BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.	DOCKET NO. 040130-TP ORDER NO. PSC-05-0325-PHO-TP ISSUED: March 22, 2005

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 7, 2005, in Tallahassee, Florida, before Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer.

APPEARANCES:

NORMAN H. HORTON, Jr., Esquire, Messer, Caparello & Self, P.A., Post Office Box 1876, Tallahassee, Florida 32302-1876; and
JOHN J. HEITMANN, Esquire, STEPHANIE JOYCE, Esquire, and GARRET R. HARGRAVE, Esquire, Kelley Drye & Warren LLP, 1200 19th Street, NW, Suite 500, Washington, DC 20036
On behalf of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC. ("JOINT PETITITONERS").

NANCY B. WHITE, Esquire, c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; and
R. DOUGLAS LACKEY, Esquire, JAMES MEZA III, Esquire, and ROBERT CULPEPPER, Esquire, Suite 4300, BellSouth Center, 675 W. Peachtree Street, NE, Atlanta, Georgia 30375
On behalf of BellSouth Telecommunications, Inc. ("BST").

JEREMY L. SUSAC, Esquire; and KIRA SCOTT, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission ("STAFF").

PREHEARING ORDER

I CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On February 11, 2004, the Joint Petitioners[1] filed their Joint Petition for Arbitration with BellSouth Telecommunications, Inc. (BellSouth) pursuant to the Telecommunications Act of 1996. On March 8, 2004, BellSouth filed its Answer to the Joint Petitioners' Petition. On July 20, 2004, both parties filed a Joint Motion to Hold Proceeding in Abeyance for 90 days. As a result, Order No. PSC-04-0807-PCO-TP, issued on August 19, 2004, revised the procedural schedule as set forth in Order No. PSC-04-0488-PCO-TP and required the parties to file an updated issues matrix on October 15, 2004.

An issue identification was held on November 15, 2004, at which the parties agreed to all supplemental issues, with the exception of issues 113(b) and 114(b). Parties filed briefs in support of their positions regarding these two issues, and on January 4, 2005, Order No. PSC-05-0018-PCO-TP was issued granting the Joint Petitioners' request for inclusion of issue 113(b) and 114(b). Pursuant to Order No. PSC-04-0807-PCO-TP, this matter is currently scheduled for an administrative hearing, March 22-25, 2005.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

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[1] NewSouth Communications Corp. (NewSouth); NuVox Communications, Inc. (NuVox); KMC Telecom V, Inc. (KMC V) and KMC Telecom III LLC (KMC III)(collectively "KMC"); and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC (Xspedius Switched) and Xspedius Management Co. of Jacksonville, LLC (Xspedius Management) (collectively "Xspedius");(collectively the "Joint Petitioners" or "CLECs")

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

Witness	Proffered By	Issues #
DIRECT & REBUTTAL		
Marva Brown Johnson*	JT. PETITIONERS	2, 23, 26, 36A, 36B, 65, 108, 109A, 109B, 110
Jerry Willis*	JT. PETITIONERS	37, 38
Hamilton E. Russell, III*	JT. PETITIONERS	4, 5, 6, 7, 12, 51B, 51C, 97, 100, 101, 103, 104, 112A, 112B, 114A, 114B
James C. Falvey*	JT. PETITIONERS	9, 46, 63, 86B, 88, 94A, 94B, 94C, 96A, 96B, 102, 111, 113A, 113B
Scot Ferguson	BST	86b, 103
Eric Fogle	BST	36, 37, 38, 46
Kathy Blake	BST	2, 4-7, 9, 12, 26, 51, 63**, 65, 88, 97, 100-102, 104, 108-114
Carlos Morillo (Adopted by Mr. Ferguson and Ms. Blake)	BST	
Eddie Owens **	BST	94, 96**

***Joint Petitioners:** Pursuant to the Commission's May 12, 2004 Order Establishing Procedure, the Joint Petitioners have identified one witness as the main witness for each issue. The main witness has presented testimony on the identified issues and a company witness for each of the other Joint Petitioners arbitrating that issue has adopted that testimony to the extent that it is common and not company specific.

Company specific testimony is included in certain instances in the testimony of the main witness. In one instance, with respect to Issue 97, company specific testimony is offered by a witness who is not the main witness. Although Mr.

Russell is the main witness for Issue 97, Mr. Falvey offers additional testimony that is specific to Xspedius. Joint Petitioners note that a section of the Mr. Russell's Direct Testimony (Russell at 42:1-9) on this issue reflects circumstances that are specific to Xspedius. Therefore, this section of Mr. Russell's Direct Testimony should be incorporated into Mr. Falvey's Direct Testimony (Joint Petitioners will file an errata to effectuate this correction), and any questions regarding Xspedius' company-specific testimony which relates to the subject matter of Issue 97 should be directed to Mr. Falvey

With the exception of Issue 63 (which KMC is not arbitrating), each of the Joint Petitioners is arbitrating the remaining issues.

Issues 63, 94 and 96 have been conditionally settled. Joint Petitioners expect that settlement of these issues will be finalized prior to the hearing.

