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January 10, 2005

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 040130-TP

Dear Ms. Bayó:

Enclosed for filing are the following documents:

1. An original and fifteen copies of the Direct Testimony of James C. Falvey on behalf of Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC; 00349-05

2. An original and fifteen copies of the Direct Testimony of Marva Brown Johnson on behalf of KMC Telecom V, Inc. and KMC Telecom III LLC; 00350-05

3. An original and fifteen copies of the Direct Testimony of Hamilton E. Russell, III, on behalf of NuVox Communications, Inc. and NewSouth Communications Corp.; and 00351-05

4. An original and fifteen copies of the Direct Testimony of Jerry Willis on behalf of NuVox Communications, Inc. and NewSouth Communications Corp. 00352-05

CMP
COM 3
CTR 1
ECR
GCL 2
OPC
MMS
RCA
SCR
SEC 1
OTH

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE:

JOINT PETITION FOR ARBITRATION OF 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	)))))))	**DOCKET N0. 040130-TP**

TESTIMONY OF THE JOINT PETITIONERS

James Falvey on behalf of the Xspedius Companies

January 10, 2005

PRELIMINARY STATEMENTS

WITNESS INTRODUCTION AND BACKGROUND

Xspedius: James Falvey

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is James C. Falvey. I am the Senior Vice President of Regulatory Affairs for Xspedius Communications, LLC. My business address is 7125 Columbia Gateway Drive, Suite 200, Columbia, Maryland 21046.

Q. PLEASE DESCRIBE YOUR POSITION AT XSPEDIUS.

A. I manage all matters that affect Xspedius before federal, state, and local regulatory agencies. I am responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, interconnection and local rights-of-way issues. I participated actively in the negotiation of the Agreement that is the subject of this arbitration.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I am a cum laude graduate of Cornell University, and received my law degree from the University of Virginia School of Law. I am admitted to practice law in the District of Columbia and Virginia.

After graduating from law school, I worked as a legislative assistant for Senator Harry M. Reid of Nevada, and then practiced antitrust litigation in the Washington D.C. office of Johnson & Gibbs. Thereafter, I practiced law with the Washington, D.C. law firm of Swidler & Berlin, where I represented competitive local exchange

providers and other competitive providers in state and federal proceedings. In May 1996, I joined e.spire Communications, Inc. as Vice President of Regulatory Affairs, where I was promoted to Senior Vice President of Regulatory Affairs in March 2000. I have continued to served in that same position for Xspedius, after Xspedius acquired the bulk of e.spire's assets in August 2002.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. In total, I have testified before 13 public service commissions, including those of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, New Mexico, Texas, Pennsylvania, Arkansas, and Kansas.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[1]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 8/G-8, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	23/2-5, 26/2-8, 27/2-9, 36/2-18, 37/2-19, 38/2-20, 43/2-25, 46/2-28, 50/2-32, 51/2-33(B) & (C)
Attachment 3: Interconnection	63/3-4, 65/3-6

[1] The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

Attachment 6: Ordering	86/6-3(B), 88/6-5, 94/6-11
Attachment 7: Billing	95/7-1, 96/7-2, 97/7-3, 99/7-5, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10
Supplemental Issues	108/S-1 thru 114/S-7

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position, as set forth with respect to each unresolved issue subsequently herein, and associated contract language on the issues indicated in the chart above.

GENERAL TERMS AND CONDITIONS[2]

Item No. 1, Issue No. G-1 [Section 1.6]: ***This issue has been resolved.***

Item No. 2, Issue No. G-2 *[Section 1.7]: How should "End User" be defined?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

Item No. 3, Issue No. G-3 [Section 10.2]: ***This issue has been resolved.***

Item No. 4, Issue No. G-4 *[Section 10.4.1]: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

[2] **Please note that the disputed contract language for all issues raised in this testimony has been attached to this testimony as *Exhibit A*.** With the exception of the language that pertains to the Supplemental Issues, the contract language contained therein represents the most recent proposals as of the date of this filing. Joint Petitioners received BellSouth's proposed contract language that relates to the Supplemental Issues well beyond the time in which it was promised and only recently had the opportunity to discuss the proposals with BellSouth. Accordingly, Joint Petitioners are not in a position to incorporate in any way BellSouth's new contract language proposals into this filing.

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 5, Issue No. G-5 *[Section 10.4.2]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 6, Issue No. G-6 *[Section 10.4.4]: How should indirect, incidental or consequential damages be defined for purposes of the Agreement?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

***Item No. 7, Issue No. G-7** [Section 10.5]: What should the indemnification obligations of the Parties be under this Agreement?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

***Item No. 8, Issue No. G-8** [Section 11.1]: What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logo and trademarks?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

***Item No. 9, Issue No. G-9** [Section 13.1]: Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a Court of law for resolution first?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 9/ISSUE G-9.

A. Either Party should be able to petition the Commission, the FCC, or a court of law for resolution of a dispute. No legitimate dispute resolution venue should be foreclosed

to the Parties. The industry has experienced difficulties in achieving efficient regional dispute resolution. Moreover, there is an ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement. There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec. 11.5); indeed, in certain instances, they may be better situated to adjudicate a dispute and may provide a more efficient alternative to litigating before up to 9 different state commissions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners submit that it is unreasonable to exclude courts of law from the available list of venues available to address disputes under this Agreement. There is no question that courts of law have proper jurisdiction over disputes arising out of this Agreement, and in fact, BellSouth and the Petitioners have agreed to language providing as much elsewhere in the Agreement, including in Sec. 11.5 of the General Terms and Conditions (and in prior agreements (*see, e.g.*, NuVox's and Xspedius's current agreements at section 15)). Therefore, at a minimum, internal consistency militates in favor of including courts of law as available venues. Furthermore, in a number of instances, such as the resolution of intellectual property issues, tax issues, the determination of negligence, willful misconduct or gross negligence issues, petitions for injunctive relief and claims for damages, courts of law may be better equipped to adjudicate such disputes. The Commission and the FCC are obviously the expert agencies with respect to a number of (if not the majority of) the issues that

might arise in connection with this Agreement (and a court can if appropriate defer to the expertise of the state or federal commission under the doctrine of primary jurisdiction, if these types of complaints are brought directly to courts), however the foregoing types of disputes would tax heavily the Commission's expertise and resources.

In addition, administrative efficiency favors inclusion of the courts as venues for dispute resolution. Given that this Agreement, or an Agreement very similar to it, will likely be adopted across BellSouth's nine-state region, the courts may for certain disputes and in certain contexts provide a more efficient alternative to litigating in up to 9 different jurisdictions or to waiting for the FCC, to decide whether or not it will accept an enforcement role given the particular facts.

Petitioners' experience has been that achieving efficient regional dispute resolution is already too difficult and it need not be made more difficult by the elimination of the courts as a possible venue for dispute resolution. As a result of the difficulties inherent in enforcing a multi-state agreement (technically, separate agreements for each state), BellSouth often is able to force carriers into heavily discounted, non-litigated settlements. Such settlements often are heavily discounted to reflect the exorbitant costs associated with litigating an issue that exists region-wide, but that gives rise to a disputed amount that may be too low for a single carrier to justify litigating in each state jurisdiction separately. Foreclosing the courts as a venue for dispute resolution may prevent CLECs from litigating legitimate disputes that cannot

efficiently be litigated across 9 different states or at the FCC, where dispute resolution is expensive and uncertain.

At bottom, elimination of the court of law as a venue option for dispute resolution unnecessarily forecloses a viable means for efficient dispute resolution. The Parties must decide on a case-by-case basis the appropriate venue for a particular dispute, and a court of law with competent jurisdiction should not be excluded from those choices.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth recently has revised its proposed language to allow for recourse to a court of law under certain conditions. Petitioners, however, remain concerned that disputes could evolve over "matters which lie outside the jurisdiction or expertise of the Commission or FCC". Such disputes could hamper efficient dispute resolution. Petitioners fear that the Parties could get mired in such disputes.

BellSouth's new proposal is also inadequate in that it could be used to effectively force CLECs to re-litigate the same issue in 9 different states, or, if claimed damages spread across all the states are too small, not to pursue their rights to enforce compliance with the Agreement at all. While the FCC theoretically may be available as an enforcement venue for disputes arising out of the Agreement, the FCC is often slow to decide as a threshold matter, whether in fact, it will even accept an enforcement role under particular facts. Assuming that the FCC is willing to exercise its jurisdiction (if it decides it has jurisdiction), the FCC often takes many months and

in some cases years to render decisions, which, in the context of business contracts that have daily and on-going impact, is unacceptable.

Finally, BellSouth's proposed language could force the needless bifurcation of claims based on breach from related claims based on other legal and equitable theories. Claims brought before a court may be referred to the Commission or FCC, for their expert opinion, if necessary. Forced bifurcation is needlessly burdensome and it may hamper Petitioners' ability to effectively pursue related claims, such as antitrust claims, before a court of competent jurisdiction.

Q. WHAT IS YOUR POSITION ON BELLSOUTH'S PROPOSED RESTATEMENT OF ITEM 9/ISSUE G-9?

A. Petitioners disagree with BellSouth's proposed restatement of the issue, as it attempts to improperly skew the issue by incorporating the false implication that there are exclusive, efficient and adequate administrative remedies available to address all claims and disputes that may arise under the Agreement and that there is an applicable mandate that such remedies be exhausted before a Party may resort to a court. BellSouth's own insistence that intellectual property related claims and disputes must go directly to a court of law (a provision to which the Petitioners agreed) underscores that BellSouth's premise and position are false.

Item No. 10, Issue No. G-10 [Section 17.4]: ***This issue has been resolved.***

Item No. 11, Issue No. G-11 [Sections 19, 19.1]: ***This issue has been resolved.***

Item No. 12, Issue No. G-12 *[Section 32.2]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

been resolved.

Item No. 14, Issue No. G-14 [Section 34.2]: ***This issue has been resolved.***

been resolved.

Item No. 16, Issue No. G-16 [Section 45.3]: ***This issue has been resolved.***

RESALE (ATTACHMENT 1)

Item No. 17, Issue No. 1-1 [Section 3.19]: ***This issue has been resolved.***

Item No. 18, Issue No. 1-2 [Section 11.6.6]: ***This issue has been resolved.***

NETWORK ELEMENTS (ATTACHMENT 2)

Item No. 19, Issue No. 2-1 [Section 1.1]: ***This issue has been resolved.***

Item No. 20, Issue No. 2-2 [Section 1.2]: ***This issue has been resolved.***

Item No. 21, Issue No. 2-3 [Section 1.4.2]: ***This issue has been resolved.***

Item No. 22, Issue No. 2-4 [Section 1.4.3]: ***This issue has been resolved.***

Item No. 23, Issue No. 2-5 *[Section 1.5]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

Item No. 24, Issue No. 2-6 [Section 1.5.1]: ***This issue has been resolved.***

Item No. 25, Issue No. 2-7 [Section 1.6.1]: ***This issues has been resolved.***

Item No. 26, Issue No. 2-8 *[Section 1.7]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

Item No. 27, Issue No. 2-9 *[Section 1.8.3]: 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?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 27/ISSUE 2-9.

A. When multiplexing equipment (equipment that allows multiple voice and data streams and signals to be carried over the same channel or circuit) is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service (which in most cases will be a UNE loop).

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a CLEC requests a commingled circuit in which multiplexing equipment is attached, then the multiplexing equipment should be billed at the lower bandwidth of service – *i.e.,* per the jurisdiction of the loop if a loop is attached or per the lower

bandwidth transport, if the circuit involves commingled transport links. It is our understanding that the FCC held, in the TRO, that the definition of local loop includes multiplexing equipment (other than DSLAMs). Therefore, the multiplexing should be at UNE rates when a UNE loop is part of the circuit. At the very least, the CLEC – as the Party ordering and paying for the service – should be able to choose whether it wants to purchase multiplexing out of the Agreement (connected to a UNE) or out of a BellSouth tariff.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that when multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher bandwidth service. The problem with this language is that, in a commingled circuit incorporating a DS1 UNE loop and DS3 special access transport (the most common kind of commingled circuit we expect to see), the multiplexing element would get billed at special access rates even though it is by definition part of the loop UNE.

