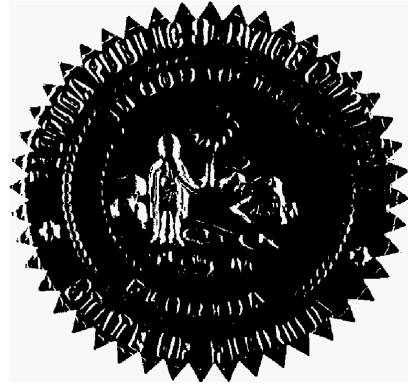


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040130-TP

In the Matter of

JOINT PETITION BY NEWSOUTH
COMMUNICATIONS CORP., NUVOX
COMMUNICATIONS, INC., KMC TELECOM
V, INC., KMC TELECOM III LLC, AND
XSPEDIUS COMMUNICATIONS, LLC, ON
BEHALF OF ITS OPERATING SUBSIDIARIES
XSPEDIUS MANAGEMENT CO. SWITCHED
SERVICES, LLC, AND XSPEDIUS MANAGEMENT
CO. OF JACKSONVILLE, LLC, FOR
ARBITRATION OF CERTAIN ISSUES ARISING
IN NEGOTIATION OF INTERCONNECTION
AGREEMENT WITH BELLSOUTH
TELECOMMUNICATIONS, INC.



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THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 5

Page 650 through 724

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON
COMMISSIONER LISA POLAK EDGAR

DATE: Wednesday, April 27, 2005

TIME: Commenced at 10:00 a.m.

PLACE: Betty Easley Conference Center
4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
Official FPSC Hearings Reporter
(850) 576-9597

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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FPSC COMMISSION CLERK

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I N D E X
WITNESSES

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NUMBER:

ID.

ADMTD.

24 Line Conditioning Exhibits

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P R O C E E D I N G S

(Transcript continues in sequence from Volume 4.)

MR. MEZA: Thank you, Mr. Chairman. BellSouth calls Eric Fogle to the stand.

COMMISSIONER BRADLEY: You said Eric Fogle?

MR. MEZA: Yes, sir.

COMMISSIONER BRADLEY: Has he been sworn in?

MR. MEZA: Yes, sir.

COMMISSIONER BRADLEY: Mr. Fogle, just for the record, you have been sworn in.

THE WITNESS: Yes, sir.

COMMISSIONER BRADLEY: BellSouth will attest to that; they have, but I asked the question and I just wanted to make sure just to put it on, put it on the record.

ERIC FOGLE

was called as a witness on behalf of BellSouth Telecommunications, Inc., and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEZA:

Q Mr. Fogle, can you please provide your name and address for the record.

A My name is Eric Fogle. My business address is 6675 West Peachtree Street in Atlanta, Georgia.

Q By whom are you employed and in what capacity?

1 A I'm employed by BellSouth and I'm a Director in
2 BellSouth's interconnection services organization.

3 Q Did you cause to be filed in this proceeding
4 supplemental direct and rebuttal testimony?

5 A Yes, I did.

6 Q Do you have any corrections to that testimony?

7 A No, I do not.

8 Q If I asked you those questions contained in your
9 testimony today, would your answers be the same?

10 A Yes, they would.

11 Q Do you have any exhibits?

12 A No, I don't believe I do.

13 MR. MEZA: Mr. Chairman, at this time I would like to
14 ask for Mr. Fogle's direct and rebuttal testimony to be entered
15 into the record as if read.

16 COMMISSIONER BRADLEY: Thank you. Without objection,
17 the prefiled testimony of Mr. Fogle is admitted into the record
18 as though read.

19

20

21

22

23

24

25

1 **BELLSOUTH TELECOMMUNICATIONS, INC.**
2 **DIRECT TESTIMONY OF ERIC FOGLE**
3 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
4 **DOCKET NO. 040130-TP**
5 **JANUARY 10, 2005**

6

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

10

11 **A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc.,**
12 **as a Director in BellSouth's Interconnection Operations Organization.**
13 **My business address is 675 West Peachtree Street, Atlanta, Georgia**
14 **30375.**

15

16 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR**
17 **BACKGROUND AND EXPERIENCE.**

18

19 **A. I attended the University of Missouri in Columbia, where I earned a**
20 **Master of Science in Electrical Engineering Degree in 1993 and Emory**
21 **University in Atlanta, where I earned a Master of Business**
22 **Administration degree in 1996. After graduation from the University of**
23 **Missouri in Columbia, I began employment with AT&T as a Network**
24 **Engineer, and joined BellSouth in early 1998 as a Business**
25 **Development Analyst in the Product Commercialization Unit. From July**

1 2000 through May 2003, I led the Wholesale Broadband Marketing
2 group within BellSouth. I assumed my current position in June 2003.
3 First, as a Business Analyst, and then as the Director of the Wholesale
4 Broadband Marketing Group and continuing in my current position, I
5 have been, and continue to be, actively involved in the evolution and
6 growth of BellSouth's network including provisions for accommodating
7 Digital Subscriber Line ("DSL") based services as well as the underlying
8 technology.

9
10 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

11
12 A. The purpose of my testimony is to provide BellSouth's position on
13 Issues 2-18 (Item 36), 2-19 (Item 37), 2-20 (Item 38) and 2-28 (Item
14 46). These issues are summarized in the October 15, 2004 Revised
15 Joint Issues Matrix filed by BellSouth and KMC Telecom V, Inc. & KMC
16 Telecom III LLC ("KMC"), NewSouth Communications Corp.
17 ("NewSouth"), NuVox Communications Corp. ("NuVox"), and Xspedius
18 Companies ("Xspedius") in a Joint Petition for Arbitration filed with the
19 Florida Public Service Commission ("Commission") on February 11,
20 2004. I henceforth refer to these companies as the "Joint Petitioners."

21
22 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

23
24 A. Yes. There are numerous unresolved issues in this arbitration that
25 have underlying legal arguments. Because I am not an attorney, I am

1 not offering a legal opinion on these issues. I respond to these issues
2 purely from a policy or technical perspective. BellSouth's attorneys will
3 address issues requiring legal argument.

4

5 **Item 36; Issue 2-18: (A) How should line conditioning be defined in the**
6 **Agreement? (B) What should BellSouth's obligations be with respect to**
7 **Line Conditioning? (Attachment 2, Section 2.12.1)**

8

9 Q. SUBPART (A) OF ITEM 36 ASKS THE QUESTION "HOW SHOULD
10 LINE CONDITIONING BE DEFINED IN THE AGREEMENT?" WHAT
11 IS BELL SOUTH'S POSITION WITH RESPECT TO ITEM 36(A)?

