

FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION CONFERENCE AGENDA

CONFERENCE DATE AND TIME: August 2, 2005, 9:30 a.m.

LOCATION: Room 148, Betty Easley Conference Center

DATE ISSUED: July 22, 2005

NOTICE

Persons affected by Commission action on certain items on this agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases) may be allowed to address the Commission when those items are taken up for discussion at this conference. These items are designated by double asterisks (**) next to the agenda item number.

Included in the above category are items brought before the Commission for tentative or proposed action which will be subject to requests for hearing before becoming final. These actions include all tariff filings, items identified as proposed agency action (PAA), show cause actions and certain others.

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Agenda for
Commission Conference
August 2, 2005

<u>ITEM NO.</u>	<u>CASE</u>						
1	Approval of Minutes July 5, 2005 Regular Commission Conference						
2**	Consent Agenda						
PAA	A) Application for certificate to provide alternative access vendor service. <table><thead><tr><th><u>DOCKET NO.</u></th><th><u>COMPANY NAME</u></th></tr></thead><tbody><tr><td>050473-TA</td><td>Your Sip, Inc.</td></tr></tbody></table>	<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	050473-TA	Your Sip, Inc.		
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050414-TX	YMax Communications Corp.						
050403-TX	Digital Express, Inc.						
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050456-TC	Kevin Rogers						

RECOMMENDATION: The Commission should approve the action requested in the dockets referenced above and close these dockets.

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CASE

3**

Docket No. 050018-WU – Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

Docket No. 050183-WU – Request by homeowners for the Commission to initiate deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.

Docket No. 010503-WU – Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason (050018-WU)
Bradley (010503-WU)
Edgar (050183-WU)

Staff: GCL: Melson

ECR: Devlin, Willis

Issue 1: Should the Commission issue a final order accepting Aloha's Offer of Settlement?

Recommendation: Yes. The Commission should issue a final order accepting Aloha's Offer of Settlement.

Issue 2: Should the dockets affected by the Offer of Settlement be closed?

Recommendation: No. If the Offer of Settlement is accepted, then:

(1) Dockets 050018-WU and 050183-WU should be held in abeyance pending either (i) a further order consistent with paragraph 11 of the Offer of Settlement, or (ii) the occurrence of the Third Effective Date. On the Third Effective Date, these dockets should be closed administratively; and

(2) Docket 010503-WU should remain open pending the occurrence of the Second Effective Date and thereafter to monitor the interim rate refunds to be made by Aloha. After staff has verified that the refunds are complete, the docket should be closed administratively.

If the Offer of Settlement is not accepted, these dockets should remain open.

ITEM NO.

CASE

4**

Docket No. 040028-TP – Complaint and request for summary disposition to enforce contract audit provisions in interconnection agreement with NewSouth Communications Corp., by BellSouth Telecommunications, Inc. (Deferred from July 19, 2005 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Edgar

Staff: GCL: Susac
CMP: Wright

Issue 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Motion For Summary Disposition?

Recommendation: Yes. Staff recommends granting BellSouth's Motion for Summary Disposition and allowing BellSouth, at its sole expense, and upon thirty (30) days notice to NewSouth, to audit NewSouth's records to verify the type of traffic being transmitted over loop and transport combinations, also known as Enhanced Extended Link (EELs). Staff recommends requiring BellSouth to serve NewSouth with notice of its intent to conduct the audit, thirty (30) days in advance of the audit.

Issue 2: Should this Docket be closed?

Recommendation: Yes. In the event BellSouth's Motion for Summary Disposition is granted, staff recommends closing the docket because no further action is needed by the Commission.

ITEM NO.

CASE

5**

Docket No. 040527-TP – Complaint to enforce interconnection agreement with NuVox Communications, Inc. by BellSouth Telecommunications, Inc. (Deferred from July 19, 2005 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: GCL: Rojas, Susac

CMP: Wright

Issue 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Motion For Summary Disposition?

Recommendation: Yes. Staff recommends granting BellSouth's Motion for Summary Disposition and allowing BellSouth, at its sole expense, and upon thirty (30) days notice to NuVox, to audit NuVox's records to verify the type of traffic being transmitted over loop and transport combinations, also known as Enhanced Extended Link (EELs).

Issue 2: Should this Docket be closed?

Recommendation: Yes. In the event BellSouth's Motion for Summary Disposition is granted, staff recommends closing the docket because no further action is needed by the Commission.

ITEM NO.

CASE

6**

Docket No. 050257-TL – Complaint of BellSouth Telecommunications, Inc. against Miami-Dade County for alleged operation of a telecommunications company in violation of Florida statutes and Commission rules.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: GCL: Teitzman

CMP: Buys, Kennedy

Issue 1: Should the Commission grant the County's Motion to Dismiss?