Item No. 28, Issue No. 2-10 [Section 1.9.4]: ***This issue has been resolved.***

Item No. 29, Issue No. 2-11 [Section 2.1.1]: ***This issue has been resolved.***

Item No. 30, Issue No. 2-12 [Section 2.1.1.1]: ***This issue has been resolved.***

Item No. 31, Issue No. 2-13 [Section 2.1.1.2]: ***This issue has been resolved.***

Item No. 32, Issue No. 2-14 [Sections 2.1.2, 2.1.2.1, 2.1.2.2]: ***This issue has been resolved.***

Item No. 33, Issue No. 2-15 [Section 2.2.3]: ***This issue has been resolved.***

Item No. 34, Issue No. 2-16 [Section 2.3.3]: ***This issue has been resolved.***

Item No. 35, Issue No. 2-17 [Sections 2.4.3, 2.4.4]: ***This issue has been resolved.***

Item No. 36, Issue No. 2-18 *[Section 2.12.1]: (A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 37, Issue No. 2-19 *[Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Jerry Willis on this issue, as though it were reprinted here.

Item No. 38, Issue No. 2-20 *[Sections 2.12.3, 2.12.4]: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Jerry Willis on this issue, as though it were reprinted here.

Item No. 39, Issue No. 2-21 [Section 2.12.6]: ***This issue has been resolved.***

Item No. 40, Issue No. 2-22 [Section 2.14.3.1.1]: ***This issue has been resolved.***

*Item No. 41, Issue No. 2-23 2.16.2.3.2****This issue has been resolved.***

Item No. 42, Issue No. 2-24 [Section 2.17.3.5]: ***This issue has been resolved***

Item No. 43, Issue No. 2-25 *[Section 2.18.1.4]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 44, Issue No. 2-26 [Section 3.6.5]: ***This issue has been resolved.***

Item No. 45, Issue No. 2-27 [Section 3.10.3]: ***This issue has been resolved.***

Item No. 46, Issue No. 2-28 *[Section 3.10.4]: 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?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 46/ISSUE 2-28.

A. The answer to the question posed in the issue statement is "YES". The CLEC should 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.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. These matters have been litigated already before the Commission, and Joint Petitioners should be placed in the same position as other carriers like FDN and Supra.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has refused to provide language that does anything more than indicate that it will some day provide Petitioners with another non-section 252 agreement to consider. This is unacceptable. Petitioners are not willing to wait until someday and

they are not willing to accede to BellSouth's request to address the issue outside the scope of the Commission's jurisdiction.

Item No. 47, Issue No. 2-29 [Section 4.2.2]: (A) ***This issue has been resolved****; (B)* ***This issue has been resolved.***

Item No. 48, Issue No. 2-30 [Section 4.5.5]: ***This issue has been resolved.***

Item No. 49, Issue No. 2-31 [Section 5.2.4]: ***This issue has been resolved.***

Item No. 50, Issue No. 2-32 *[Sections 5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5, 5.2.5.2.7]: How should the term "customer" as used in the FCC's EEL eligibility criteria rule be defined?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

Item No. 51, Issue No. 2-33 *[Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]: (A)* ***This issue has been resolved.***

(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

(C) Who should conduct the audit and how should the audit be performed?

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 52, Issue No. 2-34 [Section 5.2.6.2.3]: ***This issue has been resolved.***

Item No. 53, Issue No. 2-35 [Section 6.1.1]: ***This issue has been resolved.***

Item No. 54, Issue No. 2-36 [Section 6.1.1.1]: ***This issue has been resolved.***

Item No. 55, Issue No. 2-37 [Section 6.4.2]: ***This issue has been resolved.***

Item No. 56, Issue No. 2-38 [Sections 7.2, 7.3]: ***This issue has been resolved.***

Item No. 57, Issue No. 2-39 [Sections 7.4]: (A) ***This issue has been resolved.*** *(B)* ***This issue has been resolved.***

Item No. 58, Issue No. 2-40 [Sections 9.3.5]: ***This issue has been resolved.***

Item No. 59, Issue No. 2-41 [Sections 14.1]: ***This issue has been resolved.***

INTERCONNECTION (ATTACHMENT 3)

Item No. 60, Issue No. 3-1 [Section 3.3.4 (KMC, NSC, NVX), 3.3.3 XSP]: ***This issue has been resolved.***

Item No. 61, Issue No. 3-2 [Section 9.6 and 9.7]: ***This issue has been resolved.***

Item No. 62, Issue No. 3-3 [Section 10.7.4, 10.9.5, and 10.12.4]: ***This issue has been resolved.***

***Item No. 63, Issue No. 3-4** [Section 10.8.6, 10.10.6 and, 10.13.5]: 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?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 63/ISSUE 3-4.

A. In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, the CLEC should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is obligated to pay pursuant to contract or Commission order. Moreover, CLECs should not be required to reimburse BellSouth for any charges or costs related to Transit Traffic for which BellSouth has assumed responsibility through a settlement agreement with a third party. BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners have agreed to reimburse BellSouth for termination charges that BellSouth must pay third party carriers that terminate CLEC-originated traffic transited by BellSouth. The Agreement, however, must be clear that such reimbursement is limited to those charges BellSouth is contractually-obligated to pay to third party carriers or obligated to pay pursuant to Commission order. Moreover, Petitioners should not be made unwilling parties to any settlement agreement between BellSouth and a third party. Meaning, if BellSouth agrees to pay a third party for the

termination of Transit Traffic as part of some arrangement or settlement, Petitioners should not be responsible for reimbursing BellSouth's for its business decision to pay such third party. Without such limitations, there is the potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from Petitioners for unjustified termination charges. In order to further ensure that BellSouth does not overpay and Petitioners are not over-reimbursing for third-party termination of Petitioner-originated/BellSouth transited traffic, BellSouth should be required to diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices. Petitioners feel that such language is needed because, without it, there is the incentive for BellSouth to become lax, as it can relay on the reimbursement provision. Accordingly, we simply ask BellSouth to treat bills for termination of Transit Traffic no differently from other bills the company gets from independent telcos and the like. Petitioners' proposal will eliminate any potential discrimination and promote business certainty with regard to BellSouth's transiting function.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate in that it does not limit the reimbursement obligation to those charges BellSouth is contractually obligated to pay, or obligated to pay pursuant to Commission order, third parties terminating Petitioner-originated/BellSouth-transited traffic. Instead, it gives BellSouth the latitude to choose to pay such third parties even when it has no contractual or other legal

obligation to do so. The result would leave Petitioners vulnerable to whatever political or business arrangements BellSouth struck with such third parties regardless of whether the rate imposed or payment scheme agreed to is unjust and unreasonable.

Q. WHAT IS YOUR VIEW ON BELLSOUTH'S PROPOSED RESTATEMENT OF THE ISSUE?

A. Our view is that it is unacceptable in that it appears that BellSouth is trying to disguise the fact that this is an issue that relates to BellSouth's Transit Traffic service. It is not simply an issue about Petitioner-originated traffic.

Item No. 64, Issue No. 3-5 [Section 10.5.5.2, 10.5.6.2, 10.7.4.2 and 10.10.6]: ***This issue has been resolved.***

Item No. 65, Issue No. 3-6 *[Section 10.8.1, 10.10. 1, and 10.13]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

Item No. 66, Issue No. 3-7 [Section 10.1]: ***This issue has been resolved.***

Item No. 67, Issue No. 3-8 [Section 10.2, 10.2.1, 10.3]: ***This issue has been resolved.***

Item No. 68, Issue No. 3-9 [Section 2.1.12]: ***This issue has been resolved.***

Item No. 69, Issue No. 3-10 [Section 3.2, Ex. A]: ***This issue has been resolved***

Item No. 70, Issue No. 3-11 [Sections 3.3.1, 3.3.2, 3.4.5, 10.10.2]: ***This issue has been resolved.***

Item No. 71, Issue No. 3-12 [Section 4.5]: ***This issue has been resolved.***

Item No. 72, Issue No. 3-13 [Section 4.6]: ***This issue has been resolved.***

Item No. 73, Issue No. 3-14 [Sections 10.10.4, 10.10.5, 10.10.6,10.10.7]: ***This issue has been resolved.***

COLLOCATION (ATTACHMENT 4)

Item No. 74, Issue No. 4-1 [Section 3.9]: ***This issue has been resolved.***

Item No. 75, Issue No. 4-2 [Sections 5.21.1, 5.21.2]: ***This issue has been resolved.***

Item No. 76, Issue No. 4-3 [Section 8.1, 8.6]: ***This issue has been resolved.***

Item No. 77, Issue No. 4-4 [Section 8.4]: ***This issue has been resolved.***

Item No. 78, Issue No. 4-5 [Section 8.6]: ***This issue has been resolved.***

Item No. 79, Issue No. 4-6 [Sections 8.11, 8.11.1, 8.12.2]: ***This issue has been resolved.***

Item No. 80, Issue No. 4-7 [Section 9.1.1]: ***This issue has been resolved.***

Item No. 81, Issue No. 4-8 [Sections 9.1.2, 9.1.3]: ***This issue has been resolved.***

Item No. 82, Issue No. 4-9 [Sections 9.3]: ***This issue has been resolved.***

Item No. 83, Issue No. 4-10 [Sections 13.6]: ***This issue has been resolved.***

ORDERING (ATTACHMENT 6)

Item No. 84, Issue No. 6-1 [Section 2.5.1]: ***This issue has been resolved.***

Item No. 85, Issue No. 6-2 [Section 2.5.5]: ***This issue has been resolved.***

Item No. 86, Issue No. 6-3 *[Sections 2.5.6.2, 2.5.6.3]: (A) This issue has been resolved. (B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 86(B)/ISSUE 6-3(B).

A. If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the due process

contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Self help is nearly always an inappropriate means of handling a contract dispute. If there is a dispute, it should be handled in accordance with the Dispute Resolution provisions of the contract and not under the threat of suspension of access to OSS or termination of all services. If BellSouth is truly concerned about quickly resolving such issues, it should not continue to oppose including a court of law as an appropriate venue for dispute resolution.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language provides little more than the threat of suspension of access to OSS and the termination of all services (regardless of its potential impact on its competition or customers who have been disloyal to BellSouth). BellSouth offers as window dressing that if a Petitioner disagrees with BellSouth's allegations of unauthorized use, the *Petitioner* must proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions. However, that turns on its head the notion that the Party seeking redress must seek Dispute Resolution and puts Petitioners in the position of having to bear the burden of running to up to 9 state commissions every time they cannot convince BellSouth to cease engaging in baseless bullying. Moreover, it is not at all clear whether BellSouth would get to pull the plug while the dispute is pending or whether the coercive pressure created by

BellSouth's ambiguous language is all that it is seeking. In the end, neither Petitioners nor their customers should be forced into such a precarious situation. At bottom, the Party seeking certain relief (in this case BellSouth), should be the Party that has to file actions under the Dispute Resolution provisions. Petitioners should not be forced to seek Dispute Resolution as a means of curtailing ongoing or potential damage from BellSouth bullying and self-help.

Item No. 87, Issue No. 6-4 [Section 2.6]: ***This issue has been resolved.***

Item No. 88, Issue No. 6-5 *[Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 88/ISSUE 6-5.

A. Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. All aspects of UNE ordering and provisioning must be priced at TELRIC. This same rule should apply to Service Date Advancements. Petitioners are entitled to access the local network and obtain elements at forward-looking, cost-based rates. Where they require such access on an expedited basis, which is sometimes necessary in order to meet a customer's needs, Petitioners should not be subject to inflated, excessive fees that were not set by the Commission and that do not comport with the TELRIC pricing standard.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position is that it is not required to provide expedited service pursuant to the Act. Therefore, BellSouth's language states that BellSouth's tariffed rates for service date advancement will apply. BellSouth's tariffed rate, however, is $200.00 per element, per day. Thus, for example, a request to speed up an order for a 10-line customer by 2 days would cost $4,000.00. This fee is unreasonable, excessive and harmful to competition and consumers.

