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Subject: E-filing - Docket No. 060598-TL
Attachments: Prehearing Statement.pdf

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Docket No. and title: In re: Petition by BellSouth Telecommunications, Inc., pursuant to Florida Statutes §364.051(4) to Recover 2005 Tropical System Related Costs and Expenses
 Docket No. 060598-TL

Filed on behalf of: Competitive Carriers of the South, Inc. and NuVox Communications, Inc.

Number of pages: 6

Document attached: Joint Prehearing Statement

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth
Telecommunications, Inc., pursuant to
Florida Statutes §364.051(4) to
Recover 2005 Tropical System
Related Costs and Expenses

Docket No. 060598-TL

Filed: November 13, 2006

JOINT PREHEARING STATEMENT OF COMPSOUTH AND NUVOX

The Competitive Carriers of the South, Inc. (CompSouth) and NuVox Communications, Inc. (NuVox), pursuant to Order No. PSC-06-0783-PCO-TL, file this Joint Prehearing Statement of Issues and Positions.

A. APPEARANCES:

VICKI GORDON KAUFMAN, Moyle Flanigan Katz Raymond, White & Krasker, PA, 118 North Gadsden Street, Tallahassee, Florida 32301

On Behalf of The Competitive Carriers of the South, Inc. (CompSouth)

SUSAN J. BERLIN, NuVox Communications, Inc., Two North Main Street, Greenville, SC 29601

On Behalf of NuVox Communications, Inc. (NuVox)

B. WITNESSES:

On Behalf of CompSouth

<u>Witness</u>	<u>Proffered by</u>	<u>Issues</u>
Don J. Wood	CompSouth	1-4

C. EXHIBITS:

<u>Exhibits</u>	<u>Witness</u>	<u>Description</u>
DJW-1	Wood	Vita of Don J. Wood

CompSouth and NuVox reserve the right to use, as appropriate, cross-examination exhibits.

D. STATEMENT OF BASIC POSITION:

The Commission should reject BellSouth's proposal to apply its requested storm surcharge to unbundled wholesale loop network element customers. BellSouth's proposed charge on UNEs is inconsistent and in conflict with federal law. BellSouth seeks, through this surcharge, to reprice UNEs at above TELRIC prices. This is directly inconsistent with and violative of the Telecommunications Act of 1996 and FCC regulations which require UNEs to be priced at TELRIC rates.

Further, section 364.051(4)(b)(6), Florida Statutes, explicitly states that a surcharge may only be applied to wholesale access lines if the Commission finds it appropriate. Such a charge is not appropriate because it would conflict with federal law. It is also inappropriate for the following reasons.

First, it is inappropriate under the Florida statute to assess a charge on CLECs because CLECs have incurred and must absorb significant expenses of their own related to storm damage. Second, unlike BellSouth, CLECs have no practical market mechanism by which to impose such a surcharge on their own customers. Third, the way in which BellSouth has counted access lines is inconsistent with the statute which directs the charge to be applied on a per access line or per customer basis, not a "per DSO equivalent" basis as BellSouth seeks. Fourth, BellSouth's proposed charge is not competitively neutral – it does not propose to apply the charge in the same way to wholesale and retail customers. BellSouth proposes to charge wholesale customers more through its surcharge than retail customers for equivalent service.

E. STATEMENT OF ISSUES AND POSITIONS:

ISSUE 1: What amount of any storm damage reserve fund should be considered when determining the amount of tropical-system-related intrastate costs and expenses to be recovered?

COMPSOUTH:¹ Any amount which BellSouth accrued in its storm damage reserve fund prior to becoming price cap regulated should be considered when determining costs and expenses.

ISSUE 2: What is the appropriate amount of intrastate costs and expenses related to damage caused during the 2005 tropical storm season, if any, that should

¹ NuVox's position is included CompSouth's positions.

be recovered by BellSouth, pursuant to Section 364.051(4), Florida Statutes?

