BELLSOUTH

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June 8, 2005

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

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, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement With BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, As Amended
PSC 2004-00044

Dear Ms. O'Donnell:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of Motion of BellSouth Telecommunications, Inc. and Reply to Joint Petitioners' Opposition.

Yours very truly,

Cheryl R Winn
for Dorothy J. Chambers

Enclosure

cc: Parties of Record

588677

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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 AND XSPEDIUS MANAGEMENT CO. OF LEXINGTON, LLC, AND XSPEDIUS MANAGEMENT CO. OF LOUISVILLE, LLC	)	CASE NO. 2004-00044

MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC. AND REPLY TO JOINT PETITIONERS' OPPOSITION

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, hereby moves the Commission to permit the filing of this Reply to NewSouth Communications Corp ("NewSouth"), NuVox Communications, Inc. ("NuVox"), and Xspedius Communications, LLC ("Xspedius") ("Joint Petitioners")[1] Opposition to BellSouth's Motion to Remove Certain Issues from the Joint Petitioners' Section 252 Arbitration Proceeding ("Opposition"). BellSouth believes this reply will assist and provide additional information to the Kentucky Public Service Commission ("Commission") and inform the Commission of a recent decision that supports BellSouth's position.

INTRODUCTION

On May 20, 2005, BellSouth requested that the Commission move Arbitration Issues 26, 36, 37, 38 and 51 (including subparts) to the Commission's Generic Proceeding (Docket No.

[1] KMC Telecom V, Inc. and KMC Telecom III, LLC, filed a Notice of Withdrawal with Prejudice in this case on May 31, 2005. Thus, the KMC entities are no longer a party to this proceeding.

2004-00427) for consideration and resolution.[2] BellSouth based this request on the fact that the *TRO Arbitration Issues* relate to the Federal Communication Commission's ("FCC") findings in the *Triennial Review Order*, FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003) ("*TRO*") and are similar if not identical to *TRO* issues being addressed in the Generic Proceeding.[3] On May 31, 2005, the Joint Petitioners filed an Opposition to BellSouth's request. In the Opposition, the Joint Petitioners responded to BellSouth's request. For the foregoing reasons, the Commission should reject the Joint Petitioners' arguments and grant BellSouth's reasonable request to move identical or common issues to the Generic Proceeding so that all entities can participate in their resolution.

ARGUMENT

A. BellSouth's Request Does Not Impinge on any Section 252 Rights.

First, the Joint Petitioners contend that they have a right to have the *TRO Arbitration Issues* decided in a Section 252 arbitration. The only authority cited by the Joint Petitioners is Section 252(b)(1) of the Telecommunications Act ("Act"), which simply provides that a party has the right to "petition a State commission to arbitrate any open issue." As evidenced by the filing of the arbitration petition, their participation in the hearing, and the filing of post-hearing briefs, the Joint Petitioners have fully availed themselves of their right under the Act to request arbitration of "any open issue."

In addition, the Joint Petitioners' own actions belie their argument as they jointly requested with BellSouth to move arbitration issues – Issue 23, 108, 111, 113, and 114 – to the

[2] As an alternative request, BellSouth requested that the Commission defer ruling on these issues until its ruling in the Generic Proceeding to avoid inconsistent rulings.

[3] Specifically, as set forth in the BellSouth/CLEC agreed-upon Regional Issues Matrix for all Generic Proceedings in BellSouth's region (attached as Exhibit A to BellSouth's Motion), Issue 26 in the arbitration is identical to Issue 14 in the Generic Proceeding; Issue 51 in the arbitration is virtually identical to Issue 29 in the Generic Proceeding; and Issues 36-38 in the arbitration are encompassed within Issue 26 in the Generic Proceeding.

Generic Proceeding for consideration and resolution. The Commission granted this request on May 17, 2005. It is disingenuous for the Joint Petitioners to argue that Section 252(b)(1) prohibits the Commission from moving common issues to the Generic Proceeding when they have already agreed to do so for another arbitration issue. The Act does not give the Joint Petitioners the sole determination as to when an issue can or cannot be moved from an arbitration proceeding to a generic proceeding established by the Commission to address issues under federal law that impact all entities.

Further, the Commission has resolved disputes relating to Section 251 obligations via generic proceedings, *see* the Generic UNE docket in which the Commission established rates for UNEs under Section 252 (KPSC Adm. Case No. 382), and the separate proceeding established by the Commission to consider BellSouth's proposal for a new, Kentucky-specific Operational Support System Performance Monitoring Plan (KPSC Case No. 2004-00391).

This Commission has a history of consolidating cases for purposes of considering common issues. "On September 4, 1986, issues common to this case (KPSC Adm. Case 306) and Adm. Cases No. 269 and 305 were consolidated for hearing purposes" Order, KPSC Case No. 8838, Phase I[4], and KPSC Adm. Case No. 306[5], at 2, March 1, 1988. "This combined Order will set forth the Commission's decisions in both dockets and establish the Commission's determination of its policy directives concerning the LECs' intrastate interexchange carrier billing and collection services." Id. at 3. Another instance where the Commission incorporated common issues into a generic-like proceeding is its inquiry into the use of Contract Service

[4] *In the Matter of: An Investigation of Toll and Access Charge Pricing and Toll Settlement Agreements for Telephone Utilities Pursuant to Changes to Be Effective January 1, 1984.*
[5] *In the Matter of: Detariffing Billing and Collection Services.*

Arrangements.[6] The Commission established that proceeding and incorporated therein the records in two cases, namely, KPSC Case No. 2001-00099, the SPIS.net case and KPSC Case No. 2001-00077, BellSouth's Proposed New Procedures for Filing Contract Service Arrangements and Promotions, for the purpose of considering issues relative to the filing of CSAs by the LECs. The CSA decision impacts CLECs as well. See the Commission's December 19, 2002, Order at 9-10, in Case No. 2001-00099.