Q. IS ITEM 88/ISSUE 6-5 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. Obviously, the answer to this question is "yes". The manner in which BellSouth provisions UNEs is absolutely within the parameters of section 251. Where Petitioners require expedited provisioning, that request remains part of the overall UNE provisioning scheme. And, as we have explained, that request should result in TELRIC rates as for any other UNE order. BellSouth's position that "this issue is not appropriate in this proceeding" is therefore incorrect. Setting prices and arbitrating the terms and provisions associated with section 251 unbundling are squarely within the Commission's jurisdiction and are appropriately resolved in this arbitration proceeding. Moreover, as previously stated, this Commission has clearly found that an interconnection agreement may encompass rates terms and conditions that extend beyond an ILEC's section 251 obligations. So, even if BellSouth's position that expedite charges are outside the scope of section 251 is correct (which it is not), it is irrelevant, as that would not render the issue outside the scope of the Agreement.

Item No. 89, Issue No. 6-6 [Section 2.6.25]: ***This issue has been resolved.***

Item No. 90, Issue No. 6-7 [Section 2.6.26]: ***This issue has been resolved.***

Item No. 91, Issue No. 6-8 [Section 2.7.10.4]: ***This issue has been resolved.***

Item No. 92, Issue No. 6-9 [Section 2.9.1]: ***This issue has been resolved.***

Item No. 93, Issue No. 6-10 [Section 3.1.1]: ***This issue has been resolved.***

Item No. 94, Issue No. 6-11 *[Sections 3.1.2, 3.1.2.1]: (A) 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?*

(B) If so, what rates should apply?

(C) What should be the interval for such mass migrations of services?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 94(A)/ISSUE 6-11(A).

A. The answer to this question is "YES". Mass migration of customer service arrangements (*e.g.*, UNEs, Combinations, resale) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Consolidation in the CLEC industry has recently brought to the forefront issues surrounding mass migration and the need to ensure that there is an efficient, predictable and lawfully priced process in place for accomplishing the mass transfer of customers and associated serving arrangements from one carrier to another. It is in consumers' best interests that such transitions happen seamlessly, quickly and at a reasonable price. Mass migration scenarios that result from CLEC mergers or asset acquisitions should not translate into an opportunity for BellSouth to make things difficult, create delay or to extract a ransom to get the work done.

Because mass migrations essentially amount to bulk porting/bulk change situations, they are not extraordinarily complex and they do not require BellSouth to do new and unique things. Accordingly, they should be made possible by submission of an electronic LSR (or spreadsheet prior to that becoming available) and accomplished within a definite timeframe such as the 10-calendar day interval that Petitioners propose.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. The problem with BellSouth's language is that it leaves the determination of what is expeditious and reasonable entirely up to BellSouth. Moreover, BellSouth controls the means, pace and price for how these things get accomplished. It is no consolation that it promises to do that the same way for everybody. Too many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner and at a reasonable price. Yet, facing a task that must be done

and the reality that there is nowhere else to go to get it done CLECs ultimately must endure, litigate or pay the price demanded by BellSouth. BellSouth simply should not be permitted to leverage its control over UNEs and other service arrangements in such a way. Because this control necessitates the involvement of BellSouth, mass migrations of customers should be accomplished in predictable time periods and at fair and predictable rates that comport with the TELRIC pricing standard.

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 94(B)/ISSUE 6-11(B).

A. An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge Petitioners a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of circuits must be performed. Similarly, BellSouth should establish and only charge Petitioners a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As Petitioners have maintained, TELRIC is the appropriate methodology for setting rates that are related to the provisioning of UNEs. Performing mass migrations of customers must be subject to this same standard. This work should not be relegated to precarious ICB pricing terms, as it involves no different work than customer porting generally, which is priced at TELRIC. Pricing on an ICB basis render carriers unable to predict their cost of service and, as suggested by BellSouth, includes no commitment to adhere to TELRIC pricing principles.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Tellingly, BellSouth proposes no language regarding rates. BellSouth's position, however, is that the rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved. As we have explained, such "negotiated" rates — ICB prices — are inappropriate for mass migrations. Such rates are easily inflated, due to the advantage in bargaining power enjoyed by BellSouth (there is nobody else a Petitioner could turn to in this instance). For all these reasons, the Agreement should state that mass migrations will be priced in accordance with TELRIC.

Q. DO YOU HAVE ANY EXPERIENCE WITH BELLSOUTH "NEGOTIATED" ICB-PRICING THAT SUGGESTS THAT AFFIRMATIVE LANGUAGE REQUIRING TELRIC-BASED PRICING IS NEEDED?

A. Yes. Xspedius once attempted to accomplish the mass migration of several special access circuits to UNE loops. Although this event would require nothing more than a simple records change for each circuit, BellSouth quoted a minimum price of several hundred dollars. In addition, BellSouth proposed several hundred dollars in charges associated with "project management". These proposals obviously outweigh the approximately $25.00 rate approved by the Commission for converting special access to UNE Combinations. Yet, because only a single UNE was involved, BellSouth insisted that it was justified in imposing what amounts to a king's ransom. In the end, the effect of this "negotiated ICB rate" was that Xspedius chose not to order the

conversions and BellSouth, in certain instances, still reaps the rewards of selling Xspedius over-priced special access.

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 94(C)/ISSUE 6-11(C).

A. Migrations should be completed within ten (10) calendar days of an LSR or spreadsheet submission.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. BellSouth must be held to an objective and definite timeframe for porting customers to Petitioners or for effectuating records changes, whether on a small scale or via mass migrations. A 10-day interval is a reasonable requirement, and should be ample time for BellSouth to complete the necessary work.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes no language here and appears inclined to leave it all up to negotiations. In its position statement, BellSouth maintains that no finite interval can be set to cover all potential situations, and that while shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties. This position is unreasonable. As we have explained, BellSouth's purported need for special "project management" is unsupported, and should not be used as an excuse to delay the conversion of customers. Mass migrations should not be delayed on the ground that they are somehow different from generic requests to port a customer or update BellSouth's records. Since they simply involve bulk submission of such

requests, petitioners' 10-day interval should therefore be stated explicitly in the Agreement.

Q. IS ITEM 94/ISSUE 6-11 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. Yes. The manner in which BellSouth provisions UNEs is absolutely within the parameters of section 251. The mass migrations of customers served via UNEs, resale and Other Services is inextricably linked to BellSouth's section 251 obligations. It seems implausible that the migration of customers to service configurations covered by the Agreement should not be covered by the Agreement and resolved in this arbitration. Moreover, as previously stated, this Commission has clearly found that an interconnection agreement may encompass rates terms and conditions that extend beyond an ILEC's section 251 obligations. BellSouth's position that "this issue is not appropriate in this proceeding" is therefore incorrect. Prescribing the terms by which BellSouth switches customers and updates records associated with UNE and other serving configurations is squarely within the Commission's jurisdiction.

BILLING (ATTACHMENT 7)

***Item No. 95, Issue No. 7-1** [Section 1.1.3]: What time limits should apply to backbilling, over-billing, and under-billing issues?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

> ***Item No. 96, Issue No. 7-2*** *[Section 1.2.2]: (A) 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? (B) What intervals should apply to such changes?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 96(A)/ISSUE 7-2(A).

A. Petitioners submit that a Party should be entitled to make one corporate name, OCN, CC, CIC or ACNA change ("LEC Change") in the other Party's databases, systems and records within any 12 month period without charge. For any additional "LEC Changes", TELRIC-compliant charges should be assessed.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Due to the current status of the telecommunications industry, it is likely a company will go through a corporate reorganization, merger, acquisition, etc. that will require some type of system, database, or records change(s) to reflect the change ("LEC Change"). It is our understanding that generally "LEC Changes" are simple administrative changes that are not unduly time or labor intensive. Therefore, CLECs should be afforded one "LEC Change" in any twelve (12) month period without charge.

In the commercial setting, businesses have to deal every day with corporate reorganizations, mergers, acquisitions, etc. Most businesses, however, do not get to impose a charge for making a system modification to recognize a change in a customer's corporate status or identity. Rather, it is treated as a cost of doing business. Nonetheless, BellSouth seeks to impose charges, via the cumbersome and uncertain BFR/NBR processes, to recover costs for implementing "LEC Changes". To the extent the Commission concludes that BellSouth may recover such costs, BellSouth should only be able to do so if a CLEC requests a "LEC Change" more than once in a twelve-month period and any such charge for additional "LEC Changes" should be TELRIC-compliant rates, as they are a necessary part of the business of gaining access to and using cost-based interconnection, UNEs and collocation.

Q. ARE YOU AWARE OF THIS PROVISION BEING INCLUDED IN ANY OTHER INTERCONNECTION AGREEMENTS?

A. Yes, it is my understanding that SBC had included, in its 13-State Agreement, a provision that provides for a one-time OCN/AECN change, without charge, as part of a corporate name change. For example, this provision is included in the Stonebridge Communications, Inc.'s 13-State Agreement. [Section 4.9, GT&Cs] It is also included in the Digital Telecommunications, Inc.'s 13-State Agreement [Section 4.9, GT&Cs] Further, the Time Warner/SBC Wisconsin Agreement, which is a modified 13-State Agreement, also provides for a one-time OCN/AECN change without charge [Section 4.8, GT&Cs]

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require a CLEC to go through the BFR/NBR process in order to conduct a "LEC Change". Specifically, BellSouth's language states, "...[CLEC] shall bear all costs incurred by BellSouth to convert [CLEC] to the new ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s)... and will be handled by the BFR/NBR process." It is BellSouth's position that CLECs should be responsible for all "reasonable records change charges" via the BFR/NBR process. It is our understanding that the BFR/NBR process is a lengthy, expensive and typically unsatisfactory process. The BFR process is used to develop a new or modified UNE or related services pursuant to the Act, and the NBR process is used to develop an entirely new network element or service not required by the Act. By requesting a "LEC Change", CLECs are hardly requesting anything that rises to the level of a new UNE or new service. Rather, CLECs are asking for BellSouth to make an administrative change in its systems and databases to reflect a corporate identity change. Petitioners have specifically negotiated this provisions to incorporate language addressing "LEC Changes" in the Agreement because they do not want to be subject to BellSouth's murky BFR/NBR process for this type of request. Further, Petitioners want certainty as to the cost BellSouth will charge for a "LEC Change". Ultimately, these types of records changes must be done and Petitioners do not want to be put in the position of having to pay whatever price BellSouth demands, no matter how excessive.

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 96(B)/ISSUE 7-2(B).

A. Petitioners submit that "LEC Changes" should be accomplished in thirty (30) calendar days. Furthermore, "LEC Changes" should not result in any delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. Finally, with regard to a Billing Account Number ("BAN"), Petitioners' proposed language provides that, at the request of a Party, the other Party will establish a new BAN within ten (10) calendar days.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As discussed above, a "LEC Change" is simply an administrative records change in BellSouth's systems and databases and, accordingly, 30 days is ample time to complete such a change. Furthermore, the Agreement should be clear that "LEC Changes" will not disturb or delay the provisioning of any service orders or the operational interfaces between Petitioners and BellSouth, including access to BellSouth's OSS. The Agreement must be clear on this point so that there is no opportunity to use a "LEC Change" as an excuse for provisioning delays or denial of the ability to access BellSouth's OSS (and the attendant ability to order UNEs and other services). Finally, due to the importance of accurate billing between BellSouth and a CLEC, the Parties should establish BANs for the other party within ten (10) calendar days. A billing account change should be a simple records change and should be done on an expedited basis to avoid any billing discrepancies and the disputes that might result.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth does not include any intervals for completing "LEC Changes" in its proposed language. It is also our understanding that there are no intervals for "LEC Changes" or equivalents in any of the BellSouth intervals guidelines or operational guides. BellSouth's proposed language provides that "LEC Changes" be handled by the BFR/NBR process. The intervals for "LEC Changes" should not be left to BellSouth's discretion through the amorphous BFR/NBR processes. The Agreement should include precise intervals that the Parties can rely on in their course of dealings under the Agreement.

