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February 7, 2005

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

Re: Docket No. 040130-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc. and KMC Telecom III, LLC, and Xspedius Communications, LLC are the following documents:

1. An original and fifteen copies of the Rebuttal Testimony of James C. Falvey on behalf of the Xspedius Companies; 01377-05
2. An original and fifteen copies of the Rebuttal Testimony of Marva Brown Johnson on behalf of KMC Telecom V, Inc. and KMC Telecom III LLC; 01378-05
3. An original and fifteen copies of the Rebuttal Testimony of Hamilton Russell on behalf of NuVox Communications, Inc. and NewSouth Communications Corp.; and 01380-05
4. An original and fifteen copies of the Rebuttal Testimony of Jerry Willis on behalf of NuVox Communications, Inc. and NewSouth Communications Corp. 01379-05

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COM 3
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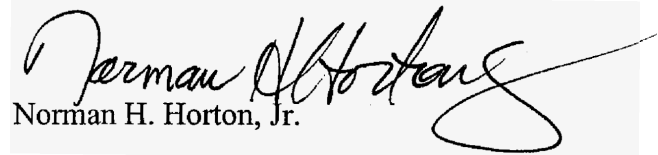
D. Menasco
FPSC-BUREAU OF RECORDS

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

Thank you for your assistance with this filing.

Sincerely yours,



Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

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 7th day of February, 2005.

Jeremy Susac, Esq.*
General Counsel's Office, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

James Meza, III
Nancy B. White, Esq.
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
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Tallahassee, FL 32301

Chad Pifer, Esq.
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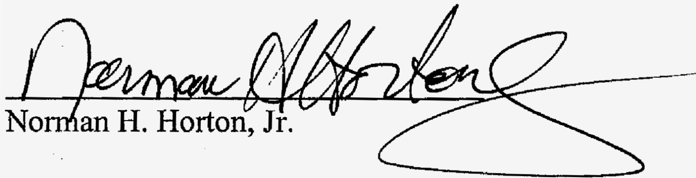

Norman H. Horton, Jr.

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

REBUTTAL TESTIMONY OF THE JOINT PETITIONERS

James Falvey on behalf of the Xspedius Companies

February 7, 2005

DOCUMENT NUMBER-DATE
01377 FEB-7 05
FPSC-COMMISSION CLERK

PRELIMINARY STATEMENTS

WITNESS INTRODUCTION AND BACKGROUND

Xspedius: James Falvey

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

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

Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF QUESTIONS REGARDING YOUR POSITION AT XSPEDIUS, YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE THE SAME?

A. Yes, the answers would be the same.

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

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

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[1] The following issues have .been settled: 1/G-1, 3/G-3, 8/G-8, 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, 27/2-9, 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, 43/2-25, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6,

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	23/2-5, 26/2-8, 36/2-18, 37/2-19, 38/2-20, 46/2-28, 51/2-33(B) & (C)
Attachment 3: Interconnection	63/3-4, 65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5, 94/6-11
Attachment 7: Billing	96/7-2, 97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10
Supplemental Issues	108/S-1 thru 114/S-7

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position, as set forth herein and associated contract language on the issues indicated in the chart above by rebutting the testimony provided by various BellSouth witnesses.

90/6-7, 91/6-8, 92/6-9, 93/6-10, 95/7-1, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

GENERAL TERMS AND CONDITIONS[2]

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

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

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

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

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

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

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

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

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[2] Please note that the disputed contract language for all unresolved issues addressed in this testimony is attached to Joint Petitioners Direct Testimony filed with the Commission on January 10, 2005 as **Exhibit A**. Because this is a dynamic process wherein the Parties continue to negotiate, Joint Petitioners intend to file an updated version of Exhibit A and an updated issues matrix prior to the hearing.

Item No. 5, Issue No. G-5 *[Section 10.4.2]: If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?*

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

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

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

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

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

__Item No. 7, Issue No. G-7__ [Section 10.5]: What should the indemnification obligations of the parties be under this Agreement?

