve that deposit dispute in a timely fashion?

19 A I'm not saying that at all. I think the, as far as  
20 them rejecting our ability to obtain a bond during the pendency  
21 of it was -- they couldn't do that because there was not  
22 provisions in the contract with IDS that allowed us to do that.  
23 We're seeking those provisions in this contract to allow us to  
24 do that. And however the dispute runs its course through the  
25 Commission is fine. But during the pendency of that we don't

1 want to be left unsecured.

2 Q Ms. Blake, are you familiar with the most recent  
3 deposit request made by BellSouth to NuVox?

4 A Yes. I believe we have not all the details of it,  
5 but I know there has been discussions between actually  
6 Mr. Russell and our representative that handles deposits and  
7 trying to work through information relative to their financial  
8 status pending their merger with NewSouth, and we are working  
9 with, with NuVox to obtain the necessary information.

10 Q Ms. Blake, would you agree with me that a year or so  
11 ago BellSouth requested a deposit of roughly \$6 million from  
12 NuVox?

13 A I'm not familiar with all the details. I know  
14 there's been evaluations of their financial health over the  
15 last years, I'm sure, with all the mergers and figuring out the  
16 financial risk. It's just a normal process.

17 Q Would you agree with me that that \$6 million deposit  
18 request actually resulted in a refund that left BellSouth with  
19 a deposit of \$1 million and that was a negotiated resolution of  
20 that request?

21 A I'm not familiar with the details. That could be the  
22 process. I think it's very clear that BellSouth and, and its  
23 customers worked together to negotiate an appropriate deposit.  
24 I mean, I think the language that is not in dispute for this  
25 item is relative, that the parties will work together to

1 determine the need for or amount of a reasonable deposit.  
2 That's not in dispute. That's what we do.

3 Q And your language in 103 and 104 adds on to that  
4 process which has worked for the past several years without  
5 controversy, it adds on the requirement that if this agreement  
6 isn't reached within 30 days, BellSouth either gets to pull the  
7 plug on Joint Petitioners or Joint Petitioners must go to the  
8 Florida Public Service Commission and up to eight others to  
9 avoid you having pulled the plug on them; correct?

10 A No. I disagree with that. I believe, as  
11 Mr. Ferguson said yesterday, if the CLEC fails to remit the  
12 deposit, does nothing within 30 days, we should have the right  
13 to terminate or suspend the service for failure to pay that  
14 deposit. If they're in -- we're in discussions with the Joint  
15 Petitioners, they dispute the amount, don't think it's  
16 reasonable, think it should be less, that kicks it to this  
17 provision 1.8.7 that sets forth how that will be handled. And  
18 we are seeking this provision because we have experience with a  
19 situation, like I said a minute ago, with IDS that we were not  
20 able to obtain, post a bond during the pendency of a deposit  
21 dispute.

22 Q Now, Ms. Blake, under your proposal for 1.8.7, if a  
23 Joint Petitioner disagrees with your request and the parties  
24 are negotiating and BellSouth doesn't get the request it wants  
25 within 30 days, BellSouth could still pull the plug on the

1 Joint Petitioners; correct?

2 A If we're in negotiations and there appears to be a  
3 dispute the Joint Petitioner is having with the deposit we're  
4 requesting, Section 1.8.7 kicks in.

5 Q Ms. Blake, if there's a dispute and the Joint  
6 Petitioners don't within 30 days seek resolution of that  
7 dispute from this Commission and eight others, because deposit  
8 requests are made regionally, aren't you seeking the right to  
9 pull the plug on the Joint Petitioners?

10 A No, that's not the case at all. When you read our  
11 language in concert with Section 1.8.6, if they fail to remit,  
12 it's subject to Section 1.8.6. In the event that they fail to  
13 remit the deposit requested, pursuant to this section, which  
14 the parties have agreed what the criteria will be to request a  
15 deposit that's not in dispute, then they're subject to  
16 termination if they do nothing.

17 If they are in contact with us and we have a dispute  
18 or they're questioning the amount, then we go to 1.8.7 that  
19 says if they don't agree -- because we will have worked  
20 together to determine the need for and amount of a reasonable  
21 deposit. If they don't agree with the amount or the need, then  
22 they should file the petition with the Commission to resolve  
23 that dispute. And then we will work together to resolve it and  
24 that we will not terminate service during the pendency of such  
25 a proceeding, provided that the Joint Petitioners post a

1 payment bond in the amount of 50 percent of the amount we  
2 requested. That's the provisions of our language.

3 Q Now, Ms. Blake, you seek to change something that has  
4 worked, in fact, for the Joint Petitioners and BellSouth over  
5 the course of five or so years or seven or more, where you seek  
6 to shift now the burden of filing dispute resolution on to the  
7 Joint Petitioners exclusively; correct?

8 A Well, again, as it's been discussed, this agreement  
9 can be adopted by other CLECs. We have experience with other  
10 CLECs. That is the exact reason we're seeking this language,  
11 so that we will not be left unsecured during the pendency of a  
12 dispute.