Q. WHY IS ITEM 96/ISSUE 7-2 APPROPRIATE FOR ARBITRATION?

A. In its position statement, BellSouth asserts that Issue 7-2 should not be included in this Arbitration because "it involves a request by the CLECs that is not encompassed" in section 251 of the 1996 Act. BellSouth is mistaken. Regardless of whether LEC Changes are expressly mandated under section 251 or state law, this issue plainly involves BellSouth's OSS and billing for UNEs, collocation and interconnection which is clearly encompassed by section 251. This issue goes directly to ensuring that BellSouth's practices are just and reasonable, which are always within the jurisdiction of the Commission. Moreover, as previously stated, this Commission has clearly found that an interconnection agreement may encompass rates terms and conditions that extend beyond an ILEC's section 251 obligations. So, even if the issue of "LEC Changes" is outside the scope of section 251 (which it is not), it is not

outside the scope of the Agreement. For these reasons, Issue 7-2 is properly before the Commission.

***Item No. 97, Issue No. 7-3** [Section 1.4]: When should payment of charges for service be due?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

*Item No. 98, Issue No. 7-4 [Section 1.6]: **This issue has been resolved.***

***Item No. 99, Issue No. 7-5** [Section 1.7.1]: 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?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 99/ISSUE 7-5.

A. Petitioners as well as BellSouth should have the right to suspend access to ordering systems and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not be imposed unilaterally by one Party over the other's written objections to

or denial of such accusations. In the event of such a dispute, "self help" should not supplant the Dispute Resolution process set forth in the Agreement.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Termination of services or denial of access to ordering systems is a potentially life-threatening event for CLECs. Petitioners will be unable to conduct business without access to BellSouth ordering systems and customers will lose service if BellSouth terminates their access to services and facilities. Such drastic measures must not be taken, therefore, without following standard procedures set forth in the Agreement. While we understand the need for BellSouth to ensure the integrity of its network, BellSouth should not be able to unilaterally terminate facilities or deny access to ordering systems if there is any dispute as to the unlawfulness or improper use of its network or facilities. The Dispute Resolution provisions of the Agreement must trump any self-help BellSouth may seek to undertake against a Petitioner in such circumstances.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes that either Party should have the right to suspend or terminate service to **all** existing services in the event a Party believes the other Party is using **any** of its services or facilities in an unlawful, improper or abusive manner, and such use is not corrected within thirty (30) calendar days. BellSouth's proposed language, however, fails to acknowledge that a CLEC may question or even deny its allegation of unlawful, improper or abusive use and that the Parties may in fact disagree over whether or not such violation has occurred or continues to occur. Instead,

BellSouth's proposed language simply provides that it may engage in self-help by terminating services or denying access to ordering systems after providing notice if such alleged improper use is not corrected. Because this outcome is an "end game" for CLECs, BellSouth must be prohibited from engaging in self-help if there is a dispute. Accordingly, the Agreement should require that the Parties adhere to the Dispute Resolution provisions in the event of a dispute regarding use of the other Party's network or facilities. Otherwise, BellSouth will be able to leverage its monopoly power over CLECs by engaging in self-help whereby the remedy imposed by BellSouth significantly would outweigh any infraction (*i.e.*, "lights-out" regardless of how insignificant the infraction – or perceived infraction – and irrespective of whether the CLEC disputes BellSouth's allegations). The Commission should prevent this result as competitors and Florida consumers could be irreparably harmed by BellSouth's attempt to secure and exercise "self-help" in a manner that capitalizes on its monopoly legacy and overwhelming market dominance.

***Item No. 100, Issue No. 7-6** [Section 1.7.2]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

***Item No. 101, Issue No. 7-7** [Section 1.8.3]: How many months of billing should be used to determine the maximum amount of the deposit?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

***Item No. 102, Issue No. 7-8** [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 102/ISSUE 7-8.

A. The answer to the question posed in the issue statement is "YES". The amount of security due from an existing CLEC should be reduced by amounts due to CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7 of the Agreement. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As mentioned above, Petitioners have compromised significantly throughout the negotiations of these deposit provisions in order to reach a reasonable and balanced solution that can work throughout the BellSouth territory. As such, the CLECs conceded to give up the right to reciprocal deposits in an effort to settle one potential arbitration issue. But, if Petitioners do not collect deposits they should at least have the ability to reduce the amount of security due to BellSouth by the amounts BellSouth owes CLEC that have aged thirty (30) days or more.

Q. DOES BELLSOUTH TYPICALLY HAVE SIGNIFICANT BALANCES OWED TO CLECs AGED OVER THIRTY DAYS?

A. Yes, BellSouth does not have a pristine or even good payment record when it comes to paying CLECs the amounts BellSouth owes under its interconnection agreements. Thus, reducing deposit amounts the Petitioners would owe BellSouth is a reasonable means to protect the CLECs' financial interest, as the remainder of the deposit provisions protect BellSouth's financial interests.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not proposed any language on this issue. BellSouth fails to address is the fact that CLECs have no remedy in the security deposit context if BellSouth is late in paying invoices to the CLECs. Since the CLECs suffer financially when payment of invoices are late or not paid in full, but are unable to request security deposits from BellSouth, they should at least be able to reduce the security amount when BellSouth has failed to make timely payments to CLECs. Furthermore, the

CLECs' offset proposal is proper in that once the amount of deposit the CLECs owes BellSouth is decreased by amounts BellSouth has failed to pay the CLECs, the resulting amount will more accurately reflect BellSouth's actual exposure to potential nonpayment.

Item No. 103, Issue No. 7-9 *[Section 1.8.6]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 104, Issue No. 7-10 *[Section 1.8.7]: 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?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 105, Issue No. 7-11 [Section 1.8.9]: ***This issue has been resolved.***

Item No. 106, Issue No. 7-12 [Section 1.9.1]: ***This issue has been resolved.***

BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR)

(ATTACHMENT 11)

Item No. 107, Issue No. 11-1 [Sections 1.5, 1.8.1, 1.9, 1.10]: ***This issue has been resolved.***

SUPPLEMENTAL ISSUES

(ATTACHMENT 2)

Item No. 108, Issue No. S-1*: How should the final FCC unbundling rules be incorporated into the Agreement?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

***Item No. 109, Issue No. S-2**: (A) Should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? If so, how? (B) Should any intervening State Commission order relating to unbundling obligations, if any, be incorporated into the Agreement? If so, how?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

***Item No. 110, Issue No. S-3**: If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Marva Brown Johnson on this issue, as though it were reprinted here.

Item No. 111, Issue No. S-4: *At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superceded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order? If not, what post Interim Period[3] transition plan should be incorporated into the Agreement?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 111/ISSUE S-4.

A. Given that we have not had sufficient time to respond to BellSouth's newly proposed language on this and related Attachment 2 issues with BellSouth and to make our own counter-proposals, we reserve or request the right to provide additional direct and rebuttal testimony with respect to BellSouth's proposed language, as well as our own.

Joint Petitioners' answer to this question is "NO." The Agreement should not automatically incorporate the "Transition Period." The "Transition Period," or plan proposed by the FCC for the six months following the Interim Period, has not been adopted by the FCC, but was merely proposed in FCC 04-179. The FCC sought comment on the proposal and on transition plans in general. Upon release of the Final FCC Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the transition plan adopted therein or to other standards, if they mutually agree to do so. Any issues which the Parties are

[3] INTERIM PERIOD – as set forth in ¶29 of the FCC 04-179, is defined as the period that ends on the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the FCC 04-179

unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale is quite simple. The Transition Period is and was merely a proposal by the FCC. In paragraph 29, of FCC 04-179, the FCC used the words "we propose" with respect to the plan. It did not say "we adopt." Indeed, the ordering paragraphs (paragraphs 47-49) in FCC 04-179 do not identify the Transition Period as something ordered. Moreover, concurrent with release of the Order, the FCC's Chairman attached a statement wherein he noted that "[c]ontrary to the inaccurate assertions being thrown around, there are no automatic price increase after 6 months for facilities providers," and that "[t]oday's Order only seeks comment on a transition that will not be necessary if the Commission gets its work done." The Chairman's statements make it eminently clear that the transition plan set forth in 04-179 was merely a proposal set forth for comment.

We also find it ironic that BellSouth takes a position here contrary to that of its trade association, the United States Telecom Association (USTA), in a recent mandamus petition filed before the U.S. Court of Appeals (D.C. Circuit). Here, BellSouth takes the position that the Transition Period will take effect at the end of the Interim Period and therefore should be automatically incorporated into the Agreement. Yet, on page 13 of USTA's mandamus petition, USTA argued that the Transition Period was and is a mere proposal with "no legal force whatsoever." Given USTA's role in

representing ILEC interests, including those of BellSouth, and the fact that USTA appears to agree with our position, we do not understand why BellSouth wishes to arbitrate this particular issue before the Commission.

At this time, there are no FCC rules in place as to what will happen when and if the Interim Period expires. However, the FCC's Chairman has stated that it is his intention to release the Final FCC Unbundling Rules by December 2004. This indicates that it is not the FCC's intention to allow the Interim Period to lapse without issuing an order containing the so-called Final FCC Unbundling Rules. That order is almost certain to incorporate a transition plan that may or may not be similar to the one proposed in FCC 04-179. After that order is released, the Parties should exchange language, negotiate and arbitrate, if necessary, any provisions on which they cannot agree.

Thus, the rest of the rationale here is the same as that found in the testimony related to Issue Nos. S-1, S-2(A), S-2(B) and S-3. Automatic incorporation of a proposed or even ordered transition plan would undermine and circumvent the negotiation process established by the Act. The Act requires the Parties to engage in good faith negotiations with respect to applicable legal requirements first and then allows for Commission arbitration of issues the Parties are unable to resolve through good faith negotiations. In either case, interconnection agreements (existing ones – or new ones such as the ones pending in this arbitration) are not automatically revised to incorporate a transition plan that has been merely proposed or, for that matter a

transition plan that has been ordered. Instead, language must be negotiated or arbitrated (to the extent the court order effectuates a change in law with practical consequences), depending on the nature of the issues and the Parties' positions with respect thereto.

Over the years, our interconnection agreements with BellSouth have incorporated the requirements of applicable law existing at the time of contracting to varying extents, with the Parties agreeing to displace applicable law with other terms and conditions in various circumstances. If, however, law was to develop after we have agreed upon terms (which will be the case with respect to the Agreements pending in this arbitration in the event that the Commission does release an intervening order), Joint Petitioners and BellSouth have always agreed that new contract language is necessary to incorporate whatever was to be done with respect to that change in law – whether that be language indicating an intent to abide by the new law or to displace it with other standards which would govern the Parties' relationship in that context.

Our position also is practical. We do not know what an FCC order establishing a transition plan will say or how it would impact provisions of the Agreement already agreed to or those at issue in this arbitration. If and when such an order is released, a process will need to be adopted to allow the Parties time to assess the order, propose and negotiate contract language relating thereto (again, only to the extent the court order effectuates a change in law with practical consequences), and to identify specific issues which cannot be resolved timely through voluntary negotiations and

that will need to be resolved through arbitration. The language that results from those negotiations and that aspect of the arbitration is how any FCC-ordered transition plan should be incorporated into the Agreement. That language should be effective when all other terms and conditions of the Agreement are effective – which is the date of the last signature executing the Agreement -- neither the Agreement nor any of its terms can be effective prior to that date.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Joint Petitioners have not had adequate time to respond to BellSouth's newly proposed contract language related to this issue. Joint Petitioners will submit language to counter BellSouth's proposal as time permits (in this regard, we note that BellSouth was to have provided its language during the abatement period, so as to allow adequate time for Joint Petitioners to review, analyze and counter – and to allow the parties to meaningfully negotiate – Joint Petitioners received BellSouth's proposed language more than a month after the abatement period ended and more than four months after BellSouth agreed that it would start the process by providing a new redline of Attachment 2).