**__BellSouth:__ As to these, it should be noted that these issues have been conditionally settled with the Joint Petitioners and that BellSouth anticipates finalization of the settlement in the near future. BellSouth announced this settlement at the Georgia Public Service Commission arbitration hearing and neither party crossed on these issues at that proceeding. Consequently, BellSouth does not anticipate calling Mr. Owens as a witness (or Ms. Blake on Issue 63) at the hearing but nevertheless identifies him herein in the unanticipated event that the Joint Petitioners claim that no settlement has been reached.

VII. BASIC POSITIONS

JT. PETITIONERS: Joint Petitioners and BellSouth have diligently negotiated to arrive at a new interconnection agreement between the parties. Although scores of issues have been resolved since the Joint Petitioners filed a Petition for Arbitration seeking Commission resolution of outstanding issues, approximately 30 issues remain unresolved and are in need of Commission resolution. The Joint Petitioners' seek contract provisions that preserve rights afforded by applicable law (e.g., Issues 2, 9, 12, 26, 36, 37, 38, 51, 65, 88, 94, 96, 108, 111, 113, 114). To the extent there are no directly controlling provisions of applicable law, Joint Petitioners propose reasonable and fair provisions designed in some cases to eliminate lopsided, unfair provisions proposed by BellSouth (e.g., Issues 4, 5, 6, 7, 23, 65, 97, 100, 101, 102, 103, 104) and, in other cases, to eliminate the recurrence of disputes that have plagued CLEC relationships with BellSouth in the past (e.g., Issues 12, 51). Joint Petitioners also seek to preserve due process afforded by the dispute resolution provisions of the Agreement (and by applicable law) and, for that reasons and others, Joint Petitioners reject proposals wherein BellSouth seeks the ability to unilaterally and coercively resolve known disputes in its favor by suspending access to ordering and provisioning systems and

terminating services to Joint Petitioners (and their entire Florida customer base)(e.g., Issues 86, 103). Where the parties are unable to resolve disputes amicably, this Commission, the FCC, or a court of competent jurisdiction must decide such disputes.

The language proposed by Joint Petitioners is reasonable, consistent with applicable statutes and rules and decisions.

In each instance, this Commission has jurisdiction to approve the contract language proposed by Joint Petitioners and to address the issues related to these proposals.

BST: Each of the individually numbered issues in this docket represent a specific dispute between BellSouth and the Joint Petitioners as to what should be included in the Interconnection Agreement between the parties. Some of these issues involve matters that are not properly within the scope of the Telecommunications Act of 1996 or the jurisdiction of this Commission and should, therefore, not be part of an Arbitrated Agreement. As to all other issues, BellSouth's positions are the more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain each of BellSouth's positions.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1 **This issue has been resolved.**

ISSUE 2 **How should "End User" be defined?**

POSITIONS:

JT. PETITIONERS: "End user" should be defined as the "customer of a Party." This is a simple definition and is a natural definition unlike the BellSouth definition which invites ambiguity and confusion and recognizes that the Petitioners have a variety of telecommunications services customers. (Main Witness: Johnson)

BST: The Parties have not discussed the definition for "End User" other than in the context of high-capacity EELs. Since the issue as stated by the CLECs and raised

in the General Terms and Conditions of the Agreement has never been discussed by the Parties, the issue is not appropriate for arbitration. Nevertheless, the term End User should be defined as it is customarily used in the industry; that is, the ultimate user of the telecommunications service. And, to address the Joint Petitioners' concerns while at the same time minimizing the risk that the definition of end user could be interpreted in such a way that allows the Joint Petitioners to use UNEs in a prohibited manner, BellSouth has offered the following definition to the Joint Petitioners: End User means the retail customer of a Telecommunications Service, excluding ISPs/ESPs, and does not include Telecommunication carriers such as CLECs, ICOs and IXCs.

STAFF: Staff has no position at this time.

ISSUE 3 **This issue has been resolved.**

ISSUE 4 **What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?**

POSITIONS:

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

BST: The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed.

STAFF: Staff has no position at this time.

ISSUE 5 **If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?**

POSITIONS:

JT. PETITIONERS: Petitioners should not be required to indemnify BellSouth in any suit based on BellSouth's failure to perform its obligations under this contract or to abide by Applicable Law. To the extent that a CLEC does not, or is unable to,

include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable in the particular circumstances, that CLEC should not be required to indemnify and reimburse BellSouth for the portion of any loss that BellSouth might somehow incur that would have been limited as to the CLEC (but not as to non-contracting parties such as BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability terms that BellSouth was successful in including in its tariffs at the time of such loss. Petitioners cannot limit BellSouth's liability in contractual arrangements wherein BellSouth is not a party and there is no legal obligation or compelling reason for them to attempt to do so. BellSouth's failure to perform as required is its own responsibility and BellSouth should bear any and all risks associated with such failures. (Main Witness: Russell)

BST: If a CLEC elects not to limit its liability to its end users/customers in accordance with industry norms, the CLEC should bear the risk of loss arising from that business decision. The purpose of this provision is to put BellSouth in the same position it would be in if the end user were a BellSouth customer rather than a Joint Petitioner customer. This is because BellSouth is unable to limit its liability to the Joint Petitioner's end users as it would for its own customer and therefore needs the level of protection from the Joint Petitioners in the event the Joint Petitioners choose to deviate from standard industry practices.

STAFF: Staff has no position at this time.