13 Q Ms. Blake, if your provision was in effect during the  
14 last request BellSouth made to NuVox, NuVox could have  
15 potentially have had to file a bond or post a bond of  
16 \$3 million; correct?

17 A Correct.

18 Q When actually in that instance the parties negotiated  
19 a refund of deposit monies where NuVox had with BellSouth and  
20 the final result was a \$1 million deposit.

21 A That could have been the ultimate outcome had that  
22 come to dispute. It could have been we worked that out and  
23 ended up not going. We did work that out. There wasn't a  
24 complaint filed in that dispute or that deposit request with  
25 NuVox.

1 Q In that case your provision would have worked to have  
2 caused NuVox to have filed a deposit bond \$2 million in excess  
3 of what the parties negotiated was appropriate. **How is that**  
4 fair?

5 A Because that is -- the language we are proposing is  
6 set forth to protect in those cases where there is a dispute,  
7 BellSouth has taken the steps to obtain a deposit or request a  
8 deposit in accordance with the contract that the parties, **and**  
9 the provisions the parties have already agreed to of when a  
10 deposit is necessary. If there's discussions that need to take  
11 place, they will take place during this time period prior to  
12 the Joint Petitioners going or filing a dispute with the  
13 Commission.

14 Q Ms. Blake, do you understand that posting a bond is  
15 not a ministerial act?

16 A I'm not familiar with the details of what would be  
17 involved in posting a bond. I don't know if it's similar to  
18 like a bail bondsman, which I'm not familiar with either, but.

19 Q Did you -- Ms. Blake, are you, are you aware that  
20 posting a bond could cause -- a bond posting requirement could  
21 require a CLEC to renegotiate credit facilities and the like?

22 A That may be an outcome. But if we were requesting  
23 the full amount, which we were, are requesting a full amount of  
24 deposit, any reassessment with their creditors would have to  
25 take place anyway. We're executing the agreement in accordance

1 with the provisions of the agreement that allow us to assess  
2 the financial risk of the CLEC, look at the payment history,  
3 all the criteria that the parties have agreed to in Section  
4 1.8.5. It's not in dispute. We go through those steps,  
5 objective and independent criteria, and make that determination  
6 and request the deposit in accordance with what the parties  
7 have agreed.

8 Q Ms. Blake, you mentioned that there are objective  
9 criteria for requesting a deposit in Section 1.8.5. You have  
10 to agree with me, however, that those criteria do not point to  
11 a particular and precise amount within the zero to either a  
12 one-month cap or two-month cap that the parties are suggesting  
13 in this agreement.

14 A That is correct. It doesn't point to the dollar  
15 amount. But it does assess the risk involved and the maximum  
16 amount of the deposit. Whatever is determined relative to  
17 Issue 101 would determine the amount, maximum amount that we  
18 could get to make sure we are secured.

19 Q And so, Ms. Blake, the actual amount of deposit that  
20 BellSouth would be entitled to in any instance will be the  
21 result of a subjective determination; correct?

22 A No. That's based on the provisions the parties have  
23 agreed to in the contract based on the subjective criteria,  
24 financial evaluation, cash flow statements. That assesses the  
25 risk. It's the same assessment we do for all of our customers.



1 And based on that assessment, whether we need to be secured for  
2 up to the maximum amount of the deposit will be determined.

3 Q Now, Ms. Blake, the standards in Section, the  
4 criteria in Section 1.8.5 apply not only to BellSouth's  
5 receipts of a deposit, but they also apply to one of the Joint  
6 Petitioner's refund requests for deposits; correct?

7 A Yes. I believe that's in another section regarding  
8 refunds, and the parties have not -- are not disputing that  
9 language.

10 Q Ms. Blake, when BellSouth's requesting a deposit, in  
11 essence provision -- your provision for Item 104 says that if  
12 the CLEC disagrees, they have got to go file complaints at all  
13 the state commissions and post the bond for 50 percent of that  
14 amount during the pendency of those complaints; correct?

15 A That's the language.

16 Q If BellSouth disagrees with a CLEC request for a  
17 deposit refund, is BellSouth willing to agree that BellSouth  
18 has to go file complaints in nine different state commissions  
19 and during the pendency of those complaints give the CLECs  
20 50 percent of their deposit back?

21 A That's not an issue in this arbitration. The  
22 language in 1.8.10 sets forth how deposits will be refunded and  
23 what criteria will be used to determine the need to refund the  
24 deposit. If we're keeping a deposit, we're paying interest on  
25 that deposit if it's a cash deposit.

1 Q So, Ms. Blake, what's good for the goose is not good  
2 for the gander in this instance, is it?

3 A I'll disagree with that analogy there. It's a  
4 different issue. A refund of deposits is not in dispute. The  
5 parties have agreed. I'm not sure why we're discussing  
6 refunds.

7 Q Ms. Blake, if there's a dispute over whether the  
8 Joint Petitioners are entitled to a deposit refund, isn't it  
9 true that the Joint Petitioners would actually have to go file  
10 a complaint to this Commission and any other in order to get it  
11 resolved if the parties were unable to negotiate a resolution?

