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BELLSOUTH TELECOMMUNICATIONS, INC.  
REBUTTAL TESTIMONY OF ERIC FOGLE  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 040130-TP  
FEBRUARY 7, 2005

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

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

Q. ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on January 10, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY FILED TODAY?

A. My testimony provides rebuttal to the direct testimony of KMC Telecom V, Inc. & KMC Telecom III LLC ("KMC"), NewSouth Communications

1 Corp. ("NewSouth"), NuVox Communications Corp. ("NuVox"), and  
2 Xspedius Companies ("Xspedius"), collectively referred to as "Joint  
3 Petitioners." Specifically, I will address the following issue numbers, in  
4 whole or in part: 2-18 (Item 36), 2-19 (Item 37), 2-20 (Item 38), and 2-  
5 28 (Item 46).

6

7 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

8

9 A. Yes. As I stated in my direct testimony, there are numerous  
10 unresolved issues in this arbitration that have underlying legal  
11 arguments. Because I am not an attorney, I am not offering a legal  
12 opinion on these issues. I respond to these issues purely from a policy  
13 or technical perspective. BellSouth's attorneys will address issues  
14 requiring legal argument.

15

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

19

20 Q. MR. HAMILTON RUSSELL, III, ON BEHALF OF NUVOX  
21 COMMUNICATIONS, INC. AND NEWSOUTH COMMUNICATIONS  
22 CORP., STATES ON PAGE 24 OF HIS TESTIMONY, "LINE  
23 CONDITIONING SHOULD BE DEFINED IN THE AGREEMENT AS  
24 SET FORTH IN FCC RULE 47 CFR 51.319 (a)(1)(iii)(A)." DO YOU  
25 AGREE?

1 A. No. Federal Communications Commission ("FCC") Rule  
2 51.319(a)(1)(iii) provides a definition for line conditioning but the  
3 Triennial Review Order ("TRO") clarifies this definition (in Paragraph  
4 643) by requiring line conditioning "that incumbent LECs regularly  
5 perform in order to provide xDSL services to their own customers." The  
6 definition of line conditioning in the Agreement should be consistent  
7 with the TRO. Mr. Russell's position ignores this fact as well as the  
8 FCC's findings in the TRO.

9  
10 Q. MR. RUSSELL, ON PAGE 25 OF HIS TESTIMONY, STATES "LINE  
11 CONDITIONING IS NOT LIMITED TO THOSE FUNCTIONS THAT  
12 QUALIFY AS ROUTINE NETWORK MODIFICATIONS." PLEASE  
13 COMMENT.

14  
15 A. It is impossible to square Mr. Russell's statement with the FCC's  
16 findings in paragraph 643 of the *TRO*, where it specifically states the  
17 opposite: "Line conditioning is properly seen as a routine network  
18 modification that incumbent LECs regularly perform in order to provide  
19 xDSL services to their own customers." Thus, the Florida Public  
20 Service Commission ("Commission") should reject the Joint Petitioners'  
21 position.

22  
23 Q. FURTHER, ON PAGE 25 OF HIS TESTIMONY, MR. RUSSELL  
24 CLAIMS THAT A "ROUTINE NETWORK MODIFICATION" IS NOT  
25 THE SAME OPERATION AS 'LINE CONDITIONING' NOR IS XDSL

1 SERVICE IDENTIFIED BY THE FCC AS THE ONLY SERVICE  
2 DESERVING OF PROPERLY ENGINEERED LOOPS." PLEASE  
3 COMMENT.

4  
5 A. The Joint Petitioners' position is inconsistent with the *TRO*. For  
6 instance, the FCC defines a "routine network modification" in  
7 paragraph 632 of the *TRO* as those activities that incumbent LECs  
8 regularly undertake for their own customers." In paragraph 643 of the  
9 *TRO*, the FCC further states that "[a]s noted above, incumbent LECs  
10 must make the routine adjustments to unbundled loops to deliver  
11 services at parity with how incumbent LECs provision such facilities for  
12 themselves." BellSouth's language is entirely consistent with the  
13 FCC's ruling in the *TRO* on this issue, and, as stated in my direct  
14 testimony, in some situations exceeds the FCC's requirements for line  
15 conditioning.

