BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF KATHY K. BLAKE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040130-TP

FEBRUARY 7, 2005

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

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

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

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to portions of the direct testimony filed by James C. Falvey on behalf of Xspedius Communications, LLC on behalf of its operating subsidiaries, Marva Brown Johnson on behalf of KMC Telecom V, Inc. and KMC Telecom III LLC, Hamilton E. Russell, III, on behalf of NuVox Communications, Inc. and NewSouth Communications Corporation and Jerry

Willis on behalf of NuVox Communications and NewSouth Communications on January 10, 2005.

Q. ARE YOU ADDRESSING ANY ADDITIONAL ITEMS IN THIS REBUTTAL TESTIMONY??

A. Yes. I am adopting certain portions of the direct testimony of BellSouth witness Carlos Morillo. Specifically, I am adopting Item Nos. 88, 97, 100, 101, 102 and 104 and will be rebutting the Joint Petitioner's testimony for these issues. BellSouth witness Scot Ferguson will be adopting Item No. 103 of Carlos Morillo's direct testimony and will be rebutting the Joint Petitioners' testimony as it relates to this item.

SUPPLEMENTAL ISSUES

Q. SHOULD THE FLORIDA PUBLIC SERVICE COMMISSION ("COMMISSION") DEFER RESOULTION OF THE SUPPLEMENTAL ISSUES IN THIS ARBITRATION PROCEEDING?

A. Yes. As I previously asserted in my Direct Testimony, the Commission should defer resolution of the Supplemental Issues to the Generic Proceeding, Docket No. 041269-TP, filed November 1, 2004.[1] **In the event the Commission**

[1] As an initial matter, BellSouth's position is that all Supplemental Issues addressing BellSouth's federal obligations resulting from *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"), the *Interim Rules Order*, issued by the FCC in WC Docket No. 04-313, CC Docket No. 01-338 or the Final Unbundling Rules should be deferred to the Commission's generic UNE proceeding. In no event, however, should issues addressing any state-law obligations be included in such a generic proceeding.

wishes to address the Supplemental Issues in this arbitration, BellSouth's position for each Supplemental Issue is set forth below.

Item 108, Issue S-1: How should the Final FCC Unbundling Rules be incorporated into the Agreement?

Q. WHAT IS THE JOINT PETITIONERS' POSITION AND HOW DO YOU RESPOND?

A. The Joint Petitioners' position on this issue is that the parties should engage in protracted negotiations and then dispute resolution at the Commission before the FCC issues its final unbundling rules ("Final FCC Unbundling Rules") and such rules become effective. Simply put, the Joint Petitioners' position does nothing more than promote delay, which is entirely inconsistent with the intent of the FCC as set forth in the *Interim Rules Order* (I fully explain and describe this intent in my Direct Testimony). Further, contrary to the Joint Petitioners' position, there is nothing in Section 251 of the Telecommunications Act of 1996 (the "Act") that specifically requires the Parties to engage in negotiations and then dispute resolution to address changes in the law as mandated by the FCC. And, in any event, BellSouth's position does not prohibit the parties from engaging in such negotiations and then amending the Agreement if the Parties ultimately agree to something other than what is mandated by the FCC.

More importantly, the Joint Petitioners' position presumes that the parties will disagree over what the FCC meant in issuing its new rules and that dispute

resolution will be required. However, as made clear by the Joint Petitioners concurrence with BellSouth's definition of switching (see Item 112) as well as with other issues that the parties have resolved, there will be portions of the Final FCC Unbundling Rules with which even the Joint Petitioners cannot disagree. Thus, there is no need to frustrate the FCC's stated intent by delaying the total effect of the Final FCC Unbundling Rules. For those limited issues where there is a good faith disagreement over what the FCC ordered, BellSouth will agree to resolve such a dispute before the Commission. However, BellSouth submits that these disputes will be limited and that there should be no dispute over what elements BellSouth is no longer required to unbundle.

It is interesting to note that the Joint Petitioners' position here appears to contradict their position regarding a similar, albeit resolved, issue concerning the effective date of future rate impacting amendments. In fact, for that issue, the Joint Petitioners objected to BellSouth's proposed language asserting that it provided BellSouth with the opportunity to delay the effectiveness of an amendment, and, according to the Joint Petitioners, injected a huge amount of uncertainty into a process that should be simple and straightforward.

For these reasons and those set forth in my Direct Testimony, the Commission should find that the Agreement would automatically incorporate the Final FCC Unbundling Rules immediately upon those rules becoming effective.

Item 109, Issue S-2: Should the Agreement automatically incorporate any

intervening order of the FCC adopted in WC Docket 04-313 or CC Docket 01-338 that is issued prior to the issuance of the Final FCC Unbundling Rules to the extent any rates, terms or requirements set forth in such an order are in conflict with, in addition to, or otherwise different from the rates, terms and requirements set forth in the Agreement?

Q. WHAT IS THE JOINT PETITIONERS' POSITION AND HOW DO YOU RESPOND?

A. The Joint Petitioners' position is that the parties should engage in protracted negotiations and then dispute resolution at the Commission before an intervening order becomes effective. For the reasons identified in responding to the Joint Petitioner's position as to Item 108, the Commission should reject their attempt to frustrate the FCC's intent by imposing unnecessary conditions as to when any intervening order of the FCC should be implemented and find that the Agreement should automatically incorporate the findings contained in an intervening order on the effective date of such order.

In addition, with their Issue Statement, the Joint Petitioners are improperly expanding the scope of this issue to include consideration of an intervening and potentially conflicting state commission order. As set forth in my Direct Testimony, the Commission should refuse to consider the issue because it exceeds the parties' agreement regarding the type of issues that could be raised after the 90-day abatement period. In addition, the issue is purely hypothetical in nature and not sanctioned by the *Interim Rules Order*, which specifically

recognized the possibility that the FCC and only the FCC would issue an intervening order (which it has) during the Interim Period and that any such order would supersede the FCC's findings in the *Interim Rules Order*.

Further, while I am not an attorney, it is my understanding that state commissions are prohibited from issuing orders containing provisions that conflict with the ***Interim Rules Order***. In fact, the *Interim Rules Order* identified the only type of state commission order that is permissible – one that increases rates for the frozen elements: "[The frozen] rates, terms, and conditions shall remain in place during the interim period, except to the extent that they are or have been superseded by … (3) (with respect to rates only) a state public utility commission order raising the rates for network elements." *See Interim Rules Order* at ¶ 29. Thus, unless the Commission increases rates for the frozen elements, the Commission is prohibited from issuing any intervening orders that conflict with the *Interim Rules Order*.

Further, BellSouth's position is consistent with the Act. The unbundling requirements of Section 251 are ***federally*** mandated and do not reference ***state*** law. The reason for this is obvious -- state law is not allowed to frustrate the national regulatory scheme as implemented by the FCC. Although a state commission has the authority to enforce state access and interconnection obligations, it may do so only to the extent "consistent with the requirements" of federal law and so as not to "substantially prevent implementation" of the requirements and purposes of federal law. *See* 47 U.S.C. §251(d)(3).

Finally, any state commission order requiring additional unbundling obligations under state law would be invalid without the state commission performing an impairment analysis. This analysis cannot be conducted in the context of a Section 252 arbitration proceeding that addresses BellSouth's federal obligations under the Act. Consequently, the Commission should reject the Joint Petitioners' attempt to convert this Section 252 arbitration into an impairment proceeding under state law and find simply that only an intervening FCC order should be automatically incorporated into the parties' Agreement.[2]

Item 110, Issue 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. WHAT IS THE JOINT PETITIONERS' POSITION AND HOW DO YOU RESPOND?

A. The Joint Petitioners' position is that the parties should engage in protracted negotiations and then dispute resolution at the Commission before any vacatur or invalidation of the *Interim Rules Order* becomes effective. For the reasons identified in Item 108, the Commission should reject their attempt to delay and

[2] Pursuant to the *Interim Rules Order*, if the Commission issues an order increasing rates for frozen elements during the *Interim Period*, this order should be automatically incorporated into the Agreement as well.

prohibit the implementation of the current status of the law because, in such a scenario, BellSouth would have no obligation to continue to provide the vacated elements. It should also be noted that, in such a case, rather than disconnecting service, BellSouth's transition plan would apply, thereby providing the Joint Petitioners with the opportunity to receive comparable services at non-UNE pricing.

Simply put, in the event a court of competent jurisdiction vacates all or part of the *Interim Rules Order*, there will be no valid impairment findings with respect to the vacated elements. Accordingly, the parties' Agreement should automatically incorporate the status of the law on the date the order or decision invalidating all or part of the *Interim Rules Order* becomes effective and the parties should invoke the transition process identified in Item No. 23 to convert vacated elements to comparable, non-UNE services.

Item 111, Issue 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?

Q. WHAT IS THE JOINT PETITIONERS' POSITION AND HOW DO YOU RESPOND?

A. The Transition Period, as defined in the *Interim Rules Order*, is the six-month period following the expiration of the Interim Period (*i.e.* March 12, 2005 or

earlier in the event the FCC issues its Final Unbundling Rules prior). The Transition Period only applies if the Final FCC Unbundling Rules are not in effect at the end of the Interim Period or if the Final FCC Unbundling Rules do not find impairment with respect to one ore more of the frozen elements. During the Transition Period, vacated elements for which there has been no finding of impairment will be available to CLECs for their existing customer base but at higher prices. *See Interim Rules Order* at ¶¶ 1, 29. However, during the Transition Period, CLECs are prohibited from adding any new customers at the rates, terms, and conditions set forth in the Transition Period. *Id.* at ¶ 29.

Moreover, refusing to find that the Transition Period is automatically incorporated into the parties' Agreement upon it becoming effective and instead requiring negotiation and the resulting dispute resolution frustrates the FCC's intent as it effectively prohibits the parties' from operating under the Transition Period. In fact, it is quite possible that the Transition Period will expire prior to the time any change of law negotiations/proceedings would be concluded, which is clearly not what the FCC intended.