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

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

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

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

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

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

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

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

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

Q. BELLSOUTH HAS PROPOSED REVISED LANGUAGE THAT WOULD ALLOW DISPUTES TO GO TO A COURT OF LAW IN CERTAIN INSTANCES. WHY IS THAT LANGUAGE NOT ACCEPTABLE? [BLAKE AT 17:1-7, 18:6-13]

A. As explained in our direct testimony, BellSouth's proposal unnecessarily builds in opportunities for dispute over when the conditions for taking a case to court have been met and imposes inefficiencies by requiring that certain claims be separated. We would prefer not to close or partially restrict the option of going to a court of competent jurisdiction for dispute resolution. When faced with the decision to file a complaint at the Commission, the FCC or a court, we will have to weigh the pros and cons of each venue (expertise and scope of jurisdiction would be among the factors) and assess them based on the totality of the dispute between the Parties – which could easily extend beyond the Florida Agreement. We find ourselves in need of efficient and effective enforcement regionally – not just in Florida. Accordingly, we will not

voluntarily give up the option of going to a court of competent jurisdiction, as such a court may provide a means by which we can avoid having to litigate nine times over (or more) or to discount settlement positions as a result of regional dispute resolution difficulties which BellSouth has used to its advantage and seeks to preserve.

Q. MS. BLAKE REFERENCES AN ARBITRATION PROCEEDING BETWEEN BELLSOUTH AND AT&T WHEREIN THIS COMMISSION FOUND THAT IT WILL RESOLVE DISPUTES UNDER THE SUBJECT INTERCONNECTION AGREEMENT. WHAT IS YOUR POSITION WITH REGARD TO MS. BLAKE'S STATEMENT?

A. The decision cited by Ms. Blake is not on point. The Commission's BellSouth/AT&T decision dealt with whether a third party commercial arbitrator could be used to resolve disputes under the subject interconnection agreement. This is quite distinct from what the Joint Petitioners seek here. Joint Petitioners do not seek to have a third party arbitrator settle disputes; Joint Petitioners simply want not to give up their rights – or any aspect of them – to bring disputes before courts of competent jurisdiction. It goes without saying that a third party arbitrator is not a court of law.

Certain state and federal courts have original jurisdiction over interconnection agreement related matters. On the other hand, a third party arbitrator has no jurisdiction unless otherwise agreed to by the parties or unless jurisdiction is conferred upon the arbitrator by the Commission. The Joint Petitioners are not asking the Commission to confer jurisdiction upon various state and federal courts, as it

would have to do with an arbitrator. These courts already have jurisdiction. Indeed, Joint Petitioners are simply requesting that this Commission deny BellSouth's request to strip courts of jurisdiction they already possess. Achieving efficient dispute resolution has been difficult in the past. With BellSouth advancing a regional legislative agenda designed to strip state commissions of various aspects of their jurisdiction, Joint Petitioners believe it is essential that courts of law remain an unencumbered option in their agreements for dispute resolution.

Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No, not at this time.

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

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

Item No. 12, Issue No. G-12 *[Section 32.2]: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?*

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

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

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 1.4.1]: ***This issue has been resolved***

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

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

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

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

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

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

Item No. 26, Issue No. 2-8 *[Section 1.7]: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?*

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

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

Item No. 27, Issue No. 2-9 [Section 1.8.3]: ***This issue has been resolved.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Item No. 39, Issue No. 2-21 [Section 2.12.6]: ***This issue, including both subparts, 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 [Sections 2.16.2.2, 2.16.2.3.1-5, 2.16.2.3.7-12]: ***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]: ***This issue has been resolved.***

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

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

Item No. 46, Issue No. 2-28 *[Section 3.10.4]: Should the CLEC be permitted to incorporate the Fast Access language from the FDN and/or Supra interconnection agreements, respectively docket numbers 010098-TP and 001305-TP, for the term of this Agreement?*

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

A. The answer to the question posed in the issue statement is "YES". Joint Petitioners should be permitted to incorporate the Fast Access language from the FDN and/or Supra interconnection agreements, respectively docket numbers 010098-TP and 001305-TP, for the term of this Agreement.

Q. DO YOU AGREE THAT THE COMMISSION SHOULD DEFER RESOLUTION OF THIS ISSUE UNTIL THE FCC REACHES A DECISION ON BELLSOUTH'S EMERGENCY PETITION?

A. No. the Commission has decided this matter already, and Joint Petitioners must be given the same access that FDN and Supra were given. Joint Petitioners should not have to wait for access; to do otherwise would be discriminatory.

Item No. 47, Issue No. 2-29 [Section 4.2.2]: ***This issue has been resolved as to both subparts.***

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]: ***This issue has been resolved.***

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

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

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

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

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

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

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

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

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

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

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

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

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

INTERCONNECTION (ATTACHMENT 3)

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

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

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

Item No. 63, Issue No. 3-4 *[Section 10.8.6, 10.10.6 and, 10.13.5]: Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?*

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

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

Q. DOES BELLSOUTH PROVIDE ANY JUSTIFICATION AS TO WHY IT CANNOT AGREE TO JOINT PETITIONERS' PROPOSED LANGUAGE?

A. No, we could not detect any. But is important to remember that the issue here is not about Joint Petitioners paying third party charges; it is about when Joint Petitioners must reimburse BellSouth for the payment of such charges. Joint Petitioners are willing to reimburse BellSouth only in those cases where BellSouth has a legal obligation to pay such charges, excluding, of course, settlements in which BellSouth voluntarily takes on such obligations. In such situations, we simply cannot afford to give BellSouth a "blank check."