12 A Yes. I believe that would be appropriate, given if  
13 there's a dispute over a refund or a need for a refund, that  
14 would be provided pursuant to the dispute resolution procedures  
15 in the general terms and conditions. This is a different  
16 situation we're dealing with in 104.

17 Q And so with respect to deposits, whether it's coming  
18 in to BellSouth or coming back to the Joint Petitioners, any  
19 time there's a dispute it's up to the Joint Petitioners to file  
20 complaints here and at eight other state commissions; correct?

21 A It's only up to the Joint Petitioners to file a  
22 dispute if they don't feel we've complied by the agreement.

23 Q Ms. Blake, are you aware of any instance where  
24 BellSouth has requested a deposit from the Joint Petitioners  
25 where the deposit BellSouth actually got was the same amount

1 originally requested?

2 A I can't speak to every instance we've requested a  
3 deposit. I know there's negotiations that go on. I think  
4 that's a very clear and very appropriate part of the process to  
5 discuss situations as we've had with, as you mentioned,  
6 Mr. Russell and NuVox and try to obtain the financial wealth,  
7 health of a company and, and assess our risk based on their  
8 financials.

9 MR. HEITMANN: I have nothing further for Ms. Blake.

10 MS. SCOTT: Staff does have some questions, Chairman.

11 CROSS EXAMINATION

12 BY MS. SCOTT:

13 Q Good morning, Ms. Blake.

14 A Good morning.

15 Q My first question is in regards to Issue 26. In your  
16 direct testimony you stated that BellSouth does not have any  
17 current separate negotiated or commercial agreements for  
18 commingling Section 271 services. **Is that statement still**  
19 **correct? Page 27, Lines 5 through 11, in your direct**  
20 **testimony.**

21 A Yes. Okay. Can you say that cite again? I'm sorry.

22 Q Page 27, Lines 5 through 11.

23 A In my direct?

24 Q Yes, ma'am.

25 A Okay. Can you ask your question again? I'm sorry.

1 Q You stated that BellSouth does not have any current  
2 separate negotiated or commercial agreements for commingling  
3 Section 271 services.

4 A Well, I may be on the wrong page. That's not what  
5 that says. But I can probably try and answer your question.

6 The commercial agreements BellSouth does have is for  
7 providing a complete service for UNE-P. This reference to  
8 Section 271 elements would be the stand-alone switch port. And  
9 if the question is do we have an agreement to commingle a  
10 switch port, a 271 switch port with a 251 loop, not in that  
11 context. It becomes -- it's not a commingled. It's a  
12 commercial offer for UNE-P through our commercial agreements.

13 Q You might also want to refer to Interrogatory 80.

14 A Okay. 80? Is that in the third set?

15 Q Does that help clarify my question?

16 A Right. The commercial agreements we have are not  
17 provided pursuant to any commingling obligation.

18 Q Does BellSouth anticipate any demand for such  
19 agreements in the future?

20 A Not that I can see how we would. I believe our  
21 commercial agreement would satisfy any CLEC's need for what  
22 formerly was known as UNE-P.

23 Q Okay. My next question deals with Issue 51(c).

24 A 51(c)?

25 Q Yes, ma'am.

1 A Okay.

2 Q Are you familiar with Joint Petitioners' list of  
3 auditing firms that they provide as a late-filed exhibit?

4 A I don't think I have that here with me, but I do  
5 recall there was several auditing firms provided there. I  
6 don't know every one of them.

7 Q We have a copy of that we can provide you, if you  
8 would like.

9 A Okay. That's fine.

10 MS. SCOTT: Chairman, may staff approach the witness  
11 with a copy?

12 COMMISSIONER BRADLEY: Yes.

13 MS. SCOTT: Thank you.

14 BY MS. SCOTT:

15 Q Did BellSouth find any of these firms objectionable  
16 that you know of?

17 A Not that I know of. From the standpoint of -- again,  
18 I'm not that familiar with the auditing process and any  
19 information relative to any of these auditors in any  
20 specificity.

21 Q Do you believe that it may be possible for BellSouth  
22 and each of the Joint Petitioners to reach an agreement on a  
23 list of auditing firms prior to BellSouth ever requesting an  
24 audit?

25 A I don't believe it would be possible for the parties

1 to agree on the auditor at all. I think it's very clear from  
2 what Mr. Russell said yesterday. And it's kind of ironic, KPMG  
3 is the first one on the list here, and they're not even willing  
4 to use them anymore because they're questioning the  
5 independence of KPMG. What would prevent them from questioning  
6 the independence of any auditor just to delay the audit?

7 Q Are there any particular auditing firms on that list  
8 that you would object to?

9 A I'm not in that part of our organization that  
10 actually conducts the audit that would have any objection.  
11 Again, I think it's important to recall that the TRO does not  
12 require the parties to mutually agree. I think it would result  
13 in delay of the audit. I don't think there's any auditor that  
14 BellSouth, that BellSouth and the parties could mutually agree  
15 on. I don't think the Joint Petitioners would ever agree that  
16 an auditor is independent enough.