B. The Decisions of Other Commissions Support BellSouth's Position.

The Joint Petitioners argue that the Commission and other state commissions have already rejected BellSouth's arguments. While BellSouth acknowledges that the Florida Public Service Commission ("FPSC") denied BellSouth's request, on June 1, 2005, the South Carolina Public Service Commission ("SCPSC") granted BellSouth's request over the objection of the Joint Petitioners.[7]

Conversely, the Tennessee Regulatory Authority ("TRA") decisions cited by the Joint Petitioners are inapplicable to the instant matter. First, the Joint Petitioners cite to the TRA's refusal to remove certain arbitration issues in the BellSouth/DeltaCom arbitration.[8] In that proceeding, the TRA declined BellSouth's specific request to (1) dismiss from the arbitration Operational Support Systems ("OSS") issues that had already been addressed by the TRA in BellSouth's 271 docket (Docket No. 97-00309); and (2) dismiss from the arbitration issues that BellSouth believed were better addressed in the CCP, which is an industry collaborative and not a TRA generic proceeding. Accordingly, this decision is factually distinguishable from the

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[6] *In the Matter of: Inquiry into the Use of Contract Service Arrangements* ("CSAs") *by Telecommunication Carriers in Kentucky*, KPSC Case No. 2002-00456.

[7] The SCPSC has yet to issue a written order. Also, the transcript from the SCPSC hearing in which this decision was made is not yet available.

[8] *In re: Petition for Arbitration of ITC DeltaCom, Initial Order Regarding BellSouth's Motion to Remove Issues and Other Pre-Hearing Procedural Issues*, Docket No. 03-00119 (Aug. 20, 2003).

instant dispute because it did not involve a request to transfer issues from an arbitration to a TRA generic proceeding that will address the same issues raised in the arbitration.

The Joint Petitioners also cite to the TRA's decision in the *In re: Petition by ICG Telecom Group, Inc.* arbitration proceeding (Docket No. 99-00377) to support their argument. There is nothing in that decision, however, remotely addressing the issue currently before this Commission. Therefore, the Joint Petitioners have not cited to any Kentucky Public Service Commission precedent that undermines BellSouth's arguments or request for relief.

Finally, the Joint Petitioners' reliance on *In re: Petition of Arbitration of ITC DeltaCom, Order Denying BellSouth Motion to Remove Issues*, Docket No. P-500, Sub 18, N.C.U.C., (Jul. 11, 2003) 2003 WL 21757758 *1 ("North Carolina DeltaCom Order") is misplaced. Like the Tennessee DeltaCom Order, this decision is inapplicable because it involved a request by BellSouth to remove issues from the arbitration that were already addressed in BellSouth's 271 Docket, that were better addressed in the CCP, or which BellSouth contended were outside the jurisdiction of the North Carolina Commission. Unlike the instant matter, BellSouth's request did not involve moving generic issues from a Section 252 arbitration to a pre-existing generic proceeding that will be addressing identical or similar issues. In any event, this decision contradicts the Joint Petitioners' Section 252(b)(1) argument and supports BellSouth's argument as the NCUC stated in the DeltaCom Order that "[w]hile the Commission in the past has deferred arbitration issues to other docket, such deferral is within the sound discretion of the Commission." *Id.* at *2.

C. All of the TRO Arbitration Issues Are Being Addressed in the Generic Proceeding.

The Joint Petitioners claim that some of the *TRO Arbitration Issues* are not being addressed in the Generic Proceeding. However, the Joint Petitioners concede that two arbitration

issues – Issue 26 (commingling) and Issue 51 (EEL Audits) -- are being addressed in the Generic Proceeding. *See* Opposition at 4. Further, as to those Issues that the Joint Petitioners contend are outside the Generic Proceeding (Issues 36-38 dealing with line conditioning), they are incorrect. Issues 36-38 are encompassed within Issue 26 of the Generic Proceeding regarding routine network modifications. Indeed, the *TRO* has stated that line conditioning can be "properly seen as a routine network modification" (*TRO* ¶ 643). BellSouth made this clear in its recent Motion for Summary Judgment and or Declaratory Ruling filed in the Generic Proceeding on June 2, 2005, wherein BellSouth asked that the Commission resolve line conditioning issues within Issue 26 of the Generic Proceeding. Consequently, BellSouth submits that all of the *TRO Arbitration Issues* will be addressed in the Generic Proceeding.

D. A Decision in the Arbitration *Will* Have Precedential Value in the Generic Proceeding.

The Joint Petitioners claim "BellSouth requests a transfer or, alternatively, to hold the Original Arbitration Issue in abeyance, so that the Commission can avoid the risk of conflicting results. This argument .... is a red herring." Opposition at 5. On the contrary, however, issues common to all CLECs relating to the *TRO* will be addressed in the pending arbitration as well as the Generic Proceeding. As a result, the Commission's decision on these issues in the arbitration will impact (either directly or indirectly) all CLECs. The Joint Petitioners concede this point in the Opposition as they state that arbitration decisions "do establish precedent and can form the basis for subsequent orders of general applicability by a state commission." *See* Opposition at 6, n. 16. Indeed, in the Kentucky hearing, Joint Petitioner witness Russell testified that at least one of the issues would be common to carriers other than the Joint Petitioners:

> Q. Okay. In the sheets that I'm looking at, the Joint Petitioners' issue matrix, BellSouth has, at Issue 51, that the issue – they're proposing it be addressed in the generic

> change of law proceeding. That was not one of the issues listed in the joint motion. Is this matter common to all carriers, and do you think it would be better addressed in the generic proceeding or . . .
>
> A. It would be common to carriers that use EEL circuits. I'm not familiar with the business plans of most other carriers, so it may be appropriate for the generic. I'm not certain about that.

See Kentucky Transcript Excerpt at 40-41, attached hereto as Exhibit B.

Accordingly, the *TRO* Arbitration Issues should be addressed in the Generic Proceeding, where all affected entities will have the opportunity to be heard on these issues and the Commission can render a single decision applicable to all entities. In addition to duplicating resources, addressing these issues in multiple dockets also presents the risk of inconsistent decisions being rendered in this docket and the Generic Proceeding.