Q. MS. BLAKE SPENDS A GOOD DEAL OF TIME OPINING AS TO WHETHER OR NOT BELLSOUTH HAS AN OBLIGATION TO PROVIDE TRANSIT SERVICES TO JOINT PETITIONERS. IS THAT DISCUSSION RELEVANT TO THIS ISSUE? [BLAKE AT 38:2-40:22]

A. No. Ms. Blake's discussion about whether or not BellSouth is obligated to provide transit services to Joint Petitioners is not relevant to this issue. (In any event, we think that BellSouth is obligated to provide transit services to Joint Petitioners under Section 251 and under the Agreement). Indeed, irrespective of the Parties' differing views of what the law requires, they have agreed that transit services will be part of the Agreement. Thus, this is not an issue of whether BellSouth will provide transit services to Joint Petitioners. BellSouth already has agreed to do so.

Q. BELLSOUTH STATES THAT IT DOES REVIEW, DISPUTE AND PAY ICO BILLS FOR CLECS IN THE SAME MANNER IT DOES FOR ITS OWN INVOICES. PLEASE RESPOND. [BLAKE AT 40:10-16]

A. If BellSouth does, in fact, review and dispute ICO bills in a manner that is at parity with its own practices, then BellSouth should not be disputing the Petitioners' proposed language. BellSouth should not pay an ICO for charges it was not obligated to pay under its agreement with the ICO or pursuant to a Commission order and, therefore, BellSouth should not agree to pay any extraneous or unauthorized charges to an ICO for the delivery of transit traffic originated by a CLEC.

Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No.

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

Item No. 65, Issue No. 3-6 *[Section 10.8.1, 10.10. 1]: Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?*

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

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

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

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

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

Item No. 69, Issue No. 3-10 [Section 3.2, Ex. A]: ***This issue, in both subparts, 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]: ***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. WHAT IS YOUR POSITION WITH RESPECT TO ITEM 86(B)/ISSUE 6-3(B)?

A. If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should

cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the due process contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement.

Q. WHY ARE THE JOINT PETITIONERS OPPOSED TO BELLSOUTH'S PROPOSED LANGUAGE FOR SECTIONS 2.5.6.3?

A. BellSouth's proposed language allows it to terminate Joint Petitioners' access to BellSouth OSS for an allegedly unauthorized use of a CSR. This form of "self help" is inappropriate. Joint Petitioners have therefore proposed that, if there is a dispute over an assertion of alleged noncompliance with CSR procedures, and notice of alleged non-compliance is not answered with a certification that corrective measures have been taken, the dispute should proceed according to the Dispute Resolution procedures in Section 13 of the General Terms and Conditions. This procedure is more reasonable than the disproportionate and unilaterally imposed pull-the-plug remedies BellSouth seeks to reserve for itself.

Q. DID ANYTHING MR. FERGUSON HAD TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No. Although the Petitioners recognize that abuse of CSRs by any carrier is serious and that such abuse could involve the access of Customer Proprietary Network Information of Florida consumers without their knowledge, *see* Ferguson at 14:4-10, Mr. Ferguson does not provide adequate justification for why *disputes* over alleged unauthorized access to CSRs cannot be handled through the dispute resolution

procedures. Moreover, Mr. Ferguson's statement that "BellSouth does not suspend or terminate access to OSS interfaces on a whim", *see* Ferguson at 13:22-23, or that to his knowledge, BellSouth has only terminated a CLEC's access to CSRs once, *see* Ferguson as 14:21, provides no reasonable or reliable measure of assurance to Joint Petitioners. BellSouth's proposal still allows BellSouth to unilaterally impose disproportionate and customer-impacting pull-the-plug remedies. BellSouth's insistence on having the ability to unilaterally resolve disputes by engaging in self-help is inappropriate and coercive.

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

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

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

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

Q. PLEASE EXPLAIN WHY SERVICE DATE ADVANCEMENTS SHOULD BE PRICED AT TELRIC-COMPLIANT RATES.

A. Unbundled Network Elements must be provisioned at TELRIC-compliant rates. BellSouth does not dispute this fact. *See* Morillo at 4:3-11. An expedite order for a UNE should not be treated any differently.