17 Q Now, Ms. Blake, with regards to Issue 2, I noticed  
18 that you didn't address it in your introduction.

19 A Right.

20 Q Could you give staff an update on that issue? Has it  
21 been resolved or withdrawn or --

22 A The parties are still negotiating language relative  
23 to the definition of end user versus customer. There are  
24 conversations and exchanging of language going on that is being  
25 considered, and I believe the parties had before the hearing

1 agreed not to cross witnesses on that issue.

2 Q Yesterday CLEC witness Mr. Mertz spoke of BellSouth's  
3 SQM when he was answering a question in regards to Issue 97.  
4 Were you in the room at that time?

5 A I believe I was, yes.

6 Q Mr. Mertz used two terms in his discussion, average  
7 and mean. He stated that he believed the two terms had  
8 different meanings. Do you have the same belief?

9 A No, I don't. I believe an average and a mean are  
10 synonymous.

11 MS. SCOTT: Thank you. I have no further questions,  
12 Chairman.

13 COMMISSIONER BRADLEY: Commissioners?  
14 Commissioner Davidson.

15 COMMISSIONER DAVIDSON: Thank you, Chairman.  
16 If you could, turn to Issue 97, please.

17 THE WITNESS: I'm there.

18 COMMISSIONER DAVIDSON: In your opinion, while  
19 BellSouth doesn't agree with Joint Petitioners' language, what  
20 is unreasonable about that position?

21 THE WITNESS: As far as calculating a due date based  
22 on receipt would require significant modifications to not only  
23 our billing systems, which are the same systems we use for all  
24 of our customers, our CRIS and CABS billing systems, **it would**  
25 require modifications to our, the collection process that we

1 use of when an account is past due, when late payment charges  
2 may need to be applied. All those processes would need to be  
3 most likely modified in order to accommodate a recalculation of  
4 a due date base for an individual customer on a  
5 customer-by-customer basis.

6 COMMISSIONER DAVIDSON: Does BellSouth have to act in  
7 accordance with that provision or closely in accordance with  
8 that provision in any other jurisdictions? There was some  
9 discussion about other commission orders, and I'm trying to  
10 determine the extent to which those other commission orders  
11 were sort of close in concept to Joint Petitioners' language or  
12 not close in concept.

13 THE WITNESS: I believe that was the discussion  
14 regarding the DeltaCom, BellSouth/DeltaCom arbitration  
15 proceeding that happened about two years ago now.

16 Those arbitration proceedings did, for that issue did  
17 result in decisions that are contrary to BellSouth's position  
18 in this arbitration, not quite the Joint Petitioners. It was  
19 kind of a mix. So you had, I think, four -- three orders and  
20 one staff rec that were not all for the same. And what  
21 DeltaCom and BellSouth ultimately agreed to was something other  
22 than all the above. We reached an agreement as to how payment  
23 history would be, good payment history would be defined, and  
24 that was in concert with the deposit provisions that the  
25 parties agreed to in a settlement, a region-wide settlement



1 that will implement payment due date issue.

2 COMMISSIONER DAVIDSON: Thank you. Turning to Issue  
3 102.

4 THE WITNESS: Yes, sir.

5 COMMISSIONER DAVIDSON: It strikes me that from the  
6 standpoint of the ultimate customer, not perhaps the commercial  
7 relationship between the parties here, but in terms of the  
8 ultimate customer, suspension, suspension and termination of  
9 service impacts, potentially impacts customers a great deal;  
10 whereas, an offset is something, some type of remedy that would  
11 exist between the parties to the commercial relationship.

12 So I want to ask the same question on 102. First,  
13 what, in your opinion what is unreasonable about Joint  
14 Petitioners' language? And then, Part 2, from the ultimate  
15 customer standpoint which, which vehicle would provide less  
16 disruption to the ultimate customer, an offset process or a  
17 suspension termination process?

18 THE WITNESS: Well, Commissioner, I don't think the  
19 suspension process is, is directly tied to the offset process.  
20 The issue about the ability to request a deposit is really the  
21 issue, and what the amount of that deposit should be is fluent  
22 throughout a lot of these later issues.

23 As far as the impact to the ultimate, the consumer,  
24 if BellSouth requests a deposit by a particular amount,  
25 BellSouth would have requested that in accordance with the

1 provisions of the contract that the parties had agreed to:  
2 financial criteria, the amount, payment history, et cetera. So  
3 that would be the amount requested.

4 If the Joint Petitioners didn't pay that deposit,  
5 BellSouth is at risk. And we would take steps to hopefully get  
6 paid that deposit to avoid suspending the service.

7 As far as offsetting a deposit request, I don't, I  
8 don't see the connection to how that impacts the, the end user,  
9 the consumer from that standpoint. If we did do our provision  
10 and did the offset, it would be expected to be paid once we got  
11 current with our bill or made that payment. Then the full  
12 amount of the deposit that we had originally requested would be  
13 secured and used for that, protecting that account.

