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

Marva Brown Johnson on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC

January 10, 2005

PRELIMINARY STATEMENTS

WITNESS INTRODUCTION AND BACKGROUND

KMC: Marva Brown Johnson

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

A. My name is Marva Brown Johnson. I am Senior Regulatory Counsel for KMC Telecom Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. I manage the organization that is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, interconnection agreements and local rights-of-way issues. I am also an officer of the company and I currently serve in the capacity of Assistant Secretary. 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 hold a Bachelors of Science in Business Administration (BSBA), with a concentration in Accounting, from Georgetown University; a Masters in Business Administration from Emory University's Goizuetta School of Business; and a Juris Doctor from Georgia State University. I am admitted to practice law in the State of Georgia. I have been employed by KMC since September 2000. I joined KMC as the Director of ILEC Compliance; I was later promoted to Vice President, Senior Counsel and this is the position that I hold today.

Prior to joining KMC as the Director of ILEC Compliance, I had over eight years of telecommunications-related experience in various areas including consulting, accounting, and marketing. From 1990 through 1993, I worked as an auditor for Arthur Andersen & Company. My assignments at Arthur Andersen spanned a wide range of industries, including telecommunications. In 1994 through 1995, I was an internal auditor for BellSouth. In that capacity, I conducted both financial and operations audits. The purpose of those audits was to ensure compliance with regulatory laws as well as internal business objectives and policies. From 1995 through September 2000, I served in various capacities in MCI Communications' product development and marketing organizations, including as Product Development – Project Manager, Manager - Local Services Product Development, and Acting Executive Manager for Product Integration. At MCI, I assisted in establishing the company's local product offering for business customers, oversaw the development and implementation of billing software initiatives, and helped integrate various regulatory requirements into MCI's products, business processes, and systems.

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

A. I have submitted testimony in proceedings before the following commissions: the North Carolina Utilities Commission; the Florida Public Service Commission; and the Tennessee Regulatory Authority.

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

A. I am prepared to sponsor and adopt all testimony sponsored by my colleague Mr. Pifer. Mr. Pifer and I will be sharing the duty of serving as KMC's regulatory policy witness in all nine of the BellSouth arbitrations. Depending on the hearing schedule adopted by the Commission, I may appear at the hearing as a substitute for Mr. Pifer.[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	65/3-6
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

[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, 63/3-4 (KMC only), 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.

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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 2/ISSUE G-2.

A. The term "End User" should be defined as "the customer of a Party".

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The definition proposed by the Petitioners is simple and avoids controversy. In addition, it is the most natural and intuitive definition. Petitioners have a variety of telecommunications services customers – some wholesale and many retail. Whether or not they qualify as the "ultimate user" of such telecommunications services (whatever that means) is simply not relevant to whether they are or aren't "end users" of the telecommunications services provided by Petitioners.

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

A. BellSouth's proposed definition unnecessarily invites ambiguity and the potential for future controversy, by turning on the notion that in order to be an End User, the customer must be the "ultimate user of the Telecommunications Service". Obviously,

[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.

this is a restrictive definition that could serve some ulterior BellSouth motive in the near term or perhaps further down the road. Given that the concept of "ultimate user" is undefined and there is no precise way of knowing which Telecommunications Service is "the Telecommunications Service" BellSouth refers to, BellSouth's proposal seems well suited to unnecessarily narrow Joint Petitioners' rights to use UNEs to provide telecommunications services to customers of their choosing (which may include wholesale customers). However, there is no apparent policy or legal basis to support BellSouth's apparent attempt to limit who can or cannot be Petitioners' customers or whether Petitioners can serve them using UNEs. Provided that Petitioners comply with the contractual provisions regarding resale, UNEs and Other Services (defined in Attachment 2), the contract should in no way attempt to limit who can or cannot be considered an End User of a Party's services.

Q. ARE THERE OTHER REASONS WHY THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Yes. The curiously restrictive definition proposed by BellSouth is inconsistent with the manner in which the term "End User" has been used elsewhere in the Agreement. For example, under BellSouth's proposed definition of "End User," it is arguable that certain types of CLEC customers, such as Internet Service Providers ("ISPs"), might not be considered to be "End Users". However, in Attachment 3 of the Agreement, BellSouth has agreed to language regarding "ISP-bound traffic" that does treat ISPs as End Users, even under BellSouth's proposed definition. This language already has been agreed to. Yet it is clear that, while ISPs use Telecommunications Services provided by Petitioners and have been considered by the industry to be end users for

more than 20 years, it is not readily apparent that they qualify as "the ultimate user of the Telecommunications Service". There simply is no need for the tension that exists between this provision and the improperly restrictive and ambiguous definition of End User proposed by BellSouth in the General Terms. The bottom line is that the **language proposed by the Petitioners is simple, straightforward, and is the best way to avoid unnecessary ambiguity and future controversy.**

Q. ARE THERE OTHER APPARENT COMPLICATIONS RAISED BY BELLSOUTH'S PROPOSED DEFINITION?

A. Yes. In connection with Attachment 2, section 5.2.5.2.1, which addresses Enhanced Extended Loop ("EEL") eligibility criteria, BellSouth, attempts to replace the word used in the FCC's rules: "customer" with "End User," a word which BellSouth seeks by definition to limit to a potentially vague subset of Petitioners' customers. If BellSouth wants to change the word used in the FCC's rule for some legitimate purpose, its definition of End User should simply be that it means "customer". This way, the meaning of the rule and the parties' rights vis-à-vis the rule are not changed. By way of background, Petitioners have repeatedly informed BellSouth that they are unwilling to compromise their rights under the EEL eligibility rules. Thus, even if BellSouth had offered Petitioners some offsetting concession in exchange for the more limiting EEL eligibility criteria it seeks to impose upon Petitioners (which they did not), Petitioners would not have accepted it.