Q. IN HIS PRELIMINARY STATEMENT, MR. MORILLO STATES THAT THE JOINT PETITIONERS WANT MORE FAVORABLE TERMS THAN BELLSOUTH PROVIDES TO ITS OWN RETAIL CUSTOMERS. [MORILLO AT 3:17-18]. PLEASE RESPOND?

A. Joint Petitioners are not similarly situated with BellSouth's retail customers. We pay TELRIC rates – not retail rates for loop and transport facilities. BellSouth is obligated to treat us at parity with how it treats its own retail service operation. Joint Petitioners cannot effectively compete with BellSouth if they are forced to accept BellSouth's retail provisioning prices. Moreover, it appears that BellSouth is attempting to treat JPs worse than its retail customers, as it has offered no provisions to account for its waiving of such charges for its retail customers.

Q. PLEASE ADDRESS BELLSOUTH'S ASSERTION THAT BECAUSE OFFERING EXPEDITES IS NOT A 251 OBLIGATION, TELRIC RATES SHOULD NOT APPLY. [MORILLO AT 4:10-11]

A. First, Mr. Morillo has no basis for asserting that making expedites available on UNE orders is not a Section 251 obligation. Second, it is important to make clear that this issue is not about whether BellSouth will offer expedites in this Agreement. It already has agreed to do so. There is no dispute over the language -- it is merely a dispute over the appropriate rate. Third, TELRIC-based rates, by definition, include a reasonable profit. As explained in our direct testimony, the rates proposed by BellSouth are unreasonable, excessive and harmful to competition and consumers.

Q. WHY IS THIS ISSUE APPROPRIATE FOR A SECTION 251 ARBITRATION?

A. As explained in our direct testimony, the manner in which BellSouth provisions UNEs is absolutely within the parameters of section 251. Moreover, the Parties already have negotiated and agreed to language providing for expedites. BellSouth cannot now argue that rates for that service cannot be arbitrated.

Q. DID ANYTHING MR. MORILLO HAD TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No. However, the Joint Petitioners remain optimistic that BellSouth will take them up on their offer to negotiate a reasonable rate for service expedites.

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

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

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

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

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

Item No. 94, Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: (A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet? *(B) If so, what rates should apply?* *(C) What should be the interval for such mass migrations of services?*

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

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

Q. SHOULD EVERY MASS MIGRATION BE HANDLED ON A CASE-BY-CASE BASIS, AS BELLSOUTH INSISTS? [OWENS AT 4:3-8]

A. No. Mass migrations should not be subject to a formless, uncertain ICB standard as BellSouth proposes. Though it may be true that "every merger, acquisition, or asset transfer is unique", *see* Owens at 4:3-8, an order is still an order and therefore, there is no reason why BellSouth cannot process OSS record changes required by mass migrations in an efficient, standardized and predictable manner via the submission of an electronic LSR or spreadsheet.

Q. DOES BELLSOUTH'S PROPOSED PROCESS FOR MERGERS AND ACQUISITIONS DISTINGUISH BETWEEN ASSET TRANSFERS AND TRANSFERS OF OWNERSHIP?

A. Yes. BellSouth's recently developed mergers and acquisitions process distinguishes between transfer of assets and transfer of ownership. Additionally, during negotiations on this issue, BellSouth has repeatedly stated that it is easier for BellSouth to process a mass migration when one company is purchasing all of the assets of another company as opposed to a partial asset purchase. While this may be true for BellSouth, its process, in effect, seems to discriminate against asset purchasers who are unwilling to assume all of the sellers assets. A CLEC has the right not to assume all of the prior liabilities of the seller for each circuit and such CLEC should not be discriminated against or forced to pay higher charges for making such a business decision.

Q. DID ANYTHING MR. OWENS HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No. The Joint Petitioners appreciate that BellSouth has developed a mergers and acquisitions process. *See* Owens at 4:10-19. Nevertheless, BellSouth has not provided any reason why mass migration related OSS record changes cannot be performed pursuant to submission of standardized electronic LSR(s) or, until an electronic LSR process is available. The Joint Petitioners are willing to work upon a mutually agreeable format for the submission of service arrangements to be migrated to accommodate BellSouth's processes. However, it is time to take some of the guess work and uncertainty out of the process.