Furthermore, it is unclear why the Joint Petitioners oppose the automatic incorporation of the Transition Plan in the absence of Final FCC Unbundling Rules. Indeed, without it, the Joint Petitioners will have no legal right to obtain new vacated elements after March 12, 2005.

Item 112, Issue 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 onto the Agreement?

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. The rates, terms, and conditions for the following subject elements were frozen by the FCC in the *Interim Rules Order*, as specifically set forth in the attached Exhibit KKB-1. This exhibit represents BellSouth's proposed language for this issue and is in addition to the general definitions BellSouth presented in my Direct Testimony.

Q. WHAT IS THE JOINT PETITIONERS' GENERAL POSITION?

A. The Joint Petitioners' position is that the rates, terms, and conditions associated with switching, dedicated transport, and enterprise loops, as those elements are defined in the Joint Petitioners' Current Agreements, should continue to apply during the Interim Period. Importantly, these definitions as well as the Current Agreements themselves have yet to be modified to address the FCC's *Triennial Review Order*, also referred to as the *TRO*. Thus, the Joint Petitioners' position is that BellSouth should be obligated to continue to provide switching, dedicated transport, and enterprise loops pursuant to rates, terms, and conditions that do not reflect the FCC's modification of said definitions in the *TRO*.

Q. DO YOU AGREE THAT THE *INTERIM RULES ORDER* REQUIRED THE PARTIES TO DISREGARD PORTIONS OF THE *TRO* THAT WERE NOT VACATED?

A. No, but that is exactly what the Joint Petitioners are recommending. Specifically, the Joint Petitioners take the position that *USTA II*'s vacatur of only certain portions of the *TRO* means that those portions *TRO* that were not vacated are frozen by the *Interim Rules Order.* With such an argument, the Joint Petitioners are now attempting to avoid the implementation of the non-vacated portions of the *TRO.* It is clear, however, that the non-vacated portions of the *TRO* were not impacted by *USTA II* and thus were not frozen by the *Interim Rules Order.* In addition to being inconsistent with the intent of the *Interim Rules Order*, such a position is also inconsistent with the practice of the Parties, as they have reached agreement regarding how some non-vacated elements of the *TRO* will be implemented in the new Agreement.

A good example of this is the Parties' agreement on the language that relieves BellSouth from providing fiber to the home loops ("FTTH"). The *Interim Rules Order* clearly provides for the amendment of the frozen terms and conditions as a result of an intervening FCC Order. Under the Joint Petitioners' theory, while the *TRO* eliminated the obligation to unbundle FTTH, BellSouth would not be permitted to avail itself of that relief; however, based on the FCC's two intervening orders expanding on the FTTH relief (addressing FTTH to multiple dwelling units ("MDU") and fiber to the curb ("FTTC")) BellSouth would be relieved of those obligations. This result is

completely nonsensical and is not supported in any manner by the *Interim Rules Order*. It should be noted that, had the Joint Petitioners amended their Current Agreements to make them *TRO*-compliant, this would not be an issue. Instead, because the Joint Petitioners' goal throughout this proceeding has been to delay those changes in the law that are not CLEC-beneficial, they are now attempting to promote antiquated definitions of enterprise loops and dedicated transport that fail to take into account rulings from the FCC that were not impacted by *USTA II*.

Q. WHAT IS THE JOINT PETITIONERS' POSITION REGARDING THE DEFINITION OF SWITCHING AND HOW DO YOU RESPOND?

A. The Joint Petitioners appears to agree with BellSouth's definition of mass market switching. Thus, it appears that this is no longer an issue.

Q. WHAT IS THE JOINT PETITIONERS' POSITION REGARDING THE DEFINITION OF DEDICATED TRANSPORT AND HOW DO YOU RESPOND?

A. The Joint Petitioners argue that the pre-*TRO* definition of dedicated transport that was in effect on June 15, 2004 in the Current Agreement should apply during the Interim Period. This definition of dedicated transport, however, was modified by the *TRO*. Specifically, in the *TRO*, the FCC excluded entrance facilities and Optical Carrier ("OCn") level transmission facilities from the definition of dedicated transport. Dedicated transport, as defined by the FCC

in the *TRO*, was the only dedicated transport that the D.C. Circuit addressed and ultimately vacated in *USTA II*. Because the *Interim Rules Order* only froze those rates, terms, and conditions associated with the vacated elements, the frozen rates, terms, and conditions are only those that correspond to the DS1 and DS3 elements that were reviewed by the D.C. Circuit as a result of the *TRO* -- transmission facilities connecting ILEC switches and wire centers in a LATA, including dark fiber transport. Stated another way, the only rates, terms, and conditions that are frozen are those that were vacated, which by necessity were those that the FCC addressed through its *TRO* definition of dedicated transport. To hold otherwise, would allow the Joint Petitioners to receive more through the *Interim Rules Order* than what the D.C. Circuit actually reviewed and what the FCC actually ordered. Simply put, it is beyond reason to suggest that the FCC intended to "freeze" rates, terms, and conditions that exceed the scope of what was vacated by *USTA II*. **Moreover, to the** extent that the Joint Petitioners argue that the definition of dedicated transport should be frozen and, therefore, that they should be entitled to frozen rates, terms and conditions for all levels of dedicated transport, the *Interim Rules Order* would prohibit the Joint Petitioners from ordering new DS0 level dedicated transport after the Interim Period and prohibit the Joint Petitioners from maintaining DS0 level dedicated transport after the Transition Period. Why the FCC would have eliminated an unbundling obligation through its *Interim Rules Order* that was unaffected by the *USTA II* decision is inconceivable and, yet, would be the result of the Joint Petitioners' self serving and nonsensical interpretation of the *Interim Rules Order*.

Q. WHAT IS THE JOINT PETITIONERS' POSITION REGARDING THE DEFINITION OF ENTERPRISE MARKET LOOPS AND HOW DO YOU RESPOND?

A. The Joint Petitioners appear to agree with BellSouth with regard to the definition of enterprise market loops. Notwithstanding the Parties' apparent agreement, the Joint Petitioners contend that the antiquated pre-*TRO* definition of enterprise market loops that was in effect on June 15, 2004 in the Current Agreement should apply during the Interim Period. Specifically, the *TRO* defined enterprise market loops as those transmission facilities between a distribution frame (or its equivalent) in the ILEC's central office and the loop demarcation point at an end user customer premises at the DS1 and DS3 level, including dark fiber loops. *TRO* at ¶ 249. This definition of "enterprise market loops" was the only definition that the D.C. Circuit addressed and ultimately vacated in its review in *USTA II* of the FCC's rules in the *TRO* regarding BellSouth's obligation to provide enterprise market loops on an unbundled basis. Because the *Interim Rules Order* only froze those rates, terms, and conditions associated with the vacated elements, the frozen rates, terms, and conditions are only those that are associated with transmission facilities between a distribution frame (or its equivalent) in the ILEC's central office and the loop demarcation point at an end user customer premises at the DS1 and DS3 level, including dark fiber loops. Stated another way, the only rates, terms, and conditions that are frozen are those that meet the FCC's *TRO* definition of enterprise market loops.

To hold otherwise, would allow the Joint Petitioners to receive more through the *Interim Rules Order* than what the D.C. Circuit actually reviewed and would conflict with the non-vacated portions of the *TRO*. For instance, if the Commission adopts the Joint Petitioners' position, the Joint Petitioners would obtain fiber to the home and fiber to the curb loops during the Interim Period, even though the FCC removed any obligation of BellSouth to provide these loops in the *TRO* and its *TRO Reconsideration Order*. It is beyond reason to suggest that the FCC intended to "freeze" rates, terms, and conditions that exceed the scope of what was vacated or even addressed in *USTA II* (the fiber to the curb ruling in the *TRO Reconsideration Order* was issued after *USTA II* and the *Interim Rules Order*).

Q. HOW DO YOU RESPOND TO JOINT PETITIONER WITNESS RUSSELL'S ASSERTION ON PAGE 61 OF HIS TESTIMONY THAT THE INTERIM RULES ORDER AMENDMENT IS NOT APPLICABLE TO THEM?

A. The Joint Petitioners erroneously claim that they are immune from complying with their change of law obligations in their Current Agreements to implement the *Interim Rules Order* as a result of an alleged agreement between the Parties. Contrary to the Joint Petitioners' claim, there is no such agreement. Specifically, as part of the 90-day abatement agreement to address issues relating to *USTA II* in this arbitration proceeding, the parties also agreed to not proceed with a change of law proceeding to implement *USTA II* and its progeny. This limited decision does not and did not encompass any agreement

to avoid the change of law process for the *Interim Rules Order* or the Final FCC Unbundling Rules.[3] Simply put, BellSouth never agreed to what the Joint Petitioners assert. Indeed, the FCC had not even issued the *Interim Rules Order* at the time the Parties reached the agreement regarding the 90-day abatement. Further, the Parties' agreement to continue operating under the Current Agreement until the new Agreement came into place was not to "freeze" the Joint Petitioners current UNE attachment, as intimated by the Joint Petitioners. Rather, it was to address the Joint Petitioners' concern that BellSouth would "bump" the Joint Petitioners from their Current Agreement during the 90-day abatement. In any event, requiring the Joint Petitioners to incorporate the *Interim Rules Order* and the Final FCC Unbundling Rules into their Current Agreement would not violate such an agreement as they would still be operating under their Current Agreement until moving to the new Agreement. BellSouth will fully address this matter in its Post-Hearing Brief if this matter ultimately becomes an issue in this proceeding.

Item 113, Issue S-6: Did USTA II vacate the FCC's unbundling requirement, if any, relating to high-capacity loops and dark fiber?

Q. ON PAGE 61 OF HIS TESTIMONY JOINT PETITIONER WITNESS FALVEY ARGUES THAT *USTA II* DID NOT VACATE THE FCC RULES WITH REGARD TO THE PROVISION OF UNBUNDLED ACCESS TO

[3] Although I am not a lawyer, I understand that "progeny" is a defined, legal term that means, "a line of opinions succeeding a leading case <*Erie* and its progeny>" as defined by the 2000 edition of *Black's Law Dictionary*. The *Interim Rules Order* is not an opinion of a court or state commission reaffirming or restating the D.C. Circuit's findings in *USTA II* and thus does not comply with the above-definition.