As we understand BellSouth's proposal, BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to existing applicable legal requirements first and then allows for Commission arbitration of issues the Parties are unable to resolve through good faith negotiations. The Agreement should not be "deemed amended" to "automatically incorporate" a

transition plan that has not yet been adopted by the FCC and that may change dramatically prior to adoption. We do not, as of the date of this filing, what such an order would say or what impact it could have. Even if we did, we do not know whether the Parties will agree on the order's meaning and on what language, if any, should be incorporated into the Agreement with respect thereto. In this regard, it is important to note that the Parties to this arbitration generated many issues for arbitration despite having had the opportunity to review relevant rules and orders and to negotiate with regard to contract language related thereto. We do not anticipate that any new FCC order adopting a transition plan would prove much different. While the Parties may be able to agree on some contract language with respect thereto, it also is possible that they will not be able to agree on all contract language proposals and that arbitration by the Commission will be needed in that regard. How the timing of all this will work out remains to be seen.

BellSouth's proposal also ignores the fact that the Act provides that Parties may voluntarily negotiate to abide by standards other than those set forth in applicable law. Thus, the Parties may voluntarily agree to abide by standards other than those set forth in whatever transition plan is eventually adopted by the FCC. Such negotiations, for a variety of reasons, have resulted in numerous instances in the new Agreement where the Joint Petitioners and BellSouth voluntarily agreed to abide by standards that differ from those set forth in applicable law. Some examples would be interconnection facilities compensation, certain aspects of intercarrier/reciprocal compensation, and collocation power (other than in Tennessee).

BellSouth's proposal to "automatically incorporate" a proposed FCC transition plan also runs counter to the principle that negotiations should take into account the law as it exists at the time – not as it might exist in the future. The Parties agreed to do this with respect to the FCC's TRO. Although parts of the TRO were vacated in March 2004, the vacatur did not become effective until June 2004. Until that point, the Parties negotiated as though all of the TRO was valid law – simply because it was. In the case of the proposed FCC transition plan, the same principle applies. Since it has not been adopted by the FCC and it is not law, it makes little sense to expend resources on it. Those resources will be better spent when a transition plan actually is adopted by the FCC.

***Item No. 112, Issue No. S-5**: (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

***Item No. 113, Issue No. S-6**: (A) Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 113(A)/ISSUE S-6(A).

A. Given that we have not had sufficient time to respond to BellSouth's newly proposed language on this and related Attachment 2 issues with BellSouth and to make our own counter-proposals, we reserve or request the right to provide additional direct and rebuttal testimony with respect to BellSouth's proposed language, as well as our own.

BellSouth is obligated to provide DS1, DS3 and dark fiber loop UNEs. *USTA II* did not vacate the FCC's rules which require BellSouth to make available DS1, DS3 and dark fiber loop UNEs. *USTA II* also did not eliminate section 251, CLEC impairment, section 271 or the Commission's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber loop UNEs.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The D.C. Circuit in *USTA II* did not vacate the FCC rules with regard to the provision of unbundled access to DS1, DS3 and dark fiber loops. Although BellSouth asserts in its position statement that the *USTA II* decision vacated the FCC's rules involving DS1 and other high-capacity UNE loops, this is not so. The D.C. Circuit merely vacated the FCC's referral of additional impairment conclusions to state regulators. BellSouth now seeks to extrapolate from this ruling the vacatur of the FCC's DS1, DS3 and dark fiber loop unbundling rules. However, such extrapolation is ill-advised

and not proper. If the Court intended to vacate the FCC's enterprise market loop rules, it certainly would have said so explicitly, as it did with respect to other FCC rules. Indeed, the FCC recognized that the *USTA II* opinion contains no language announcing BellSouth's claimed vacatur of the FCC's unbundling rules for DS1, DS3 and dark fiber loop UNEs. In FCC 04-179, footnote four, the FCC states that the D.C. Circuit "did not make a formal pronouncement regarding the status of the [FCC's] findings regarding enterprise market loops." Thus, the FCC has thus far refused to accept BellSouth's contention that *USTA II* vacated its enterprise market loop unbundling rules. It would be improper for the Commission to render vacated FCC rules which the Court did not say were vacated and which the FCC itself has properly not accepted are vacated.

In paragraph 202 of the TRO, the FCC stated that "[w]ith respect to dark fiber loops, DS3 loops and DS1 loops, we conclude that requesting carriers are impaired on a location-by-location basis without unbundled access to incumbent LEC loops nationwide." The FCC reiterated its **nationwide impairment** findings with respect to DS1, DS3 and dark fiber loops in paragraphs, 325, 320 and 311 of the TRO, respectively. In paragraph 328, the FCC again refers to its **affirmative findings of impairment** with respect to DS1, DS3 and dark fiber loops. The *USTA II* decision did not vacate these findings. In fact, the *USTA II* decision's vacatur of the FCC's referral to the states regarding the establishment of **exceptions** to the FCC's nationwide impairment findings effectively means that these findings by the FCC are final and uncontested, as the vehicle for establishing exceptions to the FCC's

nationwide findings of impairment for DS1, DS3 and dark fiber loops has been eliminated. FCC rule 319(a)(4) provides that ILECs must provide access to DS1 UNE loops, *except* where a state commission has found through application of the competitive wholesale trigger, a lack of impairment. The FCC's DS3 and dark fiber loop rules share a similar construct requiring unbundling *except* where a state commission finds a lack of impairment through application of, in the case of DS3 and dark fiber loops, two triggers. Per *USTA II,* state commissions, including the Commission, cannot make such findings (a decision which BellSouth fiercely supported and which CLECs fiercely opposed). Accordingly, no exceptions to the rule apply. The *USTA II* decision therefore perpetuates the nationwide unbundling requirement for DS1, DS3 and dark fiber loop UNEs, until such time as the FCC's existing rules are modified in a manner that requires something different.

Furthermore, the Commission must acknowledge that *USTA II* did not eliminate section 251 of the Act. Section 251 is a statute and the D.C. Circuit did not strike it down. Accordingly, under section 251, BellSouth has the "duty" to provide network elements pursuant to section 251(c). BellSouth also has a "duty to negotiate in good faith" regarding fulfillment of its duty to provide network elements under section 251(c)(1). These duties did not go away when the *USTA II* mandate was issued. Section 251(c)(3) is still "Applicable Law" under this Agreement and it plainly mandates access to UNEs where impairment exists. As explained above, the FCC made nationwide findings of impairment with respect to DS1, DS3 and dark fiber loop UNEs. These findings have not been overturned. Indeed, BellSouth's assertion

of impairment with respect to certain route-specific facilities were squarely rebutted in proceedings before the Commission. Moreover, the FCC's definition of impairment was neither vacated nor remanded by the D.C. Circuit in *USTA II*. Indeed, the Court specifically observed that the FCC's interpretation of "impairment" in the TRO represented an improvement over past efforts because the FCC "explicitly and plausibly" connected the factors to be considered in the analysis to natural monopoly characteristics and/or to other structural impediments to competitive supply, such as sunk costs, ILEC absolute cost advantages, first-mover advantages, and operational barriers to entry within the control of the ILEC. The Court offered several "general observations" for the FCC's consideration in making impairment determinations on remand. However, the FCC's definition of impairment was neither vacated nor remanded by the Court. Thus, impairment exists and unbundling is still required, even if the Commission were to erroneously accept BellSouth's invitation to write into the *USTA II* opinion a vacatur of the FCC's enterprise loop unbundling rules.

In addition to BellSouth's obligations under section 251 of the Act, BellSouth has an obligation under section 271 of the Act to provide access to DS1, DS3 and dark fiber loops at rates, terms and conditions that are just, reasonable and nondiscriminatory, consistent with the standards articulated under sections 201 and 202 of the Act. As the FCC has found, section 271 imposes unbundling obligations independent of those in section 251(c)(3). These unbundling obligations that are *not* conditioned on the presence of impairment. The FCC's interpretation of BellSouth's and other BOCs'

section 271 unbundling obligations was upheld by the *USTA II* court, which described the FCC's decision with respect to section 271 to mean that "even in the absence of impairment, BOCs must unbundle local loops, local transport, local switching, and call-related databases in order to enter the interLATA market."

Specifically, section 271 Competitive Checklist Item No. 4 requires ILECs to provide local loop transmission from the central office to the customer's premises, unbundled from the local switching or other services. In the TRO, the FCC held that BOCs are under an independent statutory obligation under section 271 of the Act to provide competitors with unbundled access to network elements, which would include the local loop under Competitive Checklist Item No. 4. BellSouth has not been relieved from its section 271 obligations in Florida. BellSouth is required to meet Competitive Checklist Item No. 4 during the section 271 application process ***and remain in compliance*** with these requirements after approval has been granted. In particular, section 271(d)(6) requires BellSouth to continue to satisfy the conditions required for approval of its section 271 application. The FCC has held that that in order to provide local loops in compliance with Competitive Checklist Item No. 4, a BOC must demonstrate that it furnishes loops (1) in quantities demanded by competitors, (2) at an acceptable level of quality and (3) in a non-discriminatory manner. In granting BellSouth's section 271 Application for Florida, the FCC concluded that BellSouth satisfied Competitive Checklist Item No. 4 as it provided all loop types, including high capacity loops, such as DS1, DS3 and dark fiber loops. Moreover, this Commission held in a Covad/BellSouth arbitration award that "the FCC reasonably

concluded that checklist item 4 imposed unbundling requirements for elements independent of the unbundling requirements imposed by Section 251 . . . . This Commission finds that, pursuant to Section 271(c)(2)(B)(iv), BellSouth has an obligation to unbundled local loop transmission from the central office to the customer's premises."

The Commission has ample authority to enforce section 271 Competitive Checklist obligations, with regard to CLEC access to DS1, DS3 and dark fiber loops. The FCC has recognized the ongoing role of state commissions in its section 271 approval orders. In approving BellSouth's section 271 application for Florida, the FCC held that the Commission has a vital role in conducting section 271 proceedings and that state and federal enforcement can address any backsliding that may arise in Florida. Moreover, the fact that BellSouth sought and obtained section 271 approval, based on the existence of interconnection agreements that specify the terms and conditions under which BellSouth is providing the Competitive Checklist items, (known as section 271 "Track A") means that the Commission has jurisdiction over the provision of Competitive Checklist elements by virtue of its jurisdiction over interconnection agreements. Furthermore, since state commissions have jurisdiction over all issues included in interconnection agreements, and the Applicable Law definition in the General Terms and Conditions includes all "applicable federal, state, and local statutes, laws, rules regulations, codes, effective orders, injunctions, judgments and binding decisions, awards and decrees that relate to the obligations

under this Agreement" within its scope, the Commission has, *ipso facto*, jurisdiction over section 271 and BellSouth's compliance therewith.

Aside from any federal statutes, this Commission arguably has independent state law authority to order BellSouth to continue to provide access to DS1, DS3 and dark fiber loop UNEs. Specifically, § 364.161(1) of the Florida Code provides that local carriers such as BellSouth "unbundle all of its network features, functionalities and capabilities." In particular, this provision contemplates the unbundling of "local loops." We believe that this Florida statute, in addition to § 364.01 of the Florida Code, gives the Commission the authority, in an effort to promote competition and the availability of good telecommunications services to Florida consumers, to require BellSouth to unbundle DS1, DS3, and dark fiber loops.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Joint Petitioners have not had adequate time to respond to BellSouth's newly proposed contract language related to this issue. Joint Petitioners will submit language to counter BellSouth's proposal as time permits (in this regard, we note that BellSouth was to have provided its language during the abatement period, so as to allow adequate time for Joint Petitioners to review, analyze and counter – and to allow the parties to meaningfully negotiate – Joint Petitioners received BellSouth's proposed language more than a month after the abatement period ended and more than four months after BellSouth agreed that it would start the process by providing a new redline of Attachment 2).

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 113(B)/ISSUE S-6(B).

