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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF ERIC FOGLE
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 040130-TP
JANUARY 10, 2005

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

A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director in BellSouth's Interconnection Operations Organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

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

A. I attended the University of Missouri in Columbia, where I earned a Master of Science in Electrical Engineering Degree in 1993 and Emory University in Atlanta, where I earned a Master of Business Administration degree in 1996. After graduation from the University of Missouri in Columbia, I began employment with AT&T as a Network Engineer, and joined BellSouth in early 1998 as a Business Development Analyst in the Product Commercialization Unit. From July

1 2000 through May 2003, I led the Wholesale Broadband Marketing
2 group within BellSouth. I assumed my current position in June 2003.
3 First, as a Business Analyst, and then as the Director of the Wholesale
4 Broadband Marketing Group and continuing in my current position, I
5 have been, and continue to be, actively involved in the evolution and
6 growth of BellSouth's network including provisions for accommodating
7 Digital Subscriber Line ("DSL") based services as well as the underlying
8 technology.

9

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

11

12 A. The purpose of my testimony is to provide BellSouth's position on
13 Issues 2-18 (Item 36), 2-19 (Item 37), 2-20 (Item 38) and 2-28 (Item
14 46). These issues are summarized in the October 15, 2004 Revised
15 Joint Issues Matrix filed by BellSouth and KMC Telecom V, Inc. & KMC
16 Telecom III LLC ("KMC"), NewSouth Communications Corp.
17 ("NewSouth"), NuVox Communications Corp. ("NuVox"), and Xspedius
18 Companies ("Xspedius") in a Joint Petition for Arbitration filed with the
19 Florida Public Service Commission ("Commission") on February 11,
20 2004. I henceforth refer to these companies as the "Joint Petitioners."

21

22 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

23

24 A. Yes. There are numerous unresolved issues in this arbitration that
25 have underlying legal arguments. Because I am not an attorney, I am

1 not offering a legal opinion on these issues. I respond to these issues
2 purely from a policy or technical perspective. BellSouth's attorneys will
3 address issues requiring legal argument.

4
5 **Item 36; Issue 2-18: (A) How should line conditioning be defined in the**
6 **Agreement? (B) What should BellSouth's obligations be with respect to**
7 **Line Conditioning? (Attachment 2, Section 2.12.1)**

8
9 Q. SUBPART (A) OF ITEM 36 ASKS THE QUESTION "HOW SHOULD
10 LINE CONDITIONING BE DEFINED IN THE AGREEMENT?" WHAT
11 IS BELLSOUTH'S POSITION WITH RESPECT TO ITEM 36(A)?

12
13 A. Line conditioning should be defined as a routine network modification
14 that BellSouth regularly undertakes to provide xDSL services to its own
15 customers. This definition is entirely consistent with the Federal
16 Communications Commission's ("FCC's") finding in Paragraph 643 of
17 the Triennial Review Order ("TRO"), which provides: "Line conditioning
18 is properly seen as a routine network modification that incumbent LECs
19 regularly perform in order to provide xDSL services to their own
20 customers. As noted above, incumbent LECs must make the routine
21 adjustments to unbundled loops to deliver services at parity with how
22 incumbent LECs provision such facilities for themselves."

23
24 BellSouth's proposed language further states that line conditioning may
25 include the removal of any device from a copper loop or copper sub-

1 loop that may diminish the capability of the loop or sub-loop to deliver
2 high-speed switched wireline telecommunications capability, including
3 xDSL service. Such devices include, but are not limited to, load coils,
4 excessive bridged taps, low pass filters, and range extenders.
5 Consistent with the FCC's definition in the *TRO*, BellSouth has
6 proposed this additional language because it routinely removes similar
7 devices from its network in the process of provisioning its own DSL
8 services, and therefore, falls within the FCC's definition of a routine
9 network modification to effect line conditioning.

10

11 Q. CAN YOU BRIEFLY DESCRIBE BRIDGED TAPS AND LOAD COILS
12 THAT ARE USED TO PROVIDE OR IMPROVE VOICE SERVICE, BUT
13 WHICH CAN IMPAIR HIGH SPEED DATA SERVICES SUCH AS
14 XDSL?

15

16 A. Yes. Bridged tap is an engineering technique of extending or tapping a
17 single loop so that it could serve additional customer locations (though
18 the bridged loop may serve only a single one of those customer
19 locations at a given time) and adds flexibility as service arrangements
20 and customer needs change over time. Bridged taps create additional
21 flexibility and increases the efficiency of the BellSouth network. Load
22 coils and low pass filters are inductive devices that improve voice
23 quality, especially on long loops, by reducing high frequency noise
24 (heard by the end-user as static). The same inductor that reduces high
25 frequency noise also interferes with high frequency data signals, such

1 as those used for xDSL service.