DS1, DS3, AND DARK FIBER LOOPS. HOW DO YOU RESPOND?

A. The Joint Petitioners devote numerous pages of their testimony arguing a position that is not supported by a clear reading of *USTA II*. The simple fact is that *USTA II* vacated the FCC's impairment finding that resulted in the requirement for BellSouth to unbundle and provide high capacity transmission facilities at TELRIC prices. Pursuant to the Act, there can be no obligation to unbundle any element unless the FCC has found impairment. In fact, the FCC recognized that *USTA II* eliminated impairment findings for these facilities and thus issued *Interim Rules Order* to address how these facilities will be provisioned for a twelve-month transition period for existing CLEC customers. The refusal of the Joint Petitioners to recognize the straightforward and clear wording of the *Interim Rules Order* reveals that their strategy is to use the Commission to circumvent orders of the FCC. Furthermore, the Joint Petitioners are attempting to expand the scope this issue to address BellSouth's Section 271 obligation or state requirements. BellSouth fully addressed these arguments in my Direct Testimony. Fundamentally, however, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them.

Item 114, Issue S-7 <<CLEC ISSUE STATEMENT>>: (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 PAGE 70 OF HIS TESTIMONY, MR. RUSSELL ADMITS "THAT THE

COMMISSION IS NOW WITHOUT THE POWER TO MAKE [SIC] FINDING OF NON-IMPAIRMENT FOR PURPOSES OF SECTION 251" AND THEN, IMMEDIATELY IN THE NEXT SENTENCE, "REQUEST THAT THE COMMISSION REQUIRE UNBUNDLING OF DEDICATED TRANSPORT UNES PURSUANT TO SECTION 251." HOW DO YOU RESPOND?

A. Under their interpretation of Section 251, the Joint Petitioners conveniently fail to recognize that Section 251's unbundling obligation is only triggered upon an impairment finding. As a result of *USTA II*'s vacatur of the FCC's rules relating to high-capacity transport, there is no longer a finding of impairment. With no finding of impairment, there is no current Section 251 unbundling obligation for high-capacity transport.

Likewise, and as I discussed in my Direct Testimony, BellSouth has no Section 271 obligation to unbundle the subject elements at Total Element Long Run Incremental Cost ("TELRIC") and the Commission is prohibited from ordering anything to the contrary. Again, this issue and the Joint Petitioners' positions in general are nothing more than the Joint Petitioners' attempts to circumvent the D.C. Circuit and the *Interim Rules Order* so that they can prolong an inapplicable pricing regime. Notwithstanding the Joint Petitioners' position and assertions, BellSouth recognizes its Section 271 obligation to offer its high-capacity transport to CLECs.

UNRESOLVED ISSUES

Item 2; Issue G-2: How should "End User" be defined? (Agreement GT&C Section 1.7)

Q. JOINT PETITIONERS' WITNESS JOHNSON STATES ON PAGES 5-6 OF HER TESTIMONY THAT BELLSOUTH'S PROPOSED LANGUAGE IS AMBIGUOUS AND SOMEHOW ATTEMPTS TO LIMIT WHO CAN OR CANNOT BE A CLEC'S CUSTOMER. PLEASE RESPOND.

A. First, there is nothing ambiguous about BellSouth's proposed definition. The end user is the actual user of the service, i.e., the customer. BellSouth's language makes clear that an end user is not an intermediary user of the service. Webster's Dictionary defines "end" as "...the last part of a thing, i.e., the furthest in distance, latest in time, or last in sequence or series....". In this instance, the "end user" is not necessarily the CLEC's customer, as the Petitioners suggest, because that customer may or may not be the end of the sequence or series. In other words, no matter how many wholesalers, enhancers, etc., are in the chain, the "end user" is the ultimate user of the service. For example, a manufacturer of breakfast cereal may have a grocery store chain as its customer, but the end user is the little boy eating his Wheaties at his breakfast table. In contrast, the Joint Petitioners' language does create uncertainty. By defining an end user as any customer, even one who subsequently repackages the service to sell it to another, the Joint Petitioners contradict the commonly understood meaning of the word "end." Put

differently, under their definition, "end user" means every user, not just the one at the end of the process.

Contrary Ms. Johnson's assertion at page 6 of her testimony, BellSouth is in no way attempting to limit who can or cannot be a CLEC's customer. CLECs can serve any customer they desire within the limits of the law and of their regulatory certification. The issue is not whom CLECs serve, but rather what service qualifies for UNEs and UNE prices. Not every customer a CLEC serves is eligible to be served by Enhanced Extended Links ("EELs"). The provisions of the Act were not designed to allow CLECs to re-wholesale to another carrier. The Joint Petitioners would change the industry-accepted definition of end user in order to improperly expand the categories of customers that can be served via UNEs.

Q. AT PAGES 7-8 OF HER TESTIMONY, MS. JOHNSON, ALLEGES THAT BELLSOUTH USES DIFFERENT DEFINITIONS OF END USER WHERE IT SUITS BELLSOUTH. PLEASE RESPOND.

A. The instance Ms. Johnson is referring to regards service provided to an Internet Service Provider ("ISP"). This is a unique, isolated instance in which the Joint Petitioners are attempting to take a narrow exception where an ISP is referred as an end user customer and translate it into a rule that would enable them to serve an entity other than an end user with an EEL. The discussion particular to ISPs that the Joint Petitioners refer to (for example, KMC's Section 10.6.1 of Attachment 3) follows a more general discussion in Section 10.6 which

addresses NPA/NXX Codes within a rate center assigned to end users outside of the Local Access Transport Area ("LATA") where that rate center is located. Although in hindsight, use of the term end user as applied to an ISP is clearly inappropriate, it is obvious its purpose in Section 10.6.1 is to highlight the fact that a CLEC cannot collect local reciprocal compensation payments for non-local traffic, whether it is from an end user or from an ISP.

It is important to remember that the FCC defines an EEL as a combination of local loop and transport and the FCC further defines a local loop as terminating at an end user customer's premises. The Joint Petitioners' position would result in an EEL no longer being an EEL, and a loop no longer being a loop, by the FCC's definition. Under the Joint Petitioners' interpretation, they could provision an EEL to another carrier and say that the facility between BellSouth and the "customer's" central office is a loop, thus allowing them to, in actuality, designate a transport-to-transport combination as an EEL. In fact, a transport-to-transport combination is not an EEL, because an EEL is only transport connected to a local loop, and a local loop terminates at an end user customer's premises.

Q. AT PAGE 7, MS. JOHNSON REFERS TO "OTHER APPARENT COMPLICATIONS RAISED BY BELLSOUTH'S PROPOSED DEFINITION." PLEASE RESPOND.

A. Ms. Johnson raises this point in reference to the FCC's eligibility criteria established for EELs. This point is addressed more fully in my Direct

Testimony under Issue 2-32.

Item 4; Issue G-4: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct? (Agreement GT&C Section 10.4.1)

Q. IS JOINT PETITIONERS' POSITION CONSISTENT WITH THEIR OWN TARIFFS?

A. No. The Joint Petitioners' position is a one-sided approach that benefits only the Joint Petitioners and is inconsistent with how they treat their own customers. In fact, consistent with BellSouth's position on this issue, the Joint Petitioners' own retail tariffs limit their liability to the actual cost of the services or function not performed. This fact proves that (1) the Joint Petitioners are attempting to impose an obligation on BellSouth that they are not willing to take on with respect to their own customers and (2) the Joint Petitioners are attempting to use the limitation of liability provision as a means to generate revenue. Indeed, given the fact that their own tariffs limit their respective liability to the actual cost of the services or function not performed, receiving 7.5% of amounts collected from BellSouth potentially results in an undeserved financial windfall for the Joint Petitioners. The simple fact is that, contrary to their position, the Joint Petitioners employ standard limitation of liability language with their respective customers. This is the same language that BellSouth is requesting and that should be adopted by the Commission.

Q. ON PAGES 11-12, MS. JOHNSON CONTENDS THAT BELLSOUTH'S PROPOSED LANGUAGE "IS NOT COMMERCIALLY REASONABLE IN THE TELECOMMUNICATIONS INDUSTRY." HAS THE FCC ADDRESSED THE SCOPE OF LIABILITY IN THE CONTEXT OF INTERCONNECTION AGREEMENTS?

A. Yes. In its decision in CC Docket No. 00-218, the FCC held:

> Specifically, we find that, in determining the scope of Verizon's liability, it is appropriate for Verizon to treat WorldCom in the same manner as it treats its own customers. Verizon has no duty to provide perfect service to its own customers; therefore, it is unreasonable to place that duty on Verizon to provide perfect service to WorldCom. In addition, we are not convinced that Verizon should indemnify WorldCom for all claims made by WorldCom's customers against WorldCom. Verizon has no contractual relationship with WorldCom's customers, and therefore lacks the ability to limit its liability in such instances, as it may with its own customers. As the carrier with a contractual relationship with its own customers, WorldCom is in the best position to limit its own liability against its customers in a manner that conforms to this provision.[4]

The above-findings by the FCC are consistent with BellSouth's position on this issue.

Item 5; Issue G-5: If the CLEC elects not to place in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the risks that result from this business decision? (Agreement GT&C Section 10.4.2)

[4] FCC Memorandum Opinion and Order, released July 17, 2002 in CC Docket No. 00-218, ¶709

Q. IS BELLSOUTH ATTEMPTING TO "DICTATE THE TERMS OF SERVICE BETWEEN PETITIONERS AND THEIR CUSTOMERS" AS ALLEGED ON PAGE 8 OF MR. RUSSELL'S TESTIMONY?

A. Absolutely not. Except as otherwise controlled by a state or federal law or rule, the Joint Petitioners are free to establish whatever terms and conditions they please with their customers. BellSouth is simply stating that, if the Petitioners make a business decision not to limit their liability in their tariffs and contracts, that is their decision and the Petitioners should bear the business risk resulting from the decision. Any liability that may occur as a result of that decision should be borne by the CLECs and not by BellSouth.