In short, BellSouth's proposed re-write of the rule could be used to limit Petitioners' access to EELs in a manner neither intended nor required by the FCC's rules. We

suspect that BellSouth inappropriately seeks to deny Petitioners the ability to use EELs as inputs to wholesale service offerings. Petitioners, however, simply will not agree to a definition that could serve to limit their rights and BellSouth's obligations to provide access to EELs, UNEs or any other services or facilities.

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

A. BellSouth's Issues Matrix states that Issue G-2 "is not appropriate for arbitration" because "the issue as stated by the CLECs and raised in the General Terms and Conditions of the Agreement has never been discussed by the Parties". BellSouth's Position statement appears to have been drafted by somebody that had not taken part in the negotiations. In any event, it is wrong. The Parties discussed the definition of End User in a number of contexts of the Agreement, including the Triennial Review Order ("TRO")-related provisions of Attachment 2. When Petitioners learned that BellSouth was going to attempt to use the definition of End User to limit its obligation to provide, and CLECs' access to, UNEs and Combinations, they refused to agree to the definition of End User proposed by BellSouth in the General Terms and Conditions. The fact that the issue is teed up in the conflicting versions of the definition contained in the General Terms and Conditions document (a document controlled by BellSouth) belies BellSouth's patently false claim that the issue had never been discussed by the Parties. Petitioners have sought to clarify, via arbitration, the correct definition of End User so that it may be used consistently throughout the Agreement and so that it cannot be used to diminish Petitioners' right to UNEs or other services under the Agreement. For these reasons, Issue G-2 is properly before the Commission.

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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 4/ISSUE G-4.

A. In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day on which the claim arose.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners and BellSouth should establish and fix a reasonable limitation on their respective risk exposure, in cases other than gross negligence or willful misconduct. As this Agreement is an arm's-length contract between commercially-sophisticated parties, providing for reciprocal performance obligations and the pecuniary benefits as to each such Party, the Parties should, in accordance with established commercial practices, contractually agree upon and fix a reasonable and appropriate, relative to the particular substantive scope of the contractual arrangements at issue here, maximum liability exposure to which each Party would potentially be subject in its performance under the Agreement. The Petitioners, as operating businesses party to a substantial negotiated contractual undertaking, should not be forced to accept and adhere to BellSouth's "standard" limitation of liability provisions, simply because BellSouth has traditionally been successful to date in leveraging its monopoly legacy to dictate terms and impose such provisions on its diffuse customer base of millions

of consumers and dozens of carriers requiring BellSouth service. Petitioners' proposal represents a compromise position between limitation of liability provisions typically found in the absence of overwhelming market dominance by one party, in commercial contracts between sophisticated parties and the effective elimination of liability provision proposed by BellSouth. As any commercial undertaking carries some degree of a risk of liability or exposure for the performing party, such risks (along with the contractual, financial and/or insurance protections and other risk-management strategies routinely found in business deals to manage these issues) are a natural and legitimate cost of doing business, regardless of the nature of the services performed or the prices charged for them. As Petitioners are merely requesting that BellSouth accept some measure, albeit a modest one relative to universally-regarded commercial practices, of accountability and contractual responsibility for performance and do not seek to expose BellSouth to any particular risks or excess levels of risk that would not otherwise fall within the general commercial-liability coverage afforded by any typical insurance policy, the incremental cost or exposure for these ordinary-course, insurable risks is nonexistent or minimal to BellSouth beyond possible costs incurred for the insurance premiums, financial reserves and/or other risk-management measures already maintained by BellSouth in the usual conduct of its business, costs that would in any event likely constitute joint and common costs already factored into BellSouth's UNE rates.

Petitioners' proposal is structured on a "rolling" basis, such that no Party will incur liabilities that in aggregate amount exceed a contractually-fixed percentage of the actual revenue amounts that such Party will have collected under the Agreement up to

the date of the particular claim or suit. Thus, for example, an event that occurs in Month 12 of the term of the Agreement would, in the worst case, result in a maximum liability equal to 7.5% of the revenue collected by the liable Party during those first 12 months of the term. This amount is fair and reasonable, and in fact, is far less than that would be at issue under standard liability-cap formulations – starting from a minimum (in some of the more conservative commercial contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract — more universally appearing in commercial contracts. Petitioners' proposed risk-vs.-revenue trade-off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well.