12

13 A. Line conditioning should be defined as a routine network modification
14 that BellSouth regularly undertakes to provide xDSL services to its own
15 customers. This definition is entirely consistent with the Federal
16 Communications Commission's ("FCC's") finding in Paragraph 643 of
17 the Triennial Review Order ("TRO"), which provides: "Line conditioning
18 is properly seen as a routine network modification that incumbent LECs
19 regularly perform in order to provide xDSL services to their own
20 customers. As noted above, incumbent LECs must make the routine
21 adjustments to unbundled loops to deliver services at parity with how
22 incumbent LECs provision such facilities for themselves."

23

24 BellSouth's proposed language further states that line conditioning may
25 include the removal of any device from a copper loop or copper sub-

1 loop that may diminish the capability of the loop or sub-loop to deliver
2 high-speed switched wireline telecommunications capability, including
3 xDSL service. Such devices include, but are not limited to, load coils,
4 excessive bridged taps, low pass filters, and range extenders.
5 Consistent with the FCC's definition in the *TRO*, BellSouth has
6 proposed this additional language because it routinely removes similar
7 devices from its network in the process of provisioning its own DSL
8 services, and therefore, falls within the FCC's definition of a routine
9 network modification to effect line conditioning.

10

11 Q. CAN YOU BRIEFLY DESCRIBE BRIDGED TAPS AND LOAD COILS
12 THAT ARE USED TO PROVIDE OR IMPROVE VOICE SERVICE, BUT
13 WHICH CAN IMPAIR HIGH SPEED DATA SERVICES SUCH AS
14 XDSL?

15

16 A. Yes. Bridged tap is an engineering technique of extending or tapping a
17 single loop so that it could serve additional customer locations (though
18 the bridged loop may serve only a single one of those customer
19 locations at a given time) and adds flexibility as service arrangements
20 and customer needs change over time. Bridged taps create additional
21 flexibility and increases the efficiency of the BellSouth network. Load
22 coils and low pass filters are inductive devices that improve voice
23 quality, especially on long loops, by reducing high frequency noise
24 (heard by the end-user as static). The same inductor that reduces high
25 frequency noise also interferes with high frequency data signals, such

1 as those used for xDSL service.

2

3 Q. DOES THE FCC SUPPORT BELLSOUTH'S POSITION?

4

5 A. In my opinion, yes. The FCC clearly defines a "routine network
6 modification" in paragraph 632 of the *TRO*. Specifically, the *TRO* states
7 in that paragraph: "By 'routine network modifications' we mean that
8 incumbent LECs must perform those activities that incumbent LECs
9 regularly undertake for their own customers." BellSouth's position and
10 proposed language clearly state that BellSouth will perform line
11 conditioning functions that (1) it regularly undertakes for its own xDSL
12 customers; or (2) additional, non-FCC required line conditioning
13 functions that it performs in limited situations pursuant to agreements
14 with Competitive Local Exchange Carriers ("CLECs") in industry
15 collaboratives. Thus, BellSouth's language is entirely consistent with
16 the FCC's ruling in the *TRO* on this issue, and in some situations
17 exceeds the FCC's requirement for line conditioning.

18

19 Q. WHY IS BELLSOUTH CONCERNED WITH THE JOINT
20 PETITIONERS' PROPOSED LANGUAGE?

21

22 A. The Joint Petitioners' proposed language creates an obligation for
23 BellSouth to perform specific line conditioning functions that BellSouth
24 does not regularly undertake for its own customers. Such an obligation
25 would lead to the development of a superior network for the Joint

1 Petitioners and is clearly not required by the FCC's definition of line
2 conditioning in the *TRO*. It is impossible to square the Joint Petitioners'
3 position with the FCC's findings in the *TRO*.

4

5 Q. SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "WHAT
6 SHOULD BELLSOUTH'S OBLIGATIONS BE WITH RESPECT TO
7 LINE CONDITIONING?" WHAT IS BELLSOUTH'S POSITION ON
8 ITEM 36 SUBPART (B)?

9

10 A. As stated above, BellSouth should perform line conditioning functions
11 as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a
12 routine network modification that BellSouth regularly undertakes to
13 provide xDSL to its own customers. As stated above, the *TRO* clarifies
14 the definition of line conditioning set forth in Rule 51.319(a)(1)(iii) by
15 limiting its application to line conditioning "that incumbent LECs
16 regularly perform in order to provide xDSL services to their own
17 customers." Any line conditioning that the Joint Petitioners desire that
18 is beyond what BellSouth is obligated to provide by the *TRO*, or has
19 voluntarily offered to the Joint Petitioners, is available via BellSouth's
20 Special Construction tariffs on a time and materials basis.

21

22 ***Item 37; Issue 2-19: Should the Agreement contain specific provisions***
23 ***limiting the availability of load coil removal to copper loops of 18,000 feet***
24 ***or less? (Attachment 2, Section 2.12.2)***

25

1 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

2

3 A. It is BellSouth's position that it will perform the same line conditioning
4 functions for CLECs that it performs for its own customers. BellSouth
5 adheres to current industry technical standards that require the
6 placement of load coils on copper loops greater than 18,000 feet in
7 length to support high quality voice service. Furthermore, BellSouth
8 does not remove load coils for BellSouth's retail end users served by
9 copper loops of over 18,000 feet in length. Therefore, such a
10 modification would not constitute a routine network modification and is
11 thus not required by the FCC's rules. Even though not required under
12 the FCC's definition of line conditioning in the *TRO*, upon a CLEC's
13 request, BellSouth will remove load coils on loops and subloops that
14 are greater than 18,000 feet in length at rates pursuant to BellSouth's
15 Special Construction Process contained in BellSouth's FCC Tariff No.
16 2.

17

18 Q. DOES ANY FCC ORDER PROVIDE BELLSOUTH WITH A BASIS TO
19 TREAT LINE CONDITIONING IN DIFFERENT MANNERS
20 DEPENDING ON THE LENGTH OF THE LOOP?

21

22 A. Yes. The *TRO* clearly states that BellSouth must perform the same line
23 conditioning activities for CLECs as it does for its own retail customers.
24 Therefore, BellSouth's procedures for providing line conditioning to its
25 retail customers is the same process and the same procedures that

1 apply to the Joint Petitioners. For its retail voice service customers,
 2 BellSouth adds or does not add load coils depending on the length of
 3 the copper loop, as set forth above, and, consistent with the *TRO*,
 4 BellSouth has offered this same procedure to the Joint Petitioners.