Q. YOU MENTIONED ABOVE, IN REGARDS TO ISSUE G-4, THAT THE JOINT PETITIONERS' TARIFFS INCLUDE LIMITATION OF LIABILITY PROVISIONS. IF THAT IS THE CASE, THEN WHY IS THIS AN ISSUE?

A. BellSouth is at a loss as to why Joint Petitioners continue to object to the proposed language because, consistent with industry standard, they all have standard limitation of liability provisions that severely limit their financial exposure. Given this fact, it is unclear why this is even an issue, unless of course, the Joint Petitioners intend to remove such provisions and rely upon BellSouth to fund their customers' claims against the Joint Petitioners.

Item 6; Issue G-6: How should indirect, incidental or consequential damages be defined for purposes of the Agreement? (Agreement GT&C Section 10.4.4)

Q. DO YOU HAVE ANY COMMENTS REGARDING THE JOINT PETITIONERS' POSITION?

A. Yes. With their stated position, the Joint Petitioners are attempting to provide their end users (either directly or vis-à-vis the Joint Petitioners) a right to receive indirect, incidental, or consequential damages against BellSouth. The Joint Petitioners' end users are not a party to this Section 251 Interconnection Agreement and should not be given any rights against BellSouth, who is not their service provider. Further, pursuant to the Joint Petitioners' tariff filings, the Joint Petitioners, themselves, prohibit their end users from recovering indirect, incidentals or consequential damages against them. Thus, it appears that the Joint Petitioners are creating litigation opportunities for their end users against BellSouth for damages they are insulated from.

Q. IN HIS TESTIMONY, MR. RUSSELL CONTENDS THAT BELLSOUTH'S POSITION IS INTERNALLY INCONSISTENT BECAUSE THERE ARE OTHER LEGAL MATTERS, SUCH AS INDEMNIFICATION, THAT BELLSOUTH SEEKS TO DEFINE WITHIN THE CONTEXT OF THE AGREEMENT (PAGES 12-13). HOW DO YOU RESPOND?

A. The comparison that the Petitioners are attempting to make is not valid. Again, while I am not a lawyer, it is my understanding that although the term

"indemnification" has a particular legal meaning, it is not so well defined that one can simply place language in a contract, for example, that "Party A agrees to indemnify Party B," and have both parties know precisely what is expected of them. Instead, it is necessary to set forth the specifics of who is indemnifying whom for what and under what circumstances. In contrast, the issue of what constitutes consequential damages is a purely legal issue that is defined in every state by a body of case law that has evolved over a long period of time. It is, therefore, possible for parties to simply say that consequential damages will be excluded, because the existing case law has defined what constitutes this type of damages with such specificity that no further negotiation of what does or does not constitute these damages is needed or warranted.

If the Petitioners' position is that there should be liability for indirect, incidental or consequential damages, then they can certainly argue for this position (although BellSouth does not agree that this should be the case). It makes no sense, however, for the Petitioners to agree that there should be no liability for these types of damages, and then try to alter the legally operative terms so that, at least in some instances, the result would be exactly the opposite of what the parties have agreed upon.

Item 7; Issue G-7: What should the indemnification obligations of the parties be under this Agreement? (Agreement GT&C Section 10.5)

Q. ON PAGE 16 OF HIS TESTIMONY, MR. RUSSELL CONTENDS THAT

BELLSOUTH'S PROPOSAL DEVIATES FROM "GENERALLY-ACCEPTED CONTRACT NORMS". HOW DO YOU RESPOND?

A. As I discussed in my Direct Testimony, what must be offered and the standards that apply to those offerings is, in part, drawn from the language of the Act, and in part, the result of eight (8) years of decisions by the FCC and various state commissions. The services included in a Section 251 agreement are provided on the basis of TELRIC pricing and TELRIC pricing does not include the cost of open-ended indemnification of the party receiving services. If one of the costs of providing UNEs and interconnection is damage payments that the Petitioners seek through their language, then those damages should also be recovered through the cost of UNEs and interconnection. However, this is not the case. Thus, the Petitioners' reliance upon commercial agreements is misplaced.

Q. PLEASE COMMENT ON MR. RUSSELL'S CLAIM ON PAGE 16 THAT "BELLSOUTH'S PROPOSAL IS COMPLETELY ONE-SIDED."

A. The Joint Petitioners' claim that the Commission must reject BellSouth's language because it is one-sided rings hollow because of other provisions advanced by the Joint Petitioners that are one-sided in favor of them. For example, the Joint Petitioners' limitation of liability language favors only the Joint Petitioners because they primarily purchase service from BellSouth. In addition, the Joint Petitioners do not dislike one-sided limitation of liability language with their customers as they all have limitation of liability language

in their tariffs that equal or exceed the language BellSouth proposes.

Item 9; Issue G-9: Should a party be allowed to take a dispute concerning the interpretation or implementation of any provision of the agreement to a Court of law for resolution without first exhausting its administrative remedies? (Agreement GT&C Section 13.1)

Q. MR. FALVEY ASSERTS AT PAGES 9-10 OF HIS TESTIMONY THAT BELLSOUTH'S POSITION DOES NOT ADEQUATELY ACCOMMODATE PETITIONER'S ABILITY AND DESIRE TO BRING MATTERS BEFORE A COURT OF LAW. IS THAT AN ACCURATE READING OF BELLSOUTH'S POSITION?

A. No, it is not. BellSouth recognizes that certain issues and disputes may not fall squarely under the expertise of either the FCC or this Commission. In those cases, CLECs should be permitted to seek relief in a court of law. However, BellSouth maintains that Petitioners should not forego resolution of issues at the appropriate regulatory body unless it is obvious, or has been determined, that neither the FCC nor this Commission has expertise or jurisdiction over the dispute. Additionally, often the terms and conditions that are included in an interconnection agreement result from an arbitration decision or the language is crafted from a rule or order written by the FCC or this Commission. Clearly, the regulatory bodies that dictate how the services are to be provisioned pursuant to an interconnection agreement are best suited to interpret and enforce those provisions. To prematurely bring a dispute to a court of law that

might otherwise be addressed and resolved by a regulatory agency is to risk that the court will remand the case to the appropriate body.

Q. ON PAGE 9, MR. FALVEY CLAIMS THAT BELLSOUTH'S PROPOSAL COULD BE USED TO EFFECTIVELY FORCE CLECS TO RE-LITIGATE THE SAME ISSUE IN NINE (9) DIFFERENT STATES. HOW DO YOU RESPOND?

A. I am somewhat confused by the Mr. Falvey's contention as the Joint Petitioners have no problem arbitrating in nine (9) states. Further, the Joint Petitioners' position is entirely inconsistent with their statement in Direct Testimony that "the Commission and the FCC are obviously the expert agencies with respect to a number of (if not the majority of) the issues that might arise." (Falvey's Direct Testimony at pages 7-8.) Given this admission, the Joint Petitioners should have no objection to BellSouth's language. And, if the Joint Petitioners want to resolve interpretation and implementation of disputes in a single proceeding, the Joint Petitioners can file a proceeding at the FCC.

Q. ON PAGE 10, MR. FALVEY ALSO CLAIMS THAT BELLSOUTH'S PROPOSAL WOULD CAUSE "NEEDLESS BIFURCATION OF CLAIMS". HOW DO YOU RESPOND?

A. The Joint Petitioners' position results in the same outcome. If either party to the Agreement filed for dispute resolution with a court of law for resolution of

issues relating to the implementation or interpretation of the Agreement, the most likely outcome would be for the court to defer the case to the state commission for resolution. Such action would require both parties to incur unnecessary cost and would cause substantial delay in resolving the dispute.

Item 12; Issue G-12: 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? (Agreement GT&C Section 32.2)

Q. ON PAGE 19 OF HIS TESTIMONY, MR. RUSSELL CLAIMS THAT BELLSOUTH'S PROPOSED LANGUAGE IS INADEQUATE BECAUSE IT PURPORTS TO ADOPT PRINCIPLES THAT DIFFER FROM GEORGIA CONTRACT LAW AND FOR THAT MATTER, BLACK-LETTER CONTRACT LAW. HOW DO YOU RESPOND?

A. Although I am not an attorney, and as I discussed in my Direct Testimony, BellSouth's proposed language acknowledges an underlying obligation to provide services in accordance with applicable rules, regulations, etc. and that the parties have negotiated what those obligations are. However, in the unlikely event that an issue arises in the future wherein the parties dispute whether there is an obligation regarding substantive telecommunications law that has or has not been included in the agreement, and the parties further dispute whether they had or had not negotiated their obligations with respect thereto, then the parties will attempt to resolve those issues by amending the agreement to define and incorporate include such obligation. In the event that

the parties cannot agree on what the obligation is, or whether such obligation exists under the law, then the Commission should resolve that dispute. In the event that an obligation exists that was not previously included in the interconnection agreement, the parties should then amend the agreement *prospectively* to include such an obligation. To require retrospective compliance in such circumstances would be inappropriate. BellSouth is not attempting to avoid its obligations under the law; it is simply trying to ensure that its obligations are sufficiently defined so that it can comply with them and so that it can expect compliance.

Q. ON PAGE 20 OF MR. RUSSELL'S TESTIMONY, THE JOINT PETITIONERS OBJECT TO BELLSOUTH'S REVISED PROPOSED LANGUAGE CONTENDING THAT "BELLSOUTH IS ADDING AN ADMINISTRATIVE LAYER, A POTENTIAL PROCEEDING TO DETERMINE WHETHER A PARTY IS OR IS NOT BOUND BY APPLICABLE LAW." HOW DO YOU RESPOND?