2

3 Q. DOES THE FCC SUPPORT BELLSOUTH'S POSITION?

4

5 A. In my opinion, yes. The FCC clearly defines a "routine network
6 modification" in paragraph 632 of the *TRO*. Specifically, the *TRO* states
7 in that paragraph: "By 'routine network modifications' we mean that
8 incumbent LECs must perform those activities that incumbent LECs
9 regularly undertake for their own customers." BellSouth's position and
10 proposed language clearly state that BellSouth will perform line
11 conditioning functions that (1) it regularly undertakes for its own xDSL
12 customers; or (2) additional, non-FCC required line conditioning
13 functions that it performs in limited situations pursuant to agreements
14 with Competitive Local Exchange Carriers ("CLECs") in industry
15 collaboratives. Thus, BellSouth's language is entirely consistent with
16 the FCC's ruling in the *TRO* on this issue, and in some situations
17 exceeds the FCC's requirement for line conditioning.

18

19 Q. WHY IS BELLSOUTH CONCERNED WITH THE JOINT
20 PETITIONERS' PROPOSED LANGUAGE?

21

22 A. The Joint Petitioners' proposed language creates an obligation for
23 BellSouth to perform specific line conditioning functions that BellSouth
24 does not regularly undertake for its own customers. Such an obligation
25 would lead to the development of a superior network for the Joint

1 Petitioners and is clearly not required by the FCC's definition of line
2 conditioning in the *TRO*. It is impossible to square the Joint Petitioners'
3 position with the FCC's findings in the *TRO*.

4
5 Q. SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "WHAT
6 SHOULD BELLSOUTH'S OBLIGATIONS BE WITH RESPECT TO
7 LINE CONDITIONING?" WHAT IS BELLSOUTH'S POSITION ON
8 ITEM 36 SUBPART (B)?

9
10 A. As stated above, BellSouth should perform line conditioning functions
11 as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a
12 routine network modification that BellSouth regularly undertakes to
13 provide xDSL to its own customers. As stated above, the *TRO* clarifies
14 the definition of line conditioning set forth in Rule 51.319(a)(1)(iii) by
15 limiting its application to line conditioning "that incumbent LECs
16 regularly perform in order to provide xDSL services to their own
17 customers." Any line conditioning that the Joint Petitioners desire that
18 is beyond what BellSouth is obligated to provide by the *TRO*, or has
19 voluntarily offered to the Joint Petitioners, is available via BellSouth's
20 Special Construction tariffs on a time and materials basis.

21
22 ***Item 37; Issue 2-19: Should the Agreement contain specific provisions***
23 ***limiting the availability of load coil removal to copper loops of 18,000 feet***
24 ***or less? (Attachment 2, Section 2.12.2)***

25

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

2

3 A. It is BellSouth's position that it will perform the same line conditioning
4 functions for CLECs that it performs for its own customers. BellSouth
5 adheres to current industry technical standards that require the
6 placement of load coils on copper loops greater than 18,000 feet in
7 length to support high quality voice service. Furthermore, BellSouth
8 does not remove load coils for BellSouth's retail end users served by
9 copper loops of over 18,000 feet in length. Therefore, such a
10 modification would not constitute a routine network modification and is
11 thus not required by the FCC's rules. Even though not required under
12 the FCC's definition of line conditioning in the *TRO*, upon a CLEC's
13 request, BellSouth will remove load coils on loops and subloops that
14 are greater than 18,000 feet in length at rates pursuant to BellSouth's
15 Special Construction Process contained in BellSouth's FCC Tariff No.
16 2.

17

18 Q. DOES ANY FCC ORDER PROVIDE BELLSOUTH WITH A BASIS TO
19 TREAT LINE CONDITIONING IN DIFFERENT MANNERS
20 DEPENDING ON THE LENGTH OF THE LOOP?

21

22 A. Yes. The *TRO* clearly states that BellSouth must perform the same line
23 conditioning activities for CLECs as it does for its own retail customers.
24 Therefore, BellSouth's procedures for providing line conditioning to its
25 retail customers is the same process and the same procedures that

1 apply to the Joint Petitioners. For its retail voice service customers,
2 BellSouth adds or does not add load coils depending on the length of
3 the copper loop, as set forth above, and, consistent with the *TRO*,
4 BellSouth has offered this same procedure to the Joint Petitioners.

