LAW OFFICES
FARRAR & BATES, L.L.P.

J Russell Farrar
William N Bates
Kristin Ellis Berexa
Teresa Reall Ricks
Molly R Cripps
Mary Byrd Ferrara*
Robyn Beale Williams
Jennifer Orr Locklin
Keith F Blue
Christopher J Larkin**
E Blaine Sprouse

*Also licensed in KY
**Also licensed in AL

211 Seventh Avenue North
Suite 420
Nashville, Tennessee 37219

Telephone 615-254-3060
Facsimile 615-254-9835
E-Mail fblaw@farrar-bates.com

Of Counsel
H LaDon Baltimore

October 29, 2004

Honorable Pat Miller, Chairman
Tennessee Regulatory Authority
ATTN: Sharla Dillon, Dockets
460 James Robertson Parkway
Nashville, TN 37243-5015

RE: Joint Petition for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended; Tennessee Regulatory Authority Docket No. 04-00046

Dear Chairman Miller:

On behalf of Joint Petitioners, KMC, NuVox-NewSouth and Xspedius, and pursuant to the revised schedule ordered by the Authority on September 30, 2004, enclosed for filing with the Authority is Joint Petitioners' supplemental Direct Testimony. As agreed to by the Parties in their July 15, 2004 Joint Motion to Hold Proceeding in Abeyance and as approved by this Authority on July 16, 2004, Joint Petitioners have supplemented their Direct Testimony that was filed with the Authority on June 25, 2004.

Pursuant to that agreement and order, Joint Petitioners have provided supplemental Direct Testimony with respect to seven Supplemental Issues identified by the Parties to address the post-*USTA II* regulatory framework. These Supplemental Issues are Item Nos. 108-114, Issues S-1 through S-7 (the Parties agreed to resolve Item No. 115/Issue S-8 before filing this supplemental Direct Testimony). These issues and the testimony related thereto appear *after* the testimony submitted with respect to the original issues (ending with Item No. 107/Issue 11-1) in a section given the heading "Supplemental Issues". By agreement of the Parties, Joint Petitioners also have modified Item No. 23/Issue 2-5 to address conversion/disconnection issues related to the post-*USTA II* regulatory framework. Accordingly, Joint Petitioners treat Item No. 23/Issue 2-5 as a Supplemental Issue and submit revised testimony with respect to it.

As part of the Parties' abeyance agreement, the Parties continued negotiations in an effort to reduce the total number of issues presented to the Authority for arbitration. Joint Petitioners are pleased to report that, to date, 73 of the original issues identified for arbitration have been resolved In order to avoid unnecessary confusion or the dedication of time at hearing to identifying portions of Joint Petitioners' original Direct Testimony that are related to these resolved issues and that, as a result of issue resolution, are no longer pertinent, Joint Petitioners have deleted the pre-filed testimony for all issues that have been resolved by the Parties since the Joint Petitioners filed their original Direct Testimony on June 25, 2004.

In addition, as a result of the Parties' ongoing efforts to resolve additional issues, the Parties' language proposals and/or positions have evolved on several issues. To account for and to inform the Authority of these changes, Joint Petitioners' direct testimony for Item Nos. 4

(Issue G-4), 9 (Issue G-9), 12 (Issue G-12), 51 (Issue 2-33) and 63 (Issue 3-4) has been modified to reflect the new language and/or positions of the Parties. Joint Petitioners' Exhibit A also has been revised to show the most current language proposals for these issues.

Finally, Joint Petitioners note that they have taken this opportunity to incorporate minor modifications to the witness identification section of the testimony and to correct a number of typographical and cosmetic formatting errors throughout the direct testimony. For clarity, item numbers have been added to their corresponding issue numbers in all text boxes.

As of today, 34 of the original 107 issues remain unresolved. With the addition of 7 Supplemental Issues, the number of issues to be arbitrated by the Authority currently stands at 41. Resolution of additional issues prior to hearing is possible. Joint Petitioners will provide the Authority with appropriate updates, if any additional issues are resolved.

In sum, today's filing is intended to *replace* Joint Petitioners' original pre-filed Direct Testimony filed with the Authority on June 25, 2004. Should the Authority have any questions regarding the Joint Petitioners' supplemental Direct Testimony or any changes made thereto, please do not hesitate to contact the undersigned.

Sincerely,

H. LaDon Baltimore/dcg

H. LaDon Baltimore

LDB/dcg
Enclosures
cc. Guy Hicks, Esq

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

JOINT PETITION FOR ARBITRATION OF NEWSOUTH COMMUNICATIONS CORP., NUVOX COMMUNICATIONS, INC., KMC TELECOM V, INC., KMC TELECOM III LLC, AND XSPEDIUS COMMUNICATIONS, LLC ON BEHALF OF ITS OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT CO., SWITCHED SERVICES, LLC OF AN INTERCONNECTION AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC.	)	Docket No. 04-00046

TESTIMONY OF THE JOINT PETITIONERS

Robert Collins on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
Marva Brown Johnson on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
Raymond Chad Pifer on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
John Fury on behalf of NuVox Communications, Inc. and NewSouth Communications Corp.
Hamilton Russell on behalf of NuVox Communications, Inc. and NewSouth Communications Corp.
Jerry Willis on behalf of NuVox Communications, Inc. and NewSouth Communications Corp.
James Falvey on behalf of the Xspedius Companies

October 29, 2004

PRELIMINARY STATEMENTS

WITNESS INTRODUCTION AND BACKGROUND

KMC: Robert Collins

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Robert Collins. I am Director of Operations, Southern Region of KMC Telecom Holdings, Inc , the parent company of KMC Telecom V, Inc and KMC Telecom III, LLC My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. My primary responsibilities include directing KMC's network engineering center, overseeing technical evaluation of new equipment, engineering, and network design of KMC's basic and enhanced telecommunications networks. Moreover, I oversee the company's construction, installation, provisioning, and maintenance of KMC's retail and wholesale products and services, as well as technical support for KMC's network

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Art degree in Psychology and Computer Science from Athens State College (now Athens University) in Athens, Alabama I have been working in the communications field for 22 years and began with KMC in August of 1997 in the capacity of Operations Supervisor In this role, I successfully turned up the first operational switch for KMC and was later promoted to my current position of Director of Operations

Prior to joining KMC, I supported NASA's PSCN contract from August of 1987 until joining KMC in August of 1997. My role there was a Senior Network Analyst for Boeing and later INET. My responsibilities included network management security of all voice and data communications throughout all NASA facilities in the continental United States and abroad. From 1981 until 1987 I worked with other communications companies to include GTE, GTECC, Communications Contractors, Inc (CCI), and served four years in the United States Army as a 32F2IN3 (Crypto repair/installer) assigned to an Engineering and Installation group installing complete systems from the ground up.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. This is the first set of testimony that I have sponsored before a state commission

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues.[1]

General Terms and Conditions	None
Attachment 2: Unbundled Network Elements	37/2-19, 38/2-20, 43/2-25, 57/2-39

[1] The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 107/11-1, and 115/S-8 For convenience, this and the other witness/issues charts that appear in this introductory section have been updated so that issues are identified by their item and issue number, with the item number followed by the issue number (the first part of the issue number indicates which part of the Agreement the issue is from).

Attachment 3: Interconnection	None
Attachment 6 Ordering	86/6-3(B), 88/6-5, 94/6-11
Attachment 7: Billing	None
Supplemental Issues	None

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

KMC: Marva Brown Johnson

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Marva Brown Johnson. I am Senior Regulatory Counsel for KMC Telecom Holdings, Inc , parent company of KMC Telecom V, Inc. and KMC III LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. I manage the organization that is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and local rights-of-way issues I am also an officer of the company and I currently serve in the capacity of Assistant Secretary.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Science in Business Administration (BSBA), with a concentration in Accounting, from Georgetown University; a Masters in Business Administration from

Emory University's Goizuetta School of Business, and a Juris Doctor from Georgia State University I am admitted to practice law in the State of Georgia.

I have been employed by KMC since September 2000 I joined KMC as the Director of ILEC Compliance; I was later promoted to Vice President, Senior Counsel and this is the position that I hold today.

Prior to joining KMC as the Director of ILEC Compliance, I had over eight years of telecommunications-related experience in various areas including consulting, accounting, and marketing. From 1990 through 1993, I worked as an auditor for Arthur Andersen & Company. My assignments at Arthur Andersen spanned a wide range of industries, including telecommunications. In 1994 through 1995, I was an internal auditor for BellSouth. In that capacity, I conducted both financial and operations audits. The purpose of those audits was to ensure compliance with regulatory laws as well as internal business objectives and policies From 1995 through September 2000, I served in various capacities in MCI Communications' product development and marketing organizations, including as Product Development – Project Manager, Manager - Local Services Product Development, and Acting Executive Manager for Product Integration. At MCI, I assisted in establishing the company's local product offering for business customers, oversaw the development and implementation of billing software initiatives, and helped integrate various regulatory requirements into MCI's products, business processes, and systems.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony in proceedings before the following commissions: the North Carolina Utilities Commission; the Florida Public Service Commission; and the Tennessee Regulatory Authority.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am prepared to sponsor and adopt all testimony sponsored by my colleague Mr. Pifer. Mr. Pifer and I will be sharing the duty of serving as KMC's regulatory policy witness in all nine of the BellSouth arbitrations Depending on the hearing schedule adopted by the Authority, I may appear at the hearing as a substitute for Mr. Pifer.[2]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 8/G-8, 9/G-9, 12/G-12
Attachment 2. Unbundled Network Elements	23/2-5, 26/2-8, 27/2-9, 36/2-18, 46/2-28, 50/2-32, 51/2-33(B)&(C),
Attachment 3. Interconnection	63/3-4, 65/3-6
Attachment 6: Ordering	None
Attachment 7: Billing	95/7-1, 96/7-2, 97/7-3, 99/7-5, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10, 106/7-12
Supplemental Issues	108/S-1 thru 114/S-7

[2] The following issues have been settled. 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 107/11-1, and 115/S-8.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

KMC: Raymond Chad Pifer

Although Ms. Johnson sponsors this testimony on behalf of KMC, Mr Pifer submits his profile in addition to Ms. Johnson's as he may appear as the live witness at the hearing

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name Raymond Chad Pifer. I am Regulatory Counsel to KMC Telecom Holdings, Inc , the parent company of KMC Telecom V, Inc and KMC Telecom III, LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. I assist in managing the company's federal regulatory and legislative matters, state regulatory proceedings and complaints, and interconnection issues. I am familiar with the operations and facilities of KMC

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Arts in History (BA) from Hendrix College, and a Juris Doctor from the University of Arkansas at Little Rock. I am admitted to practice law in the State of Georgia, as well as in the State of Arkansas.

I have been employed with KMC since October 2003 Prior to joining KMC as Regulatory Counsel, I had over seven years of telecommunications-related experience in various areas including carrier access billing, collections, industry relations, regulatory

affairs, and interconnection services From November 2000 to October 2003, I was Corporate Counsel — Regulatory Affairs for Xspedius Communications, LLC, where I handled the company's legal and regulatory matters in thirty-five (35) states, including compliance issues, rulemaking proceedings, and interconnection negotiations. Prior to that, I was Southeast Regulatory Counsel to FairPoint Communications, Inc. from January to November 2000, and handled the regulatory and legal matters for the company's Southeast region as well as the company's own compliance matters From 1996 to 2000, I served in a variety of positions with ALLTEL Communications, Inc , including the management of carrier access billing and collections, industry relations and interconnection services.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions· the Public Service Commission of Wisconsin; the Louisiana Public Service Commission; the Michigan Public Service Commission, and the Alabama Public Service Commission.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am prepared to sponsor and adopt all testimony sponsored by my colleague Ms. Johnson. Ms. Johnson and I will be sharing the duty of serving as KMC's regulatory policy witness in all nine of the BellSouth arbitrations. Depending on the hearing schedule adopted by the Commission, I may appear at the hearing as a substitute for Ms. Johnson The issues for which either I or Ms. Johnson will offer testimony include those

set forth on the following chart which has been updated to reflect the settlement of issues up to the date of this filing.[3]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 8/G-8, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	23/2-5, 26/2-8, 27/2-9, 36/2-18, 46/2-28, 50/2-32, 51/2- 33(B)&(C)
Attachment 3. Interconnection	63/3-4, 65/3-6
Attachment 6: Ordering	None
Attachment 7· Billing	95/7-1, 96/7-2, 97/7-3, 99/7-5, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10, 106/7-12
Supplemental Issues	None

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

NuVox/NewSouth: John Fury

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is John Fury. I am employed by NuVox. as Carrier Relations Manager. My business address is 2 North Main Street, Greenville, SC 29601

[3] The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 107/11-1, and 115/S-8

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. I am responsible for overseeing NuVox's business relationships with other telecommunications carriers particularly those incumbent local exchange companies with whom we interconnect to provide services

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I graduated from Louisiana State University in 1991 with a Bachelor of Science degree in Political Science, and I have been employed in the telecommunications industry since then I have been employed in various capacities for WorldCom, Brooks Fiber, Broadwing and U.S One. Since April 1998, I have been employed by NewSouth Communications, and since our merger with NuVox, NuVox of Greenville, South Carolina I have worked in network audit, planning and provisioning, capacity management, traffic management, outside plant design and engineering as well as network design. More specifically, since April 1998, I have worked for NuVox in network planning and capacity planning, and since January of 2001 I have held my current position as carrier relations manager

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions: the Florida Public Service Commission; the Georgia Public Service Commission; the Louisiana Public Service Commission, the Public Service Commission of South Carolina, and the Tennessee Regulatory Authority

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[4]

General Terms and Conditions	None
Attachment 2. Unbundled Network Elements	37/2-19, 38/2-20
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	None
Attachment 7: Billing	None
Supplemental Issues	None

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

[4] The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 107/11-1, and 115/S-8

NuVox/NewSouth: Hamilton ("Bo") Russell

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Hamilton E Russell, III. I am employed by NuVox as Vice President, Regulatory and Legal Affairs. My business address is 301 North Main Street, Suite 5000, Greenville, SC 29601.

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. I am responsible for legal and regulatory issues related to or arising from NuVox's purchase of interconnection, network elements, collocation and other services from BellSouth. In addition, I was primarily responsible for negotiation of the NuVox-BellSouth Interconnection Agreement presently in effect

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I received a B.A. degree in European History from Washington and Lee University in 1992 and a J D degree from the University of South Carolina School of Law in 1995 I have been employed by NuVox and its predecessors since February of 1998 From July of 1995 until January of 1998 I was an associate with Haynsworth Marion McKay & Guerard, LLP. From August of 1993 until July of 1995 I worked for the Office of the Speaker of the South Carolina House of Representatives.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions: the Public Service Commission of South Carolina; the Georgia Public Service Commission, and the North Carolina Utilities Commission.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues.[5]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 8/G-8, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	23/2-5, 26/2-8, 27/2-9, 36/2-18, 43/2-25, 46/2-28, 50/2-32, 51/2-33(B) & (C)
Attachment 3: Interconnection	63/3-4
Attachment 6: Ordering	86/6-3(B), 94/6-11
Attachment 7: Billing	95/7-1, 96/7-2, 97/7-3, 99/7-5, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10, 106/7-12
Supplemental Issues	108/S-1 thru 114/S-7

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

NuVox/NewSouth: Jerry Willis

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Jerry Willis. I was formerly the Senior Director — Network Development for NuVox, from May 2000 until September 2003. Since September 2003 I have been

[5] The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 107/11-1, and 115/S-8.

retained as a consultant to NuVox. I can be reached care of NuVox witness Hamilton Russell at 2 North Main Street, Greenville, SC 29601.

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. While at NuVox I assisted in matters such as implementation of switches, collocations, engineering, power and other elements needed to build the company's telecommunications network. While I served as Senior Director, I directed company and vendor employees in equipment installation and testing of sixty-one collocations, completing all sites in three months for an average of one site completion per day.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I have over thirty-five (35) years of experience in the telecommunications business and have worked with Competitive Local Exchange Carriers ("CLECs"), Incumbent Local Exchange Carriers ("ILECs"), Interexchange Carriers ("IXCs") and consulting firms

I have held positions at several telecommunications companies. From 1997 to November of 1998 I was Director, Network Services for IXC Communications, an interexchange carrier located in Austin, Texas. From 1996 to January of 1997 I was the Director of Provisioning for McLeod USA Prior to that I served as Director of International Business Development with Corporate Telemanagement Group, Inc. ("CTG") and was responsible for identifying and developing new business opportunities as well as recruiting and managing in-country agents. From October of 1986 until January of 1991, I was employed with Telecom USA as Network Director 1970 until 1986 I was employed by Contel, an ILEC headquartered in St. Louis, MO While with Contel I served in various capacities, including stints as Special Services Technician, Division

Transmission Engineer, District Superintendent, Division Planning Engineer and Manager, Proposal and Contract Development. From 1965-1970 I was an engineer in the Bell system

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the Public Service Commission of South Carolina

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues.[6]

General Terms and Conditions	None
Attachment 2: Unbundled Network Elements	23/2-5, 57/2-39
Attachment 3: Interconnection	None
Attachment 6: Ordering	88/6-5
Attachment 7: Billing	None
Supplemental Issues	None

[6] The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 107/11-1, and 115/S-8

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

Xspedius: James Falvey

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is James C. Falvey. I am the Senior Vice President of Regulatory Affairs for Xspedius Communications, LLC. My business address is 7125 Columbia Gateway Drive, Suite 200, Columbia, Maryland 21046.

Q. PLEASE DESCRIBE YOUR POSITION AT XSPEDIUS.

A. I manage all matters that affect Xspedius before federal, state, and local regulatory agencies I am responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, and local rights-of-way issues.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I am a cum laude graduate of Cornell University, and received my law degree from the University of Virginia School of Law I am admitted to practice law in the District of Columbia and Virginia.

After graduating from law school, I worked as a legislative assistant for Senator Harry M. Reid of Nevada, and then practiced antitrust litigation in the Washington D C office of Johnson & Gibbs. Thereafter, I practiced law with the Washington, D C. law firm of Swidler & Berlin, where I represented competitive local exchange providers and other competitive providers in state and federal proceedings. In May 1996, I joined e spire

Communications, Inc as Vice President of Regulatory Affairs, where I was promoted to Senior Vice President of Regulatory Affairs in March 2000.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. In total, I have testified before 13 public service commissions, including those of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, New Mexico, Texas, Pennsylvania, Arkansas, and Kansas.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[7]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 8/G-8, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	23/2-5, 26/2-8, 27/2-9, 36/2-18, 37/2-19, 38/2-20, 43/2-25, 46/2-28, 50/2-32, 51/2-33(B) & (C), 57/2-39
Attachment 3. Interconnection	63/3-4, 65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5, 94/6-11
Attachment 7: Billing	95/7-1, 96/7-2, 97/7-3, 99/7-5, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10, 106/7-12
Supplemental Issues	108/S-1 thru 114/S-7

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

---

[7] The following issues have been settled: 1/G-1, 3/G-3, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 44/2-26, 45/2-27, 47/2-29, 48/2-30, 49/2-31, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 98/7-4, 105/7-11, 107/11-1, and 115/S-8

A. The purpose of my testimony is to offer support for the CLEC Position and associated contract language on the issues indicated in the chart above.

GENERAL TERMS AND CONDITIONS[8]

Item No. 1, Issue No. G-1 [Section 1.6] ***This issue has been resolved.***

Item No 2, Issue No. G-2 [Section 1 7]. How should "End User" be defined?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-2.

A. The term "End User" should be defined as "the customer of a Party" *[Sponsored by 3 **CLECs M. Johnson (KMC)**, H Russell (NVX), J Falvey (XSP)[9]]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The definition proposed by the Petitioners is simple and avoids controversy. In addition, it is the most natural and intuitive definition Petitioners have a variety of telecommunications services customers – whether or not they qualify as the "ultimate user" of such telecommunications services (whatever that means) is simply not relevant to whether they are or aren't "end users" of the telecommunications services provided by Petitioners. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

---

8 Please note that the disputed contract language for all issues raised in this testimony has been attached to this testimony as Attachment A. The contract language contained therein represents the most recent proposals as of the date of this filing.

9 The short-hand notations used mean the following: (a) "KMC" means KMC Telecom V, Inc. & KMC Telecom III LLC, (b) "NVX" means NuVox Communications, Inc. and NewSouth Communications Corp.; (3) "XSP" means Xspedius Communications, LLC and Xspedius Management Co Switched Services, LLC.

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed definition unnecessarily invites ambiguity and the potential for future controversy, by turning on the notion that in order to be an End User, the customer must be the "ultimate user of the Telecommunications Service". Obviously, this is a restrictive definition designed to serve some ulterior BellSouth motive. Given that the concept of "ultimate user" is undefined and there is no precise way of knowing which Telecommunications Service is "the Telecommunications Service" BellSouth refers to, BellSouth's proposal seems well suited to serve its apparent effort to have the term End User narrowly defined However, there is no apparent policy or legal basis to support BellSouth's apparent attempt to limit who can or cannot be Petitioners' customers Provided that Petitioners comply with the contractual provisions regarding resale, UNEs and Other Services (defined in Attachment 2), the contract should in no way attempt to limit who can or cannot be considered an End User of a party's services *[Sponsored by 3 CLECs M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. ARE THERE OTHER REASONS WHY THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Yes. The curiously restrictive definition proposed by BellSouth is inconsistent with the manner in which the term "End User" has been used elsewhere in the Agreement. For example, under BellSouth's proposed definition of "End User," it is arguable that certain types of CLEC customers, such as Internet Service Providers ("ISPs"), might not be considered to be "End Users". However, in Attachment 3 of the Agreement BellSouth has agreed to language regarding "ISP-bound traffic" that does treat ISPs as End Users,

even under BellSouth's proposed definition This language already has been agreed to Yet it is clear that, while ISPs use Telecommunications Services provided by Petitioners and have been considered by the industry to be end users for more than 20 years, it is not readily apparent that they qualify as "the ultimate user of the Telecommunications Service. There simply is no need for the tension that exists between this provision and the improperly restrictive and ambiguous definition of End User proposed by BellSouth in the General Terms. The bottom line is that the language proposed by the Petitioners is simple, straightforward, and is the best way to avoid unnecessary ambiguity and future controversy *[Sponsored by* ***3 CLECs*** *M. Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. ARE THERE OTHER APPARENT COMPLICATIONS RAISED BY BELLSOUTH'S PROPOSED DEFINITION?

A. Yes. In connection with Attachment 2, Section 5.2 5 2 1, which addresses Enhanced Extended Loop ("EEL") eligibility criteria, BellSouth, is attempting to replace the word used in the FCC's rules "customer" with "End User," a word which BellSouth seeks to limit to a vague subset of customers. If BellSouth wants to do that, its definition of End User should simply be that it means "customer". Petitioners will not agree to a definition that will serve to limit their rights and BellSouth's obligations to provide access to EELs, UNEs or any other services or facilities. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS ISSUE G-2 APPROPRIATE FOR ARBITRATION?

A. BellSouth's Issues Matrix states that Issue G-2 "is not appropriate for arbitration" because "the issue as stated by the CLECs and raised in the General Terms and

Conditions of the Agreement has never been discussed by the Parties". BellSouth's Position statement appears to have been drafted by somebody that had not taken part in the negotiations. In any event, it is wrong. The Parties discussed the definition of End User in a number of contexts of the Agreement, including the Triennial Review Order ("TRO")-related provisions of Attachment 2. When Petitioners learned that BellSouth was going to attempt to use the definition of End User to limit its obligation to provide, and CLECs' access to, UNEs and Combinations, they refused to agree to the definition of End User proposed by BellSouth in the General Terms and Conditions. The fact that the issue is teed up in the conflicting versions of the definition contained in the General Terms and Conditions document (a document controlled by BellSouth) belies BellSouth's false claim that the issue had never been discussed by the Parties Petitioners have sought to clarify, via arbitration, the correct definition of End User so that it may be used consistently throughout the Agreement. For these reasons, Issue G-2 is properly before the Authority. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Item No 3, Issue No. G-3 [Section 10.2] ***This issue has been resolved.***

Item No. 4, Issue No G-4 [Section 10.4.1] What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-4.

A. In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees,

charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day on which the claim arose. *[Sponsored by 3 **CLECs**: M. Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Petitioners and BellSouth should establish and fix a reasonable limitation on their respective risk exposure, in cases other than gross negligence or willful misconduct. As this Agreement is an arm's-length contract between commercially-sophisticated parties, providing for reciprocal performance obligations and the pecuniary benefits as to each such Party, the Parties should, in accordance with established commercial practices, contractually agree upon and fix a reasonable and appropriate, relative to the particular substantive scope of the contractual arrangements at issue here, maximum liability exposure to which each Party would potentially be subject in its performance under the Agreement The Petitioners, as operating businesses party to a substantial negotiated contractual undertaking, should not be forced to accept and adhere to BellSouth's "standard" limitation of liability provisions, simply because BellSouth has traditionally been successful to date in leveraging its monopoly legacy to dictate terms and impose such provisions on its diffuse customer base of millions of end users requiring BellSouth service Petitioners' proposal represents a compromise position between limitation of liability provisions typically found in the absence of overwhelming market dominance by one party, in commercial contracts between sophisticated parties and the effective elimination of liability provision proposed by BellSouth. As any commercial undertaking carries some degree of a risk of liability or exposure for the performing party, such risks (along with the contractual, financial and/or insurance protections and other risk-

management strategies routinely found in business deals to manage these issues) are a natural and legitimate cost of doing business, regardless of the nature of the services performed or the prices charged for them. As Petitioners are merely requesting that BellSouth accept some measure, albeit a modest one relative to universally-regarded commercial practices, of accountability and contractual responsibility for performance and do not seek to expose BellSouth to any particular risks or excess levels of risk that would not otherwise fall within the general commercial-liability coverage afforded by any typical insurance policy, the incremental cost or exposure for these ordinary-course, insurable risks is nonexistent or minimal to BellSouth beyond possible costs incurred for the insurance premiums, financial reserves and/or other risk-management measures already maintained by BellSouth in the usual conduct of its business, costs that would in any event likely constitute joint and common costs already factored into BellSouth's UNE rates.

Petitioners' proposal is structured on a "rolling" basis, such that no Party will incur liabilities that in aggregate amount exceed a contractually-fixed percentage of the actual revenue amounts that such Party will have collected under the Agreement up to the date of the particular claim or suit Thus, for example, an event that occurs in Month 12 of the term of the Agreement would, in the worst case, result in a maximum liability equal to 7.5% of the revenue collected by the liable Party during those first 12 months of the term. This amount is fair and reasonable, and in fact, is far less onerous than the standard liability-cap formulations – starting from a minimum (in some of the more conservative commercial contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the

entire term of the relevant contract — more universally appearing in commercial contracts The Petitioners' proposed risk-vs.-revenue trade-off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth maintains that an industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed, or not properly performed. This position is flawed because it grants Petitioners no more than what long-established principles of general contract law and equitable doctrines already command the right to a refund or recovery of, and/or the discharge of any further obligations with respect to, amounts paid or payable for services not properly performed Such a provision would not begin to make Petitioners whole for losses they incur from a failure of BellSouth systems or personnel to perform as required to meet the obligations set forth in the Agreement in accordance with the terms and subject to the limitations and conditions as agreed therein. In my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for nonperformance or improper performance by the other party Therefore, BellSouth's proposal offers nothing beyond rights the injured Party would otherwise already have as a fundamental matter of contract law, thereby resulting in an illusory recovery right that, in real terms, is nothing more than an elimination of, and a

full and absolute exculpation from, any and all liability to the injured Party for any form of direct damages resulting from contractual nonperformance or misperformance. Additionally, it is not commercially reasonable in the telecommunications industry, in which a breach in the performance of services results in losses that are greater than their wholesale cost — these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach. Petitioner's proposal for a 7 5% rolling liability cap is therefore more appropriate as a reasonable and commercially-viable compromise and should be adopted *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Item No. 5, Issue No G-5 [Section 10 4 2]: To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not limited?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-5.