14 COMMISSIONER DAVIDSON: And the last question goes to  
15 this issue of reciprocity. On sort of all the issues that  
16 would be jointly applicable to the parties here, whether it be  
17 a deposit or suspension termination, some type, something where  
18 there were mutual obligations, would BellSouth agree to the  
19 notion of reciprocity, meaning that as to these sort of  
20 mutually applicable obligations, if BellSouth wants Joint  
21 Petitioners to comply with X, BellSouth would also comply with  
22 X?

23 THE WITNESS: I believe we, you know, definitely  
24 could consider that, Commissioner. I think some of the  
25 provisions are reciprocal. I think Mr. Ferguson discussed

1 yesterday on violation of access to CSR, if either party is  
2 violating, that would be reciprocal.

3           When it gets to a deposit request, I believe the  
4 parties have already agreed that a deposit would not be  
5 reciprocal. We would not pay a deposit to the Joint  
6 Petitioners primarily because we're not similarly situated.

7           COMMISSIONER DAVIDSON: And really I'm just trying to  
8 limit the question to the areas where there are still issues.  
9 If the parties have already agreed to something, that, that  
10 obviously would trump and the parties are free to agree to have  
11 reciprocal or nonreciprocal sort of obligations as the  
12 negotiations take place.

13           But my question was mainly just toward sort of the  
14 open issues that are reciprocal, does BellSouth agree with the  
15 concept of reciprocity in those obligations?

16           THE WITNESS: I think for the most part we do. I  
17 think a lot of it depends on the particular provision or  
18 situation, like relative to the deposit. Suspension notices, I  
19 think, is another one that there were some differences there.

20           Again, we can entertain that. I'm not that familiar  
21 with the specifics on, you know, the reciprocity for the  
22 suspension notice. I think that's the only one. I don't  
23 believe the deposit is appropriate for reciprocity.

24           COMMISSIONER DAVIDSON: Thank you.

25           COMMISSIONER BRADLEY: Redirect.

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

2 REDIRECT EXAMINATION

3 BY MR. MEZA:

4 Q Ms. Blake, let's talk about Issue 102. And do you  
5 remember Mr. Heitmann's claims that BellSouth had disputed  
6 approximately \$25 million in charges to e.spire?

7 A Yes, I remember that question.

8 Q Do you have Exhibit 21 before you?

9 A What is it?

10 Q That is the Xspedius to BellSouth current bills.

11 A I don't think so. Wait. Yes, I do. I'm sorry. I  
12 think I do.

13 Yes, I believe I do. Yes.

14 Q It's a two-page exhibit.

15 A Yes.

16 Q Can you please advise on the consolidated invoice  
17 statement, which is the first page, what is the current amount  
18 due from BellSouth to Xspedius?

19 A I may not have the same version you have. I have --

20 Q Let me show you mine.

21 A I'm sorry. I've got one, but it's not -- it may not  
22 be the same pages. Thank you. Sorry. I thought I had it  
23 here. Okay.

24 Q Ms. Blake, I just handed you Exhibit 21. What is the  
25 current amount due to Xspedius from BellSouth?

1 A The total amount due is \$24,909.54.

2 Q And are those current billings?

3 A That's reflective of total amount due. The total new  
4 charges is \$24,868.16.

5 Q Turn the page. That's an additional bill from  
6 Xspedius to BellSouth; correct?

7 A Yes. It's for reciprocal compensation.

8 Q And what is the total amount due by BellSouth to  
9 Xspedius?

10 A The total amount due is \$111,494.84.

11 Q And what are the current charges?

12 A \$82,340.29.

13 Q And what is the due date of that bill?

14 A The due date is May 15th.

15 Q In either of those -- I'm sorry. In either of those  
16 bills do you see \$25 million?

17 A No, I do not.

18 Q Now let's talk about Issue 101 and Mr. Heitmann's  
19 questions regarding standards in the industry regarding deposit  
20 amounts. Do you have Exhibit 23, which is the Xspedius tariff  
21 in Florida?

22 A Yes. Is it the March 5, '03?

23 Q Yes.

24 A Okay. Yes, I have it.

25 Q Can you please turn to Section 2.5.4 and tell me what

1 Kspedius seeks to have its Florida consumers pay as far as  
2 deposits?

3 A Yes. 2.5.4(a), the end says, "The deposit will not  
4 exceed an amount equal to (1) two months of charges for a  
5 service or facility that has a minimum payment period of one  
6 month." Two months.

7 Q And how much of a deposit is BellSouth seeking in  
8 this proceeding?

9 A Maximum of two months.

10 Q Okay. Let's move to Issue 100. Do you remember  
11 Mr. Heitmann's questions relating to how billing disputes are  
12 logged?

13 A Yes.

14 Q Do you have Attachment 7 in front of you?

15 A Yes, I do.

16 Q Can you please turn to Section 2.1 and advise whether  
17 or not the parties have agreed as to how disputes would be  
18 submitted?

19 A Yes. The parties have agreed to the entire billing  
20 dispute Section 2 of Attachment 7. There's no language in  
21 dispute relative to billing disputes.