E. The Joint Petitioners Will Not Be Prejudiced by BellSouth's Request.

Finally, the Joint Petitioners repeatedly argue that the rights afforded by the *TRO Arbitration Issues* are critical to their business plans and that they would be prejudiced by a delay of the arbitration decision. The Joint Petitioners claim of prejudice rings hollow in light of the fact that (1) the parties jointly waived the nine-month statutory deadline for resolving arbitration proceedings under the Act; (2) the Joint Petitioners agreed to implement the *TRO* rulings in the new, arbitrated agreement, *see* Joint Petitioners' Motion for Emergency Relief, Docket No. 2004-00044 at ¶ 2; (3) the Joint Petitioners' current agreement has not been amended to reflect the TRO, even for those rights that were not impacted by subsequent court or FCC decisions, (4) the hearing of the Generic Proceeding will take place October 10-12, 2005; and (5) BellSouth has sought, via its Summary Judgment Motion, resolution of the majority of the *TRO Arbitration Issues* prior to the hearing.

Of course, the Joint Petitioners do not claim to be prejudiced by the fact that they have agreed to move arbitration issues impacted by the *TRRO* to the Generic Proceeding for consideration and resolution, because those issues are primarily beneficial to BellSouth. In effect, the Joint Petitioners' Opposition attempts to obtain the benefits of the *TRO* prior to implementing the less-beneficial components of the *TRRO*, all at the expense of other CLECs. The Commission should reject such gamesmanship.

CONCLUSION

For the foregoing reasons and also for the reasons set forth in BellSouth's post-hearing brief, BellSouth respectfully requests the Commission move the *TRRO Arbitration Issues* to the Generic Proceeding for consideration and resolution. In the alternative, BellSouth respectfully requests the Commission to defer ruling on these issues until the Commission decides the same issues in the Generic Proceeding.

Respectfully submitted,

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588366

EXHIBIT
A

KMC / NEWSOUTH / NUVOX / XSPEDIUS - BELLSOUTH ARBITRATION
JOINT PETITIONERS' ISSUES MATRIX[1]

Revised for filing May 13, 2005

Kentucky Public Service Commission Docket No. 2004-0044

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
			GT&Cs (MAIN)		
1	G-1	1.6	*This issue has been resolved.*		
2	G-2	1.7	*How should "End User" be defined?*	"End user" should be defined as the "customer of a Party."	The Joint Petitioners should not be able to use a definition of "End User" that allows them to obtain UNEs in a unlawful manner. BellSouth has offered three definitions that address BellSouth's concerns as well as insuring the Joint Petitioners that they will be able to obtain UNEs in compliance with the law: ***End User**, as used in this Interconnection Agreement, means the retail customer of a Telecommunications Service, excluding ISPs/ESPs, and does not include Telecommunications carriers such as CLECs, ICOs and IXCs.* This definition is intended to distinguish between the customers that the industry typically

[1] KMC, NewSouth, NuVox and Xspedius are jointly arbitrating all issues raised in this arbitration proceeding.

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					considers to be End Users, i.e. the retail customer that picks the phone up and uses it to make or receive calls, and a carrier that is the wholesale customer of a telecommunications carrier, e.g., for transport services. ***Customer**, as used in this Interconnection Agreement, means the wholesale customer of a Telecommunications Service that may be an ISP/ESP, CLEC, ICO or IXC.* This definition is used in situations where the provision of a service is to a carrier, such as an IXC or another CLEC. An example would be in the provision of EELs. The FCC expressly stated that the EEL eligibility criteria apply whether the CLEC is using the service for the provision of retail services (i.e., to a traditional End User) or wholesale services (e.g., where a CLEC purchases an EEL, terminating to an End User customer premises, and sells that EEL on a wholesale basis to another carrier that will then provide the service to the End User). ***end user**, as used in this Interconnection Agreement, means the End User or any other retail customer of a Telecommunications Service, including*

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					ISPs/ESPs, CLECs, ICOs and IXCs, that are provided the retail Telecommunications Service for the exclusive use of the personnel employed by ISPs/ESPs, CLECs, ICOs and IXCs, such as the administrative business lines used by the ISPs/ESPs, CLECs, ICOs and IXCs at their business locations, where such ISPs/ESPs, CLECs, ICOs and IXCs are treated as End Users. This definition addresses circumstances where a carrier, such as an IXC, is actually an End User in the traditional sense of the word.
3	G-3	10.2	***This issue has been resolved.***		
4	G-4	10.4.1	*What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?*	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.	The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed
5	G-5	10.4.2	***Joint Petitioners' Issue Statement:*** *To the extent that a Party does not or is unable to*	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	If a CLEC elects not to limit its liability to its customers in accordance with industry norms, the CLEC should bear the risk of loss arising from that business decision. The purpose of this

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
			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? ***BellSouth Issue Statement:*** *If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?*	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 customer 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.	provision is to put BellSouth in the same position it would be in if the customer were a BellSouth customer rather than a Joint Petitioner customer. This is because BellSouth is unable to limit its liability to the Joint Petitioner's customer as it would for its own customer and therefore needs the level of protection from the Joint Petitioners in the event the Joint Petitioners choose to deviate from standard industry practices.
6	G-6	10.4.4	***Joint Petitioners' Issue Statement:*** *Should the Agreement expressly state that liability for claims or suits for damages incurred by*	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 of BellSouth's performance of its obligations under the Agreement, including its	The types of damages that constitute and who is entitled to recover (like the Joint Petitioners' end users) indirect, incidental or consequential damages is a matter of state law and should not be dictated by a party to an agreement. Further, the Joint Petitioners should not

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
			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? ***BellSouth Issue Statement:*** *How should indirect, incidental or consequential damages be defined for purposes of the Agreement?*	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.	be allowed to use this agreement to preserve or carve out certain rights their customers may have against BellSouth. In any event, the Joint Petitioners concede that their proposed language is of no force and effect. Based on this admission, there is no reason to include their proposed language in the agreement.
7	G-7	10.5	*What should the indemnification obligations of the parties be under this Agreement?*	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 Party providing services should be indemnified, defended and held harmless by the Party receiving services against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the end user or Customer of the Party receiving services arising from such