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

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

Q. PLEASE EXPLAIN WHY TELRIC-COMPLIANT RATES SHOULD APPLY TO MASS MIGRATIONS.

A. All aspects of provisioning UNEs, interconnection, traffic exchange and collocation should be priced at TELRIC-compliant rates, as Joint Petitioners have consistently maintained. This obligation should include mass migrations, which are simply bulk OSS record change orders. The Joint Petitioners have also sought rates from BellSouth for services regularly involved in a migrations process, including but not limited to, OSS charges, order and project coordination, billing/records change, disconnect and re-termination orders, retagging of circuits, collocation charges and completion notifications. We also have asked BellSouth to identify and price any other activities that might need to be undertaken as a result of a mass migration. At this point, BellSouth has not provided any rates for these services or identified and priced any additional activities. As discussed above, however, any rates that BellSouth does propose for these services should be at TELRIC-compliant rates as

these services are related to the provisioning of UNEs interconnection, traffic exchange and collocation under section 251.

Q. DID ANYTHING MR. OWENS HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No. However, we have refined our position statement to account for the fact that the proper rates may not yet be, or are not yet, in Exhibit A to Attachment 2. Joint Petitioners should pay an electronic OSS charge per service arrangement migrated, and a TELRIC-based records change charge for migrations of customers for which no physical re-termination of circuits must be performed. BellSouth should only charge Petitioners a TELRIC-based rate for migrations of customers for which physical re-termination of circuits is required. The Joint Petitioners are, however, optimistic that BellSouth is working on providing a list of applicable rates that will be included as part if its mergers and acquisitions process. A list of applicable rates, and transparency as to their composition, will assist in negotiations. *See* Owens at 6:23-7:3.

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

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

Q. **PLEASE EXPLAIN WHY BELLSOUTH SHOULD COMMIT TO A 10 CALENDAR-DAY INTERVAL FOR COMPLETING A MASS MIGRATION.**

A. Mass migrations of customers should be treated in a manner similar to typical CLEC orders and not relegated to ICB status. Joint Petitioners should not be forced to submit to unspecified deadlines derived on a case-by-case basis in order to acquire customers. More importantly, Joint Petitioners' customers' service should not be vulnerable to or affected by any such delay.

Q. **PLEASE EXPLAIN WHY ITEM 94/ISSUE 6-11 IS AN APPROPRIATE ISSUE FOR ARBITRATION. [OWENS AT 3:15-18]**

A. Section 251 is devoted to ensuring that CLECs obtain interconnection, collocation, and UNEs in a just and reasonable manner. Provisioning intervals are absolutely included in this requirement. Apart from that, it seems nonsensical that the migration of customers to service configurations covered by the Agreement should not be covered by the Agreement and resolved in this arbitration. Accordingly, the terms by which BellSouth switches customers and updates records associated with UNE and other serving configurations is squarely within the Commission's jurisdiction.

BILLING (ATTACHMENT 7)

Item No. 95, Issue No. 7-1 [Section 1.1.3]: ***This issue has been resolved.***

Item No. 96, Issue No. 7-2 *[Section 1.2.2]: (A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B) What intervals should apply to such changes?*

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

A. Charges for updating OSS to reflect such changes as corporate name, OCN, CC, CIC, ACNA and similar changes ("LEC Changes") should be TELRIC-compliant.

Q. PLEASE EXPLAIN WHY THE PETITIONERS' LANGUAGE IS APPROPRIATE?

A. The Petitioners' revised language is appropriate because it affords BellSouth TELRIC-based cost recovery (and profit) for one OSS record change functionalities provided. Requests for OSS record LEC Changes should not be forced into BellSouth's amorphous BFR/NBR process where BellSouth is not bound to any pricing scheme and Joint Petitioners have virtually no negotiating leverage, but rather should be assessed TELRIC-based rates.

Q. DID ANYTHING MR. OWENS HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No. Mr. Owens did not explain why adding standardization, predictability and pre-set pricing for certain tasks could not replace the current regime wherein BellSouth essentially gets to pick a number out of a hat. However, as with Mr. Owens' testimony on Item 94/Issue 6-11, above, we are hopeful that the process will become more transparent and predictable with BellSouth's inclusion of applicable rates as part of its mergers and acquisitions process. *See* Owens at 10:2-4. Moreover, at this point, we also note that Joint Petitioners have abandoned their contention that

BellSouth should absorb up to one LEC identifier change per year, in exchange for predictable and reasonable processes and rates.

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

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

Q. BELLSOUTH CLAIMS THAT IT IS "EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ESTABLISH AN INTERVAL [FOR A LEC CHANGE] BEFORE THE SCOPE OF THE PROJECT AND REQUIRED WORK HAS BEEN DETERMINED". [OWENS AT 10:25-11:2] PLEASE COMMENT.