16  
17 Q. WITH RESPECT TO ISSUE 2-18 (B), MR. RUSSELL, ON PAGE 26  
18 OF HIS TESTIMONY STATES THAT "IT IS NOT PERMISSABLE  
19 UNDER THE RULES FOR BELL SOUTH TO PERFORM LINE  
20 CONDITIONING ONLY WHEN IT WOULD DO SO FOR ITSELF."

21  
22 A. It is impossible to reconcile this position with the FCC's findings in  
23 paragraph 643 of the *TRO* where it expressly found that "line  
24 conditioning is properly seen as a routine network modification that  
25 incumbent LECs **regularly perform** in order to provide xDSL services

1           **to their own customers.”** (*emphasis added*).

2

3    Q.    FURTHER, MR. RUSSELL CLAIMS THAT DISCUSSING “ROUTINE  
4           NETWORK MODIFICATION’ AS OCCURRING UNDER RULE  
5           51.319(a)(1)(iii) IS SIMPLY WRONG: THAT TERM DOES NOT  
6           APPEAR ANYWHERE IN RULE 51.319(a)(1)(iii).” PLEASE  
7           COMMENT.

8

9    A.    The FCC’s Routine Network Modification discussion, and its relation to  
10          Line Conditioning are clearly articulated in paragraphs 642-644 of the  
11          TRO. The very fact that the Rule 51.319(a)(1)(iii) may not mention the  
12          phrase “routine network modifications” does not negate the FCC’s  
13          express findings in the TRO.

14

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

18

19    Q.    MR. JERRY WILLIS, ON BEHALF OF NUVOX COMMUNICATIONS,  
20          INC. AND NEWSOUTH COMMUNICATIONS CORP., STATES ON  
21          PAGES 4-5 OF HIS TESTIMONY THAT “PETITIONERS ARE  
22          ENTITLED TO OBTAIN LOOPS THAT ARE ENGINEERED TO  
23          SUPPORT WHATEVER SERVICE WE CHOOSE TO PROVIDE.”  
24          PLEASE COMMENT.

25

1 A. BellSouth does not make any attempt to limit the services that the Joint  
2 Petitioners wish to provide over the loops that they purchase as UNE's  
3 from BellSouth. However, BellSouth is only obligated by the *TRO* to  
4 provide line conditioning on loops at parity to what it does for itself.  
5 Competitive Local Exchange Carriers ("CLECs") are then free to utilize  
6 that loop to support whatever service the CLEC chooses to provide.

7  
8 Q. DO YOU AGREE WITH MR. WILLIS' STATEMENT, ON PAGE 5 OF  
9 HIS TESTIMONY THAT "NOTHING IN ANY FCC ORDER ALLOWS  
10 BELL SOUTH TO TREAT LINE CONDITIONING IN DIFFERENT  
11 MANNERS DEPENDING ON THE LENGTH OF THE LOOP"?

12  
13 A. No. As I stated in my direct testimony, the *TRO* clearly states that  
14 BellSouth must perform the same line conditioning activities for CLECs  
15 as it does for its own retail customers. Therefore, BellSouth's  
16 procedures for providing line conditioning to its retail customers is the  
17 same process and procedures that apply to the Joint Petitioners. For  
18 its retail voice service customers, BellSouth adds or does not add load  
19 coils depending on the length of the copper loop, as set forth in my  
20 direct testimony, and, consistent with the *TRO*, BellSouth has offered  
21 this same procedure to the Joint Petitioners.

