

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.

DOCKET NO. 040130-TP  
ORDER NO. PSC-04-0488-PCO-TP  
ISSUED: May 12, 2004

ORDER ESTABLISHING PROCEDURE

Case Background

On February 11, 2004, the Joint Petitioners<sup>1</sup> (CLECs) filed their Joint Petition for Arbitration with BellSouth Telecommunications, Inc. (BellSouth) pursuant to the Telecommunications Act of 1996. On February 23, 2004, BellSouth filed its Motion to Sever or to Impose Procedural Restrictions. The Joint Petitioners filed their Joint Response and Opposition to BellSouth's Motion. On April 16, 2004, the parties met to discuss BellSouth's Motion and to identify the unresolved issues. This Order reflects the agreements made with the parties at the April 16th meeting regarding the procedural concerns raised by the parties. As a result of these agreements, BellSouth withdrew its Motion to Sever or to Impose Procedural Restrictions on May 5, 2004. Pursuant to Joint Petitioners' request for arbitration, this matter has been scheduled for an administrative hearing.

Governing Provisions

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

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<sup>1</sup> NewSouth Communications Corp. (NewSouth); NuVox Communications, Inc. (NuVox); KMC Telecom V, Inc. (KMC V) and KMC Telecom III LLC (KMC III)(collectively "KMC"); and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC (Xspedius Switched) and Xspedius Management Co. of Jacksonville, LLC (Xspedius Management) (collectively "Xspedius");(collectively the "Joint Petitioners" or "CLECs")

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Section 252(b) addresses agreements arrived at through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request under this section. The parties have, however, waived the nine-month requirement of Section 252(b)(4)(C), as noted in their pleadings on the Motion to Sever.

Section 252(b)(4)(A) of the Act provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

In light of the above, this Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

#### Tentative Issues

Attached to this Order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. For purposes of clarity and simplification, the numbering of the issues attached hereto correspond to the numbering used in the arbitration petition and response. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A". The parties are encouraged to continue discussions in an effort to further eliminate issues in this proceeding.

#### Filing Procedures

In accordance with Rule 25-22.028, Florida Administrative Code, parties shall submit the original document and the appropriate number of copies to the Division of the Commission Clerk and Administrative Services for filing in the Commission's docket file. Filing may be made by mail, hand delivery, or courier service. See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities. Filings pertaining to this docket should identify the assigned docket number and should be addressed to:

Director, Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Discovery Procedures

Discovery shall be conducted in accordance with the provisions of Chapters 120 and 364, Florida Statutes, Rules 25-22, 25-40, and 28-106, Florida Administrative Code, and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

The parties have agreed that when discovery requests are served and the respondent intends to ask for clarification of the discovery request, request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for Wednesday, December 1, 2004 through Friday, December 3, 2004. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by November 17, 2004. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set, and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 250, and requests for production of documents, including all subparts, shall be limited to 150. The parties have agreed that all discovery responses shall be due 25 days after service of the request, with no additional time for mailing. Further, the parties have also agreed that all discovery responses on discovery served after October 17, 2004 shall be due within 20 days. All discovery requests shall be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Responses to interrogatories, and to the extent possible requests for documents, shall also be served by e-mail, with a hard copy to follow by U.S. Mail or hand delivery. Commission staff shall be served with a copy of these and all other filings. The parties have agreed that CLECs will act jointly for the purpose of propounding discovery on BellSouth and BellSouth shall serve the CLECs jointly for purposes of discovery.

Any party intending to provide information pursuant to a discovery request, which it is aware is deemed, or might be deemed, confidential by another party in this proceeding, shall notify that party prior to submitting such information for the purpose of ensuring conformance with this Commission's rules regarding the handling of such information and continued confidential treatment pending a formal ruling by the Commission. Any information provided

pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(4), Florida Statutes.

Parties shall avail themselves of the liberal discovery allowed by this Order within the time frames set forth above. Unless authorized by the Presiding Officer for good cause shown, parties shall not conduct discovery during cross-examination at the hearing.

#### Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number, and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL  
J. Doe Exhibit No. \_\_\_\_\_  
Cost Studies for Minutes of Use by Time of Day

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by

mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below:

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;

- (i) a statement identifying the party's pending requests or claims for confidentiality;
- (j) a statement as to any requirement set forth in this Order that cannot be complied with, and the reasons therefore;
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter; and
- (l) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

#### Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held on November 1, 2004 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

#### Prehearing Procedure

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to

hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

The CLECs stated that they have developed common positions on all of the issues to the extent the issues were raised jointly. The CLECs have agreed, to the extent possible, to identify one CLEC witness as the main witness on an issue and have the other CLEC witnesses adopt said testimony. Thus, the CLECs are encouraged to select one, main witness to testify to each issue or position where the CLECs have a joint position.

The CLECs, however, have reserved the right to have each company's witness specifically testify on those issues, which they deem necessary for the presentation of their case. In recognition that there may be a few instances where the CLECs feel it is necessary to have multiple witnesses on an issue, the CLECs are still encouraged to avoid redundancy and duplicative testimony, unless there is a compelling reason for such duplication. Further, the parties agreed to maintain the usual practice that each witness sponsored by the parties files individual testimony. Furthermore, the CLECs have agreed that, for purposes of cross-examination at hearing, they will designate one CLEC attorney per each BellSouth witness.

#### Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do

so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time. The parties have agreed that the CLECs shall jointly file their brief.

Controlling Dates

The following dates have been established to govern the key activities of this case.

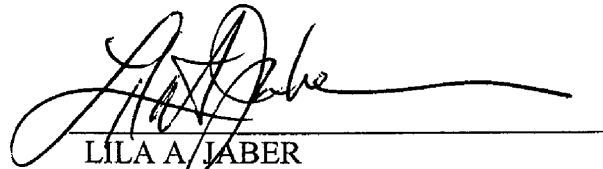
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|--|--------------------|
| 1) Direct testimony and exhibits (All)   | June 21, 2004      |
| 2) Rebuttal testimony and exhibits (All) | August 16, 2004    |
| 3) Prehearing Statements                 | October 18, 2004   |
| 4) Prehearing Conference                 | November 1, 2004   |
| 5) Hearing                               | December 1-3, 2004 |
| 6) Briefs                                | January 18, 2005   |



Based upon the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 12th day of May, 2004.

  
LILA A. JABER  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this Order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

**APPENDIX "A"**

The tentative list of issues which have been identified in this proceeding are set forth below.

- ISSUE 1**      What should be the effective date of future rate impacting amendments?
- ISSUE 2**      How should "End User" be defined?
- ISSUE 3**      Should the agreement contain a general provision providing that BellSouth shall take financial responsibility for its own actions in causing, or contributing to unbillable or uncollectible CLEC revenue in addition to specific provisions set forth in Attachments 3 and 7?
- ISSUE 4**      What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?
- ISSUE 5**      If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?
- ISSUE 6**      How should indirect, incidental or consequential damages be defined for purposes of the Agreement?
- ISSUE 7**      What should the indemnification obligations of the parties be under this Agreement?
- ISSUE 8**      What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logo and trademarks?
- ISSUE 9**      Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a Court of law for resolution first?
- ISSUE 10**     This issue has been resolved.
- ISSUE 11**     This issue has been resolved.
- ISSUE 12**     Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?
- ISSUE 13**     How should the Parties deal with non-negotiated deviations from the state Commission-approved rates in the rate sheets attached to the Agreement?

**ISSUE 14** Can either Party require, as a prerequisite to performance of its obligations under the Agreement, that the other Party adhere to any requirement other than those expressly stipulated in the Agreement or mandated by Applicable Law?

**ISSUE 15** If BellSouth changes a provision of one or more of its Guides that would cause CLEC to incur a material cost or expense to implement the change, should the CLEC notify BellSouth, in writing, if it does not agree to the change?

**ISSUE 16** If a tariff is referenced in the Agreement, what effect should subsequent changes to the tariff have on the Agreement?

**ISSUE 17** This issue has been resolved.

**ISSUE 18** This issue has been resolved.

**ISSUE 19** This issue has been resolved.

**ISSUE 20** This issue has been resolved.

**ISSUE 21** This issue has been resolved.

**ISSUE 22A** Should CLEC be required to submit a BFR/NBR to convert a UNE or Combination (or part thereof) to other services or tariffed BellSouth access services?

