

**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)	DOCKET NO.
ITS OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT)	040130-TP
CO. SWITCHED SERVICES, LLC AND XSPEDIUS)	
MANAGEMENT CO. OF JACKSONVILLE, LLC)	

REBUTTAL TESTIMONY OF THE JOINT PETITIONERS

**Jerry Willis on behalf of NuVox Communications, Inc. and
NewSouth Communications Corp.**

February 7, 2005

1 PRELIMINARY STATEMENTS

2 WITNESS INTRODUCTION AND BACKGROUND

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

5 **A.** My name is Jerry Willis. I was formerly the Executive Director — Network Cost and
6 Budgeting for NuVox, from May 2000 until July 31, 2003. Since August 1, 2003 I
7 have been retained as a consultant to NuVox. I can be reached care of NuVox
8 witness Hamilton Russell at 2 North Main Street, Greenville, SC 29601.

9 **Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**
10 **QUESTIONS REGARDING YOUR RELATIONSHIP WITH**
11 **NUVOX/NEWSOUTH, YOUR EDUCATIONAL AND PROFESSIONAL**
12 **BACKGROUND AND THE COMMISSIONS BEFORE WHICH YOU**
13 **PREVIOUSLY HAVE TESTIFIED. IF ASKED THOSE SAME QUESTIONS**
14 **TODAY, WOULD YOUR ANSWERS BE THE SAME?**

15 **A.** Yes, the answers would be the same.

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

18 **A.** I am sponsoring testimony on the following issues:¹

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	None
Attachment 2: Unbundled Network Elements	23/2-5, 37/2-19, 38/2-20
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	88/6-5
Attachment 7: Billing	None
Supplemental Issues	None

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2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

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

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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.

1 NETWORK ELEMENTS (ATTACHMENT 2)²

2 *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?*

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

6 **A.** Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting
7 the pre-filed testimony of Marva Brown Johnson on this issue, as though it were
8 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?

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10 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 37/ISSUE 2-**
11 **19.**

12 **A.** The Agreement should not contain specific provisions limiting the availability of
13 Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or
14 less in length.

² Please note that the disputed contract language for all issues has been attached as Exhibit A to the direct testimony of NuVox witness Hamilton E. Russell III.

1 **Q. PLEASE EXPLAIN WHY THE AGREEMENT SHOULD REQUIRE**
2 **BELLSOUTH TO REMOVE LOAD COILS, REGARDLESS OF LOOP**
3 **LENGTH.**

4 **A.** Rule 51.319(a)(iii) states that load coils are a type of device that ILECs should
5 remove from a loop at a CLEC's request. It does not state that load coils on loops
6 over 18,000 feet in length are exempt from removal. The FCC's *Line Sharing Order*
7 held that ILECs are required to condition loops, *regardless of the loop length*, to
8 allow requesting carriers to offer advanced services. Such line conditioning must be
9 done at Commission-approved TELRIC-compliant rates. BellSouth's proposed
10 language thus once again fails to follow the FCC's line conditioning rule.

11 **Q. IS IT RELEVANT THAT BELLSOUTH ASSERTS THAT IT DOES NOT**
12 **REMOVE LOAD COILS FROM LOOPS OVER 18,000 FEET IN LENGTH**
13 **FOR ITS OWN CUSTOMERS? [FOGLE AT 7:17-19]**

14 **A.** No. As explained above with respect to Item 36/Issue 2-18, FCC Rule 51.319(a)(iii)
15 does not state that line conditioning is a routine network modification. Accordingly,
16 BellSouth is not entitled to limit TELRIC-priced line conditioning activities to only
17 those that it does to provide xDSL to its retail customers. Notably, BellSouth claims
18 that it will not remove load coils on long loops, even though it concedes that load
19 coils impair DSL service. *See* Fogle at 4:11-14. BellSouth should not foist its
20 unwillingness to innovate on its competitors (or their customers).

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

3 **A.** No. Once again, we urge the Commission to reject BellSouth's attempt to impose
4 upon Joint Petitioners its own reduced obligation re-write of the FCC's line
5 conditioning requirements.

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*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?*

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Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 38/ISSUE 2-20.

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A. Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, 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 CLEC. Line Conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2.

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Q. WHAT IS THE PRIMARY DISAGREEMENT REGARDING THIS ISSUE?

