BELLSOUTH

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May 23, 2005

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2005 MAY 23 PM 4:41
SC PUBLIC SERVICE COMMISSION

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2005-57-C

Dear Mr. Terreni:

Enclosed for filing are an original and twenty-five copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Kathy K. Blake, the Rebuttal Testimony of P. L. (Scot) Ferguson and the Rebuttal Testimony of Eric Fogle in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of the testimony as indicated on the attached Certificate of Service.

Sincerely,

Patrick Turner

Patrick W. Turner

PWT/nml
Enclosures
cc: All Parties of Record
DM5 # 585885

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF KATHY K. BLAKE

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2005-57-C

MAY 23, 2005

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

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

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on May 11, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My Rebuttal Testimony responds to portions of the Direct Testimony filed on May 11, 2005 by Marva Brown Johnson on behalf of KMC Telecom V, Inc. and KMC Telecom III LLC, James Mertz on behalf of KMC Telecom V, Inc. and KMC Telecom III LLC, Hamilton Russell on behalf of NuVox Communications, Inc. and its operating entity, NewSouth Communications

Corp., Jerry Willis on behalf of NuVox Communications, Inc. and its operating entity, NewSouth Communications Corp., and James Falvey on behalf of the Xspedius Companies.

Q. DOES YOUR REBUTTAL TESTIMONY ADDRESS THE SUPPLEMENTAL ISSUES OR ISSUE 23 OF THE UNRESOLVED ISSUES?

A. No. I did not address these issues in my Direct Testimony for the reasons set out on pages 5 and 6 of that testimony, and the Joint Petitioners did not address these issues in their Direct Testimony. Thus, I do not address these issues in my Rebuttal testimony.

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

Q. PLEASE COMMENT ON THE STATEMENT, ON PAGE 18 OF THE JOINT PETITIONERS DIRECT TESTIMONY, THAT BELLSOUTH'S PROPOSED DEFINITIONS OF THE TERM "END-USER" ARE "CONFOUNDING AND COMPLEX".

A. My Direct Testimony offered three separate and distinct definitions of the term, "End User" in an effort to facilitate resolution of this arbitration issue. The definitions are not confusing. Instead, they accurately set forth the different meanings that "End User" can and does have in the Agreement.

For instance, the use of "End User" in Attachment 2 regarding UNEs has a different meaning than in Attachment 1 regarding resale. This is appropriate because CLECs can use UNEs to provide wholesale services to other telecommunications carriers (subject to all EEL requirements and restrictions), but under the FCC's rules, CLECs cannot use resold services to provide service to other telecommunications carriers. The Joint Petitioners' proposed definition does not recognize such distinctions and the different meanings the term "End User" can have in the context of the various sections of the Agreement. The Joint Petitioners' proposed definition, therefore, is inadequate, misleading, and overly simplistic.

Q. HAS BELLSOUTH REVIEWED THE USE OF THE TERM "END USER" IN THE AGREEMENT TO SEE IF BELLSOUTH'S PROPOSED DEFINITIONS ARE APPROPRIATE?

A. Yes, BellSouth has conducted such a review and determined that its proposed definitions are appropriate. Further, although the Joint Petitioners complain about BellSouth's definitions in their testimony, they have not provided any suggested revisions to BellSouth's language.

Q. THE JOINT PETITIONERS STATE ON PAGE 20 THAT, "THE CONTRACT SHOULD IN NO WAY ATTEMPT TO LIMIT WHO CAN OR CANNOT BE CONSIDERED AN END USER OF A PARTY'S SERVICES." IS BELLSOUTH ATTEMPTING TO LIMIT WHO CAN OR CANNOT BE CONSIDERED AN END USER OF A PARTY'S SERVICES?

A. No. CLECs can serve any customer they desire within the limits of the law and of their regulatory certification. The issue is not whom CLECs serve, but rather what service qualifies for UNEs and UNE prices. Not every customer a CLEC serves is eligible to be served by EELs and not every type of customer can be served via resale. The Joint Petitioners are seeking to change the industry-accepted definition of end user in order to improperly expand the categories of customers that can be served via UNEs or resale.

Q. HAS ANY OTHER STATE COMMISSION ISSUED AN ORDER THAT IS RELEVANT TO THIS ISSUE?

A. Yes. The Texas Public Utilities Commission rejected an attempt by a CLEC to globally replace the term "end user" with "customer" based on the same concerns BellSouth has expressed with the Joint Petitioners' definition. *See Petition of El Paso Networks, LLC*, Docket No. 25188, *Order Approving Revised Arbitration Award and Interconnection Agreement*, P.U.C.T. (Aug. 31, 2004)).

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

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

A. No. The Joint Petitioners' position is a one-sided approach that benefits only the Joint Petitioners and is inconsistent with how they treat their own customers. The Joint Petitioners' own retail tariffs limit their liability to the actual cost of the services or function not performed (which is consistent with BellSouth's position on this issue). Clearly, the Joint Petitioners are attempting to impose an obligation on BellSouth that they are not willing to take on with respect to their own customers, and the Joint Petitioners are attempting to use the limitation of liability provision as a means to generate revenue.

Indeed, given the fact that their own tariffs limit their respective liability to the actual cost of the services or function not performed, receiving 7.5% of amounts collected from BellSouth potentially results in an undeserved financial windfall for the Joint Petitioners. The simple fact is that, contrary to their position, the Joint Petitioners employ standard limitation of liability language with their respective customers. This is the same language that BellSouth uses with its own customers in its tariffs and is the same language that BellSouth is requesting that the Commission adopt in this proceeding.

Q. PLEASE ADDRESS THE JOINT PETITIONERS' BELIEF THAT BELLSOUTH'S PROPOSED DEFINITION IS NOT THE STANDARD IN THE INDUSTRY?

A. As evidenced by their own tariffs, the Joint Petitioners are incorrect. Each of the Joint Petitioners limit their liability to their own end users to bill credits,

which is exactly what BellSouth is proposing in this arbitration. *See* NuVox's Tariff at § 2.1.4; 2.8.4, KMC's Tariff at § 2.1.4; 2.6.1, Xspedius' Tariff at § 2.1.4; 2.6.1, collectively Exhibit KKB-1, attached to my Direct Testimony. BellSouth treats its retail customers in the same manner by limiting BellSouth's liability to its end users to bill credits. *See* BellSouth's GSST at § A2.5.1 (attached to my Direct Testimony as Exhibit KKB-2).

Q. PLEASE ADDRESS THE JOINT PETITIONERS' REFERENCE TO AN ALLTEL INTERCONNECTION AGREEMENT?

A. The redacted excerpt of the Alltel agreement attached as Exhibit "B" to the Joint Petitioners' testimony is not relevant to this issue because, unlike BellSouth, Alltel is a rural ILEC that does not have a 251(c) obligation to provide UNEs at cost-based rates. Indeed, there is no UNE section in the "Table of Contents" set forth in Joint Petitioner Exhibit B. Thus, unlike BellSouth, Alltel is not restricted to TELRIC prices and, therefore, it can charge NewSouth rates to allow it to recover the additional expenses that may be experienced by limiting liability to something more than bill credits.

Additionally, the Alltel agreement does not include the type of language the Joint Petitioners' are seeking here, which would limit each party's liability to 7.5% of amounts paid or payable on the day the claim arose. Neither BellSouth nor the Joint Petitioners are aware of any other interconnection agreement that contains such a provision. *See* Joint Petitioners' Supplemental Response to North Carolina Utilities Commission POD No. 6, attached hereto

as Exhibit KKB-3. And, unlike the Alltel agreement, which limits each party's liability to certain amounts, it does not result in a totally one-sided limitation of liability provision like the Joint Petitioners' proposed language does.

Q. IS THE JOINT PETITIONERS' LANGUAGE ONE-SIDED IN FAVOR OF THE JOINT PETITIONERS?

A. Yes. Adoption of the Joint Petitioners' language on this issue would result in a totally one-sided limitation of liability provision that only benefits the Joint Petitioners. Under the Joint Petitioners' proposed language, for instance, after three years and based on the current billings between BellSouth and NuVox, BellSouth's liability to NuVox would be capped at $8.1 million while NuVox's liability to BellSouth would be limited to ***$2,700***. In other words, BellSouth's potential liability to NuVox would be ***three thousand times greater than*** Nuvox's potential liability to BellSouth. Such a result is inherently unfair, not the standard in the industry, and only benefits the Joint Petitioners.

Item 5; Issue G-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? (Agreement GT&C Section 10.4.2)

Q. IS BELLSOUTH ATTEMPTING TO "DICTATE THE TERMS OF SERVICE BETWEEN PETITIONERS AND THEIR CUSTOMERS" AS ALLEGED ON PAGE 28 OF THE JOINT PETITIONERS' TESTIMONY?