5

6 ***Item 38; Issue 2-20: Under what rates, terms and conditions should***
 7 ***BellSouth be required to perform Line Conditioning to remove bridged***
 8 ***taps? (Attachment 2, Sections 2.12.3 & 2.12.4)***

9

10 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

11

12 A. BellSouth's offer to the Joint Petitioners exceeds its obligations under
 13 the *TRO*. Specifically, even though BellSouth does not routinely
 14 remove any bridged taps for its own xDSL customers, BellSouth agreed
 15 in the CLEC industry collaborative to remove a limited number of
 16 bridged taps at the request of CLECs. The following bridged tap
 17 removal process was developed and agreed to in the CLEC industry
 18 collaborative:

19

20 1) Any copper loop being ordered by a CLEC that has over 6,000
 21 feet of combined bridged tap will be modified, upon request from
 22 the CLEC, so that the loop will have a maximum of 6,000 feet of
 23 bridged tap. This modification will be performed at no additional
 24 charge to the CLEC.

25 2) Line conditioning orders that require the removal of bridged tap

1 (serving no network design purpose) on a copper loop that will
2 result in a combined level of bridged tap between 2,500 and
3 6,000 feet will be performed at the rates set forth in Exhibit A of
4 Attachment 2 of the Interconnection Agreement.

- 5 3) The CLEC may request removal of any unnecessary and non-
6 excessive bridged tap (bridged tap between 0 and 2,500 feet that
7 serves no network design purpose) at rates pursuant to
8 BellSouth's Special Construction Process contained in
9 BellSouth's FCC Tariff No. 2.

10
11 Requests for line conditioning beyond what BellSouth performs for its
12 own customers (which is BellSouth's only obligation) or is willing to
13 voluntarily provide to the CLECs, are not appropriately dealt with under
14 a Section 251 arbitration and should be addressed via a separate
15 agreement.

16
17 Q. DO YOU BELIEVE THAT A BRIDGED TAP THAT IS LESS THEN
18 2,500 FEET IN LENGTH SIGNIFICANTLY IMPAIRS THE PROVISION
19 OF HIGH SPEED DATA TRANSMISSION?

20
21 A. No. The policy of not removing bridged taps less than 2,500 feet
22 ("Short Bridged Taps") was established by both BellSouth and the
23 CLECs through the industry Shared Loop Collaborative. Both BellSouth
24 and the CLECs in this collaborative would not have agreed to such a
25 policy if they believed that failing to remove Short Bridged Taps would

1 impair the provision of high speed data service. Additionally, this joint
2 policy is consistent with industry standards for xDSL services, which
3 allow the use of bridged taps on loops up to 6,000 feet in length.
4 BellSouth's line conditioning policies are consistent with these
5 standards.

6
7 Q. DO YOU AGREE WITH THE JOINT PETITIONERS' ASSERTION
8 THAT REMOVAL OF BRIDGED TAPS IS INCLUDED IN THE
9 DEFINITION OF LINE CONDITIONING?

10
11 A. No. Because BellSouth does not routinely remove bridged taps for its
12 own xDSL customers, such activity does not fall within the FCC's *TRO*
13 definition of line conditioning.

14
15 ***Item 46; Issue 2-28: Should the CLECs be permitted to incorporate the***
16 ***FastAccess language from the FDN and/or Supra interconnection***
17 ***agreements, respectively docket numbers 010098-TO and 001305-TP, for***
18 ***the term of this Agreement? (Attachment 2, Section 3.10.4)***

19
20 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

21
22 A. The Commission should not address this issue for three reasons. First,
23 in light of recent FCC rulings, the Joint Petitioners cannot incorporate
24 the rates, terms, and conditions relating to the provision of BellSouth's
25 DSL service with UNE-P (Supra ICA Language) or UNE-L (FDN ICA

1 Language) that exist in these prior agreements. This is because the
2 FCC recently interpreted Section 252(i) of the Act to require CLECs to
3 adopt another carrier's interconnection agreement in its entirety. In
4 doing so, the FCC expressly prohibited what the Joint Petitioners are
5 trying to do here – that is “pick and choose” certain portions of other
6 carriers' agreements. Furthermore, because the FCC prohibited the
7 adoption of any agreement that contains “frozen elements” in the
8 *Interim Rules* Order, even if the Joint Petitioners wanted to adopt prior
9 agreements in their entirety, such adoption would be prohibited.

10

11 Second, while this Commission has ordered¹ BellSouth to provide its
12 retail DSL based FastAccess® service to end users of CLECs who
13 obtain service using a UNE-P or UNE-L line in the past, the
14 Commission should refrain from making this same finding in this
15 arbitration. This is because, as set forth in detail below, FastAccess®
16 and BellSouth's wholesale DSL service are interstate
17 telecommunications services over which the FCC, and not the
18 Commission, has jurisdiction. In fact, in an order addressing GTE's
19 DSL-Solutions-ADSL Service, the FCC found that “this offering, which

¹ FPSC Order No. PSC-02-0765-FOF-TP, Docket No. 010098-TP, dated June 5, 2002, required BellSouth to continue to provide its retail FastAccess service to end users who obtain voice service from FDN over UNE loops. FPSC Order No. PSC-02-0878-FOF-TP in Docket No. 001305-TP, rel. July 1, 2002 (clarified in Order dated October 21, 2002), required BellSouth to continue to provide its retail FastAccess service to a customer migrating to Supra's voice service over UNE-P. Both the FDN and the Supra orders are on appeal to the U.S. District Court, Northern District of Florida. On July 21-22, 2003, hearings were held in a similar case, the FCCA FastAccess Complaint, Docket 020507-TL. Decisions in the FDN and Supra appeals as well as in the FCCA Complaint case are currently stayed pending a decision by the FCC in BellSouth's Emergency Request for Declaratory Ruling, WC Docket No. 03-251.

1 permits Internet Service Providers (ISPs) to provide their end user
2 customers with high-speed access to the Internet, is an interstate
3 service and is properly tariffed at the federal level.”² As a result, this
4 Commission lacks the jurisdiction to grant the relief at issue.

5
6 Third, BellSouth has filed an Emergency Request for Declaratory Ruling
7 (“Emergency Request”), WC Docket No. 03-251, with the FCC to
8 address this exact issue. At a minimum, as in the FCCA Complaint
9 case (Docket 020507-TL) pending in Florida, the Commission should
10 defer resolution of this issue until the FCC reaches a decision on
11 BellSouth’s Emergency Request.

12
13 Q. IF THE COMMISSION ELECTS TO ADDRESS THIS ISSUE AGAIN,
14 WHAT IS BELLSOUTH’S POSITION?

15
16 A. BellSouth should not be required to provide DSL transport or DSL
17 services over UNEs to a CLEC and its end users because BellSouth’s
18 Digital Subscriber Line Access Multiplexers (“DSLAMs”) are not subject
19 to unbundling. The FCC specifically stated in paragraph 288 of the
20 *TRO* that it would “not require incumbent LECs to provide unbundled
21 access to any electronics or other equipment used to transmit
22 packetized information”. A DSLAM is precisely the type of equipment to
23 which the FCC referred.

² See Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1*, 13 F.C.C. rcd 22,466 at ¶1 (October 30, 1998) (emphasis added).