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				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.	company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement. This indemnification obligation shall not apply the extent any claims, loss, or damage is caused by the providing Party's gross negligence or willful misconduct.
8	G-8	11.1	***This issue has been resolved.***		
9	G-9	13.1	*Should a court of law be included in the venues available for initial dispute resolution for disputes relating to the interpretation or implementation of the Interconnection Agreement?*	No legitimate dispute resolution venue should be foreclosed to the Parties and either Party should be able to petition the Commission, the FCC, or a court of competent jurisdiction for resolution of a dispute.	This Commission or the FCC should resolve disputes between the parties for matters that are within the Commission's or the FCC's expertise. For matters that lie outside such expertise, the parties should be able to bring disputes to a court of law.
10	G-10	17.4	***This issue has been resolved.***		
11	G-11	19, 19.1	***This issue has been resolved.***		
12	G-12	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?*	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	BellSouth's proposed language acknowledges an underlying obligation to provide services in accordance with applicable rules, regulations, etc. and that the parties have negotiated what those obligations are. However, in the unlikely event that an issue arises in the future where the parties dispute whether

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				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.	there is an obligation regarding substantive telecommunications law that has or has not been included in the agreement, and the parties further dispute whether they had or had not negotiated their obligations with respect to that law, then the parties should attempt to resolve the dispute by amending the agreement to define and include such obligation. In the event that the parties cannot agree on what the obligation is, or whether such obligation exists under the law, then the Commission should resolve that dispute. In the event the Commission finds that at an obligation exists that was not previously included in the interconnection agreement, the parties should then amend the agreement *prospectively* to include such an obligation. To require retroactive compliance in such circumstances would be inappropriate. BellSouth is not attempting to avoid its obligations under the law; it is simply trying to ensure that its obligations are sufficiently defined so that it can comply with them and can expect compliance.
13	G-13	32.3	***This issue has been resolved.***		

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14	G-14	34.2	***This issue has been resolved.***		
15	G-15	45.2	***This issue has been resolved.***		
16	G-16	45.3	***This issue has been resolved.***		
RESALE (ATTACHMENT 1)					
17	1-1	3.19	***This issue has been resolved***		
18	1-2	11.6.6	***This issue has been resolved.***		
NETWORK ELEMENTS (ATTACHMENT 2)					
19	2-1	1.1	***This issue has been resolved.***		
20	2-2	1.2	***This issue has been resolved.***		
21	2-3	1.4.2	***This issue has been resolved.***		
22	2-4	1.4.3	***This issue has been resolved.***		
23	2-5	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?*	In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, including any transition plan set forth therein, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other pursuant to Attachment 2. There should be no service order, labor, disconnection or other nonrecurring charges associated with the transition of section 251	***BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding. BellSouth also reserves the right to modify its position as it has yet to incorporate the findings from the TRRO into its positions.*** At the conclusion of the Transition Period, in the absence of an effective FCC ruling that Mass Market Switching,

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				UNEs to other services. *This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's Generic Proceeding (APSC Docket No. 29543), provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law stemming from USTA II and its progeny into their new arbitrated Agreements.*	DS1, or equivalent, and higher capacity loops, including dark fiber loops (collectively "Enterprise Market Loops"), and DS1, or equivalent, and higher capacity dedicated transport, including dark fiber transport (collectively "High Capacity Transport"), or any subset thereof (individually or collectively referred to herein as the "Eliminated Elements") are subject to unbundling, the CLEC must transition Eliminated Elements to either Resale, tariffed services, or services offered pursuant to a separate agreement negotiated between the Parties (collectively "Comparable Services") or must disconnect such Eliminated Elements, as set forth below. <u>Eliminated Elements including Mass Market Switching Function ("Switching Eliminated Elements").</u> In the event that the CLEC has not entered into a separate agreement for the provision of Mass Market Switching or services that include Mass Market Switching, the CLEC will submit orders to either disconnect Switching Eliminated Elements or convert such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period. If the CLEC submits

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					orders to transition such Switching Eliminated Elements to Resale within thirty (30) days of the last day of the Transition Period, applicable recurring and nonrecurring charges shall apply as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of the Agreement. If the CLEC fails to submit orders within thirty (30) days of the last day of the Transition Period, BellSouth shall transition such Switching Eliminated Elements to Resale, and the CLEC shall pay the applicable nonrecurring and recurring charges as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in the resale attachment of this Agreement. In such case, the CLEC shall reimburse BellSouth for labor incurred in identifying the lines that must be converted and processing such conversions. If no equivalent Resale service exists, then BellSouth may disconnect such Switching Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In all cases, until Switching Eliminated Elements have been converted to Comparable Services or disconnected,

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					the applicable recurring and nonrecurring rates for Switching Eliminated Elements during the Transition Period shall apply as set forth in the Agreement. Applicable nonrecurring disconnect charges may apply for disconnection of service or conversion to Comparable Services. Other Eliminated Elements. Upon the end of the Transition Period, the CLEC must transition the Eliminated Elements other than Switching Eliminated Elements ("Other Eliminated Elements") to Comparable Services. Unless the Parties agree otherwise, Other Eliminated Elements shall be handled as follows. the CLEC will identify and submit orders to either disconnect Other Eliminated Elements or transition them to Comparable Services within thirty (30) days of the last day of the Transition Period. Rates, terms and conditions for Comparable Services shall apply per the applicable tariff for such Comparable Services as of the date the order is completed. Where the CLEC requests to transition a minimum of fifteen (15) circuits per state, the CLEC may submit orders via a

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					spreadsheet process and such orders will be project managed. In all other cases, the CLEC must submit such orders pursuant to the local service request/access service request (LSR/ASR) process, dependent on the Comparable Service elected. For such transitions, the non-recurring and recurring charges shall be those set forth in BellSouth's FCC#1 tariff, or as otherwise agreed in a separately negotiated agreement. Until such time as the Other Eliminated Elements are transitioned to such Comparable Services, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in the Agreement. If the CLEC fails to identify and submit orders for any Other Eliminated Elements within thirty (30) days of the last day of the Transition Period, BellSouth may transition such Other Eliminated Elements to Comparable Services. The rates, terms and conditions for such Comparable Services shall apply as of the date following the end of the Transition

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					Period. If no Comparable Services exist, then BellSouth may disconnect such Other Eliminated Elements if the CLEC does not submit such orders within thirty (30) days of the last day of the Transition Period. In such case the CLEC shall reimburse BellSouth for labor incurred in identifying such Other Eliminated Elements and processing such orders and the CLEC shall pay the applicable disconnect charges set forth in this Agreement. Until such time as the Other Eliminated Elements are disconnected pursuant to this Agreement, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement. In the event that the Interim Rules are vacated by a court of competent jurisdiction, the CLEC should immediately transition Mass Market Switching, Enterprise Market Loops and High Capacity Transport as set forth above, applied from the effective date of such vacatur, without regard to the Interim Period or Transition Period.