A. No. Except as otherwise controlled by a state or federal law or rule, the Joint Petitioners are free to establish whatever terms and conditions they please with their customers. BellSouth is simply stating that, if the Joint Petitioners make a business decision not to limit their liability in their tariffs and contracts, that is their own business decision, and the Petitioners should bear the business risk resulting from the decision. Any liability that may occur as a result of that decision should be borne by the Joint Petitioners and not by BellSouth.

Q. PLEASE COMMENT ON THE JOINT PETITIONERS' STATEMENT (ON PAGE 31) THAT THEY DEVIATE FROM THEIR TARIFF LANGUAGE IN END USER CONTRACTS WITH RESPECT TO MODIFICATIONS TO THEIR LIMITATION OF LIABILITY LANGUAGE IN ORDER TO ATTRACT CUSTOMERS.

A. BellSouth is not aware of the Joint Petitioners deviating from their tariff language in this manner. In fact, even though BellSouth requested such evidence in discovery, the Joint Petitioners have been unable to identify a specific instance where they have modified limitation of liability language to win a customer. *See* Joint Petitioner Supplemental Response to Interrogatory No. 22, attached hereto as Exhibit KKB-4.

Even if such deviations exist, however, they would be irrelevant because the Joint Petitioners have the freedom to charge these customers whatever they want, and to ultimately decide not to enter into a contract with a customer if the risk associated with deviating from their standard language is deemed by

the Joint Petitioners to be too great. BellSouth has no similar freedoms when providing UNEs as required by Section 251. BellSouth is obligated to charge TELRIC-based rates for such UNEs as a matter of federal law and it has to enter into this agreement with the Joint Petitioners under the Act. And, the contract that is executed as a result of the Commission's rulings in this arbitration will be adoptable by any other CLEC in South Carolina. This is clearly not a risk that the Joint Petitioners face if they do in fact deviate from their standard tariff language.

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

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

Tellingly, BellSouth's proposed language is in the Joint Petitioners' current agreement with BellSouth and there has never been a dispute between the parties over its application, interpretation, or enforcement. This is likely because the individual Joint Petitioners use limitation of liability language to protect themselves and in some cases their language exceeds BellSouth's

language, as I demonstrated in my Direct Testimony. Thus, it is disingenuous for the Joint Petitioners to claim that BellSouth's language requires it to mirror limitation of liability language as they have greater limitation of liability language today even though the same provision has been in effect for the last several years.

Q. WHY DOES BELLSOUTH WANT THIS PROVISION INCLUDED IN ITS FUTURE AGREEMENTS WITH THE JOINT PETITIONERS?

A. My Direct Testimony provides specific, underlying reasons why BellSouth is concerned with this issue, particularly with respect to its impact on future operations under the interconnection agreements with all CLECs, including the Joint Petitioners. But, very simply stated, the goal of this provision is to put BellSouth in the same position as if the Joint Petitioner end user was a BellSouth end user.

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

Q. PLEASE ADDRESS THE JOINT PETITIONERS' CLAIM AT PAGE 36 THAT BELLSOUTH, THROUGH THIS AGREEMENT, INTENDS TO "QUASH ANY END USER'S EFFORTS TO SEEK REDRESS AGAINST BELLSOUTH"?

1 A. This statement is simply wrong. Nothing in BellSouth's language attempts to
2 restrict or limit the rights of any entity, person, end user, or other third party as
3 to what they can or cannot recover from or claim against BellSouth.
4 BellSouth's language simply says that neither BellSouth nor the Joint
5 Petitioners will be liable for indirect, consequential or incidental damages. The
6 Parties' are in agreement in this concept.
7
8 Further, although I am not a lawyer, the Joint Petitioner witnesses (of which
9 three are lawyers) have conceded in other arbitration proceedings that, as a
10 matter of law, parties to a contract cannot impact or limit the rights of third
11 parties through the agreement between BellSouth and a Joint Petitioner. Thus,
12 the Joint Petitioners admit that their language, which attempts to insulate or
13 carve out end user rights or damage claims, is unenforceable as a matter of
14 law.
15
16 Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING THE JOINT
17 PETITIONERS' POSITION?
18
19 A. Yes. With their stated position, the Joint Petitioners are attempting to provide
20 their end users (either directly or vis-à-vis the Joint Petitioners) a right to
21 receive certain types of damages against BellSouth. The Joint Petitioners' end
22 users are not a party to this Section 251 Interconnection Agreement and should
23 not be given any rights against BellSouth, who is not their service provider.
24 Further, pursuant to the Joint Petitioners' tariff filings, the Joint Petitioners,
25 themselves, prohibit their end users from recovering indirect, incidental or

consequential damages against them. Thus, it appears that the Joint Petitioners are creating litigation opportunities for their end users against BellSouth for damages they are insulated from.

Q. IF THE JOINT PETITIONER'S PROPOSAL IS UNENFORCEABLE AS A MATTER OF LAW AS THEY CONCEDE, WHY DOES BELLSOUTH OBJECT TO IT?

A. The Joint Petitioners have argued in other states that BellSouth should withdraw its objection to if their language is of no force and effect as a matter of law. Thus, they take the position (and have taken the position in other proceedings) that this Commission should adopt language in an interconnection agreement that is meaningless and cannot accomplish its stated goal – to avoid any restriction on end user rights. As a fundamental matter, BellSouth is opposed to agreeing to meaningless, unnecessary language. Moreover, this Commission should not adopt legally ineffective language that only leads to the potential evisceration of already-agreed-upon language regarding limitation of liability, as I explained in my Direct Testimony.

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

opposite of what the parties have agreed upon.

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

Q. ON PAGE 37, THE JOINT PETITIONERS ATTEMPT TO ESTABLISH A LINK BETWEEN INDEMNIFICATION TERMS UNDER THE AGREEMENT AND OTHER COMMERCIAL SERVICES CONTRACTS, THUS IMPLYING THAT THIS INTERCONNECTION AGREEMENT IS A COMMERCIAL AGREEMENT. PLEASE COMMENT ON THIS TESTIMONY.

A. The Joint Petitioners apparently believe that commercial terms and conditions that they claim apply in the commercial arena should be incorporated into this Section 252 agreement. The Joint Petitioners' position should be rejected. This interconnection agreement is not a commercial agreement. BellSouth, as a matter of federal law, does not have the same contractual freedoms that other entities enjoy in the commercial arena, like the negotiation of price or walking away from the table if it so desires. Because of these distinct differences, several authorities have held that interconnection agreements are not traditional commercial contracts. For instance, the North Carolina Utilities Commission found, in a dispute between BellSouth and a Joint Petitioner, that "[i]nterconnection agreements are not to be treated as typical commercial contracts." *See In the Matter of BellSouth Telecommunications, Inc. v. NewSouth Communications, Corp.*, Docket No. P-772, Sub at 6 (Jan. 20,

2005). Similarly, the United States District Court for the Southern District of Mississippi reached the same conclusion in its recent decision overturning the Mississippi Public Service Commission's interpretation of the *TRRO* relating to "no new adds". *See BellSouth Telecommunications, Inc. v. Mississippi Public Serv. Comm'n, et al.*, Civil Action No. 3:05CV173LN at 13 (Apr. 13, 2005). This court found the following:

> If the FCC's Order is viewed not merely as a general regulation which bears on the proper interpretation of the interconnection agreements but as an outright abrogation of provisions of parties' interconnection agreements, consideration of its jurisdiction to act in the premises must take into account that interconnection agreements are "not ... ordinary private contract[s]," and are "not to be construed as ... traditional contract[s] but as ... instrument[s] arising within the context of ongoing federal and state regulation."

The Joint Petitioners' attempt to bootstrap commercial terms into the interconnection agreement ignores these decisions.

Q. PLEASE EXPLAIN WHY THE JOINT PETITIONERS' PROPOSED LANGUAGE LEAVES BELLSOUTH "HOLDING THE BAG."

A. In their testimony at page 38, the Joint Petitioners claim that BellSouth's proposed language is "completely one-sided" in that, "the Parties predominately taking services under the Agreement will be the ones indemnifying BellSouth." In truth, however, BellSouth's language is quite narrow and insures that the providing Party will only be indemnified in the unique situation when the end user of the receiving Party sues the providing

1 Party based on the receiving Party's use or reliance of services provided by the
2 providing Party.[1]
3
4 In contrast, adoption of the Joint Petitioners' language results in a scenario that
5 is **totally one-sided in favor of the Joint Petitioners**. Under their language,
6 the Providing Party (which more times than not will be BellSouth) is only
7 indemnified by the Receiving Party (which more times than not will be the
8 Joint Petitioners) for claims of libel, slander or invasion of privacy. In
9 contrast, the Providing Party would have an obligation to indemnify the
10 Receiving Party for (1) any violation of Applicable Law; or (2) damages
11 arising out of the negligence, gross negligence or willful misconduct.
12 Consequently, by adopting their language, BellSouth would have no
13 indemnification rights when a Joint Petitioner end user sues BellSouth even
14 though the Joint Petitioner's actions solely caused its end user to sustain the
15 damages.
16
17 Thus, by adopting the Joint Petitioners' language BellSouth is left "holding the
18 bag" for any expenses associated with defending itself against claims to which
19 it has no responsibility. And, BellSouth essentially has unlimited

[1] The Joint Petitioners do not use the same indemnification language with its end users. For instance, KMC requires its end users (who are receiving services from KMC) to indemnify and hold harmless KMC "from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided." *See* KMC Tariff at § 2.1.4(E), Exhibit KKB-1, attached to my Direct Testimony. And, the Joint Petitioners do not agree to indemnify their end users in their tariffs.