1 Further, the FCC addressed this issue in its Line Sharing Order³ and
2 concluded that incumbent carriers are not required to provide line
3 sharing to requesting carriers that are purchasing UNE-P combinations.
4 The FCC reiterated this determination in its Line Sharing
5 Reconsideration Order⁴. It stated: "We deny, however, AT&T's request
6 that the Commission clarify that incumbent LECs must continue to
7 provide xDSL service in the event customers choose to obtain service
8 from a competing carrier on the same line because we find that the Line
9 Sharing order contained no such requirement." ¶26. The FCC then
10 expressly stated that the Line Sharing Order "does not require that
11 [LECs] provide xDSL service when they are not [sic] longer the voice
12 provider." ¶26. The FCC explained: "We note that in the event that the
13 customer terminates its incumbent LEC provided voice service, for
14 whatever reason, the competitive data LEC is required to purchase the
15 full stand-alone loop network element if it wishes to continue providing
16 xDSL service." (Line Sharing Order, at ¶72).

17

18 Likewise, the FCC addressed BellSouth's practice of not providing its
19 federally tariffed wholesale DSL service over a combined unbundled
20 loop and unbundled switch port (that is, the so-called "UNE-P") in its
21 order approving BellSouth's Louisiana/Georgia Section 271

³ *In Re: Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order No. FCC 99-355 in CC Docket Nos. 98-147, 96-98 (Released December 9, 1999) (*Line Sharing Order*).

⁴ *Third Report and Order on Reconsideration* in CC Docket No. 98-147 and *Fourth Report and Order on Reconsideration* in CC Docket No. 96-98, Order No. FCC 01-26 (Released January 19, 2001) (*Line Sharing Reconsideration Order*).

1 application.⁵ Parties to that proceeding raised complaints about
2 BellSouth's DSL policy that are nearly identical to those asserted in this
3 proceeding, which the FCC rejected:

4
5 BellSouth states that its policy "not to offer its
6 wholesale DSL service to an ISP or other network
7 services provider [] on a line that is provided by a
8 competitor via the UNE-P" is not discriminatory nor
9 contrary to the Commission's rules. Commenters
10 allege that BellSouth will not offer its DSL service
11 over a competitive LEC's UNE-P voice service on
12 that same line. We reject these claims because,
13 under our rules, the incumbent LEC has no
14 obligation to provide DSL service over the
15 competitive LEC's leased facilities. Furthermore, a
16 UNE-P carrier has the right to engage in line
17 splitting on its loop. As a result, a UNE-P carrier
18 can compete with BellSouth's combined voice and
19 data offering on the same loop by providing the
20 customer with line splitting voice and data service
21 over the UNE-P loop in the same manner.
22 *Accordingly, we cannot agree with commenters*
23 *that BellSouth's policy is discriminatory.*
24

25 Id. at ¶157 (emphasis added). The FCC, therefore, was squarely
26 presented with the issue of whether BellSouth's policy of not providing
27 its federally tariffed, wholesale DSL service over UNE-P violates federal
28 law. The FCC found no such violation. A contrary ruling by this
29 Commission under state law would be inconsistent with the
30 requirements of federal law, as interpreted by the FCC.
31

⁵ FCC Order No. 02-247, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and Bellsouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Rel. May 15, 2002. ("GA/LA 271 Order")

1 Q. HAS THE FCC ADDRESSED BELLSOUTH'S DSL POLICY IN OTHER
2 DECISIONS?

3

4 A. Yes. The FCC again affirmed its conclusion reached in the
5 Georgia/Louisiana Order when it approved BellSouth's 271 Application
6 for Alabama, Kentucky, Mississippi, North Carolina, and South
7 Carolina. In paragraph 164 of its order, the FCC concluded:

8

9 Finally, we reject claims by KMC and NuVox that
10 BellSouth's practice of refusing to provide DSL
11 service on the same line over which an end user
12 subscribes to a competitive LEC's voice service
13 warrants a finding of noncompliance. As we stated
14 in the BellSouth Georgia/Louisiana Order, an
15 incumbent LEC has no obligation, under our rules,
16 to provide DSL service over the competitive LEC's
17 leased facilities. Moreover, a UNE-P carrier has the
18 right to engage in line splitting on its loop. As a
19 result, a UNE-P carrier can compete with
20 BellSouth's combined voice and data offering on
21 the same loop by providing the customer with line
22 splitting voice and data service over the UNE-P
23 loop in the same manner. Accordingly, we cannot
24 agree with KMC and NuVox that BellSouth's
25 policies are discriminatory and warrant a finding of
26 checklist noncompliance. [Footnotes omitted.]

27 Again, it is clear that BellSouth's DSL policy is neither anticompetitive
28 nor discriminatory. Further, as the FCC noted, CLECs have the option
29 of engaging in line splitting in order to provide DSL service to their voice
30 customers -- an option that Joint Petitioners have conveniently elected
31 to forego, despite prior representations by some CLECs that line
32 splitting is essential to competition.

33

1 Importantly, because BellSouth will provide DSL service over a
2 BellSouth line being resold by a CLEC⁶, it is not necessary for an end-
3 user customer to purchase voice service from BellSouth in order to
4 receive DSL service. Thus, if a CLEC wants to provide both voice and
5 DSL service to an end user over a single line, one option is for the
6 CLEC to resell BellSouth's voice service with BellSouth-provided DSL
7 service over the same line.

8

9 Q: WHAT IS BELLSOUTH REQUESTING AS TO THIS ISSUE?

10

11 A. BellSouth is asking the Commission to find, consistent with federal and
12 state law, that BellSouth is not required to provide its DSL transport or
13 DSL services to a CLEC and its end users through any means other
14 than BellSouth's FCC tariff. At a minimum, as in the FCCA Complaint
15 case (Docket 020507-TL), the Commission should defer resolution of
16 this issue until the FCC reaches a decision on BellSouth's Emergency
17 Request.

18

19 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

20

21 A. Yes.

⁶ A resold line is a "BellSouth provided exchange line facility" within the meaning of BellSouth's FCC Tariff No. 1.

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF ERIC FOGLE
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 040130-TP
FEBRUARY 7, 2005

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

A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director in BellSouth's Interconnection Operations Organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on January 10, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY FILED TODAY?

A. My testimony provides rebuttal to the direct testimony of KMC Telecom V, Inc. & KMC Telecom III LLC ("KMC"), NewSouth Communications

1 Corp. ("NewSouth"), NuVox Communications Corp. ("NuVox"), and
2 Xspedius Companies ("Xspedius"), collectively referred to as "Joint
3 Petitioners." Specifically, I will address the following issue numbers, in
4 whole or in part: 2-18 (Item 36), 2-19 (Item 37), 2-20 (Item 38), and 2-
5 28 (Item 46).