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

A. BellSouth maintains that an industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed, or not properly performed. This position is flawed because it grants Petitioners no more than what long-established principles of general contract law and equitable doctrines already command: the right to a refund or recovery of, and/or the discharge of any further obligations with respect to, amounts paid or payable for services not properly performed. Such a provision would not begin to make Petitioners whole for losses they incur from a failure of BellSouth

systems or personnel to perform as required to meet the obligations set forth in the Agreement in accordance with the terms and subject to the limitations and conditions as agreed therein. It is a common-sense and universally-acknowledged principle of contracting that a party is not required to pay for nonperformance or improper performance by the other party. Therefore, BellSouth's proposal offers nothing beyond rights the injured party would otherwise already have as a fundamental matter of contract law, thereby resulting in an illusory recovery right that, in real terms, is nothing more than an elimination of, and a full and absolute exculpation from, any and all liability to the injured party for any form of direct damages resulting from contractual nonperformance or misperformance. Additionally, it is not commercially reasonable in the telecommunications industry, in which a breach in the performance of services results in losses that are greater than their wholesale cost — these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach. Petitioner's proposal for a 7.5% rolling liability cap is therefore more appropriate as a reasonable and commercially-viable compromise and should be adopted.

***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 Russell 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 Russell 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 Russell 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 Russell 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. 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 James Falvey on this issue, as though it were reprinted here.

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 on this issue, as though it were reprinted here.

Item No.13, Issue No. G-13 [Section 32.3]: ***This issue has been resolved.***

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

Item No. 15, Issue No. G-15 [Section 45.2]: ***This issue has 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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 23/ISSUE 2-5.

A. As an initial matter, it bears noting that this issue is one that the Parties agreed to amend as though it were a Supplemental Issue raised during the abatement period. 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. In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, including any transition plan set forth therein, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other services pursuant to Attachment 2.

There should be no service order, labor, disconnection or other nonrecurring charges associated with the transition of section 251 UNEs to other services.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. To the extent that UNEs or Combinations are no longer offered under this Agreement, BellSouth should be responsible for identifying any CLEC service arrangements that it seeks to transition from section 251 UNEs or Combinations to section 271 UNEs or Other Services pursuant to Attachment 2. It is logical that the Party seeking a change should be responsible for identifying such change to the other Party. Any other result would place the burden on the Party that does not necessarily think that a service change is desirable or necessary.

At bottom, there will be costs involved with identifying such service arrangements. If BellSouth seeks to avail itself of unbundling relief, it should not seek to put the costs of doing so squarely on the Joint Petitioners. Indeed, since it is BellSouth that stands to garner all of the benefit from conversions from section 251 UNEs to other services, it should shoulder most, if not all, of the costs associated with implementing those changes. Since BellSouth stands to be the sole beneficiary, BellSouth also has the appropriate incentive to devote sufficient resources to generate requests in a manner that is acceptably timely to BellSouth. The process proposed by Joint Petitioners fairly apportions order generation costs and leaves the timing of the process under BellSouth's control (BellSouth is free to devote the resources to generate the requests immediately, within 30 days or within whatever time period it can manage given its own resource allocation and demand issues evident at the time). Under the Joint

Petitioners' proposal, BellSouth would bear the burden of identifying and requesting any conversion to which it believes it is entitled. Joint Petitioners would bear the appreciable burden of verifying that list, selecting alternative service arrangements (or disconnection), and submitting spreadsheets, LSRs or ASRs, as appropriate.

Notably, Joint Petitioners' proposal creates a helpful check and balance in that CLEC verification of BellSouth's request will either generate conversion requests, disconnection requests, or disputes about whether a particular arrangement must be converted. It is unlikely that BellSouth would not or could not without undue burden create a list of arrangements it thinks it is entitled to no longer provide as UNEs. There is no compelling reason why that list should not serve as the starting point for this process. This way, if there is to be a dispute, the scope of it will be known to both sides sooner, rather than later and neither side gets to hide the ball.

It is also important to note that the Joint Petitioners recognize that they cannot unreasonably hold-up the post-transition period process of converting section 251 UNE arrangements to section 271 UNEs or other services. Therefore, the Joint Petitioners propose that if a CLEC does not submit a rearrange or disconnect order within 30 days of receipt of BellSouth's request, BellSouth may convert such arrangements or services without further advance notice, provided that the CLEC has not notified BellSouth of a dispute regarding the identification of specific service arrangements as being no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement.

As indicated above, BellSouth is the sole beneficiary of unbundling relief. The only thing Joint Petitioners stand to gain is higher costs which they will have to absorb, share with, or pass on to Florida consumers and businesses. Since it is BellSouth that, in this context, seeks to avail itself of the benefits of unbundling relief, BellSouth should not impose additional charges on Joint Petitioners for converting services from section 251 UNEs to other services. Joint Petitioners do not seek to incur or create those costs – BellSouth does. Accordingly, Joint Petitioners should not be required to pay any order placement charges, disconnect charges or nonrecurring charges associated with a conversion to or establishment of an alternative service arrangement. BellSouth's proposal to saddle Joint Petitioners with the costs associated with its own desire to avail itself of the benefits of unbundling relief is unconscionable and should be squarely rejected.

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

A. Joint Petitioners have not had adequate time to review and analyze BellSouth's newly proposed contract language related to this issue. So that we are in the same position as with other Supplemental Issues, Joint Petitioners have withdrawn our proposed language. Joint Petitioners will resubmit 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).