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A. The primary disagreement is over BellSouth's desire to charge non-TELRIC Special Construction rates when Joint Petitioners request the removal of "any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet that serves no network design purpose)". See Fogle at 9:5-7. As we explained in our direct testimony, these terms are unacceptable. They leave the determination of what "serves no network design purpose" entirely to BellSouth's discretion. BellSouth would decide whether Joint Petitioners' customers can receive quality DSL or other advanced services that require clean copper. In addition, the rates contained in BellSouth's Special Construction tariff, those that Joint Petitioners are able to discern, are prohibitively expensive. Application of such rates would in effect

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1 preclude us from obtaining a loop with less than 2,500 feet of bridged tap, thus
2 leading to the impairment of DSL or other advanced services that we could provide
3 (as BellSouth recognizes and seeks to ensure is the case). *See* Fogle at 4:10-15.

4 **Q. DO YOU AGREE WITH MR. FOGLE’S ASSERTION THAT “LINE**
5 **CONDITIONING BEYOND WHAT BELLSOUTH PERFORMS FOR ITS**
6 **OWN CUSTOMERS (WHICH IS BELLSOUTH’S ONLY OBLIGATION) OR**
7 **IS WILLING TO VOLUNTARILY PROVIDE” TO CLECS IS NOT**
8 **APPROPRIATELY PART OF THIS ARBITRATION, BUT SHOULD**
9 **INSTEAD BE THE SUBJECT OF A SEPARATE AGREEMENT? [FOGLE**
10 **AT 9:11-13]**

11 **A.** No. Repetition of a false position does not make it right. BellSouth’s line
12 conditioning obligation is not limited to what BellSouth decides it will routinely do
13 for its own customers. Under Mr. Fogle’s theory, BellSouth would be free to
14 eliminate any line conditioning obligations, and based on his testimony, it appears
15 that BellSouth thinks that it has just about done that (there is very little line
16 conditioning that BellSouth will do on behalf of its own customers). We see nothing
17 in Mr. Fogle’s testimony or in the FCC’s rule or orders that supports BellSouth’s
18 position that it unilaterally can determine the scope of its line conditioning
19 obligations. Moreover, since line conditioning is part of the FCC’s rules
20 implementing section 251, it is plain to see that Mr. Fogle’s claim that certain types
21 of line conditioning are outside the scope of this arbitration is without merit. Joint
22 Petitioners do not embrace BellSouth’s attempt to undermine and avoid its
23 agreement filing obligations under section 252.

1 Q. BELLSOUTH CLAIMS THAT BRIDGED TAP THAT IS LESS THAN 2,500
2 FEET DOES NOT IMPAIR THE PROVISION OF HIGH SPEED DATA
3 TRANSMISSION. [FOGLE AT 9:25-10:13] PLEASE RESPOND.

4 A. BellSouth makes this assertion without any justification or support. Indeed, Mr.
5 Fogle said previously that bridged taps may diminish the capacity of the loop or
6 subloop to transmit high-speed telecommunications. See Fogle at 4:11-14.
7 Nevertheless, BellSouth is entitled to its opinions (regardless of whether they
8 conflict). Those opinions, however, do not change BellSouth's obligations. Joint
9 Petitioners should not be caged by what aspects of line conditioning BellSouth thinks
10 is or is not necessary – or by what BellSouth is reluctantly willing to offer its own
11 retail customers. And, just because BellSouth's policy was established in
12 conjunction with the Shared Loop Collaborative, and BellSouth claims it is
13 consistent with "industry standards for xDSL services," see Fogle at 10:1-13, it does
14 not mean that it does not harm the Petitioners. The Petitioners are attempting to
15 preserve their rights to use new technologies to deploy new and innovative services
16 to Floridians – regardless of whether BellSouth seeks to take advantage of new
17 technologies or decides to offer similar services. The services we are seeking to
18 preserve the ability to develop are not Shared Loop services. For example, as
19 discussed in our direct testimony, some of the Petitioners are exploring technologies
20 that may need bridged taps longer than 2,500 feet such as "Etherloop" and
21 "G.SHDSL Long" technologies. See Willis at 6:11-14.

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

3 A. No. Items 36, 37 and 38/ Issues 2-18, 2-19 and 2-2- essentially turn on one question:
4 do Joint Petitioners' have the right to insist upon full and unqualified compliance
5 with the FCC's line conditioning rule or is BellSouth permitted to re-write the rule
6 and impose its reduced obligation re-write on Joint Petitioners. To us, the answer is
7 obvious: Joint Petitioners need not accept less than full compliance with the FCC's
8 line conditioning rule.

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*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?*

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

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

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

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

1 **A.** Yes, consistent with the May 12, 2004 Order Establishing Procedure, I am adopting
2 the pre-filed testimony of James Falvey on this issue, as though it were reprinted
3 here.

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

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