1 indemnification obligations to the Joint Petitioners.

2

3 Q. AS A PRACTICAL MATTER, WILL THE JOINT PETITIONERS BE LEFT
4 "HOLDING THE BAG" FOR BELLSOUTH'S NEGLIGENCE?

5

6 A. No. All of the Joint Petitioners have provisions in their tariffs that state that
7 they are not liable for the actions of service providers, like BellSouth. *See*
8 NuVox Tariff at § 2.1.4(H)(1); KMC Tariff at § 2.1.4(C); Xspedius Tariff at §
9 2.1.4(C), Exhibit KKB-1 attached to my Direct Testimony. Thus, the Joint
10 Petitioners already protect themselves against the very risk they claim
11 BellSouth's language imposes on them.

12

13 ***Item 9; Issue G-9: Should a court of law be included in the venues available for***
14 ***initial dispute resolution for disputes relating to the interpretation or***
15 ***implementation of the Interconnection Agreement? (Agreement GT&C Section***
16 ***13.1)***

17

18 Q. THE JOINT PETITIONERS CONCEDE AT PAGE 43 THAT BELLSOUTH
19 RECENTLY REVISED ITS PROPOSED LANGUAGE TO ALLOW FOR
20 RECOURSE TO A COURT UNDER CERTAIN CIRCUMSTANCES. YET,
21 THE JOINT PETITIONERS CONTINUE TO MAINTAIN THAT
22 BELLSOUTH'S POSITION WILL FORECLOSE A VIABLE MEANS FOR
23 EFFICIENT DISPUTE RESOLUTION BEFORE A COURT. IS THAT AN
24 ACCURATE READING OF BELLSOUTH'S POSITION?

25

1 A. No, it is not. BellSouth believes that this Commission or the FCC should
2 resolve disputes that are within the expertise of the Commission or the FCC.
3 However, BellSouth agrees that, if a dispute is outside the jurisdiction or
4 expertise of the Commission or FCC, the Parties can take the dispute to a
5 court. In contrast, the Joint Petitioners want to bring a dispute to a court even
6 when the Commission has jurisdiction and/or expertise to resolve the dispute.
7 The rationale for BellSouth's position is simple: this Commission is the best
8 tribunal to resolve disputes over the interpretation or enforcement of
9 interconnection agreement that it arbitrates and approves.
10
11 The Joint Petitioners advocate that a court may be a better alternative than
12 litigating before nine different state commissions. What this apparently means
13 is that the Joint Petitioners intend to file regional disputes in a single forum.
14 Thus, for disputes relating to actions in South Carolina over an agreement that
15 this Commission arbitrated and approved, the Joint Petitioners apparently
16 believe that they could file a lawsuit in federal court in Louisiana to resolve the
17 disputes. To the extent that they are correct, this Commission would have no
18 say whatsoever in the interpretation and enforcement of an interconnection
19 agreement it arbitrated and approved. In fact, the only possible way that the
20 public interest of South Carolina could be represented under that scenario
21 envisioned by the Joint Petitioners would be for the Office of Regulatory Staff
22 to attempt to intervene and participate in a proceeding in another state.
23 Clearly, this is not an appropriate result. Instead, this Commission should have
24 the ability to appropriately resolve disputes that arise in South Carolina and
25

that relate to an interconnection agreement that was arbitrated and approved by this Commission.

Q. ON PAGE 44, THE JOINT PETITIONERS CLAIM THAT BELLSOUTH'S PROPOSAL COULD BE USED TO EFFECTIVELY FORCE CLECS TO RE-LITIGATE THE SAME ISSUE IN NINE (9) DIFFERENT STATES. HOW DO YOU RESPOND?

A. I am somewhat confused by that statement as the Joint Petitioners have no problem arbitrating in nine (9) states. Further, the Joint Petitioners' position is entirely inconsistent with their statement on page 42 that, "The Commission and the FCC are obviously the expert agencies with respect to a number of (if not the majority of) the issues that might arise in connection with this Agreement..." Given this admission, the Joint Petitioners should have no objection to BellSouth's language. And, if the Joint Petitioners want to resolve interpretation and implementation of disputes in a single proceeding, the Joint Petitioners can file a complaint at the FCC. Further, because nine state commissions will be addressing the items in dispute, it is possible that there will be multiple sets of language in dispute that must be interpreted and resolved. Each state commission is the best forum to address their respective ordered language.

Q. ON PAGE 44, THE JOINT PETITIONERS ALSO CLAIM THAT BELLSOUTH'S PROPOSAL WOULD CAUSE "NEEDLESS BIFURCATION OF CLAIMS." HOW DO YOU RESPOND?

A. BellSouth does not agree that bringing a dispute regarding the interpretation and enforcement of an interconnection agreement before the Commission that actually arbitrated and approved that interconnection agreement is the "needless bifurcation" of claims. In any event, the Joint Petitioners' position likely will result in the same outcome. If either party to the Agreement filed for dispute resolution with a court for resolution of issues relating to the implementation or interpretation of the Agreement, the most likely outcome would be for the court to defer the case to a state commission for resolution. Filing in a court only to have the dispute referred to the Commission would require both parties to incur unnecessary cost and could cause substantial delay in resolving the dispute.

Item 12; Issue G-12: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties? (Agreement GT&C Section 32.2)

Q. ON PAGES 47-48, THE JOINT PETITIONERS ATTEMPT TO DESCRIBE BELLSOUTH'S POSITION WITH RESPECT TO ITS OBLIGATIONS UNDER APPLICABLE LAW. IS THEIR DESCRIPTION ACCURATE?

A. No. This issue centers on how the Parties should handle disputes when one Party asserts that an obligation, right, or other requirement relating to telecommunications law is applicable even though such obligation, right, or requirements are not expressly memorialized in the interconnection agreement.

Simply put, with this issue, BellSouth is attempting to provide the Parties with certainty as to their respective telecommunications obligations.

In addition, BellSouth's language recognizes that this agreement, which the Parties have been actively negotiating for some time now, represents an attempt by the Parties to memorialize their mutual understanding of their various obligations under substantive telecommunications law. The agreement is over 500 pages and addresses all aspects of what BellSouth and the Joint Petitioners are obligated or not obligated to do, in compliance with the law. In those instances where the Parties could not agree on what the law is, they have raised those disputes as issues to be resolved in this arbitration proceeding.

BellSouth's concern is that, with their language, the Joint Petitioners will review a telecommunications rule or order that is not addressed, claim that such interpretation forms the basis of a contractual obligation (even though during the two years of negotiations the Joint Petitioners did not raise the issue), and then seek to enforce the obligation against BellSouth. BellSouth's language addresses this concern as it provides that "to the extent that either Party asserts that an obligation, right or other requirement, ***not expressly memorialized herein***, is applicable under this Agreement by virtue of a reference to an FCC or Authority rule or order, or ***with respect to substantive telecommunications law only***, Applicable Law…", and the other Party disputes such right, obligation, or requirement, the Parties agree to submit the dispute to dispute resolution before the Commission and agree that any finding that such right or obligation exists applies prospectively only.