Recommendation: No. The Commission should deny the County's Motion to Dismiss because BellSouth has stated a cause of action for which relief may be granted and the Motion to Dismiss was not timely filed.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open. Staff will work with the parties to discuss how the docket should proceed and bring a recommendation to the Prehearing Officer.

ITEM NO.

CASE

7**

Docket No. 050420–GU – Petition for approval of modifications to tariff provisions governing extension of mains and services, by St. Joe Natural Gas Company, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Administrative

Staff: CMP: Broussard, Bulecza-Banks, Makin
GCL: Rodan

Issue 1: Should St. Joe Natural Gas Company (SJNG), Inc. be allowed to modify its tariff rules and regulations governing main and/or service extensions as permitted under Rule 25-7.054, Florida Administrative Code, to reduce its MACC as calculated under the company's existing tariff from 10 times the estimated annual revenue less the cost of gas to four times the estimated annual revenue less the cost of gas?

Recommendation: Yes. The Commission should approve the modifications to tariff provisions governing Mains and Service Extensions requested by SJNG effective August 2, 2005, the date of the Commission vote in this matter, because the tariff modification meets the requirements of Rule 25-7.054, Florida Administrative Code.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves the staff recommendation in Issue 1, and a protest is filed within 21 days of the issuance of an Order, the tariff should remain in effect with any increase held subject to refund pending resolution of the protest; however, if no timely protest is filed, this docket should be closed upon the issuance of a Consummating Order.

ITEM NO.

CASE

8**

Docket No. 010977-TL – State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314. (Deferred from June 21, 2005 conference.)

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Administrative

Staff: CMP: Brown, Bulecza-Banks, Casey
GCL: B. Keating
SGA: Fogleman

Issue 1: Should the Florida Public Service Commission (FPSC or Commission) certify to the FCC and to USAC that for the year 2006, ALLTEL Florida, Inc., Frontier Communications of the South, Inc., GTC, Inc., ITS Telecommunications Systems, Inc., Northeast Florida Telephone Company, Inc., d/b/a NEFCOM Communications, TDS Telecom, and Smart City Telecom will only use the federal high-cost support they receive for the provision, maintenance and upgrading of facilities and services for which the support is intended?

Recommendation: Yes.

Issue 2: Should the FPSC adopt the new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs?

Recommendation: Yes. The FPSC should adopt the new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs desiring high cost support.

Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open in order to address future certification of rural telephone companies.

ITEM NO.

CASE

9**PAA

Docket No. 050437-TI – Request for waiver of carrier selection requirements of Rule 25-4.118, FAC, due to asset purchase agreement resulting in transfer of customer accounts from Red River Networks, LLC to NOSVA Limited Partnership d/b/a Cierracom Systems.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Bradley

Staff: CMP: Watts
GCL: Scott

Issue 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of customers from Red River Networks, LLC to NOSVA Limited Partnership d/b/a Cierracom Systems?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

ITEM NO.

CASE

10**

Docket No. 050068–EI – Request for approval of standard form underground conversion contract by Progress Energy Florida, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Administrative

Staff: ECR: Wheeler, Kummer
GCL: Brown

Issue 1: Should the Commission acknowledge Progress Energy Florida, Inc.’s Notice of Voluntary Withdrawal of its Request for approval of standard form underground conversion contract?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon the issuance of the Commission’s Order acknowledging the voluntary withdrawal.

ITEM NO.

CASE

11**

Docket No. 050318–WU – Request for increase in service connection charges in Highlands County by Placid Lakes Utilities, Inc.

Critical Date(s): 1/8/06 (8-month effective date)

Commissioners Assigned: All Commissioners
Prehearing Officer: Administrative

Staff: ECR: Hudson, Rendell
GCL: Jaeger

Issue 1: Should Placid Lakes' proposed tariff sheet to implement a service connection charge be approved as filed?

Recommendation: No. Fourth Revised Sheet No. 23.0, filed on May 16, 2005, should be denied as filed. Staff recommends that the appropriate service connection charge should be \$460.15 and the meter installation charge should be \$283.06. If the utility files a revised tariff sheet within 30 days of the effective date of the Order, which is consistent with the Commission's vote, staff should be given administrative authority to approve the revised tariff sheet upon staff's verification that the tariff is consistent with the Commission's decision. If the revised tariff sheet is filed and approved, the service connection charge and meter installation fee should become effective for connections made on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(2), Florida Administrative Code, if no protest is filed.

Issue 2: Should this docket be closed?