ISSUE 6 **How should indirect, incidental or consequential damages be defined for purposes of the Agreement?**

POSITIONS:

JT. PETITIONERS: The limitation of liability terms in the Agreement should not preclude damages that CLECs' End Users incur as a foreseeable result of BellSouth's performance of its obligations, including its provisioning of UNEs and other services. Damages to End Users that result directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement that were not otherwise caused by or are the result of BellSouth's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage should be considered direct and are not indirect, incidental or consequential. BellSouth should be responsible for reasonably foreseeable damages that are directly and proximately caused by BellSouth. This Agreement is a contract for wholesale services and, therefore, liability to customers must be contemplated and expressly included in the contract language. In our view, these

types of damages are not incidental, indirect or consequential. (Main Witness: Russell)

BST: The types of damages that constitute and who is entitled to recover (like the Joint Petitioners' end users) indirect, incidental or consequential damages is a matter of state law and should not be dictated by a party to an agreement. The Joint Petitioners concede that their proposed language is of no force and effect. Based on this admission, there is no reason to include their proposed language in the agreement.

STAFF: Staff has no position at this time.

ISSUE 7 **What should the indemnification obligations of the parties be under this Agreement?**

POSITIONS:

JT. PETITIONERS: The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. Additionally, customary provisions should be included to specify that the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss or damage to the extent reasonably arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the providing Party's negligence, gross negligence or willful misconduct. (Main Witness: Russell)

BST: The Party providing services should be indemnified, defended and held harmless by the Party receiving services against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement. This indemnification obligation shall not apply the extent any claims, loss, or damage is caused by the providing Party's gross negligence or willful misconduct.

STAFF: Staff has no position at this time.

ISSUE 8 **This issue has been resolved.**

ISSUE 9 **Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a Court of law for resolution first?**

POSITIONS:

JT. PETITIONERS: No legitimate dispute resolution venue should be foreclosed to the Parties and either Party should be able to petition the Commission, the FCC, or a court of competent jurisdiction for resolution of a dispute. (Main Witness: Falvey)

BST: This Commission or the FCC should resolve disputes between the parties for matters that are within the Commission's or the FCC's expertise. For matters that lie outside such expertise, the parties should be able to bring disputes to a court of law.

STAFF: Staff has no position at this time.

ISSUE 10 **This issue has been resolved.**

ISSUE 11 **This issue has been resolved.**

ISSUE 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?**

POSITIONS:

JT. PETITIONERS: Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Moreover, silence with respect to any issue, no matter how discrete, should not construed to be such a limitation or exception. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past. (Main Witness: Russell)

BST: 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 where 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 to that law, then the parties should attempt to resolve the dispute 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 the Commission finds that at 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.

STAFF: Staff has no position at this time.

ISSUE 13 **This issue has been resolved.**

ISSUE 14 **This issue has been resolved.**

ISSUE 15 **This issue has been resolved.**

ISSUE 16 **This issue has been resolved.**

ISSUE 17 **This issue has been resolved.**

ISSUE 18 **This issue has been resolved.**

ISSUE 19 **This issue has been resolved.**

ISSUE 20 **This issue has been resolved.**

ISSUE 21 **This issue has been resolved.**

ISSUE 22A **This issue has been resolved.**

ISSUE 22B **This issue has been resolved.**

ISSUE 23 **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?**

POSITIONS:

JT. PETITIONERS: In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, including any transition plan set forth therein, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other pursuant to Attachment 2. There should be no service order, labor, disconnection or other nonrecurring charges associated with the transition of section 251 UNEs to other services. (Main Witness: Johnson)

This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

BST: ****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.****

At the conclusion of the Transition Period, in the absence of an effective FCC ruling that Mass Market Switching, DS1, or equivalent, and higher capacity loops, including dark fiber loops (collectively "Enterprise Market Loops"), and DS1, or equivalent, and higher capacity dedicated transport, including dark fiber transport (collectively "High Capacity Transport"), or any subset thereof (individually or collectively referred to herein as the "Eliminated Elements") are subject to unbundling, the CLEC must transition Eliminated Elements to either Resale, tariffed services, or services offered pursuant to a separate agreement negotiated

between the Parties (collectively "Comparable Services") or must disconnect such Eliminated Elements, as set forth below.

Eliminated Elements including Mass Market Switching Function ("Switching Eliminated Elements"). In the event that the CLEC has not entered into a separate agreement for the provision of Mass Market Switching or services that include Mass Market Switching, the CLEC will submit orders to either disconnect Switching Eliminated Elements or convert such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period. If the CLEC submits orders to transition such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period, applicable recurring and nonrecurring charges shall apply as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of the Agreement. If the CLEC fails to submit orders within thirty (30) days of the last day of the Transition Period, BellSouth shall transition such Switching Eliminated Elements to Resale, and the CLEC shall pay the applicable nonrecurring and recurring charges as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of this Agreement. In such case, the CLEC shall reimburse BellSouth for labor incurred in identifying the lines that must be converted and processing such conversions. If no equivalent Resale service exists, then BellSouth may disconnect such Switching Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In all cases, until Switching Eliminated Elements have been converted to Comparable Services or disconnected, the applicable recurring and nonrecurring rates for Switching Eliminated Elements during the Transition Period shall apply as set forth in the Agreement. Applicable nonrecurring disconnect charges may apply for disconnection of service or conversion to Comparable Services.