A. The answer to the question posed in the issue statement is "NO". Petitioners cannot limit BellSouth's liability in contractual arrangements wherein BellSouth is not a party. Moreover, Petitioners will not indemnify BellSouth in any suit based on BellSouth's failure to perform its obligations under this contract or to abide by applicable law. Finally, BellSouth should not be able to dictate the terms of service between Petitioners and their customers by, among other things, holding Petitioners liable for failing to mirror BellSouth's limitation of liability and indemnification provisions in CLEC's End User

tariffs and/or contracts. To the extent that a CLEC does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable in the particular circumstances, that CLEC should not be required to indemnify and reimburse BellSouth for that portion of the loss that would have been limited (as to the CLEC but not as to non-contracting parties such as BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability terms that BellSouth was successful in including in its tariffs at the time of such loss. *[Sponsored by **3 CLECs:** M. Johnson (KMC), **H. Russell (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. First, the language in CLEC tariffs or other customer contracts cannot protect a non-party to those contracts, such as BellSouth, from suits by or potential liability to customers who experience damages as a result of BellSouth's breach of the Agreement or failure to abide by applicable law. Second, it is not reasonable to impose on Petitioners the burden of guaranteeing that their customers will accede to liability language identical to what BellSouth generally obtains. Petitioners do not have the market dominance or negotiating power of BellSouth, and thus do not have nearly the same leverage as BellSouth to dictate terms vis-à-vis their customers. As such, holding Petitioners to a standard that, in actual effect, assumes comparable negotiating positions for Petitioners and BellSouth in their respective markets is inappropriate, since it is clearly in each Party's own business interest, first and foremost, to at all times seek and secure in each particular aspect of its business operations the most favorable limitations on liability that it possibly can obtain. For these reasons, Petitioners propose that they be required to do

no more than negotiate liability language that actually reflects the terms that they could reasonably be expected to secure in their exercise of diligence and commercially reasonable efforts to maintain effective contractual protections for their own direct liability interests that are most critical to their respective businesses. As such, Petitioners request that the Agreement allow them to offer a measure of commercially reasonable terms on liability that they may need in the exercise of their reasonable business judgment to make available to customers in order to conduct their businesses. Accordingly, these terms may at some point need to make allowances, although Petitioners would naturally prefer not to do so if they were in a position to deny such terms, for some level of recovery for service failures. While each Party under the Agreement surely has a significant liability interest in ensuring that the other Party maintains an aggressive approach to tariff-based limitation of liability, such concerns are already adequately and more appropriately addressed by existing provisions of the Agreement and applicable commercial law stipulating that a Party is precluded from recovering damages to the extent it has failed to act with due care and commercial reasonableness in mitigation of losses and otherwise in its performance under the Agreement. In other words, any failure by Petitioners to adhere to these existing standards of due care, commercial reasonableness and mitigation in their tariffing and contracting efforts would, in itself, bar recovery for any otherwise-avoidable losses. In order to allay any concern BellSouth may continue to have notwithstanding the above, Petitioners would agree to include terms that more expressly require each Party to mitigate any damages vis-à-vis third parties, for example a promise to operate prudently and perform routine system maintenance These terms should make abundantly clear

that, even without a rigid tariff-based standard, adequate protection will exist for BellSouth with respect to claims by a third-party customer of a Petitioner *[Sponsored by **3 CLECs:** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language that would require Petitioners to ensure that their tariffs and contracts include the same limitation of liability terms that BellSouth achieves in its own agreements. This language is unreasonable, anti-competitive and anti-consumer. As mentioned previously, Petitioners should not be required to offer the same tariff liability terms and conditions as BellSouth. Moreover, it is likely that CLECs in certain instances would not even be able to obtain the same liability provisions from a customer due to the fact that a CLEC generally has to concede, where it can do so prudently in weighing its business-generation needs against the corresponding liability concerns, on certain terms to attract customers in markets dominated by incumbent providers. Given the vast disparity between BellSouth and the Petitioners in overall bargaining power and their relative leverage in the communications market it is patently unfair for BellSouth to attempt to dictate tariff terms that would limit the Petitioners' recourse and subject it to indemnity obligations by holding it to tariff terms that, in certain instances, may be uniquely obtainable by BellSouth. Such a provision is clearly a one-sided provision for the benefit of BellSouth and should not be adopted. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Item No 6, Issue No G-6 [Section 10.4.4] Should the Agreement expressly state that liability for claims or suits for

damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-6.

A. The answer to the question posed in the issue statement is "YES". Such an express statement is needed because the limitation of liability terms in the Agreement should in no way be read so as to preclude damages that CLECs' customers incur as a foreseeable result BellSouth's performance of its obligations under the Agreement, including its provisioning of UNEs and other services. Damages to customers that result directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or a CLEC's) performance of obligations set forth in the Agreement that were not otherwise caused by, or are the result of, a CLEC's (or BellSouth's) failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage should be considered direct and compensable under the Agreement for simple negligence or nonperformance purposes. *[Sponsored by **3 CLECs:** M Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In any contract, including the Agreement, each Party should be liable for damages that are the direct and foreseeable result of its actions. Where the injured person is a customer of one Party, providing relief is no less proper where, as in the case of the Agreement, a contract expressly contemplates that services provided are being directed to such customers. Such liability is an appropriate risk to be borne by any service provider in a contract such as the Agreement that clearly envisions that the effect of performance or

nonperformance of such services will be passed through to ascertainable third parties related to the other Party to the contract. In this Agreement, being a contract for wholesale services, liability to injured End Users must be contemplated and covered by express language, subject, in any event, to the forseeability and legal and proximate cause limitation as Petitioners have proposed for express inclusion in the Agreement in this particular instance as well as in addition to those found in the Agreement's general liability provisions. *[Sponsored by **3 CLECs:** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position on liability vis-à-vis End Users is somewhat ambiguous insofar as its language merely states that "[e]xcept in cases of gross negligence or willful or intentional misconduct, under no circumstances shall a Party be responsible or liable for indirect, incidental, or consequential damages" while, in other provisions of the Agreement there are disclaimers of liability to End Users that are predicated on specified circumstances (for example, non-negligent damage to End User premises, among others) It is BellSouth's stated position that "[w]hat damages constitute indirect, incidental or consequential damages is a matter of state law at the time of the claim and should not be dictated by a party to an agreement." BellSouth is mistaken. At the onset, liability, limitation of liability, indemnification and damages are all matters of state law, nonetheless BellSouth includes provisions for all of these matters in its template agreement (the basis for this Agreement and other BellSouth interconnection agreements). Therefore, BellSouth contradicts itself in claiming the terms of the

Agreement cannot address the substance of the Parties' negotiated agreement as to what will constitute, as between such Parties only, indirect, incidental, and/or consequential damages for purposes of their respective liabilities This is simply a matter of risk allocation among the Parties expressly bound by the terms of this Agreement and, as such, there is no issue of "dictating" the Parties' agreed understanding on these damages to any third parties as to whom they may arise Petitioners merely seek a reasonable contractual standard for purposes of allocating these third-party risks as between BellSouth and Petitioners exclusively. If any claim or loss would fail to meet the standards Petitioners propose for inclusion in the Agreement, the Party seeking compensation would simply be forced to bear these risks with respect to its own third parties, regardless of what state law had to say on the particular issue. As such, Petitioners believe that BellSouth miscasts these issues in terms of ambiguous state-law concerns, whereas all that Petitioners are proposing here is a contractual allocation, binding on the Agreement Parties only, of the third-party risks already provided for throughout the Agreement by inserting a fair and reasonable standard that will offer a uniform and definitive statement as to each Party's potential exposure to these third-party risks. *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS YOUR POSITION ON BELLSOUTH'S PROPOSED RESTATEMENT OF ISSUE G-6?

A. Petitioners disagree with BellSouth's proposed restatement of the issue. BellSouth's statement of the issue misses the Parties' core dispute. Petitioners are not disputing the definition of indirect, incidental or consequential damages, but rather seek to establish with certainty that damages incurred by CLEC's (or BellSouth's) End Users to the extent

such damages result directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance obligations set forth in the Agreement are not included in that definition *[Sponsored by 3 CLECs: M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No. 7, Issue No G-7 [Section 10 5]: What should the indemnification obligations of the Parties be under this Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-7.

A. The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications Additionally, customary provisions should be included to specify that the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss or damage to the extent reasonably arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the providing Party's negligence, gross negligence or willful misconduct *[Sponsored by 3 **CLECs:** M. Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Party receiving services under this Agreement is, at a minimum, equally entitled to indemnification as the Party providing services As is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among

the risk levels posed by the performance of each. In other words, the higher level of risks inherent in service-related activities as compared to the mere payment and similar obligations of the receiving party typically results in a far heavier indemnity undertaking on the provider side As such, the Party receiving services under this Agreement should, at a minimum, be indemnified for reasonable and proximate losses to the extent it becomes liable due to the other Party's negligence, gross negligence and/or willful misconduct, or failure to abide by Applicable Law. With regard to Applicable Law, the Parties agree in Section 32.1 of the General Terms and Conditions that "[e]ach Party shall comply at its own expense with all applicable federal, state, and local statutes, laws, rules, regulations, codes, effective orders, injunctions, judgments and binding decisions, awards and decrees that relate to its obligations under this Agreement ('Applicable Law')". With this provision expressly set forth in the General Terms and Conditions, it is logical that, a Party should be indemnified to a third-party due to the other Party's failure to comply with Applicable law, regardless of whether that Party is the providing or receiving Party. The Parties are in an equal contractual position under the Agreement to ensure compliance with Applicable Law as well as the terms and conditions of the Agreement and are, in any event, entitled to the benefit of Agreement provisions limiting any resulting liability or indemnity obligation to a reasonable and foreseeable scope; it is entirely equitable and appropriate for the noncomplying Party to indemnify the other for losses resulting from any such breach of Applicable Law. *[Sponsored by 3 **CLECs:** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposal provides that only the Party providing services is indemnified under this Agreement Not to mention the extent of its deviation from generally-accepted contract norms providing precisely to the contrary, BellSouth's proposal is completely one-sided in that BellSouth, as the predominate provider of services under this Agreement, will be the only Party indemnified and the CLECs as the Parties predominately taking services under the Agreement will be the ones indemnifying BellSouth. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 8, Issue No. G-8 [Section 11 1]: What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logo and trademarks?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-8.

A. Given the complexity of and variability in intellectual property law, this nine-state Agreement should simply state that no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by the Agreement and that a Party's use of the other Party's name, service mark and trademark should be in accordance with Applicable Law. The Authority should not attempt to prejudge intellectual property law issues, which at BellSouth's insistence, the Parties have agreed are best left to adjudication by courts of law (see GTC, Sec. 11 5). *[Sponsored by **3 CLECs**: M Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for Petitioners' position is that intellectual property law is a highly specialized area of the law where the bounds of what is and is not lawful are hashed out in case law that can vary among jurisdictions Petitioners are fully prepared to ensure that their marketing efforts comport with those varying standards and will consult with experts in the field of intellectual property law when appropriate Petitioners are not however willing to hamstring their marketing departments so that they are at a disadvantage and cannot do what other CLEC marketing departments can do when engaging in comparative advertising and other sales and marketing initiatives Since Petitioners believe that the services they provide often compare favorably with those provided by BellSouth, we intend to preserve our right to engage in comparative advertising to the fullest extent permitted under the law *[Sponsored by 3 **CLECs:** M. Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. The language proposed by BellSouth is inadequate because it proposes to significantly restrict Petitioners' rights to engage in comparative advertising or use BellSouth's name, marks, logo and trademarks in ways that are permitted by Applicable Law. Joint Petitioners are not prepared to give up those rights and we do not believe that it would be appropriate for the Authority to order us to do so by adopting BellSouth's proposed language. If BellSouth wants Petitioners to sacrifice rights, particularly those which could put Petitioners at a disadvantage relative to other competitors, it should be prepared to agree to an offsetting concession It hasn't – and Joint Petitioners refuse to bow to

BellSouth's demand to give up something for nothing. *[Sponsored by 3 **CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No 9, Issue No. G-9 [Section 13.1] Should a court of law be included in the venues available for initial dispute resolution?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-9.

A. The answer to the question posed in the issue statement is "YES". Either Party should be able to petition the Authority, the FCC, or a court of law for resolution of a dispute No legitimate dispute resolution venue should be foreclosed to the Parties. The industry has experienced difficulties in achieving efficient regional dispute resolution. Moreover, there is an ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec 11 5); indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating before up to 9 different state commissions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts. *[Sponsored by 3 **CLECs:** M. Johnson (KMC), H Russell (NVX), **J. Falvey (XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Petitioners submit that it is unreasonable to exclude courts of law from the available list of venues available to address disputes under this Agreement. There is no question that courts of law have proper jurisdiction over disputes arising out of this Agreement,

and in fact, BellSouth and the Petitioners have agreed to language providing as much elsewhere in the Agreement, including in Sec. 11.5 of the General Terms and Conditions (and in prior agreements (see, e.g., NuVox and Xspedius agreements at Section 15)). Therefore, at a minimum, internal consistency militates in favor of including courts of law as available venues. Furthermore, in a number of instances, such as the resolution of intellectual property issues, tax issues, the determination of negligence, willful misconduct or gross negligence issues, petitions for injunctive relief and claims for damages, courts of law may be far better equipped to adjudicate such disputes. The Authority and the FCC are obviously the expert agencies with respect to a number of the issues that might arise in connection with this Agreement (and a court can if appropriate defer to the expertise of the state or federal commission under the doctrine of primary jurisdiction, if these types of complaints are brought directly to courts), however the foregoing types of disputes would tax heavily the Authority's expertise and resources.

In addition, administrative efficiency favors inclusion of the courts as venues for dispute resolution. Given that this Agreement, or an Agreement very similar to it, will likely be adopted across BellSouth's nine-state region, the courts may for certain disputes and in certain contexts provide a more efficient alternative to litigating in up to 9 different jurisdictions or to waiting for the FCC, to decide whether or not it will accept an enforcement role given the particular facts

Petitioners' experience has been that achieving efficient regional dispute resolution is already too difficult and it need not be made more difficult by the elimination of the courts as a possible venue for dispute resolution. As a result of the difficulties inherent in

enforcing a multi-state agreement (technically, separate agreements for each state), BellSouth often is able to force carriers into heavily discounted, non-litigated settlements. Such settlements often are, heavily discounted to reflect the exorbitant costs associated with litigating an issue that exists region-wide, but that gives rise to a disputed amount that may be too low for a single carrier to justify litigating in each state jurisdiction separately. Foreclosing the courts as a venue for dispute resolution may prevent CLECs from litigating legitimate disputes that cannot efficiently be litigated across 9 different states or at the FCC, where dispute resolution is expensive and uncertain.

At bottom, elimination of the court of law as a venue option for dispute resolution unnecessarily forecloses a viable means for efficient dispute resolution. The Parties must decide on a case-by-case basis the appropriate venue for a particular dispute, and a court of law with competent jurisdiction should not be excluded from those choices. *[Sponsored by* ***3 CLECs:*** *M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth recently has revised its proposed language to allow for recourse to a court of law under certain conditions. Joint Petitioners, however, remain concerned that disputes could evolve over "matters which lie outside the jurisdiction or expertise of the Commission or FCC". Such disputes could hamper efficient dispute resolution Joint Petitioners fear that the Parties could get mired in such disputes.

BellSouth's new proposal is also inadequate in that it could be used to effectively force CLECs to re-litigate the same issue in 9 different states, or, if claimed damages spread

across all the states are too small, not to pursue their rights to enforce compliance with the Agreement at all While the FCC theoretically may be available as an enforcement venue for disputes arising out of the Agreement, the FCC is often slow to decide as a threshold matter, whether in fact, it will even accept an enforcement role under particular facts. Assuming that the FCC is willing to exercise its jurisdiction (if it decides it has jurisdiction), the FCC often takes many months and in some cases years to render decisions, which, in the context of business contracts that have daily and on-going impact, is unacceptable

Finally, BellSouth's proposed language could force the needless bifurcation of claims based on breach from related claims based on other legal and equitable theories Claims brought before a court may be referred to the Authority or FCC, for their expert opinion, if necessary Forced bifurcation is needlessly burdensome and it may hamper Joint Petitioners' ability to effectively pursue related claims, such as antitrust claims, before a court of competent jurisdiction. *[Sponsored by **3 CLECs:** M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS YOUR POSITION ON BELLSOUTH'S PROPOSED RESTATEMENT OF ISSUE G-9?

A. The CLECs disagree with BellSouth's proposed restatement of the issue, as it attempts to improperly skew the issue by incorporating the false implication that there are exclusive, efficient and adequate administrative remedies available to address all claims and disputes that may arise under the Agreement and that there is an applicable mandate that such remedies be exhausted before a Party may resort to a court. BellSouth's own insistence that intellectual property related claims and disputes must go directly to a court

of law (a provision to which the Petitioners agreed) underscores that BellSouth's premise and position are false. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 10, Issue No G-10 [Section 17 4]: ***This issue has been resolved.***

Item No 11, Issue No. G-11 [Sections 19, 19 1] ***This issue has been resolved.***

Item No. 12, Issue No G-12 [Section 32.2] 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?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE G-12.

A. The answer to the question posed in the issue statement is "YES". Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption Moreover, silence with respect to any issue, no matter how discrete, should not construed to be such a limitation or exception. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the Parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past. *[Sponsored by **3 CLECs** M. Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' position is intended to be a restatement of Georgia law, which the Parties have agreed is the body of contract law applicable to the Agreement Because several of the Joint Petitioners have been confronted with BellSouth-initiated litigation in which

BellSouth seeks to upend this fundamental principle of Georgia law on contract interpretation, all of the Joint Petitioners believe it is important that the Agreement be explicit on this point. Joint Petitioners will not voluntarily agree to the scheme proposed by BellSouth which is essentially the opposite of applicable Georgia law (agreed to by the Parties) on contract interpretation *[Sponsored by 3 **CLECs:** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it purports to adopt principles that differ from Georgia contract law (already agreed to by the Parties as being the governing contract law) – and, for that matter, black-letter contract law. Joint Petitioners will not voluntarily agree to BellSouth's novel proposal to supplant applicable Georgia law (the choice of the Parties) governing contract interpretation, with a cumbersome scheme that gives BellSouth unknown rights and countless opportunities to limit is obligations under state and federal law. Where the Parties intend for standards to supplant those found in Applicable Law, they must say so expressly or do so by agreeing to terms that conflict with and thereby displace the requirements of Applicable Law. Such an intent cannot be implied and silence with respect to a particular requirement of Applicable Law cannot be read to conflict with or displace that requirement This is a fundamental principle of Georgia law, to which the Joint Petitioners decline Bellsouth's request to displace with either BellSouth's original language or the more novel, but still unacceptable, recent replacement term s offered by BellSouth

Moreover, BellSouth's recently revised contract language proposes not only that the Agreement memorializes all of the Parties obligations under Applicable law, (a faulty premise discussed below), but that the Parties have the burden of having to petition the FCC or Authority should a Party feel that an obligation, right or other requirement, not expressly memorialized in other provisions of the Agreement (Joint Petitioners submit that the choice of Georgia law and their proposed language expressly memorialize Joint Petitioners' intent that this Agreement not adopt the deviation from applicable Georgia law on contract interpretation proposed by BellSouth), is applicable under Applicable Law and that obligation is disputed by the other Party. Essentially, BellSouth is adding an administrative layer, a potential proceeding to determine whether a Party is or is not bound by Applicable Law Such a proposal contravenes fundamental principles of contracting and is wasteful for the Parties as well as the Authority.

Although the specifics of this contract law argument might best be left to briefing by counsel, it is important to emphasize that BellSouth's proposal attempts to turn universally accepted principles of contracting on their head. The case of interconnection agreements presents no exception to the rule Parties to a contract may agree to rights and obligations different than those imposed by Applicable Law. When they do so, however, they need to do it explicitly. It is far easier to set forth negotiated exceptions to rules than it is to set forth all the rules for which no exceptions were negotiated Moreover, Petitioners must stress that in the context of their negotiations with BellSouth, they have refused to negotiate away rights for nothing in return. The Act and the FCC and Authority rules and orders do not exist for the purpose of seeing how CLECs and the Authority can detect and overcome attempts by BellSouth to evade obligations that are

contained therein with contract language that skirts certain obligations If BellSouth wants to free itself from an obligation under Section 251, or any other provision of Applicable Law (including FCC and Authority rules and orders) it needs to identify that obligation and offer a concession acceptable to Petitioners in exchange – otherwise, consistent with Georgia Law, all obligations under Applicable Law are incorporated into this Agreement

Joint Petitioners request that the Authority reject BellSouth's attempt to impose upon Joint Petitioners an exception that essentially guts the Parties' agreement to have Georgia law govern the interpretation of this Agreement. Indeed, it is fundamental to the Joint Petitioners that the Agreement not deviate from the basic legal tenet that it should not be construed to limit a Party's rights under Applicable Law (except in such cases where the Parties have explicitly agreed to an exception from or other standards that displace Applicable Law), but should encompass all Applicable Law in existence at the time of contracting (on this point, we note that if there is a new FCC order that is released prior to execution but after the Parties have had an opportunity to arbitrate or negotiate appropriate terms, that order should be treated as a change in law which should be addressed in a subsequent amendment to the Agreement). *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No 13, Issue No G-13 [Section 32.3]: ***This issue has been resolved.***

Item No. 14, Issue No. G-14 [Section 34.2] ***This issue has been resolved.***

Item No. 15, Issue No. G-15 [Section 45 2] ***This issue has***

been resolved.

Item No 16, Issue No G-16 [Section 45 3] ***This issue has been resolved.***

RESALE (ATTACHMENT 1)

Item No 17, Issue No. 1-1 [Section 3 19] ***This issue has been resolved.***

Item No 18, Issue No 1-2 [Section 11 6 6] ***This issue has been resolved.***

NETWORK ELEMENTS (ATTACHMENT 2)

Item No. 19, Issue No 2-1 [Section 1 1] ***This issue has been resolved.***

Item No 20, Issue No 2-2 [Section 1 2] ***This issue has been resolved.***

Item No. 21, Issue No 2-3 [Section 1.4 2] ***This issue has been resolved.***

Item No. 22, Issue No 2-4 [Section 1.4 3]. ***This issue has been resolved.***

Item No. 23, Issue No. 2-5 [Section 1 5]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-5.

A. As an initial matter, it bears noting that this issue is one that the Parties agreed to amend as though it were a supplemental issue raised during the abatement period. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter BellSouth's proposed language. However, because the Joint Petitioners have not yet seen BellSouth's latest set of proposed language with respect to this issue, we have not had the opportunity to adequately assess BellSouth's proposal or to counter-propose language. At this point, Joint Petitioners' understanding of BellSouth's language is based on BellSouth's recently provided position statement made available in the October 15, 2004 Issues Matrix filing. Accordingly, we reserve or request the right to amend our position statement and testimony as may prove necessary

In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, including any transition plan set forth therein, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other services pursuant to Attachment 2 There should be no service order, labor, disconnection or other nonrecurring charges associated with the transition of section 251 UNEs to other services. *[Sponsored by 3 **CLECs: M. Johnson (KMC)**, H. Russell (NVX), J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. To the extent that UNEs or Combinations are no longer offered under this Agreement, BellSouth should be responsible for identifying any CLEC service arrangements that it seeks to transition from section 251 UNEs or Combinations to section 271 UNEs or Other Services pursuant to Attachment 2. It is logical that the Party seeking a change should be responsible for identifying such change to the other Party. Any other result would place the burden on the Party that does not necessarily think that a service change is desirable or necessary.

At bottom, there will be costs involved with identifying such service arrangements. If BellSouth seeks to avail itself of unbundling relief, it should not seek to put the costs of doing so squarely on the Joint Petitioners. Indeed, since it is BellSouth that stands to garner all of the benefit from conversions from section 251 UNEs to other services, it should shoulder most, if not all, of the costs associated with implementing those changes. Since BellSouth stands to be the sole beneficiary, BellSouth also has the appropriate incentive to devote sufficient resources to generate requests in a manner that is acceptably timely to BellSouth. The process proposed by Joint Petitioners fairly apportions order generation costs and leaves the timing of the process under BellSouth's control (BellSouth is free to devote the resources to generate the requests immediately, within 30 days or within whatever time period it can manage given its own resource allocation and demand issues evident at the time) Under the Joint Petitioners' proposal, BellSouth would bear the burden of identifying and requesting any conversion to which it believes it is entitled. Joint Petitioners would bear the appreciable burden of verifying

that list, selecting alternative service arrangements (or disconnection), and submitting spreadsheets, LSRs or ASRs, as appropriate

Notably, Joint Petitioners' proposal creates a helpful check and balance in that CLEC verification of BellSouth's request will either generate conversion requests, disconnection requests, or disputes about whether a particular arrangement must be converted. It is unlikely that BellSouth would not or could not without undue burden create a list of arrangements it thinks it is entitled to no longer provide as UNEs. There is no compelling reason why that list should not serve as the starting point for this process. This way, if there is to be a dispute, the scope of it will be known to both sides sooner, rather than later. Neither side gets to hide the ball

It is also important to note that the Joint Petitioners recognize that they cannot unreasonably hold-up the post-transition period process of converting section 251 UNE arrangements to section 271 UNEs or other services Therefore, the Joint Petitioners propose that if a CLEC does not submit a rearrange or disconnect order within 30 days of receipt of BellSouth's request, BellSouth may convert such arrangements or services without further advance notice, ***provided that the CLEC has not notified BellSouth of a dispute*** regarding the identification of specific service arrangements as being no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement.

As indicated above, BellSouth is the sole beneficiary of unbundling relief. The only thing Joint Petitioners stand to gain is higher costs which they will have to absorb, share

with, or pass on to North Carolina consumers and businesses. Since it is BellSouth that, in this context, seeks to avail itself of the benefits of unbundling relief, BellSouth should not impose additional charges on Joint Petitioners for converting services from section 251 UNEs to other services. Joint Petitioners do not seek to incur or create those costs – BellSouth does Accordingly, Joint Petitioners should not be required to pay any order placement charges, disconnect charges or nonrecurring charges associated with a conversion to or establishment of an alternative service arrangement. BellSouth's proposal to saddle Joint Petitioners with the costs associated with its own desire to avail itself of the benefits of unbundling relief is unconscionable and should be squarely rejected. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Joint Petitioners do not have the latest version of BellSouth's proposed contract language related to this issue. So that we are in the same position as with other supplemental issues, Joint Petitioners have withdrawn our proposed language. We will resubmit language to counter BellSouth's proposal after we actually receive it. The Parties had agreed, as part of their abeyance agreement, that BellSouth would provide redlined language during the abeyance period Nearly a month after the end of that time frame, we still do not have BellSouth's proposal, but instead must go by BellSouth's recently supplied position statement

Based on BellSouth's position statement, BellSouth's proposed language has morphed into at least seven intertwined and complicated provisions. It appears, based on BellSouth's position statement that it has split the types of UNEs or Combinations subject to conversions into "Switching Eliminated Elements" and "Other Eliminated Elements". The CLECs do not discern the need for this division and suggest that there likely is none Indeed, the only difference we can detect is that so-called Switching Eliminated Elements may be converted to Resale It is unclear to us why any so-called Other Eliminated Elements could not be converted to Resale at the best available rate minus the Authority -ordered resale discount.

Based on BellSouth's position statement, other likely problems with BellSouth's proposal include the various defined/capitalized terms included therein. As discussed with respect to Supplemental Issue S-4, Joint Petitioners do not agree that "Transition Period" set forth in FCC 04-179 was ordered and accordingly find it inappropriate to define the post-Interim Period transition plan as the one the FCC set forth for comment in FCC 04-179 Joint Petitioners also object to the term "Eliminated Elements" as it presumes that BellSouth is not subject to unbundling requirements in the absence of an FCC order and rules containing unbundling requirements. For reasons set forth with respect to Supplemental Issues S-6 and S-7, Joint Petitioners do not believe that such a presumption is valid, as it ignores the fact that the *USTA II* decision did not strike section 251 Moreover, BellSouth has unbundling requirements under section 271 and may be compelled to unbundle pursuant to state law.

As explained in the rationale set forth in support of our position with respect to this issue, Joint Petitioners also find objectionable the burdens that BellSouth's proposal seeks to impose upon them – so that BellSouth can speedily avail itself of unbundling relief. For the reasons set forth above, BellSouth should take the initial steps to identify and request conversion of service arrangements it no longer believes it is obligated to provide as section 251 UNEs. Since BellSouth is the cost causer, BellSouth should not be able to saddle Joint Petitioners with the costs of such conversions. Instead, the Authority should expressly find that Joint Petitioners should not be required to pay any order placement charges, disconnect charges or nonrecurring charges associated with a conversion to or establishment of an alternative service arrangement. *[Sponsored by **3 CLECs**: M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No. 24, Issue No. 2-6 [Section 1.5 1] ***This issue has been resolved.***

Item No. 25, Issue No. 2-7 [Section 1 6 1] ***This issues has been resolved.***

Item No. 26, Issue No. 2-8 [Section 1 7] 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?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-8.

A. The answer to the question posed in the issue statement is "YES". BellSouth should be required to "commingle" UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of

the Act *[Sponsored by* ***3 CLECs M. Johnson (KMC)****, H. Russell (NVX), J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Petitioners' proposed language seeks to ensure that BellSouth will provide UNEs and UNE Combinations commingled with services, network elements and any other offering it is required to provide pursuant to Section 271, consistent with the FCC's rules, which do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs

The FCC has defined "commingling" as the connecting, attaching, or otherwise linking of a UNE, or a UNE Combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. Commingling is different from combining (as in a UNE Combination). In the TRO, the FCC specifically eliminated the temporary commingling restrictions that it had adopted and affirmatively clarified that CLECs are free to commingle UNEs and combinations of UNEs with services (*i e.,* non-UNE offerings), and further clarified that BellSouth is required to perform the necessary functions to effectuate such commingling The FCC has also concluded that Section 271 places requirements on BellSouth to provide network elements, services and other offerings, and those obligations operate completely separate and apart from Section 251. Clearly, elements provided under Section 271 are provided pursuant to a method other than unbundling under section 251(c)(3) Therefore, the FCC's rules unmistakably require BellSouth to allow the Petitioners to commingle a UNE or a UNE combination

with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to Section 271. In short, BellSouth's efforts to isolate – and thereby make useless Section 271 elements – should be flatly rejected *[Sponsored by 3 CLECs: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth interprets the FCC's rules as providing no obligation for it to commingle UNEs and Combinations with elements, services, or other offerings that it its required to provide to CLECs under Section 271 BellSouth's language turns the FCC's commingling rules on their head, and nothing in the FCC's rules or the TRO supports its interpretation. In fact, the FCC specifically rejected BellSouth's creative but erroneous interpretation of the TRO (including paragraph 35 of the errata to the TRO) when it concluded that CLECs may commingle UNEs or UNE combinations with facilities or services that a it has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act. Services obtained from BellSouth pursuant to Section 271 obligations are obviously obtained from BellSouth pursuant to a method other than Section 251(c)(3) unbundling, and therefore are not subject to any restrictions on commingling whatsoever. The Authority should therefore reject BellSouth's proposal as anticompetitive and unlawful. *[Sponsored by 3 CLECs: M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 27, Issue No. 2-9 [Section 1 8 3]: When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth service?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-9.