**ISSUE 22B** In the event of such conversion, what rates should apply?

**ISSUE 23A** In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in this Agreement, which Party should bear the obligation of identifying those service arrangements?

**ISSUE 23B** What recourse may BellSouth take if CLEC does not submit a rearrange or disconnect order within 30 days?

**ISSUE 23C** What rates, terms and conditions should apply in the event of a termination, re-termination, or physical rearrangements of circuits?

**ISSUE 24** This issue has been resolved.

**ISSUE 25** What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?

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

**ISSUE 27** When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth service?

**ISSUE 28** Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?

**ISSUE 29** This issue has been resolved.

**ISSUE 30** Should the Agreement include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center or base station do not constitute loops?

**ISSUE 31** Should the Agreement require CLEC to purchase the entire bandwidth of a Loop in all situations?

**ISSUE 32** This issue has been resolved.

**ISSUE 33** Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?

**ISSUE 34** This issue has been resolved.

**ISSUE 35A** What rates should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report when no trouble is ultimately found to exist?

**ISSUE 35B** What rate should apply when BellSouth is required to dispatch to an end user location more than once due to incorrect or incomplete information?

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

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

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

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

**ISSUE 39A** Should BellSouth be required to perform Line Conditioning by modifying a Loop in such a way that it no longer meets technical parameters of the original Loop?

**ISSUE 39B** If not, should the resulting modified Loop be maintained as a non-service-specific Unbundled Copper Loop?

**ISSUE 40** Should BellSouth be required to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have inactive loops attached?

**ISSUE 41A** This issue has been resolved.

**ISSUE 41B** This issue has been resolved.

**ISSUE 41C** Under what circumstances, if any, should BellSouth be required to install new network terminating wire (UNTW) for the use of the CLEC?

**ISSUE 41D** In determining whether a pair is available, to what standard should the CLEC be held?

**ISSUE 41E** Should a time limit be placed on a CLEC's commitment to reimburse costs associated with removing access terminals and restoring the property to its original state (per request of property owner)?

**ISSUE 42** Should BellSouth be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point?

**ISSUE 43** Under what circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or controlled by a carrier other than BellSouth?

**ISSUE 44** This issue has been resolved.

**ISSUE 45** What should be the CLECs' indemnification obligations under a line splitting arrangement?

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

**ISSUE 47** This issue has been resolved.

**ISSUE 48** This issue has been resolved.

**ISSUE 49** Under what conditions, if any, may BellSouth deny or delay a CLEC request to convert a circuit to a high capacity EEL?

**ISSUE 50** How should the term "customer," as used in the FCC's EEL eligibility criteria rule, be defined?

**ISSUE 51A** How often, and under what circumstances, should BellSouth be able to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria?

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

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

**ISSUE 52** Under what circumstances should CLEC be required to reimburse BellSouth for the cost of the independent auditor?

**ISSUE 53** This issue has been resolved.

**ISSUE 54** This issue has been resolved.

**ISSUE 55** What terms should govern CLEC access to test and splice Dark Fiber Transport?

**ISSUE 56** Should BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching?

**ISSUE 57A** Should the parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, including cases that would require the party providing the information to query a third party database provider?

**ISSUE 57B** If so, which party should bear the cost?

**ISSUE 58** Should LIDB charges be subject to application of jurisdictional factors?

**ISSUE 59** What terms should govern BellSouth's obligation to provide access to OSS?

**ISSUE 60** Should the CLEC be permitted to connect to BellSouth's switch via a Cross Connect, where technically feasible or any other technically feasible means of interconnection?

**ISSUE 61A** What is the definition of a global outage?

**ISSUE 61B** Should BellSouth be required to provide upon request, for any trunk group outage that has occurred 3 or more times in a 60 day period, a written root cause analysis report?

**ISSUE 61C(1)** What target interval should apply for the delivery of such reports?

**ISSUE 61C(2)** What target interval should apply for reports related to global outages?

**ISSUE 62** What provisions should apply regarding failure to provide accurate and detailed usage data necessary for the billing and collection of access revenues?

**ISSUE 63** Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?

**ISSUE 64** While a dispute over jurisdictional factors is pending, what factors should apply in the interim?

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

**ISSUE 66A** Does the tandem interconnection rate include common transport?

**ISSUE 66B** Have the CLECs presented sufficient information in this proceeding to establish entitlement to symmetrical reciprocal compensation for the transport and termination of Local Traffic at the tandem interconnection rate?