Other Eliminated Elements. Upon the end of the Transition Period, the CLEC must transition the Eliminated Elements other than Switching Eliminated Elements ("Other Eliminated Elements") to Comparable Services. Unless the Parties agree otherwise, Other Eliminated Elements shall be handled as follows.

The CLEC will identify and submit orders to either disconnect Other Eliminated Elements or transition them to Comparable Services within thirty (30) days of the last day of the Transition Period. Rates, terms and conditions for Comparable Services shall apply per the applicable tariff for such Comparable Services as of the date the order is completed. Where the CLEC requests to transition a minimum of fifteen (15) circuits per state, the CLEC may submit orders via a spreadsheet process and such orders will be project managed. In all other cases, the CLEC must submit such orders pursuant to the local service request/access service request (LSR/ASR) process, dependent on the Comparable Service elected. For such transitions, the non-recurring and recurring charges shall be those set forth in BellSouth's FCC#1 tariff, or as otherwise agreed in a separately

negotiated agreement. Until such time as the Other Eliminated Elements are transitioned to such Comparable Services, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in the Agreement.

If the CLEC fails to identify and submit orders for any Other Eliminated Elements within thirty (30) days of the last day of the Transition Period, BellSouth may transition such Other Eliminated Elements to Comparable Services. The rates, terms and conditions for such Comparable Services shall apply as of the date following the end of the Transition Period. If no Comparable Services exist, then BellSouth may disconnect such Other Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In such case the CLEC shall reimburse BellSouth for labor incurred in identifying such Other Eliminated Elements and processing such orders and the CLEC shall pay the applicable disconnect charges set forth in this Agreement. Until such time as the Other Eliminated Elements are disconnected pursuant to this Agreement, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement.

In the event that the Interim Rules are vacated by a court of competent jurisdiction, the CLEC should immediately transition Mass Market Switching, Enterprise Market Loops and High Capacity Transport as set forth above, applied from the effective date of such vacatur, without regard to the Interim Period or Transition Period.

In the event that any Network Element, other than those addressed above, is no longer required to be offered by BellSouth pursuant to Section 251 of the Act, the CLEC shall immediately transition such elements as set forth above, applied from the effective date of the order eliminating such obligation.

STAFF: Staff has no position at this time.

ISSUE 24 **This issue has been resolved.**

ISSUE 25 **This issue has been resolved.**

ISSUE 26 **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?**

POSITIONS:

JT. PETITIONERS: Yes, BellSouth should be required to "commingle" UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to section 271 of the Act. Elements provided under section 271 are provided pursuant to a method other than unbundling under section 251(c)(3). Therefore, the FCC's rules unmistakably require BellSouth to allow the Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to section 271. (Main Witness: Johnson)

BST: No, consistent with the FCC's errata to the Triennial Review Order, there is no requirement to commingle UNEs or combinations with services, network elements or other offerings made pursuant to Section 271 of the Act.

STAFF: Staff has no position at this time.

ISSUE 27 **This issue has been resolved.**

ISSUE 28 **This issue has been resolved.**

ISSUE 29 **This issue has been resolved.**

ISSUE 30 **This issue has been resolved.**

ISSUE 31 **This issue has been resolved.**

ISSUE 32 **This issue has been resolved.**

ISSUE 33 **This issue has been resolved.**

ISSUE 34 **This issue has been resolved.**

ISSUE 35A **This issue has been resolved.**

ISSUE 35B **This issue has been resolved.**

ISSUE 36A **How should line conditioning be defined in the Agreement?**

POSITIONS:

JT. PETITIONERS: Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). (Main Witness: Johnson)

BST: As set forth in paragraph 643 of the TRO, BellSouth has an obligation to provide the Joint Petitioners with line conditioning in a nondiscriminatory fashion. Thus, BellSouth is obligated to provide and has agreed to provide the Joint Petitioners with line conditioning pursuant to the same rates, terms, and conditions that it provides to its own customers. Accordingly, the Interconnection Agreement should provide that BellSouth will perform line conditioning functions as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a routine network modification that BellSouth regularly undertakes to provide xDSL to its own customers.

STAFF: Staff has no position at this time.

ISSUE 36B **What should BellSouth's obligations be with respect to line conditioning?**

POSITIONS:

JT. PETITIONERS: BellSouth should perform Line Conditioning in accordance with FCC Rule 47 CFR 51.319 (a)(1)(iii). (Main Witness: Johnson)

BST: As set forth in paragraph 643 of the TRO, BellSouth has an obligation to provide the Joint Petitioners with line conditioning in a nondiscriminatory fashion. Thus, BellSouth is obligated to provide and has agreed to provide the Joint Petitioners with line conditioning pursuant to the same rates, terms, and conditions that it provides to its own customers. Accordingly, the Interconnection Agreement should provide that BellSouth will perform line conditioning functions as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a routine network modification that BellSouth regularly undertakes to provide xDSL to its own customers.