22  
23 ***Item 38; Issue 2-20: Under what rates, terms and conditions should***  
24 ***BellSouth be required to perform Line Conditioning to remove bridged***  
25 ***taps? (Attachment 2, Sections 2.12.3 & 2.12.4)***

1 Q. DO YOU AGREE WITH MR. WILLIS' ASSERTION THAT REMOVAL  
2 OF BRIDGED TAPS IS INCLUDED IN THE DEFINITION OF LINE  
3 CONDITIONING?  
4

5 A. No. If BellSouth routinely removed bridged taps for its own retail  
6 customers in order to provide xDSL services, then the removal of  
7 bridged taps for CLECs would be included in the *TRO* definition of line  
8 conditioning. As I stated in my direct testimony, because BellSouth  
9 does not routinely remove bridged taps for its own xDSL customers,  
10 such activity does not fall within the FCC's definition of line  
11 conditioning in the *TRO*.  
12

13 Q. DO YOU BELIEVE THAT BRIDGED TAP THAT IS LESS THEN 2,500  
14 FEET IN LENGTH SIGNIFICANTLY IMPAIRS THE PROVISION OF  
15 HIGH SPEED DATA TRANSMISSION?  
16

17 A. No. The policy of not removing bridged taps less than 2,500 feet  
18 ("Short Bridged Taps") was established by both BellSouth and the  
19 CLECs through the industry shared loop collaborative. Both BellSouth  
20 and the CLECs in this collaborative would not have agreed to such a  
21 policy if they believed that failing to remove Short Bridged Taps would  
22 impair the provision of high speed data service. Additionally, this joint  
23 policy is consistent with industry standards for xDSL services, which  
24 recommend bridged taps on loops to be between 2,500 feet and 6,000  
25 feet in length. BellSouth's line conditioning policies are consistent with

1           these standards.

2

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

7

8   Q.   MR. JAMES FALVEY, ON BEHALF OF THE XSPEDIUS  
9        COMPANIES, CLAIMS ON PAGE 17 OF HIS TESTIMONY THAT THE  
10       CLEC SHOULD BE PERMITTED TO INCORPORATE LANGUAGE  
11       AS STATED IN THE ISSUE STATEMENT FOR THE TERM OF THIS  
12       AGREEMENT. PLEASE COMMENT.

13

14   A.   As I stated in my direct testimony, in light of recent FCC rulings, the  
15       Joint Petitioners cannot simply incorporate the rates, terms, and  
16       conditions contained in the Supra and FDN interconnection  
17       agreements relating to the provision of BellSouth's FastAccess®  
18       service when BellSouth is no longer the voice provider for the term of  
19       the future agreement. If the Joint Petitioners want the language from  
20       the Supra and FDN agreements, then they should adopt those  
21       agreements for the term of those agreements. However, these  
22       agreements are not "adoptable" because they are "frozen" pursuant to  
23       the *Interim Rules Order*, which expressly prohibits the adoption of  
24       "frozen" agreements. Further, what the Joint Petitioners are requesting  
25       is that they be able to "pick and choose" certain portions of other



1 carriers' agreements and boot strap those provisions into a new  
2 agreement. This exact result was prohibited by the FCC in its recent  
3 decision requiring carriers to adopt an agreement in its entirety under  
4 Section 252(i). Thus, even if the Supra and FDN agreements were  
5 adoptable, the Joint Petitioners' request for relief is prohibited by FCC  
6 rules.

7

8 Q. WHAT IS BELL SOUTH REQUESTING THE COMMISSION TO DO AS  
9 TO THIS ISSUE?

10

11 A. As I stated in my direct testimony, BellSouth's obligation to continue to  
12 provide its FastAccess® or DSL services when it is no longer the voice  
13 provider is currently being addressed by the FCC in BellSouth's  
14 Emergency Request for Declaratory Ruling ("Emergency Request"),  
15 WC Docket No. 03-251. While BellSouth is asking the Commission to  
16 find, consistent with federal law, that BellSouth is not required to  
17 provide DSL transport or DSL services to a CLEC and its end users  
18 through any means other than BellSouth's FCC tariff, at a minimum,  
19 the Commission should defer further resolution of this issue until the  
20 FCC reaches a decision on BellSouth's Emergency Request. The  
21 Commission reached a similar conclusion in the FCCA Complaint  
22 addressing this exact issue.

23

24 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

25

1 A. Yes.