Recommendation: No. Upon expiration of the protest period, if a timely protest is not filed, a Consummating Order should be issued and the docket should remain open for 30 days from the issuance date of the Consummating Order, to allow the utility time to file the revised tariff sheet. Upon staff's verification that the tariff sheet complies with the order, the tariff sheet should be stamped approved and the docket should be closed administratively. In the event that a timely protest is filed, and the utility files revised tariff sheets reflecting the approved charges, the tariff should remain in effect with any increases held subject to refund pending resolution of the protest. If no protest is filed and the utility does not file another revised tariff sheet consistent with the approved service connection charge and meter installation charge within 30 days of the Consummating Order, the Third Revised Tariff Sheet No. 23.0 should remain in effect, and this docket should be closed administratively.

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CASE

12**

Docket No. 050192–WS – Application for certificates to provide water and wastewater service in Sumter County by Central Sumter Utility Company, L.L.C.

Critical Date(s): 8/24/05 (Statutory deadline for original certificate pursuant to Section 367.031, Florida Statutes.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: ECR: Johnson, Redemann

GCL: Brown

PAA

Issue 1: Should the Commission grant Central Sumter's petition for a temporary waiver of Rules 25-30.033 (1)(k), (r), (t), (u), (v), and (w), Florida Administrative Code?

Recommendation: Yes. Central Sumter's petition for a temporary waiver of Rules 25-30.033 (1)(k), (r), (t), (u), (v), and (w), Florida Administrative Code, should be granted.

Issue 2: Should the Commission grant the application of Central Sumter Utility Company, L.L.C. for water and wastewater certificates?

Recommendation: Yes. The Commission should grant Central Sumter Utility Company, L.L.C. Certificate Nos. 631-W and 540-S to serve the territory described in Attachment A of staff's July 21, 2005 memorandum. The utility should file an executed and recorded copy of the warranty deed for the land for the water and wastewater facilities within 30 days of the issuance date of the Order granting the certificates.

Issue 3: Should this docket be closed?

Recommendation: No. The docket should remain open pending receipt of the annual status reports, the executed and recorded copy of the warranty deed, and to establish the setting of initial rates, charges and return on equity.

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13

Docket No. 041464–TP – Petition for arbitration of certain unresolved issues associated with negotiations for interconnection, collocation, and resale agreement with Florida Digital Network, Inc. d/b/a FDN Communications, by Sprint-Florida, Incorporated.

Critical Date(s): 8/4 - 5/05 (hearing)

Commissioners Assigned: Deason, Bradley, Edgar

Prehearing Officer: Deason

Staff: CMP: Bulecza-Banks, Moses

GCL: Scott, Susac

(Motion for reconsideration – oral argument requested.)

Issue 1: Should FDN’s Request for Oral Argument be granted?

Recommendation: FDN’s request for oral argument should be granted with respect to the Motion for Reconsideration in that oral argument may assist the Panel in its understanding and disposition of the complex issues underlying the Motion for Reconsideration. Staff recommends that oral argument be limited to fifteen (15) minutes per side.

Issue 2: Should the Panel assigned to this Docket grant FDN’s Motion for Reconsideration?

Recommendation: No. FDN’s Motion for Reconsideration does not meet the standard of review for a motion for reconsideration.

Issue 3: Should this Docket be closed?

Recommendation: No. This Docket is scheduled for hearing on August 4 – 5, 2005.

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14

Docket No. 040130-TP – Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., 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.

Critical Date(s): None

Commissioners Assigned: Bradley, Edgar

Prehearing Officer: Bradley

Staff: CMP: Marsh, Barrett, Hallenstein, K. Kennedy, Moss, Pruitt, Rich, Vickery

GCL: Susac, Scott

(Participation is limited to Commissioners and staff.)

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

Recommendation: Staff recommends that a party's liability should be limited to the issuance of bill credits in all circumstances other than gross negligence or willful misconduct.

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?

Recommendation: Staff recommends that CLECs have the ability to limit their liability through their customer agreements and/or tariffs. If a CLEC does not limit its liability through its customer agreements and/or tariffs, then the CLEC should bear the resulting risk.

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

Recommendation: Staff recommends that the Commission should not define indirect, incidental or consequential damages for purposes of the Agreement. The decision of whether a particular type of damage is indirect, incidental or consequential should be made, consistent with applicable law, if and when a specific damage claim is presented to the Commission or a court.

Issue 7: What should the indemnification obligations of the parties be under this Agreement?

Recommendation: A Party should be indemnified, defended and held harmless against claims, loss or damage to the extent reasonably arising from or in connection with the other Party's gross negligence or willful misconduct.

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?

Recommendation: Staff recommends that the parties should be allowed to seek resolution of disputes arising out of the interconnection agreement from the Commission, FCC or courts of law. However, staff believes that the Commission has primary

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jurisdiction over most disputes arising from interconnection agreements and that a petition filed in an improper forum would ultimately be subject to being dismissed or held in abeyance while the Commission addressed the matters within its jurisdiction.