STAFF: Staff has no position at this time

ISSUE 37 **Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?**

POSITIONS:

JT. PETITIONERS: No. There should not be any specific provisions limiting the availability of TELRIC-rated Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in length. Rule 51.319(a)(iii) states that load coils are a type of device that ILECs should remove from a loop at a CLEC's request. It does not state that load coils on loops over 18,000 feet in length are exempt from removal. The FCC's *Line Sharing Order* held that ILECs are required to condition loops, ***regardless of the loop length***, to allow requesting carriers to offer advanced services and such line conditioning must be done at Commission-approved TELRIC-compliant rates. (Main Witness: Willis)

BST: Yes, current industry technical standards require the placement of load coils on copper loops greater than 18,000 feet in length to support voice service and BellSouth does not remove them for BellSouth retail end users on copper loops of over 18,000 feet in length; therefore, such a modification would not constitute a routine network modification and is not required by the FCC.

STAFF: Staff has no position at this time.

ISSUE 38 **Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?**

POSITIONS:

JT. PETITIONERS: Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap should be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification should be performed at no additional charge to the CLEC. Line Conditioning orders that require the removal of other bridged tap should be performed at the Commission-approved TELRIC-compliant rates set forth in Exhibit A of Attachment 2 of the Agreement. (Main Witness: Willis)

BST: For any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of bridged tap that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet will be performed at the rates set forth in Exhibit A of this Attachment. CLEC may request removal of any unnecessary and non-excessive bridged tap

(bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties. BellSouth is only required to perform line conditioning that it performs for its own xDSL customers and is not required to create a superior network for CLECs. The situations outlined above where BellSouth will remove bride taps for the Joint Petitioners was agreed to with CLECs in the Shared Loop Collaborative and thus BellSouth has offered these conditions to the Joint Petitioners.

STAFF: Staff has no position at this time.

ISSUE 39A **This issue has been resolved.**

ISSUE 39B **This issue has been resolved.**

ISSUE 40 **This issue has been resolved.**

ISSUE 41A **This issue has been resolved.**

ISSUE 41B **This issue has been resolved.**

ISSUE 41C **This issue has been resolved.**

ISSUE 41D **This issue has been resolved.**

ISSUE 41E **This issue has been resolved.**

ISSUE 42 **This issue has been resolved.**

ISSUE 43 **This issue has been resolved.**

ISSUE 44 **This issue has been resolved.**

ISSUE 45 **This issue has been resolved.**

ISSUE 46 **Should the CLEC be permitted to incorporate the Fast Access language from the FDN and/or Supra interconnection agreements, respectively docket numbers 010098-TP and 001305-TP, for the term of this Agreement?**

POSITIONS:

JT. PETITIONERS: Yes. Joint Petitioners should not be forced to re-litigate the same issue before the Commission. (Main Witness: Falvey)

BST: This issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. Moreover, pursuant to the FCC's recent "all or nothing rule" regarding Section 251(i) and the Interim Rules, the CLECs cannot adopt any agreement that requires BellSouth to provision FastAccess over UNE-P or UNE-L.

Further, BellSouth should not be required to provide DSL transport or DSL services over UNEs to CLEC and its End Users as BellSouth's DSLAMs are not subject to unbundling. The FCC specifically stated in paragraph 288 of the TRO that they would "not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information."

If BellSouth elects to offer these services to CLEC, they should be pursuant to a separately negotiated commercial agreement between the parties or a tariff, and should not be subject to arbitration in this proceeding as they are not services required pursuant to Section 251 of the Act.

STAFF: Staff has no position at this time.

ISSUE 47 **This issue has been resolved.**

ISSUE 48 **This issue has been resolved.**

ISSUE 49 **This issue has been resolved.**

ISSUE 50 **This issue has been resolved.**

ISSUE 51A **This issue has been resolved.**

ISSUE 51B **Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?**

POSITIONS:

JT. PETITIONERS: In order to invoke its limited right to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria, BellSouth should send a Notice of Audit to the CLECs, identifying the particular circuits for which BellSouth alleges non-compliance and demonstrating the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to the CLECs with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit. (Main Witness: Russell)

BST: This issue is only appropriate for arbitration to the extent that high capacity EELs are available to CLECs and the associated service eligibility criteria apply. In the event that high capacity loops and transport are not available as UNEs pursuant to Section 251, this issue is not appropriate for arbitration.

(B) BellSouth will provide notice to CLECs stating the cause upon which BellSouth rests its allegations of noncompliance with the service eligibility criteria at least 30 calendar days prior to the date of the audit. The TRO does not obligate BellSouth to identify circuits or provide supporting documentation that support the cause for the audit or limit its audit right to only those circuits that are identified in a notice.

STAFF: Staff has no position at this time.

ISSUE 51C **Who should conduct the audit and how should the audit be performed?**

POSITIONS:

JT. PETITIONERS: The audit should be conducted by a third party independent auditor mutually agreed upon by the Parties. (Main Witness: Russell)

BST: This issue is only appropriate for arbitration to the extent that high capacity EELs are available to CLECs and the associated service eligibility criteria apply. In the event that high capacity loops and transport are not available as UNEs pursuant to Section 251, this issue is not appropriate for arbitration.

(C) The audit shall be conducted by an independent auditor, and the auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA). The auditor will perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria. The independent auditor's report will conclude whether CLEC has complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment. The TRO does not require mutual agreement on the selection of an auditor and any concerns the Joint Petitioners may have about the independence of an auditor should be alleviated by BellSouth's agreement that the audit will be performed in accordance with AICPA standards.

STAFF: Staff has no position at this time.