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					In the event that any Network Element, other than those addressed above, is no longer required to be offered by BellSouth pursuant to Section 251 of the Act, the CLEC shall immediately transition such elements as set forth above, applied from the effective date of the order eliminating such obligation.
24	2-6	1.5.1	***This issue has been resolved.***		
25	2-7	1.6.1	***This issue has been resolved.***		
26	2-8	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?*	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. By that we mean that BellSouth should be required to permit commingling and should be required to perform the functions necessary to commingle a Section 251 UNE or UNE combination with any wholesale service, including those obtained from BellSouth pursuant to any method other than Section 251 unbundling (this would include Section 271 unbundling).	*Because this issue is similar if not identical to issues that will be addressed to the Generic Change of Law Proceeding, the Commission should move this issue to the Generic Proceeding for consideration and resolution.* Subject to this request, BellSouth's position on this issue is as follows: No, consistent with the FCC's errata to the Triennial Review Order, there is no requirement to commingle UNEs or Combinations of UNEs with services, network elements or other offerings made available only under Section 271

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					of the Act.
27	2-9	1.8.3	***This issue has been resolved.***		
28	2-10	1.9.4	***This issue has been resolved.***		
29	2-11	2.1.1	***This issue has been resolved.***		
30	2-12	2.1.1.1	***This issue has been resolved.***		
31	2-13	2.1.1.2	***This issue has been resolved.***		
32	2-14	2.1.2, 2.1.2.1, 2.1.2.2	***This issue has been resolved.***		
33	2-15	2.2.3	***This issue has been resolved.***		
34	2-16	2.3.3	***This issue has been resolved.***		
35	2-17	2.4.3, 2.4.4	***This issue has been resolved.***		
36	2-18	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?*	(A) Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). (B) BellSouth should perform line conditioning in accordance with FCC Rule 47 C.F.R. 51.319(a)(1)(iii).	*Because this issue is similar if not identical to issues that will be addressed to the Generic Change of Law Proceeding, the Commission should move this issue to the Generic Proceeding for consideration and resolution.* Subject to this request, BellSouth's position on this issue is as follows: (A) Line Conditioning is defined as

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers. (B) BellSouth should perform line conditioning functions as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a routine network modification that BellSouth regularly undertakes to provide xDSL to its own customers.
37	2-19	2.12.2	*Should the Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?*	No. There should not be any 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.	*Because this issue is similar if not identical to issues that will be addressed to the Generic Change of Law Proceeding, the Commission should move this issue to the Generic Proceeding for consideration and resolution.* Subject to this request, BellSouth's position on this issue is as follows: Yes, current industry technical standards require the placement of load coils on copper loops greater than 18,000 feet in length to support voice service and BellSouth does not remove them for BellSouth retail end users on copper loops of over 18,000 feet in length; therefore, such a modification would not constitute a routine network modification and is not required by the

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					FCC.
38	2-20	2.12.3, 2.12.4	*Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?*	Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap should be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification should be performed at no additional charge to the CLEC. Line Conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2.	*Because this issue is similar if not identical to issues that will be addressed to the Generic Change of Law Proceeding, the Commission should move this issue to the Generic Proceeding for consideration and resolution.* Subject to this request, BellSouth's position on this issue is as follows: For any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of bridged tap that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet will be performed at TELRIC. CLEC may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
					agreed to by the Parties. BellSouth is only required to perform line conditioning that it performs for its own xDSL customers and is not required to create a superior network for CLECs. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
39	2-21	2.12.6	***This issue has been resolved.***		
40	2-22	2.14.3.1.1	***This issue has been resolved.***		
41	2-23	2.16.2.3.2	***This issue has been resolved.***		
42	2-24	2.17.3.5	***This issue has been resolved.***		
43	2-25	2.18.1.4	***This issue has been resolved.***		
44	2-26	3.6.5	***This issue has been resolved.***		
45	2-27	3.10.3	***This issue has been resolved.***		
46	2-28	3.10.4	***This issue has been resolved.***		

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
47	2-29	4.2.2	***This issue has been resolved.***		
48	2-30	4.5.5	***This issue has been resolved.***		
49	2-31	5.2.4	***This issue has been resolved.***		
50	2-32	5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.4, 5.2.5.2.7	***This issue has been resolved.***		
51	2-33	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?*	(B) In order to invoke its limited right to audit CLEC's records to verify compliance with the high capacity EEL service eligibility criteria, BellSouth should send a Notice of Audit to the CLECs, identifying the particular circuits for which BellSouth alleges non-compliance and demonstrating the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to the CLECs with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit.	*Because this issue is similar if not identical to issues that will be addressed to the Generic Change of Law Proceeding, the Commission should move this issue to the Generic Proceeding for consideration and resolution.* Subject to this request, BellSouth's position on this issue is as follows: (B) BellSouth will provide notice to CLECs stating the cause upon which BellSouth rests its allegations of noncompliance with the service eligibility criteria at least thirty (30) days prior to the date of the audit. Contrary to the Joint Petitioners' position, the TRO does not obligate BellSouth to identify the circuits or provide supporting documentation that

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				(C) The audit should be conducted by a third party independent auditor mutually agreed upon by the Parties.	support the cause for the audit or limit its audit right to only those circuits that are identified in a notice. (C) The audit shall be conducted by an independent auditor, and the auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA). Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment. The TRO does not require mutual agreement on the selection of an auditor and any concerns the Joint Petitioners may have about the independence of an auditor should be alleviated by BellSouth's agreement that the audit will be performed in accordance with AICPA standards.
52	2-34	5.2.6.2.3	***This issue has been resolved.***		
53	2-35	6.1.1	***This issue has been resolved.***		
54	2-36	6.1.1.1	***This issue has been resolved.***		