1 Q. DOES BELLSOUTH COMPLY WITH SUBSTANTIVE
2 TELECOMMUNICATIONS LAW, INCLUDING STATE AND FEDERAL
3 LAW, RULES, REGULATIONS AND DECISIONS?
4
5 A. Yes. BellSouth will comply with all appropriate laws and already has agreed
6 to do so in Section 32.1 of the General Terms & Conditions ("GT&Cs").
7 Further, BellSouth's proposal is only triggered if and when one party asserts
8 that a right or obligation exists that was not expressly identified or referenced
9 in the agreement and the other party disputes the applicability of that right or
10 obligation. For instance, under the Joint Petitioners' interpretation, state
11 unbundling laws are automatically incorporated into this Section 252
12 agreement even though there is no reference to such rules in the agreement.
13 Accordingly, the Joint Petitioners intend to take the position (and have testified
14 as much in other proceedings) that, if the FCC determined that BellSouth had
15 no obligation to provide a specific element on an unbundled basis, BellSouth
16 would still have an obligation under state law to provide that element and that
17 the Joint Petitioners could hold BellSouth in breach of that obligation even
18 though (1) it conflicts with federal law; and (2) it is not even addressed in the
19 agreement. BellSouth's language is designed to address this exact scenario –
20 not to provide BellSouth with a means in which to avoid complying with the
21 law.
22
23 Q. ON PAGE 48, THE JOINT PETITIONERS OBJECT TO BELLSOUTH'S
24 REVISED PROPOSED LANGUAGE CONTENDING THAT,
25 "...BELLSOUTH IS ADDING AN ADMINISTRATIVE LAYER, A

POTENTIAL PROCEEDING TO DETERMINE WHETHER A PARTY IS OR IS NOT BOUND BY APPLICABLE LAW." HOW DO YOU RESPOND?

A. Contrary to the Joint Petitioners' contention, it is the Joint Petitioners' proposed language that instigates the need for on-going litigation. In fact, NewSouth and NuVox have attempted to exploit a similar provision in its current interconnection agreements with BellSouth in an attempt to circumvent the provision regarding how audits will be conducted to verify compliance with the EEL eligibility criteria. The Joint Petitioners' proposed "catch-all" language seeks to memorialize the "two bites at the apple" strategy they have taken in the NewSouth/NuVox EELs audit dispute. The first bite occurs during the contract negotiations (resulting in the agreed-upon EEL audit language in the Current Agreement, for example), and the second bite occurs if and when the agreed-upon language creates results that are unfavorable to the Joint Petitioners. The Joint Petitioners want to have a ready option at such times to canvass all laws, presumably from any source, to see if a better result for them might be obtained. This is a fundamental difference in business approaches between the Joint Petitioners and BellSouth. BellSouth organizes itself around its obligations. The Joint Petitioners, at least in this effort, seek to keep obligations fluid for purposes that appear to be inconsistent with the Act.

Q. ARE THE JOINT PETITIONERS CORRECT THAT GEORGIA LAW GOVERNS THIS AGREEMENT?

A. Partially, but they fail to mention a very important distinction. Specifically,

the Parties have already agreed in Section 22 of the GT&Cs as to what law will govern this agreement: "Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles." Accordingly, it is not accurate to state that Georgia law governs this agreement in all respects. Importantly, Georgia law only applies if attempting to interpret non-substantive telecommunications law. As to substantive telecommunications law, federal and state telecommunications law (as it relates to 251 obligations), and not Georgia law, governs.

Q. WHY DID BELLSOUTH RECENTLY LIMIT ITS PROPOSED LANGUAGE TO APPLICATION OF "SUBSTANTIVE TELECOMMUNICATIONS LAWS"

A. After the initial arbitration proceedings, BellSouth modified, in part, its language to state as follows: "to the extent that either Party asserts that an obligation, right or other requirement, not expressly memorialized herein, is applicable under this Agreement by virtue of a reference to an FCC or Commission rule or order, or ***with respect to substantive telecommunications law only***, Applicable Law..." BellSouth limited its applicability to "substantive telecommunications law only" to address the Joint Petitioners' testimony in other proceedings that BellSouth's prior language would allow

BellSouth to not comply with laws of general applicability.

For instance, in the Tennessee hearing, NuVox witness Russell claimed that BellSouth's proposed language would allow BellSouth to claim that it has no obligation to comply with traffic laws. Of course, this issue is not about complying with traffic laws and BellSouth attempted to address his concerns by limiting its language to the seminal issue in dispute – the application of substantive telecommunications law that is not expressly addressed or memorialized in the agreement.

Item 26; Issue 2-8: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act? (Attachment 2, Section 1.7)

Q. ON PAGE 53, THE JOINT PETITIONERS ASSERT THAT BELLSOUTH, "...SHOULD BE REQUIRED TO COMMINGLE UNES OR COMBINATIONS OF UNES WITH ANY SERVICE, NETWORK ELEMENT, OR OTHER OFFERING THAT IT IS OBLIGATED TO MAKE AVAILABLE PURSUANT TO SECTION 271 OF THE ACT." HOW DO YOU RESPOND?

A. The Joint Petitioners' position is without merit. As I discussed in my Direct Testimony, BellSouth's position is consistent with the FCC's errata to the *Triennial Review Order*, in that there is <u>no</u> requirement to commingle UNEs or UNE combinations with services, network elements, or other offerings made

available only pursuant to Section 271 of the Act. Unbundling and commingling are Section 251 obligations. Services not required to be unbundled are not subject to Section 251 obligations. When BellSouth provides an item pursuant only to Section 271, BellSouth is not obligated by the requirements of Section 251 to either combine or commingle that 271 item with any other element or service. If BellSouth agrees to do so, it will be done pursuant to a commercial agreement.

Q. PLEASE ADDRESS THE JOINT PETITIONERS' STATEMENT, ON PAGE 55, THAT "NOTHING IN THE FCC'S RULES OR THE TRO SUPPORT [BELLSOUTH'S] INTREPRETATION."

A. The Joint Petitioners are wrong. The FCC made it clear by deleting the only reference to 271 elements in the entire commingling section of the *TRO* via the Errata (paragraph 27) that BellSouth has no obligation to commingle 271 elements with 251 elements. In fact, upon review of the commingling section, it is clear that the FCC limited its discussion of commingling to the combining of 251 elements with tariffed services only.

For instance, the FCC states in paragraph 579 of the *TRO* that "[w]e therefore modify our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (*e.g.*, switched and special access services offered pursuant to tariff) ...." In that same paragraph, the FCC states, "[a]s a result, competitive LECs may connect, combine, or otherwise attach UNEs and combinations of UNEs to wholesale services (*e.g.*, switched

and special access services offered pursuant to tariff) ...." Similarly, in paragraph 581, the FCC states: "For these reasons, we require incumbent LECs to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations." And, in paragraph 583, the FCC describes commingling as allowing a "competitive LEC to connect or attach a UNE or UNE combination with an interstate access service, such as high-capacity multiplexing or transport services." All of these references, combined with the Errata, make it clear that BellSouth has no obligation to commingle 251 elements with 271 elements.

Q. CAN YOU ADDRESS THE JOINT PETITIONERS' REFERENCE ON PAGE 56 TO PARAGRAPH 31 OF THE TRO ERRATA AND ITS IMPACT TO BELLSOUTH'S ARGUMENT?

A. Yes. The Joint Petitioners argue that the Errata's deletion of the last sentence of footnote 1990 proves their case. The Joint Petitioners are wrong. If anything, the deletion of this sentence in the Errata buttresses BellSouth's position and proves that the Joint Petitioners' attempt to explain away the deletion to the reference of 271 services in paragraph 584 of the Errata is incorrect.

Specifically, because the FCC deleted the reference to 271 services in the commingling section of the *TRO* in paragraph 584 via the Errata, there was no need for the FCC to maintain the last sentence of footnote 1990, which is in an entirely different section of the *TRO*. Further, the Joint Petitioners have

attempted to argue that BellSouth's interpretation of the Errata cannot be correct because they claim that errata cannot be used to impact substantive rights. However, in their testimony, the Joint Petitioners are arguing exactly that. They are arguing that, through the deletion of the last sentence of footnote 1990 in the Errata, the FCC deleted BellSouth's substantive right to not commingle 251 services with 271 services. The Joint Petitioners cannot have it both ways; they cannot argue the Errata can strip substantive rights but only when the stripping of those rights benefits the Joint Petitioners.

Item 51; Issue 2-33: (B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include? (C) Who should conduct the audit and how should the audit be performed? (Attachment 2, Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1 & 5.2.6.2.3)

Q. ON PAGE 66 OF THEIR TESTIMONY, THE JOINT PETITIONERS SUGGEST THAT BELLSOUTH'S AUDIT RIGHTS SHOULD BE LIMITED TO THE CIRCUITS IDENTIFIED IN A NOTICE AND FOR WHICH SUFFICIENT DOCUMENTATION IS PRODUCED. PLEASE COMMENT ON THIS SUGGESTION.

A. The *TRO* does not contain these impediments to BellSouth's audit rights, and adoption of these unnecessary audit obstacles will only be used to delay any audit.

This point is important given the nature of EELs and BellSouth's audit rights. Under the *TRO*, CLECs can only obtain EELs if the CLEC meets certain eligibility criteria. When ordering an EEL, the CLEC has to certify that it will be using the EEL in compliance with these criteria established by federal law. BellSouth has no right to object or challenge this initial certification. Rather, to prevent gaming and false certifications, the *TRO* provides BellSouth with a right to audit the certifications on a yearly basis. Thus, the only way BellSouth can challenge the veracity of a CLEC certification and compliance with federal law is through an audit.