A. When multiplexing equipment (equipment that allows multiple voice and data streams and signals to be carried over the same channel or circuit) is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service (which in most cases will be a UNE loop). *[Sponsored by **3 CLECs** M. Johnson (KMC), H. Russell (NVX), **J. Falvey (XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a CLEC requests a commingled circuit in which multiplexing equipment is attached, then the multiplexing equipment should be billed at the lower bandwidth of service – *i.e.*, per the jurisdiction of the loop if a loop is attached or per the lower bandwidth transport, if the circuit involves commingled transport links. It is my understanding that the FCC held, in the TRO, that the definition of local loop includes multiplexing equipment (other than DSLAMs) Therefore, the multiplexing should be at UNE rates when a UNE loop is part of the circuit. At the very least, the CLECs – as the Party ordering and paying for the service – should be able to choose whether it wants to purchase multiplexing out of the Agreement (connected to a UNE) or out of a BellSouth tariff. *[Sponsored by 3 **CLECs**· M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that when multiplexing equipment is attached to a commingled circuit, the multiplexing equipment will be billed from the same jurisdictional authorization (agreement or tariff) as the higher bandwidth service. The problem with this language is that, in a commingled circuit incorporating a DS1 UNE loop and DS3 special access transport (the most common kind of commingled circuit we expect to see), the multiplexing element would get billed at special access rates even though it is by definition part of the loop UNE On a commingled circuit involving DS1 UNE transport and DS3 special access transport, it is not clear what jurisdiction the multiplexing would be billed from. Such a lack of clarity can only lead to unnecessary disputes. *[Sponsored by **3 CLECs**: M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Item No 28, Issue No 2-10 [Section 1 9 4]: ***This issue has been resolved.***

Item No 29, Issue No. 2-11 [Section 2.1 1]: ***This issue has been resolved.***

Item No. 30, Issue No 2-12 [Section 2.1 1 1]: ***This issue has been resolved.***

Item No. 31, Issue No 2-13 [Section 2 1.1.2] ***This issue has been resolved.***

Item No 32, Issue No 2-14 [Sections 2 1 2, 2.1 2.1, 2 1 2 2]. ***This issue has been resolved.***

Item No. 33, Issue No. 2-15 [Section 2 2 3]: ***This issue has been resolved.***

Item No 34, Issue No 2-16 [Section 2 3.3] ***This issue has been resolved.***

Item No 35, Issue No 2-17 [Sections 2 4.3, 2 4.4]: ***This issue has been resolved.***

Item No. 36, Issue No. 2-18 [Section 2 12 1] (A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-18(A).

A. Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51 319 (a)(1)(iii)(A) *[Sponsored by* ***3 CLECs*** *M Johnson (KMC),* ***H. Russell (NVX)****, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' language incorporates by reference FCC Rules 51.319(a)(1)(iii) — the Line Conditioning rule — and 51.319(a)(1)(iii)(A) — the definition of Line Conditioning — to describe BellSouth's obligations. This language sets forth, in a simple yet precise way, what BellSouth should be able and willing to provide to Petitioners within the Agreement This language does not provide Petitioners with anything more than what the FCC rules prescribe. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it provides an extensive definition of Line Conditioning that refuses to reference or incorporate the applicable FCC Rule 51.319(a)(1)(iii) Petitioners are not interested in BellSouth's rewriting of the rule which conflates BellSouth's Line Conditioning obligations with its Routine Network Modification obligations. The FCC has rules that govern each. Line Conditioning is not limited to those functions that qualify as Routine Network Modifications.

BellSouth's position statement demonstrates the analytical errors in its contract language, as we have explained. It states that Line Conditioning should be defined as "routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers". This position does not comport with FCC Rule 319 "Routine network modification" is not the same operation as "Line Conditioning" nor is xDSL service identified by the FCC as the only service deserving of properly engineered loops. Neither BellSouth's position nor its contract language complies with the law The FCC created and kept two separate rules to govern these distinct forms of line modification, and the Agreement must reflect this FCC decision. BellSouth's proposal would effectively nullify one of those rules Petitioners' language should therefore be adopted *[Sponsored by **3 CLECs**. M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-18(B).

A. BellSouth should perform Line Conditioning in accordance with FCC Rule 47 CFR 51.319 (a)(1)(iii). *[Sponsored by **3 CLECs**· M Johnson (KMC), **H. Russell (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' request only that the Agreement and BellSouth's obligations thereunder comport with federal law. Petitioners are unwilling to accept BellSouth's attempt at diluting its obligations by effectively eliminating Line Conditioning obligations that the FCC left in place. *[Sponsored by **3 CLECs**: M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate for the same reasons discussed previously with respect to issue 2-18(A). BellSouth's proposed language inappropriately attempts to limit its Line Conditioning obligations For its position statement, BellSouth essentially re-states the same position it provided for Issue 2-18(A). That is, BellSouth will only perform Line Conditioning as a "routine network modification", in accordance with Rule 51.319(a)(1)(iii), to the extent that BellSouth would do so for its own xDSL customers. For the reasons I have explained, this position is without merit. First, to discuss "routine network modification" as occurring under Rule 51.319(a)(1)(iii) is simply wrong: that term does not appear anywhere in Rule 51 319(a)(1)(iii). Second, it is not permissible under the rules for BellSouth to perform Line Conditioning only when it would do so for itself. The FCC has placed no such limitation on Line Conditioning. Third, BellSouth's repeated insistence that Line Conditioning is only for xDSL services contravenes Rule 51.319(a)(1)(iii), which is absolutely neutral as to the services that can be provided over conditioned loops. The Agreement should accurately reflect BellSouth's obligations as to Line Conditioning, and therefore should include Petitioners' language on that matter,

which references the FCC's governing rule. *[Sponsored by 3 **CLECs** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 37, Issue No. 2-19 [Section 2 12.2] Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-19.

A. The answer to the question posed in the issue statement is "NO". The agreement should not contain specific provisions limiting the availability of Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in length. *[Sponsored by 3 **CLECs** M. Johnson (KMC), **J. Fury (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners will not agree to language that provides them no right to order Line Conditioning (in this case, load coil removal) on loops that are longer than 18,000 feet. Nothing in Applicable Law would support such a limitation. Petitioners are entitled to obtain loops that are engineered to support whatever service we choose to provide. In refusing to condition loops (in this case, load coil removal) over 18,000 feet in length, BellSouth may preclude Petitioners from providing innovative services to a significant number of customers In unreasonably attempting to restrict its Line Conditioning obligations, BellSouth is attempting to dictate the service that Petitioners may provide by limiting those services to those that *BellSouth* chooses to provide. This result is contrary to the 1996 Act, is anticompetitive, and may deprive Tennessee consumers of innovative services that CLECs may choose to provide and that BellSouth would prefer not to *[Sponsored by 3 **CLECs** M Johnson (KMC), J Fury (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language stating that it "will remove load coils only on copper loops and sub loops that are less than 18,000 feet in length" as a matter of course, but that it will remove load coils on longer loops only at the CLEC's request and at the rates in "BellSouth's Special Construction Process contained in BellSouth's FCC No. 2". This language is unacceptable. First, it has no basis in Applicable Law. Nothing in any FCC order allows BellSouth to treat Line Conditioning in different manners depending on the length of the loop Second, BellSouth's imposition of "special construction" rates for Line Conditioning is inappropriate As Petitioners have explained with respect to several issues in this arbitration, the work performed in connection with provisioning UNEs must be priced at TELRIC-compliant rates. BellSouth's special construction rates are not TELRIC-compliant. Indeed, BellSouth's Tariff FCC No 2 does not include rates for Line Conditioning, but rather lists the charges imposed on specific carriers for hanging or burying cable, adding UDLC facilities, and the like. Petitioners therefore do not know what rates they would pay for Line Conditioning under this section. Such ambiguity is unacceptable Accordingly, the Agreement should state that TELRIC-compliant rates shall apply to Line Conditioning for loops over 18,000 feet in length. For all these reasons, BellSouth's language should be rejected. *[Sponsored by **3 CLECs** M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Q. ARE YOU CURRENTLY CONTEMPLATING THE DEPLOYMENT OF TECHNOLOGIES THAT MIGHT REQUIRE THE TYPE OF LINE

CONDITIONING THAT BELLSOUTH SEEKS TO EXCLUDE FROM THE AGREEMENT?

A. Yes. We are currently exploring at least two technologies designed to derive additional bandwidth from "long" loops. One is called "Etherloop" which should work on loops up to 21,000 feet in length and another is called "G.HDSL Long" which should work on loops up to 26,000 feet in length *[Sponsored by **1 CLEC**. J Fury (NVX)]*

Item No 38, Issue No. 2-20 [Sections 2 12 3, 2.12 4] Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-20.

A. Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line Conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2. *[Sponsored by **3 CLECs**. M. Johnson (KMC), **J. Fury (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners seek to ensure that BellSouth will, at their request, remove bridged tap from loops as necessary to enable the loop to carry Petitioners' choice of service. Federal law provides, without limitation, that CLECs may request this type of Line Conditioning, insofar as they pay for the work required based on TERLIC-compliant rates. Petitioners' language comports exactly with these parameters, stating simply that they may request removal of bridged tap at the rates already provided in the Agreement, excepting bridged

tap of more than 6,000 feet, which the Parties agree should be removed without charge. Petitioners have the right to provide the service of their choice, and to obtain loops that can carry those services The Authority should reject BellSouth's attempt to limit CLEC service offerings to those BellSouth also chooses to provide. *[Sponsored by **3 CLECs** M Johnson (KMC), J. Fury (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require it to remove only bridged tap "that serves no network design purpose" and is between "2500 and 6000 feet". This language substantially restricts Petitioners' ability to obtain loops that are free of bridged tap, in two ways. First, it leaves entirely to BellSouth's discretion which bridged tap "serves no network design purpose", which is an arbitrary and unworkable standard Moreover, it is not for BellSouth to unilaterally roll-back its federal regulatory obligations. Second, BellSouth's language precludes the removal of bridged tap that is less than 2500 feet in length, which may significantly impair the provision of high-speed data transmission. Nothing in federal law supports a refusal to remove bridged tap, regardless of the length of or their location on the loop. BellSouth's language would have the effect of depriving consumers of competitive choice of service, and would improperly gate Petitioners' entry into the broadband market. This proposal is unlawful, anticompetitive, and should be rejected.

BellSouth makes two points in its position statement that require comment. First, BellSouth claims that removing bridged tap that either "serves no network purpose" or is "between 0 and 2500" feet constitutes "creation of a superior network". This position is

flatly incorrect, as the FCC has expressly held that Line Conditioning does not result in a "superior network". Rather, it is the work necessary to ensure that existing loops can support the services that a CLEC chooses to provide. BellSouth is not building a "superior network" in this instance, it is merely modifying its existing network. Moreover, removing bridged tap pursuant to the CLEC's request is absolutely required by Rule 51.319(a)(1)(iii) (Line Conditioning). Second, BellSouth states that this issue is "not appropriate for arbitration" because it somehow involves "a request by the CLECs that is not encompassed within ... Section 251". Yet, the FCC established the Line Conditioning rule under its Section 251 authority. Accordingly, this issue is squarely within the Authority's jurisdiction. *[Sponsored by **3 CLECs**. M. Johnson (KMC), J. Fury (NVX), J. Falvey (XSP)]*

Item No. 39, Issue No. 2-21 [Section 2 12 6] ***This issue has been resolved.***

Item No 40, Issue No. 2-22 [Section 2 14 3.1 1] ***This issue has been resolved.***

Item No. 41, Issue No 2-23 ***This issue has been resolved.***

Item No. 42, Issue No. 2-24 [Section 2 17.3.5] ***This issue has been resolved***

Item No. 43, Issue No. 2-25 [Section 2 18.1 4] Under what circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or controlled by a carrier other than BellSouth?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-25.

A. BellSouth should provide CLEC Loop Makeup information on a particular loop upon request by a Petitioner. Such access should not be contingent upon receipt of an LOA from a third party carrier *[Sponsored by **3 CLECs**: M Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners are entitled to obtain information about the physical make-up of loops upon request BellSouth, as the sole controller of the legacy systems that hold this information, must provide it to the fullest extent required by law. The law does not require an LOA from third party carriers If BellSouth withholds loop make-up information on that basis, it will delay, or even preclude, Petitioners' ability to discern which services it can offer to a customer, thus limiting the customer's competitive choice It will also inhibit Petitioners' ability to compete, as it effectively institutes a policy of one competitor having to ask another for permission to compete for their customers. The Agreement should therefore ensure that Petitioners can obtain Loop Makeup information upon request. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would deny Petitioners Loop Makeup if a carrier other than BellSouth "controls" the loop. More specifically, BellSouth's language would require Petitioners to provide "a Letter of Authorization (LOA) from the voice CLEC (owner) or its authorized agent" prior to receiving any loop information This proposal is pure mischief. BellSouth does not need an LOA from one competitor in order to provide

loop make-up information to another As I've indicated, this would in effect require CLECs to ask each other for permission to attempt to win-over their customers. Such a regime would obviously be anti-competitive and would likely thwart most attempts to get information needed to make informed service offers to customers

If customer privacy is BellSouth's true concern, that issue is not addressed in its proposed language For BellSouth to require an LOA from a CLEC as a means of securing privacy would therefore be misplaced. Because it serves no lawful basis, yet would impose significant competitive harm, BellSouth's proposed language should be rejected. *[Sponsored by **3 CLECs**: M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Item No 44, Issue No 2-26 [Section 3.6 5] ***This issue has been resolved.***

Item No. 45, Issue No 2-27 [Section 3 10 3] ***This issue has been resolved.***

Item No. 46, Issue No 2-28 [Section 3 10 4] (A) May BellSouth refuse to provide DSL services to CLEC's customers absent a Authority order establishing a right for it to do so?

(B) Should CLEC be entitled to incorporate into the Agreement, for the term of this Agreement, rates, terms and conditions that are no less favorable in any respect, than the rates terms and conditions that BellSouth has with any third party that would enable CLEC to serve a customer via a UNE loop that may also be used by BellSouth for the provision of DSL services to the same customer?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-28(A).

A. The answer to the question posed in the issue statement is "NO". In cases where a Petitioner purchases UNEs from BellSouth, BellSouth should not be permitted to refuse to provide DSL transport or DSL services (of any kind) to the Petitioner and its End Users, unless BellSouth has been expressly permitted to do so by the Authority *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX),* ***J. Falvey (XSP)****]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. BellSouth should not be permitted to refuse xDSL transport services to a CLEC or its customers It is anticompetitive and anti-consumer to block CLEC customers from receiving such DSL services. By doing so, BellSouth is discriminating against Petitioners and artificially preserving its local service base with the threat of denying attractive DSL services to those customers who wish to switch to a CLEC for other services In addition, denying DSL to CLEC customers is contrary to the public interest, as such conduct in effect "punishes" customers for exercising their right to choose a local service provider. Four state commissions, Georgia, Florida, Kentucky and Louisiana have agreed Petitioners are not asking the Authority to decide whether BellSouth should

be able to tie DSL services to its voice offerings and punish consumers who would like to use other voice providers in this proceeding. Instead, Petitioners are simply asking the Authority to prohibit BellSouth from doing so, until the Authority expressly determines that it is lawful and in the public interest to allow BellSouth to leverage its control over its rate-payer financed network in such a manner.

For these reasons, Petitioners have proposed language stating that "BellSouth shall not refuse to provide DSL transport or DSL services (of any kind) to [a Petitioner]and its End Users unless BellSouth has been expressly permitted to do so by the Commission." *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not provided any alternative language for this provision Its position has been, however, that only upon an express order by a state commission will it sell DSL service to a CLEC local customer This position is unreasonable. An entity should not refrain from acting anticompetitively only at the behest of an official. That obligation remains constant. Nor should BellSouth have the power to punish CLEC customers absent a specific Authority order to the contrary, as denying customers the services that they request, if they are technically feasible to provide, is patently unreasonable and contrary to the public interest. *[Sponsored by* ***3 CLECs****· M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-28(B).

A. The answer to the question posed in the issue statement is "YES". Where BellSouth provides DSL transport/services to a CLEC and its End Users, BellSouth should be required to do the same for Petitioners without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity. *[Sponsored by 3 **CLECs** M Johnson (KMC), H. Russell (NVX), **J. Falvey (XSP)**]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. This position comes out of frustration with BellSouth's failure to provide a proposal with respect to CLEC's request to have contract language that provides them with the same rights any other entity has with respect to such DSL transport/services This is simply an anti-discrimination provision. Petitioners have therefore proposed that BellSouth must provide DSL service free of charge, until such time as the Agreement includes terms and conditions for provisioning that are at least as advantageous as those to which BellSouth has already agreed or that are currently in effect. Because BellSouth refuses to negotiate these terms, they must be imposed upon BellSouth *[Sponsored by 3 **CLECs** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has refused to provide language and merely suggests that it will some day provide Petitioners with another non-Section 252 agreement to consider. This is unacceptable. Petitioners are not willing to wait until someday and they are not willing to

accede to BellSouth's request to address the issue outside the scope of the Authority's jurisdiction. *[Sponsored by 3 **CLECs** M. Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS YOUR POSITION ON BELLSOUTH'S ADDITION OF ISSUE 2-28(C)?

A. BellSouth's new Issue 2-28(C) asks whether BellSouth's obligation not to deny DSL service should "be in included in this agreement" Petitioners' response to that question is "YES". Petitioners want those provisions in this Agreement subject to the General Terms and Conditions provisions we have negotiated (and arbitrated). *[Sponsored by 3 **CLECs** M Johnson (KMC), H. Russell (NVX), **J. Falvey (XSP)]***

Q. WHY IS ISSUE 2-28 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. BellSouth's assertion that "[t]his issue (including all subparts) is not appropriate in this proceeding" is incorrect. This issue came up repeatedly during negotiations and because it involves the shared use of UNE facilities, it is squarely within the Authority's jurisdiction to arbitrate. *[Sponsored by 3 **CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 47, Issue No. 2-29 [Section 4 2 2] (A) ***This issue has been resolved.*** *(B)* ***This issue has been resolved.***

Item No. 48, Issue No 2-30 [Section 4.5.5] ***This issue has been resolved.***

Item No 49, Issue No. 2-31 [Section 5 2 4]. ***This issue has been resolved.***

Item No 50, Issue No 2-32 [Sections 5.2 5.2 1, 5 2 5.2 3, 5 2.5.2 4, 5 2.5 2 5, 5.2 5 2 7] How should the term "customer" as used in the FCC's EEL eligibility criteria rule be defined?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-32.

A. The high capacity EEL eligibility criteria should be consistent with those set forth in the FCC's rules and should use the term "customer", as used in the FCC's rules The term "customer" should not be defined in a manner that limits Petitioners' access to EELs, as BellSouth proposes. The FCC did not limit its term "customer" to the restrictive definition of End User sought by BellSouth. Use of the term "End User" as defined by BellSouth may result in a deviation from the FCC rules to which CLECs are unwilling to agree. *[Sponsored by **3 CLECs. M. Johnson (KMC)**, H. Russell (NVX), J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for this position is simple: Petitioners want what the rule says, not anything else. Petitioners are unwilling to accept more limited access to EELs than which they are entitled to under the FCC's rules. *[Sponsored by **3 CLECs**· M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed replacement of "customer" with "End User" – a term upon which the Parties cannot agree on a definition (Item 2 / Issue G-2) improperly seeks to reduce the availability of EELs in a manner not intended by the FCC. In the absence of mutual agreement otherwise, the Authority must find that the express terms of the FCC rule govern. *[Sponsored by **3 CLECs**· M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 51, Issue No. 2-33 [Sections 5 2.6, 5.2 6 1, 5.2 6.2, 5 2 6.2 1, 5 2 6.2 3] (A) ***This issue has been resolved.***

(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?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-33(B).

A. The answer to the question posed in the issue statement is "YES" . It is the CLECs' position that to invoke its limited right to audit CLEC's records in order to verify compliance with the high capacity EEL service eligibility criteria, BellSouth should send a Notice of Audit to the CLECs, identifying the particular circuits for which BellSouth alleges non-compliance and demonstrating the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to the CLECs with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit *[Sponsored by* ***3 CLECs*** *M Johnson (KMC),* ***H. Russell (NVX)****, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In order for the CLECs to be adequately prepared to respond to a BellSouth EEL audit request, BellSouth should provide the CLECs with proper notification CLECs are entitled to know the basis for the audit and need sufficient time, i.e , 30 days, to evaluate BellSouth's audit request and to prepare to for an audit. Since the original filing of testimony, BellSouth has agreed that audits may be conducted only based upon cause;

therefore, it should not resist providing documentation that identifies the particular circuits for which Bellsouth alleges non-compliance and the documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. *[Sponsored by 3 **CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Since filing the original testimony, BellSouth agreed to language requiring it to provide 30 days notice, however, the Parties disagree on whether that 30 days should be 30 days prior to the date upon which BellSouth seeks to have an audit commence (as Joint Petitioners maintain) or whether the notice will affirmatively establish that the audit will commence 30 days after notice is given. BellSouth's position is unnecessarily inflexible. The Parties simply cannot know whether 30 days after the notice will be a date upon which the necessary personnel and resources will be available and can begin to be devoted to an audit engagement or whether the CLEC can gather the appropriate records and make certain the necessary logistical arrangements In some cases, it may be possible and, in others, it may not BellSouth's language also does not accept the Joint Petitioners' proposals that the notice identify the circuits for which BellSouth alleges non-compliance and include all documentation used to establish the cause upon which BellSouth rests its allegations. Joint Petitioners' proposal is designed to bring any potential dispute up front and center with relevant documentation available to both Parties so that unnecessary disputes over whether BellSouth may or may not proceed with an audit can be avoided and so that real ones can be resolved efficiently. Disputes

of this nature have consumed too many resources in the past By requiring BellSouth to establish the scope and the basis for its claimed right to audit up front, the Joint Petitioners have created a better proposal for eliminating, narrowing and more quickly resolving disputes over whether or not BellSouth has the right to proceed with an EEL audit In this regard, it is important to note that, although the TRO does not include a specific notice requirement, the Authority may order such a requirement. The TRO only includes "basic principles for EEL audits" and should not be construed as a comprehensive overview of all EEL audit requirements. In fact, the FCC specifically stated, " .we set forth basic principles regarding carriers' rights to undertake and defend against audits. However, we recognize that the details surrounding the implementation of these audits may be specific to related provisions of interconnection agreements or to the facts of a particular audit, and the states are in a better position to address that implementation".

If the CLECs are going to have to endure the time and expense necessary to comply with a BellSouth audit request, at the very least, BellSouth can provide adequate notice to CLECs setting forth the scope of and cause upon which the audit request is based along with supporting documentation. Such a requirement should place no additional burden on BellSouth, as BellSouth has agreed that it may conduct audits only based upon cause. Moreover, as clearly stated in the FCC's TRO, the Authority is well within its prerogative to order such a notice requirement be included in the Parties' Agreement. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-33(C).

A. The audit should be conducted by a third party independent auditor mutually agreed-upon by the Parties. The provisions regarding when a CLEC must reimburse BellSouth and when BellSouth must reimburse a CLEC should mirror those contained in the TRO

*[Sponsored by **3 CLECs**: M Johnson (KMC), **H. Russell (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Since the original testimony was filed, the Parties have managed to agree on additional language and to reduce this sub-issue to two specific audit implementation disagreements First, the Agreement should eliminate opportunities for dispute over who is entitled to conduct an EEL audit. Joint Petitioners propose that the parties agree on an independent auditor, just as the parties agreed to with respect to PIU and PLU audits conducted pursuant to Attachment 3 of the Agreement. Far too many resources have been consumed in the past over disputes about whether a proposed auditor was independent or not The Joint Petitioners' proposal will address this problem by requiring the parties to do what they have traditionally agreed to do for PIU and PLU audits: mutually agree on an independent auditor. Second, the reimbursement provisions contained in section 5.2 6 1 should come directly from the FCC's TRO. The TRO's requirements for when a CLEC must reimburse BellSouth and when BellSouth must reimburse a CLEC for costs associated with an audit are balanced. BellSouth seeks to take the balance out of the provision by refusing to keep "in all material respects" in the language addressing when a CLEC must reimburse BellSouth. This gambit is inconsistent with the TRO and should be rejected in favor of Joint Petitioners' language

which mirrors that set forth in the TRO *[Sponsored by **3 CLECs** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language for EEL audits does not require the parties to agree on an independent auditor. BellSouth's language simply sets the stage for additional disputes regarding whether or not an auditor it proposes to use is independent. Joint Petitioners are unwilling to subject themselves to audits by entities whose independence is doubtful and reasonably challenged. Because there are many auditing entities whose independence cannot easily be questioned or challenged, it seems nonsensical not to address this issue now in order to prevent recurring disputes later. With respect to the audit reimbursement provisions, BellSouth language is deficient because it seeks to upend the balanced requirement established in the TRO. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 52, Issue No. 2-34 [Section 5 2 6.2 3] ***This issue has been resolved.***

Item No 53, Issue No 2-35 [Section 6 1.1] ***This issue has been resolved.***

Item No 54, Issue No 2-36 [Section 6 1 1 1] ***This issue has been resolved.***

Item No 55, Issue No. 2-37 [Section 6 4 2] ***This issue has been resolved.***

Item No 56, Issue No 2-38 [Sections 7 2, 7.3] ***This issue has been resolved.***

Item No 57, Issue No 2-39 [Sections 7 4] (A) Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, including cases that would require the party providing the information to query a third party database provider?

(B) If so, which party should bear the cost?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-39(A).

A. The answer to the question posed in the issue statement is "YES" The Parties should be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider. *[Sponsored by M. Johnson (KMC),* ***J. Willis (NVX),*** *J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for this position is one of competitive necessity. If BellSouth refuses to perform CNAM queries and to pass such information on CLEC originated traffic to be terminated to its own customers, then CLECs will be placed at an unfair competitive advantage because its customers will not have his/her/its caller ID appear when a BellSouth customer subscribes to that service. When caller ID does not appear, the party receiving the call is much less likely to answer the call. This may scare customers away from CLECs and back to BellSouth. Because BellSouth would be able to do this only as a result of its monopoly legacy and overwhelming market dominance, the Authority should find that requiring BellSouth to query and pass CNAM information – even if that requires BellSouth to query a competitive database provider is in the public interest.

Without such a ruling CLECs would be faced with a Hobson's choice of having to choose between competitive CNAM providers that the largest LEC (BellSouth) refuses to dip or the (non-UNE) CNAM service provided by BellSouth. BellSouth should not be permitted to free itself of the CNAM unbundling obligation based on the presence of competitive alternatives only to then engage in behavior that makes those alternatives false choices and forces CLECs back to BellSouth for non-UNE CNAM. Accordingly, the Authority should adopt CLECs' proposed language *[Sponsored by **3 CLECs** M. Johnson (KMC), J. Willis (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it does not oblige BellSouth to query another CNAM database provider and thus threatens to put CLECs at a significant competitive disadvantage. It is our understanding that BellSouth has dipping agreements with the third party providers we seek to use. We are simply trying to ensure that our reliance on such providers is not compromised by BellSouth in a manner that effectively forces us to consider switching to a non-UNE BellSouth service. *[Sponsored by **3 CLECs**: M. Johnson (KMC), J. Willis (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 2-39(B).

A. Each Party should bear its own costs associated with dipping CNAM providers. *[Sponsored by **3 CLECs** M Johnson (KMC), **J. Willis (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale for this position is based on fairness and sound public policy. It would be unfair to have a CLEC pay for its own database dips and those of BellSouth. Moreover,

since BellSouth no longer has an obligation to provide a CNAM database as a UNE (in cases where unbundled local switching is not used), the Authority should not permit BellSouth to engage in conduct that makes use of third party CNAM providers undesirable. *[Sponsored by **3 CLECs:** M Johnson (KMC), J Willis (NVX), J Falvey (XSP)]*

Q. WHY IS ISSUE 2-39 APPROPRIATE FOR ARBITRATION?

A. In its position statement, BellSouth asserts that this issue, and its subparts, are not "appropriate for this proceeding" because they "involve[] a request . that is not encompassed within BellSouth's obligations pursuant to Section 251." This position is incorrect. As explained above, the exchange of such information is essential to fair competition and the exchange of traffic contemplated by Section 251's interconnection obligations. By virtue of even the language BellSouth has offered, it is clear that CNAM queries and delivery are essential to the exchange of local traffic between interconnecting LECs required under Section 251. Moreover, unless Petitioners' proposed language is adopted, they will once again be impaired without unbundled access to BellSouth's CNAM database. *[Sponsored by **3 CLECs**: M Johnson (KMC), J. Willis (NVX), J Falvey (XSP)]*

Item No 58, Issue No. 2-40 [Sections 9 3 5] ***This issue has been resolved.***

Item No 59, Issue No 2-41 [Sections 14 1]: ***This issue has been resolved.***

INTERCONNECTION (ATTACHMENT 3)

Item No 60, Issue No 3-1 [Section 3.3 4 (KMC, NSC, NVX), 3 3.3 XSP] ***This issue has been resolved.***

Item No 61, Issue No 3-2 [Section 9 6 and 9.7] ***This issue has been resolved.***

Item No 62, Issue No. 3-3 [Section 10 7 4, 10 9.5, and 10 12 4] ***This issue has been resolved.***

Item No 63, Issue No. 3-4 [Section 10 8 6, 10 10 6 and, 10 13 5] Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-4.

A. In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, the CLEC should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is obligated to pay pursuant to contract or Commission order. Moreover, CLECs should not be required to reimburse BellSouth for any charges or costs related to Transit Traffic for which BellSouth has assumed responsibility through a settlement agreement with a third party BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies. *[Sponsored by **3 CLECs M. Johnson (KMC)**, H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners have agreed to reimburse BellSouth for termination charges that BellSouth must pay third party carriers that terminate CLEC-originated traffic transited by BellSouth The Agreement, however, must be clear that such reimbursement is limited to those charges BellSouth is contractually-obligated to pay to third party carriers or obligated to pay pursuant to Authority order. Moreover, the Joint Petitioners should not be made unwilling parties to any settlement agreement between BellSouth and a third party. Meaning, if BellSouth agrees to pay a third party for the termination of Transit Traffic as part of some arrangement or settlement, the CLECs should not be responsible for reimbursing BellSouth's for its business decision to pay such third party. Without such limitations, there is the potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLECs, for unjustified termination charges In order to further ensure that BellSouth does not overpay and CLECs are not over-reimbursing for third-party termination of CLEC-originated/BellSouth transited traffic, BellSouth should be required to diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices. We feel that such language is needed because, without it, there is the incentive for BellSouth to become lax, as it can relay on the reimbursement provision. Accordingly, we simply ask BellSouth to treat bills for termination of Transit Traffic no differently from other bills the company gets from independent telcos and the like. The CLECs' proposal will eliminate any potential discrimination and promote business certainty with regard to BellSouth's transiting

function. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate in that it does not limit the reimbursement obligation to those charges BellSouth is contractually obligated to pay, or obligated to pay pursuant to Authority order, third parties terminating CLEC-originated/BellSouth-transited traffic. Instead, it gives BellSouth the latitude to choose to pay such third parties even when it has no contractual or other legal obligation to do so. The result would leave CLECs vulnerable to whatever political or business arrangements BellSouth struck with such third parties regardless of whether the rate imposed is unjust and unreasonable *[Sponsored by **3 CLECs** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS YOUR VIEW ON BELLSOUTH'S PROPOSED RESTATEMENT OF THE ISSUE?