6
7 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

8
9 A. Yes. As I stated in my direct testimony, there are numerous
10 unresolved issues in this arbitration that have underlying legal
11 arguments. Because I am not an attorney, I am not offering a legal
12 opinion on these issues. I respond to these issues purely from a policy
13 or technical perspective. BellSouth's attorneys will address issues
14 requiring legal argument.

15
16 ***Item 36; Issue 2-18: (A) How should line conditioning be defined in the***
17 ***Agreement? (B) What should BellSouth's obligations be with respect to***
18 ***Line Conditioning? (Attachment 2, Section 2.12.1)***

19
20 Q. MR. HAMILTON RUSSELL, III, ON BEHALF OF NUVOX
21 COMMUNICATIONS, INC. AND NEWSOUTH COMMUNICATIONS
22 CORP., STATES ON PAGE 24 OF HIS TESTIMONY, "LINE
23 CONDITIONING SHOULD BE DEFINED IN THE AGREEMENT AS
24 SET FORTH IN FCC RULE 47 CFR 51.319 (a)(1)(iii)(A)." DO YOU
25 AGREE?

1 A. No. Federal Communications Commission ("FCC") Rule
2 51.319(a)(1)(iii) provides a definition for line conditioning but the
3 Triennial Review Order ("TRO") clarifies this definition (in Paragraph
4 643) by requiring line conditioning "that incumbent LECs regularly
5 perform in order to provide xDSL services to their own customers." The
6 definition of line conditioning in the Agreement should be consistent
7 with the TRO. Mr. Russell's position ignores this fact as well as the
8 FCC's findings in the TRO.

9
10 Q. MR. RUSSELL, ON PAGE 25 OF HIS TESTIMONY, STATES "LINE
11 CONDITIONING IS NOT LIMITED TO THOSE FUNCTIONS THAT
12 QUALIFY AS ROUTINE NETWORK MODIFICATIONS." PLEASE
13 COMMENT.

14
15 A. It is impossible to square Mr. Russell's statement with the FCC's
16 findings in paragraph 643 of the *TRO*, where it specifically states the
17 opposite: "Line conditioning is properly seen as a routine network
18 modification that incumbent LECs regularly perform in order to provide
19 xDSL services to their own customers." Thus, the Florida Public
20 Service Commission ("Commission") should reject the Joint Petitioners'
21 position.

22
23 Q. FURTHER, ON PAGE 25 OF HIS TESTIMONY, MR. RUSSELL
24 CLAIMS THAT A "'ROUTINE NETWORK MODIFICATION' IS NOT
25 THE SAME OPERATION AS 'LINE CONDITIONING' NOR IS XDSL

1 SERVICE IDENTIFIED BY THE FCC AS THE ONLY SERVICE
2 DESERVING OF PROPERLY ENGINEERED LOOPS.” PLEASE
3 COMMENT.

4

5 A. The Joint Petitioners’ position is inconsistent with the *TRO*. For
6 instance, the FCC defines a “routine network modification” in
7 paragraph 632 of the *TRO* as those activities that incumbent LECs
8 regularly undertake for their own customers.” In paragraph 643 of the
9 *TRO*, the FCC further states that “[a]s noted above, incumbent LECs
10 must make the routine adjustments to unbundled loops to deliver
11 services at parity with how incumbent LECs provision such facilities for
12 themselves.” BellSouth’s language is entirely consistent with the
13 FCC’s ruling in the *TRO* on this issue, and, as stated in my direct
14 testimony, in some situations exceeds the FCC’s requirements for line
15 conditioning.

16

17 Q. WITH RESPECT TO ISSUE 2-18 (B), MR. RUSSELL, ON PAGE 26
18 OF HIS TESTIMONY STATES THAT “IT IS NOT PERMISSABLE
19 UNDER THE RULES FOR BELL SOUTH TO PERFORM LINE
20 CONDITIONING ONLY WHEN IT WOULD DO SO FOR ITSELF.”

21

22 A. It is impossible to reconcile this position with the FCC’s findings in
23 paragraph 643 of the *TRO* where it expressly found that “line
24 conditioning is properly seen as a routine network modification that
25 incumbent LECs **regularly perform** in order to provide xDSL services

1 **to their own customers.”** (*emphasis added*).

2

3 **Q.** **FURTHER, MR. RUSSELL CLAIMS THAT DISCUSSING “ROUTINE**
4 **NETWORK MODIFICATION’ AS OCCURRING UNDER RULE**
5 **51.319(a)(1)(iii) IS SIMPLY WRONG: THAT TERM DOES NOT**
6 **APPEAR ANYWHERE IN RULE 51.319(a)(1)(iii).” PLEASE**
7 **COMMENT.**

8

9 **A.** **The FCC’s Routine Network Modification discussion, and its relation to**
10 **Line Conditioning are clearly articulated in paragraphs 642-644 of the**
11 **TRO. The very fact that the Rule 51.319(a)(1)(iii) may not mention the**
12 **phrase “routine network modifications” does not negate the FCC’s**
13 **express findings in the TRO.**

14

15 ***Item 37; Issue 2-19: Should the Agreement contain specific provisions***
16 ***limiting the availability of load coil removal to copper loops of 18,000***
17 ***feet or less? (Attachment 2, Section 2.12.2)***

18

19 **Q.** **MR. JERRY WILLIS, ON BEHALF OF NUVOX COMMUNICATIONS,**
20 **INC. AND NEWSOUTH COMMUNICATIONS CORP., STATES ON**
21 **PAGES 4-5 OF HIS TESTIMONY THAT “PETITIONERS ARE**
22 **ENTITLED TO OBTAIN LOOPS THAT ARE ENGINEERED TO**
23 **SUPPORT WHATEVER SERVICE WE CHOOSE TO PROVIDE.”**
24 **PLEASE COMMENT.**

25

1 A. BellSouth does not make any attempt to limit the services that the Joint
2 Petitioners wish to provide over the loops that they purchase as UNE's
3 from BellSouth. However, BellSouth is only obligated by the *TRO* to
4 provide line conditioning on loops at parity to what it does for itself.
5 Competitive Local Exchange Carriers ("CLECs") are then free to utilize
6 that loop to support whatever service the CLEC chooses to provide.

7

8 Q. DO YOU AGREE WITH MR. WILLIS' STATEMENT, ON PAGE 5 OF
9 HIS TESTIMONY THAT "NOTHING IN ANY FCC ORDER ALLOWS
10 BELLSOUTH TO TREAT LINE CONDITIONING IN DIFFERENT
11 MANNERS DEPENDING ON THE LENGTH OF THE LOOP"?