ISSUE 52 **This issue has been resolved.**

ISSUE 53 **This issue has been resolved.**

ISSUE 54 **This issue has been resolved.**

ISSUE 55 **This issue has been resolved.**

ISSUE 56 **This issue has been resolved.**

ISSUE 57A **This issue has been resolved.**

ISSUE 57B **This issue has been resolved.**

ISSUE 58 **This issue has been resolved.**

ISSUE 59 **This issue has been resolved.**

ISSUE 60 **This issue has been resolved.**

ISSUE 61A **This issue has been resolved.**

ISSUE 61B **This issue has been resolved.**

ISSUE 61C(1) **This issue has been resolved.**

ISSUE 61C(2) **This issue has been resolved.**

ISSUE 62 **This issue has been resolved.**

ISSUE 63 **Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?**

POSITIONS:

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

Issue 63 has been conditionally settled.

BST: *****The Parties have conditionally settled this issue***** In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth.

STAFF: Staff has no position at this time.

ISSUE 64 **This issue has been resolved.**

ISSUE 65 **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?**

POSITIONS:

JT. PETITIONERS: No, BellSouth should not be permitted to impose upon Joint Petitioners a Transit Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC-based additive charge which exploits BellSouth's market power and is discriminatory. (Main Witness: Johnson)

BST: Yes, BellSouth is not obligated to provide the transit function and the CLEC has the right pursuant to the Act to request direct interconnection to other carriers. Additionally, BellSouth incurs costs beyond those for which the Commission ordered rates were designed to address, such as the costs of sending records to the CLECs identifying the originating carrier. BellSouth does not charge the CLEC for these records and does not recover those costs in any other form. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

STAFF: Staff has no position at this time.

ISSUE 66A **This issue has been resolved.**

ISSUE 66B **This issue has been resolved.**

ISSUE 67 **This issue has been resolved.**

ISSUE 68 **This issue has been resolved.**

ISSUE 69A **This issue has been resolved.**

ISSUE 69B **This issue has been resolved.**

ISSUE 70 **This issue has been resolved.**

ISSUE 71 **This issue has been resolved.**

ISSUE 72 **This issue has been resolved.**

ISSUE 73 **This issue has been resolved.**

ISSUE 74A **This issue has been resolved.**

ISSUE 74B **This issue has been resolved.**

ISSUE 75 **This issue has been resolved.**

ISSUE 76 **This issue has been resolved.**

ISSUE 77 **This issue has been resolved.**

ISSUE 78 **This issue has been resolved.**

ISSUE 79 **This issue has been resolved.**

ISSUE 80A **This issue has been resolved.**

ISSUE 80B **This issue has been resolved.**

ISSUE 81A **This issue has been resolved.**

ISSUE 81B **This issue has been resolved.**

ISSUE 82 **This issue has been resolved.**

ISSUE 83 **This issue has been resolved.**

ISSUE 84 **This issue has been resolved.**

ISSUE 85 **This issue has been resolved.**

ISSUE 86A **This issue has been resolved.**

ISSUE 86B **How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?**

POSITIONS:

JT. PETITIONERS: If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the due process contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement. (Main Witness: Falvey)

BST: This issue addresses when a party is in violation of federal law as well as the Interconnection Agreement by obtaining unauthorized access to CSR information. In such an instance and when the offending party cannot prove that the violation has been cured, the non-offending party should have the right to suspend and terminate service after an explicit cure period. If there is a legitimate dispute as to whether that was unauthorized access to CSR information, the parties should resolve the dispute at the Commission via expedited resolution.

STAFF: Staff has no position at this time.

ISSUE 87 **This issue has been resolved.**

ISSUE 88 **What rate should apply for Service Date Advancement (a/k/a service expedites)?**

POSITIONS:

JT. PETITIONERS: Rates for Service Date Advancement (a/k/a service expedites) of UNEs, interconnection or collocation must be set consistent with federal TELRIC pricing rules. (Main Witness: Falvey)

BST: BellSouth is not required to provide expedited service pursuant to The Act. If BellSouth elects to offer expedite capability as an enhancement to a CLEC, BellSouth's tariffed rates for service date advancement should apply. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

STAFF: Staff has no position at this time.

ISSUE 89 **This issue has been resolved.**

ISSUE 90 **This issue has been resolved.**

ISSUE 91 **This issue has been resolved.**

ISSUE 92 **This issue has been resolved.**

ISSUE 93A **This issue has been resolved.**

ISSUE 93B **This issue has been resolved.**

ISSUE 94A **Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?**

POSITIONS:

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

Issue 94 has been conditionally settled.

BST: *****The Parties have conditionally settled this issue***** This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

(A) No, each and every Merger, Acquisition and Asset Transfer is unique and requires project management and planning to ascertain the appropriate manner in which to accomplish the transfer, including how orders should be submitted. The vast array of services that may be the subject of such a transfer, under the agreement and both state and federal tariffs, necessitates that various forms of documentation may be required.

STAFF: Staff has no position at this time.

ISSUE 94B **If so, what rates should apply?**

POSITIONS:

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

Migrations should be completed within 10 calendar days of an LSR or spreadsheet submission. (Main Witness: Falvey)

Issue 94 has been conditionally settled.

BST: ***The Parties have conditionally settled this issue*** This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

(B) The rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved.

STAFF: Staff has no position at this time.