A. My view is that it is unacceptable in that it appears that BellSouth is trying to disguise the fact that this is an issue that relates to BellSouth's Transit Traffic service It is not simply an issue about CLEC-originated traffic *[Sponsored by **3 CLECs:** M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 64, Issue No. 3-5 [Section 10 5 5.2, 10 5.6.2, 10 7 4 2 and 10.10 6]: ***This issue has been resolved.***

Item No 65, Issue No. 3-6 [Section 10 8 1, 10.10. 1, and 10 13]. 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?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 3-6.

A. The answer to the question posed, in the issue statement is "NO". BellSouth should not be permitted to impose upon CLECs a Tandem Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC-based additive charge which exploits BellSouth's market power and is discriminatory. *[Sponsored by 3 **CLECs. M. Johnson (KMC)**, J. Fury (NVX) , J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. KMC and NewSouth's reasoning for refusing to agree to BellSouth's proposed TIC is threefold First, BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power. Only BellSouth is in the position of providing transit service capable of connecting all carriers big and small BellSouth is in this position because of its monopoly legacy and continuing market dominance. To ensure connectivity necessary to allow Tennessee consumers to choose among carriers big or small, it is essential that this means of interconnection among parties be preserved and not jeopardized by the imposition of non-cost-based rates.

Second, the rate BellSouth seeks to impose – appropriately called the TIC (like its insect namesake, this charge is parasitic and debilitating) – appears to be purely "additive". The Authority has never established a TELRIC-based rate for it BellSouth already collects

elemental rates for tandem switching and common transport to recover its costs associated with providing the transiting functionality. These elemental rates are TELRIC-compliant which, by definition, means that they not only provide BellSouth with cost recovery but they also provide BellSouth with a reasonable profit. BellSouth has recently developed the TIC simply to extract additional profits over-and-above profit already received through the elemental rates.

Third, BellSouth's attempted imposition of the TIC charge on the CLECs is discriminatory. BellSouth does not charge TIC on all CLECs and it appears that, even when it does, it can set the rate at whatever level it desires. Although, the TIC proposed by BellSouth in the filed rate sheet exhibits to Attachment 3 is $0.0015, BellSouth had threatened to nearly double that rate, if Petitioners did not agree to it during negotiations. For these reasons, the Authority must find that the TIC charge is unlawfully discriminatory and unreasonable. *[Sponsored by **3 CLECs**. M Johnson (KMC), J. Fury (NVX) , J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language provides for recovery of the TIC. It is BellSouth's position that the proposed rate is justified because BellSouth incurs costs beyond those for which the Authority-ordered rates were designed to address, such as the costs of sending records to the CLECs identifying the originating carrier. BellSouth, however, has not demonstrated that the elemental rates that have applied for nearly eight (8) years to BellSouth's transiting function do not adequately provide for BellSouth cost recovery. If these rates no longer provide for adequate cost recovery, BellSouth should conduct a TELRIC cost

study and propose a rate in the Authority's next generic pricing proceeding. BellSouth should not be permitted unilaterally to impose a new charge without submitting such charge to the Authority for review and approval. *[Sponsored by* ***3 CLECs*** *M. Johnson (KMC), J Fury (NVX) , J Falvey (XSP)]*

Q. WHY IS ISSUE 3-6 APPROPRIATE FOR ARBITRATION?

A. BellSouth's position statement states that Issue 3-6 should not be included in this Arbitration because "it involves a request by the CLECs that is not encompassed" in Section 251 of the 1996 Act. This statement is incorrect Transiting is an interconnection issue firmly ensconced in Section 251 of the Act Moreover, this functionality has been included in BellSouth interconnection agreements for nearly 8 years – it is not now magically not related to its obligations under Section 251 of the Act In addition, transiting functionality is something BellSouth offers in Attachment 3 of the Agreement, which sets forth the terms and conditions of BellSouth's obligations to interconnect with CLECs pursuant to section 251(c) of Act. Finally, the Parties have discussed and debated the TIC, although to no resolution, throughout the negotiations of this Agreement. For these reasons, Issue 3-6 is properly before the Authority *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), J Fury (NVX), J Falvey (XSP)]*

Item No. 66, Issue No. 3-7 [Section 10.1] ***This issue has been resolved.***

Item No. 67, Issue No. 3-8 [Section 10.2, 10 2.1, 10 3]. ***This issue has been resolved.***

Item No 68, Issue No 3-9 [Section 2.1.12]. ***This issue has been resolved.***

Item No 69, Issue No 3-10 [Section 3 2, Ex A]: ***This issue has been resolved***

Item No 70, Issue No. 3-11 [Sections 3 3 1, 3 3.2, 3 4 5, 10.10.2] ***This issue has been resolved.***

Item No. 71, Issue No 3-12 [Section 4 5]: ***This issue has been resolved.***

Item No. 72, Issue No 3-13 [Section 4.6] ***This issue has been resolved.***

Item No 73, Issue No. 3-14 [Sections 10.10 4, 10 10 5, 10 10 6,10.10 7]. ***This issue has been resolved.***

COLLOCATION (ATTACHMENT 4)

Item No. 74, Issue No. 4-1 [Section 3.9]: ***This issue has been resolved.***

Item No. 75, Issue No 4-2 [Sections 5.21 1, 5 21.2] ***This issue has been resolved.***

Item No. 76, Issue No. 4-3 [Section 8.1, 8 6]: ***This issue has been resolved.***

Item No. 77, Issue No 4-4 [Section 8.4]: ***This issue has been resolved.***

Item No 78, Issue No 4-5 [Section 8 6] ***This issue has been resolved.***

Item No. 79, Issue No 4-6 [Sections 8 11, 8.11.1, 8.12.2]: ***This issue has been resolved.***

Item No 80, Issue No. 4-7 [Section 9 1.1]: ***This issue has been resolved.***

Item No 81, Issue No 4-8 [Sections 9.1 2, 9 1 3] ***This issue has been resolved.***

Item No 82, Issue No. 4-9 [Sections 9.3] ***This issue has been resolved.***

Item No. 83, Issue No 4-10 [Sections 13 6] ***This issue has been resolved.***

ORDERING (ATTACHMENT 6)

Item No. 84, Issue No 6-1 [Section 2.5 1] ***This issue has been resolved.***

Item No 85, Issue No 6-2 [Section 2.5 5] ***This issue has been resolved.***

Item No 86, Issue No 6-3 [Sections 2 5 6 2, 2 5 6 3] (A) ***This issue has been resolved.***
(B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-3(B).

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

provisions incorporated in the General Terms and Conditions of the Agreement *[Sponsored by **3 CLECs** M Johnson (KMC), H. Russell (NVX), **J. Falvey (XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Self help is nearly always an inappropriate means of handling a contract dispute. If there is a dispute, it should be handled in accordance with the Dispute Resolution provisions of the contract and not under the threat of suspension of access to OSS or termination of all services If BellSouth is truly concerned about quickly resolving such issues, it should not continue to oppose including a court of law as an appropriate venue for dispute resolution. *[Sponsored by **3 CLECs**: M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language provides little more than the threat of suspension of access to OSS and the termination of all services (regardless of its potential impact on its competition or consumers who have been disloyal to BellSouth). While BellSouth offers as window dressing that if the CLEC disagrees with BellSouth's allegations of unauthorized use, the *CLEC* must proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. However, it is not at all clear whether BellSouth gets to pull the plug while the dispute is pending or whether the coercive pressure created by BellSouth's ambiguous language is all that it is seeking. In the end, neither CLECs nor their customers should be forced into such a precarious provision. Moreover, the Party seeking certain relief (in this case BellSouth), should be the Party that has to file actions under the Dispute Resolution provisions. Petitioners should not be forced to seek Dispute

Resolution as a means of curtailing ongoing or potential damage from BellSouth self-help. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Item No 87, Issue No 6-4 [Section 2 6]: ***This issue has been resolved.***

Item No 88, Issue No 6-5 [Section 2.6 5] What rate should apply for Service Date Advancement (a/k/a service expedites)?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-5.

A. Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles. *[Sponsored by **3 CLECs** M Johnson (KMC), J Willis NVX), **J. Falvey (XSP)**]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As explained above in Issue 2-17, all aspects of UNE ordering must be priced at TELRIC. This same rule should apply to Service Date Advancements. CLECs are entitled to access the local network and obtain elements at forward-looking, cost-based rates Where they require such access on an expedited basis, which is often necessary in order to meet a customer's needs, CLECs should not be subject to inflated, excessive fees that were not set by the Authority and that do not comport with the TELRIC pricing standard *[Sponsored by **3 CLECs** M Johnson (KMC), J. Willis (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position is that it is not required to provide expedited service pursuant to the Act Therefore, BellSouth's language states that BellSouth's tariffed rates for service

date advancement will apply. BellSouth's tariffed rate, however, is $200.00 per element, per day Thus, for example, a request to speed up an order for a 10-line customer by 2 days would cost $4,000.00 This fee is unreasonable, excessive and harmful to competition and consumers *[Sponsored by **3 CLECs**: M. Johnson (KMC), J Willis (NVX), J. Falvey (XSP)]*

Q. IS ISSUE 6-5 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. Obviously, the answer to that question is "yes" The manner in which BellSouth provisions UNEs is absolutely within the parameters of Section 251. Where Petitioners require expedited provisioning, that request remains part of the overall UNE provisioning scheme. And, as we have explained, that request should result in TELRIC rates as for any other UNE order. BellSouth's position that "this issue is not appropriate in this proceeding" is therefore incorrect. Setting prices and arbitrating the terms and provisions associated with Section 251 unbundling are squarely within the Authority's jurisdiction and are appropriately resolved in this arbitration proceeding. *[Sponsored by **3 CLECs** M. Johnson (KMC), J Willis (NVX), J Falvey (XSP)]*

Item No. 89, Issue No 6-6 [Section 2.6.25] ***This issue has been resolved.***

Item No 90, Issue No 6-7 [Section 2.6 26]. ***This issue has been resolved.***

Item No 91, Issue No. 6-8 [Section 2 7.10 4] ***This issue has been resolved.***

Item No. 92, Issue No. 6-9 [Section 2 9 1] ***This issue has been resolved.***

Item No 93, Issue No 6-10 [Section 3.1 1]. ***This issue has been resolved.***

Item No 94, Issue No. 6-11 [Sections 3.1.2, 3 1.2.1] (A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?

(B) If so, what rates should apply?

(C) What should be the interval for such mass migrations of services?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-11(A).

A. The answer to this question is "YES". Mass migration of customer service arrangements (*e.g.*, UNEs, Combinations, resale) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information should be used. *[Sponsored by **3 CLECs** M. Johnson (KMC), H. Russell (NVX), **J. Falvey (XSP)**]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Consolidation in the CLEC industry has recently brought to the forefront issues surrounding mass migration and the need to ensure that there is an efficient, predictable and lawfully priced process in place for accomplishing the mass transfer of customers and associated serving arrangements from one carrier to another. It is in consumers' best interests that such transitions happen seamlessly, quickly and at a reasonable price. Mass migration scenarios that result from CLEC mergers or asset acquisitions should not translate into an opportunity for BellSouth to make things difficult, create delay or to extract a ransom to get the work done

Because mass migrations essentially amount to bulk porting situations, they are not extraordinarily complex and they do not require BellSouth to do new and unique things. Accordingly, they should be made possible by submission of an electronic LSR (or spreadsheet prior to that becoming available) and accomplished within a definite timeframe such as the 10-calendar day interval that Petitioners propose. *[Sponsored by 3 **CLECs**: M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. The problem with BellSouth's language is that it leaves the determination of what is expeditious and reasonable entirely up to BellSouth. Moreover, BellSouth controls the means, pace and price for how these things get accomplished. It is no consolation that it promises to do that the same way for everybody. Too many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner. Yet, facing a task that must be done and the reality that there is nowhere else to go to get it done CLECs ultimately must endure, litigate or pay the price demanded by BellSouth. BellSouth simply should not be permitted to leverage its control over UNEs and other service arrangements in such a way Because this control necessitates the involvement of BellSouth, mass migrations of customers should be accomplished in predictable time periods and at fair and predictable rates that comport with the TELRIC pricing standard *[Sponsored by 3 **CLECs** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-11(B).

A. An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge Petitioners a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of circuits must be performed Similarly, BellSouth should establish and only charge Petitioners a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX),* ***J. Falvey*** ***(XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As Petitioners have maintained, TELRIC is the appropriate methodology for setting rates that are related to the provisioning of UNEs Performing mass migrations of customers must be subject to this same standard. This work should not be held to ICB pricing, as it involves no different work than customer porting generally, which is priced at TELRIC Pricing on an ICB basis render carriers unable to predict their cost of service and, as suggested by BellSouth, includes no commitment to adhere to TELRIC pricing principles. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Tellingly, BellSouth proposes no language regarding rates. BellSouth's position, however, is that the rates by necessity must be negotiated between the Parties based upon

the particular services to be transferred and the work involved. As we have explained, such "negotiated" rates — ICB prices — are inappropriate for mass migrations Such rates are easily inflated, due to the advantage in bargaining power enjoyed by BellSouth. For all these reasons, the Agreement should state that mass migrations will be priced in accordance with TELRIC *[Sponsored by* ***3 CLECs*** *M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. DO YOU HAVE ANY EXPERIENCE WITH BELLSOUTH "NEGOTIATED" ICB-PRICING THAT SUGGESTS THAT AFFIRMATIVE LANGUAGE REQUIRING TELRIC-BASED PRICING IS NEEDED?

A. Yes. Xspedius once attempted to accomplish the mass migration of several special access circuits to UNE loops. Although this event would require nothing more than a simple records change for each circuit, BellSouth quoted a minimum price of several hundred dollars. In addition, BellSouth proposed several hundred dollars in charges associated with "project management." These proposals obviously outweigh the approximately $73.00 rate approved by the Authority for converting special access to UNE combinations. Yet, because only a single UNE was involved, BellSouth insisted that it was justified in imposing what amounts to a king's ransom. In the end, the effect of this "negotiated ICB rate" was that Xspedius chose not to order the conversions and BellSouth still reaps the rewards of selling Xspedius over-priced special access. *[Sponsored by* ***1 CLEC*** *J Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 6-11(C).

A. Migrations should be completed within ten (10) calendar days of an LSR or spreadsheet submission. *[Sponsored by **3 CLECs**. M Johnson (KMC), H Russell (NVX), **J. Falvey (XSP)**]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. BellSouth must be held to an objective and definite timeframe for porting customers to Petitioners, whether on a small scale or via mass migrations. A 10-day interval is a reasonable requirement, and should be ample time for BellSouth to complete the necessary work. *[Sponsored by **3 CLECs** M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes no language here and appears inclined to leave it all up to negotiations In its position statement, BellSouth maintains that no finite interval can be set to cover all potential situations, and that while shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties This position is unreasonable As we have explained, BellSouth's purported need for special "project management" is unsupported, and should not be used as an excuse to delay the conversion of customers Mass migrations should not be delayed on the ground that they are somehow different from generic requests to port a customer or update BellSouth's records. Since they simply involve bulk submission of such requests, petitioners' 10-day interval should therefore be stated explicitly in the Agreement. *[Sponsored by **3 CLECs**. M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. IS ISSUE 6-11 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. Yes The manner in which BellSouth provisions UNEs is absolutely within the parameters of Section 251. The mass migrations of customers served via UNEs, resale and Other Services is inextricably linked to BellSouth's Section 251 obligations. Moreover, it seems implausible that the migration of customers to service configurations covered by the Agreement should not be covered by the Agreement and resolved in this arbitration BellSouth's position that "this issue is not appropriate in this proceeding" is therefore incorrect. Prescribing the terms by which BellSouth switches customers and updates records associated with UNE and other serving configurations is squarely within the Authority's jurisdiction. *[Sponsored by **3 CLECs**: M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

BILLING (ATTACHMENT 7)

Item No 95, Issue No 7-1 [Section 1.1 3]: What time limits should apply to backbilling, over-billing, and under-billing issues?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-1.

A. There should be an explicit, uniform limitation on a Party's ability to engage in backbilling under this Agreement. The Authority should adopt the CLEC proposed language, which would limit a Party's ability to bill for services rendered no more than ninety (90) calendar days after the bill date on which those charges ordinarily would have been billed. For purposes of ensuring that a party could reconcile backbilled amounts, the CLEC proposed language provides that billed amounts for services that are rendered more than one (1) billing period prior to the bill date should be invalid unless the billing

Party identifies such billing as "backbilling" on a line-item basis. Finally, the CLEC proposed language provides an exemption to the ninety (90) day limit whereby backbilling beyond ninety (90) calendar days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued may be invoiced under the following conditions: (1) charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and (2) charges incorrectly billed due to erroneous information supplied by the non-billing Party. With respect to over-billing, the Parties have negotiated and separately agreed to a 2-year limit on filing billing disputes (thus, Petitioners do not believe that BellSouth properly has inserted this as a sub-issue here). With respect to under-billing, Petitioners believe that the subissue is covered by any provisions that address backbilling *[Sponsored by* ***3 CLECs: M. Johnson (KMC)****, H. Russell (NVX), J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION THAT BACKBILLING SHOULD GENERALLY BE LIMITED TO NINETY DAYS?

A. It comes down to business and financial certainty. In order for CLECs to pay invoices in a timely manner and keep adequate financial records, there must be a limit on the Parties' ability to backbill for services rendered. The Parties should not have unlimited time to backbill each other in an attempt to recoup past amounts not properly billed Neither CLECs nor BellSouth should be required to reopen their financial books because the other did not issue accurate invoices in a timely manner To allow backbilling more than 90 days would create too much business uncertainty between the Parties and ultimately lead to billing disputes. Accordingly, the Authority should adopt the CLEC proposed

language which establishes a general 90 day limit on backbilling. *[Sponsored by 3 **CLECs:** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. ARE THERE ANY CIRCUMSTANCES IN WHICH BACKBILLING MORE THAN NINETY DAYS SHOULD BE PERMITTED?

A. Yes, Petitioners' proposed language contemplates that there may be circumstances under which the Parties may backbill for past due amounts beyond 90 days and up to 6 months. Such circumstances include backbilling for charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and charges incorrectly billed due to erroneous information supplied by the non-billing Party Such exemptions to the 90 day backbilling limit would allow the Parties to recover past amounts not properly billed due to errors beyond their control while establishing a 6 month limit to avoid excessive backbilling. The CLECs propose a caveat, however, that any amount backbilled more than 1 billing period must be clearly identified as "backbilling" on a line-item basis. This requirement would allow the Parties to easily identify backbilled amounts, and reconcile invoices and will likely decrease the number of billing disputes between the Parties *[Sponsored by 3 **CLECs:** M. Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that all charges incurred under the Agreement are subject to the state's statute of limitations or applicable Authority rules BellSouth's language is inadequate because it fails to provide uniform, workable parameters by which the Parties can invoice each other for services rendered in prior billing periods As discussed below, the statute of limitations vary greatly among the states in the BellSouth territory and, thus, do not provide an effective limit to backbilling

In Tennessee, BellSouth asserts that the statute of limitation is 6 years Such a lengthy backbilling period would create too much business uncertainty between the Parties and would force the CLECs to devote substantial time and resources to review and reconcile past bills in order to verify backbilled amounts. Moreover, it is unlikely that CLECs would be able to backbill its customers for such amounts as most end-user customers would not understand, much less accept, a substantially late bill for services the end-user cannot verify were actually rendered.

The state statute of limitations within the BellSouth territory vary greatly. It is unreasonable for a CLEC to have to alter its billing processes to allow for backbilling that could range, for example, from 6 months in South Carolina to 6 years in Tennessee. The purpose of this Agreement is to set forth the terms and conditions under which the Parties will interconnect and CLECs will purchase UNEs and related services from BellSouth. Accordingly, the Agreement should serve as a guide to the company personnel responsible for implementing the Agreement. CLEC billing personnel should be able to develop processes implementing the billing provisions of this Agreement, including backbilling policies based on the limits proposed by the CLECs. *[Sponsored by 3* ***CLECs*** *M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. HAVE THE PARTIES AGREED TO LANGUAGE IN ANOTHER PART OF THE AGREEMENT THAT ADDRESSES OVER-BILLING?

A. Yes, the Parties have effectively addressed over-billing by limiting the filing of billing disputes to amounts no more than 2 years old. Specifically, Section 2.1.7 of Attachment 7 states, "[n]otwithstanding the foregoing, new billing disputes may not be filed pertaining to a bill when a period of two (2) years from the bill issue date has elapsed." BellSouth agreed to a uniform cap of two (2) years for billing disputes even through such timeframe is longer than the statue of limitations in Florida, Louisiana, and South Carolina, and shorter than the statute of limitations in Tennessee and the other states in the BellSouth region BellSouth's position with regard to billing disputes is squarely contradictory to its position for backbilling, and BellSouth has not provided any compelling reasons why it will not agree to a uniform time limit for backbilling as it done with respect to billing disputes *[Sponsored by **3 CLECs**. M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. ARE YOU AWARE OF THE AUTHORITY ADDRESSING THIS ISSUE?

A. Yes, it is my understanding that the Authority has addressed this issue in the ITC^DeltaCom/BellSouth Arbitration in Docket No 03-00119. It is my further understanding that the Directors, in their March 22, 2004 deliberations, ruled in favor of ITC^DeltaCom's proposed 3-billing cycle backbilling limit, approximately 90-days The Petitioners would find acceptable the same ruling here. *[Sponsored by **3 CLECs** M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Item No. 96, Issue No 7-2 [Section 1 2.2] (A) What charges, if any, should be imposed for records changes made

by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?
(B) What intervals should apply to such changes?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-2(A).

A. Petitioners submit that a Party should be entitled to make one corporate name, OCN, CC, CIC or ACNA change ("LEC Change") in the other Party's databases, systems and records within any 12 month period without charge. For any additional "LEC Changes", TELRIC-compliant charges should be assessed. *[Sponsored by 3* ***CLECs*** *M. Johnson (KMC), H Russell (NVX),* ***J. Falvey (XSP)****]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Due to the current status of the telecommunications industry, it is likely a company will go through a corporate reorganization, merger, acquisition, etc that will require some type of system, database, or records change(s) to reflect the change ("LEC Change"). It is my understanding that generally "LEC Changes" are simple administrative changes that are not unduly time or labor intensive. Therefore, CLECs should be afforded one "LEC Change" in any twelve (12) month period without charge

In the commercial setting, businesses have to deal every day with corporate reorganizations, mergers, acquisitions, etc. Most businesses, however, do not get to impose a charge for making a system modification to recognize such a change in corporate status or identity. Rather, it is treated as a cost of doing business. Nonetheless, BellSouth seeks to impose charges, via the cumbersome and uncertain BFR/NBR processes, to recover costs for implementing "LEC Changes". To the extent the Authority concludes that BellSouth may recover such cost, BellSouth should only be able

to do so if a CLEC requests a "LEC Change" more than once in a twelve-month period and any such charge for additional "LEC Changes" should be TELRIC-compliant rates, as they are a necessary part of the business of gaining access to and using cost-based interconnection, UNEs and collocation. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. ARE YOU AWARE OF THIS PROVISION BEING INCLUDED IN ANY OTHER INTERCONNECTION AGREEMENTS?

A. Yes, it is my understanding that.SBC had included, in its 13-State Agreement, a provision that provides for a one-time OCN/AECN change, without charge, as part of a corporate name change. For example, this provision is included in the Stonebridge Communications, Inc.'s 13-State Agreement, which SBC lists as current. [Section 4 9, GT&Cs]. It is also included in the Digital Telecommunications, Inc.'s 13-State Agreement [Section 4 9, GT&Cs]. Further, the Time Warner/SBC Wisconsin Agreement, which is a modified 13-State Agreement, also provides for a one-time OCN/AECN change without charge [Section 4.8, GT&Cs]. *[Sponsored by* ***2 CLECs*** *M Johnson (KMC), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require a CLEC to go through the BFR/NBR process in order to conduct a "LEC Change". Specifically, BellSouth's language states, "...[CLEC] shall bear all costs incurred by BellSouth to convert [CLEC] to the new ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s).. and will be handled by the BFR/NBR process " It is BellSouth's position that CLECs should be responsible for all "reasonable

records change charges" via the BFR/NBR process It is my understanding that the BFR/NBR process is a lengthy, expensive and typically unsatisfactory process The BFR process is used to develop a new or modified UNE or related services pursuant to the Act, and the NBR process is used to develop an entirely new network element or service not required by the Act. By requesting a "LEC Change", CLECs are hardly requesting anything that rises to the level of a new UNE or new service. Rather, CLECs are asking for BellSouth to make an administrative change in its systems and databases to reflect a corporate identity change. Petitioners have specifically negotiated this provisions to incorporate language addressing "LEC Changes" in the Agreement because they do not want to be subject to BellSouth's murky BFR/NBR process for this type of request. Further, Petitioners want certainty as to the cost BellSouth will charge for a "LEC Change". Ultimately, these types of records changes must be done and Petitioners do not want to be put in the position of having to pay whatever price BellSouth demands, no matter how excessive. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-2(B).

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

ten (10) calendar days *[Sponsored by 3 **CLECs** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As discussed above, a "LEC Change" is simply an administrative records change in BellSouth's systems and databases and, accordingly, 30 days is ample time to complete such a change Furthermore, the Agreement should be clear that "LEC Changes" will not disturb or delay the provisioning of any service orders or the operational interfaces between Petitioners and BellSouth, including access to BellSouth's OSS. The Agreement must be clear on this point so that there is no opportunity to use a "LEC Change" as an excuse for provisioning delays or denial of the ability to access BellSouth's OSS (and the attendant ability to order UNEs and other services). Finally, due to the importance of accurate billing between BellSouth and a CLEC, the Parties should establish BANs for the other party within ten (10) calendar days A billing account change should be a simple records change and should be done on an expedited basis to avoid any billing discrepancies and the disputes that might result. *[Sponsored by 3 **CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth does not include any intervals for completing "LEC Changes" in its proposed language. It is also my understanding that there are no intervals for "LEC Changes" or equivalents in any of the BellSouth intervals guidelines or operational guides. BellSouth's proposed language provides that "LEC Changes" be handled by the BFR/NBR process. The Authority should find that intervals for "LEC Changes" should

not be left to BellSouth's discretion though the amorphous BFR/NBR processes. The Agreement should include precise intervals that the Parties can rely on in their course of dealings under the Agreement. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q WHY IS ISSUE 7-2 APPROPRIATE FOR ARBITRATION?

A. In its position statement, BellSouth asserts that Issue 7-2 should not be included in this Arbitration because "it involves a request by the CLECs that is not encompassed" in Section 251 of the 1996 Act. BellSouth is mistaken. Regardless of whether LEC Changes are expressly mandated under Section 251 or state law, this issue plainly involves BellSouth's OSS and billing for UNEs, collocation and interconnection which is clearly encompassed by Section 251 Moreover, this issue goes directly to ensuring that BellSouth's practices are just and reasonable, which are always within the jurisdiction of the Authority. For these reasons, Issue 7-2 is properly before the Authority. *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Item No 97, Issue No 7-3 [Section 1.4]: When should payment of charges for service be due?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-3.

A. Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill, in those cases where correction or retransmission is necessary for processing *[Sponsored by 3 **CLECs:** M Johnson (KMC), **H. Russell (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners need at least 30 days to review and pay invoices. In other commercial settings in which parties have established business relationships, the payor may be afforded 45 days or more to pay an invoice. Furthermore, it is not uncommon for parties to a contract to develop a course of dealings in which a party is not strictly held to a certain payment date Nevertheless, in order to try to settle as many billing issues as possible, Petitioners agreed to BellSouth's proposal for a thirty (30)-day payment deadline (one billing cycle). Under such a strict deadline, it is imperative that CLECs be given the full thirty (30) days to review and pay those bills It is Petitioners' experience, however, that BellSouth is consistently untimely in posting or delivering its bills and those bills are often incomplete and sometimes incomprehensible. Therefore, in effect BellSouth is actually giving Petitioners far fewer than thirty (30) days to pay invoices, which is neither typical nor acceptable in a commercial setting, especially in this case, where the bills are numerous, voluminous and complex. Thus, the Authority should find that the thirty (30)-day payment due date must be established from the time a Petitioner receives a complete and

fully readable bill via mail or website posting *[Sponsored by 3 **CLECs** M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. HAVE YOU TRACKED HOW LONG IT TAKES BELLSOUTH TO POST OF DELIVER ITS BILLS?

A. Yes. We have found that it takes on average 7 days after the issue date for NuVox to receive a bill from BellSouth. NuVox conducted a study of how long it takes NuVox to receive an electronic invoice from BellSouth NuVox conducted this study from July 2002 through July 2003. Although the times recorded by NuVox varied from 3 days to over 30 days the average time it takes BellSouth to deliver its electronic bills to NuVox is 7 days. We tracked the issue separately for our NewSouth division, as BellSouth has billed and for the time being will continue to bill NewSouth separately. NewSouth's experience has been that, by the time it receives its bills from BellSouth, it has anywhere from 19-22 days to process bills for payment This amount of time is inadequate as it does not allow NewSouth to effectively and completely review and audit the bills it receives from BellSouth. *[Sponsored by **1 CLEC**· H Russell (NVX)]*

Q. HAVE YOU TRACKED THE DIFFERENCE BETWEEN THE DATE BELLSOUTH POSTS ON THE BILL AND THE DATE THE BILL IS RECEIVED BY XSPEDIUS?