A. Given that we have not had sufficient time to respond to BellSouth's newly proposed language on this and related Attachment 2 issues with BellSouth and to make our own counter-proposals, we reserve or request the right to provide additional direct and rebuttal testimony with respect to BellSouth's proposed language, as well as our own.

BellSouth is obligated to provide access to DS1, DS3 and dark fiber loop UNEs at TELRIC-compliant rates approved by the Commission. DS1, DS3 and dark fiber loops unbundled on other than a section 251 statutory basis should be made available at TELRIC-compliant rates approved by the Commission until such time as it is determined that another pricing standard applies and the Commission establishes rates pursuant to that standard.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As stated above, *USTA II* not vacate the FCC's rules which require BellSouth to make DS1, DS3 and dark fiber loop UNEs available to CLECs. Furthermore, BellSouth is obligated to provision unbundled access to these UNEs pursuant to section 251 (regardless of whether the FCC's enterprise loop unbundling rules were vacated – which they were not) and section 271. In addition, the Commission may order BellSouth to continue such unbundling pursuant to Florida state law. The Commission may also enforce unbundling requirements under section 271. Joint Petitioners maintain that their currently negotiated Attachment 2 adequately incorporates the rates, terms and conditions for DS1, DS3 and dark fiber loops that should remain in the Agreement. Notably, the rates incorporated are intended to be

the TELRIC-compliant rates approved by the Commission. These rates should apply to DS1, DS3 and dark fiber UNE loops, in all instances where unbundling is required pursuant to section 251. In cases where section 271 is the source of the continuing unbundling mandate, the FCC articulated that the just, reasonable and nondiscriminatory pricing standard under sections 201 and 202 would apply. Accordingly, the Commission should require BellSouth to continue providing section 271 checklist items at TELRIC-complaint rates, at least until such time as it is determined that another pricing methodology comports with the just, reasonable and nondiscriminatory pricing standard and the Commission establishes rates pursuant thereto.

In FCC 04-179, the FCC recognized that the ILEC obligation to provide section 251 switching, loops and transport UNEs has been in place for several years and the precipitous elimination of these UNEs could destabilize the market. BellSouth's proposed alternative to TELRIC – phantom-market-based rates or tariffed special access rates – would not only harm competitive carriers, but also the consumers who rely on them to provide competitively-priced services. BellSouth's phantom-market-based rates and special access rates are generally exorbitant, bear no discernable relationship to costs (or to a cost-based pricing standard found to comport with the just and reasonable pricing standard), and are largely unconstrained by market forces. Consequently, neither BellSouth's proposed phantom market-based rates nor special access rates are "just and reasonable" for section 271 elements and they should not be allowed by the Commission. By maintaining TELRIC-complaint rates, the

Commission will shield consumers from sharp and sudden rate increases as a result of carriers' increased costs for network elements and decreases the likelihood that consumers will be forced to incur steep price hikes from Joint Petitioners (to the extent that Joint Petitioners were able to impose such price hikes and remain competitive with BellSouth) or to return to BellSouth (which, in the absence of competition would surely seek to impose its own steep price hikes on consumers).

Finally, with respect to UNEs for which state law, independent of section 251, is the basis of unbundling, Joint Petitioners submit that the Commission should continue to require unbundling at its TELRIC-compliant UNE rates, at least until such time as it determines another pricing methodology is appropriate and establishes rates pursuant thereto.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Joint Petitioners have not had adequate time to respond to BellSouth's newly proposed contract language related to this issue. Joint Petitioners will submit language to counter BellSouth's proposal as time permits (in this regard, we note that BellSouth was to have provided its language during the abatement period, so as to allow adequate time for Joint Petitioners to review, analyze and counter – and to allow the parties to meaningfully negotiate – Joint Petitioners received BellSouth's proposed language more than a month after the abatement period ended and more than four months after BellSouth agreed that it would start the process by providing a new redline of Attachment 2).

Q. WHAT IS YOUR POSITION WITH BELLSOUTH'S PROPOSED RESTATEMENT OF ITEM 113/ISSUE S-6.

A. BellSouth attempts to narrow the issue so that the *USTA II* decision is the only binding authority on BellSouth's obligations to provide Joint Petitioners with unbundled access to DS1, DS3 and dark fiber loops. BellSouth's proposed issue statement unreasonably eliminates other sources of law that impacts its obligations to provide such UNEs, including sections 251 and 271 of the Act, as well as the Commission's authority under Florida state law.

Item No. 114, Issue No. S-7: *(A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?*

Q. ON THIS ISSUE, ARE YOU ADOPTING THE TESTIMONY OFFERED BY ANOTHER COMPANY'S WITNESS?

A. Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting the pre-filed testimony of Hamilton E. Russell III on this issue, as though it were reprinted here.

Item No. 115, Issue No. S-8: ***This issue has been resolved.***

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, for now, it does. Thank you.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by Hand Delivery (*), and/or U. S. Mail this 10th day of January, 2005.

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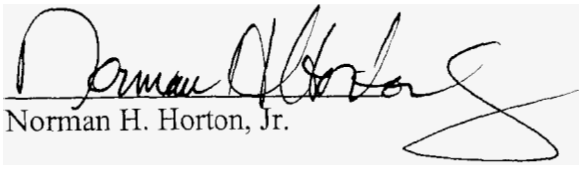

Norman H. Horton, Jr.

JOINT PETITIONERS' EXHIBIT

DISPUTED CONTRACT LANGUAGE BY ISSUE

GENERAL TERMS AND CONDITIONS

Item No. 2, Issue No. G-2 [Section 1.7]: How should "End User" be defined?

1.7 [CLEC Version] **End User** means the **customer of a Party**.

[BellSouth Version] **End User** means the **ultimate user of the Telecommunications Service**.

Item No. 4, Issue No. G-4 [Section 10.4.1]: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

10.4.1 [CLEC Version] Except for any indemnification obligations of the Parties hereunder, **with respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by either Party, any End User of either Party, or by any other person or entity, for damages associated with any of the services provided pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and, in any event, subject to the provisions of the remainder of this Section, each Party's liability shall be limited to and shall not exceed in aggregate amount over the entire term hereof an amount equal to seven-and-one half percent (7.5%) of the aggregate fees, charges or other amounts paid or payable to such Party for any and all services provided or to be provided by such Party pursuant to this Agreement as of the Day on which the claim arose; provided that the foregoing provisions shall not be deemed or construed as (A) imposing or allowing for any liability of either Party for (x) indirect, special or consequential damages as otherwise excluded pursuant to Section 10.4.4 below or (y) any other amount or nature of damages to the extent resulting directly and proximately from the claiming Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to all applicable damages or (B) limiting either Party's right to recover appropriate refund(s) of or rebate(s) or credit(s) for fees, charges or other amounts paid at Agreement rates for**

services not performed or provided or otherwise failing to comply (with applicable refund, rebate or credit amounts measured by the diminution in value of services reasonably resulting from such noncompliance) with the applicable terms and conditions of this Agreement. Notwithstanding the foregoing, claims or suits for damages by either Party, any End User of either Party, or by any other person or entity, to the extent resulting from the gross negligence or willful misconduct of the other Party, shall not be subject to the foregoing limitation of liability.

[BellSouth Version] Except for any indemnification obligations of the Parties hereunder, **and except in cases of the provisioning Party's gross negligence or willful misconduct,** each Party's liability to **the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort,** shall be limited to **a credit for the actual cost of the** services **or functions** not performed or **improperly performed.**

Item No. 5, Issue No. G-5 [Section 10.4.2]: 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?

10.4.2 [CLEC Version] **No Section.**

[BellSouth Version] **Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.**

Item No. 6, Issue No. G-6 [Section 10.4.4]: How should indirect, incidental or consequential damages be defined for purposes of the Agreement?

10.4.4 [CLEC Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages **provided that neither the foregoing nor any other provision of this Section 10 shall be deemed or construed as imposing any limitation on the liability of a Party for claims or suits for damages incurred by End Users of the other Party or by such other Party vis-à-vis its End Users to the extent such damages result directly and in a reasonably foreseeable manner from the first Party's performance of services hereunder and were not and are not directly and proximately caused by or the result of such Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage.** In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

[BellSouth Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

indemnification obligations of the parties be under this Agreement?

10.5 [CLEC Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim **for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. The Party receiving services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party providing services hereunder against any claim, loss or damage to the extent arising from (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent caused by the providing Party's negligence, gross negligence or willful misconduct**.

[BellSouth Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim**, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims** for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications**, or (2)** any claim, loss or damage **claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations** arising out of this Agreement.

Item No. 8, Issue No. G-8 [Section 11.1]: What language should be included in the Agreement regarding a Party's use

11.1 [CLEC Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. **A Party's use of the other Party's name, service marks and trademarks shall be in accordance with Applicable Law.**

[BellSouth Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. **The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications**

services, of any name, service mark, logo or trademark (collectively, the "Marks") of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. Notwithstanding the foregoing, <<customer_short_name>> may make factual references to the BellSouth name as necessary to respond to direct inquiries from customers or potential customers regarding the source of the underlying services or the identity of repair technicians. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.

Item No. 9, Issue No. G-9 [Section 13.1]: Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a Court of law for resolution first?

13.1 [CLEC Version] **Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the FCC, the Commission or a court of law for a resolution of the dispute. Either Party may seek expedited resolution by the Commission, and may request that resolution occur in no event later than sixty (60) calendar days from the date of submission of such dispute. The other Party will not object to such expedited resolution of a dispute. If the FCC or Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred to the extent the FCC or the Commission requires the Parties to bear such fees and expenses. Each Party reserves any rights it may have to seek judicial review of any ruling made by the FCC, the Commission or a court of law concerning this Agreement. Until the dispute is finally resolved, each Party shall continue to perform its obligations under this Agreement, unless the issue as to how or whether there is an obligation to perform is the basis of the dispute, and shall continue to provide all services and payments as prior to the dispute provided however, that neither Party shall be required to act in any unlawful fashion.**

13. [BellSouth Version] **Resolution of Disputes**

13.1 **Except for procedures that outline the resolution of billing disputes which are set forth in Section 2 of Attachment 7, each Party agrees to notify the other Party in writing of a dispute concerning this Agreement. If the Parties are unable to resolve the issues relating to the dispute in the normal course of business then either Party shall file a complaint with the Commission to resolve such issues or, as explicitly otherwise provided for in this Agreement, may proceed with any other remedy pursuant to law or equity as provided for in this Section 13.**

13.2 **Except as otherwise stated in this Agreement, or for such matters which lie outside the jurisdiction or expertise of the Commission or FCC, if any dispute arises as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, the aggrieved party, to the extent seeking resolution of such dispute, must seek such resolution before the Commission or the FCC in accordance with the Act. Each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement. Either Party may seek expedited resolution by the Commission. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement; provided, however, that neither Party shall be required to act in an unlawful fashion.**

13.3 **Except to the extent the Commission is authorized to grant temporary equitable relief with respect to a dispute arising as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, this Section 13 shall not prevent either Party from seeking any temporary equitable relief, including a temporary restraining order, in a court of competent jurisdiction.**

13.4 **In addition to Sections 13.1 and 13.2 above, each Party shall have the right to seek legal and equitable remedies on any and all legal and equitable theories in any court of competent jurisdiction for any and all claims, causes of action, or other proceedings not arising: (i) as to the enforcement of any provision of this Agreement, or (ii) as to the enforcement or interpretation under applicable federal or state telecommunications law. Moreover, if the Commission would not have authority to grant an award of damages after issuing a ruling finding fault or liability in connection with a dispute under this Agreement, either Party may pursue such award in any court of competent jurisdiction after such Commission finding.**

Item No. 12, Issue No. G-12 [Section 32.2]: 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?