A. The Commission should not accept BellSouth's vague and hollow attempt to avoid reasonable intervals for completing LEC Changes. Joint Petitioners are rightfully concerned that a simple name change could result in substantial delay and disruption of service. Mr. Owens does not even attempt to address the reasonableness of intervals proposed by the CLECs or provide counter proposals, but rather attempts to preserve the cloak of ICB rates and intervals. The Petitioners maintain that, due to the prevalence of LEC Changes, the Commission must adopt intervals to ensure that the process is speedy, fair and predictable.

Q. DID ANYTHING MR. OWENS HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No.

Q. IS BELLSOUTH CORRECT IN ITS ASSERTION THAT THIS ISSUE (BOTH PARTS) IS NOT APPROPRIATE FOR ARBITRATION? [OWENS TESTIMONY AT 8:8-11]

A. No, BellSouth's assertion is not correct. Pursuant to section 251, BellSouth must provide nondiscriminatory access to network elements, interconnection and collocation. Regardless of whether LEC Changes are expressly mandated under section 251 or state law, this issue plainly involves BellSouth's OSS and billing for UNEs, collocation and interconnection which is clearly encompassed by section 251. Furthermore, this issue directly impacts BellSouth's billing practices and ensures that they are just and reasonable. There is no question that BellSouth's billing practices are within the Commission's purview.

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

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

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

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

Item No. 99, Issue No. 7-5 [Section 1.7.1]: ***This issue has been resolved.***

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?*

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

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

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

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

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

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

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

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

Q. PLEASE EXPLAIN WHY THE PETITIONERS' LANGUAGE IS APPROPRIATE.

A. Joint Petitioners language is appropriate because it is fair and reasonable. Joint Petitioners have had to endure a legacy of untimely payments from BellSouth, and there are no deposit provisions in this Agreement to protect Joint Petitioners from the credit risks created by BellSouth's chronically poor payment history. Any credit risk exposure that BellSouth seeks to protect itself from Joint Petitioners is certainly offset by amounts that BellSouth does not pay timely to Joint Petitioners.

Q. DOES MR. MORILLO PROVIDE ANY JUSTIFICATION FOR BELLSOUTH'S REFUSAL TO AGREE TO JOINT PETITIONERS' PROPOSAL? [MORILLO 10:21-11:1]

A. No. Mr. Morillo provides no justification for BellSouth's refusal to offset deposit requests with amounts past due from BellSouth to Joint Petitioners. Instead, Mr.

Morillo suggests that suspension/termination of service and assessment of late payment charges are sufficient to protect Joint Petitioners' credit risk created by BellSouth's poor payment track record. Mr. Morillo does not explain why these same mechanisms are not sufficient to protect BellSouth. If BellSouth was willing to rely exclusively on those mechanisms, we would as well. However, BellSouth insists upon collecting deposits. Accordingly, we have every right to insist that the deposit requirements incorporated into the Agreement reflect the fact that BellSouth's risk exposure is reduced by amounts that it withholds from Joint Petitioners.

Q. DID ANYTHING MR. MORILLO HAVE TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

A. No. However, the Petitioners recognize BellSouth's proposal that it is willing to reduce a deposit amount by amounts BellSouth owes Petitioners for reciprocal compensation payments pursuant to Attachment 3. *See* Morillo at 11:13-18. Nevertheless, the Petitioners do not want to limit their right to reduce security deposits to only BellSouth's past-due reciprocal compensation payments. There is no rational basis for such a limitation. The Petitioners, however, are willing to continue to negotiate this issue with BellSouth.

Item No. 103, Issue No. 7-9 *[Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment* ***if*** *CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?*

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

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

Item No. 104, Issue No. 7-10 *[Section 1.8.7]: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?*

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

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

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

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

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

(ATTACHMENT 11)

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

SUPPLEMENTAL ISSUES

(ATTACHMENT 2)

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

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

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

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

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

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

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

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

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

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

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

A. The Agreement should not automatically incorporate the "Transition Period." The "Transition Period" or plan proposed by the FCC for the six months following the Interim Period has not been adopted by the FCC, but was merely proposed in FCC 04-179. The FCC sought comment on the proposal and on transition plans in general. After release of the Final FCC Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the transition plan adopted therein or to other standards, if they mutually agree to do so. Any issues which the Parties are 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.

[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

Q. WILL THE CERTAINTY AND STEADINESS OF THE TELECOMMUNICATIONS MARKET BE FRUSTRATED BY NOT AUTOMATICALLY INCORPORATING INTO THE AGREEMENT THE TRANSITION PERIOD? [BLAKE AT 54:1-13].