A. Yes My company has tracked the difference between the date posted on the BellSouth bill and the date the bill is actually received by Xspedius We began tracking this data in December, 2003. Our results demonstrate that it takes on an average 6.45 days for Xspedius to receive a bill from BellSouth. Although the average time is 6.45 days, we

have tracked bills that Xspedius has received from BellSouth in as little as 2 days and as long as 22 days *[Sponsored by 1 CLEC J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that payment of charges for services rendered must be made on or before the next bill date. This language is inadequate in that it does not account for the fact that there is typically a long gap between the time a bill is "issued" and the date upon which it is made available to or delivered to a Petitioner BellSouth's language also makes no attempt to mitigate the problems caused in circumstances when its invoices are incomplete and/or incomprehensible When this occurs, the CLEC already has a late start in paying the invoice and then may also need to spend extraordinary amounts of time attempting to reconciling an such invoices Therefore, under BellSouth's proposal Petitioners are not getting thirty (30) days to remit payment.

The Authority should take note that not only is less than thirty (30) days to remit payment for services rendered unacceptable in most commercial settings, but CLECs have the added burden of extraordinary pressure from BellSouth to pay on time. The alterative to paying on time is that Petitioners' capital will be tied up in security deposits and/or late payments By proposing the next bill date as the payment due date as opposed to thirty (30) days after receipt of a complete and readable bill, BellSouth does not afford Petitioners adequate time to review and pay invoices and unfairly raises the likelihood that a Petitioner would be forced to tie-up much needed capital in a deposit BellSouth is, in essence, using its monopoly legacy and bargaining position to force CLECs to either

remit payment faster than almost any other business or in the alternative face substantial late payment penalties and increased security deposits. *[Sponsored by 3 **CLECs** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Item No. 98, Issue No 7-4 [Section 1 6] ***This issue has been resolved.***

Item No 99, Issue No. 7-5 [Section 1 7 1] What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-5.

A. Petitioners as well as BellSouth should have the right to suspend access to ordering systems and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not be imposed unilaterally by one Party over the other's written objections to or denial of such accusations. *[Sponsored by **3 CLECs** M Johnson (KMC), H. Russell (NVX), **J. Falvey (XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Termination of services or denial of access to ordering systems is a potentially life-threatening event for CLECs Petitioners will be unable to conduct business without access to BellSouth ordering systems and customers will lose service if BellSouth terminates their access to services and facilities Such drastic measures must not be taken, therefore, without following standard procedures set forth in the Agreement While we understand the need for BellSouth to ensure the integrity of its network,

BellSouth should not be able to unilaterally terminate facilities or deny access to ordering systems if there is any dispute as to the unlawfulness or improper use of its network or facilities The Dispute Resolution provisions of the Agreement must trump any self-help BellSouth may seek to undertake against a Petitioner in such circumstances. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes that either Party should have the right to suspend or terminate service to **all** existing services in the event a Party believes the other Party is using **any** of its services or facilities in an unlawful, improper or abusive manner, and such use is not corrected within thirty (30) calendar days. BellSouth's proposed language, however, fails to acknowledge that a CLEC may question or even deny its allegation of unlawful, improper or abusive use and that the Parties may in fact disagree over whether or not such violation has occurred or continues to occur. Instead, BellSouth's proposed language simply provides that it may engage in self-help by terminating services or denying access to ordering systems after providing notice if such alleged improper use is not corrected. Because this outcome is an "end game" for CLECs, BellSouth must be prohibited from engaging in self-help if there is a dispute. Accordingly, the Agreement should require that the Parties adhere to the Dispute Resolution provisions in the event of a dispute regarding use of the other Party's network or facilities. Otherwise, BellSouth will be able to leverage its monopoly power over CLECs by engaging in self-help whereby the remedy imposed by BellSouth significantly would outweigh any infraction (*i.e.*, "lights-out" regardless of how insignificant the infraction and irrespective of

whether the CLEC disputes BellSouth's allegations). The Authority should prevent this result as competitors and Tennessee consumers could be irreparably harmed by BellSouth's attempt to secure and exercise "self-help" in a manner that capitalizes on its monopoly legacy and overwhelming market dominance. *[Sponsored by 3 **CLECs** M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No 100, Issue No. 7-6 [Section 1.7.2]: 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?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-6.

A. The answer to the question posed in the issue statement is "NO". CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination Rather, if a Petitioner receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amount past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination *[Sponsored by 3 **CLECs:** M Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a Petitioner receives a notice of suspension or termination from BellSouth, it will be Petitioner's immediate goal to pay the past due amounts included in the notice to avoid suspension and termination If the Petitioner must attempt to calculate and pay past due amounts in addition to those specified in BellSouth's notice, the Petitioner unfairly will

risk suspension or termination due to possible calculation and timing errors. *[Sponsored by 3 CLECs: M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. COULD YOU PLEASE EXPLAIN WHAT WOULD LIKELY HAPPEN AT YOUR COMPANY UPON RECEIPT OF A NOTICE OF SUSPENSION OR TERMINATION DUE TO NONPAYMENT?

A. Yes, if I or someone at my company received a notice of suspension or termination from BellSouth, it would be nothing less than a "fire drill". Whoever received the notice would immediately work to determine whether such payments were missing, not posted, disputed, or simply due and, in the latter case would arrange to deliver payment to BellSouth as fast as possible. Access to BellSouth's OSS is essential to the daily operation of our company – we take the threat of suspension of such access very seriously. Obviously, the threat of termination is taken very seriously, as well given that would result in massive service outages across our Tennessee customer base. *[Sponsored by 3 CLECs M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. UNDER SUCH A SCENARIO, HOW WOULD YOU BE HINDERED IF YOU WERE REQUIRED TO CALCULATE OTHER POSSIBLE PAST DUE AMOUNTS?

A. Under the threat of suspension or termination, our billing personnel would be working as fast as possible to track and pay the amount specified as past due on the suspension or termination notice. Obviously, there is time pressure to perform an investigation into the circumstances and to resolve the matter by identifying any discrepancies and securing payment of the amount specified. Any time or resources that we would have to expend in trying to calculate any possible additional past due amounts that may become past due in

the time period between the date on which BellSouth calculated the past due amount (which may or may not be known) and the date on which BellSouth would receive and post payment (which, with respect to posting only, will not be known) would be taken away from time needed to investigate and secure payment of the amount specified on the suspension or termination notice. But, the more significant hindrance is the "shell game" that would ensue if Petitioner had to guess the precise amount that BellSouth calculated upon receipt and posting of payment that was needed to satisfy the payment of all amounts past due requirement BellSouth seeks to impose. Under that circumstance, only BellSouth can know (and control) the answer to that calculation, as it knows the date upon which it first calculated the past due amount included in the notice and the date upon which it posts receipt of payment. Indeed, under BellSouth's proposal, it could simply delay posting of payment by a day if it was determined to suspend or terminate service. Like many others, this BellSouth proposal seeks unfairly to leverage its monopoly legacy and overwhelming dominance by putting Petitioners in a position that would not be acceptable in a typical commercial setting. The worst part of it, however, is that BellSouth once again proposes to use the specter of consumer affecting service outages as a means of putting CLECs at the mercy of a reluctant seller. *[Sponsored by **3 CLECs** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes that in response to a notice of suspension or termination, a CLEC must pay not only the amount included in the notice, but all other amounts not in dispute that become past due. BellSouth's proposed language places too much burden and risk

on CLECs who are forced to calculate possible past due amounts in addition to those included in the BellSouth notice to avoid suspension or termination of service. As I just explained, BellSouth's proposal amounts to a high stakes shell game that could result in massive service outages for our Tennessee customers, if we fail to properly track, time, trace and predict BellSouth behavior in a manner that allows us to arrive at a "magic number" needed to avoid suspension or termination Obviously, such terms and conditions are unreasonable in any setting and especially in this one where consumers' service hangs in the balance. *[Sponsored by **3 CLECs** M. Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Item No 101, Issue No. 7-7 [Section 1.8 3]: How many months of billing should be used to determine the maximum amount of the deposit?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-7.

A. The maximum amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). *[Sponsored by **3 CLECs:** M. Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The CLECs involved in the negotiation process have engaged in tremendous compromise with BellSouth in an attempt to settle deposit issues and limit the issues for arbitration. It is not typical in commercial relationships for one side to continually try to extract deposits from the other. Nevertheless, in trying to settle deposit issues, the Petitioners agreed to language that expands BellSouth's right to collect deposits well beyond what is

found in its typical tariffs. In addition to attempting to resolve an issue that has long vexed the Parties (a protracted battle over these issues was played out before the FCC little more than a year ago), the Parties tried, through negotiations, to develop new contract language for deposits uniformly applicable across the 9 state BellSouth region. The primary goals of this exercise were to draft deposit provisions that address BellSouth's asserted need for security deposits with Petitioners' asserted need to limit tying-up capital in such deposits and to be able to clearly ascertain the circumstances when deposits would be required and returned.

In particular, Petitioners believe that the deposit terms should reflect that each, directly and through its predecessors, has already had a long and substantial business relationship with BellSouth Accordingly, it is reasonable to treat Petitioners differently from other entities that have no established business relationship with BellSouth. The one and one-half month's actual billing deposit limit for existing CLECs proposed by Petitioners is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance. Moreover, Petitioners believe that it is more generous to BellSouth than terms to which BellSouth has previously agreed. Additionally, the calculations for existing CLECs, which include all the CLECs in this arbitration, should be based on average monthly billings for the most recent six (6) month period. This way, any deposit required by BellSouth will reflect the most recent billing patterns and will eliminate any potential to skew a deposit requirement by using a base timeframe that may not accurately reflect the CLECs' current billing. *[Sponsored by* ***3 CLECs:*** *M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposed language establishes a deposit based on an estimated two month's actual billing for existing customers and two month's estimated billing for new customers. BellSouth's language fails to take into account that the CLECs involved in this arbitration have established business relationships with BellSouth with significant billing history For these reasons, they should not be subject to the same deposit requirements as new CLEC customers with no established business relationship with BellSouth Through these negotiations, BellSouth has argued that the Agreement must include deposit provisions that not only work for the these four CLECs, but that will also work for other carriers that may adopt the Agreement. To accommodate BellSouth's position in that this Agreement will likely be adopted by other carriers, the CLEC proposed language includes a separate deposit requirement for existing CLEC customers (one and one-half month's actual billing) as well as new CLEC customers (two month's estimated billing). This dual approach can apply in a reasonable and non-discriminatory manner to both the CLECs involved in the instant case as well as any new carriers that may adopt the final Agreement *[Sponsored by 3* ***CLECs*** *M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No. 102, Issue No. 7-8 [Section 1.8.3 1] Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-8.

A. The answer to the question posed in the issue statement is "YES" The amount of security due from an existing CLEC should be reduced by amounts due to CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7 of the Agreement. *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), **J. Falvey (XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As mentioned above, Petitioners have compromised significantly throughout the negotiations of these deposit provisions in order to reach a reasonable and balanced solution that can work throughout the BellSouth territory As such, the CLECs conceded to give up the right to reciprocal deposits in an effort to settle one potential arbitration issue. But, if Petitioners do not collect deposits they should at least have the ability to reduce the amount of security due to BellSouth by the amounts BellSouth owes CLEC that have aged thirty (30) days or more *[Sponsored by **3 CLECs** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. DOES BELLSOUTH TYPICALLY HAVE SIGNIFICANT BALANCES OWED TO CLECs AGED OVER THIRTY DAYS?

A. Yes, BellSouth does not have a pristine or even good payment record when it comes to paying CLECs the amounts BellSouth owes under its interconnection agreements. Thus, reducing deposit amounts the Petitioners would owe BellSouth is a reasonable means to

protect the CLECs' financial interest - as the remainder of the deposit provisions protect BellSouth's financial interests *[Sponsored by 3 **CLECs** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has not proposed any language on this issue. BellSouth fails to address is the fact that CLECs have no remedy in the security deposit context if BellSouth is late in paying invoices to the CLECs Since the CLECs suffer financially when payment of invoices are late or not paid in full, but are unable to request security deposits from BellSouth, they should at least be able to reduce the security amount when BellSouth has failed to make timely payments to CLECs Furthermore, the CLECs' offset proposal is proper in that once the amount of deposit the CLECs owes BellSouth is decreased by amounts BellSouth has failed to pay the CLECs, the resulting amount will more accurately reflect BellSouth's actual exposure to potential nonpayment *[Sponsored by 3 **CLECs** M. Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Item No. 103, Issue No 7-9 [Section 1 8 6]: 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?

Q: PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-9.

A. The answer to the question posed in the issue statement is "NO". BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth **only** in cases where: (a) CLEC agrees that such a deposit is required by the

Agreement, or (b) the Authority has ordered payment of such deposit *[Sponsored by **3 CLECs** M. Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As with numerous other provisions in this Attachment, Petitioners' proposed language counters BellSouth's proposal to "pull the plug" on CLEC service without following the Dispute Resolution provisions of the Agreement. Such self-help actions must be limited to those circumstances where the CLEC agrees that a deposit is required by the Agreement, or the Authority has ordered payment for the deposit. If there is a dispute as to the need or amount of a security deposit, BellSouth must not be able to terminate service to CLEC without following the Dispute Resolution provisions of the Agreement. *[Sponsored by **3 CLECs** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would allow BellSouth to terminate service to CLEC under any circumstance in which CLEC has not remitted a deposit requested by BellSouth within thirty (30) calendar days. Such broad and sweeping language would allow BellSouth to circumvent the Dispute Resolution provisions of the Agreement and simply "pull the plug" on CLEC services even in the event of a valid dispute regarding the required amount of a requested security deposit BellSouth must be required to follow the Dispute Resolution provisions and the Authority must prevent BellSouth from taking any unilateral self-help action that will ultimately harm or terminate consumers' service *[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No. 104, Issue No. 7-10 [Section 1 8 7]· 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?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-10.

A. If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute *[Sponsored by 3 **CLECs** M Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. It is reasonable to assume that the Parties may disagree as to the need for or required amount of a security deposit (there has been disagreement in the past). In the event of such a dispute that the Parties are unable to reach a negotiated settlement on (which typically has happened in the past), either Party may file a petition for dispute resolution in accordance with the Dispute Resolution provisions set forth in the Agreement. Such action is consistent with how disputes are handled throughout the Agreement and is the purpose of the Dispute Resolution provisions. *[Sponsored by 3 **CLECs:** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language acknowledges that the Parties can file a petition for dispute resolution in the event there is a dispute as to the need and amount of deposit, but BellSouth proposes that the CLECs must post a payment bond for the amount of the requested deposit during the pendency of the dispute resolution proceeding According to BellSouth's language, posting a bond is a condition to avoid suspension or termination

of service during the pendency of the dispute proceeding This BellSouth bond requirement completely negates the purpose of the Dispute Resolution provisions. If a CLEC is forced to post its funds during the pendency of the dispute resolution proceeding, that unfairly puts the CLEC in the position of losing the dispute (and BellSouth in the position of winning the dispute) before it has been properly adjudicated and resolved Thus, BellSouth's proposed language would effectively allow BellSouth to override the Dispute Resolution provisions of the Agreement by terminating service to CLEC if CLEC does not post a payment bond for the amount of the requested deposit that CLEC, in that instance, already would have asserted is not required under the Agreement. Finally, BellSouth's insistence that it be the CLEC that has to file for Dispute Resolution is untenable. As BellSouth would be seeking relief (in the form of deposit), it is BellSouth that should have the burden of filing any complaint that it deems necessary *[Sponsored by* ***3 CLECs*** *M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Item No 105, Issue No. 7-11 [Section 1 8 9] ***This issue has been resolved.***

Item No 106, Issue No 7-12 [Section 1 9.1] To whom should BellSouth be required to send the 15-day notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE 7-12.

A. Notice of suspension for additional applications for service, pending applications for service, and access to BellSouth's ordering systems should be sent to CLECs pursuant to the requirements of Attachment 7 and also should be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions. *[Sponsored by **3 CLECs** M. Johnson (KMC), H Russell (NVX), **J. Falvey (XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Parties have agreed, in the General Terms and Conditions, to identify a person to receive notices under the Agreement. Specifically, Section 24.1 of the General Terms and Conditions states, "[e]very notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by U.S. Mail postage prepaid, addressed to [identified CLEC/BellSouth recipient]." This provision is not in dispute and it was agreed to without exception. Access to BellSouth ordering systems is part of the Agreement and is fundamental to a CLEC's business Nevertheless, BellSouth proposes that a notice of suspension for applications for services as well as access to ordering systems only be sent to the CLEC billing contact and not also to the notice receipt set forth in the General Terms and Conditions Petitioners are unwilling to agree to such an exception. A notice of suspension of access to ordering systems is too important to a CLEC's business to be sent only to the billing contact who likely is buried in bills from BellSouth and other

vendors The very purpose of including a notice recipient in the General Terms and Conditions is to provide a central person to receive all notices of importance to the implementation of the Agreement. As stated, there is almost no notice more important than one that will potentially terminate a CLEC's access to ordering systems The notice provision included in the General Terms and Conditions was drafted to address this exact type of notice, one of dire consequence to CLECs if not addressed immediately. Therefore, BellSouth must not be allowed to create an exception to the rule for this type of suspension notice Accordingly, the Authority should find that BellSouth must provide notice of suspension of access to BellSouth's ordering systems to the billing contact as well as the notice recipient identified in the General Terms and Conditions

*[Sponsored by **3 CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that an initial notice that a CLEC's applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of outstanding amounts are not paid by the fifteenth (15th) calendar day following the date of the notice is system generated and will only be supplied to CLEC's billing contact. As mentioned previously, access to ordering systems is vital to a CLEC's business and it is imperative that such a notice will be provided to the billing contact but also to the legal/regulatory/carrier relations contact or contacts identified in the General Terms and Conditions of this Agreement. Even if such notice is system generated, there is no valid reason why BellSouth cannot ensure that the same notice is also provided to the notice

recipient(s) identified in the General Terms and Conditions. The issues of access to OSS and UNE provisioning are too important for BellSouth not to do so. *[Sponsored by 3 **CLECs** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR)

(ATTACHMENT 11)

Item No. 107, Issue No 11-1 [Sections 1.5, 1.8.1, 1 9, 1 10]: ***This issue has been resolved.***

SUPPLEMENTAL ISSUES

(ATTACHMENT 2)

Item No. 108, Issue No S-1 How should the final FCC unbundling rules be incorporated into the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-1.

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary

Joint Petitioners maintain that the Agreement should not automatically incorporate the "Final FCC Unbundling Rules", which for convenience, is a term the Parties have agreed

to use to refer to the rules the FCC intends to release in the near term in WC Docket No. 04-313. After release of the Final FCC Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by those rules, or to other standards, if they mutually agree to do so Any issues which the Parties are unable to resolve should be resolved through Authority arbitration The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement *[Sponsored by **3 CLECs: M. Johnson (KMC),** H Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Our position reflects the process established by the Act, which requires the Parties to engage in good faith negotiations with respect to applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations. In either case, interconnection agreements (existing ones – or new ones such as those pending in this arbitration) are not automatically revised to incorporate a new FCC order. Instead, language must be negotiated or arbitrated, depending on the nature of the issues and the Parties' positions with respect thereto.

Over the years, our interconnection agreements with BellSouth have incorporated the requirements of applicable law existing at the time of contracting to a large but not uniform extent, with the Parties agreeing to displace applicable law with other terms and conditions in various circumstances. If, however, law was to develop after we have agreed upon terms (which will be the case with respect to the Agreements pending in this arbitration when the Final FCC Unbundling Rules are issued), Joint Petitioners and

BellSouth have always agreed that new contract language is necessary to incorporate whatever was to be done with respect to that change in law – whether that be language indicating an intent to abide by the new law or to displace it with other standards which would govern the Parties' relationship in that context. Additional contract terms may also be necessary to govern how and when the Parties will go about meeting any new requirements from an operational perspective.

Our position also is practical. We do not know what the Final FCC Unbundling Rules will say or how they might impact those provisions of the Agreement already agreed to or those provisions at issue in this arbitration. Thus, we cannot simply deem incorporated something that is unknown and that, accordingly, will have unknown impact When the Final FCC Unbundling Rules are released, a process will need to be adopted to allow the Parties sufficient time to assess the FCC's order and new rules, propose and negotiate contract language relating thereto, and to identify specific issues which cannot be resolved timely through voluntary negotiations and that will need to be resolved through Authority arbitration. The language that results from those negotiations and that aspect of the arbitration is how the Final FCC Unbundling Rules should be incorporated into the Agreement That language should be effective when all other terms and conditions of the Agreement are effective – which is ten calendar days after the date of the last signature executing the Agreement – neither the Agreement nor any of its terms can be effective prior to that date. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. Joint Petitioners first note that BellSouth has yet to deliver its proposed contract language regarding this issue, although BellSouth promised to do so months ago. Back in June 2004, the Parties to this arbitration agreed that BellSouth would propose contract language to incorporate the post-*USTA II* regulatory framework and that the Joint Petitioners would have an opportunity to respond in redline form with competing language, to the extent that they could not agree to BellSouth's proposal From there, the Parties were supposed to negotiate and identify for arbitration those issues that could not be resolved through negotiation. As of the date of this filing, we have not received BellSouth's proposed redline of Attachment 2 Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language.

As we understand BellSouth's proposal, BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to existing applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations The Agreement should not be "deemed amended" to "automatically incorporate" the so-called and yet-to-be released Final FCC Unbundling Rules We do not, as of the date of this filing, know what those rules will say Even if we did, we do not know whether the Parties will agree on their meaning and on what language should be incorporated into the Agreement with

respect thereto. In this regard, it is important to note that the Parties to this arbitration generated many issues for arbitration despite having had the opportunity to review relevant rules and orders and to negotiate with regard to contract language related thereto We do not anticipate that the Final FCC Unbundling Rules will prove much different While the Parties may be able to agree on some contract language with respect thereto, it also is possible that they will not be able to agree on all contract language proposals and that arbitration by the Authority will be needed in that regard. How the timing of all this will work out remains to be seen.

BellSouth's proposal also ignores the fact that the Act provides that Parties may voluntarily negotiate to abide by standards other than those set forth in applicable law Thus, the Parties may voluntarily agree to abide by standards other than those set forth in the Final FCC Unbundling Rules Such negotiations, for a variety of reasons, have resulted in numerous instances in the new Agreement where the Joint Petitioners and BellSouth voluntarily agreed to abide by standards that differ from those set forth in applicable law. Some examples from the pending Agreements would be interconnection facilities compensation (for KMC and NuVox/NewSouth), certain aspects of intercarrier/reciprocal compensation, and collocation power (other than in Tennessee).

BellSouth's proposal to "automatically incorporate" unknown rules also is contrary to language and principles upon which the Parties already have agreed will be incorporated into section 17.4 of the General Terms and Conditions of the Agreement. The principle is that changes in law will be addressed via written amendment to the agreement that will

be negotiated or, if necessary, resolved through arbitration The Parties already have agreed that changes in law will not have springing or retroactive effect, as amendments are required (General Terms and Conditions section 17.3) and such amendments will be effective as of the date of the last signature, or 10 days after the last signature, if rates are incorporated into the amendment (General Terms and Conditions section 1.6). The Parties also already have agreed to language to ensure that the terms of the Agreement and any amendments thereto have no retroactive effect. Specifically, section 3.1 of the General Terms and Conditions states that "[n]otwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date". The Parties thereby eliminated practical difficulties or even impossibilities and destabilizing uncertainty created by retroactive application of the Agreement's provisions *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 109, Issue No. S-2: (A) How should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? (B) How should any intervening State Commission order relating to unbundling obligations, if any, be incorporated into the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-2(A).

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to

counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary.

Joint Petitioners' position with respect to Issue S-2(A) is much the same as that described in the above testimony regarding Issue S-1. More specifically, Joint Petitioners maintain that the Agreement should not automatically incorporate an "intervening FCC order" adopted in CC Docket 01-338 or WC Docket 04-313 By "intervening FCC order", we mean an FCC order released in CC Docket 01-338 or WC Docket 04-313 that addresses unbundling issues but does not purport to be the "final" unbundling order released as a result of the notice of proposed rulemaking ("NPRM") released as document FCC 04-179 on August 20, 2004 or an FCC order further addressing the interim rules adopted in the FCC's order also released as document FCC 04-179 on August 20, 2004. After release of an intervening FCC order, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the intervening FCC order, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Authority arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. *[Sponsored by 3 **CLECs: M. Johnson (KMC)**, H Russell (NVX), J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale here is the same as that described within the written testimony related to Issue S-1. Automatic incorporation of an intervening order would undermine and circumvent the negotiation process established by the Act. The Act requires the Parties

to engage in good faith negotiations with respect to applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations In either case, interconnection agreements (existing ones – or new ones such as the ones pending in this arbitration) are not automatically revised to incorporate a new FCC order. Instead, language must be negotiated or arbitrated, depending on the nature of the issues and the Parties' positions with respect thereto.

Over the years, our interconnection agreements with BellSouth have incorporated the requirements of applicable law existing at the time of contracting to a large but not uniform extent, with the Parties agreeing to displace applicable law with other terms and conditions in various circumstances. If, however, law was to develop after we have agreed upon terms (which will be the case with respect to the Agreements pending in this arbitration in the event that the FCC does release an intervening order), Joint Petitioners and BellSouth have always agreed that new contract language is necessary to incorporate whatever was to be done with respect to that change in law – whether that be language indicating an intent to abide by the new law or to displace it with other standards which would govern the Parties' relationship in that context. Additional contract terms may also be necessary to govern how and when the Parties will go about meeting any new requirements from an operational perspective

Our position also is practical. We do not know what such an intervening FCC order will say or how it might impact those provisions of the Agreement already agreed to or those

provisions at issue in this arbitration. Again, we cannot simply deem incorporated something that may never come to be and is otherwise unknown and that, accordingly, would have unknown impact If and when such an order is released, a process will need to be adopted to allow the Parties sufficient time to assess the FCC's order and new rules, propose and negotiate contract language relating thereto, and to identify specific issues which cannot be resolved timely through voluntary negotiations and that will need to be resolved through Authority arbitration. The language that results from those negotiations and that aspect of the arbitration is how an intervening FCC order should be incorporated into the Agreement. That language should be effective when all other terms and conditions of the Agreement are effective – which is ten (10) calendar days after the date of the last signature executing the Agreement – neither the Agreement nor any of its terms can be effective prior to that date. *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted in the testimony related to Issue S-1, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago Back in June 2004, the Parties to this arbitration agreed that BellSouth would propose contract language to incorporate the post-*USTA II* regulatory framework and that the Joint Petitioners would have an opportunity to respond in redline form with competing language, to the extent that they could not agree to BellSouth's proposal. From there, the Parties were supposed to negotiate and identify for arbitration those issues that could not be resolved through negotiation As of the date of this filing, we

have not received BellSouth's proposed redline of Attachment 2. Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language.

As we understand BellSouth's proposal, BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to existing applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations. The Agreement should not be "deemed amended" to "automatically incorporate" an intervening FCC order. We do not, as of the date of this filing, know what that order – or any rules which may accompany it – might say. Even if we did, we do not know whether the Parties will agree on their meaning and on what language should be incorporated into the Agreement with respect thereto. In this regard, it is important to note that the Parties to this arbitration generated many issues for arbitration despite having had the opportunity to review relevant rules and orders and to negotiate with regard to contract language related thereto. We do not anticipate that an intervening FCC order would prove much different. While the Parties may be able to agree on some contract language with respect thereto, it also is possible that they will not be able to agree on all contract language proposals and that arbitration by the Authority will be needed in that regard. How the timing of all this will work out remains to be seen

BellSouth's proposal also ignores the fact that the Act provides that Parties may voluntarily negotiate to abide by standards other than those set forth in applicable law. Thus, the Parties may voluntarily agree to abide by standards other than those set forth in an interim FCC order. Such negotiations, for a variety of reasons, have resulted in numerous instances in the new Agreement where the Joint Petitioners and BellSouth voluntarily agreed to abide by standards that differ from those set forth in applicable law Some examples from the pending Agreements would be interconnection facilities compensation (for KMC and NuVox/NewSouth), certain aspects of intercarrier/reciprocal compensation, and collocation power (other than in Tennessee).

BellSouth's proposal to "automatically incorporate" an unknown FCC order also is contrary to language and principles upon which the Parties already have agreed will be incorporated into section 17.4 of the General Terms and Conditions of the Agreement The principle is that changes in law will be addressed via written amendment to the agreement that will be negotiated or, if necessary, resolved through arbitration. The Parties already have agreed that changes in law will not have springing or retroactive effect, as amendments are required (General Terms and Conditions section 17 3) and such amendments will be effective as of the date of the last signature, or 10 days after the last signature, if rates are incorporated into the amendment (General Terms and Conditions section 1 6) The Parties also already have agreed to language to ensure that the terms of the Agreement and any amendments thereto have no retroactive effect Specifically, Section 3.1 of the General Terms and Conditions states that "[n]otwithstanding any prior agreement of the Parties, the rates, terms and conditions of

this Agreement shall not be applied retroactively prior to the Effective Date". The Parties thereby eliminated practical difficulties or even impossibilities and destabilizing uncertainty created by retroactive application of the Agreement's provisions. *[Sponsored by 3 **CLECs:** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-2(B).

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary.