A. Contrary to the Mr. Russell's contention, it is the Joint Petitioners' proposed language that instigates the need for on-going litigation. In fact, NuVox and NewSouth have attempted to exploit a similar provision in their current interconnection agreements with BellSouth in an attempt to circumvent the provision in those agreements regarding how audits will be conducted to verify compliance with the EEL eligibility criteria. The Joint Petitioners' proposed "catch-all" language seeks to memorialize the "two bites at the apple" strategy they have taken in the NuVox and NewSouth EELs audit disputes. The first

bite occurs during the contract negotiations (resulting in the agreed-upon EEL audit language in the Current Agreement, for example) and the second bite occurs if and when the agreed-upon language creates results that are unfavorable to the Joint Petitioners. The Joint Petitioners want to have a ready option at such times to canvass all laws, presumably from any source, to see if a better result for them might be obtained. This is a fundamental difference in business approaches between the Joint Petitioners and BellSouth. BellSouth organizes itself around its obligations. The Joint Petitioners, at least in this effort, seek to keep obligations fluid for purposes that appear to be inconsistent with the Act.

Item 23; Issue 2-5: 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? (Attachment 2, Section 1.5)

Q. WHAT IS THE JOINT PETITIONERS' POSITION ON THIS ISSUE AND HOW DO YOU RESPOND?

A. The main theme of the Joint Petitioners' position and testimony on this issue seems to be to delay or avoid any action that impedes their ability to continue to obtain vacated elements at the supra-discounted rates they currently enjoy. This position is most certainly rooted in their apparent belief that there is no advantage or incentive to converting the vacated elements and incurring the associated rate changes any sooner than is absolutely necessary. While that position may make sense to the Petitioners, it does little to further the

implementation of the intent of the FCC's rules or to address this arbitration issue before the Commission.

Contrary to the Joint Petitioners' position, the CLECs should be responsible for ensuring that they are not violating the Agreement that they have negotiated, executed and agreed to abide by. Therefore, it should be the Joint Petitioners' obligation to identify the arrangements that are no longer offered or are not in compliance with the terms of the Agreement and, therefore, must be transitioned. Additionally, it is reasonable to expect the Joint Petitioners to have sufficient records and the ability to research them in order to identify those arrangements that no longer comply with the terms of the Agreement since they have ordered the services in question.

Further, only the Joint Petitioners know whether if their plan is to disconnect the facility completely or convert the facility to a BellSouth resold service or access service or to a service offered under a commercial agreement with BellSouth. The Joint Petitioners have options with respect to the facilities they require to provide services to end users, and they also have options as to whether they choose to self-provision those facilities, buy the facilities from BellSouth or purchase facilities from a third party. Because BellSouth cannot select such options for the Joint Petitioners, the Joint Petitioners must not only identify the noncompliant facilities, but must also instruct BellSouth, via the appropriate ordering mechanism, as to whether they choose to disconnect the facility or to replace it with a comparable service.

Q. AT PAGE 17 OF MS. JOHNSON'S TESTIMONY, SHE STATES THAT BELLSOUTH'S LANGUAGE WOULD "... PLACE THE BURDEN ON THE PARTY THAT DOES NOT NECESSARILY THINK THAT A SERVICE CHANGE IS DESIRABLE OR NECESSARY." PLEASE RESPOND.

A. Both the Joint Petitioners and BellSouth are equally bound by the Agreement. Both parties have an obligation to honor the requirements and spirit of the Agreement. The Petitioners' tactic of "catch us if you can" is not appropriate. BellSouth should not be solely responsible for compliance with the Agreement. Because the non-compliant services are owned by the Joint Petitioners, the Joint Petitioners are in the best position to identify those services.

Item 26; Issue 2-8: 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? (Attachment 2, Section 1.7)

Q. ON PAGE 22 OF MS. JOHNSON'S TESTIMONY, SHE ASSERTS THAT 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. HOW DO YOU RESPOND?

A. Ms. Johnson's position is without merit. As I discussed in my Direct

Testimony, BellSouth's position is consistent with the FCC's errata to the *Triennial Review Order*, in that there is no requirement to commingle UNEs or UNE combinations with services, network elements or other offerings made available only pursuant to Section 271 of the Act. Unbundling and commingling are Section 251 obligations. Services not required to be unbundled are not subject to Section 251. When BellSouth provides an item pursuant only to Section 271, BellSouth is not obligated by the requirements of Section 251 to either combine or commingle that item with any other element or service. If BellSouth agrees to do so, it will be done pursuant to a commercial agreement.

Q. ON PAGE 23 OF HER TESTIMONY, MS. JOHNSON CLAIMS THAT "NOTHING IN THE FCC'S RULES OR THE *TRO* SUPPORT [BELLSOUTH'S] INTREPRETATION." IS THIS TRUE?

A. No. BellSouth's interpretation of its commingling requirements is based solely on the obligations stated in the *TRO* by the FCC. Specifically, paragraph 579 states "competitive LECs may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services (e.g., switched and special access services offered pursuant to tariff), and incumbent LECs shall not deny access to UNEs and combinations of UNEs on the grounds that such facilities or services are somehow connected, combined, or otherwise attached to wholesale services."

Contrary to their belief, the Joint Petitioners are not prevented from

commingling wholesale services purchased from BellSouth's Special Access tariff with UNEs and UNE combinations provided pursuant to Section 251. However, there is no requirement for BellSouth to commingle UNEs or UNE combinations with services, network elements or other offerings made available only pursuant to Section 271 of the Act. To the extent the Joint Petitioners are asking to commingle UNEs with non-tariffed services provided only pursuant to BellSouth's Section 271 obligations, commingling is not required by Sections 251 or 252 of the Act and, therefore, such commingling is outside the scope of an Interconnection Agreement. Any agreement to commingle such a 271 service should be addressed, if at all, by a separate agreement negotiated between the parties.

Item 51; Issue 2-33: (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? (Attachment 2, Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1 & 5.2.6.2.3)

Q. WHAT IS BELLSOUTH'S POSITION WITH RESPECT TO THE AMOUNT OF TIME BETWEEN THE NOTICE TO THE CLEC OF BELLSOUTH'S INTENTION TO CONDUCT AN AUDIT AND THE START DATE OF THE AUDIT?

A. BellSouth's position is that the audit should commence 30 days from the date that BellSouth notifies the CLEC that it will conduct an audit. 30 days is ample time for the CLEC to identify the necessary personnel to assist with the

audit and to make arrangements to receive the auditors. Naturally, there is room for negotiation as to the specific start date and time, and BellSouth will certainly consider extenuating circumstances that may not permit a CLEC to be ready within 30 days. But in no case should the CLEC be permitted to unduly and unilaterally delay the start of the audit.

Q. IN MR. RUSSELL'S TESTIMONY ON PAGE 31, HE SUGGESTS REQUIRING BELLSOUTH TO PRE-IDENTIFY THE SPECIFIC CIRCUITS TO BE EXAMINED IN THE COURSE OF AN AUDIT AND RELAY THAT INFORMATION TO THEM PRIOR TO THE COMMENCEMENT OF THE AUDIT. PLEASE COMMENT.

A. As an initial matter, a requirement to identify specific circuits beforehand defeats the purpose of the compliance audit. The purpose of an EELs audit is to assess, via an independent, third party auditor, the extent to which carriers are complying with the rules for determining the usage of EELs circuits. To require BellSouth to pre-identify specific circuits to be examined would provide an opportunity for a non-compliant CLEC to correct the mischaracterization of the EELs circuits in advance of the audit. This attempt by Petitioners to limit the BellSouth audit solely to a list of pre-identified circuits would negate the effectiveness of the audit. During the conduct of an audit, findings may dictate that the audit follow a direction not originally intended in the initial audit scope. If the audit were restricted to specific circuits, such additional questions or examinations could not be followed and any errors corrected. A non-compliant CLEC could simply refuse to comply

with any audit request that does not directly relate to the specific circuits identified, thus delaying the correction of erroneous EELs accounting.

While correcting mischaracterized circuits as a result of an audit is, and should be, a goal of both BellSouth and the CLEC, of equal concern to BellSouth is the ability to audit a CLEC's underlying processes and procedures used to develop allocation factors in general, including EELs factors, in order to determine the extent to which those processes may result in systematic errors in the accounting for EELs circuits.

Item 63; Issue 3-4: Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers to terminate CLEC originated traffic? (Attachment 3, Sections 10.10.6 – KMC; 10.8.6 – NSC & NVX; 10.13.5 – XSP)

Q. ON PAGES 20-21 OF HIS TESTIMONY, MR. FALVEY STATES THAT ANY REIMBURSEMENT TO BELLSOUTH FOR TERMINATION CHARGES THAT BELLSOUTH PAYS THIRD-PARTY CARRIERS FOR CLEC-ORIGINATED TRAFFIC SHOULD BE LIMITED TO THOSE CHARGES BELLSOUTH IS CONTRACTUALLY OBLIGATED TO PAY OR OBLIGATED TO PAY PURSUANT TO COMMISSION ORDER. HOW DO YOU RESPOND?

A. To begin with, as I stated in my Direct Testimony, BellSouth and the Joint Petitioners appear to agree that the CLECs should reimburse BellSouth for

third party charges when such charges are covered by the agreement between BellSouth and the terminating carrier.

However, regardless of whether or not BellSouth has a contractual obligation or an obligation to pay Independent Companies ("ICOs") for the delivery of the Joint Petitioners' transit traffic, BellSouth is unwilling to provide a transit function if the financial obligation to compensate rests with BellSouth and not the originating carrier, which in this case would be the Joint Petitioners. Such an outcome is not required by the Act, and is clearly contrary to reasonable business practices. In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by a CLEC, the CLEC should reimburse BellSouth for all charges paid by BellSouth. BellSouth's position is that the originating carriers (the Petitioners in this case) are responsible for the payment of intercarrier compensation to the terminating carriers, and the originator of the traffic rather than the transit provider must ensure that the terminating carrier is appropriately compensated. Mr. Falvey's suggestion that BellSouth should refuse to pay the ICOs in the instance where the originating carriers have not entered into agreements or compensation arrangements with the ICOs for terminating such traffic is disingenuous. Mr. Falvey makes this suggestion without indicating that Petitioners will agree to enter into compensation arrangements with the ICOs, thus, the Petitioners' suggested course of action would leave the terminating carriers, i.e., the ICOs, with no way to recover the costs associated with terminating the Petitioners' traffic. Importantly, adopting the Joint Petitioners' position would require BellSouth to be unnecessarily engaged in compensation

disputes between CLECs and ICOs in cases where BellSouth's retail customers neither originated nor received calls.