12

13 A. No. As I stated in my direct testimony, the *TRO* clearly states that
14 BellSouth must perform the same line conditioning activities for CLECs
15 as it does for its own retail customers. Therefore, BellSouth's
16 procedures for providing line conditioning to its retail customers is the
17 same process and procedures that apply to the Joint Petitioners. For
18 its retail voice service customers, BellSouth adds or does not add load
19 coils depending on the length of the copper loop, as set forth in my
20 direct testimony, and, consistent with the *TRO*, BellSouth has offered
21 this same procedure to the Joint Petitioners.

22

23 ***Item 38; Issue 2-20: Under what rates, terms and conditions should***
24 ***BellSouth be required to perform Line Conditioning to remove bridged***
25 ***taps? (Attachment 2, Sections 2.12.3 & 2.12.4)***

1 Q. DO YOU AGREE WITH MR. WILLIS' ASSERTION THAT REMOVAL
2 OF BRIDGED TAPS IS INCLUDED IN THE DEFINITION OF LINE
3 CONDITIONING?
4

5 A. No. If BellSouth routinely removed bridged taps for its own retail
6 customers in order to provide xDSL services, then the removal of
7 bridged taps for CLECs would be included in the *TRO* definition of line
8 conditioning. As I stated in my direct testimony, because BellSouth
9 does not routinely remove bridged taps for its own xDSL customers,
10 such activity does not fall within the FCC's definition of line
11 conditioning in the *TRO*.
12

13 Q. DO YOU BELIEVE THAT BRIDGED TAP THAT IS LESS THEN 2,500
14 FEET IN LENGTH SIGNIFICANTLY IMPAIRS THE PROVISION OF
15 HIGH SPEED DATA TRANSMISSION?
16

17 A. No. The policy of not removing bridged taps less than 2,500 feet
18 ("Short Bridged Taps") was established by both BellSouth and the
19 CLECs through the industry shared loop collaborative. Both BellSouth
20 and the CLECs in this collaborative would not have agreed to such a
21 policy if they believed that failing to remove Short Bridged Taps would
22 impair the provision of high speed data service. Additionally, this joint
23 policy is consistent with industry standards for xDSL services, which
24 recommend bridged taps on loops to be between 2,500 feet and 6,000
25 feet in length. BellSouth's line conditioning policies are consistent with

1 these standards.

2

3 **Item 46; Issue 2-28: Should the CLECs be permitted to incorporate the**
4 **FastAccess language from the FDN and/or Supra interconnection**
5 **agreements, respectively docket numbers 010098-TO and 001305-TP, for**
6 **the term of this Agreement? (Attachment 2, Section 3.10.4)**

7

8 Q. MR. JAMES FALVEY, ON BEHALF OF THE XSPEDIUS
9 COMPANIES, CLAIMS ON PAGE 17 OF HIS TESTIMONY THAT THE
10 CLEC SHOULD BE PERMITTED TO INCORPORATE LANGUAGE
11 AS STATED IN THE ISSUE STATEMENT FOR THE TERM OF THIS
12 AGREEMENT. PLEASE COMMENT.

13

14 A. As I stated in my direct testimony, in light of recent FCC rulings, the
15 Joint Petitioners cannot simply incorporate the rates, terms, and
16 conditions contained in the Supra and FDN interconnection
17 agreements relating to the provision of BellSouth's FastAccess®
18 service when BellSouth is no longer the voice provider for the term of
19 the future agreement. If the Joint Petitioners want the language from
20 the Supra and FDN agreements, then they should adopt those
21 agreements for the term of those agreements. However, these
22 agreements are not "adoptable" because they are "frozen" pursuant to
23 the *Interim Rules Order*, which expressly prohibits the adoption of
24 "frozen" agreements. Further, what the Joint Petitioners are requesting
25 is that they be able to "pick and choose" certain portions of other

1 carriers' agreements and boot strap those provisions into a new
2 agreement. This exact result was prohibited by the FCC in its recent
3 decision requiring carriers to adopt an agreement in its entirety under
4 Section 252(i). Thus, even if the Supra and FDN agreements were
5 adoptable, the Joint Petitioners' request for relief is prohibited by FCC
6 rules.

7
8 Q. WHAT IS BELL SOUTH REQUESTING THE COMMISSION TO DO AS
9 TO THIS ISSUE?

10
11 A. As I stated in my direct testimony, BellSouth's obligation to continue to
12 provide its FastAccess® or DSL services when it is no longer the voice
13 provider is currently being addressed by the FCC in BellSouth's
14 Emergency Request for Declaratory Ruling ("Emergency Request"),
15 WC Docket No. 03-251. While BellSouth is asking the Commission to
16 find, consistent with federal law, that BellSouth is not required to
17 provide DSL transport or DSL services to a CLEC and its end users
18 through any means other than BellSouth's FCC tariff, at a minimum,
19 the Commission should defer further resolution of this issue until the
20 FCC reaches a decision on BellSouth's Emergency Request. The
21 Commission reached a similar conclusion in the FCCA Complaint
22 addressing this exact issue.

23
24 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

25

1 A. Yes.



1 BY MR. MEZA:

2 Q Do you have a summary, Mr. Fogle?

3 A Yes, I do.

4 Q Can you please provide it?

5 A Yes. My name is Eric Fogle. I filed testimony in
6 this proceeding to present BellSouth's position regarding its
7 obligations to perform line conditioning, specifically
8 Items 36, 37 and 38.

9 Item 36 addresses the parties' disagreement regarding
10 what definition of line conditioning should be included in the
11 agreement. BellSouth's position is that line conditioning
12 should be defined consistent with Paragraph 643 of the
13 Triennial Review Order, which provides, "Line conditioning is
14 properly seen as a routine network modification that incumbent
15 LECs regularly perform in order to provide xDSL services to
16 their own customers. As noted above, incumbent LECs must make
17 the routine adjustments to unbundled loops to deliver services
18 at parity without incumbent LECs provisioning such facilities
19 for themselves. Consistent with the TRO, BellSouth's proposed
20 definition requires BellSouth to perform the same type of line
21 conditioning that it provides to its own customers."

22 In contrast, the Joint Petitioners seek to have the
23 definition set forth in 47 CFR 51.319(a)(1)(iii)(A) as the only
24 appropriate definition. This should be rejected for several
25 reasons.

1 First, adopting the Joint Petitioners' petition would
2 read away the Federal Communications Commission's express
3 findings in the TRO regarding the scope of BellSouth's line
4 conditioning obligations and would require BellSouth to perform
5 specific line conditioning functions that BellSouth does not
6 regularly undertake for its own customers.

7 Second, notwithstanding the fact that the two
8 definitions are not identical, the source of the obligation
9 remains the same. That is, as found by the FCC in the TRO,
10 BellSouth has an obligation to perform line conditioning at
11 parity with what it provides its own customers pursuant to its
12 nondiscriminatory obligations under the Act. BellSouth's
13 proposal does exactly that while the Joint Petitioners'
14 proposal does not.