22 Q And what does that agreed language say regarding how  
23 billing disputes will be submitted in Section 2.1?

24 A Each party agrees to notify the other party in  
25 writing electronically upon the discovery of a billing dispute.

1 Q And in Section 2.1.1 is there any reference to  
2 confirmation of receipt of a dispute?

3 A Yes. It's very clearly laid out. Confirmation of  
4 the receipt of a dispute filed via the BAR, which is a billing  
5 adjustment request form, or multiple disputes filed by the Mass  
6 Dispute Spreadsheet form will be sent by the billing party to  
7 the disputing party via the same medium used to file the  
8 dispute. An automatic response will be provided."

9 Q That's good, Ms. Blake. Thank you.

10 Now let's turn to Item 97. And Ms. Heitmann -- I'm  
11 sorry. Ms. Heitmann -- Mr. Heitmann. Mr. Heitmann showed you  
12 your -- or Carlos Morillo's Tennessee testimony. Do you  
13 remember that?

14 A Yes.

15 Q I believe it's Exhibit 28.

16 A Yes.

17 Q Do you know if BellSouth updated the figures  
18 represented in Mr. Morillo's Tennessee testimony regarding the  
19 frequency of or the percentage of bills received by the Joint  
20 Petitioners?

21 A Yes, we did in discovery responses.

22 Q Do you have that with you?

23 A I probably do. I believe it was in -- it was  
24 actually a discovery response in North Carolina that we had  
25 referenced. And the staff had asked for that discovery

1 response, which we attached.

2 Q Item Number 7-8-2?

3 A Yes. That was the North Carolina response.

4 Q And do you know what the latest information is for  
5 BellSouth's payment of or dispute of KMC's bills?

6 A I believe it's 100 percent. I don't have it in front  
7 of me. It's 100 percent or 90 percent.

8 Q Now I would like to focus your attention on Exhibit  
9 29, which is the KMC spreadsheet.

10 A I have it.

11 Q Now did you prepare this document?

12 A No, I did not.

13 Q Do we know who at KMC prepared this document?

14 A I believe Ms. Johnson, whether she prepared it or she  
15 provided it or was, I think, associated with Ms. Johnson, a KMC  
16 witness in Alabama.

17 Q But it's a KMC document as far as you know?

18 A Yes, as far as I know.

19 Q All right. I'd like you to turn to the last page of  
20 that.

21 A Okay.

22 Q And the "Grand Total" column.

23 A Yes.

24 Q Based upon the "Late Payment Charge" column and the  
25 "Late Payment Due" column, do you have an understanding of how



1 much in late payment charges BellSouth paid KMC according to  
2 this document?

3 A It's in the neighborhood of over \$350,000.

4 Q Do you think KMC wants to keep that money?

5 A I would suspect they do.

6 Q Now is there any reference in these columns as to  
7 when BellSouth received the KMC bill?

8 A Not based on the column headings as I see them listed  
9 here.

10 Q And based upon the column entitled "Bill Due Date"  
11 and "Payment Date" as well as the "Number of Days Late," can  
12 you ascertain when KMC expects BellSouth to pay KMC's bills?

13 A Actually it looks about 30 days and possibly -- about  
14 30 days.

15 Q 30 days from the bill due date?

16 A Correct.

17 Q Now do you also have Exhibit 21 in front of you?

18 A Exhibit which one?

19 Q The Xspedius bill.

20 A Oh, yes.

21 Q Can you tell us when Xspedius expects BellSouth to  
22 pay its bills?

23 A Well, on this first invoice it has an invoice date of  
24 April 1st. It's got a payment due date of April 20th. The  
25 next page has a bill date of April 15th with a payment due date

1 of May 15th. It's consistent with what BellSouth is proposing  
2 in this proceeding.

3 Q If not sooner?

4 A If not sooner. Actually the first one is 20 days  
5 versus BellSouth's typical 30 days.

6 Q Now do you have the NuVox tariff that is marked as  
7 Exhibit 15?

8 A I don't think so. I don't have it up here. Thanks.  
9 Unless it's in that. Sorry. Thank you.

10 Q And if I can focus your attention to Section 2.11.1.

11 A I'm there.

12 Q When does NuVox expect its customers to pay  
13 nonrecurring charges?

14 A "Nonrecurring charges are due and payable upon  
15 receipt of the company's invoice by the customer." Upon  
16 receipt.

17 Q When does NuVox expect payment of recurring charges  
18 in Section 2.11.2?

19 A "The company shall present invoices for recurring  
20 charges monthly to the customer in advance of the month in  
21 which the service is provided, and recurring charges shall be  
22 due and payable upon receipt."

23 Q And when does NuVox begin to apply late payment  
24 charges, if you look at Section 2.11.5?

25 A After 20 days from the date of billing.

1 Q Okay. Let's talk about Issue 88. Do you remember  
2 Mr. Heitmann's hypothetical of the late, excuse me, the  
3 expedite charges associated with expediting ten DS1 circuits by  
4 two days?