Joint Petitioners' position with regard to Issue No. S-2(B) is much the same as their position with regard to Issue No. S-1 and S-2(A). The only difference here is that now we are dealing with the intervening order of a state commission Like the Final FCC Unbundling Rules, as well as any intervening FCC order, a State Commission intervening order should not be automatically incorporated into the Agreement. Upon release of an intervening State Commission intervening order, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the intervening State Commission order, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Authority arbitration The effective date of the resulting rates, terms and conditions should be the same as all

others – ten (10) calendar days after the last signature executing the Agreement. *[Sponsored by* ***3 CLECs: M. Johnson (KMC)****, H Russell (NVX), J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale here is the same as that found in the testimony related to Issue No. S-1 and S-2(A) Automatic incorporation of an intervening State Commission order would undermine and circumvent the negotiation process established by the Act. The Act requires the Parties to engage in good faith negotiations with respect to applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations. In either case, interconnection agreements (existing ones – or new ones such as the ones pending in this arbitration) are not automatically revised to incorporate a new State Commission order. Instead, language must be negotiated or arbitrated, depending on the nature of the issues and the Parties' positions with respect thereto

Over the years, our interconnection agreements with BellSouth have incorporated the requirements of applicable law existing at the time of contracting to varying extents, with the Parties agreeing to displace applicable law with other terms and conditions in various circumstances. If, however, law was to develop after we have agreed upon terms (which will be the case with respect to the Agreements pending in this arbitration in the event that the Authority does release an intervening order), Joint Petitioners and BellSouth have always agreed that new contract language is necessary to incorporate whatever was to be done with respect to that change in law – whether that be language indicating an intent to

abide by the new law or to displace it with other standards which would govern the Parties' relationship in that context

Our position also is practical. We do not know what such an intervening Authority order will say or how they will impact provisions of the Agreement already agreed to or those at issue in this arbitration If and when such an order is released, a process will need to be adopted to allow the Parties time to assess the order and new rules, propose and negotiate contract language relating thereto, and to identify specific issues which cannot be resolved timely through voluntary negotiations and that will need to be resolved through arbitration. The language that results from those negotiations and that aspect of the arbitration is how an intervening State Commission order should be incorporated into the Agreement. That language should be effective when all other terms and conditions of the Agreement are effective – which is the date of the last signature executing the Agreement -- neither the Agreement nor any of its terms can be effective prior to that date. *[Sponsored by* ***3 CLECs:*** *M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted in the testimony related to Issue No. S-1, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago. Back in June 2004, the Parties to this arbitration agreed that BellSouth would propose contract language to incorporate the post-*USTA II* regulatory framework and that the Joint Petitioners would have an opportunity to respond in redline form with competing language, to the extent that they could not agree to BellSouth's proposal.

From there, the Parties were supposed to negotiate and identify for arbitration those issues that could not be resolved through negotiation. As of date of this filing, we have not received BellSouth's proposed redline of Attachment 2. Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language

That being said, Joint Petitioners acknowledge that this sub-issue arises from Joint Petitioners' expectation that BellSouth's proposed language will be inadequate. Thus, the issue will likely arise from Joint Petitioners' proposed language. Joint Petitioners, however, cannot counter-propose language without seeing BellSouth's proposed language first Nevertheless, as we understand BellSouth's general proposal with respect to these supplemental issues, BellSouth seeks only to have the Agreement automatically revised (in undetermined ways and with undisclosed language) to incorporate various *federal* decisions – some of which may never even materialize. Joint Petitioners are of the view that the Authority (as well as its counterparts across the southeastern United States) has ample jurisdiction to address many issues relating to BellSouth's obligations to provide access to unbundled network elements and to create applicable law with respect to those issues (including the adoption of unbundling obligations under both state and federal law). As with any federal orders, such State Commission orders would not be automatically incorporated into the Agreement (Strangely, BellSouth appears to agree with us on this point – which suggests that they advocate their "automatically incorporated" position only with respect to orders they anticipate will be favorable to BellSouth.) Joint Petitioners maintain that, as with any other aspect of relevant new law,

a new State Commission order would be subject to the same negotiation and arbitration process used to arrive at contract language in any other context *[Sponsored by 3 **CLECs:** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. DOES BELLSOUTH'S POSITION STATEMENT DEMONSTRATE A MISAPPREHENSION OF THE ISSUE?

A. Yes. BellSouth seems to think that there is a dispute about whether a State Commission can modify FCC orders – and the one in FCC 04-179 (part of which is the so-called Interim Rules order and part is a the so-called Final Rules NPRM) in particular. Joint Petitioners never stated to BellSouth that they held the view that State Commissions maintained editorial privileges or otherwise could modify an FC order including the one that appears in FCC 04-179 In discussing this issue, BellSouth counsel insisted on framing the manner in this light and Joint Petitioners (through counsel) resisted for obvious reasons. At bottom, the issue comes down to what the State Commissions can or cannot do. Joint Petitioners do not see the FCC order in FCC 04-179 as a general preemption of State Commission authority. The most anybody could reasonably argue (in our view) is that, for a period lasting no longer than up to March 12, 2005, the State Commissions may not approve interconnection agreements based on post September 12, 2004 State Commission orders that do anything with respect to so-called "frozen elements", other than to raise rates for them.

In all other respects, the Authority has power to create its own unbundling rules and requirements, so long as such rules do not conflict with federal unbundling requirements. If and when the Authority adopts an order doing so, the Parties will need to negotiate and

perhaps arbitrate contract language incorporating the requirements of such an order (or other standards mutually agreed to) into the Agreement. *[Sponsored by 3 **CLECs:** M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No 110, Issue No. S-3 If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-3.

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary.

In the event that FCC 04-179 is vacated or modified, the Agreement should not automatically incorporate the court order. Upon release of such a court order, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the court order (to the extent the court order effectuates a change in law with practical consequences), or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Authority arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. *[Sponsored by **3 CLECs: M. Johnson (KMC),** H. Russell (NVX), J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Again, the rationale here is the same as that found in the testimony related to Issue No. S-1, S-2(A), and S-2(B). Automatic incorporation of a vacatur or modifying decision would undermine and circumvent the negotiation process established by the Act. The Act requires the Parties to engage in good faith negotiations with respect to applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations. In either case, interconnection agreements (existing ones – or new ones such as the ones pending in this arbitration) are not automatically revised to incorporate a court order. Instead, language must be negotiated or arbitrated (to the extent the court order effectuates a change in law with practical consequences), depending on the nature of the issues and the Parties' positions with respect thereto

Over the years, our interconnection agreements with BellSouth have incorporated the requirements of applicable law existing at the time of contracting to varying extents, with the Parties agreeing to displace applicable law with other terms and conditions in various circumstances. If, however, law was to develop after we have agreed upon terms (which will be the case with respect to the Agreements pending in this arbitration in the event that the FCC does release an intervening order), Joint Petitioners and BellSouth have always agreed that new contract language is necessary to incorporate whatever was to be done with respect to that change in law – whether that be language indicating an intent to abide by the new law or to displace it with other standards which would govern the Parties' relationship in that context

Our position also is practical We do not know what such a court order would say or how it would impact provisions of the Agreement already agreed to or those at issue in this arbitration. If and when such an order is released, a process will need to be adopted to allow the Parties time to assess the order, propose and negotiate contract language relating thereto (again, only to the extent the court order effectuates a change in law with practical consequences), and to identify specific issues which cannot be resolved timely through voluntary negotiations and that will need to be resolved through arbitration. The language that results from those negotiations and that aspect of the arbitration is how an intervening court order should be incorporated into the Agreement. That language should be effective when all other terms and conditions of the Agreement are effective – which is the date of the last signature executing the Agreement -- neither the Agreement nor any of its terms can be effective prior to that date. *[Sponsored by **3 CLECs:** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted in the testimony related to Issue No. S-1, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago. Back in June 2004, the Parties to this arbitration agreed that BellSouth would propose contract language to incorporate the post-*USTA II* regulatory framework and that the Joint Petitioners would have an opportunity to respond in redline form with competing language, to the extent that they could not agree to BellSouth's proposal. From there, the Parties were supposed to negotiate and identify for arbitration those

issues that could not be resolved through negotiation. As of date of this filing, we have not received BellSouth's proposed redline of Attachment 2. Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language.

As we understand BellSouth's proposal, BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to existing applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations The Agreement should not be "deemed amended" to "automatically incorporate" a court order that has not yet and may never materialize. We do not, as of the date of this filing, what such an order would say or what impact it could have Even if we did, we do not know whether the Parties will agree on the order's meaning and on what language, if any, should be incorporated into the Agreement with respect thereto (again, the court order could result in a change in law with no practical effect). In this regard, it is important to note that the Parties to this arbitration generated many issues for arbitration despite having had the opportunity to review relevant rules and orders and to negotiate with regard to contract language related thereto. We do not anticipate that any new court decision would prove much different While the Parties may be able to agree on some contract language with respect thereto, it also is possible that they will not be able to agree on all contract language proposals and that arbitration by the Authority will be needed in that regard How the timing of all this will work out remains to be seen.

BellSouth's proposal also ignores the fact that the Act provides that Parties may voluntarily negotiate to abide by standards other than those set forth in applicable law Thus, the Parties may voluntarily agree to abide by standards other than those set forth in an intervening court order Such negotiations, for a variety of reasons, have resulted in numerous instances in the new Agreement where the Joint Petitioners and BellSouth voluntarily agreed to abide by standards that differ from those set forth in applicable law. Some examples would be interconnection facilities compensation, certain aspects of intercarrier/reciprocal compensation, and collocation power (other than in Tennessee).

BellSouth's proposal to "automatically incorporate" an unknown court decision also is contrary to language and principles upon which the Parties already have agreed will be incorporated into the General Terms and Conditions of the Agreement. The principle is that changes in law will be addressed via written amendment to the agreement that will be negotiated or, if necessary, resolved through arbitration. The Parties have agreed that changes in law will not have springing or retroactive effect, as amendments are required and such amendments will be effective as of the date of the last signature, or 10 days after the last signature, if rates are incorporated into the amendment. The Parties also have agreed to language to ensure that the terms of the Agreement and any amendments thereto have no retroactive effect Specifically, Section 3.1 of the General Terms & Conditions states that "[n]otwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date". The Parties thereby eliminated practical difficulties or even

impossibilities and destabilizing uncertainty created by retroactive application of the Agreement's provisions. *[Sponsored by 3 **CLECs:** M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No 111, Issue No S-4 What post Interim Period[10] transition plan should be incorporated into the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-4.

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary

The "Transition Period" or plan proposed by the FCC for the six months following the Interim Period has not been adopted by the FCC, but was merely proposed in FCC 04-179. The FCC sought comment on the proposal and on transition plans in general Upon release of the Final FCC Unbundling Rules, the Parties should endeavor to negotiate contract language that reflects an agreement to abide by the transition plan adopted therein or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Authority arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others

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

– ten (10) calendar days after the last signature executing the Agreement. *[Sponsored by 3 CLECs: M. Johnson (KMC), H Russell (NVX), **J. Falvey (XSP)**]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The rationale is quite simple. The Transition Period is and was merely a proposal by the FCC. In paragraph 29, of FCC 04-179, the FCC used the words "we propose" with respect to the plan. It did not say "we adopt." Indeed, the ordering paragraphs (paragraphs 47-49) in FCC 04-179 do not identify the Transition Period as something ordered. Moreover, concurrent with release of the Order, the FCC's Chairman attached a statement wherein he noted that "[c]ontrary to the inaccurate assertions being thrown around, there are no automatic price increase after 6 months for facilities providers," and that "[t]oday's Order only seeks comment on a transition that will not be necessary if the Commission gets its work done." The Chairman's statements make it eminently clear that the transition plan set forth in 04-179 was merely a proposal set forth for comment.

We also find it ironic that BellSouth takes a position here contrary to that of its trade association, the United States Telecom Association (USTA), in a recent mandamus petition filed before the U S. Court of Appeals (D.C. Circuit). Here, BellSouth takes the position that the Transition Period will take effect at the end of the Interim Period and therefore should be automatically incorporated into the Agreement. Yet, on page 13 of mandamus petition, USTA argued that the Transition Period was and is a mere proposal with "no legal force whatsoever." Given USTA's role in representing ILEC interests, including those of BellSouth, and the fact that USTA appears to agree with our position,

we do not understand why BellSouth wishes to arbitrate this particular issue before the Authority

At this time, nothing is firmly in place as to what will happen when and if the Interim Period expires. However, the FCC's Chairman has stated that it his intention to release the Final FCC Unbundling Rules by December 2004 This indicates that it is not the FCC's intention to allow the Interim Period to lapse without issuing an order containing the so-called Final FCC Unbundling Rules That order is almost certain to incorporate a transition plan that may or may not be similar to the one proposed in FCC 04-179. After that order is released, the Parties should exchange language, negotiate and arbitrate, if necessary, any provisions on which they cannot agree.

Thus, the rest of the rationale here is the same as that found in the testimony related to Issue Nos. S-1, S-2(A), S-2(B) and S-3. Automatic incorporation of a proposed or even ordered transition plan would undermine and circumvent the negotiation process established by the Act The Act requires the Parties to engage in good faith negotiations with respect to applicable legal requirements first and then allows for Authority arbitration of issues the Parties are unable to resolve through good faith negotiations. In either case, interconnection agreements (existing ones – or new ones such as the ones pending in this arbitration) are not automatically revised to incorporate a transition plan that has been merely proposed or, for that matter a transition plan that has been ordered Instead, language must be negotiated or arbitrated (to the extent the court order

effectuates a change in law with practical consequences), depending on the nature of the issues and the Parties' positions with respect thereto.

Over the years, our interconnection agreements with BellSouth have incorporated the requirements of applicable law existing at the time of contracting to varying extents, with the Parties agreeing to displace applicable law with other terms and conditions in various circumstances If, however, law was to develop after we have agreed upon terms (which will be the case with respect to the Agreements pending in this arbitration in the event that the Commission does release an intervening order), Joint Petitioners and BellSouth have always agreed that new contract language is necessary to incorporate whatever was to be done with respect to that change in law – whether that be language indicating an intent to abide by the new law or to displace it with other standards which would govern the Parties' relationship in that context

Our position also is practical. We do not know what an FCC order establishing a transition plan will say or how it would impact provisions of the Agreement already agreed to or those at issue in this arbitration If and when such an order is released, a process will need to be adopted to allow the Parties time to assess the order, propose and negotiate contract language relating thereto (again, only to the extent the court order effectuates a change in law with practical consequences), and to identify specific issues which cannot be resolved timely through voluntary negotiations and that will need to be resolved through arbitration. The language that results from those negotiations and that aspect of the arbitration is how any FCC-ordered transition plan should be incorporated

into the Agreement That language should be effective when all other terms and conditions of the Agreement are effective – which is the date of the last signature executing the Agreement -- neither the Agreement nor any of its terms can be effective prior to that date. *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted in the testimony related to Issue No. S-1, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago Back in June 2004, the Parties to this arbitration agreed that BellSouth would propose contract language to incorporate the post-*USTA II* regulatory framework and that the Joint Petitioners would have an opportunity to respond in redline form with competing language, to the extent that they could not agree to BellSouth's proposal From there, the Parties were supposed to negotiate and identify for arbitration those issues that could not be resolved through negotiation. As of date of this filing, we have not received BellSouth's proposed redline of Attachment 2 Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language.

As we understand BellSouth's proposal, BellSouth inappropriately seeks to upend the process established by the Act which requires good faith negotiations with respect to existing applicable legal requirements first and then allows for Authority arbitration of

issues the Parties are unable to resolve through good faith negotiations The Agreement should not be "deemed amended" to "automatically incorporate" a transition plan that has not yet been adopted by the FCC and that may change dramatically prior to adoption. We do not, as of the date of this filing, what such an order would say or what impact it could have. Even if we did, we do not know whether the Parties will agree on the order's meaning and on what language, if any, should be incorporated into the Agreement with respect thereto. In this regard, it is important to note that the Parties to this arbitration generated many issues for arbitration despite having had the opportunity to review relevant rules and orders and to negotiate with regard to contract language related thereto. We do not anticipate that any new FCC order adopting a transition plan would prove much different. While the Parties may be able to agree on some contract language with respect thereto, it also is possible that they will not be able to agree on all contract language proposals and that arbitration by the Authority will be needed in that regard. How the timing of all this will work out remains to be seen.

BellSouth's proposal also ignores the fact that the Act provides that Parties may voluntarily negotiate to abide by standards other than those set forth in applicable law Thus, the Parties may voluntarily agree to abide by standards other than those set forth in whatever transition plan is eventually adopted by the FCC Such negotiations, for a variety of reasons, have resulted in numerous instances in the new Agreement where the Joint Petitioners and BellSouth voluntarily agreed to abide by standards that differ from those set forth in applicable law. Some examples would be interconnection facilities

compensation, certain aspects of intercarrier/reciprocal compensation, and collocation power (other than in Tennessee).

BellSouth's proposal to "automatically incorporate" a proposed FCC transition plan also runs counter to the principle that negotiations should take into account the law as it exists at the time – not as it might exist in the future. The Parties agreed to do this with respect to the FCC's TRO. Although parts of the TRO were vacated in March 2004, the vacatur did not become effective until June 2004. Until that point, the Parties negotiated as though all of the TRO was valid law – simply because it was. In the case of the proposed FCC transition plan, the same principle applies Since it has not been adopted by the FCC and it is not law, it makes little sense to expend resources on it. Those resources will be better spent when a transition plan actually is adopted by the FCC. *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No. 112, Issue No. S-5 (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-5.

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to

counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary

The rates, terms and conditions relating to switching, enterprise market loops and dedicated transport from each CLEC's interconnection agreement that was in effect as of June 15, 2004 were "frozen" by FCC 04-179 *[Sponsored by **3 CLECs:** M Johnson (KMC), **H. Russell (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. FCC 04-179 was clear that ILECs, including BellSouth, must continue to provide unbundled access to switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that are applied under their interconnection agreements with Joint Petitioners as of June 15, 2004. Accordingly, the rates, terms and conditions, including the definition, for those elements as stated in the Joint Petitioners' June 15, 2004 agreements should apply, unless the FCC clarified otherwise BellSouth, however, is acting in contravention of FCC 04-179 by attempting to unilaterally modify the definitions of dedicated transport and enterprise market loops. The Joint Petitioners' rationale with regard to each class of UNEs frozen by FCC 04-179 is discussed below:

Dedicated Transport

With regard to dedicated transport, the Joint Petitioners' current interconnection agreements define this UNE as follows:

KMC/NewSouth/ NuVox/Xspedius:

> Dedicated transport, defined as BellSouth's transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide

telecommunications between wire centers or switches owned by BellSouth, or between wire centers and switches owned by BellSouth and [KMC Telecom/ NewSouth/ NuVox/Xspedius].

The definition that BellSouth has proposed for dedicated transport (the transmission facilities connecting ILEC switches and wire centers in a LATA at a DS1 or higher level capacity, including dark fiber transport) does not appear in any of the Joint Petitioners' interconnection agreements that were in effect as of June 15, 2004, and, in fact represents an attempt to impose a significant change from the terms that actually were frozen by the FCC in FCC 04-179. The FCC, in FCC 04-179, did not make, nor direct any carrier to make, any modifications to the definition of dedicated transport included in the interconnection agreements in effect as of June 15, 2004. Notably, this is different from the FCC's treatment of unbundled switching, for which the FCC specifically limited the impact of its order by defining unbundled switching as mass market switching in footnote three of FCC 04-179 (this will be discussed in more detail later).

The key distinction between the frozen definitions from the existing interconnection agreements and the new definition proposed by BellSouth is that the frozen terms are based on pre-TRO FCC rules and orders and allow Joint Petitioners access to a class of dedicated transport facilities commonly known as "entrance facilities". These facilities, which run to points other than solely between BellSouth wire centers, were excluded from the dedicated transport definition adopted by the FCC in the TRO. Joint Petitioners traditionally have used these UNEs to backhaul traffic from their collocations in BellSouth end offices back to their own end office/switching centers. Joint Petitioners challenged the FCC's definitional gambit and the DC Circuit agreed that the FCC failed

to justify how what had been clearly considered to be dedicated transport since the beginning of unbundling under the Act could one day simply not be considered to be dedicated transport. The definitional issue was remanded to the FCC

As the Authority is undoubtedly aware, the FCC, in FCC 04-179, intended to preserve the "status quo" with respect to the provision of dedicated transport while it addressed the *USTA II* remand issues. The FCC did not intend to modify the definition of dedicated transport in the Joint Petitioners' current interconnection agreements and, therefore, the Authority must reject BellSouth's attempt to modify the definition of dedicated transport and restrict Joint Petitioners' access to dedicated transport as a UNE for the period during which Joint Petitioners operate under these new Agreements prior to expiration of the Interim Period

Enterprise Market Loops

With regard to enterprise market loops, the Joint Petitioners do not generally disagree with BellSouth's proposed definition, but again, in accordance with FCC 04-179, BellSouth cannot modify the definitions in the Joint Petitioners' current interconnection agreements in any way The Joint Petitioners' current agreements define local loop as follows:

KMC/NuVox/Xspedius:

> The loop is the physical medium or functional path on which a subscriber's traffic is carried from the MDF or similar terminating device in central office up to the termination at the NID at the customer's premise. Each loop will be provisioned with NID.

NewSouth:

> The local loop network element ("Loop(s)") is defined as a transmission facility between a distribution frame (or its equivalent) in BellSouth's central office and the loop demarcation point at an end-user customer premises, including inside wire owned by BellSouth. The local loop network element includes all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such Digital Subscriber Line Access Multiplexers) and line conditioning. The loop shall include the use of all test access functionality, including without limitation, smart jacks, for both voice and data NewSouth shall be entitled to order all loops set forth in Exhibit C of this Attachment Unless otherwise requested, all loops will be provisioned with the appropriate Network Interface Device (NID).
>
> As with dedicated transport, the FCC did not alter, nor grant BellSouth the authority to alter, the definition of enterprise market loops In fact, in footnote four of FCC 04-179, the FCC reiterates that the D.C. Circuit in *USTA II* did not make any formal pronouncement of the FCC's findings with regard to enterprise market loops. BellSouth's proposed definition of enterprise market loops states that these loops consist of DS1 or higher level capacity, including dark fiber loops. Joint Petitioners do not disagree with BellSouth that these are the loop capacities that are at issue However, BellSouth may not rewrite the FCC's order and develop a new definition for enterprise market loops. Despite the fact that the practical impact of BellSouth's revised definition appears to be minimal, if indeed there is any, the Authority must not allow BellSouth to defy FCC orders and become the sole-arbiter of what is and is not frozen in the Joint Petitioners' current interconnection agreements. The FCC did not grant BellSouth editorial privileges in this regard (or in any other).

Switching

Of the three UNEs discussed in this issue S-5(A), switching is the one in which the FCC did provide a specific definition so as to limit the impact of its order to freeze certain terms in the Joint Petitioners' current interconnection agreements. Specifically, in footnote three of FCC 04-179, the FCC defined switching as mass market local circuit switching and all elements that must be made available when such switching is made available. As defined in the TRO, mass market switching serves customers that could not economically be served by competitors via DS1 or above capacity loops. The FCC made this modifications because, pursuant to the TRO, the FCC determined that there was no impairment with regard to enterprise market switching and no state commission in the BellSouth region found otherwise. Moreover, the FCC's national finding of non-impairment for enterprise switching (switching for customers at the DS1 and above capacity) was neither vacated nor remanded by *USTA II.*

The Joint Petitioners do not disagree with BellSouth's proposed definition of switching. The Joint Petitioners believe that the exception to switching for a requesting carrier that serves an End User with four (4) or more voice-grade (DSO) equivalents or lines served by the ILEC in Density Zone 1 of the top 50 MSAs is consistent with the FCC's *UNE Remand Order,* which is incorporated into the Joint Petitioners' current interconnection agreements. The Joint Petitioners also agree with the exception to the definition for switching to carriers that serve an End User with a DS1 or higher capacity service or UNE loop.

At this point, it bears reemphasizing that the FCC explicitly provided this definition of switching to effectuate its TRO finding of non-impairment for enterprise market switching. It provided no similar limitation with respect to dedicated transport or enterprise market loops This fact underscores the FCC's intent that the definitions for loop and dedicated transport UNEs should remain as currently defined in the Joint Petitioners' current interconnection agreements With respect to switching, it was the FCC that took care to note that not all components of switching from the June 15, 2004 interconnection agreements would be frozen. With respect to loops and dedicated transport, the FCC adopted no similar caveat. *[Sponsored by **3 CLECs:** M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted in the testimony related to Issue No S-1 (and all other Supplemental Issues), BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago. Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language

Although the Parties agreed to a 90-day abatement during which the Parties were to negotiate issues related to *USTA II* and its progeny (also referred to by the Parties as the post-*USTA II* regulatory framework), as of the time of filing this testimony, the Joint

Petitioners have not been presented with a redline of Attachment 2. Thus, Joint Petitioners have not had an opportunity to review BellSouth's contract language regarding the rates, terms and conditions that were "frozen" by FCC 04-179. To date, the Joint Petitioners have only been presented with an Interim Order Amendment, which is not applicable to the Joint Petitioners, as, by agreement with BellSouth, the Joint Petitioners are not amending their existing agreements' UNE provisions, but will instead operate under the existing agreements until they are able to move into the new agreements that result from this arbitration. This agreement between the Parties was memorialized in their July 15, 2004 Joint Motion to Hold Proceeding in Abeyance, which was granted by the Authority on July 16, 2004. It is anticipated that these new agreements will encompass the resolution of issues related to *USTA II* and its progeny.

With respect to the language BellSouth has stated it will propose to effectuate the freeze adopted by FCC 04-179, Joint Petitioners understand that BellSouth intends to propose a provision establishing the freeze and attaching as an exhibit to the new Agreements the frozen terms from the old agreements Conceptually, this approach is acceptable. However, we do not know whether the proposed provision incorporating the freeze will be worded in an acceptable manner and we anticipate that there will be disputes over whether BellSouth can modify some of the frozen terms with the definitions set forth in its position statements (available to us at this date via the most recent issues matrix filing). For the reasons set forth above, Joint Petitioners submit that the FCC did not intend for frozen terms to be modified. With respect to switching, the FCC carefully set forth which aspects of that UNE were being frozen (mass market switching) – therefore,

if language is needed to make clear that enterprise switching was not frozen, it is unlikely that the Parties will have any disagreement with respect to making that point clear. With respect to loops, the Parties agree that frozen rates, terms and conditions are frozen only with respect to enterprise market loops which constitute DS1 and higher capacity level loops, including dark fiber *[Sponsored by **3 CLECs:** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-5(B).

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary

The frozen rates, terms and conditions should be incorporated into the Agreement as they appeared in each Joint Petitioner's interconnection agreement that was in effect as of June 15, 2004. In so doing, it should be made clear that the switching rates, terms and conditions that were frozen apply only with respect to mass market switching and not with respect to enterprise market switching. It also should be made clear that the loop provisions frozen are frozen with respect to DS1 and higher capacity level loop facilities, including dark fiber. The Parties agree that these constitute "enterprise market loops". The modified definitions proposed by BellSouth should be rejected. The frozen provisions should not be modified to reflect BellSouth's proposed more restrictive

definition of dedicated transport. *[Sponsored by **3 CLECs:** M Johnson (KMC), **H. Russell (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

As stated above, the FCC, in FCC 04-179, was clear in requiring that ILECs must continue to provide unbundled access to mass market switching, enterprise market loops, and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements with Joint Petitioners that were in effect as of June 15, 2004. Accordingly, the rates, terms and conditions for these UNEs as they existed in the Parties' June 15, 2004 agreements should be incorporated ***in their entirety*** into the Agreement. BellSouth should not be allowed make any modifications to the language containing the definition for dedicated transport. It is evident from the definition proposed by BellSouth for dedicated transport that BellSouth is seeking to do less than that is required by FCC 04-179. In that order, the FCC did not indicate that it intended to freeze only the remanded TRO definition of dedicated transport (which appears in none of the Joint Petitioners' existing agreements). Instead, the FCC froze the definitions in place as of June 14, 2004, regardless of whether they were based on the TRO, earlier FCC rules and orders or some other construct. Through its proposed definition of dedicated transport, BellSouth is attempting to limit Joint Petitioners' access to dedicated transport UNEs by eliminating access to entrance facilities that are available as UNEs under each Joint Petitioner's June 15, 2004 agreement BellSouth's gambit is inconsistent with the FCC's mandate in FCC 041-79 and is otherwise unacceptable to the Joint Petitioners (who have consistently refused in negotiations with BellSouth to give away something for nothing). Accordingly, the Authority must reject BellSouth's ploy.

As explained above, Joint Petitioners have yet to detect a practical impact of the definition BellSouth offers with respect to enterprise market loops. However, in the absence of assurances that the proposed definition will not work to eliminate unbundling of enterprise market loops pursuant to the frozen rates, terms and conditions of the June 14, 2004 interconnection agreements, Joint Petitioners submit that there is no need to tinker with the definitions included in the frozen terms. Joint Petitioners agree with BellSouth that enterprise market loops include DS1 and higher level capacity loops, including dark fiber and anticipate that they will be able to agree with BellSouth on contract language that makes clear that the loop rates, terms and conditions frozen are frozen only with respect to those enterprise market loops.

With respect to switching, Joint Petitioners also can agree that the switching provisions frozen are frozen only with respect to mass market switching and that there appear to be no conceptual differences between the Parties as to what constitutes mass market switching (and associated elements unbundled with switching) Again, when BellSouth proposes language, Joint Petitioners anticipate that they will be able to confirm these points and hopefully narrow this issue. *[Sponsored by **3 CLECs:** M Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted above, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago. Therefore, it is

quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language. As addressed above, BellSouth has discussed with the Joint Petitioners its intention to attach to the Agreement frozen provisions from each Joint Petitioner's current interconnection agreement The Joint Petitioners agree in concept to this approach, but maintain that BellSouth should not be permitted to modify any of the rates, terms and conditions affecting these UNEs. The Parties can incorporate language into the Agreement making it clear that the frozen switching terms apply only to mass market switching and that the frozen loop terms apply only to enterprise market loops (loops of DS1 and higher capacity) *[Sponsored by* ***3 CLECs:*** *M. Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Item No. 113, Issue No S-6. (A) Is BellSouth obligated to provide unbundled access to DSI loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-6(A).