A. No, the "certainty" and "steadiness" of the telecommunications market will not be frustrated. In fact, stability of the market demands that the status quo be maintained. In other words, the rates frozen during the Interim Period should continue until release of the Final FCC Unbundling Rules or the Transition Plan is adopted and finalized. Increased rates and the inability to provide certain elements to new customers is a dramatic change for which the ultimate effects on the market are anything but certain and steady.

Q. IS THE TRANSITION PERIOD DESCRIBED IN FCC 04-179 MERELY A PROPOSAL FOR WHAT SHOULD TAKE PLACE IN THE EVENT THE INTERIM PERIOD EXPIRES?

A. Yes, the Transition Period is a proposal and nothing more. As discussed in our direct testimony, the FCC specifically used "we propose" when it discussed the Transition Plan. Moreover, the Chairman, in a concurrent statement released with FCC 04-179, stated that the order "only seeks comment on a transition that will not be necessary if the Commission gets its work done." The foregoing considered, Joint Petitioners do not understand how BellSouth can believe the Transition Period is presently binding on the industry.

Q. BELLSOUTH TAKES THE CONTRARY POSITION AND ARGUES THAT THE TRANSITION PERIOD WAS ORDERED. [BLAKE AT 54:18-55:2] DO YOU DISAGREE?

A. Yes, we disagree. As we discussed above, as well as in our direct testimony, the Transition Period was and is a mere proposal the FCC put out for comment. To be ordered, there must be evidence of finality. In FCC 04-179, there is no such evidence of finality – at least not with regard to the Transition Plan. In fact, the ordering clauses found in FCC 04-179 make no mention of the Transition Period. Indeed, the Transition Period therefore cannot be deemed ordered.

Q. WHAT SHOULD OCCUR IN THE EVENT THE INTERIM PERIOD EXPIRES WITHOUT THE FINAL FCC UNBUNDLING RULES BECOMING EFFECTIVE?

A. Provided that the Transition Plan is not finalized, if the Interim Period lapses without the FCC's Final Unbundling Rules becoming effective, then the status quo should be maintained. Maintaining the status quo is the only measure to ensure market stabilization.

Q. WHAT SHOULD OCCUR IN THE EVENT THAT THE FCC ADOPTS THE TRANSITION PERIOD PLAN?

A. Should the Transition Plan be formally adopted or any other transition plan, the resulting plan and associated contract language should be negotiated, and if needed, arbitrated just like the FCC's Final Unbundling Rules and any intervening FCC or State Commission order or court decision.

Q. **IN THE ABSENCE OF FINAL FCC UNBUNDLING RULES, BELLSOUTH CLAIMS THAT WITHOUT THE TRANSITION PLAN, JOINT PETITIONERS WILL HAVE NO LEGAL RIGHT TO OBTAIN VACATED ELEMENTS AFTER MARCH 12, 2005. [BLAKE AT 55:6-7] DO YOU AGREE WITH THIS STATEMENT?**

A. No. Should there be a gap whereby there is no adopted Transition Plan and no FCC Final Unbundling Rules, the Parties should continue as they would anyway – which is to operate under the rates, terms and conditions in their existing Agreements. Further, in the absence of any controlling federal law, the Commission may order the status quo without conflicting with federal law or any FCC rule or order (FCC rules still require nationwide unbundling of DS1, DS3 and dark fiber loops – *USTA II* did not vacate those requirements). The Commission has the power to order BellSouth to continue to provision the UNEs at issue in this arbitrations (DS1, DS3 and dark fiber loops and transport) pursuant to federal as well as state law.

Q. **DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

A. No.

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

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

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

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

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

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

Q. PLEASE RESPOND TO BELLSOUTH'S ASSERTION THAT THE JOINT PETITIONERS' POSITION ON THIS ISSUE "REQUIRES THE COMMISSION TO DISREGARD BINDING FEDERAL AND FCC AUTHORITY." [BLAKE AT 58:12-14]

A. BellSouth's assertion is incorrect. On the contrary, it is BellSouth's position on this issue that would require the Commission to disregard FCC rules with regard to the provision of DS1, DS3 and dark fiber loops, BellSouth's 271 obligation to make such loops available and Florida state law which also provides the Commission independent authority to order BellSouth to continue to provide access to these loops. BellSouth claims that "*USTA II* vacated any requirement for BellSouth to unbundle and provide these high capacity transmission facilities at TELRIC prices...." *See* Blake at 58:15-16. As stated in the Joint Petitioners direct testimony, the D.C. Circuit in *USTA II* did not vacate the FCC's rules regarding DS1 and other high-capacity UNE loops, but merely vacated the FCC's referral of additional impairment conclusions to state regulators. Additionally, *USTA II* did not vacate the FCC's nationwide finding of impairment with respect to DS1, DS3 and dark fiber loops made in the TRO. Moreover, the Commission also has not made any finding that Florida CLECs are not impaired without access to these loops. Accordingly, there is no FCC or Commission finding of non-impairment with respect to DS1, DS3 and dark fiber loops and, therefore, BellSouth has no justification for its position that it is not legally obligated to provide the Joint Petitioners will unbundled access to these loops.