Based on BellSouth's position statement only, it appears that BellSouth's proposed language has morphed into at least seven intertwined and complicated provisions. It appears that BellSouth has split the types of UNEs or Combinations subject to conversions into "Switching Eliminated Elements" and "Other Eliminated Elements". Joint Petitioners do not discern the need for this division and suggest that there likely is none. Indeed, the only difference we can detect is that so-called Switching Eliminated Elements may be converted to Resale. It is unclear to us why any so-called Other Eliminated Elements could not be converted to Resale at the best available rate minus the Commission -ordered resale discount.

Based on BellSouth's position statement, other likely problems with BellSouth's proposal include the various defined/capitalized terms included therein. As discussed with respect to Supplemental Issue S-4, Joint Petitioners do not agree that "Transition Period" set forth in FCC 04-179 was ordered and accordingly find it inappropriate to define the post-Interim Period transition plan as the one the FCC set forth for comment in FCC 04-179. Joint Petitioners also object to the term "Eliminated Elements" as it presumes that BellSouth is not subject to unbundling requirements in the absence of an FCC order and rules containing unbundling requirements. For reasons set forth with respect to Supplemental Issues S-6 and S-7, Joint Petitioners do not believe that such a presumption is valid, as it ignores the fact that the *USTA II*

decision did not strike section 251. Moreover, BellSouth has unbundling requirements under section 271 and may be compelled to unbundle pursuant to state law.

As explained in the rationale set forth in support of our position with respect to this issue, Joint Petitioners also find objectionable the burdens that BellSouth's proposal seeks to impose upon them – so that BellSouth can speedily avail itself of unbundling relief. For the reasons set forth above, BellSouth should take the initial steps to identify and request conversion of service arrangements it no longer believes it is obligated to provide as section 251 UNEs. Since BellSouth is the cost causer, BellSouth should not be able to saddle Joint Petitioners with the costs of such conversions. Instead, the Commission should expressly find that Joint Petitioners should not be required to pay any order placement charges, disconnect charges or nonrecurring charges associated with a conversion to or establishment of an alternative service arrangement.

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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 26/ISSUE 2-8.

A. The answer to the question posed in the issue statement is "YES". BellSouth should be required to "commingle" UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to section 271 of the Act.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' proposed language seeks to ensure that BellSouth will provide UNEs and UNE Combinations commingled with services, network elements and any other offering it is required to provide pursuant to section 271, consistent with the FCC's rules, which do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs.

The FCC has defined "commingling" as the connecting, attaching, or otherwise linking of a UNE, or a UNE Combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. Commingling is different from combining (as in a UNE Combination). In the TRO, the FCC specifically eliminated the temporary commingling restrictions that it had

adopted and affirmatively clarified that CLECs are free to commingle UNEs and combinations of UNEs with services (*i.e.,* non-UNE offerings), and further clarified that BellSouth is required to perform the necessary functions to effectuate such commingling. The FCC has also concluded that section 271 places requirements on BellSouth to provide network elements, services and other offerings, and those obligations operate completely separate and apart from section 251. Clearly, elements provided under section 271 are provided pursuant to a method other than unbundling under section 251(c)(3). Therefore, the FCC's rules unmistakably require BellSouth to allow the Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to section 271. In short, BellSouth's efforts to isolate – and thereby make useless section 271 elements -- should be flatly rejected.

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

A. BellSouth interprets the FCC's rules as providing no obligation for it to commingle UNEs and Combinations with elements, services, or other offerings that it its required to provide to CLECs under section 271. BellSouth's language turns the FCC's commingling rules on their head, and nothing in the FCC's rules or the TRO supports its interpretation. In fact, the FCC specifically rejected BellSouth's creative but erroneous interpretation of the TRO (including paragraph 35 of the errata to the TRO) when it concluded that CLECs may commingle UNEs or UNE combinations with facilities or services that a it has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act.

Services obtained from BellSouth pursuant to section 271 obligations are obviously obtained from BellSouth pursuant to a method other than section 251(c)(3) unbundling, and therefore are not subject to any restrictions on commingling whatsoever. The Commission should therefore reject BellSouth's proposal as anticompetitive and unlawful.

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. 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 James Falvey on this issue, as though it were reprinted here.

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 Russell 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 Russell 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. 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 James Falvey on this issue, as though it were reprinted here.

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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 50/ISSUE 2-32.

A. The high capacity EEL eligibility criteria should be consistent with those set forth in the FCC's rules and should use the term "customer", as used in the FCC's rules. The

term "customer" should not be defined in a manner that limits Petitioners' access to EELs, as BellSouth proposes. The FCC did not limit its term "customer" to the restrictive definition of End User sought by BellSouth. Use of the term "End User" as defined by BellSouth may result in a deviation from the FCC rules to which CLECs are unwilling to agree.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for this position is simple: Petitioners want what the rule says, not anything else. Petitioners are unwilling to accept more limited access to EELs than which they are entitled to under the FCC's rules.

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

A. BellSouth's proposed replacement of "customer" with "End User" – a term upon which the Parties cannot agree on a definition (Item 2 / Issue G-2) improperly seeks to reduce the availability of EELs in a manner not intended by the FCC. In the absence of mutual agreement otherwise, the Commission must find that the express terms of the FCC rule govern.