COMPSOUTH: CompSouth has no position on this issue except to note, as explained in more detail in Issues 3 and 4, that even if the Commission were to find that BellSouth had some amount of costs and expenses appropriate for recovery, no charge should be imposed on wholesale UNE customers.

ISSUE 3: (a) What is the appropriate type and number of retail access lines, basic and nonbasic, to which any storm damage recovery may be assessed?

(b) Is a line item charge on BellSouth's wholesale UNE loops appropriate pursuant to Section 364.051(4)(b)(6), Florida Statutes, and federal law? If yes, on which types of lines should the charge be assessed and how should the lines be counted? What is the total number of UNE loops to be assessed, if any?

COMPSOUTH:

(a) No position.

(b) No. A line item charge on UNEs is inappropriate under Florida and federal law. Pursuant to federal law, BellSouth's attempt to apply the proposed charge to UNE customers is inconsistent with and preempted by federal law. The United States Supreme Court in *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002), approved the FCC's adoption of the TELRIC pricing methodology, which state commissions must apply in regard to UNE pricing. Imposing a charge on top of already approved TELRIC prices is in conflict with federal law.²

Under Florida law, the proposed surcharge is inappropriate because:

1) Unlike BellSouth CLECs have no practical market mechanism by which to impose such a surcharge on their own customers;

2) The way in which BellSouth has counted access lines is inconsistent with the statute which directs the charge to be applied on a per access line or per customer basis. Instead, BellSouth has redefined the statute's terms which refer to "access line", "customer line", and "unbundled loop" to mean "DSO equivalent." Such an interpretation is inappropriate, bears no relationship to cost and would inappropriately increase the burden on competitors.

3) BellSouth's proposed charge is not competitively neutral – it does not propose to apply the charge in the same way to wholesale and

² The issues of law which will impact the Commission's decision in this case will be addressed in CompSouth's pretrial memorandum which will be filed on November 30, 2006 pursuant to Order No. PSC-06-0941-PCO-TL.

retail customers. Application of the charge on an “activated voice channel basis” to retail customers is not the same as a DSO-equivalent basis for wholesale customers. The effect of this disparate treatment is that wholesale customers will be charged more for equivalent service.

ISSUE 4: What is the appropriate line item charge per access line, if any?

COMPSOUTH: For the reasons delineated in Issue No. 3, no charge should be imposed on UNEs.

ISSUE 5: If a line item charge is approved in Issue 4, on what date should the charge become effective and on what date should the charge end?

COMPSOUTH: If the Commission approves any storm charge, it should not be applicable to wholesale UNE customers. If any charge is applied to wholesale customers, which it should not be, such a charge cannot be applied unless and until any applicable interconnection agreements are amended. Finally, any charge must end 12 months after its effective date.

ISSUE 6: Should the docket be closed?

COMPSOUTH: As noted above, no charge should be imposed on UNE customers. If the Commission imposes a charge on retail customers, it should keep the docket open to monitor collection of the charge so as to ensure that BellSouth does not collect any monies in excess of what the Commission permits.

F. STIPULATED ISSUES:

None at this time.

G. PENDING MOTIONS:

CompSouth and NuVox have no motions pending.

H. PENDING CONFIDENTIALITY REQUESTS:

CompSouth and NuVox have no pending confidentiality requests.

I. REQUIREMENTS THAT CANNOT BE COMPLIED WITH:

CompSouth and NuVox are not aware of any requirements with which they cannot comply at this time.

J. DECISIONS WHICH MAY IMPACT THIS CASE:

Pursuant to Order No. PSC-06-0941-PCO-TL, CompSouth will provide a legal memorandum on November 30, 2006.

K. OBJECTIONS TO WITNESS QUALIFICATIONS:

BellSouth has not designated any of its witnesses as experts. CompSouth and NuVox reserve the right to challenge any expert designations BellSouth may proffer.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Prehearing Statement was furnished by electronic and U.S. Mail this 13th day of November, 2006 to:

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