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary

BellSouth is obligated to provide DS1, DS3 and dark fiber loop UNEs. *USTA II* did not vacate the FCC's rules which require BellSouth to make available DS1, DS3 and dark fiber loop UNEs. *USTA II* also did not eliminate section 251, CLEC impairment, section 271 or the Authority's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber loop UNEs *[Sponsored by **3 CLECs:** M. Johnson (KMC), H Russell (NVX), **J. Falvey (XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The D.C. Circuit in *USTA II* did not vacate the FCC rules with regard to the provision of unbundled access to DS1, DS3 and dark fiber loops. Although BellSouth asserts in its position statement that the *USTA II* decision vacated the FCC's rules involving DS1 and other high-capacity UNE loops, this is not so. The D C. Circuit merely vacated the FCC's referral of additional impairment conclusions to state regulators. BellSouth now seeks to extrapolate from this ruling the vacatur of the FCC's DS1, DS3 and dark fiber loop unbundling rules. However, such extrapolation is ill-advised and not proper. If the Court intended to vacate the FCC's enterprise market loop rules, it certainly would have said so explicitly, as it did with respect to other FCC rules. Indeed, the FCC recognized that the *USTA II* opinion contains no language announcing BellSouth's claimed vacatur of the FCC's unbundling rules for DS1, DS3 and dark fiber loop UNEs. In FCC 04-179, footnote four, the FCC states that the D C. Circuit "did not make a formal pronouncement regarding the status of the [FCC's] findings regarding enterprise market loops." Thus, the FCC has thus far refused to accept BellSouth's contention that *USTA II* vacated its enterprise market loop unbundling rules It would be improper for the Authority to

render vacated FCC rules which the Court did not say were vacated and which the FCC itself has properly not accepted are vacated.

In paragraph 202 of the TRO, the FCC stated that "[w]ith respect to dark fiber loops, DS3 loops and DS1 loops, we conclude that requesting carriers are impaired on a location-by-location basis without unbundled access to incumbent LEC loops nationwide " The FCC reiterated its **nationwide impairment** findings with respect to DS1, DS3 and dark fiber loops in paragraphs, 325, 320 and 311 of the TRO, respectively In paragraph 328, the FCC again refers to its **affirmative findings of impairment** with respect to DS1, DS3 and dark fiber loops. The *USTA II* decision did not vacate these findings. In fact, the *USTA II* decision's vacatur of the FCC's referral to the states regarding the establishment of **exceptions** to the FCC's nationwide impairment findings effectively means that these findings by the FCC are final and uncontested, as the vehicle for establishing exceptions to the FCC's nationwide findings of impairment for DS1, DS3 and dark fiber loops has been eliminated. FCC rule 319(a)(4) provides that ILECs must provide access to DS1 UNE loops, *except* where a state commission has found through application of the competitive wholesale trigger, a lack of impairment The FCC's DS3 and dark fiber loop rules share a similar construct requiring unbundling *except* where a state commission finds a lack of impairment through application of, in the case of DS3 and dark fiber loops, two triggers Per *USTA II,* state commissions, including the Authority, cannot make such findings (a decision which BellSouth fiercely supported and which CLECs fiercely opposed) Accordingly, no exceptions to the rule apply. The *USTA II* decision therefore perpetuates the nationwide unbundling requirement for DS1, DS3 and dark

fiber loop UNEs, until such time as the FCC's existing rules are modified in a manner that requires something different

Furthermore, the Authority must acknowledge that *USTA II* did not eliminate section 251 of the Act. Section 251 is a statute and the D.C. Circuit did not strike it down. Accordingly under section 251, BellSouth has the "duty" to provide network elements pursuant to section 251(c). BellSouth also has a "duty to negotiate in good faith" regarding fulfillment of its duty to provide network elements under section 251(c)(1). These duties did not go away when the *USTA II* mandate was issued. Section 251(c)(3) is still "Applicable Law" under this Agreement and it plainly mandates access to UNEs where impairment exists. As explained above, the FCC made nationwide findings of impairment with respect to DS1, DS3 and dark fiber loop UNEs. These findings have not been overturned Indeed, BellSouth's assertion of impairment with respect to certain route-specific facilities were squarely rebutted in proceedings before the Authority. Moreover, the FCC's definition of impairment was neither vacated nor remanded by the D.C. Circuit in *USTA II.* Indeed, the Court specifically observed that the FCC's interpretation of "impairment" in the TRO represented an improvement over past efforts because the FCC "explicitly and plausibly" connected the factors to be considered in the analysis to natural monopoly characteristics and/or to other structural impediments to competitive supply, such as sunk costs, ILEC absolute cost advantages, first-mover advantages, and operational barriers to entry within the control of the ILEC. The Court offered several "general observations" for the FCC's consideration in making impairment determinations on remand. However, the FCC's definition of impairment was neither

vacated nor remanded by the Court. Thus, impairment exists and unbundling is still required, even if the Authority were to erroneously accept BellSouth's invitation to write into the *USTA II* opinion a vacatur of the FCC's enterprise loop unbundling rules.

In addition to BellSouth's obligations under section 251 of the Act, BellSouth has an obligation under section 271 of the Act to provide access to DS1, DS3 and dark fiber loops at rates, terms and conditions that are just, reasonable and nondiscriminatory, consistent with the standards articulated under sections 201 and 202 of the Act. As the FCC has found, section 271 imposes unbundling obligations independent of those in section 251(c)(3). These unbundling obligations that are *not* conditioned on the presence of impairment The FCC's interpretation of BellSouth's and other BOC's 271 unbundling obligations was upheld by the *USTA II* court, which described the FCC's decision with respect to section 271 to mean that "even in the absence of impairment, BOCs must unbundle local loops, local transport, local switching, and call-related databases in order to enter the interLATA market "

Specifically, section 271 Competitive Checklist Item No. 4 requires ILECs to provide local loop transmission from the central office to the customer's premises, unbundled from the local switching or other services. In the TRO, the FCC held that BOCs are under an independent statutory obligation under section 271 of the Act to provide competitors with unbundled access to network elements, which would include the local loop under Competitive Checklist Item No. 4. BellSouth has not been relieved from its section 271 obligations in Tennessee BellSouth is required to meet Competitive

Checklist Item No. 4 during the section 271 application process ***and remain in compliance*** with these requirements after approval has been granted. In particular, section 271(d)(6) requires BellSouth to continue to satisfy the conditions required for approval of its section 271 application. The FCC has held that that in order to provide local loops in compliance with Competitive Checklist Item No. 4, a BOC must demonstrate that it furnishes loops (1) in quantities demanded by competitors, (2) at an acceptable level of quality and (3) in a non-discriminatory manner. In granting BellSouth's section 271 Application for Tennessee, the FCC concluded that BellSouth satisfied Competitive Checklist Item No 4 as it provided all loop types, including high capacity loops, such as DS1, DS3 and dark fiber loops.

The Authority has ample authority to enforce section 271 Competitive Checklist obligations, with regard to CLEC access to DS1, DS3 and dark fiber loops. The FCC has recognized the ongoing role of state commissions in its section 271 approval orders. In approving BellSouth's 271 Application for Tennessee, the FCC held that the Authority has a vital role in conducting section 271 proceedings and that state and federal enforcement can address any backsliding that may arise in Tennessee Moreover, the fact that BellSouth sought and obtained section 271 approval, based on the existence of interconnection agreements that specify the terms and conditions under which BellSouth is providing the Competitive Checklist items, (known as section 271 "Track A") means that the Authority has jurisdiction over the provision of Competitive Checklist elements by virtue of its jurisdiction over interconnection agreements. Furthermore, since state commissions have jurisdiction over all issues included in interconnection agreements,

and the Applicable Law definition in the General Terms and Conditions includes all "applicable federal, state, and local statutes, laws, rules regulations, codes, effective orders, injunctions, judgments and binding decisions, awards and decrees that relate to the obligations under this Agreement" within its scope, the Authority has, *ipso facto*, jurisdiction over section 271 and BellSouth's compliance therewith

Aside from any federal statutes, the Authority has independent state law authority to order BellSouth to continue to provide access to DS1, DS3 and dark fiber loop UNEs. Specifically, TCA section 65-4-104 gives the Authority "general supervisory and regulatory power, jurisdiction, and control over all public utilities." This plenary authority is confirmed by TCA section 65-4-106 which states that "This chapter shall not be construed as being in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the Authority .shall be resolved in favor of the existence of the power, to the end that the Authority may effectively govern and control the public utilities..." With regard to the provision of access to unbundled network elements, TCA section 65-4-124(a) requires "non-discriminatory interconnection...under reasonable terms and conditions...on an unbundled and non-discriminatory basis ..." Moreover, TCA section 65-4-123 declares that "the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services ***by permitting competition in all telecommunications services markets***. .To that end, the regulation of telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider. .."

DS1, DS3 and dark fiber loops most certainly meet these standards. These Tennessee Code sections give the Authority the power to require BellSouth to provide DS1, DS3 and dark fiber loops on an unbundled basis. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language. *[Sponsored by **3 CLECs:** M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-6(B).

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary.

BellSouth is obligated to provide access to DS1, DS3 and dark fiber loop UNEs at TELRIC-compliant rates approved by the Authority DS1, DS3 and dark fiber loops unbundled on other than a section 251 statutory basis should be made available at

TELRIC-compliant rates approved by the Authority until such time as it is determined that another pricing standard applies and the Authority establishes rates pursuant to that standard. *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H Russell (NVX),* ***J. Falvey*** ***(XSP)]***

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As stated above, *USTA II* not vacate the FCC's rules which require BellSouth to make DS1, DS3 and dark fiber loop UNEs available to CLECs. Furthermore, BellSouth is obligated to provision unbundled access to these UNEs pursuant to section 251 (regardless of whether the FCC's enterprise loop unbundling rules were vacated – which they were not) and section 271. In addition, the Authority may order BellSouth to continue such unbundling pursuant to Tennessee state law. The Authority may also enforce unbundling requirements under section 271. Joint Petitioners maintain that their currently negotiated Attachment 2 adequately incorporates the rates, terms and conditions for DS1, DS3 and dark fiber loops that should remain in the Agreement. Notably, the rates incorporated are intended to be the TELRIC-compliant rates approved by the Authority These rates should apply to DS1, DS3 and dark fiber UNE loops, in all instances where unbundling is required pursuant to section 251. In cases where section 271 is the source of the continuing unbundling mandate, the FCC articulated that the just, reasonable and nondiscriminatory pricing standard under sections 201 and 202 would apply. Accordingly, the Authority should require BellSouth to continue providing section 271 checklist items at TELRIC-complaint rates, at least until such time as it is determined that another pricing methodology comports with the just, reasonable and nondiscriminatory pricing standard and the Authority establishes rates pursuant thereto.

In FCC 04-179, the FCC recognized that the ILEC obligation to provide section 251 switching, loops and transport UNEs has been in place for several years and the precipitous elimination of these UNEs could destabilize the market. BellSouth's proposed alternative to TELRIC – phantom-market-based rates or tariffed special access rates – would not only harm competitive carriers, but also the consumers who rely on them to provide competitively-priced services. BellSouth's phantom-market-based rates and special access rates are generally exorbitant, bear no discernable relationship to costs (or to a cost-based pricing standard found to comport with the just and reasonable pricing standard), and are largely unconstrained by market forces. Consequently, neither BellSouth's proposed phantom market-based rates nor special access rates are "just and reasonable" for section 271 elements and they should not be allowed by the Authority. By maintaining TELRIC-complaint rates, the Authority will shield consumers from sharp and sudden rate increases as a result of carriers' increased costs for network elements and decreases the likelihood that consumers will be forced to incur steep price hikes from Joint Petitioners (to the extent that Joint Petitioners were able to impose such price hikes and remain competitive with BellSouth) or to return to BellSouth (which, in the absence of competition would surely seek to impose its own steep price hikes on consumers).

Finally, with respect to UNEs for which state law, independent of section 251 is the basis of unbundling, Joint Petitioners submit that the Authority should continue to require unbundling at its TELRIC-compliant UNE rates, at least until such time as it determines

another pricing methodology is appropriate and establishes rates pursuant thereto. *[Sponsored by **3 CLECs:** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted above, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago. Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language. *[Sponsored by **3 CLECs:** M Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Q. WHAT IS YOUR POSITION WITH BELLSOUTH'S PROPOSED RESTATEMENT OF ISSUE S-6.

A. BellSouth attempts to narrow the issue so that the *USTA II* decision is the only binding authority on BellSouth's obligations to provide Joint Petitioners with unbundled access to DS1, DS3 and dark fiber loops. BellSouth's proposed issue statement unreasonably eliminates other sources of law that impacts its obligations to provide such UNEs, including sections 251 and 271 of the Act, as well as the Authority's authority under Tennessee state law. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Item No 114, Issue No S-7: (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-7(A).

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary BellSouth is obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport *USTA II* did not eliminate Section 251, CLEC impairment, section 271 or the Authority's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber transport. *[Sponsored by **3 CLECs:** M Johnson (KMC), **H. Russell (NVX)**, J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. *USTA II* did not eliminate BellSouth's statutory obligation to provide unbundled access to DS1, DS3 and dark fiber transport. Moreover, aside from BellSouth's section 251 obligation to provide access to these UNEs, BellSouth is under an obligation to provide unbundled access to transport pursuant to section 271 of the Act and can be independently required to unbundle DS1, DS3 and dark fiber transport pursuant to Tennessee state law.

The FCC, in the TRO, made findings of **nationwide impairment** for DS1, DS3 and dark fiber transport. With respect to DS1 transport, the FCC made its nationwide impairment finding based on "the high entry barriers associated with deploying or obtaining transport used to serve relatively few end-user customers and the lack of route-specific evidence showing sufficient alternative deployment." In particular, the FCC found that deployment of DS1 transport cannot be justified as an economic or practical matter. The FCC also found that "competing carriers generally cannot self-provision DS1 transport." The FCC found that a carrier providing DS1 transport incurs the same fixed and sunk costs as a carrier deploying a higher capacity circuit or dark fiber but also incurs "higher incremental costs across its customer base than a carrier requesting higher capacity transport." The FCC also found that "DS1 transport is not generally made available on a wholesale basis" and that "unbundled DS1 transport is often used by competing carriers in a loop/transport combination when collocation at the customer's end-office is uneconomic."

With respect to DS3 transport, the FCC concluded that, although this level of capacity indicates that a carrier is aggregating a significant amount of traffic, a carrier seeking to deploy a DS3 facility faces the same fixed and sunk costs, such as trenching and attaching to poles, that are involved in deploying any fiber facilities. Thus, the FCC made a nationwide impairment finding based on the high fixed and sunk costs associated with self-providing transport and the lack of route-specific evidence showing alternative facilities, as well as the difficulties of overcoming those obstacles at the DS3 transmission level. Citing scale economies, the FCC capped the number of DS-3

dedicated transport circuits available as UNEs to twelve per CLEC per route Finally, with respect to dark fiber transport, the FCC found impairment on a nationwide basis based on record evidence showing that the high sunk costs associated with deploying fiber and the lack of evidence showing on a route specific basis alternative fiber facilities.

The D C. Circuit, in *USTA II*, vacated the FCC's dedicated transport unbundling rules and remanded back to the FCC for further findings Although the Court of Appeals' vacatur of the FCC's dedicated transport rules had overwhelmingly to do with the Court's non-delegation holding, rather than a fundamental critique of the FCC's impairment analysis, the Court expressed doubt that there was in fact nationwide impairment for all capacities of dedicated transport on every available route. At the same time, however, the Court in no way eliminated the statutory section 251 unbundling obligation or the FCC's underlying finding that there was, in general, impairment present with respect to dedicated transport UNEs, despite the potential that non-impairment could be proven with respect to specific routes The fact of the matter is, however, that ILECs, including BellSouth, were unable to assemble reliable evidence to counter CLEC claims of impairment in the FCC's *Triennial Review* proceeding. When given a second chance to establish exceptions to the dedicated transport unbundling rules and the FCC's finding of nationwide impairment in proceedings before the Authority, BellSouth again failed to present a compelling case. Indeed, even if BellSouth had prevailed in establishing non-impairment exceptions to the FCC's unbundling rules before the Authority, the vast majority of its unbundling obligations would have remained in place

Thus, regardless of the D.C. Circuit's vacatur and remand of the FCC's DS1, DS3 and dark fiber transport rules, the D.C Circuit did not eliminate BellSouth's statutory section 251 unbundling obligations and, although it offered wide-ranging dicta on the topic, it left in tact the FCC's impairment standard.

Section 251 is a statute. It has free-standing meaning and it was in no way struck-down by the D.C Circuit. As discussed above with regard to DS1, DS3 and dark fiber loops, BellSouth still has the "duty" to provide network elements pursuant to section 251(c) as well as a "duty to negotiate in good faith" regarding fulfillment of its duty to provide network elements under section 251(c)(1). The nationwide impairment findings made by the FCC with respect to DS1, DS3 and dark fiber transport remain fundamentally sound. Indeed, there has never been an FCC or Authority finding of non-impairment with respect to these elements (up to the twelve DS-3 cap) As a result of *USTA II's* adoption of BellSouth arguments regarding the limits of state commission authority, it appears that the Authority is now without the power to make finding of non-impairment for purposes of section 251 In the absence of such a finding, Joint Petitioners request that the Authority require unbundling of dedicated transport UNEs pursuant to section 251 (and, perhaps as importantly, state law) until such time as the FCC makes such a finding and adopts effective FCC rules and orders holding that there is non-impairment with respect to dedicated transport UNEs in certain circumstances. This result is based on the preponderance of evidence offered to date by CLECs and BellSouth in the FCC's and the Authority's own related proceeding regarding unbundling. It also is the most reasonable approach To replace eight years of unbundling with a flash-cut to no unbundling serves

nobody other than BellSouth and it threatens the very existence of the Joint Petitioners and the benefits Tennessee residents and businesses now enjoy as a result of competition.

In addition to BellSouth's obligations under section 251 of the Act, BellSouth has an obligation under section 271 of the Act to provide access to DS1, DS3 and dark fiber transport at rates, terms and conditions that are just, reasonable and nondiscriminatory consistent with the standards articulated under sections 201 and 202 of the Act. As the FCC has found, section 271 imposes unbundling obligations independent of those in section 251(c)(3), obligations that are *not* conditioned on the presence of impairment. The FCC's interpretation of the BOCs' 271 unbundling obligations was upheld by the *USTA II* court, which described the Authority's decision with respect to section 271 to mean that "even in the absence of impairment, BOCs must unbundle local loops, local transport, local switching, and call-related databases in order to enter the interLATA market." Specifically, section 271 Competitive Checklist Item No 5 requires ILECs to provide local transport transmission from the trunk side of a wireline local exchange carrier switch unbundled from switching and other services In the TRO, the FCC held that BOCs are under an independent statutory obligation contained in section 271 of the Act to provide competitors with unbundled access to network elements, which would include DS1, DS3 and dark fiber dedicated transport under Competitive Checklist Item NO. 5 BellSouth has not been relieved from its section 271 obligations in Tennessee BellSouth is required to meet Competitive Checklist Item 5 during the section 271 application process ***and remain in compliance*** with these requirements after the approval has been granted. In particular, section 271(d)(6) requires the BOCs to continue to

satisfy the conditions required for approval of its section 271 application. The FCC has held that that in order to provide transport in compliance with Competitive Checklist Item No. 5, a BOC must provide dedicated transport to requesting carriers In Tennessee, the FCC granted BellSouth's section 271 Application in based on BellSouth's compliance with this Competitive Checklist item.

The Authority has ample authority to enforce section 271 Competitive Checklist obligations, with regard to CLEC access to DS1, DS3 and dark fiber transport. The FCC has recognized the ongoing role of state commissions in its section 271 approval orders. In approving BellSouth's 271 Application for Tennessee, the FCC held that the Authority has a vital role in conducting section 271 proceedings and state and federal enforcement can address any backsliding that may arise in Tennessee. Moreover, the fact that BellSouth sought and obtained section 271 approval, based on the existence of interconnection agreements that specify the terms and conditions under which BellSouth is providing the checklist items, (known as section 271 "Track A") means that the Authority has jurisdiction over the provision of Competitive Checklist elements by virtue of its jurisdiction over interconnection agreements Furthermore, since state commissions have jurisdiction over all issues included in interconnection agreements, and the Applicable Law definition in the General Terms and Conditions includes all "applicable federal, state, and local statutes, laws, rules regulations, codes, effective orders, injunctions, judgments and binding decisions, awards and decrees that relate to the obligations under this Agreement" within its scope, the Authority has, *ipso facto*, jurisdiction over section 271 and BellSouth's compliance therewith.

Aside from any federal statutes, the Authority has independent state law authority to order BellSouth to continue to provide access to DS1, DS3 and dark fiber transport UNEs Specifically, TCA section 65-4-104 gives the Authority "general supervisory and regulatory power, jurisdiction, and control over all public utilities." This plenary authority is confirmed by TCA section 65-4-106 which states that "[t]his chapter shall not be construed as being in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the authority . .shall be resolved in favor of the existence of the power, to the end that the authority may effectively govern and control the public utilities...." With regard to the provision of access to unbundled network elements, TCA section 65-4-124(a) requires "non-discriminatory interconnection...under reasonable terms and conditions ..on an unbundled and non-discriminatory basis...." Moreover, TCA section 65-4-123 declares that "the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets. . To that end, the regulation of telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider.. ." DS1, DS3 and dark fiber transport most certainly meet these standards Unbundled access to these facilities is essential to the ability of CLECs to compete meaningfully with BellSouth and to provide quality services to Tennessee consumers and businesses at competitive prices. Without access to these UNEs, Joint Petitioners might have no alternative other than BellSouth special access which is not priced at a level nor regulated

in such a manner that will permit meaningful and sustainable competition These Tennessee Code sections give the Authority with ample power to require BellSouth to provide DS1, DS3 and dark fiber transport on an unbundled basis *[Sponsored by 3 **CLECs:** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted above, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago. Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language. *[Sponsored by **3 CLECs:** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ISSUE S-7(B).

A. Joint Petitioners offer the following position statement based on their understanding of what BellSouth's proposed contract language will be and how we anticipate we will counter the proposed language. However, because the Joint Petitioners have not seen proposed language from BellSouth at this point, and thus have not had the opportunity to counter-propose language, we reserve or request the right to amend our position statement and testimony as may prove necessary

Pursuant to Section 251, BellSouth is obligated to provide access to DS1, DS3 and dark fiber transport UNEs at TELRIC-compliant rates approved by the Authority. DS1, DS3

and dark fiber transport unbundled on other than a Section 251 statutory basis should be made available at TELRIC-compliant rates approved by the Authority until such time as it is determined that another pricing standard applies and the Authority establishes rates pursuant to that standard. *[Sponsored by **3 CLECs:** M Johnson (KMC), **H. Russell (NVX)**, J Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As stated above, BellSouth is obligated to provision unbundled access to DS1, DS3 and dark fiber transport UNEs pursuant to section 251 and section 271. In addition, the Authority may order such unbundling pursuant to Tennessee state law The Authority may also enforce unbundling requirements under section 271. Joint Petitioners maintain that their currently negotiated Attachment 2 adequately incorporates the rates, terms and conditions for DS1, DS3 and dark fiber transport that should remain in the Agreement. Notably, the rates incorporated are intended to be the TELRIC-compliant rates approved by the Authority. These rates should apply to DS1, DS3 and dark fiber UNE transport, in all instances where unbundling is required pursuant to section 251 In cases where section 271 is the source of the unbundling mandate, the FCC articulated that the just, reasonable and nondiscriminatory pricing standard under sections 201 and 202 would apply Accordingly, the Authority should require BellSouth to continue providing section 271 checklist items at cost-based TELRIC-compliant rates, at least until such time as it is determined that another pricing methodology comports with the just, reasonable and nondiscriminatory pricing standard and the Authority establishes rates pursuant thereto.

In FCC 04-179, the FCC recognized that the ILEC obligation to provide section 251 switching, loop and dedicated transport UNEs has been in place for several years and the precipitous elimination of these UNEs could destabilize the market. BellSouth's proposed alternative to TELRIC – phantom-market-based rates and tariffed special access rates – would not only harm competitive carriers, but also the consumers who rely on them to provide competitively-priced services. BellSouth's phantom-market-based rates and special access rates are generally exorbitant, bear no discernable relationship to costs (or to a cost-based pricing standard found to comport with the just and reasonable pricing standard), and are largely unconstrained by market forces. Consequently, neither phantom-market-based rates nor special access rates are "just and reasonable" for section 271 elements and they should not be allowed by the Authority By maintaining TELRIC-compliant rates, the Authority will shield consumers from sharp and sudden rate increases as a result of carriers' increased costs for network elements and decrease the likelihood that consumers will be forced to incur steep price hikes from Joint Petitioners (to the extent that Joint Petitioners were able to impose such price hikes and remain competitive with BellSouth) or to return to BellSouth (which, in the absence of competition could impose its own steep price hikes on consumers).

Finally, with respect to UNEs for which state law independent of section 251 is the basis of unbundling, Joint Petitioners submit that the Authority should continue to require unbundling at its TELRIC-compliant UNE rates, at least until such time as it determines another pricing methodology is appropriate and establishes rates pursuant thereto. *[Sponsored by* ***3 CLECs:*** *M Johnson (KMC), H. Russell (NVX), J Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. As noted above, BellSouth has failed to provide Joint Petitioners with proposed contract language regarding this issue, although it promised to do so months ago Therefore, it is quite difficult to address properly the adequacy of BellSouth's proposed language. Accordingly, Joint Petitioners reserve or request the right to amend and modify any testimony provided herein subsequent to BellSouth presenting Joint Petitioners with contract language As explained with respect to supplemental issue S-5, the Parties have adequate rates, terms and conditions in their current interconnection agreements addressing DS1, DS3 and dark fiber transport, which should be incorporated into this Agreement. Those "frozen" provisions should remain in the Agreement until such time as the FCC issues an order addressing existing DS1, DS3 and dark fiber transport unbundling obligations and there is negotiated or arbitrated language to incorporate into the Agreement regarding those new requirements (or another set of standards mutually agreed upon by the parties). With respect to the rates, the Authority's TELRIC-compliant dedicated transport rates should remain in the Agreement and apply to dedicated transport regardless of the source of the unbundling requirement until the Authority establishes different rates (if necessary and appropriate) for network elements unbundled on a different statutory basis. *[Sponsored by **3 CLECs:** M Johnson (KMC), H Russell (NVX), J. Falvey (XSP)]*

Q. BELLSOUTH ASSERTS THAT THIS ISSUE IS NOT APPROPRIATE FOR ARBITRATION. DO YOU AGREE?

A. No. There is no basis for BellSouth's contention that this issue (including both its subparts) is inappropriate for arbitration. As part of their abeyance agreement, which was memorialized in a joint motion for abeyance granted by the Authority, the Parties agreed that they would raise in this arbitration supplemental issues relating to the post-*USTA II* regulatory framework Given *USTA II's* vacatur of the FCC's dedicated transport unbundling rules, BellSouth has expressed to Joint Petitioners its view that it does not have to unbundle dedicated transport. For the reasons expressed herein and which will be set forth in additional submissions of testimony and briefing, Joint Petitioners emphatically disagree Frankly, it is difficult to see how BellSouth can plausibly argue that this issue is somehow beyond the scope of the Parties' abeyance agreement. BellSouth has no right to declare certain things inside or outside the scope of this proceeding Furthermore, by virtue of the joint motion for abeyance approved by the Authority, the Authority unquestionably has jurisdiction over all Supplemental Issues raised herein. *[Sponsored by **3 CLECs:** M. Johnson (KMC), H Russell (NVX), J Falvey (XSP)]*

Item No 115, Issue No. S-8: (A) ***This issue has been resolved.***

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, for now, it does Thank you. *[Sponsored by **3 CLECs:** R. Collins (KMC), M. Johnson (KMC), J Fury (KMC), H Russell (NVX), J Willis (NVX), J. Falvey (XSP)]*

Certificate of Service

The undersigned hereby certifies that on this the 29th day of October, 2004, a true and correct copy of the foregoing has been forwarded via first class U. S. Mail, hand delivery, overnight delivery, electronic transmission or facsimile transmission to the following.

Guy Hicks
BellSouth Telecommunications, Inc
333 Commerce Street, Suite 2101
Nashville, TN 37201

H. LaDon Baltimore by Permission
by Attorney Keith F. Blu

H LaDon Baltimore

JOINT PETITIONERS' EXHIBIT A

DISPUTED CONTRACT LANGUAGE BY ISSUE

GENERAL TERMS AND CONDITIONS

Item No 2, Issue No G-2 [Section 1 7]. How should "End User" be defined?

1 7 [CLEC Version] **End User** means the **customer of a Party.**

[BellSouth Version] **End User** means the **ultimate user of the Telecommunications Service.**

Item No 4, Issue No G-4 [Section 10 4 1] What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

10.4.1 [CLEC Version] Except for any indemnification obligations of the Parties hereunder, **with respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by either Party, any End User of either Party, or by any other person or entity, for damages associated with any of the services provided pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and, in any event, subject to the provisions of the remainder of this Section, each Party's liability shall be limited to and shall not exceed in aggregate amount over the entire term hereof an amount equal to seven-and-one half percent (7.5%) of the aggregate fees, charges or other amounts paid or payable to such Party for any and all services provided or to be provided by such Party pursuant to this Agreement as of the Day on which the claim arose; provided that the foregoing provisions shall not be deemed or construed as (A) imposing or allowing for any liability of either Party for (x) indirect, special or consequential damages as otherwise excluded pursuant to Section 10.4.4 below or (y) any other amount or nature of damages to the extent resulting directly and proximately from the claiming Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to all applicable damages or (B) limiting either Party's right to recover appropriate refund(s) of or rebate(s)**

or credit(s) for fees, charges or other amounts paid at Agreement rates for services not performed or provided or otherwise failing to comply (with applicable refund, rebate or credit amounts measured by the diminution in value of services reasonably resulting from such noncompliance) with the applicable terms and conditions of this Agreement. Notwithstanding the foregoing, claims or suits for damages by either Party, any End User of either Party, or by any other person or entity, to the extent resulting from the gross negligence or willful misconduct of the other Party, shall not be subject to the foregoing limitation of liability.

[BellSouth Version] Except for any indemnification obligations of the Parties hereunder, **and except in cases of the provisioning Party's gross negligence or willful misconduct,** each Party's liability to **the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort,** shall be limited to **a credit for the actual cost of the** services **or functions** not performed or **improperly performed.**

Item No 5, Issue No G-5 [Section 10 4 2] To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not eliminated?

10 4.2 [CLEC Version] **No Section.**

[BellSouth Version] **Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.**

Item No 6, Issue No G-6 [Section 10 4 4]: Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?