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 Russell 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]: ***This issue has been resolved by KMC Telecom V, Inc. and KMC Telecom III, LLC. The issue remains open for the other Joint Petitioners.***

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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 65/ISSUE 3-6.

A. The answer to the question posed, in the issue statement is "NO". BellSouth should not be permitted to impose upon CLECs a Transit Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic.

The TIC is a non-TELRIC-based additive charge which exploits BellSouth's market power and is discriminatory.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' reasoning for refusing to agree to BellSouth's proposed TIC is threefold. First, BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power. Only BellSouth is in the position of providing transit service capable of connecting all carriers big and small. BellSouth is in this position because of its monopoly legacy and continuing market dominance. To ensure connectivity necessary to allow Florida consumers to choose among carriers big or small, it is essential that this means of interconnection among parties be preserved and not jeopardized by the imposition of non-cost-based rates.

Second, the rate BellSouth seeks to impose – appropriately called the TIC (like its insect namesake, this charge is parasitic and debilitating) – appears to be purely "additive". The Commission has never established a TELRIC-based rate for it. BellSouth already collects elemental rates for tandem switching and common transport to recover its costs associated with providing the transiting functionality. These elemental rates are TELRIC-compliant which, by definition, means that they not only provide BellSouth with cost recovery but they also provide BellSouth with a reasonable profit. BellSouth has recently developed the TIC simply to extract additional profits over-and-above profit already received through the elemental rates.

Third, BellSouth's attempted imposition of the TIC charge on Petitioners is discriminatory. BellSouth does not charge TIC on all CLECs and it appears that,

even when it does, it can set the rate at whatever level it desires. Although the TIC proposed by BellSouth in the filed rate sheet exhibits to Attachment 3 is $0.0015, BellSouth had threatened to nearly double that rate, if Petitioners did not agree to it during negotiations. For these reasons, the Commission must find that the TIC charge proposed by BellSouth is unlawfully discriminatory and unreasonable.

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

A. BellSouth's language provides for recovery of the TIC. It is BellSouth's position that the proposed rate is justified because BellSouth incurs costs beyond those for which the Commission-ordered rates were designed to address, such as the costs of sending records to third parties identifying the originating carrier. BellSouth, however, has not demonstrated that the elemental rates that have applied for nearly eight (8) years to BellSouth's transiting function do not adequately provide for BellSouth cost recovery. If these rates no longer provide for adequate cost recovery, BellSouth should conduct a TELRIC cost study and propose a rate in the Commission's next generic pricing proceeding. BellSouth should not be permitted unilaterally to impose a new charge without submitting such charge to the Commission for review and approval.

Q. WHY IS ITEM 65/ISSUE 3-6 APPROPRIATE FOR ARBITRATION?

A. BellSouth's position statement states that Issue 3-6 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. This statement is incorrect. Transiting is an interconnection issue firmly ensconced in section 251 of the Act. Moreover, this

functionality has been included in BellSouth interconnection agreements for nearly 8 years – it is not now magically unrelated to its obligations under section 251 of the Act. In addition, transiting functionality is something BellSouth offers in Attachment 3 of the Agreement, which sets forth the terms and conditions of BellSouth's obligations to interconnect with CLECs pursuant to section 251(c) of Act. Finally, the Parties have discussed and debated the TIC, although to no resolution, throughout the negotiations of this Agreement. For these reasons, there is no doubt that Issue 3-6 is properly before the Commission.

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. 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 James Falvey on this issue, as though it were reprinted here.

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. 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 James Falvey on this issue, as though it were reprinted here.

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. 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 James Falvey on this issue, as though it were reprinted here.

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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 95/ISSUE 7-1.

A. There should be an explicit, uniform limitation on a Party's ability to engage in backbilling under this Agreement. The Commission should adopt the CLEC proposed language, which would limit a Party's ability to bill for services rendered no more than ninety (90) calendar days after the bill date on which those charges ordinarily would have been billed. For purposes of ensuring that a party could

reconcile backbilled amounts, the CLEC proposed language provides that billed amounts for services that are rendered more than one (1) billing period prior to the bill date should be invalid unless the billing Party identifies such billing as "backbilling" on a line-item basis. Finally, the CLEC proposed language provides an exemption to the ninety (90) day limit whereby backbilling beyond ninety (90) calendar days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued may be invoiced under the following conditions: (1) 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; and (2) charges incorrectly billed due to erroneous information supplied by the non-billing Party. With respect to over-billing, the Parties have negotiated and separately agreed to a 2-year limit on filing billing disputes (thus, Petitioners do not believe that BellSouth properly has inserted this as a sub-issue here). With respect to under-billing, Petitioners believe that the sub-issue is covered by any provisions that address backbilling.

Q. WHAT IS THE RATIONALE FOR YOUR POSITION THAT BACKBILLING SHOULD GENERALLY BE LIMITED TO NINETY DAYS?

A. It comes down to business and financial certainty. In order for CLECs to pay invoices in a timely manner and keep adequate financial records, there must be a limit on the Parties' ability to backbill for services rendered. The Parties should not have unlimited time to backbill each other in an attempt to recoup past amounts not properly billed. Neither CLECs nor BellSouth should be required to reopen their financial books because the other did not issue accurate invoices in a timely manner.