Q. IF THE JOINT PETITIONERS AGREE (FALVEY, PAGE 20) THAT THEY SHOULD REIMBURSE BELLSOUTH FOR TERMINATION CHARGES BELLSOUTH PAYS THIRD PARTY CARRIERS THAT TERMINATE JOINT PETITIONER-ORIGINATED TRAFFIC TRANSITED BY BELLSOUTH, THEN WHY IS THERE STILL AN ISSUE?

A. In my opinion, this is still an issue because as long as the Joint Petitioners avoid establishing agreements directly with the carriers that terminate their traffic, they can continue to rely upon BellSouth to carry the traffic on their behalf. It is the obligation of the originating carrier (in this case the Joint Petitioners) to make arrangements with the terminating carrier with respect to delivery of and compensation for such transit traffic. However, where the originating carrier has failed to make arrangements with the terminating carrier to compensate the terminating carrier for such traffic, and the terminating carrier imposes costs and charges on BellSouth, BellSouth should be able to seek reimbursement from the originating carrier for those charges.

The Joint Petitioners' concern that BellSouth will "overpay" and the CLECs will "over-reimburse" is unfounded. Clearly, the best way a CLEC can mitigate such a concern is for the CLEC to negotiate compensation arrangements directly with the ICO. BellSouth reviews, disputes and pays third party invoices in a manner that is at parity with its own practices for

reviewing, disputing and paying such invoices. If BellSouth believes the ICO has inappropriately billed BellSouth for calls, BellSouth will dispute such charges and seek reimbursement from the ICO.

Item 65; Issue 3-6: 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? (Attachment 3, Sections 10.10.1 – KMC; 10.8.1 – NSC)

Q. MS. JOHNSON'S TESTIMONY CLAIMS, AT PAGE 31, THAT THE TANDEM INTERMEDIARY CHARGE IS "PURELY 'ADDITIVE'." MS. JOHNSON ALSO CLAIMS AT PAGE 32 THAT, IF CURRENT TELRIC CHARGES FOR TANDEM SWITCHING AND COMMON TRANSPORT DO NOT COVER ALL COSTS, BELLSOUTH SHOULD CONDUCT A TELRIC STUDY OF THOSE ADDITIONAL COSTS AND PROPOSE A RATE IN THE NEXT GENERIC PRICING PROCEEDING. PLEASE RESPOND.

A. First, as stated in my direct testimony, the tandem intermediary charge is not "purely 'additive'". For example, BellSouth pays Telcordia for messages that are not recovered in tandem switching and common transport charges. BellSouth pays Telcordia for all messages, whether they are access records or end user billing records that are sent and received through Centralized Message Distribution System ("CMDS"). More importantly, *CLECs can connect directly with other carriers in order to exchange traffic. They do not need BellSouth to pass such traffic for them.* For whatever efficiencies they gain,

the CLECs have elected to have BellSouth perform a transit traffic function for them. Because the transit traffic function is not a Section 251 obligation, it is not subject to Section 252 cost standards (TELRIC); therefore, submitting a TELRIC cost study for this function to a state commission is not appropriate. As stated previously, CLECs that elect to have BellSouth perform this function should negotiate the rates, terms and conditions of transit traffic in a separate agreement.

Item 88; Issue 6-5: What rate should apply for Service Date Advancement (a/k/a service expedites)? (Attachment 6, Section 2.6.5)

Q. PLEASE ADDRESS MR. FALVEY'S CONTENTIONS AT PAGES 26-27 OF HIS TESTIMONY THAT BELLSOUTH'S EXPEDITE CHARGES ARE INFLATED, WERE NOT SET BY THE COMMISSION AND DO NOT COMPORT WITH THE TELRIC PRICING STANDARD.

A. First, BellSouth's expedite charges are set forth in BellSouth's FCC No. 1 Tariff, Section 5 (which is an FCC-approved tariff). These are the same charges that BellSouth's retail customers are charged when a retail customer requests service in less than the standard interval. Such rates reflect the value of the expedited service being provided. To the extent that a CLEC wants expedited service, the CLEC should pay the same rates as BellSouth's retail customers. Regarding the contention that expedite charges should reflect TELRIC pricing, the Petitioners are incorrect. As noted above, BellSouth's obligation is to provide UNEs within the standard interval. BellSouth has no

obligation to provide CLECs with expedited service. Because expedited service is not an obligation under Section 251, the cost-based pricing standards of Section 252(d) do not apply.

As a practical matter, if there were no charge or only a minor charge for expedited service requests, it is likely that most CLEC orders would be expedited, causing BellSouth to miss its standard intervals and its obligations to provide non-discriminatory access. The result would be most, if not all, orders would either be expedited or late, due to the volume of expedite orders that preempt other scheduled orders with standard intervals. BellSouth's position on this issue is reasonable and provides parity of service between how BellSouth treats CLECs and how it treats its own retail customers.

Item 97; Issue 7-3: When should payment of charges for service be due? (Attachment 7, Section 1.4)

Q. AT PAGE 40 OF HIS TESTIMONY, MR. RUSSELL COMPLAINS THAT PETITIONERS NEED AT LEAST 30 CALENDAR DAYS TO REVIEW AND PAY INVOICES. IS THAT REASONABLE?

A. No. There is no legitimate reason to allow the Petitioners a full thirty calendar days after receiving a bill to make payment. BellSouth invoices each CLEC every 30 days, just as it does for retail customers. The bill date is the same each month and each CLEC is aware of its billing due date. Moreover, a CLEC can elect to receive its bills electronically so as to minimize any delay in bill

printing and receipt. To the extent a CLEC has questions about its bills, BellSouth cooperates with that CLEC to provide responses in a prompt manner and resolve any issue. It is reasonable for BellSouth to expect that payment will be due and payable before the next bill date. Furthermore, in a given month if special circumstances warrant, a CLEC may request an extension of the due date and BellSouth does not unreasonably refuse to grant such a request.

All customer's due dates and treatment notices are generated the same way; therefore, it is not realistic to do something different for one customer versus another. Any such change would require substantial modifications to BellSouth's billing systems; would involve substantial costs, and would apply to all customers. Incurring such substantial costs to meet the special payment due date request of the Joint Petitioners is unnecessary and unwarranted given the fact that this Commission and the FCC have determined that BellSouth's billing practices are non-discriminatory in granting BellSouth long distance authority in Florida. In short, it has already been determined that BellSouth's *existing* billing practices give efficient CLECs a meaningful opportunity to compete in the local market. Further, BellSouth's failure to submit bills in a timely manner under its e*xisting* billing practices subjects BellSouth to SEEM penalties.

BellSouth has no way to know when a customer that chooses to receive paper bills actually receives the bills; thus, it is not reasonable to expect that payment due dates and collection activities could be based upon the date the customer

receives the bill. BellSouth offers electronic transmission of bills, which would allow the Joint Petitioners to receive bills sooner and allow more time for review to the extent electronic billing is utilized by the Joint Petitioners.

Q. AT PAGE 41, MR. RUSSELL ALLEGES THAT BELLSOUTH IS "CONSISTENTLY UNTIMELY IN POSTING OR DELIVERING ITS BILLS" AND THAT THERE ARE CIRCUMSTANCES WHEN BELLSOUTH'S INVOICES ARE "OFTEN INCOMPLETE AND SOMETIMES INCOMPREHENSIBLE." PLEASE COMMENT.

A. Regarding the unfound allegation of untimely bills, I will provide a brief, high-level explanation of BellSouth's bill generation processes. First, it is important to know that the established customer/service-specific bill date is most always the same date from month-to-month. This consistent bill date serves both BellSouth, from the efficient application of its billing systems and processes, as well as BellSouth's interconnection customers, through the ability to predict the arrival of BellSouth bills in order to maximize the use of CLEC resources.

The bill for the previous month's service is not generated on the bill date, however, because it is necessary to ensure that there is a complete accounting of all charges attributed to services provided prior to the bill date and that those charges have been posted—a period of 3 to 4 days. The bill is then generated on the 3rd or 4th business day following the bill date. For customers who choose electronic delivery, the bill is delivered on the day the bill is generated. For customers who choose to receive paper bills, the bill is mailed to those

customers on the "bill generation" date. Obviously, paper bills will take longer to reach the CLEC due to varying mail delivery times. Therefore, the difference between the billing cycle dates (the same dates each month) and the length of time it takes for the electronic or paper bill to arrive at the CLEC represents the amount of time that the CLEC has available to review and pay its bill. That period may be as many as 26 days in the case of an electronic bill generated in 3 days in a month with 31 calendar days. Similarly, the time available for CLECs to review and pay paper bills will vary from about 25 days in cases where the mail delivery time is only two days, to a shorter interval depending on actual mail delivery schedules. Clearly, CLECs currently receiving paper bills can increase the time available to review and pay bills simply by converting to electronic bill delivery.

Regarding the allegation of "incomplete and sometimes incomprehensible" bills, the Joint Petitioners do not support this allegation with examples or other factual evidence. If the CLECs would provide such evidence, BellSouth will be glad to investigate. Further, if the Joint Petitioners believe that they have insufficient time to review their bill or that BellSouth's bills are "incomprehensible," then they may take advantage of the help offered by BellSouth to assist the CLECs in understanding the bills from BellSouth. CLECs should also be prepared to dedicate sufficient resources to allow them to understand the bill and to timely pay it. Finally, it should be noted that to the extent BellSouth fails to remit timely bills within the Commission established interval, BellSouth pays the CLEC a SEEM penalty. Thus, the CLECs are being adequately compensated in those rare instances where

BellSouth's delivery of a bill may be delayed.