10.4 4 [CLEC Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages **provided that neither the foregoing nor any other provision of this Section 10 shall be deemed or construed as imposing any limitation on the liability of a Party for claims or suits for damages incurred by End Users of the other Party or by such other Party vis-à-vis its End Users to the extent such damages result directly and in a reasonably foreseeable manner from the first Party's performance of services hereunder and were not and are not directly and proximately caused by or the result of such Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage.** In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

[BellSouth Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

Item No 7, Issue No G-7 [Section 10 5] What should the indemnification obligations of the parties be under this Agreement?

10.5 [CLEC Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim **for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. The Party receiving services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party providing services hereunder against any claim, loss or damage to the extent arising from (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent caused by the providing Party's negligence, gross negligence or willful misconduct.**

[BellSouth Version] Indemnification for Certain Claims The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim**, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims** for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications**, or (2)** any claim, loss or damage **claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations** arising out of this Agreement.

Item No 8, Issue No G-8 [Section 11 1] What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logos and trademarks?

11.1 [CLEC Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement **A Party's use of the other Party's name, service marks and trademarks shall be in accordance with Applicable Law.**

[BellSouth Version] No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. **The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. Notwithstanding the foregoing, <<customer_short_name>> may make factual references to the BellSouth name as necessary to respond to direct inquiries from customers or potential customers regarding the source of the underlying services or the identity of repair technicians. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.**

Item No 9, Issue No G-9 [Section 13 1] Should a court of law be included in the venues available for initial dispute resolution?

13.1 [CLEC Version] **Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the FCC, the Commission or a court of law for a resolution of the dispute. Either Party may seek expedited resolution by the Commission, and may request that resolution occur in no event later than sixty (60) calendar days from the date of submission of such dispute. The other Party will not object to such expedited resolution of a dispute. If the FCC or Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred to the extent the FCC or the Commission requires the Parties to bear such fees and expenses. Each Party reserves any rights it may have to seek judicial review of any ruling made by the FCC, the Commission or a court of law concerning this Agreement. Until the dispute is finally resolved, each Party shall continue to perform its obligations under this Agreement, unless the issue as to how or whether there is an obligation to perform is the basis of the dispute, and shall continue to provide all services and payments as prior to the dispute provided however, that neither Party shall be required to act in any unlawful fashion.**

13 [BellSouth Version] **Resolution of Disputes**

13 1 **Except for procedures that outline the resolution of billing disputes which are set forth in Section 2 of Attachment 7, each Party agrees to notify the other Party in writing of a dispute concerning this Agreement. If the Parties are unable to resolve the issues relating to the dispute in the normal course of business then either Party shall file a complaint with the Commission to resolve such issues or, as explicitly otherwise provided for in this Agreement, may proceed with any other remedy pursuant to law or equity as provided for in this Section 13.**

13 2 **Except as otherwise stated in this Agreement, or for such matters which lie outside the jurisdiction or expertise of the Commission or FCC, if any dispute arises as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, the aggrieved party, to the extent seeking resolution of such dispute, must seek such resolution before the Commission or the FCC in accordance with the Act. Each Party reserves any rights it may have to seek**

judicial review of any ruling made by the Commission concerning this Agreement. Either Party may seek expedited resolution by the Commission. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement; provided, however, that neither Party shall be required to act in an unlawful fashion.

13.3 **Except to the extent the Commission is authorized to grant temporary equitable relief with respect to a dispute arising as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, this Section 13 shall not prevent either Party from seeking any temporary equitable relief, including a temporary restraining order, in a court of competent jurisdiction.**

13.4 **In addition to Sections 13.1 and 13.2 above, each Party shall have the right to seek legal and equitable remedies on any and all legal and equitable theories in any court of competent jurisdiction for any and all claims, causes of action, or other proceedings not arising: (i) as to the enforcement of any provision of this Agreement, or (ii) as to the enforcement or interpretation under applicable federal or state telecommunications law. Moreover, if the Commission would not have authority to grant an award of damages after issuing a ruling finding fault or liability in connection with a dispute under this Agreement, either Party may pursue such award in any court of competent jurisdiction after such Commission finding.**

Item No 12, Issue No G-12 [Section 32.2] 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?

32.2 **[CLEC Version] Nothing in this Agreement shall be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Silence shall not be construed to be such a limitation or exemption with respect to any aspect, no matter how discrete, of Applicable Law.**

[BellSouth Version] This Agreement is intended to memorialize the Parties' mutual agreement with respect to their obligations under the Act and applicable FCC and Commission rules and orders. 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 Applicable Law, and such obligation, right or other requirement is disputed by the other Party, the Party asserting that such obligation, right or other requirement is applicable shall petition the Commission for resolution of the dispute and the

Parties agree that any finding by the Commission that such obligation, right or other requirement exists shall be applied prospectively by the Parties upon amendment of the Agreement to include such obligation, right or other requirement and any necessary rates, terms and conditions, and the Party that failed to perform such obligation, right or other requirement shall be held harmless from any liability for such failure until the obligation, right or other requirement is expressly included in this Agreement by amendment hereto.

ATTACHMENT 2

NETWORK ELEMENTS AND OTHER SERVICES

Item No 23, Issue No 2-5 [Section 1 5]· What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?

Language to be provided by the Parties.

Item No 26, Issue No. 2-8 [Section 1 7] 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?

1.7 [CLEC Version] Notwithstanding any other provision of this Agreement, BellSouth will not combine UNEs or Combinations with any service, Network Element or other offering that it is obligated to make available only pursuant to Section 271 of the Act

[BellSouth Version] Notwithstanding any other provision of this Agreement, BellSouth will not **commingle or** combine UNEs or Combinations with any service, Network Element or other offering that it is obligated to make available only pursuant to Section 271 of the Act.

Item No 27, Issue No 2-9 [Section 1 8 3] When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization (Agreement or tariff) of the lower or higher bandwidth service?

1.8 3 [CLEC Version] When multiplexing equipment is attached to a commingled circuit, the **multiplexing equipment** and Central Office Channel Interfaces will be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service.

[BellSouth Version] When multiplexing equipment is attached to a commingled circuit, the **multiplexing equipment** will be billed from the same jurisdictional authorization (agreement or tariff) as the **higher bandwidth service**. The Central Office Channel Interface will be billed from the same jurisdictional authorization (tariff or agreement) as the lower **bandwidth service.**

Item No 36, Issue No 2-18 [Section 2 12 1] (A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?

2.12.1 [CLEC Version] **BellSouth shall perform line conditioning in accordance with FCC 47 C.F.R. 51.319 (a)(1)(iii). Line Conditioning is as defined in FCC 47 C.F.R. 51.319 (a)(1)(iii)(A).** Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

[BellSouth Version] **Line Conditioning is defined as routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers. This may include the removal of any device, from a copper Loop or copper sub-loop that may diminish the capability of the Loop or sub-loop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to; load coils, low pass filters, and range extenders.** Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

Item No 37, Issue No 2-19 [Section 2 12 2] Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

2 12.2 [CLEC Version] **No Section.**

[BellSouth Version] **BellSouth will remove load coils only on copper loops and sub loops that are less than 18,000 feet in length. BellSouth will remove load coils on copper loops and sub loops that are greater than 18,000 feet in length upon <<customer_short_name>>'s request at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties.**

Item No 38, Issue No 2-20 [Sections 2 12 3, 2 12 4] Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

2.12.3 [CLEC Version] For any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of **other** bridged tap will be performed at the rates set forth in Exhibit A of this Attachment.

[BellSouth Version] For any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of bridged tap **that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet** will be performed at the rates set forth in Exhibit A of this Attachment.

2.12 4 [CLEC Version] **No Section.**

[BellSouth Version] **<<customer_short_name>> may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties. Rates for ULM are as set forth in Exhibit A of this Attachment.**

Item No 43, Issue No 2-25 [Section 2 18 1 4] Under what circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or controlled by a carrier other than BellSouth?

2.18.1.4 [CLEC Version] **No Section.**

[BellSouth Version] **BellSouth's provisioning of LMU information to the requesting CLEC for facilities is contingent upon either BellSouth or the requesting CLEC controlling the Loop(s) that serve the service location for which LMU information has been requested by the CLEC. The requesting CLEC is not authorized to receive LMU information on a facility used or**

controlled by another CLEC unless BellSouth receives a Letter of Authorization (LOA) from the voice CLEC (owner) or its authorized agent on the LMUSI submitted by the requesting CLEC.

Item No 46, Issue No 2-28 [Section 3.10 4] (A) May BellSouth refuse to provide DSL services to CLEC's customers absent an Authority order establishing a right for it to do so?

(B) Should CLEC be entitled to incorporate into the Agreement, for the term of this Agreement, rates, terms and conditions that are no less favorable in any respect, than the rates terms and conditions that BellSouth has with any third party that would enable CLEC to serve a customer via a UNE loop that may also be used by BellSouth for the provision of DSL services to the same customer?

3 10.4 [CLEC Version] To the extent required by **and consistent with** Applicable Law, BellSouth shall provide its retail DSL offering (e.g., Fast Access Service) to <<customer_short_name>> for use with UNE-P or Loops provisioned pursuant to this Agreement pursuant to separately negotiated rates, terms and conditions in a non-discriminatory manner. **To the extent BellSouth provides a DSL offering to another CLEC pursuant to the rates, terms and conditions of an interconnection agreement or Commission order, BellSouth will provide <<customer_short_name>> with the same DSL offering at the same rates, terms and conditions.**

[BellSouth Version] To the extent required by Applicable Law, BellSouth shall provide its DSL service and Fast Access services to <<customer_short_name>>, for use with UNE-P as Loops provisioned pursuant to this Agreement, pursuant to separately negotiated rates, terms and conditions in a non-discriminatory manner.

Item No 50, Issue No 2-32 [Sections 5 2 5 2 1, 5 2 5 2 3, 5 2 5 2 4, 5 2 5 2 5and 5 2 5 2 7] How should the term "customer" as used in the FCC's EEL eligibility criteria rule be defined?

5 2 5 2 1 [CLEC Version] 1) Each circuit to be provided to each **customer** will be assigned a local number prior to the provision of service over that circuit;

[BellSouth Version] 1) Each circuit to be provided to each **End User** will be assigned a local number prior to the provision of service over that circuit;

5 2.5.2.3 [CLEC Version] 3) Each circuit to be provided to each **customer** will have 911 or E911 capability prior to provision of service over that circuit;

[BellSouth Version] 3) Each circuit to be provided to each **End User** will have 911 or E911 capability prior to provision of service over that circuit;

5 2.5.2.4 [CLEC Version] 4) Each circuit to be provided to each **customer** will terminate in a collocation arrangement that meets the requirements of FCC 47 C.F.R. 51.318(c);

[BellSouth Version] 4) Each circuit to be provided to each **End User** will terminate in a collocation arrangement that meets the requirements of FCC 47 C.F.R. 51 318(c);

5.2.5.2.5 [CLEC Version] 5) Each circuit to be provided to each **customer** will be served by an interconnection trunk in the same LATA as the customer premises served by the EEL over which <<customer_short_name>> will transmit the calling party's number in connection with calls exchanged over the trunk;

[BellSouth Version] 5) Each circuit to be provided to each **End User** will be served by an interconnection trunk in the same LATA as the customer premises served by the EEL over which <<customer_short_name>> will transmit the calling party's number in connection with calls exchanged over the trunk;

5.2.5.2.7 [CLEC Version] 7) Each circuit to be provided to each **customer** will be served by a switch capable of switching local voice traffic.

[BellSouth Version] 7) Each circuit to be provided to each **End User** will be served by a switch capable of switching local voice traffic.

Item No 51, Issue No 2-33 [Sections 5 2 6, 5 2 6 1, 5 2 6 2, 5 2 6 2 1, 5 2 6 2 3] (A) ***This issue has been resolved.***

(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?

5 2.6.1 [CLEC Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>>, **identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit shall also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit will be delivered to <<customer_short_name>> with all supporting documentation no less than thirty (30) calendar days prior to the date upon which BellSouth seeks to commence an audit.**

[BellSouth Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>>. Such Notice of Audit will be delivered to <<customer_short_name>> no less than thirty (30) calendar days prior to the date upon which **the audit will commence.**

5.2 6.2 [<<customer_short_name>> Version] The audit shall be conducted by a third party independent auditor **mutually agreed-upon by the Parties** and retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations).

[BellSouth Version] The audit shall be conducted by a third party independent auditor retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations).

5.2.6.2.3 [<<customer_short_name>> Version] To the extent the independent auditor's report concludes that <<customer_short_name>> failed to comply **in all material respects** with the service eligibility criteria, <<customer_short_name>> shall reimburse BellSouth for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that <<customer_short_name>> did comply in all material respects with the service eligibility criteria, BellSouth will reimburse <<customer_short_name>> for its reasonable and demonstrable costs associated with the audit, including, among other things, staff time. The Parties shall provide such reimbursement within thirty (30) calendar days of receipt from <<customer_short_name>> of a statement of such costs.

[BellSouth Version] To the extent the independent auditor's report concludes that <<customer_short_name>> failed to comply with the service eligibility criteria, <<customer_short_name>> shall reimburse BellSouth for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that <<customer_short_name>> did comply in all material respects with the service eligibility criteria, BellSouth will reimburse <<customer_short_name>> for its reasonable and demonstrable costs associated with the audit, including, among other things, staff time. The Parties shall provide such reimbursement within thirty (30) calendar days of receipt from <<customer_short_name>> of a statement of such costs.

Item No 57, Issue No 2-39 [Sections 7 4] (A) Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, including cases that would require the party providing the information to query a third party database provider? (B) If so, which party should bear the cost?

7.4 [CLEC Version] **The Parties agree that they will perform CNAM queries and pass such information on all calls exchanged between the Parties, regardless of whether** that would require BellSouth to query a third party database provider

[BellSouth Version] **Nothing in this Agreement will be construed to require BellSouth to query a third party database. Should BellSouth query a third party database then it will be performed subject to a separate agreement. If BellSouth terminates an agreement with a third party database provider, then BellSouth will provide notice pursuant to a carrier notification letter to the CLECs.**

ATTACHMENT 3

INTERCONNECTION

Item No 63, Issue No 3-4 [Section 10 10 6 (KMC), 10 8 6 (NSC), 10 8 6 (NVX), 10 13 5 (XSP)] Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers that terminate BellSouth transited/CLEC originated traffic?

10.8.6 [CLEC Version] BellSouth agrees to deliver Transit Traffic originated by <<customer_short_name>> to the terminating carrier; provided, however, that <<customer_short_name>> is solely responsible for negotiating and executing any appropriate contractual agreements with the terminating carrier for the exchange of Transit Traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier or to <<customer_short_name>> for transiting <<customer_short_name>>-originated or terminated Transit Traffic. **Notwithstanding any other provision of this Attachment**, in the event that the terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by <<customer_short_name>>, <<customer_short_name>> shall reimburse BellSouth for all charges paid by BellSouth, **which BellSouth is obligated to pay pursuant to contract or Commission order**, provided that BellSouth notifies and, upon request, provides <<customer_short_name>> with a copy of such an invoice, if available, or other equivalent supporting documentation (if an invoice is not available), and proof of payment and other applicable supporting documentation. BellSouth will provide such notice and information in a timely, reasonable and nondiscriminatory manner. BellSouth shall diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) **when no similar reimbursement provision applies. Notwithstanding the foregoing, <<customer_short_name>> will not be obligated to reimburse BellSouth for any charges or costs related to Transit Traffic for which BellSouth has assumed responsibility through a settlement agreement with a third party.** Additionally, the Parties agree that any billing to a third party or other telecommunications carrier under this section shall be pursuant to MECAB procedures.

[BellSouth Version] BellSouth agrees to deliver Transit Traffic originated by <<customer_short_name>> to the terminating carrier; provided, however, that <<customer_short_name>> is solely responsible for negotiating and executing any appropriate contractual agreements with the terminating carrier for the exchange of Transit Traffic through the BellSouth network. BellSouth will not be liable for any compensation to the terminating carrier or to <<customer_short_name>> for transiting <<customer_short_name>>-originated

or terminated Transit Traffic. In the event that the terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by <<customer_short_name>>, <<customer_short_name>> shall reimburse BellSouth for all charges paid by BellSouth, provided that BellSouth notifies <<customer_short_name>> and, upon request, provides <<customer_short_name>> with a copy of such an invoice, if available, or other equivalent supporting documentation (if an invoice is not available), and proof of payment and other applicable supporting documentation. BellSouth will **use commercially reasonable efforts to** provide such notice and information in a timely, reasonable and nondiscriminatory manner. BellSouth shall diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) **under the same circumstances. Once <<customer_short_name>> reimburses BellSouth for any such payments, any disputes with respect to such charges shall be between <<customer_short_name>> and the terminating third party carrier.** Additionally, the Parties agree that any billing to a third party or other telecommunications carrier under this section shall be pursuant to MECAB procedures.

Item No 65, Issue No 3-6 [Section 10 10 1 (KMC), 10 8 1 (NSC/NVX), 10 13 (XSP)] 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?

10.10.1 [CLEC's Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i.e., common transport and tandem switching charge; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

[BellSouth's Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i e., common transport and tandem switching charges and **tandem intermediary charge**; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission

approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

ATTACHMENT 6

ORDERING

Item No 86, Issue No 6-3 [Sections 2 5 6 2, 2 5 6 3] (A) ***This issue has been resolved*** *(B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?*

2 5.6.3 [CLEC Version] Disputes over Alleged Noncompliance. **If one Party disputes the other Party's assertion of non-compliance, that Party shall notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting that the non-compliance, the requesting** Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. In such instance, the Parties cooperatively shall seek expedited resolution of the dispute. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

[BellSouth Version] Disputes over Alleged Noncompliance. In it's **written notice to the other Party** the alleging Party will state **that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the other** Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

Item No 88, Issue No 6-5 [Section 2 6 5]. What rate should apply for Service Data Advancement (a/k/a service expedites)?

2.6 5 [PARTIES DISAGREE ON THE RATE, NOT THE LANGUAGE] Service Date Advancement Charges (a k a. Expedites). For Service Date Advancement requests by <<customer_short_name>>, Service Date Advancement charges will apply for intervals less than the standard interval as outlined in Section 8 of the LOH, located at http://interconnection.bellsouth.com/guides/html/leo.html. The charges shall be as set-forth in Exhibit A of Attachment 2 of this Agreement and will apply only where Service Date Advancement has been specifically requested by the requesting Party, and the element or service provided by the other Party meets all technical specifications and is provisioned to meet those technical specifications. If <<customer_short_name>> accepts service on the plant test date (PTD) normal recurring charges will apply from that date but Service Date Advancement charges will only apply if <<customer_short_name>> previously requested the order to be expedited and the expedited DD is the same as the original PTD.

Item No 94, Issue No 6-11 [Sections 3 1 2, 3 1 2 1] (A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?

(B) If so, what rates should apply?

(C) What should be the interval for such mass migrations of services?

3.1.2 [CLEC Version] Mass Migration of Customers. BellSouth will cooperate with <<customer_short_name>> to accomplish mass migration of customers expeditiously and on terms that are reasonable and non-discriminatory. **Mass migration of customer service arrangements (e.g., UNEs, Combinations, resale) will be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all relevant information shall be used. An electronic OSS charge shall be assessed per service arrangement migrated. This Section shall not govern bulk migration from one service arrangement to another for the same carrier or migration of a collocation space from one carrier to another.**

[BellSouth Version] Mass Migration of Customers BellSouth will cooperate with <<customer_short_name>> to accomplish mass migration of customers expeditiously and on terms that are reasonable and non-discriminatory.

3.1.2.1 **[CLEC Version] BellSouth shall only charge <<customer_short_name>> a TELRIC-based records change charge for the migration of customers for which no physical re-termination of circuits must be performed. The TELRIC-based records change charge is as set forth in Exhibit A of Attachment 2 of this Agreement. Such migrations shall be completed within ten (10) calendar days of an LSR or spreadsheet submission. The TELRIC-based charge for physical re-termination of circuits (including appropriate record changes (a single charge will apply)) is as set forth in Exhibit A of Attachment 2 of this Agreement. Such physical re-terminations shall be completed within ten (10) calendar days of electronic LSR or spreadsheet submission.**

[BellSouth Version] **No Section.**

ATTACHMENT 7

BILLING

Item No. 95, Issue No 7-1 [Section 1 1.3]. What time limits should apply to backbilling, over-billing, and under-billing issues?

1.1.3 [CLEC Version] The Bill Date, as defined herein, must be present on each bill transmitted by one Party to the other Party and must be a valid calendar date. **Bills should not be rendered for any charges which are incurred under this agreement when more than ninety (90) days have passed since the bill date on which those charges ordinarily would have been billed. Billed amounts for services rendered more than one (1) billing period prior to the Bill Date shall be invalid unless the billing Party identifies such billing as "back-billing" on a line-item basis. However, both Parties recognize that situations exist which would necessitate billing beyond ninety (90) days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued. These exceptions are:**

Charges connected with jointly provided services whereby meet point billing guidelines require either party to rely on records provided by a third party and such records have not been provided in a timely manner;

Charges incorrectly billed due to erroneous information supplied by the non-billing Party.

[BellSouth Version] The Bill Date, as defined herein, must be present on each bill transmitted by one Party to the other Party and must be a valid calendar date. **Charges incurred under this Agreement are subject to applicable Commission rules and state statutes of limitations.**

Item No 96, Issue No 7-2 [Section 1 2 2] (A) What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B) What intervals should apply to such changes?

1.2.2 [CLEC Version] OCN, CC, CIC, ACNA and BAN Changes. **In the event that either Party makes any corporate name change (including addition or deletion of a d/b/a), or a change in OCN, CC, CIC, ACNA or any other LEC identifier (collectively, a "LEC Change"), the changing Party shall submit written notice to the other Party. A Party may make one (1) LEC Change per state in any twelve (12) month period without charge by the other Party for updating its databases, systems, and records solely to reflect such LEC Change. In the event of any other LEC Change, such charge shall be at the cost-based, TELRIC compliant rate set forth in Exhibit A to this Attachment 7. LEC Changes shall be accomplished in thirty (30) calendar days and shall result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order or maintenance interfaces made available by BellSouth pursuant to Attachment 6 of this Agreement. At the request of a Party, the other Party shall process and implement all system and record changes necessary to effectuate a new OCN/CC within thirty (30) calendar days. At the request of a Party, the other Party shall establish a new BAN within ten (10) calendar days.**

[BellSouth Version] OCN, CC, CIC, ACNA and BAN Changes. **If <<customer_short_name>> needs to change its ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s) under which it operates when <<customer_short_name>> has already been conducting business utilizing that ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s), <<customer_short_name>> shall bear all costs incurred by BellSouth to convert <<customer_short_name>> to the new ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s). ACNA/BAN/CC/CIC/OCN conversion charges include the time required to make system updates to all of <<customer_short_name>>'s End User customer records and will be handled by the BFR/NBR process.**

Item No 97, Issue No 7-3 [Section 1.4] When should payment of charges for service be due?

1.4 [CLEC Version] Payment Due. Payment **of charges** for services rendered will be due **thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

[BellSouth Version] Payment Due. Payment for services will be due **on or before the next bill date (Payment Due Date)** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

Item No 99, Issue No 7-5 [Section 1 7 1]· What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?

1.7.1 [CLEC Version] Each Party reserves the right to suspend or terminate service in the event of prohibited, unlawful or, in the case of resold services, improper use of the other Party's facilities or service (e.g. making calls in a manner reasonably to be expected to frighten, abuse, torment or harass another, etc.) as described under the providing Party's tariff, abuse of the other Party's facilities, or any other violation or noncompliance with this Agreement and/or each Party's tariffs where applicable. Upon detection of such use, the detecting Party will provide written notice to the other Party that additional applications for **such** service may be refused, that any pending orders for **such** service may not be completed, and/or that access to ordering systems **for such service** may be suspended if such use is not corrected or ceased by the fifteenth (15th) calendar day following the date of the notice. In addition, the detecting Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the detecting Party may terminate the provision of **such** existing services to the other Party if such use is not corrected or ceased by the thirtieth (30th) calendar day following the date of the initial notice. **Notwithstanding the foregoing, if the Party that receives the notice disagrees with the issuing Party's allegations of prohibited, unlawful or improper use, it shall provide written notice to the issuing Party stating the reasons therefor. Upon delivery of such notice of dispute, the foregoing provisions regarding suspension and termination will be stayed, and the Parties shall work in good faith to resolve any dispute over allegations of prohibited,**

unlawful or improper use. If the Parties are unable to resolve such dispute amicably, the issuing Party shall proceed, if at all, pursuant to the dispute resolution provisions set forth in the General Terms and Conditions.

[BellSouth Version] Each Party reserves the right to suspend or terminate service in the event of prohibited, unlawful or, in the case of resold services, improper use of the other Party's facilities or service (e.g. making calls in a manner reasonably to be expected to frighten, abuse, torment or harass another, etc.) as described under the providing Party's tariff, abuse of the other Party's facilities, or any other violation or noncompliance with this Agreement and/or each Party's tariffs where applicable. Upon detection of such use, the detecting Party will provide written notice to the other Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifteenth (15th) calendar day following the date of the notice. In addition, the detecting Party may, at the same time, provide written notice to the person designated by the other Party to receive notices of noncompliance that the detecting Party may terminate the provision of **all** existing services to the other Party if such use is not corrected or ceased by the thirtieth (30th) calendar day following the date of the initial notice.

Item No 100, Issue No 7-6 [Section 1 7.2]. Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

1.7.2 [CLEC Version] **Each Party** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **Due Date, the billing Party may** provide written notice **to the other Party** that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **as indicated on the notice in dollars and cents**, is not received by the fifteenth (15th) calendar day following the date of the notice. In addition, **the billing Party** may, at the same time, provide written notice that **the billing Party** may discontinue the provision of existing services to **the other Party** if payment of such amounts, **as indicated on the notice (in dollars and cents),** is not received by the thirtieth (30th) calendar day following the date of the Initial Notice.

[BellSouth Version] **BellSouth** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **bill date in the month after the original bill date, BellSouth** will provide written notice to **<<customer_short_name>>** that additional applications for service may be

refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **and all other amounts not in dispute that become past due before refusal, incompletion or suspension**, is not received by the fifteenth (15th) calendar day following the date of the notice. In addition, **BellSouth** may, at the same time, provide written notice **to the person designated by <<customer_short_name>> to receive notices of noncompliance** that **BellSouth** may discontinue the provision of existing services to **<<customer_short_name>>** if payment of such amounts**, and all other amounts not in dispute that become past due before discontinuance**, is not received by the thirtieth (30th) calendar day following the date of the initial notice.

Item No 101, Issue No 7-7 [Section 1 8 3]: How many months of billing should be used to determine the maximum amount of the deposit?

1.8 3 [CLEC Version] The amount of the security shall not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing under this Agreement for existing CLECs (based on average monthly billings for the most recent six (6) month period). Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

[BellSouth Version] The amount of the security shall not exceed two (2) month's **estimated billing for new CLECs or** actual billing for existing CLECs. Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

Item No 102, Issue No 7-8 [Section 1.8 3 1]. Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

1.8.3.1 [CLEC Version] **The amount of security due from an existing CLEC shall be reduced by amounts due <<customer_short_name>> by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in Section 1.8.5.1, and subject to the standard set forth in Section 1.8.5.**

[BellSouth Version] **No Section.**

Item No. 103, Issue No 7-9 [Section 1 8 6] 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?

1.8.6 [CLEC Version] Subject to Section 1.8.7 following, in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section **and either agreed to by <<customer_short_name>> or as ordered by the Commission** within thirty (30) calendar days **of such agreement or order**, service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

[BellSouth Version].Subject to Section 1.8.7 following, in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section within thirty (30) calendar days **of <<customer_short_name>>'s receipt of such request,** service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

Item No 104, Issue No 7-10 [Section 1 8 7]· 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?

1.8 7 [CLEC Version] The Parties will work together to determine the need for or amount of a reasonable deposit. **If the Parties are unable to agree, either Party** may file a petition for resolution of the dispute and both parties shall cooperatively seek expedited resolution of such dispute.

[BellSouth Version]. The Parties will work together to determine the need for or amount of a reasonable deposit. **If <<customer_short_name>> does not agree with the amount or need for a deposit requested by BellSouth, <<customer_short_name>>** may file a petition with the Commissions for resolution of the dispute and both Parties shall cooperatively seek expedited resolution of such dispute. **BellSouth shall not terminate service during the pendency of such a proceeding provided that <<customer_short_name>> posts a payment bond for the amount of the requested deposit during the pendency of the proceeding.**

Item No 106, Issue No 7-12 [Section 1 9 1] To whom should BellSouth be required to send the 15-day notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?

1.9.1 [CLEC Version] **Notices sent pursuant to this Attachment 7** also shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement.

[BellSouth Version] BellSouth's **Initial Notice to <<customer_short_name>> that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, and all other amounts not in dispute that become past due before refusal, incompletion or suspension, is not received by the fifteenth (15th) calendar day following the date of the notice is system generated and will only be supplied to <<customer_short_name>>'s billing contact. Notices, not system generated, of security deposits and suspension or termination of services** also shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement. **Such notices must be sent in accordance with the time frames set forth in Section 1.7.**

Item No 108, Issue No S-1 How should the final FCC unbundling rules be incorporated into the Agreement?

Language to be provided by the Parties.

Item No 109, Issue No S-2 (A) How should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? (B) How should any intervening State Commission order relating to unbundling obligations, if any, be incorporated into the Agreement?

Language to be provided by the Parties.

Item No 110, Issue No S-3 If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?

Language to be provided by the Parties.

Item No 111, Issue No S-4 What post Interim Period transition plan should be incorporated into the Agreement?

Language to be provided by the Parties.

Item No 112, Issue No S-5 (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?

Language to be provided by the Parties.

Item No 113, Issue No S-6 (A) Is BellSouth obligated to provide unbundled access to DS1 loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?

Language to be provided by the Parties.

Item No 114, Issue No S-7. (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?

Language to be provided by the Parties.