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
55	2-37	6.4.2	*This issue has been resolved.*		
56	2-38	7.2, 7.3	*This issue has been resolved.*		
57	2-39	7.4	*This issue has been resolved*		
58	2-40	9.3.5	*This issue has been resolved.*		
59	2-41	14.1	*This issue has been resolved.*		
INTERCONNECTION (ATTACHMENT 3)					
60	3-1	3.3.4 (KMC, NSC, NVX) 3.3.3 XSP)	*This issue has been resolved.*		
61	3-2	9.6 (KMC), 9.6 (NSC), 9.6 (NVX, XSP)	*This issue has been resolved.*		
62	3-3	10.7.4 (NSC), 10.7.4 (NVX), 10.12.4 (XSP)	*This issue has been resolved.*		
63	3-4	10.8.6 (NSC),	*This issue has been resolved*		

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
		10.8.6 (NVX), 10.13.5 (XSP)			
64	3-5	10.7.4.2 (KMC), 10.5.5.2 (NSC), 10.5.6.2 (NVX) 10.10.6 (XSP)	***This issue has been resolved.***		
65	3-6	10.10. 1 (KMC), 10.8.1 (NSC/ NVX) 10.13 (XSP)	*Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?*	No, BellSouth should not be permitted to impose upon Joint Petitioners a Transit Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC-based additive charge which exploits BellSouth's market power and is discriminatory.	Yes, BellSouth is not obligated to provide the transit function and the CLEC has the right pursuant to the Act to request direct interconnection to other carriers. Additionally, BellSouth incurs costs beyond those for which the Commission ordered rates were designed to address, such as the costs of sending records to the CLECs identifying the originating carrier. BellSouth does not charge the CLEC for these records and does not recover those costs in any other form. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
66	3-7	10.1 (KMC),10 .1 (XSP)	*This issue has been resolved.*		
67	3-8	10.2, 10.3 (XSP)	*This issue has been resolved.*		
68	3-9	2.1.12 (XSP)	*This issue has been resolved.*		
69	3-10	3.2 (XSP), Ex. A (XSP)	*This issue has been resolved.*		
70	3-11	3.3.1, 3.3.2, 3.4.5, 10.10.2 (XSP)	*This issue has been resolved.*		
71	3-12	4.5 (XSP)	*This issue has been resolved.*		
72	3-13	4.6 (XSP)	*This issue has been resolved.*		
73	3-14	10.10.4, 10.10.5, 10.10.6, 10.10.7 (XSP)	*This issue has been resolved.*		
COLLOCATION (ATTACHMENT 4)					
74	4-1	3.9	*This issue has been resolved.*		
75	4-2	5.21.1, 5.21.2	*This issue has been resolved.*		
76	4-3	8.1, 8.6	*This issue has been resolved.*		

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
77	4-4	8.4	***This issue has been resolved.***		
78	4-5	8.6	***This issue has been resolved.***		
79	4-6	8.11, 8.11.1, 8.11.2	***This issue has been resolved.***		
80	4-7	9.1.1	***This issue has been resolved.***		
81	4-8	9.1.2, 9.1.3	***This issue has been resolved.***		
82	4-9	9.3	***This issue has been resolved.***		
83	4-10	13.6	***This issue has been resolved.***		
ORDERING (ATTACHMENT 6)					
84	6-1	2.5.1	***This issue has been resolved.***		
85	6-2	2.5.5	***This issue has been resolved.***		
86	6-3	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?*	(B) 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	(B) This issue addresses when a party is in violation of federal law as well as the Interconnection Agreement by obtaining unauthorized access to CSR information. In such an instance and when the offending party cannot prove that the violation has been cured, the alleging party should have the right to suspend and terminate service after notice sent via e-mail and an explicit cure period. If there is a legitimate

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				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.	dispute as to the allegation of unauthorized access to CSR information, the alleging party should seek expedited resolution of the dispute at the Commission before any suspension or termination of service.
87	6-4	2.6	***This issue has been resolved.***		
88	6-5	2.6.5	*What rate should apply for Service Date Advancement (a/k/a service expedites)?*	Rates for Service Date Advancement (a/k/a service expedites) of UNEs, interconnection or collocation must be set consistent with federal TELRIC pricing rules.	BellSouth is not required to provide expedited service pursuant to The Act. If BellSouth elects to offer expedite capability as an enhancement to a CLEC, BellSouth's tariffed rates for service date advancement should apply. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
89	6-6	2.6.25	***This issue has been resolved.***		
90	6-7	2.6.26	***This issue has been resolved.***		

Issue #	Item No.	§	Unresolved Issue	Joint Petitioners' Position	BellSouth Position
91	6-8	2.7.10.4	***This issue has been resolved.***		
92	6-9	2.9.1	***This issue has been resolved.***		
93	6-10	3.1.1	***This issue has been resolved.***		
94	6-11	3.1.2, 3.1.2.1	***This issue has been resolved.***	.	
BILLING (ATTACHMENT 7)					
95	7-1	1.1.3	***This issue has been resolved.***		
96	7-2	1.2.2	***This issue has been resolved***		
97	7-3	1.4	*When should payment of charges for service be due?*	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.	Payment for services should be due on or before the next bill date (Payment Due Date) in immediately available funds.
98	7-4	1.6	***This issue has been resolved.***		
99	7-5	1.7.1	***This issue has been resolved.***		
100	7-6	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*	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	Yes, if CLEC receives a notice of suspension or termination from BellSouth as a result of CLEC's failure to pay timely, CLEC should be required to pay all amounts that are past due as of the date of the pending suspension or

Issue #	Item No.	§	Unresolved Issue	Joint Petitioners' Position	BellSouth Position
			avoid suspension or termination?	suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amounts past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors.	termination action. To remove any question as to what additional amounts have become past due, BellSouth has offered to advise the CLEC of such amount upon request.
101	7-7	1.8.3	*How many months of billing should be used to determine the maximum amount of the deposit?*	The maximum amount of a deposit should not exceed two months' estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance. Alternatively, the maximum deposit amount should not exceed one month's billing for services billed in advance and two months' billing for services billed in arrears. This maximum deposit is reasonable and has been agreed to by BellSouth in other interconnection agreements.	The maximum amount of deposit should be the average of two (2) months of actual billing for existing end users or Customers or estimated billing for new end users or Customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users and Customers.