Importantly, if a CLEC has not complied with the law and filed false certifications in violation of the law, the CLEC has no incentive to allow the audit to proceed, because the audit will reveal the CLEC's noncompliance. The unnecessary limitations the Joint Petitioners seek to impose on BellSouth's audit rights – limitations not imposed by the *TRO* – could be used to avoid discovery of the CLECs noncompliance by an audit. For example, the CLEC could always claim that BellSouth did not produce enough or sufficient documentation to allow the audit to proceed. Likewise, if a CLEC has 100 circuits, all of which were obtained in violation of the law, and BellSouth identifies 20 circuits in the notice, the CLEC could convert those circuits to special access during the 30 days prior to the audit and then claim that BellSouth has no right to audit the remaining circuits, even though they are all in violation of the law.

Simply put, if a CLEC is in violation of the law, there is no amount of notice or documentation that will prevent the CLEC from using the Joint Petitioners' language to delay BellSouth's audit rights and the potential revelation of their malfeasance. In fact, the Joint Petitioners have stated in response to discovery propounded by the Florida Staff that even a finding of a CLEC's systemic noncompliance may not result in the expansion of an audit from the initial circuits identified in the notice. *See* Joint Petitioner Response to Florida Public Service Commission Interrogatory No. 94(b), attached hereto as Exhibit KKB-5. This response makes it clear that the language proposed by the Joint Petitioners is subject to abuse and delay as it could be used to forestall audits, even upon a finding of systemic violations of federal law. For this reason, the Commission should reject the Joint Petitioners' language.

Furthermore, the *TRO* makes it clear that, to the extent the audit shows that the CLEC complies with the EEL eligibility criteria in all material respects, the CLEC can recover its costs associated with the audit from BellSouth. Thus, if the CLEC's EEL certifications are accurate, the CLEC will recover its costs.

Q. CAN YOU PLEASE ADDRESS THE JOINT PETITIONERS' POSITION REGARDING THE INDEPENDENCE OF THE AUDITOR?

A. The Joint Petitioners continue to assert on page 69 that the parties be required to mutually agree to the selection of the auditor. As I stated in my Direct Testimony, the *TRO* requires and the Parties have already agreed that the auditor selected would conduct the audit pursuant to AICPA standards. As

1 admitted by the Joint Petitioners, these standards require that the auditor be
2 independent. These standards also require that the auditor operate with
3 integrity and objectivity. Because BellSouth has already agreed to select an
4 auditor that will conduct the audit pursuant to AICPA standards, there is no
5 need for mutual agreement as to who the auditor should be. And, there is
6 nothing in the *TRO* that requires any such agreement.
7
8 Q. DOES BELLSOUTH HAVE ANY OTHER CONCERNS ABOUT A
9 MUTUAL AGREEMENT REQUIREMENT BASED ON THE JOINT
10 PETITIONERS' TESTIMONY?
11
12 A. Yes. As evidenced by the Joint Petitioners' position, adoption of this
13 unnecessary requirement could lead to the delay of the audit. For example, the
14 Joint Petitioners have historically taken the position that they would not object
15 to the selection of a nationally recognized auditing firm, like KPMG or
16 Deloitte, to conduct the audit. In fact, in Georgia, where an auditor is almost
17 finished auditing 44 NuVox's EELs, NuVox actually recommended KPMG as
18 the auditor. BellSouth agreed to KPMG as the auditor in Georgia even though
19 the chairman of NuVox's Board of Directors was formerly associated with
20 KPMG and the fact that KPMG is NuVox's external auditor. Most recently,
21 however, NuVox claims in its Kentucky testimony that "it does not appear that
22 KPMG is qualified to serve as an independent auditor." The logical conclusion
23 from these sudden turn of events is that KPMG or any other auditor that
24 NuVox now claims may be independent will no longer be considered
25 independent by NuVox after an audit commences.

In particular, at least in Florida, the Joint Petitioners withdrew their identification of six auditing firms that it would not object to as the auditor (the first identified being KPMG) on the grounds that there "was a potential for conflicts to arise as to particular auditing entities . . . ." *See* Emails from Joint Petitioners Counsel to FPSC Staff, collectively attached hereto as Exhibit KKB-6. If NuVox is claiming that its own external auditor is not independent, then presumably no auditor is independent. This evidence makes it clear that there is likely no auditor that the Joint Petitioners would find to be independent, especially if agreement on the auditor would result in the auditor proceeding and revealing their noncompliance with the law.

Item 65; Issue 3-6: Should BellSouth be allowed to charge a CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic? (Attachment 3, Sections 10.10.1 – KMC; 10.8.1 – NSC; 10.13 - XSP)

Q. ON PAGE 72, THE JOINT PETITIONERS CLAIM THAT THE TANDEM INTERMEDIARY CHARGE APPEARS TO BE "PURELY 'ADDITIVE'." THE JOINT PETITIONERS ALSO CLAIM AT PAGE 73 THAT, IF CURRENT TELRIC CHARGES FOR ELEMENTAL RATES DO NOT COVER ALL COSTS, BELLSOUTH SHOULD CONDUCT A TELRIC STUDY OF THOSE ADDITIONAL COSTS AND PROPOSE A RATE IN THE NEXT GENERIC PRICING PROCEEDING. PLEASE RESPOND.

A. First, my Direct Testimony explains why the tandem intermediary charge is proper and is not an additive charge. Briefly, BellSouth incurs many costs associated with providing the transit function, including, but not limited to, EMI records, billing disputes, network resources, and product management expenses caused by, or related to, the provisioning of the transit traffic function. BellSouth should be permitted to recover those costs.

Second, the FCC has not determined that BellSouth has an obligation to provide transit service at TELRIC. In addressing this issue in the *Virginia Arbitration Order*, the Wireline Competition Bureau of the FCC declined to make such a finding in that proceeding. In addition, the Georgia Public Service Commission recently found (in Docket No. 16772-U) that BellSouth has no obligation to provide transit service at TELRIC. BellSouth requests that this Commission make a similar finding.

Importantly, CLECs can connect directly with other carriers in order to exchange traffic. They do not need BellSouth to pass such traffic for them. For whatever efficiencies they gain, the CLECs have elected to have BellSouth perform a transit traffic function for them. Because the transit traffic function is not a Section 251 obligation, it is not subject to Section 252 cost standards (TELRIC). As stated previously, CLECs that elect to have BellSouth perform this function should negotiate the rates, terms, and conditions of transit traffic in a separate agreement.

1 ***Item 88; Issue 6-5: What rate should apply for Service Date Advancement (a/k/a***
2 ***service expedites)? (Attachment 6, Section 2.6.5)***
3
4 Q. PLEASE ADDRESS THE JOINT PETITIONERS' CONTENTIONS AT
5 PAGE 79 OF THEIR TESTIMONY THAT BELLSOUTH'S EXPEDITE
6 CHARGES ARE INFLATED, WERE NOT SET BY THE COMMISSION
7 AND DO NOT COMPORT WITH THE TELRIC PRICING STANDARD.
8
9 A. First, BellSouth's expedite charges are set forth in BellSouth's FCC No. 1
10 Tariff, Section 5. These are the same charges that BellSouth's retail customers
11 are charged when a retail customer requests service in less than the standard
12 interval. Such rates reflect the value of the expedited service being provided as
13 well as the additional costs involved. To the extent that a CLEC wants
14 expedited service, the CLEC should pay the same rates as BellSouth's retail
15 customers.
16
17 Regarding the contention that expedite charges should reflect TELRIC pricing,
18 the Petitioners are incorrect. As noted above, BellSouth's obligation is to
19 provision UNEs within standard intervals. BellSouth has no obligation to
20 provide CLECs with expedited service. Not surprisingly, no Commission in
21 BellSouth's region has required BellSouth to provision UNEs on an expedited
22 basis. To the contrary, in the context of performance measurement plans, *all*
23 Commissions in BellSouth's region have required BellSouth to provision
24 UNEs in accordance with *standard* intervals and pay IPP penalties if BellSouth
25 fails to provision UNEs within such intervals. Because expedited service

provisioning of UNEs is not an obligation under Section 251, the cost-based pricing standards of Section 252(d) do not apply.

As a practical matter, if there were no charge or only a minor charge for expedited service requests, it is likely that most CLEC orders would be expedited, causing BellSouth to miss its standard intervals and its obligations to provide non-discriminatory access. The result would be most, if not all, orders would either be expedited or late, due to the volume of expedite orders that preempt other scheduled orders with standard intervals. Additionally, from a policy perspective, any requirement that forces BellSouth to price voluntarily offered services at TELRIC prices will chill BellSouth's willingness to offer any voluntary services to CLECs. BellSouth's position on this issue is reasonable and provides parity of service between how BellSouth treats CLECs and how it treats its own retail customers.