5

6 ***Item 38; Issue 2-20: Under what rates, terms and conditions should***
7 ***BellSouth be required to perform Line Conditioning to remove bridged***
8 ***taps? (Attachment 2, Sections 2.12.3 & 2.12.4)***

9

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

11

12 A. BellSouth's offer to the Joint Petitioners exceeds its obligations under
13 the *TRO*. Specifically, even though BellSouth does not routinely
14 remove any bridged taps for its own xDSL customers, BellSouth agreed
15 in the CLEC industry collaborative to remove a limited number of
16 bridged taps at the request of CLECs. The following bridged tap
17 removal process was developed and agreed to in the CLEC industry
18 collaborative:

19

20 1) Any copper loop being ordered by a CLEC that has over 6,000
21 feet of combined bridged tap will be modified, upon request from
22 the CLEC, so that the loop will have a maximum of 6,000 feet of
23 bridged tap. This modification will be performed at no additional
24 charge to the CLEC.

25 2) Line conditioning orders that require the removal of bridged tap

1 (serving no network design purpose) on a copper loop that will
2 result in a combined level of bridged tap between 2,500 and
3 6,000 feet will be performed at the rates set forth in Exhibit A of
4 Attachment 2 of the Interconnection Agreement.

5 3) The CLEC may request removal of any unnecessary and non-
6 excessive bridged tap (bridged tap between 0 and 2,500 feet that
7 serves no network design purpose) at rates pursuant to
8 BellSouth's Special Construction Process contained in
9 BellSouth's FCC Tariff No. 2.

10

11 Requests for line conditioning beyond what BellSouth performs for its
12 own customers (which is BellSouth's only obligation) or is willing to
13 voluntarily provide to the CLECs, are not appropriately dealt with under
14 a Section 251 arbitration and should be addressed via a separate
15 agreement.

16

17 Q. DO YOU BELIEVE THAT A BRIDGED TAP THAT IS LESS THEN
18 2,500 FEET IN LENGTH SIGNIFICANTLY IMPAIRS THE PROVISION
19 OF HIGH SPEED DATA TRANSMISSION?

20

21 A. No. The policy of not removing bridged taps less than 2,500 feet
22 ("Short Bridged Taps") was established by both BellSouth and the
23 CLECs through the industry Shared Loop Collaborative. Both BellSouth
24 and the CLECs in this collaborative would not have agreed to such a
25 policy if they believed that failing to remove Short Bridged Taps would

1 impair the provision of high speed data service. Additionally, this joint
2 policy is consistent with industry standards for xDSL services, which
3 allow the use of bridged taps on loops up to 6,000 feet in length.
4 BellSouth's line conditioning policies are consistent with these
5 standards.

6

7 Q. DO YOU AGREE WITH THE JOINT PETITIONERS' ASSERTION
8 THAT REMOVAL OF BRIDGED TAPS IS INCLUDED IN THE
9 DEFINITION OF LINE CONDITIONING?

10

11 A. No. Because BellSouth does not routinely remove bridged taps for its
12 own xDSL customers, such activity does not fall within the FCC's *TRO*
13 definition of line conditioning.

14

15 ***Item 46; Issue 2-28: Should the CLECs be permitted to incorporate the***
16 ***FastAccess language from the FDN and/or Supra interconnection***
17 ***agreements, respectively docket numbers 010098-TO and 001305-TP, for***
18 ***the term of this Agreement? (Attachment 2, Section 3.10.4)***

19

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

21

22 A. The Commission should not address this issue for three reasons. First,
23 in light of recent FCC rulings, the Joint Petitioners cannot incorporate
24 the rates, terms, and conditions relating to the provision of BellSouth's
25 DSL service with UNE-P (Supra ICA Language) or UNE-L (FDN ICA

1 Language) that exist in these prior agreements. This is because the
2 FCC recently interpreted Section 252(i) of the Act to require CLECs to
3 adopt another carrier's interconnection agreement in its entirety. In
4 doing so, the FCC expressly prohibited what the Joint Petitioners are
5 trying to do here – that is “pick and choose” certain portions of other
6 carriers' agreements. Furthermore, because the FCC prohibited the
7 adoption of any agreement that contains “frozen elements” in the
8 *Interim Rules Order*, even if the Joint Petitioners wanted to adopt prior
9 agreements in their entirety, such adoption would be prohibited.