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
102	7-8	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?*	Yes. The amount of security due from an existing CLEC should be reduced by amounts due to CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7 of the Agreement. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor.	No, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC. BellSouth is willing to agree that, in the event that a deposit or additional deposit is requested of the CLEC, such deposit request shall be reduced by an amount equal to the undisputed past due amount, if any, that BellSouth owes the CLEC for payments pursuant to Attachment 3 of the Interconnection Agreement at the time of the request by BellSouth for a deposit.
103	7-9	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?*	No. BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth **only** in cases where: (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help".	Yes, thirty (30) calendar days is a commercially reasonable time period within which CLEC should have met its fiscal responsibilities.
104	7-10	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*	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	If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the Commission for resolution of the dispute and BellSouth would

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
			reasonable deposit?	resolution of such dispute.	cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that CLEC posts a payment bond for half of the amount of the requested deposit during the pendency of the proceeding.
105	7-11	1.8.9	***This issue has been resolved.***		
106	7-12	1.9.1	***This issue has been resolved.***		
BFR/NBR (ATTACHMENT 11)					
107	11-1	1.5, 1.8.1, 1.9, 1.10	***This issue has been resolved.***		
SUPPLEMENTAL ISSUES					
108	S-1		*How should the Final FCC Unbundling Rules[2] be incorporated into the Agreement?*	The Agreement should not automatically incorporate the "Final FCC Unbundling Rules." The Parties should negotiate contract language that reflects an agreement to abide by those rules, or to other standards, if they mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature	*BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding. BellSouth also reserves the right to modify its position as it has yet to incorporate the findings from the TRRO into its positions.* Subject to this request, BellSouth's position is that the Agreement should automatically incorporate the FCC Final Unbundling Rules immediately upon those rules becoming effective.

[2] FINAL FCC UNBUNDLING RULES - is defined as an effective order of the FCC adopted pursuant to the Notice of Proposed Rulemaking, WC Docket No. 04-313, released August 20, 2004, and effective September 13, 2004. That Order is the Triennial Review Remand Order ("TRRO") released by the FCC on February 4, 2005 and effective March 11, 2005.

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				calendar days after the last signature executing the Agreement. *This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's Generic Proceeding (APSC Docket No. 29543), provided provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law stemming from USTA II and its progeny into their new arbitrated Agreements.*	
109	S-2		*(A) Should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? If so, how?* *(B) Should any intervening State Commission Order relating to the unbundling obligations, if any, be incorporated into the Agreement? If so, how?*	(A) The Agreement should not automatically incorporate an "intervening FCC order" adopted in CC Docket 01-338 or WC Docket 04-313. After release of an intervening FCC order, the Parties should 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 Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement.	*Because the FCC's Triennial Review Order on Remand (FCC 04-290) became effective as of March 11, 2005, this issue is moot.* (A) If the FCC enters an intervening order prior to issuing the Final FCC Unbundling Rules, the requirements of the intervening order should take precedence over rates, terms, and conditions in the Agreement that are inconsistent with the rates, terms, and conditions set forth in the intervening order. In order to effectuate this, the Agreement should automatically

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				(B) The Agreement should not automatically incorporate an intervening State Commission order. After release of an intervening State Commission order, the Parties should 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 Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. *Because the FCC's Triennial Review Order on Remand (FCC 04-290) became effective as released, this issue is moot as of March 11, 2005, the effective date of that order.*	incorporate any intervening order on the effective date of such order. (B) State commissions are preempted from making any changes to the FCC findings in FCC 04-179, except for the issuance of an order increasing rates for frozen elements, as set forth in FCC 04-179. Consequently, any state commission order (other than one increasing rates for the frozen elements) should not be incorporated into the Agreement. In addition, subsection (B) is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could be raised as a supplemental issue.
110	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?*	In the event that FCC 04-179 is vacated or modified, the Agreement should not automatically incorporate the court order. Upon release of such a court order, the Parties should negotiate contract language that reflects an agreement to abide by the court order (to the extent the court order effectuates a change in law with practical consequences), or to other standards, if they	*Because the FCC's Triennial Review Order on Remand (FCC 04-290) became effective as of March 11, 2005, this issue is moot.* In the event a court of competent jurisdiction vacates all or part of FCC 04-179, there will be no valid impairment findings with respect to the

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				mutually agree to do so. Any issues which the Parties are unable to resolve should be resolved through Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature executing the Agreement. *Because the FCC's Triennial Review Order on Remand (FCC 04-290) became effective as released, this issue is moot as of March 11, 2005, the effective date of that order.*	vacated elements. Thus, the Agreement should automatically incorporate the state of the law on the date the order or decision becomes effective.
111	S-4		*What post Interim Period transition plan should be incorporated into the Agreement?*	The "Transition Period" or transition 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. The transition Period proposed was not the transition plan adopted in the TRRO. With the Final FCC Unbundling Rules now effective, the Parties should 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 Commission arbitration. The effective date of the resulting rates, terms and conditions should be the same as all others – ten (10) calendar days after the last signature	*BellSouth submits that this issue is moot. To the extent a question exists to what Transition Period should govern after March 11, 2005, BellSouth submits that the Transition Period set forth in the TRRO should be automatically incorporated into the agreement.* FCC 04-179 states that, in the absence of Final FCC Unbundling Rules that modify the requirements of the Transition Period, the Transition Period specified in FCC 04-179 will take effect at the end of the Interim Period. Therefore, the Agreement should automatically incorporate the FCC's Transition Period once it becomes effective. In the event the Final FCC's Unbundling Rules or an intervening order of the FCC modifies the

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				executing the Agreement. *This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's Generic Proceeding (APSC Docket No. 29543), provided provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law stemming from USTA II and its progeny into their new arbitrated Agreements.*	requirements of the FCC's Transition Period, such modified requirements should take effect in accordance with BellSouth's position on Issues 1 and 2 above.
112	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?*	*(A)* 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. (B) 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	*Because the FCC's Triennial Review Order on Remand (FCC 04-290) became effective as of March 11, 2005, this issue is moot.* The rates, terms and conditions for the following defined elements were frozen: **Switching** -- Mass Market Switching and all elements that must be made available when switching is made available. Mass Market Switching is unbundled access to local switching except when the CLEC: (1) serves an End User with four (4) or more voice-