15 Item 37 addresses the parties' disagreement over
16 whether BellSouth has an obligation to remove load coils on
17 copper loops that exceed 18,000 feet. Consistent with the TRO
18 and BellSouth's nondiscriminatory obligations, BellSouth's
19 position is that it will perform load coil removal for CLECs
20 that it performs for its own customers. BellSouth adheres to
21 current industry technical standards that require the placement
22 of load coils on copper loops greater than 18,000 feet in
23 length to support voice service. Furthermore, BellSouth does
24 not remove load coils for BellSouth's retail end users served
25 by copper loops of over 18,000 feet in length, since the load

1 coil is necessary to support the quality of the underlying
2 voice service. Therefore, removing load coils on loops greater
3 than 18,000 feet exceeds BellSouth's obligations and should not
4 be ordered by this Commission. If the CLECs want these load
5 coils removed, BellSouth is more than happy to perform such
6 services at tariffed prices.

7 Item 38 deals with the removal of bridged taps.
8 While BellSouth does not routinely remove any bridged taps for
9 its own customers, it has discussed, negotiated and agreed in
10 the CLEC industry collaborative to remove a limited number of
11 bridged taps at the request of the CLECs. Specifically,
12 BellSouth will remove bridged taps longer than 6,000 feet at no
13 charge to the CLECs, remove bridged taps between 2,500 and
14 5,000 feet at TELRIC and will remove bridged taps that are less
15 than 2,500 feet at tariffed prices. The Joint Petitioners have
16 not appeared in these collaboratives, but BellSouth has offered
17 these same terms and conditions to them in hopes of resolving
18 this issue. Thank you. That concludes my summary.

19 MR. MEZA: Mr. Fogle is available for
20 cross-examination.

21 CROSS EXAMINATION

22 BY MR. HEITMANN:

23 Q Good morning, Mr. Fogle.

24 A Good morning.

25 Q Mr. Fogle, would you agree with me that Issue 36 is

1 an issue about the definition of line conditioning and whether
2 BellSouth will accept a definition that is contained in the
3 FCC's rules?

4 A I would agree that it's about the definition of line
5 conditioning.

6 Q Will BellSouth accept the definition that's contained
7 in the FCC's rules?

8 A Yes. BellSouth will accept that definition. In
9 addition, we also accept the clarifying description in the
10 definitions that are provided in the TRO. Our position is that
11 those two are in concert with each other.

12 Q Mr. Fogle, do you have a copy of the Joint
13 Petitioners' revised Exhibit A?

14 A There's probably one up here somewhere. I'm not
15 exactly sure where it was left. I don't have one in front of
16 me.

17 Q We'll get you one. It'll be one second.

18 A Thank you.

19 Q Mr. Fogle, can I turn your attention to Page 10?

20 Mr. Fogle, are you familiar with this document?

21 A Yes, I am.

22 Q And you're familiar with how it's set up?

23 A Yes, I am.

24 Q Would you agree with me that it takes issues and goes
25 issue by issue and presents the competing language proposed by

1 the parties?

2 A Yes, I understand that.

3 Q Would you agree with me that it is reflective of the
4 very latest language proposals by each party?

5 A That's my understanding, yes.

6 Q Turning to Issue 36 language in particular on Page
7 10, would you agree with me that the bolding in the CLEC
8 version indicates language that BellSouth is unwilling to agree
9 to?

10 A Yes. I believe our version provides the language
11 that we would prefer for this same term, this same item. That
12 is correct. We don't agree with the Joint Petitioners'
13 language as it is currently written.

14 Q So BellSouth refuses to agree to language that says
15 BellSouth shall perform line conditioning in accordance with
16 FCC 47 CFR 51.319(a)(1)(iii), and then it continues, "Line
17 conditioning is as defined in FCC 47 CFR 51.319(a)(1)(iii)(A)."
18 Is that right?

19 A Yes. The reasoning is that in the rule in particular
20 the FCC chose not to add the clarifying statements that line
21 conditioning is properly seen as a routine network
22 modification, which is what they have stated in the TRO. And
23 to -- for BellSouth to agree to provide line conditioning in
24 accordance with only how the rule is stated would go beyond
25 what the FCC intended for BellSouth's obligations for line

1 conditioning to be.

2 BellSouth's version of the language is incorporative
3 of both the rule and the order. We're providing line
4 conditioning consistent with what is asked for in the rule as
5 well as in the order.

6 Q Mr. Fogle, you're not an attorney; correct?

7 A No, I am not.

8 Q And so you are not qualified to give an opinion as to
9 how to resolve legally when you have got text in the rules
10 versus text in an FCC order; correct?

11 A I don't believe I could resolve it legally, no.

12 Q So the opinions you're offering today are policy
13 opinions offered by BellSouth for the benefit of this
14 Commission; correct?

15 A They could be considered a policy opinion or a lay
16 opinion. It's my reading of these rules and the order and
17 understanding how to apply them in concert with each other.

18 Again, BellSouth's position is fully consistent with
19 all of the FCC's writings in both the rule and the order. The
20 Joint Petitioners' position is only consistent with the rule
21 and is in conflict with the order.

22 Q Mr. Fogle, if the FCC had intended to limit the
23 application of the rule in the manner suggested by you, don't
24 you think they would have put that in the rule itself?

25 A I can't speak to what the FCC may have been thinking

1 when they wrote the rule versus the order. I do know what they
2 have written in the rule and in the order.

3 Q But you have just told us what the FCC intended with
4 respect to the order. So you can speak with, you can speak
5 with respect to what the FCC intended in the order, but not
6 with respect to the rule, Mr. Fogle?

7 A I'm speaking to what I believe the FCC means when
8 they say "Line conditioning is properly seen as a routine
9 network modification." They wrote those words and so I assume
10 they have meaning that the FCC intended.

11 Similarly in Paragraph 250 where they say, "Line
12 conditioning constitutes a form of routine network
13 modification," again, those are words the FCC did write. I
14 can't speak to what they were intending. I can only speak to
15 or try to interpret what they actually wrote in the order and
16 in the rule.

17 Q Mr. Fogle, would you agree with me that it is
18 BellSouth's position that the line conditioning rules are in
19 effect limited by the FCC's separate routine network
20 modification rules?

21 A Yes, I believe that's true.

22 Q Mr. Fogle, I'm going to pass out an exhibit to you
23 and, in fact, I'm going to pass out three that we're familiar
24 with just to save some time.

25 Mr. Fogle, when you get this stack -- and I'd like

1 you to start with the Vin diagram.

2 A Okay.

3 COMMISSIONER BRADLEY: Okay. We will -- what's the
4 title, "Routine Network Modifications"?

5 MR. HEITMANN: Actually, Mr. Chairman, if you could
6 mark the set of these three exhibits as one, that would be
7 fine. If you could call it "Line Conditioning Exhibits."