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?

Recommendation: No. A provision including such a statement could be subject to various interpretations in the context of a dispute. Instead, the contract should be interpreted according to its explicit terms if those terms are clear and unambiguous. If the contract language at issue in a dispute is deemed ambiguous, the terms should be interpreted in accordance with applicable law governing contract interpretation.

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?

Recommendation: Yes, BellSouth is required, upon a CLEC's request, to commingle or to allow commingling of UNEs or UNE combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271.

Issue 36A: How should line conditioning be defined in the Agreement?

Recommendation: The definition should be taken from the FCC rules and contain the limiting conditions of nondiscriminatory access and suitability for xDSL delivery, which appear in the rules leading to the definition found in 47 C.F.R. § 51.319(a)(1)(iii)(A). If the parties through negotiation cannot agree on a definition that includes the stated conditions, then the following language should serve as a default:

Line Conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver xDSL capability, to ensure that the copper loop or copper subloop is suitable for providing xDSL services and provided the same for all telecommunications carriers requesting access to that network and at least in quality to that which the incumbent provides to itself.

Issue 36B: What should BellSouth's obligations be with respect to line conditioning?

Recommendation: BellSouth's obligations with respect to line conditioning are to provide nondiscriminatory access and ensure digital subscriber line capability.

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

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Recommendation: Yes. Staff recommends that the Agreement should contain specific provisions addressing the availability of load coil removal by loop length, specifically less than or greater than 18,000 feet, provided that the criteria established remain at parity with what BellSouth offers its own customers or other carriers. (See Recommendation for Issues 36A and B.)

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

Recommendation: BellSouth should be required to remove bridged taps to ensure xDSL capability at parity with what it does for itself. Cumulative bridged taps greater than 6,000 feet should be removed at no charge. Cumulative bridged taps between 2,500 feet and 6,000 feet should be removed at no more than TELRIC rates. Bridged taps less than 2,500 feet may be removed based upon the rates, terms and conditions negotiated by the parties. If negotiations are not successful, BellSouth's Special Construction Process should apply.

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

Recommendation: Yes. BellSouth should provide written notice to the CLEC 30 days prior to the date that BellSouth seeks to commence the audit. The notice should include the cause that BellSouth believes warrants the audit, but need not identify the specific circuits that are to be audited or contain additional detailed documentation.

Issue 51C: Who should conduct the audit and how should the audit be performed?

Recommendation: The audit should be performed by an independent, third-party auditor selected by BellSouth from a list of at least four auditors included in the interconnection agreement. The list should be developed as recommended in analysis portion of staff's July 21, 2005 memorandum. The audit should be performed according to the standards of the American Institute of Certified Public Accountants (AICPA).

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?

Recommendation: Yes. BellSouth should be allowed to charge the CLEC a Tandem Intermediary Charge (TIC) for transport of transit traffic when CLECs are not directly interconnected to third parties. Unless a different rate is negotiated prior to the parties filing their agreement, the applicable rate in the agreement should be \$.0015 per minute of use.

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Docket No. 040130-TP – Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., 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.

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

Recommendation: In the event that the alleged offending party disputes the allegation of unauthorized access to customer service records (CSR) information (even after the party's inability to produce an appropriate Letter of Authorization), the alleging party should seek expedited resolution from the appropriate regulatory body pursuant to the dispute resolution provision in the Interconnection Agreement's General Terms and Conditions section. The alleging party should take no action to terminate the alleged offending party during any such pending regulatory proceeding. If the alleged offending party does not dispute the allegation of unauthorized access to CSR information, BellSouth may suspend or terminate service under the time lines proposed by BellSouth.

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

Recommendation: BellSouth's tariffed rates for service expedites should apply unless the parties negotiate different rates.

Issue 97: When should payment of charges for service be due?

Recommendation: Payment of charges for service should be payable on or before the next bill date.

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?

Recommendation: Yes. A CLEC should be required to pay past due undisputed amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination.

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

Recommendation: The maximum deposit should not exceed two months' estimated billing for new CLECs or two months' actual billing for existing CLECs based on average monthly billings for the most recent six-month period.

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

Recommendation: No. The amount of the deposit BellSouth requires from CLEC should not be reduced by past due amounts owed by BellSouth to CLEC.

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Docket No. 040130–TP – Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., 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.

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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?

Recommendation: BellSouth should be entitled to terminate service to the CLEC pursuant to the process for termination due to non-payment if the CLEC refuses to remit any deposit required by BellSouth and does not dispute the deposit request per Section 1.8.7 of the proposed Agreement, within 30 calendar days.

Issue 115: Should this docket be closed?

Recommendation: No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