5 A Yes.

6 Q And what was the math you came up with on that one?

7 A It was \$4,000.

8 Q Do you have the Xspedius tariff still in front of  
9 you?

10 A Yes, I do.

11 Q Can you turn to Page 128.1?

12 A What section again? I'm sorry.

13 Q Page 128.1.

14 A Oh, there we go. Mr. Falvey must have pulled it out  
15 because it's not in here. Oh, there it is. It was backwards.  
16 I've got it out.

17 Q And can you please advise as to the charges for  
18 expedites that Xspedius expects its Florida customers to pay?

19 A Per order per occurrence is \$800.

20 Q So based upon that same hypothetical what would  
21 Xspedius charge its customers for expediting that order?

22 A Basically charge them \$800 per order versus the \$400,  
23 which for the ten circuits that were a total of \$4,000, it  
24 would be \$400 a circuit. Basically double.

25 Q So they would charge its customers \$8,000?

1 A Yes, versus \$4,000.

2 Q Now regarding Issue 51, staff counsel asked you a  
3 series of questions about an e-mail and a proposal by the Joint  
4 Petitioners regarding a list of auditors that they would find  
5 acceptable. Do you remember that?

6 A Yes.

7 Q Do you know if the Joint Petitioners have withdrawn  
8 that offer?

9 A Yes. I believe Mr. Russell indicated that yesterday.

10 Q Now let's talk about Issue 4. Do you remember  
11 Mr. Heitmann talking to you about the hypothetical of a CO  
12 being burned to the ground? Do you remember that?

13 A Yes. Yes, I do.

14 Q Has that ever happened?

15 A Not that I'm aware of in BellSouth's territory. No.

16 Q Now is Nuvox a facilities-based CLEC?

17 A Yes.

18 Q Does that mean NuVox has collocation space in  
19 BellSouth's central offices?

20 A Yes, they could.

21 Q And if a NuVox employee burned down BellSouth's  
22 central office while addressing their, their equipment in their  
23 collocation space and causes BellSouth to sustain \$8.1 million  
24 in damages, what would NuVox's liability to BellSouth be if  
25 this Commission adopts their proposal?

1           A     Well, based on the financial information that was  
2 discussed or the amounts of bills, it would be \$2,700.

3           Q     Now do you remember Exhibit 27, the AllTel agreement?

4           A     Yes. I have it.

5           Q     Have you ever seen this agreement before this  
6 hearing?

7           A     No, I have not.

8           Q     What is the date of the fax on the exhibit?

9           A     September 24th, 2004, at 2:56 p.m.

10          Q     And who was the sender of the fax?

11          A     NuVox Communications.

12          Q     And do you recognize that 864 area code?

13          A     I believe that's South Carolina.

14          Q     I'd like to hand you, Ms. Blake, an exhibit which  
15 is -- it's already a matter of record, Mr. Chairman, but it's  
16 BellSouth's discovery responses to the Joint Petitioners.

17                 Can you please read what BellSouth was asking the  
18 Joint Petitioners to produce?

19          A     In Item 6 or 7?

20          Q     Item 6.

21          A     Thank you. "Regarding Issue Number G-4, please  
22 produce all telecommunications interconnection agreements that  
23 contain a provision that is identical or similar to the  
24 revision you are requesting the Commission adopt in this  
25 proceeding."

1 Q And what is the date of their response?

2 A December 7th, 2004.

3 Q And what did NuVox say?

4 A NuVox response, "After a diligent review of its  
5 records, NuVox is unable to locate any documents in its  
6 possession, custody or control that are responsive to this  
7 request."

8 Q What did NewSouth say?

9 A "After a diligent review of its records, NewSouth is  
10 unable to locate any documents in its possession, custody or  
11 control that are responsive to this request."

12 Q Based upon Exhibit 27, do you believe these responses  
13 are accurate?

14 A It does not appear to be.

15 MR. MEZA: Thank you. I have no further questions.

16 COMMISSIONER BRADLEY: Thank you.

17 MR. HEITMANN: Mr. Chairman, if we could move to have  
18 our Exhibits 27 through 32 entered into the record, admitted.

19 COMMISSIONER BRADLEY: 27 -- which ones?

20 MR. HEITMANN: I think 27 through 32.

21 COMMISSIONER BRADLEY: Okay. Without objection --

22 MR. MEZA: No objection, sir.

23 COMMISSIONER BRADLEY: Without objection, show  
24 Exhibits 27, 28, 29, 30, 31 and 32 are admitted into the  
25 record.

1 (Exhibits 27, 28, 29, 30, 31 and 32 are admitted into  
2 the record.)

3 COMMISSIONER BRADLEY: The witness is excused.

4 MR. SUSAC: Oh, Chairman, before you excuse the  
5 witness, I believe BellSouth had, what was it, 25 and 26, is  
6 that correct, should be requested moved into the record, as  
7 well as I believe the Exhibit 26 is an errata sheet which  
8 negates the need for Ms. Blake's KKB-2.