10

11 Second, while this Commission has ordered¹ BellSouth to provide its
12 retail DSL based FastAccess® service to end users of CLECs who
13 obtain service using a UNE-P or UNE-L line in the past, the
14 Commission should refrain from making this same finding in this
15 arbitration. This is because, as set forth in detail below, FastAccess®
16 and BellSouth's wholesale DSL service are interstate
17 telecommunications services over which the FCC, and not the
18 Commission, has jurisdiction. In fact, in an order addressing GTE's
19 DSL-Solutions-ADSL Service, the FCC found that “this offering, which

¹ FPSC Order No. PSC-02-0765-FOF-TP, Docket No. 010098-TP, dated June 5, 2002, required BellSouth to continue to provide its retail FastAccess service to end users who obtain voice service from FDN over UNE loops. FPSC Order No. PSC-02-0878-FOF-TP in Docket No. 001305-TP, rel. July 1, 2002 (clarified in Order dated October 21, 2002), required BellSouth to continue to provide its retail FastAccess service to a customer migrating to Supra's voice service over UNE-P. Both the FDN and the Supra orders are on appeal to the U.S. District Court, Northern District of Florida. On July 21-22, 2003, hearings were held in a similar case, the FCCA FastAccess Complaint, Docket 020507-TL. Decisions in the FDN and Supra appeals as well as in the FCCA Complaint case are currently stayed pending a decision by the FCC in BellSouth's Emergency Request for Declaratory Ruling, WC Docket No. 03-251.

1 permits Internet Service Providers (ISPs) to provide their end user
2 customers with high-speed access to the Internet, is an interstate
3 service and is properly tariffed at the federal level.”² As a result, this
4 Commission lacks the jurisdiction to grant the relief at issue.

5
6 Third, BellSouth has filed an Emergency Request for Declaratory Ruling
7 (“Emergency Request”), WC Docket No. 03-251, with the FCC to
8 address this exact issue. At a minimum, as in the FCCA Complaint
9 case (Docket 020507-TL) pending in Florida, the Commission should
10 defer resolution of this issue until the FCC reaches a decision on
11 BellSouth’s Emergency Request.

12
13 Q. IF THE COMMISSION ELECTS TO ADDRESS THIS ISSUE AGAIN,
14 WHAT IS BELL SOUTH’S POSITION?

15
16 A. BellSouth should not be required to provide DSL transport or DSL
17 services over UNEs to a CLEC and its end users because BellSouth’s
18 Digital Subscriber Line Access Multiplexers (“DSLAMs”) are not subject
19 to unbundling. The FCC specifically stated in paragraph 288 of the
20 *TRO* that it would “not require incumbent LECs to provide unbundled
21 access to any electronics or other equipment used to transmit
22 packetized information”. A DSLAM is precisely the type of equipment to
23 which the FCC referred.

² See Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1*, 13 F.C.C. rcd 22,466 at ¶1 (October 30, 1998) (emphasis added).

1 Further, the FCC addressed this issue in its Line Sharing Order³ and
2 concluded that incumbent carriers are not required to provide line
3 sharing to requesting carriers that are purchasing UNE-P combinations.
4 The FCC reiterated this determination in its Line Sharing
5 Reconsideration Order⁴. It stated: “We deny, however, AT&T’s request
6 that the Commission clarify that incumbent LECs must continue to
7 provide xDSL service in the event customers choose to obtain service
8 from a competing carrier on the same line because we find that the Line
9 Sharing order contained no such requirement.” ¶¶26. The FCC then
10 expressly stated that the Line Sharing Order “does not require that
11 [LECs] provide xDSL service when they are not [sic] longer the voice
12 provider.” ¶¶26. The FCC explained: “We note that in the event that the
13 customer terminates its incumbent LEC provided voice service, for
14 whatever reason, the competitive data LEC is required to purchase the
15 full stand-alone loop network element if it wishes to continue providing
16 xDSL service.” (Line Sharing Order, at ¶¶72).

17
18 Likewise, the FCC addressed BellSouth’s practice of not providing its
19 federally tariffed wholesale DSL service over a combined unbundled
20 loop and unbundled switch port (that is, the so-called “UNE-P”) in its
21 order approving BellSouth’s Louisiana/Georgia Section 271

³ *In Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order No. FCC 99-355 in CC Docket Nos. 98-147, 96-98 (Released December 9, 1999) (*Line Sharing Order*).

⁴ *Third Report and Order on Reconsideration* in CC Docket No. 98-147 and *Fourth Report and Order on Reconsideration* in CC Docket No. 96-98, Order No. FCC 01-26 (Released January 19, 2001) (*Line Sharing Reconsideration Order*).