Item 100; Issue 7-6: To avoid suspension or termination, should CLEC be required to pay additional amounts that become past due after the Notice of Suspension or Termination for Nonpayment is sent? (Attachment 7, Section 1.7.2)

Q. MR. RUSSELL STATES AT PAGE 44 THAT ONLY THE PAST DUE AMOUNTS EXPRESSLY AND PLAINLY INDICATED ON THE NOTICE OF TERMINATION SHOULD BE REQUIRED TO BE PAID TO AVOID SUSPENSION OR TERMINATION. PLEASE COMMENT.

A. As an initial matter, it is important to recognize that payment of non-disputed charges is due by the Payment Due Date, which is clearly posted on every invoice/bill that the CLEC receives from BellSouth. In no way is appropriate for the due date reflected on a Notice of Suspension to serve as a "revised" Payment Due Date. Once an invoice/bill becomes past due, BellSouth begins taking action, such as sending Suspension Notices, in an effort to collect the amounts that the CLEC owes BellSouth.

Recently, BellSouth modified its collection processes so that treatment notices for past due amounts for Integrated Billing System ("IBS") billed services (non-designed, i.e., UNE-P, etc.), are handled the same as treatment notices for past due amounts for Carrier Access Billing System ("CABS") billed services (i.e., designed services). As such, if a notice is sent to a customer for undisputed past due balances, and during that treatment process, additional

undisputed charges become past due, BellSouth will require the customer to pay the amount on the notice, plus any additional undisputed amounts that have become past due in order to avoid suspension or termination of services.

Q. WOULD YOU EXPLAIN IN MORE DETAIL THE REQUIREMENT TO PAY ALL UNDISPUTED PAST DUE AMOUNTS FOLLOWING THE ISSUANCE OF A SUSPENSION NOTICE?

A. Yes. Attached as Exhibit KKB-2, I have illustrated three separate bills for a given CLEC in the month of March. The first bill, for $1000, has a bill date of March 1st with a Payment Due Date of April 1st. The second bill, for $500, has a bill date of March 2nd with a Payment Due Date of April 2nd. And, finally, the third bill, for $800, has a bill date of March 4th with a Payment Due Date of April 4th.

In the event that the CLEC did not pay the first bill by the April 1st due date, the CLEC would receive a collection notice, in the form of a Suspension Notice, indicating that the CLEC must pay the outstanding undisputed amount from the March 1st bill date within 15 days of the April 1st due date, or April 16th, in order to avoid suspension of ordering systems access.

If the CLEC subsequently did not pay the second and third bills, as well by the respective April 2nd and April 4th due dates, the CLEC would be required to pay all outstanding undisputed amounts, i.e., $1000 + $500 + $800 by the April 16th Suspension Notice Due Date notification in order to avoid

suspension of ordering systems access. The Joint Petitioner position that they should only be required to pay the past due amount for a specific account in order to avoid suspension, with no regard to any other outstanding past due balances, is nothing more than a self-serving attempt to extend the payment due date by at least 15 days.

Item 101; Issue 7-7: How many months of billing should be used to determine the maximum amount of the deposit? (Attachment 7, Section 1.8.3)

Q. AT PAGE 47 OF HIS TESTIMONY, MR. RUSSELL STATES THAT EXISTING CLECS SHOULD BE SUBJECT TO ONLY ONE AND ONE HALF MONTH'S BILLING AS A DEPOSIT THAT IS BASED UPON THE MOST RECENT SIX MONTH PERIOD. PLEASE ADDRESS THESE POINTS.

A. First, BellSouth would agree to use the Petitioners' most recent six-month period to establish the deposit amount. However, BellSouth does not agree with only one and one-half month's billing as a deposit. BellSouth's policy of requiring a deposit of no more than two months of a CLEC's estimated billings is consistent with industry standards. Most telecommunications companies require deposits from their customers to reduce potential losses if a customer ceases to pay its bills. BellSouth is no different. BellSouth is simply using sound business criteria for determining the credit risk of our customers to protect the Company from excessive bad debt. Two months is necessary because BellSouth must wait approximately 74 days before it can disconnect a

customer for non-payment. Having a deposit that covers two months of billing still leaves BellSouth at risk of covering 14 days of billing. In today's telecom world, reserving the right to require a deposit of two month's billing is necessary and demonstrates sound business rationale.

Q. MR. RUSSELL ALSO ASSERTS THAT DEPOSIT TERMS SHOULD TAKE INTO ACCOUNT THAT THE CLECs INVOLVED IN THIS ARBITRATION HAVE ESTABLISHED BUSINESS RELATIONSHIPS WITH BELLSOUTH WITH SIGNIFICANT BILLING HISTORY. DO YOU AGREE?

A. Yes, in determining whether any Joint Petitioner is required to pay a deposit, the agreed-upon deposit criteria terms does take into account the parties' billing history and other objective financial measurements. As such, BellSouth is at a loss as to why this is still an unresolved issue for the Joint Petitioners. In any event, the payment history for some of the Joint Petitioners is not as flattering as they suggest and, in any event, having an established business relationship does not necessarily limit or minimize BellSouth's risk in providing service to high-credit risk customers, as established by independent, objective credit evaluation tools as well as the customers' own data.

Q. DO THE JOINT PETITIONERS HAVE ESTABLISHED POLICIES REGARDING THE EQUIVALENT AMOUNT OF DEPOSIT THAT MAY BE REQUIRED?

A. Yes, in some instances. But the Joint Petitioner's deposit policies vary significantly from company to company and from state to state. The tariffed provisions range from no specific deposit amount required to those that specify a deposit amount not to exceed two and one-half months of a customer's estimated monthly billing.

Q. AT PAGE 49, MR. RUSSELL ARGUES THAT EXISTING CLECS SHOULD HAVE A LESSER DEPOSIT THAN NEW CLECS. DO YOU AGREE?

A. No. Mr. Russell's assertion overlooks the fact that a new CLEC may be in stronger financial shape than an existing CLEC and that the financial health of an existing CLEC can deteriorate. Further, Mr. Russell argues that a one and one-half month actual billing deposit proposal is reasonable given the Joint Petitioners' long, substantial business relationships with BellSouth. During the last 2 years, however, a very large number of BellSouth's customers have made timely payments up until the day they filed bankruptcy. Payment history is an indication of how a customer performed in the past, but not how it will perform in the future. A compilation of data including how the debtor pays other suppliers, management history, company history, financial information, and bond rating (indicates the company's ability to obtain financing) all help paint a picture of how a company will perform in the future. A long relationship does not guarantee a low credit risk. For example, WorldCom, Adelphia, Cable and Wireless and Global Crossing all had a long relationship with BellSouth, and with credible payment histories, yet filed for bankruptcy

with little notice.

Further, in the event a CLEC fails to pay (after maintaining a good payment history or otherwise), BellSouth is faced with a lengthy process before it can disconnect service. In addition to the period of time for which the CLEC did not pay, BellSouth may be required to provide an additional month (or more) of service while notice is being given and the disconnection process is taking place. This results in at least two months of outstanding debt, even if the CLEC made timely payments prior to that point. As stated previously, a deposit of two months billing is necessary and demonstrates sound business rationale.

That is the fundamental reason why BellSouth requires a deposit from carriers. That is, deposits are needed to recognize and mitigate the possibility that a CLEC may not be able to fulfill its financial obligations in the future, regardless of the intentions of the CLEC and regardless of outward appearances of financial health. BellSouth relies on CLEC payment history as well as both internal and independent, third-party financial risk assessment to ultimately establish, or modify, the level of deposit required from a CLEC. BellSouth's intention is not to collect excessive deposits, but rather to collect a deposit amount that is relative to the risk that the CLEC will not honor its payment obligations in the future. For BellSouth to do otherwise would not protect the interests of BellSouth's shareholders, employees or other business partners.

The two-month requirement proposed by BellSouth is very reasonable given

that BellSouth will refund, return or release any security deposit within 30 calendar days of determining that the customer's creditworthiness indicates a deposit is no longer necessary. At least one Joint Petitioner should be aware of this fact as BellSouth refunded over $800,000 of a deposit to one of the Joint Petitioners in 2003.

It is also worthwhile to note that the Florida PSC recently affirmed the right of BellSouth to collect deposits under the terms of its Agreement with IDS Telecom LLC[5]. Specifically, the Florida PSC ruled that BellSouth is entitled to request a deposit from IDS in accordance with the language of Attachment 7 of its Agreement. Attachment 7 provides that the deposit amount not exceed two months' estimated billing.

Q. SHOULD THE TIMELINESS OF PAYMENTS BY THE CLEC BE THE PREDOMINANT CRITERIA FOR SETTING THE AMOUNT OF DEPOSIT THAT BELLSOUTH REQUIRES?

A. No. While the payment history of a CLEC is an important factor in the determination of the required deposit, other independent financial indicators play an equally important role and, in some cases, may outweigh, even a "good" payment history by the CLEC. The Joint Petitioners obviously agree with BellSouth on this point as the parties have reached agreement on

[5] See Florida Public Service Commission Order No. PSC-04-0824-PAA-TP, Docket No. 040488-TP, issued August 23, 2004 in re: Complaint of BellSouth Telecommunications, Inc. against IDS Tel(e)com LLC to enforce interconnection agreement deposit requirements.

objective and specific deposit criteria.

Q. PLEASE EXPLAIN YOUR ANSWER.

A. There are numerous examples in recent years of perceived financially healthy companies suddenly in serious financial trouble. A high-profile example is Enron, but also includes many telecommunications companies such as Adelphia, MCI, Global Crossing and others. Their financial difficulties may be due to the economy, industry changes, faulty company strategy or accounting irregularities. The point being that nearly all of these entities were perceived as financially healthy and, in most respects, were current in their payment of financial obligations. It was only after the existence of financial problems was released to the media that the public, and creditors, became aware of the possibility that the firm in jeopardy may not be able to fulfill its payment obligations.

That is why BellSouth relies on both internal and independent, third-party financial risk assessment tools, as well as a CLEC's payment history, to ultimately establish, or modify, the level of deposit required from a CLEC. Again, BellSouth's intention is not to collect excessive deposits but to collect a deposit amount that will minimize BellSouth's risk in providing service to customers.

Item 102; Issue 7-8: Should the amount of the deposit BellSouth requires from the CLEC be reduced by past due amounts owed by BellSouth to the CLEC?