9 MR. MEZA: That's correct, sir. And -- that's  
10 correct.

11 COMMISSIONER BRADLEY: Any objection?

12 MR. HEITMANN: None.

13 COMMISSIONER BRADLEY: Without objection also show  
14 Exhibit 26 -- show without objection Exhibit 26 is, is admitted  
15 into the record.

16 (Exhibit 26 admitted into the record.)

17 COMMISSIONER BRADLEY: Does that take care of it?

18 MR. MEZA: Mr. Chairman.

19 COMMISSIONER BRADLEY: Go ahead. I'm sorry.

20 MR. MEZA: I have one more housecleaning issue, and I  
21 think I did it, I just want to make sure I did, and that is  
22 Ms. Blake adopted the direct testimony of Mr. Morillo. I would  
23 just ask that if I did not ask for Mr. Morillo's testimony to  
24 be moved into the record, that it be done.

25 COMMISSIONER BRADLEY: Is there an objection?

1 MR. HEITMANN: None.

2 COMMISSIONER BRADLEY: Without objection, the  
3 prefiled testimony of Mr. Morillo, as adopted by Ms. Blake, is  
4 admitted into the record as though read.

5 MR. MEZA: Yes, sir.

6 (REPORTER'S NOTE: Witness Morillo's prefiled  
7 testimony was inserted into the record in Volume 6.)

8 COMMISSIONER BRADLEY: Any other housecleaning  
9 matters?

10 MR. SUSAC: I believe, I believe there are two  
11 housekeeping matters, the first of which I'd like to just  
12 clarify for the record that Exhibit 13 is the revised Exhibit A  
13 that was already moved into the record just for clarification.  
14 With that clarification I think we can proceed to our last  
15 housekeeping matter, which is I believe BellSouth would like to  
16 request to enter into the record a confidential exhibit.

17 MR. MEZA: Yes, sir. Actually there's two  
18 housekeeping matters. BellSouth would like to withdraw Exhibit  
19 12 because Mr. Owens' issues have been settled, so there's no  
20 need to include his exhibit into the record.

21 COMMISSIONER BRADLEY: Okay. Show Exhibit 12  
22 withdrawn.

23 (Exhibit 12 withdrawn.)

24 MR. MEZA: And in addition, sir, I would like to have  
25 marked as the next exhibit the confidential identification --



1 or the identification of confidential documents that were  
2 contained in BellSouth's North Carolina discovery responses  
3 which are already a matter of record. We have identified those  
4 portions of the discovery that are the subject of a pending  
5 RCC. And to make it clear to everyone involved as to what  
6 portion of the discovery is included in that RCC, I would like  
7 to have this document marked as the next exhibit.

8 COMMISSIONER BRADLEY: Okay. How do we identify that  
9 and give it a number?

10 MR. MEZA: It would be, it would be 33.

11 COMMISSIONER BRADLEY: You're right.

12 MR. MEZA: And "BellSouth's Confidential Discovery  
13 List."

14 COMMISSIONER BRADLEY: Okay. We'll give it the --  
15 give it Exhibit Number 33.

16 MR. SUSAC: Yes, sir.

17 COMMISSIONER BRADLEY: Is there any objection to it?

18 MR. HEITMANN: None.

19 COMMISSIONER BRADLEY: Without objection, show  
20 Exhibit Number 33 is admitted into the record.

21 (Exhibit 33 marked for identification and admitted  
22 into the record.)

23 COMMISSIONER BRADLEY: Does that take care of it?

24 MR. MEZA: Yes, sir. Thank you.

25 MR. SUSAC: Yes, sir. That takes care of it. Last

1 I'd like to note that at this point in time transcripts will be  
2 available around May 12th, and the parties' briefs are due  
3 June 9th.

4 COMMISSIONER BRADLEY: Okay. Those are the  
5 controlling dates. Any comments?

6 MR. HEITMANN: Mr. Chairman, Joint Petitioners and  
7 BellSouth and staff discussed earlier before the start of  
8 today's hearing requesting that they be permitted to file  
9 75-page briefs.

10 COMMISSIONER BRADLEY: Beg your pardon? I didn't  
11 hear that.

12 MR. HEITMANN: The parties have discussed and I'm  
13 hereby making a request that we be permitted to file briefs  
14 that are 75 pages long, and I'd request your permission to do  
15 that.

16 MR. SUSAC: And staff supports that request, seeing  
17 the complexity and the number of issues at hand here.

18 COMMISSIONER BRADLEY: Granted. Any other matters?

19 MR. SUSAC: No, sir. I believe that's it.

20 COMMISSIONER BRADLEY: Well, with that, let me thank  
21 you all for your participation in this hearing, and we are  
22 adjourned.

23 (Hearing adjourned at 12:05 p.m.)

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25

1 STATE OF FLORIDA )  
 : CERTIFICATE OF REPORTER  
2 COUNTY OF LEON )

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I, LINDA BOLES, RPR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12<sup>th</sup> DAY OF MAY, 2005.

Linda Boles  
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FPSC Official Commission Reporter  
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