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				not with respect to enterprise market switching. It also should be made clear that the loop provisions 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. *Because the FCC's Triennial Review Order on Remand (FCC 04-290) became effective as released, this issue is moot as of March 11, 2005, the effective date of that order.*	grade (DSO) equivalents or lines served by the ILEC in Density Zone 1 of the top 50 MSAs; or (2) serves an End User with a DS1 or higher capacity service or UNE Loop. **Enterprise Market Loops** -- those transmission facilities between a distribution frame (or its equivalent) in the ILEC's central office and the loop demarcation point at an end user customer premises at a DS1 or higher level capacity, including dark fiber loops. **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.
113	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?*	(A) Yes. BellSouth is obligated to provide DS1, DS3 and dark fiber loop UNEs. *USTA II* did not vacate the FCC's rules which require BellSouth to make available DS1, DS3 and dark fiber loop UNEs. *USTA II* also did not eliminate section 251, CLEC impairment, section 271 or the Commission's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber loop UNEs.	*BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding. BellSouth also reserves the right to modify its position as it has yet to incorporate the findings from the TRRO into its positions.* Subject to this request and BellSouth's objection to the inclusion of the issue, the TRRO established BellSouth's obligations to provide high capacity loops and dark fiber. Pursuant to the Act, there can be no obligation to

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
				(B) BellSouth is obligated to provide access to DS1, DS3 and dark fiber loop UNEs at TELRIC-compliant rates approved by the Commission. DS1, DS3 and dark fiber loops unbundled on other than a section 251 statutory basis should be made available at TELRIC-compliant rates approved by the Commission until such time as it is determined that another pricing standard applies and the Commission establishes rates pursuant to that standard. *This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's Generic Proceeding (APSC Docket No. 29543), provided provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law stemming from USTA II and its progeny into their new arbitrated Agreements.*	unbundle any element unless the FCC has found impairment. Furthermore, the Joint Petitioners are attempting to expand the scope this issue to address BellSouth's Section 271 obligation or state requirements, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could be raised as a supplemental issue.

ISSUE #	ITEM NO.	§	UNRESOLVED ISSUE	JOINT PETITIONERS' POSITION	BELLSOUTH POSITION
114	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?*	(A) Yes. BellSouth is obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport. *USTA II* did not eliminate section 251, CLEC impairment, section 271 or the Commission's jurisdiction under federal or state law to require BellSouth to provide unbundled access to DS1, DS3 and dark fiber transport. (B) Pursuant to section 251, BellSouth is obligated to provide access to DS1, DS3 and dark fiber transport UNEs at TELRIC-compliant rates approved by the Commission. DS1, DS3 and dark fiber transport unbundled on other than a section 251 statutory basis should be made available at TELRIC-compliant rates approved by the Commission until such time as it is determined that another pricing standard applies and the Commission establishes rates pursuant to that standard. *This is an issue which Joint Petitioners are agreeable to having resolved in the Commission's Generic Proceeding (APSC Docket No. 29543), provided provided that adequate procedures are established for translating the results of the generic resolution of these issues into compliant contract language that gets incorporated into the arbitrated Agreement. Joint*	*BellSouth submits that this issue should be resolved in the Change of Law Generic Proceeding. BellSouth also reserves the right to modify its position as it has yet to incorporate the findings from the TRRO into its positions.* Subject to this request and BellSouth's objection to the inclusion of the issue, the TRRO established BellSouth's obligations to provide high capacity loops and dark fiber. Pursuant to the Act, there can be no obligation to unbundle any element unless the FCC has found impairment. Furthermore, the Joint Petitioners are attempting to expand the scope this issue to address BellSouth's Section 271 obligation or state requirements, which his inappropriate and outside the jurisdiction of the Commission. Fundamentally, a Section 252 arbitration proceeding is not the proper forum to address these arguments and the Commission should reject them. Finally, this issue is inappropriate for arbitration because it exceeds the scope of the parties' agreement regarding what could be raised as a supplemental issue.

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				Petitioners and BellSouth have agreed that they will not be amending their existing agreements but will incorporate changes of law stemming from USTA II and its progeny into their new arbitrated Agreements.	
115	S-8		***This issue has been resolved.***		

the contract rather than BellSouth's?

A. The TRO, Triennial Review Order, requires that BellSouth have a concern before it conducts an audit of the CLEC's use of circuits. It is important because, without having to establish a concern and enforcing the limited right to use these audits, BellSouth would be free to come to NuVox or go to Xspedius or to KMC and review their business records whenever they wanted. That's very intrusive. They are one of our - they are our biggest competitor. They are also one of the company's biggest vendors; that is, we purchase a significant amount of services from them. So we're competing with them and purchasing services from them, and we don't believe that it is appropriate, except in limited circumstances where a concern has been demonstrated, for BellSouth to be able to come in, review NuVox's business records, review records related to our relationship with and the terms that we provide service to our customers. So it is a competitive issue to a large degree.

Q. Okay. In the sheets that I'm looking at, the Joint Petitioners' issues matrix, BellSouth has, at Issue 51, that the issue - they're proposing it be addressed in the generic change of law proceeding. That was not one of the issues listed in the joint motion. Is this

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matter common to all carriers, and do you think it would be better addressed in the generic proceeding, or . . .

A. It would be common to carriers that use EEL circuits. I'm not familiar with the business plans of most other carriers, so it may be appropriate for the generic. I'm not certain about that.

MR. HEITMANN:

Ms. Dougherty, if I could interject at this point, BellSouth has, in its testimony and in this matrix, asserted about certain issues it would like to see moved to the generic. It is . . .

MR. MEZA:

I'm sorry, Mr. Chairman. I believe this is - I don't know what Mr. Heitmann is doing.

CHAIRMAN GOSS:

Yeah. I mean, we're in the middle of cross examination here, and I think this is something that the witness - it is something the witness wishes to explain. Certainly, that's appropriate. I'm not sure that we need to supplement the witness's testimony with a statement from counsel. So why don't we proceed.

Q. It's the Joint Petitioners' viewpoint that this audit, should it occur, would be conducted by a third party

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 8th day of June 2005.

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