To allow backbilling more than 90 days would create too much business uncertainty between the Parties and ultimately lead to billing disputes. Accordingly, the Commission should adopt the CLEC proposed language which establishes a general 90 day limit on backbilling.

Q. ARE THERE ANY CIRCUMSTANCES IN WHICH BACKBILLING MORE THAN NINETY DAYS SHOULD BE PERMITTED?

A. Yes, Petitioners' proposed language contemplates that there may be circumstances under which the Parties may backbill for past due amounts beyond 90 days and up to 6 months. Such circumstances include backbilling for 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; and charges incorrectly billed due to erroneous information supplied by the non-billing Party. Such exemptions to the 90 day backbilling limit would allow the Parties to recover past amounts not properly billed due to errors beyond their control while establishing a 6 month limit to avoid excessive backbilling. Petitioners propose a caveat, however, that any amount backbilled more than 1 billing period must be clearly identified as "backbilling" on a line-item basis. This requirement would allow the Parties to easily identify backbilled amounts, and reconcile invoices and will likely decrease the number of billing disputes between the Parties.

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

A. BellSouth's proposed language provides that all charges incurred under the Agreement are subject to the state's statute of limitations or applicable Commission

rules. BellSouth's language is inadequate because it fails to provide uniform, workable parameters by which the Parties can invoice each other for services rendered in prior billing periods. As discussed below, the statute of limitations vary greatly among the states in the BellSouth territory and, thus, do not provide an effective limit to backbilling.

In Florida, the statute of limitations is 5 years, and the Commission's rules establish a 12 month limit on "customer" backbilling. Although BellSouth has represented that a 12 month limitation would apply, it recently retracted those representations and now asserts that a 5 year statute of limitations would apply.

In either case, a lengthy backbilling period would create too much business uncertainty between the Parties and would force the CLECs to devote substantial time and resources to review and reconcile past bills in order to verify backbilled amounts. Moreover, it is unlikely that CLECs would be able to successfully backbill its customers for such amounts as most customers would not understand, much less accept, a substantially late bill for services the customer cannot verify were actually rendered.

Q. HAVE THE PARTIES AGREED TO LANGUAGE IN ANOTHER PART OF THE AGREEMENT THAT ADDRESSES OVER-BILLING?

A. Yes, the Parties have effectively addressed over-billing by limiting the filing of billing disputes to amounts no more than 2 years old. Specifically, section 2.1.7 of Attachment 7 states, "[n]otwithstanding the foregoing, new billing disputes may not be filed pertaining to a bill when a period of two (2) years from the bill issue date has elapsed." BellSouth agreed to a uniform cap of two (2) years for billing disputes even

through such timeframe is longer than the statute of limitations in Florida, Louisiana, and South Carolina, and shorter than the statute of limitations in Tennessee and the other states in the BellSouth region. BellSouth's position with regard to billing disputes is squarely contradictory to its position for backbilling, and BellSouth has not provided any compelling reasons why it will not agree to a uniform time limit for backbilling as it done with respect to billing disputes.

***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. 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 James Falvey on this issue, as though it were reprinted here.

***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 Russell 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. 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 James Falvey on this issue, as though it were reprinted here.

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 Russell 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 Russell 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. 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 James Falvey on this issue, as though it were reprinted here.

***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 Russell 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 Russell 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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 108/ISSUE S-1.

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 maintain that the Agreement should not automatically incorporate the "Final FCC Unbundling Rules", which for convenience, is a term the Parties have agreed to use to refer to the rules the FCC intends to release in the near term in WC Docket No. 04-313. After release of the Final FCC Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by those rules, or to other standards, if they mutually agree to do so. Any issues which the Parties are 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. Our position reflects the process established by the Act, which 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 those pending in this arbitration) are not automatically revised to incorporate a new FCC order. Instead, language must be negotiated or arbitrated, 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 a large but not uniform extent, 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 when the Final FCC Unbundling Rules are issued), 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. Additional contract terms may also be necessary to govern how and when the Parties will go about meeting any new requirements from an operational perspective.

Our position also is practical. We do not know what the Final FCC Unbundling Rules will say or how they might impact those provisions of the Agreement already agreed to or those provisions at issue in this arbitration. Thus, we cannot simply deem incorporated something that is unknown and that, accordingly, will have

unknown impact. When the Final FCC Unbundling Rules are released, a process will need to be adopted to allow the Parties sufficient time to assess the FCC's order and new rules, propose and negotiate contract language relating thereto, and to identify specific issues which cannot be resolved timely through voluntary negotiations and that will need to be resolved through Commission arbitration. The language that results from those negotiations and that aspect of the arbitration is how the Final FCC Unbundling Rules should be incorporated into the Agreement. That language should be effective when all other terms and conditions of the Agreement are effective – which is ten calendar days after 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" the so-called and yet-to-be released Final FCC Unbundling Rules. We do not, as of the date of this filing, know what those rules will say. Even if we did, we do not know whether the Parties will agree on their meaning and on what language 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 the Final FCC Unbundling Rules will 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 the Final FCC Unbundling Rules. 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 from the pending Agreements would be interconnection facilities compensation (for KMC and NuVox/NewSouth), certain aspects of intercarrier/reciprocal compensation, and collocation power (other than in Tennessee).