**ISSUE 67** Should compensation for the transport and termination of ISP-bound Traffic be subject to a cap?

**ISSUE 68** How should Local Traffic be defined?

**ISSUE 69A** Should BellSouth be required to provide CLEC with OCn level interconnection at TELRIC-compliant rates?

**ISSUE 69B** What should those rates be?

**ISSUE 70** Should interconnection at TELRIC-based rates be limited to the percentage of facilities used for "local" traffic?

**ISSUE 71** What rate should apply for interconnection trunks and facilities in the event that a rate is not set forth in Exhibit A?

**ISSUE 72** Should the costs of two-way interconnection trunks and facilities used for both parties' traffic be split proportionally based on the percentage of traffic originated by each Party or in half?

**ISSUE 73** Under what conditions should CLEC be permitted to bill BellSouth based on actual traffic measurements, in lieu of BellSouth-reported jurisdictional factors?

**ISSUE 74A** What definition of "Cross Connect" should be included in the Agreement?

**ISSUE 74B** This issue has been resolved.

**ISSUE 75** In circumstances not covered by the scope of the FCC Rule 51.233 (which relates to Advanced Services equipment) what restrictions should apply to the CLEC's use of collocation space or collocated equipment/facilities that impact others?

**ISSUE 76** To the extent the CLECs paid for space preparation and power on a non-recurring basis, how should those payments be accounted for in light of the current collocation rate structure?

**ISSUE 77** When should BellSouth commence billing of recurring charges for power?

**ISSUE 78** Should CLEC be required to pay additional space preparation fees and charges for costs related to functions that have not already been recovered through previous ICB or NRC charges?

**ISSUE 79** What rates should apply for BellSouth-supplied DC power?

**ISSUE 80A** Under the fused amp billing option, how should recurring and non-recurring charges be applied?

**ISSUE 80B** What should the charges be?

**ISSUE 81A** Should CLEC be permitted to choose between a fused amp billing option and a power usage metering option?

**ISSUE 81B** If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?

**ISSUE 82** For BellSouth-supplied AC power, should CLEC be entitled to choose between a fused amp billing option and a power usage metering option?



**ISSUE 83** Under what circumstances should BellSouth be entitled to request that a CLEC employee be removed from BellSouth's premises?

**ISSUE 84** Should payment history be included in the CSR?

**ISSUE 85** Should CLEC have to provide BellSouth with access to CSRs within firm intervals?

**ISSUE 86A** What procedures should apply when one Party alleges, via written notice, that the other Party has engaged in unauthorized access to CSR information?

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

**ISSUE 87** Should BellSouth be allowed to assess manual service order charges on CLEC orders for which BellSouth does not provide an electronic ordering option?

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

**ISSUE 89** Should CLEC be required to deliver a FOC to BellSouth for purposes of porting a number within a firm interval?

**ISSUE 90** Should CLEC be required to provide Reject Responses to BellSouth within a firm interval?

**ISSUE 91** Should BellSouth be required to provide performance and maintenance history for circuits with chronic problems?

**ISSUE 92** Should charges for substantially similar OSS functions performed by the parties be reciprocal?

**ISSUE 93A** Can BellSouth make the porting of an End User to the CLEC contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the End User changing its PIC?

**ISSUE 93B** If not, should BellSouth be subject to liquidated damages for imposing such conditions?

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

**ISSUE 94B** If so, what rates should apply?

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

**ISSUE 95** What time limits should apply to backbilling, over-billing, and under-billing issues?

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

**ISSUE 96B** What intervals should apply to such changes?

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

**ISSUE 98A** What interest rate should apply for late payments?

**ISSUE 98B** What fee should be assessed for returned checks?

**ISSUE 99** What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?

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

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

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

**ISSUE 103** Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

**ISSUE 104** What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?

**ISSUE 105** Under what conditions may BellSouth seek additional security deposit from CLEC?

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**ISSUE 106** To whom should BellSouth be required to send the 15 day notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?

**ISSUE 107A** Should BellSouth be permitted to charge CLEC the full development costs associated with a BFR?

**ISSUE 107B** If so, how should these costs be recovered?