Since neither the FCC or the Commission has made a finding of non-impairment with respect to DS1, DS3 and dark fiber loops, the Joint Petitioners are in no way asking the Commission to "disregard binding federal and FCC authority" as BellSouth argues. The bottom line is that there are FCC rules in place that require unbundling of these loops; these rules have not been vacated and BellSouth must comply with these rules. BellSouth is trying to "imply vacatur" of these rules and intimidate the Commission into believing that by maintaining the "status quo" with respect to these loops, the Commission will be acting contrary to federal law. This is not the case, and the Commission should not be swayed by BellSouth's sweeping and baseless claims that there are no statutory obligations, FCC rules, or state laws that require BellSouth to continue to unbundle DS1, DS3 and dark fiber loops.

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

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

Q. PLEASE RESPOND TO BELLSOUTH'S STATEMENT THAT "THE COMMISSION IS PROHIBITED FROM ESTABLISHING A 'NEW' PRICING REGIME FOR THESE [DS1, DS3 AND DARK FIBER LOOPS] ELEMENTS THAT CONTRADICTS [FCC 04-179]". [BLAKE TESTIMONY AT 58:23-25]

A. The Joint Petitioners are in no way asking the Commission to establish any "new" pricing regime that contradicts FCC 04-179. Nor are the Joint Petitioners attempting to "convert this Section 252 arbitration into a state cost proceeding for UNEs that no longer exist and cannot be reinstated by a state commission." *See* Blake at 59:1-3. It is the Petitioners understanding that the Commission has already established TELRIC-complaint rates for these elements and the Joint Petitioners are not challenging these rates. Indeed, the Petitioners do not see why there would be a need to change the rates for these elements. The bottom line is that BellSouth remains obligated to provide unbundled access to DS1, DS3 and dark fiber loops at TELRIC-compliant rates set by the Commission.

Q. MS. BLAKE NOTES THAT BELLSOUTH RECOGNIZES ITS OBLIGATION TO OFFER ITS HIGH-CAPACITY LOOPS AND TRANSPORT PURSUANT TO ITS 271 OBLIGATIONS; HOWEVER, SHE CLAIMS THAT BELLSOUTH IS NOT OBLIGATED TO PROVIDE SUCH ELEMENTS AT TELRIC RATES. DO YOU AGREE?

A. No. Section 271 pricing must be just and reasonable. TELRIC-compliant rates are just and reasonable and should be employed until such time as the Commission decides to adopt and apply another pricing methodology. Section 271 elements are

not simply special access. If special access elements satisfied the Section 271 checklist (and they don't), there would have been no need for Congress to enact the Section 271 checklist in the first place. Obviously, Congress decided that something other than special access was needed.

Q. **DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE (BOTH PARTS) CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

A. No. But given that we have not had sufficient time 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.

The D.C. Circuit in *USTA II* did not relieve BellSouth of its obligation to provide unbundled access to DS1, DS3 and dark fiber loops, as BellSouth purports. BellSouth provides no legal justification for its claim that it is no longer obligated to provide unbundled access to these elements. BellSouth's "we-say-so-therefore-it-is" approach is not persuasive. On the other hand, the Joint Petitioners have set forth the following justification for why BellSouth remains obligated to provide access to high-capacity and dark fiber loops: (1) *USTA II* did not vacate the FCC's unbundling rules for these elements; (2) *USTA II* did not vacate ILEC's section 251 obligations nor the FCC's impairment standard; (3) BellSouth is obligated under Competitive Checklist Item No. 4 of section 271 to provided unbundled access to local loop transmission facilities, that includes high-capacity and dark fiber loops; and (4) there is independent Florida state law that obligates BellSouth to makes these facilities available to promote competition for Florida consumers. Moreover, the rates, terms

and conditions for these loops should not be altered from the rates, terms and conditions already agreed to by the Parties in the Agreement. The Commission has already established rates for these loop facilities that are TELRIC-compliant and these rates should continue to apply.

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

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

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

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

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

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