BellSouth's proposal to "automatically incorporate" unknown rules also is contrary to language and principles upon which the Parties already have agreed will be incorporated into section 17.4 of the General Terms and Conditions of the Agreement. The principle is that changes in law will be addressed via written amendment to the agreement that will be negotiated or, if necessary, resolved through arbitration. The Parties already have agreed that changes in law will not have springing or retroactive effect, as amendments are required (General Terms and Conditions section 17.3) and such amendments will be effective as of the date of the last signature, or 10 days after the last signature, if rates are incorporated into the amendment (General Terms and Conditions section 1.6). The Parties also already have agreed to language to ensure that the terms of the Agreement and any amendments thereto have no retroactive effect. Specifically, section 3.1 of the General Terms and Conditions states that "[n]otwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date". The Parties thereby eliminated practical difficulties or even impossibilities and destabilizing uncertainty created by retroactive application of the Agreement's provisions.

***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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 109(A)/ISSUE S-2(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.

Joint Petitioners' position with respect to Issue S-2(A) is much the same as that described in the above testimony regarding Issue S-1. More specifically, Joint Petitioners maintain that the Agreement should not automatically incorporate an "intervening FCC order" adopted in CC Docket 01-338 or WC Docket 04-313. By "intervening FCC order", we mean an FCC order released in CC Docket 01-338 or WC Docket 04-313 that addresses unbundling issues but does not purport to be the "final" unbundling order released as a result of the notice of proposed rulemaking ("NPRM") released as document FCC 04-179 on August 20, 2004 or an FCC order further addressing the interim rules adopted in the FCC's order also released as document FCC 04-179 on August 20, 2004. After release of an intervening FCC order, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the intervening FCC order, or to other standards, if they

mutually agree to do so. Any issues which the Parties are 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 here is the same as that described within the written testimony related to Issue S-1. Automatic incorporation of an intervening order 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 new FCC order. Instead, language must be negotiated or arbitrated, 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 a large but not uniform extent, 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 FCC 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. Additional contract terms may also be necessary to govern how and when the Parties will go about meeting any new requirements from an operational perspective.

Our position also is practical. We do not know what such an intervening FCC order will say or how it might impact those provisions of the Agreement already agreed to or those provisions at issue in this arbitration. Again, we cannot simply deem incorporated something that may never come to be and is otherwise unknown and that, accordingly, would have unknown impact. If and when such an order is released, a process will need to be adopted to allow the Parties sufficient time to assess the FCC's order and new rules, propose and negotiate contract language relating thereto, and to identify specific issues which cannot be resolved timely through voluntary negotiations and that will need to be resolved through Commission arbitration. The language that results from those negotiations and that aspect of the arbitration is how an intervening FCC order should be incorporated into the Agreement. That language should be effective when all other terms and conditions of the Agreement are effective – which is ten (10) calendar days after 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" an intervening FCC order. We do not, as of the date of this filing, know what that order – or any rules which may accompany it – might say. Even if we did, we do not know whether the Parties will agree on their meaning and on what language 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 an intervening FCC order 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 an interim FCC order. 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 from the pending Agreements would be interconnection facilities compensation (for KMC and NuVox/NewSouth), certain aspects of intercarrier/reciprocal compensation, and collocation power (other than in Tennessee).

BellSouth's proposal to "automatically incorporate" an unknown FCC order also is contrary to language and principles upon which the Parties already have agreed will be incorporated into section 17.4 of the General Terms and Conditions of the Agreement. The principle is that changes in law will be addressed via written amendment to the agreement that will be negotiated or, if necessary, resolved through

arbitration. The Parties already have agreed that changes in law will not have springing or retroactive effect, as amendments are required (General Terms and Conditions section 17.3) and such amendments will be effective as of the date of the last signature, or 10 days after the last signature, if rates are incorporated into the amendment (General Terms and Conditions section 1.6). The Parties also already have agreed to language to ensure that the terms of the Agreement and any amendments thereto have no retroactive effect. Specifically, section 3.1 of the General Terms and Conditions states that "[n]otwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date". The Parties thereby eliminated practical difficulties or even impossibilities and destabilizing uncertainty created by retroactive application of the Agreement's provisions.

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 109(B)/ISSUE S-2(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.

Joint Petitioners' position with regard to Issue No. S-2(B) is much the same as their position with regard to Issue No. S-1 and S-2(A). The only difference here is that now we are dealing with the intervening order of a state commission. Like the Final FCC Unbundling Rules, as well as any intervening FCC order, a State Commission

intervening order should not be automatically incorporated into the Agreement. Upon release of an intervening State Commission intervening order, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the intervening State Commission order, or to other standards, if they mutually agree to do so. Any issues which the Parties are 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 here is the same as that found in the testimony related to Issue No. S-1 and S-2(A). Automatic incorporation of an intervening State Commission order 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 new State Commission order. Instead, language must be negotiated or arbitrated, 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 such an intervening Commission order will say or how they will 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 and new rules, propose and negotiate contract language relating thereto, 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 an intervening State Commission order 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).