Q. ON PAGE 79 OF THEIR DIRECT TESTIMONY, JOINT PETITIONERS CLAIM THAT BELLSOUTH'S $200 PER CIRCUIT, PER DAY, SERVICE EXPEDITE FEE IS "UNREASONABLE, EXCESSIVE, AND HARMFUL" AND WOULD RESULT IN A $4,000 CHARGE TO "SPEED UP AN ORDER FOR A 10-LINE CUSTOMER BY 2 DAYS." DO YOU AGREE?

A. No. One DS-1 circuit (1.544 Mbps) has the capacity to support 24 voice grade lines (64 KB/sec). Obviously, a business customer with one location that orders one DS1 circuit, could use a portion of the circuit's capacity for 10 voice grade lines. In such case, a request to expedite the installation of a DS1

circuit by two days would result in a ***$400*** charge (and not, as the Joint Petitioners suggest, a $4,000 charge).

Setting aside what BellSouth charges Joint Petitioners as a service expedite fee, the Joint Petitioners' South Carolina tariffs allow them, at a minimum, to pass on all such charges to their customers. Specifically, the Joint Petitioners' South Carolina tariffs classify a service expedite request as "special construction"; undertaken at the Joint Petitioners' discretion; and governed by special pricing rules that allow the Joint Petitioners to recover from their customers any BellSouth charges associated with the service expedite request. *See* KKB-1 as attached to my Direct Testimony (NuVox Tariff § 2.1.8(E) & 11.1.1; Xspedius Tariff § 2.1.8(E) & 11.1.1; and KMC Tariff § 2.1.8(E)).

Significantly, in its South Carolina Tariff, Xspedius charges its customers an ***$800 per circuit*** service expedite charge, and it reserves the right to charge a higher rate if its underlying cost is greater than $800. *See* Exhibit KKB-1 attached to my Direct Testimony (Xspedius South Carolina Tariff § 11.4). A comparable application of the Xspedius service expedite charge to the example appearing on page 79 of Joint Petitioner's direct testimony results in an ***$8,000*** service expedite charge that Xspedius would impose on its customer. An $8,000 service expedite charge is ***double*** the amount that Joint Petitioners claim (erroneously) that BellSouth would charge under the same circumstances ($4,000).

Accordingly, the Commission should disregard the Joint Petitioners' unwarranted request for a TELRIC-based service expedite fee, and instead allow BellSouth to continue charging its wholesale and retail customers the same service expedite fee.

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

Q. AT PAGE 81, THE JOINT PETITIONERS COMPLAIN THAT PETITIONERS NEED AT LEAST 30 CALENDAR DAYS TO REVIEW AND PAY INVOICES. IS THAT REASONABLE?

A. No. There is no legitimate reason to allow the Petitioners a full thirty calendar days after receiving a bill to make payment. BellSouth invoices each CLEC every month, just as it does for retail customers. The bill date is the same each month and each CLEC is aware of its payment due date (which is the next bill date). Moreover, a CLEC can elect to receive its bills electronically, thus giving it even more time to review its bill before making its payment. To the extent a CLEC has questions about its bills, BellSouth cooperates with that CLEC to provide responses in a prompt manner and resolve any issue. It is reasonable for BellSouth to expect that payment will be due and payable before the next bill date. BellSouth expects the same from it retail customers. Furthermore, in a given month if special circumstances warrant, a CLEC may request an extension of the payment due date and BellSouth does not unreasonably refuse to grant such a request.

All customers' due dates and treatment (or collections) notices are generated the same way; therefore, it is not realistic or efficient to do something different for one customer versus another. Any such change would require significant modifications to BellSouth's billing systems, would involve substantial costs, and would apply to all customers.

In prior hearings, Joint Petitioners have testified that they are unwilling to pay for the costs associated with their request for special billing treatment. For BellSouth to incur such additional costs to meet the special payment due date request of the Joint Petitioners is unnecessary and unwarranted given the fact that in granting BellSouth long distance authority in South Carolina, both this Commission and the FCC determined that BellSouth's billing practices are non-discriminatory[2] In short, it has already been determined that BellSouth's *existing* billing practices are sufficient and give efficient CLECs a meaningful opportunity to compete in the local market. Further, BellSouth's delivery of bills to CLECs is measured by BellSouth's performance measurement plan (known as the SQM and IPP plans), and BellSouth's failure to submit bills in a timely manner to CLECs under its *existing* billing practices subjects BellSouth to IPP penalties.

[2] Memorandum Opinion and Order, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina,* WC Docket, No. 02-150, FCC02-260 (Rel. Sept. 18, 2002) at ¶ 174 ("Like the state commissions, we find that BellSouth provides nondiscriminatory access to its billing functions. BellSouth's performance data demonstrates its ability . . . to provide wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.)

The Monthly State Summary ("MSS") offers reliable and recent data that demonstrates that the Joint Petitioners' request for special billing treatment is unwarranted and that the results of the Joint Petitioners' unscientific bill studies are outdated and inaccurate.[3] Specifically, a review of the relevant Service Quality Measurement ("SQM") report, Mean Time to Deliver Invoices –CRIS/CABS (Average Time to Deliver Bills) for South Carolina, for the 12-month period (April 2004 through March 2005) shows that, at a CLEC-aggregate level, BellSouth has delivered bills to CLECs in about 3 or 4 days. The referenced MSS and SQM reports are attached as Exhibit KKB-7. *See* CLEC Metric column of the SQM Report in Exhibit KKB-7 for the specific monthly average that it takes BellSouth to deliver CLEC bills. Additionally, the SQM report shows that BellSouth, on average, delivers CLEC bills faster than it has delivered bills to its own retail customers. *Compare* CLEC Metric column to BST Metric column; *see* Z-score Equity column. In short, regarding bill delivery timeliness, BellSouth is already providing service that meets or exceeds parity.

Without disclosing any proprietary information, a review of the CLEC-specific South Carolina SQM reports for the Joint Petitioners for the first three months of 2005, indicates that the average time it takes BellSouth to deliver bills to the Joint Petitioners (in particular CABS/interconnection bills) is substantially similar to the CLEC-aggregate numbers contained in KKB-7.

3 NuVox completed its bill study almost two years ago (July 2003).

Setting aside averages, the testimony provided by the Joint Petitioners on this issue in several hearings demonstrates that Joint Petitioners do not need any additional time to pay their bills. Specifically, NuVox has stated on numerous occasions in testimony and at hearing that it receives over 1,100 bills per month from BellSouth. The NuVox witness has also consistently testified that NuVox ***pays all of its BellSouth's bills in a timely manner*** and has done so for years. Obviously, a party may ***want*** additional time to pay bills, but NuVox's payment behavior demonstrates that Joint Petitioners ***do not need additional time to pay their bills.***

Q. AT PAGE 81, THE JOINT PETITIONERS ASSERT THAT IN OTHER SETTINGS "IN WHICH THE PARTIES HAVE ESTABLISHED BUSINESS RELATIONSHIPS", THAT PAYMENT TERMS MAY EQUAL OR EXCEED 45 DAYS. HAVE THE JOINT PETITIONERS PRODUCED ANY EXAMPLES OF SUCH PAYMENT TERMS?

A. Not to my knowledge. However, in support of their position on another arbitration issue, the Joint Petitioners produced an excerpt of the interconnection agreement between Alltel South Carolina, Inc. and NewSouth Communications Corporation. A review of the ***complete*** Alltel/NewSouth interconnection agreement shows that NewSouth (which merged with NuVox in May 2004) agreed to pay Alltel "all rate and charges due and owing . . . ***within thirty (30) days of the invoice date*** in immediately available funds." Section 8.3 Alltel/NewSouth Interconnection Agreement. The complete Alltel/NewSouth interconnection agreement is attached hereto as Exhibit

KKB-11. Interestingly, a review of the Alltel/NewSouth interconnection agreement shows that NewSouth agreed to the same payment terms that NewSouth (or rather NuVox, post-merger) so adamantly opposes in this arbitration, and did so in August 2004, six months after the filing of the Joint Petitioners' original arbitration petition (February 2004). This is yet another example of the fact that Joint Petitioners in this arbitration are seeking special payment terms that are inconsistent with the industry norm.

Q. AT PAGE 81, THE JOINT PETITIONERS ALLEGE THAT BELLSOUTH IS "CONSISTENTLY UNTIMELY IN POSTING OR DELIVERING ITS BILLS" AND THAT THERE ARE CIRCUMSTANCES WHEN BELLSOUTH'S INVOICES ARE "OFTEN INCOMPLETE AND SOMETIMES INCOMPREHENSIBLE." PLEASE COMMENT.