32.2 [CLEC Version] **Nothing in this Agreement shall be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Silence shall not be construed to be such a limitation or exemption with respect to any aspect, no matter how discrete, of Applicable Law.**

[BellSouth Version] **This Agreement is intended to memorialize the Parties' mutual agreement with respect to their obligations under the Act and applicable FCC and Commission rules and orders. To the extent that either Party asserts that an obligation, right or other requirement, not expressly memorialized herein, is applicable under this Agreement by virtue of a reference to an FCC or Commission rule or order or Applicable Law, and such obligation, right or other requirement is disputed by the other Party, the Party asserting that such obligation, right or other requirement is applicable shall petition the Commission for resolution of the dispute and the Parties agree that any finding by the Commission that such obligation, right or other requirement exists shall be applied prospectively by the Parties upon amendment of the Agreement to include such obligation, right or other requirement and any necessary rates, terms and conditions, and the Party that failed to perform such obligation, right or other requirement shall be held harmless from any liability for such failure until the obligation, right or other requirement is expressly included in this Agreement by amendment hereto.**

ATTACHMENT 2

NETWORK ELEMENTS AND OTHER SERVICES

Item No. 23, Issue No. 2-5 [Section 1.5]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?

Language to be provided by the Parties.

Item No. 26, Issue No. 2-8 [Section 1.7]: 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?

1.7 [CLEC Version] Notwithstanding any other provision of this Agreement, BellSouth will not combine UNEs or Combinations with any service, Network Element or other offering that it is obligated to make available only pursuant to Section 271 of the Act.

[BellSouth Version] Notwithstanding any other provision of this Agreement, BellSouth will not **commingle or** combine UNEs or Combinations with any service, Network Element or other offering that it is obligated to make available only pursuant to Section 271 of the Act.

Item No. 27, Issue No. 2-9 [Section 1.8.3]: 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?

1.8.3 [CLEC Version] When multiplexing equipment is attached to a commingled **circuit, the multiplexing equipment** and Central Office Channel Interfaces will be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service.

[BellSouth Version] When multiplexing equipment is attached to a commingled circuit, the **multiplexing equipment** will be billed from the same jurisdictional authorization (agreement or tariff) as the **higher bandwidth service**. The Central Office Channel Interface will be billed from the same jurisdictional authorization (tariff or agreement) as the lower **bandwidth service.**

Item No. 36, Issue No. 2-18 [Section 2.12.1]: (A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?

2.12.1 [CLEC Version] **BellSouth shall perform line conditioning in accordance with FCC 47 C.F.R. 51.319 (a)(1)(iii). Line Conditioning is as defined in FCC 47 C.F.R. 51.319 (a)(1)(iii)(A).** Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

[BellSouth Version] **Line Conditioning is defined as routine network modification that BellSouth regularly undertakes to provide xDSL services to**

its own customers. This may include the removal of any device, from a copper Loop or copper sub-loop that may diminish the capability of the Loop or sub-loop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to; load coils, low pass filters, and range extenders. Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

Item No. 37, Issue No. 2-19 [Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

2.12.2 [CLEC Version] **No Section.**

[BellSouth Version] **BellSouth will remove load coils only on copper loops and sub loops that are less than 18,000 feet in length. BellSouth will remove load coils on copper loops and sub loops that are greater than 18,000 feet in length upon <<customer_short_name>>'s request at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties.**

Item No. 38, Issue No. 2-20 [Sections 2.12.3, 2.12.4]: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

2.12.3 [CLEC Version] For any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of **other** bridged tap will be performed at the rates set forth in Exhibit A of this Attachment.

[BellSouth Version] For any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop

will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of bridged tap **that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet** will be performed at the rates set forth in Exhibit A of this Attachment.

2.12.4 [CLEC Version] **No Section.**

[BellSouth Version] **<<customer_short_name>> may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties. Rates for ULM are as set forth in Exhibit A of this Attachment.**

Item No. 43, Issue No. 2-25 [Section 2.18.1.4]: 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?

2.18.1.4 [CLEC Version] **No Section.**

[BellSouth Version] **BellSouth's provisioning of LMU information to the requesting CLEC for facilities is contingent upon either BellSouth or the requesting CLEC controlling the Loop(s) that serve the service location for which LMU information has been requested by the CLEC. The requesting CLEC is not authorized to receive LMU information on a facility used or controlled by another CLEC unless BellSouth receives a Letter of Authorization (LOA) from the voice CLEC (owner) or its authorized agent on the LMUSI submitted by the requesting CLEC.**

Item No. 46, Issue No. 2-28 [Section 3.10.4]: 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?

3.10.4 [CLEC Version] To the extent required by **and consistent with** Applicable Law, BellSouth shall provide its retail DSL offering (e.g., Fast Access Servic e) to <<customer_short_name>> for use with UNE-P or Loops provisioned pursuant to

this Agreement pursuant to separately negotiated rates, terms and conditions in a non-discriminatory manner. **To the extent BellSouth provides a DSL offering to another CLEC pursuant to the rates, terms and conditions of an interconnection agreement or Commission order, BellSouth will provide <<customer_short_name>> with the same DSL offering at the same rates, terms and conditions.**

[BellSouth Version] To the extent required by Applicable Law, BellSouth shall provide its DSL service and Fast Access services to <<customer_short_name>>, for use with UNE-P as Loops provisioned pursuant to this Agreement, pursuant to separately negotiated rates, terms and conditions in a non-discriminatory manner.

Item No. 50, Issue No. 2-32 [Sections 5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5and 5.2.5.2.7]: How should the term "customer" as used in the FCC's EEL eligibility criteria rule be defined?

5.2.5.2.1 [CLEC Version] 1) Each circuit to be provided to each **customer** will be assigned a local number prior to the provision of service over that circuit;

[BellSouth Version] 1) Each circuit to be provided to each **End User** will be assigned a local number prior to the provision of service over that circuit;

5.2.5.2.3 [CLEC Version] **3) Each circuit to be provided to each customer** will have 911 or E911 capability prior to provision of service over that circuit;

[BellSouth Version 3) Each circuit to be provided to each **End User** will have 911 or E911 capability prior to provision of service over that circuit;

5.2.5.2.4 [CLEC Version] 4) Each circuit to be provided to each **customer** will terminate in a collocation arrangement that meets the requirements of FCC 47 C.F.R. 51.318(c);

[BellSouth Version 4) Each circuit to be provided to each **End User** will terminate in a collocation arrangement that meets the requirements of FCC 47 C.F.R. 51.318(c);

5.2.5.2.5 [CLEC Version] 5) Each circuit to be provided to each **customer** will be served by an interconnection trunk in the same LATA as the customer premises served by the EEL over which <<customer_short_name>> will transmit the calling party's number in connection with calls exchanged over the trunk;

[BellSouth Version 5) Each circuit to be provided to each **End User** will be served by an interconnection trunk in the same LATA as the customer premises served by the EEL over which <<customer_short_name>> will transmit the calling party's number in connection with calls exchanged over the trunk;

5.2.5.2.7 [CLEC Version] 7) Each circuit to be provided to each **customer** will be served by a switch capable of switching local voice traffic.

[BellSouth Version] 7) Each circuit to be provided to each **End User** will be served by a switch capable of switching local voice traffic.

Item No. 51, Issue No. 2-33 [Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]: (A) ***This issue has been resolved.***

(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

(C) Who should conduct the audit and how should the audit be performed?

5.2.6.1 [CLEC Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>>, **identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit shall also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit will be delivered to <<customer_short_name>> with all supporting documentation no less than thirty (30) calendar days prior to the date upon which BellSouth seeks to commence an audit.**

[BellSouth Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>>. Such Notice of Audit will be delivered to <<customer_short_name>> no less than thirty (30) calendar days prior to the date upon which **the audit will commence**.

5.2.6.2 [<<customer_short_name>> Version] The audit shall be conducted by **a** third party independent auditor **mutually agreed-upon by the Parties** and retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations).

[BellSouth Version] The audit shall be conducted by a third party independent auditor retained and paid for by BellSouth. The audit shall commence **a**t a mutually agreeable location (or locations).

5.2.6.2.3 [<<customer_short_name>> Version] To the extent the independent auditor's report concludes that <<customer_short_name>> failed to comply **in all material respects** with the service eligibility criteria, <<customer_short_name>> shall reimburse BellSouth for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that <<customer_short_name>> did comply in all material respects with the service eligibility criteria, B ellSouth will reimburse <<customer_short_name>> for its reasonable and demonstrable costs associated with the audit, including, among other things, staff time. The

Parties shall provide such reimbursement within thirty (30) calendar days of receipt from <<customer_short_name>> of a statement of such costs.

[BellSouth Version] To the extent the independent auditor's report concludes that <<customer_short_name>> failed to comply with the service eligibility criteria, <<customer_short_name>> shall reimburse BellSouth for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that <<customer_short_name>> did comply in all material respects with the service eligibility criteria, BellSouth will reimburse <<customer_short_name>> for its reasonable and demonstrable costs associated with the audit, including, among other things, staff time. The Parties shall provide such reimbursement within thirty (30) calendar days of receipt from <<customer_short_name>> of a statement of such costs.

ATTACHMENT 3

INTERCONNECTION

Item No. 63, Issue No. 3-4 [Section 10.10.6 (KMC), 10.8.6 (NSC), 10.8.6 (NVX), 10.13.5 (XSP)]: 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?

10.8.6 [CLEC Version] BellSouth agrees to deliver Transit Traffic originated by <<customer_short_name>> to the terminating carrier; provided, however, that <<customer_short_name>> is solely responsible for negotiating and executing any appropriate contractual agreements with the terminating carrier for the exchange of Transit Traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier or to <<customer_short_name>> for transiting <<customer_short_name>>-originated or terminated Transit Traffic. **Notwithstanding any other provision of this Attachment**, in the event that the terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by <<customer_short_name>>, <<customer_short_name>> shall reimburse BellSouth for all charges paid by BellSouth, **which BellSouth is obligated to pay pursuant to contract or Commission order**, provided that BellSouth notifies and, upon request, provides <<customer_short_name>> with a copy of such an invoice, if available, or other equivalent supporting documentation (if an invoice is not available), and proof of payment and other applicable supporting documentation. BellSouth will provide such notice and information in a timely, reasonable and nondiscriminatory manner. BellSouth shall diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or

equivalent) **when no similar reimbursement provision applies. Notwithstanding the foregoing, <<customer_short_name>> will not be obligated to reimburse BellSouth for any charges or costs related to Transit Traffic for which BellSouth has assumed responsibility through a settlement agreement with a third party.** Additionally, the Parties agree that any billing to a third party or other telecommunications carrier under this section shall be pursuant to MECAB procedures.

[BellSouth Version] BellSouth agrees to deliver Transit Traffic originated by <<customer_short_name>> to the terminating carrier; provided, however, that <<customer_short_name>> is solely responsible for negotiating and executing any appropriate contractual agreements with the terminating carrier for the exchange of Transit Traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier or to <<customer_short_name>> for transiting <<customer_short_name>>-originated or terminated Transit Traffic. In the event that the terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by <<customer_short_name>>, <<customer_short_name>> shall reimburse BellSouth for all charges paid by BellSouth, provided that BellSouth notifies <<customer_short_name>> and, upon request, provides <<customer_short_name>> with a copy of such an invoice, if available, or other equivalent supporting documentation (if an invoice is not available), and proof of payment and other applicable supporting documentation. BellSouth will **use commercially reasonable efforts to** provide such notice and information in a timely, reasonable and nondiscriminatory manner. BellSouth shall diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) **under the same circumstances. Once <<customer_short_name>> reimburses BellSouth for any such payments, any disputes with respect to such charges shall be between <<customer_short_name>> and the terminating third party carrier.** Additionally, the Parties agree that any billing to a third party or other telecommunications carrier under this section shall be pursuant to MECAB procedures.

Item No. 65, Issue No. 3-6 [Section 10.10. 1 (KMC), 10.8.1 (NSC/NVX), 10.13 (XSP)]: 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?