That being said, Joint Petitioners acknowledge that this sub-issue arises from Joint Petitioners' assumption (based on previous conversations with BellSouth) that BellSouth's proposed language is inadequate. Thus, the issue will likely arise from Joint Petitioners' proposed language. Joint Petitioners, however, cannot counter-propose language without having had an adequate opportunity to review and analyze BellSouth's proposed language first. Nevertheless, as we understand BellSouth's general proposal with respect to these supplemental issues, BellSouth seeks only to have the Agreement automatically revised (in undetermined ways and with undisclosed language) to incorporate various *federal* decisions – some of which may never even materialize. Joint Petitioners are of the view that the Commission (as well as its counterparts across the southeastern United States) has ample jurisdiction to address many issues relating to BellSouth's obligations to provide access to unbundled network elements and to create applicable law with respect to those issues (including the adoption of unbundling obligations under both state and federal law). As with any federal orders, such State Commission orders would not be automatically incorporated into the Agreement. (Strangely, BellSouth appears to agree with us on

this point – which suggests that they advocate their "automatically incorporated" position only with respect to orders they anticipate will be favorable to BellSouth.) Joint Petitioners maintain that, as with any other aspect of relevant new law, a new State Commission order would be subject to the same negotiation and arbitration process used to arrive at contract language in any other context.

Q. DOES BELLSOUTH'S POSITION STATEMENT DEMONSTRATE A MISAPPREHENSION OF THE ISSUE?

A. Yes. BellSouth seems to think that there is a dispute about whether a State Commission can modify FCC orders – and the one in FCC 04-179 (part of which is the so-called Interim Rules order and part is a the so-called Final Rules NPRM) in particular. Joint Petitioners never stated to BellSouth that they held the view that State Commissions maintained editorial privileges or otherwise could modify an FCC order including the one that appears in FCC 04-179. In discussing this issue, BellSouth counsel insisted on framing the manner in this light and Joint Petitioners (through counsel) resisted for obvious reasons. At bottom, the issue comes down to what the State Commissions can or cannot do. Joint Petitioners do not see the FCC order in FCC 04-179 as a general preemption of State Commission authority. The most anybody could reasonably argue (in our view) is that, for a period lasting no longer than up to March 12, 2005, the State Commissions may not approve interconnection agreements based on post September 12, 2004 State Commission orders that do anything with respect to so-called "frozen elements", other than to raise rates for them.

In all other respects, the Commission has power to create its own unbundling rules and requirements, so long as such rules do not conflict with federal unbundling requirements. If and when the Commission adopts an order doing so, the Parties will need to negotiate and perhaps arbitrate contract language incorporating the requirements of such an order (or other standards mutually agreed to) into the Agreement.

***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. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 110/ISSUE S-3.

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.

In the event that FCC 04-179 is vacated or modified, the Agreement should not automatically incorporate the court order. Upon release of such a court order, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the court order (to the extent the court order effectuates a change in law with practical consequences), or to other standards, if they mutually agree to do so. Any issues which the Parties are 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. Again, the rationale here is the same as that found in the testimony related to Issue No. S-1, S-2(A), and S-2(B). Automatic incorporation of a vacatur or modifying decision 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 court order. 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 FCC 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 such a court order would 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 an intervening court order 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 court order that has not yet and may never materialize. We do not, as of the date of this filing, know 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 (again, the court order could result in a change in law with no practical effect). 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 court decision 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 an intervening court order. 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" an unknown court decision also is contrary to language and principles upon which the Parties already have agreed will be incorporated into the General Terms and Conditions of the Agreement. The principle is that changes in law will be addressed via written amendment to the agreement that will be negotiated or, if necessary, resolved through arbitration. The Parties have agreed that changes in law will not have springing or retroactive effect, as amendments are required and such amendments will be effective as of the date of the last signature, or 10 days after the last signature, if rates are incorporated into the amendment. The Parties also have agreed to language to ensure that the terms of the Agreement and any amendments thereto have no retroactive effect. Specifically, section 3.1 of the General Terms & Conditions states that "[n]otwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall

not be applied retroactively prior to the Effective Date". The Parties thereby eliminated practical difficulties or even impossibilities and destabilizing uncertainty created by retroactive application of the Agreement's provisions.

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. 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 James Falvey on this issue, as though it were reprinted here.

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 Russell on this issue, as though it were reprinted here.

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[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

***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. 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 James Falvey on this issue, as though it were reprinted here.

***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 Russell 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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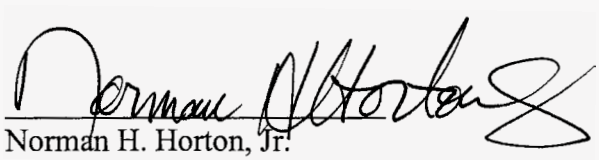

Norman H. Horton, Jr.

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**.

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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 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.

Item No. 7, Issue No. G-7 [Section 10.5]: What should the 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 of the other Party's name, service marks, logos and trademarks?

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

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.**

circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or

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 Service) 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 at 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, 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.

[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

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 Agreement or applicable tariffs?

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.