ISSUE 94C **What should be the interval for such mass migrations of services?**

POSITIONS:

JT. PETITIONERS: Migrations should be completed within 10 calendar days of an LSR or spreadsheet submission. (Main Witness: Falvey)

Issue 94 has been conditionally settled.

BST: ***The Parties have conditionally settled this issue*** This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

(C) No finite interval can be set to cover all potential situations. While shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties.

STAFF: Staff has no position at this time.

ISSUE 95 **This issue has been resolved.**

ISSUE 96A **What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?**

POSITIONS:

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

Issue 96 has been conditionally settled.

BST: ***The Parties have conditionally settled this issue**** This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

(A) BellSouth is permitted to recover its costs and CLEC should be charged a reasonable records change charge. Requests for this type of change should be submitted to the BFR/NBR process.

STAFF: Staff has no position at this time.

ISSUE 96B **What intervals should apply to such changes?**

POSITIONS:

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

Issue 96 has been conditionally settled.

BST: ***The Parties have conditionally settled this issue**** This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

(B) The Interval of any such project would be determined by the BFR/NBR process based upon the complexity of the project.

STAFF: Staff has no position at this time.

ISSUE 97 **When should payment of charges for service be due?**

POSITIONS:

JT. PETITIONERS: Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill, in those cases where correction or retransmission is necessary for processing. (Main Witness: Russell; additional company specific testimony offered by Falvey)

BST: Payment for services should be due **on or before** the next bill date (Payment Due Date) in immediately available funds.

STAFF: Staff has no position at this time.

ISSUE 98A **This issue has been resolved.**

ISSUE 98B **This issue has been resolved.**

ISSUE 99 **This issue has been resolved.**

ISSUE 100 **Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?**

POSITIONS:

JT. PETITIONERS: CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination. Rather, if a Petitioner receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amounts past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors. (Main Witness: Russell)

BST: Yes, if CLEC receives a notice of suspension or termination from BellSouth as a result of CLEC's failure to pay timely, CLEC should be required to pay all amounts that are past due as of the date of the pending suspension or termination action.

STAFF: Staff has no position at this time.

ISSUE 101 **How many months of billing should be used to determine the maximum amount of the deposit?**

POSITIONS:

JT. PETITIONERS: The maximum amount of a deposit should not exceed two months' estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance. Alternatively, the maximum deposit amount should not exceed one month's billing for services billed in advance and two months' billing for services billed in arrears. This maximum deposit is reasonable and has been agreed to by BellSouth in other interconnection agreements. (Main Witness: Russell)

BST: The average of two (2) months of actual billing for existing customers or estimated billing for new customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users.

STAFF: Staff has no position at this time.

ISSUE 102 **Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?**

POSITIONS:

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

BST: No, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC.

STAFF: Staff has no position at this time.

ISSUE 103 **Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?**

POSITIONS:

JT. PETITIONERS: No. BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth **only** in cases where: (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help". (Main Witness: Russell)

BST: Yes, thirty (30) calendar days is a commercially reasonable time period within which CLEC should have met its fiscal responsibilities as well as the already agreed-upon right for BellSouth to obtain a deposit.

STAFF: Staff has no position at this time.

ISSUE 104 **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?**

POSITIONS:

JT. PETITIONERS: If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute. (Main Witness: Russell)

BST: If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the Commission for resolution of the dispute and BellSouth would cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that CLEC posts a payment bond for half of the amount of the requested deposit during the pendency of the proceeding.

STAFF: Staff has no position at this time.

ISSUE 105 **This issue has been resolved.**

ISSUE 106 **This issue has been resolved.**

ISSUE 107A **This issue has been resolved.**

ISSUE 107B **This issue has been resolved.**

ISSUE 108 **How should the final FCC unbundling rules be incorporated into the Agreement?**

POSITIONS:

JT. PETITIONERS: The Agreement should not automatically incorporate the "Final FCC Unbundling Rules." After release of the Final FCC Unbundling Rules, the Parties should negotiate contract language that reflects an agreement to abide by those rules, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. (Main Witness: Johnson)

This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

BST: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.*****

The Agreement should automatically incorporate the FCC Final Unbundling Rules immediately upon those rules becoming effective.

STAFF: Staff has no position at this time.

ISSUE 109A **Should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? If so, how?**

POSITIONS:

JT. PETITIONERS: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

BST: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

STAFF: Staff has no position at this time.

ISSUE 109B **Should any intervening State Commission Order relating to the unbundling obligations, if any, be incorporated into the Agreement? If so, how?**

POSITIONS:

JT. PETITIONERS: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

BST: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

STAFF: Staff has no position at this time.

ISSUE 110 **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?**

POSITIONS:

JT. PETITIONERS: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

If the Commission does not consider this issue to be moot, Joint Petitioners' position is as follows. In the event that FCC 04-179 is vacated or modified, the Agreement should not automatically incorporate the court order. Upon release of

such a court order, the Parties should negotiate contract language that reflects an agreement to abide by the court order (to the extent the court order effectuates a change in law with practical consequences), or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. (Main Witness: Johnson)

BST: ***Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.****

In the event a court of competent jurisdiction vacates all or part of FCC 04-179, there will be no valid impairment findings with respect to the vacated elements. Thus, the Agreement should automatically incorporate the state of the law on the date the order or decision becomes effective.