1 application.⁵ Parties to that proceeding raised complaints about
2 BellSouth's DSL policy that are nearly identical to those asserted in this
3 proceeding, which the FCC rejected:

4
5 BellSouth states that its policy "not to offer its
6 wholesale DSL service to an ISP or other network
7 services provider [] on a line that is provided by a
8 competitor via the UNE-P" is not discriminatory nor
9 contrary to the Commission's rules. Commenters
10 allege that BellSouth will not offer its DSL service
11 over a competitive LEC's UNE-P voice service on
12 that same line. We reject these claims because,
13 under our rules, the incumbent LEC has no
14 obligation to provide DSL service over the
15 competitive LEC's leased facilities. Furthermore, a
16 UNE-P carrier has the right to engage in line
17 splitting on its loop. As a result, a UNE-P carrier
18 can compete with BellSouth's combined voice and
19 data offering on the same loop by providing the
20 customer with line splitting voice and data service
21 over the UNE-P loop in the same manner.
22 *Accordingly, we cannot agree with commenters*
23 *that BellSouth's policy is discriminatory.*
24

25 *Id.* at ¶157 (emphasis added). The FCC, therefore, was squarely
26 presented with the issue of whether BellSouth's policy of not providing
27 its federally tariffed, wholesale DSL service over UNE-P violates federal
28 law. The FCC found no such violation. A contrary ruling by this
29 Commission under state law would be inconsistent with the
30 requirements of federal law, as interpreted by the FCC.

31

⁵ FCC Order No. 02-247, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and Bellsouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Rel. May 15, 2002. ("GA/LA 271 Order")

1 Q. HAS THE FCC ADDRESSED BELLSOUTH'S DSL POLICY IN OTHER
2 DECISIONS?

3

4 A. Yes. The FCC again affirmed its conclusion reached in the
5 Georgia/Louisiana Order when it approved BellSouth's 271 Application
6 for Alabama, Kentucky, Mississippi, North Carolina, and South
7 Carolina. In paragraph 164 of its order, the FCC concluded:

8

9 Finally, we reject claims by KMC and NuVox that
10 BellSouth's practice of refusing to provide DSL
11 service on the same line over which an end user
12 subscribes to a competitive LEC's voice service
13 warrants a finding of noncompliance. As we stated
14 in the BellSouth Georgia/Louisiana Order, an
15 incumbent LEC has no obligation, under our rules,
16 to provide DSL service over the competitive LEC's
17 leased facilities. Moreover, a UNE-P carrier has the
18 right to engage in line splitting on its loop. As a
19 result, a UNE-P carrier can compete with
20 BellSouth's combined voice and data offering on
21 the same loop by providing the customer with line
22 splitting voice and data service over the UNE-P
23 loop in the same manner. Accordingly, we cannot
24 agree with KMC and NuVox that BellSouth's
25 policies are discriminatory and warrant a finding of
26 checklist noncompliance. [Footnotes omitted.]

27 Again, it is clear that BellSouth's DSL policy is neither anticompetitive
28 nor discriminatory. Further, as the FCC noted, CLECs have the option
29 of engaging in line splitting in order to provide DSL service to their voice
30 customers -- an option that Joint Petitioners have conveniently elected
31 to forego, despite prior representations by some CLECs that line
32 splitting is essential to competition.

33

1 Importantly, because BellSouth will provide DSL service over a
2 BellSouth line being resold by a CLEC⁶, it is not necessary for an end-
3 user customer to purchase voice service from BellSouth in order to
4 receive DSL service. Thus, if a CLEC wants to provide both voice and
5 DSL service to an end user over a single line, one option is for the
6 CLEC to resell BellSouth's voice service with BellSouth-provided DSL
7 service over the same line.

8

9 **Q: WHAT IS BELLSOUTH REQUESTING AS TO THIS ISSUE?**

10

11 **A.** BellSouth is asking the Commission to find, consistent with federal and
12 state law, that BellSouth is not required to provide its DSL transport or
13 DSL services to a CLEC and its end users through any means other
14 than BellSouth's FCC tariff. At a minimum, as in the FCCA Complaint
15 case (Docket 020507-TL), the Commission should defer resolution of
16 this issue until the FCC reaches a decision on BellSouth's Emergency
17 Request.

18

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

20

21 **A.** Yes.

⁶ A resold line is a "BellSouth provided exchange line facility" within the meaning of BellSouth's FCC Tariff No. 1.