10.10.1 [CLEC Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-

Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i.e., common transport and tandem switching charge; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

[BellSouth's Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i.e., common transport and tandem switching charges and **tandem intermediary charge**; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

ATTACHMENT 6

ORDERING

Item No. 86, Issue No. 6-3 [Sections 2.5.6.2, 2.5.6.3]: (A) ***This issue has been resolved.*** *(B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?*

2.5.6.3 [CLEC Version] Disputes over Alleged Noncompliance. **If one Party disputes the other Party's assertion of non-compliance, that Party shall notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting that the non-compliance, the requesting** Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. In such instance, the Parties cooperatively shall seek expedited resolution of the dispute. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and

Confidential Information Section in the General Terms and Conditions of this Agreement.

[BellSouth Version] Disputes over Alleged Noncompliance. In it's **written notice to the other Party** the alleging Party will state **that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the other** Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Data Advancement (a/k/a service expedites)?

2.6.5 [PARTIES DISAGREE ON THE RATE, NOT THE LANGUAGE] Service Date Advancement Charges (a.k.a. Expedites). For Service Date Advancement requests by <<customer_short_name>>, Service Date Advancement charges will apply for intervals less than the standard interval as outlined in Section 8 of the LOH, located at http://interconnection.bellsouth.com/guides/html/leo.html. The charges shall be as set-forth in Exhibit A of Attachment 2 of this Agreement and will apply only where Service Date Advancement has been specifically requested by the requesting Party, and the element or service provided by the other Party meets all technical specifications and is provisioned to meet those technical specifications. If <<customer_short_name>> accepts service on the plant test date (PTD) normal recurring charges will apply from that date but Service Date Advancement charges will only apply if <<customer_short_name>> previously requested the order to be expedited and the expedited DD is the same as the original PTD.

Item No. 94, Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: (A) 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?

(B) If so, what rates should apply?

(C) What should be the interval for such mass migrations of services?

3.1.2 [CLEC Version] Mass Migration of Customers. BellSouth will cooperate with <<customer_short_name>> to accomplish mass migration of customers expeditiously and on terms that are reasonable and non-discriminatory. **Mass migration of customer service arrangements (e.g., UNEs, Combinations, resale) will be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information shall be used. An electronic OSS charge shall be assessed per service arrangement migrated. This Section shall not govern bulk migration from one service arrangement to another for the same carrier or migration of a collocation space from one carrier to another.**

[BellSouth Version] Mass Migration of Customers. BellSouth will cooperate with <<customer_short_name>> to accomplish mass migration of customers expeditiously and on terms that are reasonable and non-discriminatory.

3.1.2.1 [CLEC Version] **BellSouth shall only charge <<customer_short_name>> a TELRIC-based records change charge for the migration of customers for which no physical re-termination of circuits must be performed. The TELRIC-based records change charge is as set forth in Exhibit A of Attachment 2 of this Agreement. Such migrations shall be completed within ten (10) calendar days of an LSR or spreadsheet submission. The TELRIC-based charge for physical re-termination of circuits (including appropriate record changes (a single charge will apply)) is as set forth in Exhibit A of Attachment 2 of this Agreement. Such physical re-terminations shall be completed within ten (10) calendar days of electronic LSR or spreadsheet submission.**

[BellSouth Version] **No Section.**

ATTACHMENT 7

BILLING

Item No. 95, Issue No. 7-1 [Section 1.1.3]: What time limits should apply to backbilling, over-billing, and under-billing issues?

1.1.3 [CLEC Version] The Bill Date, as defined herein, must be present on each bill transmitted by one Party to the other Party and must be a valid calendar date. **Bills should not be rendered for any charges which are incurred under this agreement when more than ninety (90) days have passed since the bill date on which those charges ordinarily would have been billed. Billed amounts for services rendered more than one (1) billing period prior to the Bill Date shall be invalid unless the billing Party identifies such billing as "back-billing" on a line-item basis. However, both Parties recognize that situations exist which would necessitate billing beyond ninety (90) days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued. These exceptions are:**

Charges connected with jointly provided services whereby meet point billing guidelines require either party to rely on records provided by a third party and such records have not been provided in a timely manner;

Charges incorrectly billed due to erroneous information supplied by the non-billing Party.

[BellSouth Version] The Bill Date, as defined herein, must be present on each bill transmitted by one Party to the other Party and must be a valid calendar date. **Charges incurred under this Agreement are subject to applicable Commission rules and state statutes of limitations.**

Item No. 96, Issue No. 7-2 [Section 1.2.2]: (A) 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? (B) What intervals should apply to such changes?

1.2.2 [CLEC Version] OCN, CC, CIC, ACNA and BAN Changes. **In the event that either Party makes any corporate name change (including addition or deletion of a d/b/a), or a change in OCN, CC, CIC, ACNA or any other LEC identifier (collectively, a "LEC Change"), the changing Party shall submit written notice to the other Party. A Party may make one (1) LEC Change**

per state in any twelve (12) month period without charge by the other Party for updating its databases, systems, and records solely to reflect such LEC Change. In the event of any other LEC Change, such charge shall be at the cost-based, TELRIC compliant rate set forth in Exhibit A to this Attachment 7. LEC Changes shall be accomplished in thirty (30) calendar days and shall result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order or maintenance interfaces made available by BellSouth pursuant to Attachment 6 of this Agreement. At the request of a Party, the other Party shall process and implement all system and record changes necessary to effectuate a new OCN/CC within thirty (30) calendar days. At the request of a Party, the other Party shall establish a new BAN within ten (10) calendar days.

[BellSouth Version] OCN, CC, CIC, ACNA and BAN Changes. **If <<customer_short_name>> needs to change its ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s) under which it operates when <<customer_short_name>> has already been conducting business utilizing that ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s), <<customer_short_name>> shall bear all costs incurred by BellSouth to convert <<customer_short_name>> to the new ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s). ACNA/BAN/CC/CIC/OCN conversion charges include the time required to make system updates to all of <<customer_short_name>>'s End User customer records and will be handled by the BFR/NBR process.**

Item No. 97, Issue No. 7-3 [Section 1.4]: When should payment of charges for service be due?

1.4 [CLEC Version] Payment Due. Payment **of charges** for services rendered will be due **thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

[BellSouth Version] Payment Due. Payment for services will be due **on or before the next bill date (Payment Due Date)** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

Item No. 99, Issue No. 7-5 [Section 1.7.1]: 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

1.7.1 [CLEC Version] Each Party reserves the right to suspend or terminate service in the event of prohibited, unlawful or, in the case of resold services, improper use of the other Party's facilities or service (e.g. making calls in a manner reasonably to be expected to frighten, abuse, torment or harass another, etc.) as described under the providing Party's tariff, abuse of the other Party's facilities, or any other violation or noncompliance with this Agreement and/or each Party's tariffs where applicable. Upon detection of such use, the detecting Party will provide written notice to the other Party that additional applications for **such** service may be refused, that any pending orders for **such** service may not be completed, and/or that access to ordering systems **for such service** may be suspended if such use is not corrected or ceased by the fifteenth (15th) calendar day following the date of the notice. In addition, the detecting Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the detecting Party may terminate the provision of **such** existing services to the other Party if such use is not corrected or ceased by the thirtieth (30th) calendar day following the date of the initial notice. **Notwithstanding the foregoing, if the Party that receives the notice disagrees with the issuing Party's allegations of prohibited, unlawful or improper use, it shall provide written notice to the issuing Party stating the reasons therefor. Upon delivery of such notice of dispute, the foregoing provisions regarding suspension and termination will be stayed, and the Parties shall work in good faith to resolve any dispute over allegations of prohibited, unlawful or improper use. If the Parties are unable to resolve such dispute amicably, the issuing Party shall proceed, if at all, pursuant to the dispute resolution provisions set forth in the General Terms and Conditions.**

[BellSouth Version] Each Party reserves the right to suspend or terminate service in the event of prohibited, unlawful or, in the case of resold services, improper use of the other Party's facilities or service (e.g. making calls in a manner reasonably to be expected to frighten, abuse, torment or harass another, etc.) as described under the providing Party's tariff, abuse of the other Party's facilities, or any other violation or noncompliance with this Agreement and/or each Party's tariffs where applicable. Upon detection of such use, the detecting Party will provide written notice to the other Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifteenth (15th) calendar day following the date of the notice. In addition, the detecting Party may, at the same time, provide written notice to the person

designated by the other Party to receive notices of noncompliance that the detecting Party may terminate the provision of **all** existing services to the other Party if such use is not corrected or ceased by the thirtieth (30th) calendar day following the date of the initial notice.

Item No. 100, Issue No. 7-6 [Section 1.7.2]: Should CLEC be required to calculate and 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?

1.7.2 [CLEC Version] **Each Party** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **Due Date, the billing Party may** provide written notice **to the other Party** that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **as indicated on the notice in dollars and cents**, is not received by the fifteenth (15th) calendar day following the date of the notice. In addition, **the billing Party** may, at the same time, provide written notice that **the billing Party** may discontinue the provision of existing services to **the other Party** if payment of such amounts, **as indicated on the notice (in dollars and cents),** is not received by the thirtieth (30th) calendar day following the date of the Initial Notice.

[BellSouth Version] **BellSouth** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **bill date in the month after the original bill date, BellSouth** will provide written notice to **<<customer_short_name>>** that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **and all other amounts not in dispute that become past due before refusal, incompletion or suspension**, is not received by the fifteenth (15th) calendar day following the date of the notice. In addition, **BellSouth** may, at the same time, provide written notice **to the person designated by <<customer_short_name>> to receive notices of noncompliance** that **BellSouth** may discontinue the provision of existing services to **<<customer_short_name>>** if payment of such amounts**, and all other amounts not in dispute that become past due before discontinuance**, is not received by the thirtieth (30th) calendar day following the date of the initial notice.

Item No. 101, Issue No. 7-7 [Section 1.8.3]: How many months of billing should be used to determine the maximum

amount of the deposit?

1.8.3 [CLEC Version] The amount of the security shall not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing under this Agreement for existing CLECs (based on average monthly billings for the most recent six (6) month period). Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

[BellSouth Version] The amount of the security shall not exceed two (2) month's **estimated billing for new CLECs or** actual billing for existing CLECs. Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

Item No. 102, Issue No. 7-8 [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

1.8.3.1 [CLEC Version] **The amount of security due from an existing CLEC shall be reduced by amounts due <<customer_short_name>> by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in Section 1.8.5.1, and subject to the standard set forth in Section 1.8.5.**

[BellSouth Version] **No Section.**

Item No. 103, Issue No. 7-9 [Section 1.8.6]: 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?

1.8.6 [CLEC Version] Subject to Section 1.8.7 following, in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section **and either agreed to by <<customer_short_name>> or as ordered by the Commission** within thirty (30) calendar days **of such agreement or order**, service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

[BellSouth Version].Subject to Section 1.8.7 following, in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section within thirty (30) calendar days **of <<customer_short_name>>'s receipt of such request,** service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

Item No. 104, Issue No. 7-10 [Section 1.8.7]: 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?

1.8.7 [CLEC Version] The Parties will work together to determine the need for or amount of a reasonable deposit. **If the Parties are unable to agree, either Party** may file a petition for resolution of the dispute and both parties shall cooperatively seek expedited resolution of such dispute.

[BellSouth Version]. The Parties will work together to determine the need for or amount of a reasonable deposit. **If <<customer_short_name>> does not agree with the amount or need for a deposit requested by BellSouth,** <<customer_short_name>> may file a petition with the Commissions for resolution of the dispute and both Parties shall cooperatively seek expedited resolution of such dispute. **BellSouth shall not terminate service during the pendency of such a proceeding provided that <<customer_short_name>> posts a payment bond for the amount of the requested deposit during the pendency of the proceeding.**

Item No. 108, Issue No. S-1: How should the final FCC unbundling rules be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 109, Issue No. S-2: (A) How should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? (B) How should any intervening State Commission order relating to unbundling obligations, if any, be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 110, Issue No. S-3: If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 111, Issue No. S-4 What post Interim Period transition plan should be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 112, Issue No. S-5: (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 113, Issue No. S-6: (A) Is BellSouth obligated to provide unbundled access to DSI loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?

Language to be provided by the Parties.

Item No. 114, Issue No. S-7: (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?

Language to be provided by the Parties.