STAFF: Staff has no position at this time.

ISSUE 111 **At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superseded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order? If not, what post Interim Period[2] transition plan should be incorporated into the Agreement?**

POSITIONS:

JT. PETITIONERS: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) the fist part of this issue (i.e. first question), has become moot as of March 11, 2005, the effective date of that order.*

The Agreement should not automatically incorporate any "Transition Period." After release of the Final FCC Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the transition plan adopted therein or to other standards, if they mutually agree to do so. Any

[2] INTERIM PERIOD – as set forth in ¶29 of the FCC 04-179, is defined as the period that ends on the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the FCC 04-179.

issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – tens (10) calendar days after the last signature executing the Agreement. (Main Witness: Falvey)

The second part of this issue (second question) is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.[3]

BST: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that the second part of this issue should be resolved in the Change of Law Generic Proceeding. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.*****

BellSouth submits that this issue is moot. To the extent a question exists to what Transition Period should govern after March 11, 2005, BellSouth submits that the Transition Period set forth in the TRRO should be automatically incorporated into the agreement.

STAFF: Staff has no position at this time.

ISSUE 112A **What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179?**

POSITIONS:

JT. PETITIONERS: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

BST: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

[3] BellSouth objected at the prehearing conference because it had not agreed to "incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements."

STAFF: Staff has no position at this time.

ISSUE 112B **How should these rates, terms and conditions be incorporated into the Agreement?**

POSITIONS:

JT. PETITIONERS: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

BST: *In light of the FCC's Triennial Review Order on Remand (FCC 04-290) this issue has become moot as of March 11, 2005, the effective date of that order.*

STAFF: Staff has no position at this time.

ISSUE 113A **Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops?**

POSITIONS:

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

This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

BST: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding, subject to BellSouth's objection to the inclusion of this issue. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate***

changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.**

USTA II vacated any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. 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, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue.

STAFF: Staff has no position at this time.

ISSUE 113B **If so, under what rates, terms and conditions?**

POSITIONS:

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

This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

BST: *****Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of***

Law Generic Proceeding, subject to BellSouth's objection to the inclusion of this issue. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.**

USTA II vacated any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. 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, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue.

STAFF: Staff has no position at this time.

ISSUE 114A **Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber dedicated transport?**

POSITIONS:

JT. PETITIONERS: Yes. BellSouth is obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport. *USTA II* did not eliminate section 251, CLEC impairment, section 271 or the Commission's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber transport. (Main Witness: Russell)

This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes

of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

BST: ***Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding, subject to BellSouth's objection to the inclusion of this issue. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.****

USTA II vacated any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. 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, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue.

STAFF: Staff has no position at this time.

ISSUE 114B **If so, under what rates, terms and conditions?**

POSITIONS:

JT. PETITIONERS: Pursuant to section 251, BellSouth is obligated to provide access to DS1, DS3 and dark fiber transport UNEs at TELRIC-compliant rates approved by the Commission. DS1, DS3 and dark fiber transport unbundled on other than a section 251 statutory basis should be made available at TELRIC-compliant rates approved by the Commission until such time as it is determined that another pricing standard applies and the Commission establishes rates pursuant to that standard. (Main Witness: Russell)

This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's generic BellSouth UNE docket (041269-TP), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.

BST: ***Pursuant to the conference call with Staff and the parties on February 14, 2005 as well as the agreement between BellSouth and the Joint Petitioners on that call, BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding, subject to BellSouth's objection to the inclusion of this issue. BellSouth noted at the Prehearing Conference that it objected to the Joint Petitioners statement that "Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law establishing the post-USTA II regulatory framework into their new arbitrated Agreements.*** **

USTA II vacated any FCC requirement that obligated ILECs to provide high capacity loops and dark fiber. 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, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could raised as a supplemental issue.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
DIRECT & REBUTTAL			
Marva Brown Johnson	JT. PETITIONERS	(MBJ – 1)	Disputed Contract Language by Issue
Hamilton E. Russell, III	JT. PETITIONERS	(HER – 1)	Disputed Contract Language by Issue
James C. Falvey	JT. PETITIONERS	(JCF – 1)	Disputed Contract Language by Issue
Kathy K. Blake	BST	(KKB-1)	ATT 2 for Proposed Interconnection Agreement
Kathy K. Blake	BST	(KKB-2)	Example of Timeline of Past Due Notices
Eddie L. Owens	BST	(ELO-1)	Mergers and Acquisition Process

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

Other than those issues which have been identified as resolved, there are no other stipulated issues at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

1. On February 1, 2005, Joint Petitioners filed a claim of confidentiality for certain portions of the December 15, 2004, deposition transcript of Hamilton Russell. Pursuant to Rule 25-22.006(5), Florida Administrative Code, a ruling is not currently required. However, parties are reminded that should information subject to a claim be entered into the record at hearing, the owner of the information must file a request

for confidentiality within 21 days of the conclusion of the hearing in order to maintain confidentiality

2. On March 15, 2005, BellSouth filed a Notice of Intent to request confidential classification of select response to Staff's 3rd Set of Interrogatories and responses to Staff's 3rd Set of Requests for Production of Documents to BellSouth. A ruling is not required at this time.

XIII. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 22nd day of March, 2005

RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(SEAL)

JLS/KS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and

time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.