A. Regarding the unfounded allegation of untimely bills, I will provide a brief, high-level explanation of BellSouth's bill generation processes. First, it is important to know that the established customer/service-specific bill date is the same date from month-to-month. This consistent bill date serves both BellSouth, from the efficient application of its billing systems and processes, as well as BellSouth's interconnection customers, through the ability to predict the arrival of BellSouth bills in order to maximize the use of resources. Further, Joint Petitioners admit that monthly billings can be predicted with "reasonable accuracy." *See* Joint Petitioners Direct Testimony at p. 88.

The bill for the previous month's service is not generated on the bill date, however, because it is necessary to ensure that there is a complete accounting of all charges attributed to services provided prior to the bill date and that those charges have been posted—a period of 3 to 4 days. The bill is then generated on the 3rd or 4th business day following the bill date. For customers who choose electronic delivery (like all of the Joint Petitioners for most of their bills), the bill is delivered on the day the bill is generated. For customers who choose to receive paper bills, the bill is mailed to those customers on the "bill generation" date. Obviously, paper bills will take longer to reach the CLEC due to varying mail delivery times. Therefore, the difference between the billing cycle dates (the same dates each month) and the length of time it takes for the electronic or paper bill to arrive at the CLEC represents the amount of time that the CLEC has available to review and pay its bill. That period may be as many as 28 days in the case of an electronic bill generated in 3 days in a month with 31 calendar days. Similarly, the time available for CLECs to review and pay paper bills will vary from about 25 days in cases where the mail delivery time is only two days, to a shorter interval depending on actual mail delivery schedules. Clearly, CLECs currently receiving paper bills can increase the time available to review and pay bills simply by converting to electronic bill delivery.

Again, BellSouth is subject to paying IPP penalties if BellSouth fails to deliver CLEC bills in a timely manner (i.e. in the same time it takes BellSouth to deliver bills to its retail customers). In short, from a timeliness perspective, BellSouth has at least two practical reasons (getting paid and avoiding IPP

1 penalties) for delivering bills to CLECS as soon as possible.

2

3 Regarding the allegation of "incomplete and sometimes incomprehensible"
4 bills, the Joint Petitioners do not support this allegation with examples or other
5 factual evidence. If the CLECs would provide such evidence, BellSouth will be
6 glad to investigate. Further, if the Joint Petitioners believe that they have
7 insufficient time to review their bill or that BellSouth's bills are
8 "incomprehensible," then they may take advantage of the help offered by
9 BellSouth to assist the CLECs in understanding the bills from BellSouth.
10 CLECs should also be prepared to dedicate sufficient resources to allow them
11 to understand the bill and to timely pay it.

12

13 Q. AT PAGE 83 OF THEIR DIRECT TESTIMONY, JOINT PETITIONERS
14 ASSERT THAT BELLSOUTH IS USING ITS "MONOPLY LEGACY" TO
15 FORCE CLECs TO REMIT PAYMENT FASTER THAN ANY OTHER
16 BUSINESS. DO YOU AGREE?

17

18 A. No. BellSouth requires all of its customers (retail and wholesale) to pay bills
19 on or before the payment due date. This is no new concept. Additionally, in
20 their South Carolina tariffs, Joint Petitioners impose upon their customers the
21 same payment terms they are opposed to in this arbitration. (*See* Xspedius
22 Tariff § 2.5.2(A)(B) ("...charges are due and payable from the customer within
23 30 days after invoice date..."); KMC Tariff § 2.5.2(A)(B) ("...charges are due
24 and payable from the customer within 30 days after invoice date..."); Nuvox
25 Tariff § 2.7.2(A)(B) ("charges due and payable upon receipt"); all provided as

Exhibit KKB-1 as attached to my Direct Testimony. These tariff provisions demonstrate two things. One, the Joint Petitioners' own payment terms are unacceptable to Joint Petitioners. Second, the Joint Petitioners want more favorable payment terms than BellSouth offers to its other wholesale and retail customers. It is completely contrary to the fundamental principle of parity, to give special payment terms to the Joint Petitioners. Accordingly, the Commission should adopt BellSouth's position on Issue 97 and continue to require Joint Petitioners to pay their bills in a timely manner.

Item 100; Issue 7-6: 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? (Attachment 7, Section 1.7.2)

Q. THE JOINT PETITIONERS STATE AT PAGE 84 THAT ONLY THE PAST DUE AMOUNTS EXPRESSLY AND PLAINLY INDICATED ON THE NOTICE OF TERMINATION SHOULD BE REQUIRED TO BE PAID TO AVOID SUSPENSION OR TERMINATION. PLEASE COMMENT.

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

or account "treatment", such as sending Suspension Notices, in an effort to collect the amounts that the CLEC owes BellSouth.

Q. ON PAGE 86, THE JOINT PETITIONERS DISCUSS THE "SHELL GAME" THAT THEY MUST PLAY IN ORDER TO "GUESS" THE PRECISE AMOUNT THAT IS OWED TO BELLSOUTH IN ORDER TO SATISFY THE AMOUNTS PAST DUE REQUIREMENT PROPOSED BY BELLSOUTH. PLEASE COMMENT ON THIS CONCERN?

A. Yes. Again, there is no guesswork involved in BellSouth's collections process, as I will explain. More significant, however, is that the Joint Petitioners continue to overlook the fact that a suspension or termination notice is triggered only by the Joint Petitioners' failure to timely pay undisputed amounts owed on a previously issued bill (or bills). Accordingly, there is no undefined "cure amount" that must be paid to avoid suspension to ordering systems and/or termination of service. Further, the mere fact that the Joint Petitioners receive many BellSouth bills on a monthly basis (NuVox claims it receives over 1,100 BellSouth bills per month) is of no consequence as BellSouth has no control over whether the Joint Petitioners' employees (or contractors) have the requisite competence and ability to review and timely pay the bills the Joint Petitioners receive in the normal course of business.

Moreover, as plainly demonstrated by BellSouth's response to Florida Staff Interrogatory No. 117 (redacted version is attached hereto as Exhibit KKB-8), there is no guesswork or so-called "shell game" involved in BellSouth's

collections process. To the contrary, a CLEC that fails to timely pay undisputed amounts that are past due is provided with a (i) written notice of the amount that must be paid to avoid suspension or termination; and (ii) a spread sheet (also know as an aging report) that shows, by billing account number, the current amount owed, the past due amount owed, disputed amounts, and for the CLECs' convenience, the total amount that has or will become due, less disputed and current charges.

Exhibit KKB-8 unquestionably establishes that, in addition to providing updated aging reports on a frequent basis, there is constant communication between BellSouth and a CLEC that fails to timely pay undisputed amounts owed. Accordingly, the Commission should reject Joint Petitioners' unsubstantiated assertion regarding "guesswork," adopt BellSouth's proposed language for Issue 100, and require the Joint Petitioners to timely pay undisputed amounts owed to avoid suspension or termination of service.

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

Q. AT PAGE 88, THE JOINT PETITIONERS STATE THAT EXISTING CLECS SHOULD BE SUBJECT TO ONLY ONE AND ONE HALF MONTH'S BILLING AS A DEPOSIT THAT IS BASED UPON THE MOST RECENT SIX MONTH PERIOD. PLEASE ADDRESS THESE POINTS.

1 A. First, BellSouth would agree to use the Petitioners' most recent six-month
2 period to establish the deposit amount. However, BellSouth does not agree
3 with a maximum deposit amount of one and one-half month's billing.
4 BellSouth's policy of reserving the right to require a deposit of no more than
5 two months of a CLEC's estimated billings is consistent with industry
6 standards. Most telecommunications companies require deposits from their
7 customers to reduce potential losses if a customer ceases to pay its bills.
8 BellSouth is no different. BellSouth is simply using sound business criteria for
9 determining the credit risk of our customers to protect the Company from
10 excessive bad debt. Two months is necessary because BellSouth must wait
11 approximately 74 days or more before it can disconnect a customer for non-
12 payment. Having a deposit that covers two months of billing still leaves
13 BellSouth at risk of covering 14 days or more of billing. In today's telecom
14 world, reserving the right to require a deposit of up to two month's billing is
15 necessary and demonstrates sound business rationale.
16
17 Q. CAN YOU ADDRESS THE JOINT PETITIONERS' MODIFED POSITION
18 ON PAGE 88 REGARDING A MAXIMUM SECURITY DEPOSIT
19 AMOUNT?
20
21 A. As an alternative to its original position, the Joint Petitioners state that they
22 will accept as a maximum deposit amount, the deposit maximum that
23 BellSouth recently agreed to with DeltaCom. What the Joint Petitioners
24 continue to fail to disclose regarding the BellSouth/DeltaCom interconnection
25 agreement is the fact that the Joint Petitioners were offered the ***entire*** deposit

and payment terms agreed to between DeltaCom and BellSouth (not simply the maximum deposit amount provision) and the Joint Petitioners ***rejected*** DeltaCom's deposit and payment terms. The entire DeltaCom deposit and payment terms are attached hereto as Exhibit KKB-9.