(Attachment 7, Section 1.8.3.1)

Q. AT PAGE 43 OF HIS TESTIMONY, MR. FALVEY STATES THAT THE JOINT PETITIONERS HAVE CONCEDED TO GIVE UP THE RIGHT TO RECIPROCAL DEPOSITS. HOWEVER, IF THEY DO NOT COLLECT DEPOSITS, PETITIONERS SAY THEY SHOULD "AT LEAST HAVE THE ABILITY TO REDUCE THE AMOUNT OF SECURITY DUE TO BELLSOUTH BY THE AMOUNTS BELLSOUTH OWES CLEC(s) THAT HAVE AGED THIRTY (30) DAYS OR MORE." PLEASE RESPOND.

A. Mr. Falvey's proposal is administratively unmanageable and overly simplistic. Further, the Joint Petitioners' proposal fails to exclude amounts that are subject to a valid billing dispute. The Joint Petitioners' provide no explanation as to how it could be accomplished. Security deposits are established due to a risk of non-payment, not a risk of slow-payment. Deposit amounts relate directly to the risk of default. BellSouth has never defaulted on its payments for undisputed amounts. Because BellSouth is not buying UNEs and other services from CLECs, there is no reciprocal need for BellSouth to pay a deposit.

The problem the Petitioners seek to resolve is not a default issue for which a deposit would be required; it is a slow payment issue. Slow payment should be treated through suspension/termination of service or the application of late payment charges as noted above.

As a general matter, a CLEC's deposit should not be reduced by past due

amounts owed by BellSouth to the CLEC. The CLEC's remedy for addressing non-disputed late payment by BellSouth should be suspension/termination of service or assessment of interest/late payment charges similar to BellSouth's remedy for addressing late payment by the CLEC. KMC has already pursued one of these options with BellSouth – they can bill BellSouth for late payment charges today.

BellSouth is within its rights to protect itself against uncollectible debts on a non-discriminatory basis. BellSouth *must* protect against unnecessary risk while providing service to all requesting CLEC providers. The Joint Petitioners are not faced with the same obligation.

Notwithstanding the above, BellSouth is willing to agree that, in the event that a deposit or additional deposit is requested of the Joint Petitioners, such deposit request shall be reduced by an amount equal to the undisputed past due amount, if any, that BellSouth owes the Joint Petitioners for reciprocal compensation payments pursuant to Attachment 3 of the Interconnection Agreement at the time of the request by BellSouth for a deposit. However, when BellSouth pays the Joint Petitioners the undisputed past due amount, BellSouth would be unsecured to the extent of that amount unless there is an obligation on the Joint Petitioner's part to provide the additional security necessary to establish the full amount of the deposit that BellSouth originally required. Consequently, any such obligation to offset undisputed past due amounts owed by BellSouth against a deposit request would only be reasonable if BellSouth would be secured in the full amount upon payment by

BellSouth of any undisputed past due amount. However, as a practical matter, BellSouth believes that such an arrangement would be confusing and cumbersome from both accounting and operational perspectives.

Q. MR FALVEY FURTHER STATES AT PAGE 43, THAT BELLSOUTH DOES NOT HAVE A GOOD PAYMENT RECORD; THUS, REDUCED DEPOSIT AMOUNTS IS A REASONABLE MEANS TO PROTECT THE PETITIONERS' FINANCIAL INTERESTS. PLEASE RESPOND.

A. In its discovery response, BellSouth provided an analysis of the payment of bills for a recent 6-month period. The analysis demonstrates that BellSouth has paid 100% of the invoices received from Xspedius Communications and Xspedius Corporation within 30 days of receipt of these invoices. In the same 6-month period, BellSouth has paid 80% of the invoices received from KMC within 30 days of receipt of these invoices. There have been numerous delays by KMC in providing their invoices to BellSouth causing delays in payments and additional work effort to verify and pay these invoices. Both KMC and BellSouth have been working together to resolve these delays and progress has been made on the receipt and payment of current and future invoices. BellSouth has not received an appreciable number of invoices from either NuVox or NewSouth during the period since the advent of bill and keep clauses in their interconnection agreements with BellSouth.

Item 104; Issue 7-10: 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?

(Attachment 7, Section 1.8.7)

Q. WITH REGARD TO POSTING A BOND, MR. RUSSELL STATES AT PAGE 52 THAT "...BELLSOUTH'S PROPOSED LANGUAGE WOULD EFFECTIVELY ALLOW BELLSOUTH TO OVERRIDE THE DISPUTE RESOLUTION PROVISIONS OF THE AGREEMENT BY TERMINATING SERVICE TO A CLEC IF CLEC DOES NOT POST A PAYMENT BOND..." PLEASE RESPOND.

A. BellSouth has a responsibility to ensure that risk of nonpayment is minimized and posting a bond or requiring the Joint Petitioners to pay into an escrow account serves to minimize BellSouth's risk. In the past two years there have been instances in which BellSouth has asked a state commission to require a CLEC to pay a deposit where the CLEC has not done so. In some of these instances, while BellSouth was waiting for state commission action, the CLEC filed for bankruptcy. The filing of bankruptcy stayed BellSouth's efforts to collect a deposit in such commission proceedings. In order for BellSouth to minimize the risk of financial loss, BellSouth requests this Commission require a CLEC to post a bond while a deposit dispute is pending.

BellSouth shall not terminate service during the pendency of such a proceeding before this Commission provided that the Joint Petitioners post a payment bond for half of the amount of the requested deposit during the pendency of the proceeding. It would not be reasonable to expect BellSouth to remain completely, or inadequately, unsecured during the pendency of a proceeding --

the purpose of which is to resolve a dispute regarding the need for a deposit or additional deposit. In fact, to allow such a situation would simply encourage CLECs that are on the verge of filing bankruptcy to file a complaint in order to delay the payment of a deposit while they ready themselves for bankruptcy filing. A requirement that the CLEC post a payment bond for half of the requested deposit amount takes into consideration the disagreement between the parties with respect to the need for or the amount of a deposit request but also protects BellSouth during the resolution of any dispute over the amount of the deposit.

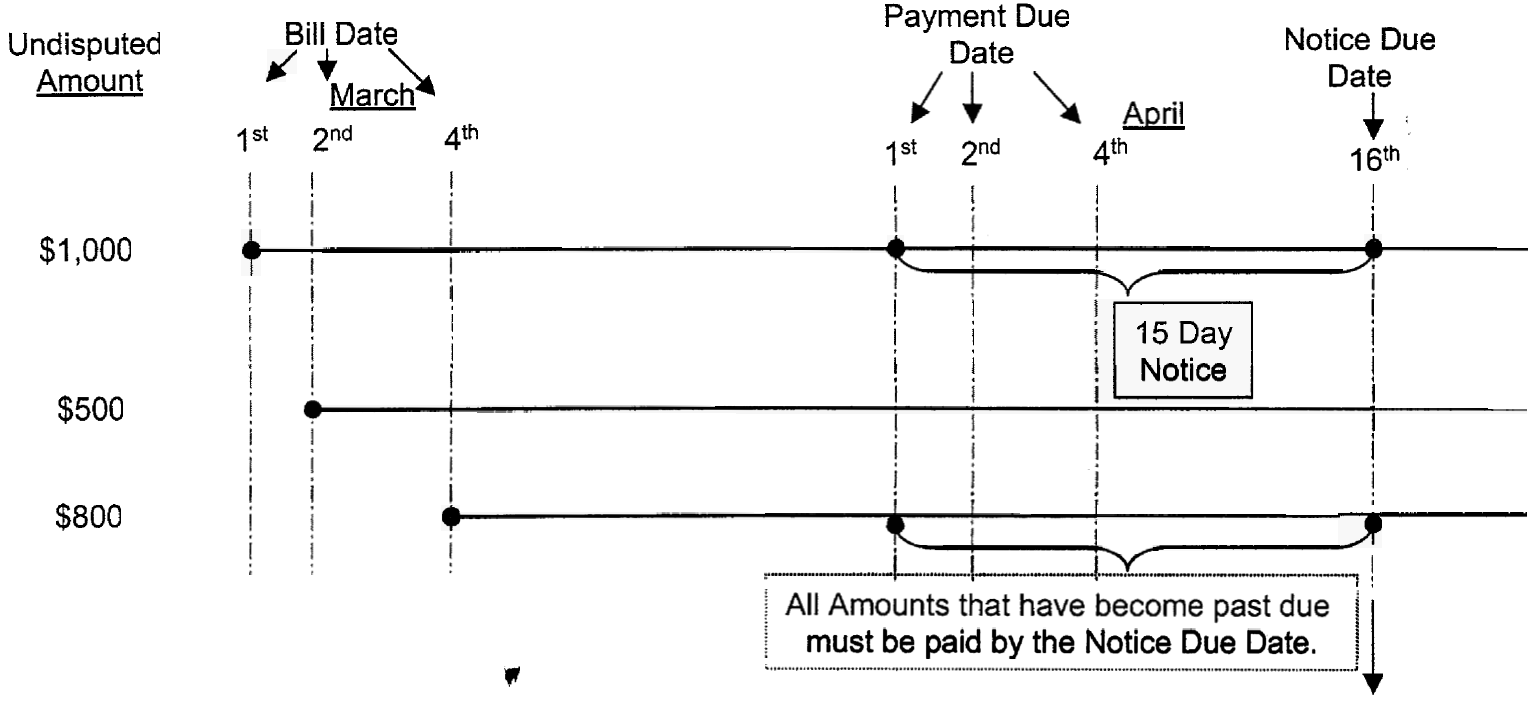
Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Exhibit KKB-2

Issue 100

Example of Timeline of Past Due Notices & add'l amounts that must be paid to avoid Suspension/ Disconnection



In order to avoid suspension of ordering systems access on April 16th, the CLEC must pay all undisputed amounts that have become past due as of the Notice Due Date (April 16th). Thus, based on the example above, the CLEC must pay the $1,000, $500 and $800 amounts by April 16th in order to avoid suspension.