Q. DO YOU AGREE WITH THE JOINT PETITIONERS' CLAIM THAT A ONE AND ONE-HALF MONTH'S ACTUAL BILLING IS AN APPROPRIATE MAXIMUM DEPOSIT AMOUNT FOR AN EXISTING CLEC?

A. No. A higher maximum deposit amount for a new CLEC (as opposed to an existing CLEC) overlooks the fact that a new CLEC may be less of a credit risk than an existing CLEC. Deposit requirements are driven by a CLEC's creditworthiness (or lack thereof). Arbitrarily lowering the maximum deposit amount for an existing CLEC misses the mark and is contrary to the need and purpose of the deposit. The Joint Petitioners appear to understand this concept since at least one of the Joint Petitioners (NewSouth) recently agreed to a ***three (3) months billing*** deposit amount provision. Section 8.1 Alltel/NewSouth Interconnection Agreement ("The security deposit must be an amount equal to three (3) months anticipated charges"). *See* Exhibit KKB-11. The Joint Petitioners redacted this provision of the AllTel/NewSouth Interconnection Agreement excerpt that they attached as an Exhibit to their testimony.

Further, BellSouth's proposed maximum deposit amount (two months billing) is consistent with the maximum deposit amount contained in the South

Carolina end user tariffs of BellSouth and the Joint Petitioners (*See* BellSouth Tariff, § A2.4.2, Exhibit KKB-2 as attached to my Direct Testimony; *See* NuVox Tariff, § 2.6.1(A); KMC Tariff, § 2.5.4(A)(1); Xspedius Tariff, § 2.5.4(A)(1), Exhibit KKB-1 as attached to my Direct Testimony).

The maximum two-month requirement proposed by BellSouth is reasonable given that BellSouth will refund, return, or release any security deposit within 30 calendar days of determining that the customer's creditworthiness indicates a deposit is no longer necessary. NuVox should be aware of this fact as BellSouth reduced NuVox's deposit by about $800,000 in 2003, and also reduced NewSouth's cash deposit from $2.4 million to about $600,000. Stated in percentage terms, BellSouth reduced NuVox's deposit by about 44% and reduced NewSouth's deposit by about 75%. Accordingly, the Commission should adopt BellSouth's proposed maximum deposit amount as it ensures parity treatment between BellSouth's retail and wholesale customers.

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

A. Yes, in determining whether any Joint Petitioner is required to pay a deposit, the agreed-upon deposit criteria terms do, in fact, take into account the parties' billing history and other objective financial measurements. *See* Attachment 7,

§ 1.8.5. As such, BellSouth is at a loss as to why this is still an unresolved issue for the Joint Petitioners. In any event, the payment history for some of the Joint Petitioners is not as flattering as they suggest. Additionally, having an established business relationship does not necessarily limit or minimize BellSouth's risk in providing service to high-credit risk customers, as established by independent, objective credit evaluation tools, as well as the customers' own data.

Further, timely payment does not necessarily equate to a low credit risk. In fact, during the last 2 years, a very large number of BellSouth's customers have made timely payments up until the day they filed bankruptcy. For example, WorldCom, Adelphia, Cable and Wireless, and Global Crossing all had a long relationship with BellSouth, and credible payment histories, when they filed for bankruptcy with little notice. Consequently, BellSouth has written off over $23 million owed by CLECs that filed for bankruptcy. A deposit (or a greater deposit amount) would have reduced the amount BellSouth was unable to recover from such CLECs.

Simply stated, payment history is an indication of how a customer performed in the past, but not how it will perform in the future. A compilation of data including how the debtor pays other suppliers, management history, company history, financial information, and bond rating (indicates the company's ability to obtain financing) all help paint a picture of how a company will perform in the future. A long relationship does not guarantee a low credit risk.

Item 102; Issue 7-8: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to the CLEC? (Attachment 7, Section 1.8.3.1)

Q. ON PAGE 92, THE JOINT PETITIONERS CLAIM THAT BELLSOUTH DOES NOT HAVE A "PRISTINE OR EVEN GOOD PAYMENT RECORD WHEN IT COMES TO PAYING CLECs THE AMOUNTS BELLSOUTH OWES . . ." CAN YOU PROVIDE SPECIFIC DATA FOR A JOINT PETITIONER COMPANY TO ADDRESS THIS UNFOUNDED CLAIM?

A. Yes. In support of its allegation "that BellSouth's payment history with CLECs is often poor", the Joint Petitioners (specifically, Jim Falvey of Xspedius) has repeatedly testified that BellSouth has a history of withholding payment and disputing millions of dollars in reciprocal compensation payments owed to Xspedius (and a predecessor company, espire). However, a review of the May 2005 bill that BellSouth received from Xspedius for reciprocal compensation indicates a total amount due of ***$48,319.*** In fact the total amount due for reciprocal compensation ***exceeds the billed current charges*** ($71,723.56). The May 2005 remittance statement for reciprocal compensation that BellSouth received from Xspedius is attached hereto as Exhibit KKB-10. Accordingly, the Commission should reject the Joint Petitioners' tired references to a several-year-old reciprocal compensation dispute, and, instead, rely on recent and relevant billing information. The current Xspedius reciprocal compensation invoice squarely and convincingly rebuts the allegation that BellSouth's payment history is poor.

1 Q. WHY IS THE JOINT PETITIONERS LANGUAGE FOR ISSUE 102
2 UNACCEPTABLE TO BELLSOUTH?
3
4 A. Joint Petitioners' have repeatedly testified that their proposed offset provision
5 ***includes amounts that are subject to a billing dispute.*** This position is
6 unreasonable and unacceptable and is completely at odds with the Joint
7 Petitioners' position on a host of other issues that disputes should proceed in
8 accordance with the interconnection agreement's dispute resolution provision
9 before any action can be taken.
10
11 Q. ON PAGE 91, THE JOINT PETITIONERS STATE THAT THE CLECS
12 CONCEDED TO GIVE UP THE RIGHT TO RECIPROCAL DEPOSITS. IS
13 IT RELEVANT TO THIS ARBITRATION THAT THE DEPOSIT
14 PROVISIONS OF THE INTERCONNECTION AGREEMENT ARE NOT
15 RECIPROICAL?
16
17 A. No. Joint Petitioners ***agreed*** that the interconnection agreement's deposit
18 provisions should not be reciprocal. Accordingly, it is puzzling that Joint
19 Petitioners keep pointing to something that is not an arbitration issue
20 (reciprocal deposit provisions) in support of an arbitration issue (appropriate
21 deposit offset provision).
22
23 Q. WHAT RECOURSE DO THE JOINT PETITIONERS HAVE IF
24 BELLSOUTH ENGAGES IN SLOW PAYMENT?
25

A. Slow payment should be treated through suspension/termination of service or the application of late payment charges, not through the reduction of a deposit.

Item 104; Issue 7-10: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit? (Attachment 7, Section 1.8.7)

Q. WITH REGARD TO POSTING A BOND, THE JOINT PETITIONERS STATE AT PAGE 96 THAT "BELLSOUTH'S PROPOSED LANGUAGE WOULD EFFECTIVELY ALLOW BELLSOUTH TO OVERRIDE THE DISPUTE RESOLUTION PROVISIONS OF THE AGREEMENT BY TERMINATING SERVICE TO A CLEC IF CLEC DOES NOT POST A PAYMENT BOND… ." PLEASE RESPOND.

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

BellSouth is willing to agree to not terminate service during the pendency of such a proceeding before this Commission provided that the Joint Petitioners post a payment bond for half of the amount of the requested deposit during the pendency of the proceeding. It would not be reasonable to expect BellSouth to remain completely, or inadequately, unsecured during the pendency of a proceeding -- the purpose of which is to resolve a dispute regarding the need for a deposit or additional deposit. This is particularly true here, where BellSouth's right to a deposit (or an additional deposit) hinges on a Joint Petitioner's *failure to satisfy specific and objective deposit criteria*. In fact, to allow such a situation would simply encourage CLECs that are on the verge of filing bankruptcy to file a complaint in order to delay the payment of a deposit while they ready themselves for bankruptcy filing. A requirement that the CLEC post a payment bond for half of the requested deposit amount takes into consideration the disagreement between the parties with respect to the need for, or the amount of, a deposit request, but also protects BellSouth during the resolution of any dispute over the amount of the deposit.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

[DM #586341, v3]

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Rebuttal Testimony of Kathy K. Blake in Docket No. 2005-57-C to be served upon the following this May 23, 2005:

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