8 COMMISSIONER BRADLEY: Just a minute. Just a minute.
9 We'll give this Number 24, composite exhibit.

10 Okay. You may proceed.

11 (Exhibit Number 24 marked for identification.)

12 MR. HEITMANN: Thank you.

13 BY MR. HEITMANN:

14 Q Mr. Fogle, could you from this group of exhibits pull
15 the Vin diagram that you have seen in five previous hearings?

16 A Yes. The one with two circles?

17 Q Yes.

18 A Okay.

19 Q And would you agree with me that the Joint
20 Petitioners' position is reflected in this diagram?

21 A Yes. I believe this is an attempt by the Joint
22 Petitioners to, I guess, graphically or pictorially describe
23 their position.

24 Q Would you agree with me that in particular the
25 diagram represents the Joint Petitioners' view of the

1 interrelationship between the FCC's line conditioning rules and
2 its separate routine network modification rule?

3 A Yes. I believe that this does represent the Joint
4 Petitioners' view. I don't believe that it represents the
5 FCC's view, nor does it represent BellSouth's view of the
6 relationship between line conditioning and routine network
7 modifications.

8 Q Now BellSouth's view on its routine network
9 modification obligations is one that is influenced by the TRO;
10 correct?

11 A That is correct.

12 Q And BellSouth's current view on its line conditioning
13 obligations is a relatively new view, isn't it?

14 A I believe our view is that we'll comply with the
15 rules and the orders as provided by the FCC. The FCC, as a
16 result of the TRO, provided additional clarification and
17 additional limitations on what we are obligated, we, BellSouth,
18 are obligated to provide. So I think our position is that we
19 will comply, but what we're obligated to comply with has been
20 altered by the FCC.

21 Q Mr. Fogle, you'll agree with me that the FCC nowhere
22 in the TRO suggested it's limiting its line conditioning rules,
23 does it?

24 A I believe -- would you repeat your question again to
25 make sure I fully understand, and I can try to answer with a

1 yes or no?

2 Q Sure. Let me rephrase it.

3 Mr. Fogle, would you agree with me that nowhere in
4 the Triennial Review Order does the FCC say it is limiting its
5 line conditioning rules?

6 A I'm not aware of any particular place where it says
7 "limiting its line conditioning rules." So, no, I don't
8 believe it does. I do believe though that they set forth the,
9 our obligation to perform line conditioning and that there are
10 limits to that obligation that they do specify.

11 Q Now these limitations to your obligation did not
12 exist prior to the TRO; correct?

13 A The language that they provide in the TRO is new, but
14 line conditioning is properly seen as a routine network
15 modification. That clarifying information is new.

16 Q Mr. Fogle, could you go to your exhibit and pull out
17 the long document with three columns that is a comparison of
18 the UNE remand line conditioning rules and the Triennial Review
19 Order line conditioning rules?

20 A Yes. I have that in front of me.

21 Q And will you agree with me that you have seen this
22 document five times previously in our hearings?

23 A Yes, I have.

24 Q And would you agree with me that of the three
25 columns, the very first one on the left-hand side represents

1 the line conditioning rules that were contained in the FCC's
2 UNE remand order?

3 A Yes, I understand that to be the case.

4 Q And that the middle column and the final far right
5 column are the FCC's line conditioning rules contained in the
6 Triennial Review Order?

7 A Yes, I understand that to be the case also.

8 Q And do you understand that the rules contained in the
9 Triennial Review Order, those rules in the center and far right
10 columns, are those rules currently in 47 CFR, Part 51, of the
11 FCC's rules?

12 A I believe that's the case, yes.

13 Q Now, Mr. Fogle, you will agree with me that the FCC
14 in its Triennial Review Order did modify in some respects its
15 line conditioning rules; correct?

16 A Yes, they did.

17 Q And in particular, they did modify the definition of
18 line conditioning contained, previously contained in Section
19 (3)(A) and now in (iii)(A); correct?

20 A Yes. That is correct.

21 Q Now in the UNE remand rules, Mr. Fogle, you will
22 agree with me that there is no reference to routine network
23 modifications or limitations of that sort?

24 A I don't believe in this section that they talk about
25 routine network modifications.

1 Q Now in the new rules regarding line conditioning you
2 will agree with me that there is no reference to the routine
3 network modifications or limitations of that sort; correct?

4 A No, they're not listed in the rules. The
5 relationship between routine network modifications and line
6 conditioning are expressly just provided for in the TRO, the
7 order itself.

8 Q Now, Mr. Fogle, as long as we have these rules in
9 front of us, I'd like to point your attention to the current
10 definition of line conditioning which appears in the center
11 column. It's (iii)(A) subsection. Would you agree with me
12 that this definition includes the removal of load coils?

13 A Yes, it does.

14 Q Do you see in this definition any limitation with
15 respect to the length of the loop on which load coils appear?

16 A No. There's no express discussion about the length
17 of the loop or any kind of particular aspects of what is
18 appropriate or inappropriate.

19 Q Mr. Fogle, would you agree with me that bridged tap
20 removal is also part of this definition of line conditioning?

21 A Yes, that is correct.

22 Q And would you agree with me that this definition of
23 line conditioning does not limit bridged tap removal to bridged
24 taps of a certain length?

25 A In the rule itself it does not provide. Again, the

1 relationship between line conditioning and routine network
2 modifications is expressly provided for in the order, and our
3 position is consistent with both the rule and the order.

4 Q Now, Mr. Fogle, you like to point to Paragraph 643 of
5 the order. Does that paragraph contain any language that says
6 that line conditioning is only that which qualifies as a
7 routine network modification?

8 A No. This language doesn't say that line conditioning
9 is only a routine network modification. It states that line
10 conditioning is properly seen as a routine network
11 modification, which would be defined as a subset.

12 Q Now, Mr. Fogle, you also frequently point to
13 Paragraph 635 of the Triennial Review Order; correct?

14 A Yes, I believe I do.

15 Q And would you agree with me that in Paragraph 635 the
16 FCC is talking about routine network modifications?

17 A Yes.

18 Q Would you agree with me that the FCC says that the
19 routine modifications we require today are substantially
20 similar activities to those that the incumbent LECs currently
21 undertake under our line conditioning rules; specifically,
22 based on the record, high capacity loop modifications and line
23 conditioning require comparable personnel can be provisioned
24 within similar intervals and do not require a geographic
25 extension of the network?

1 A Yes, I agree that's what that says.

2 Q Do you agree that the FCC in that statement did not
3 say that line conditioning or routine network modifications
4 were the same; they instead say they were similar?

5 A I think, again, the language they use in Paragraph
6 635 and Paragraph 250 and 643 are consistent in that line
7 conditioning is seen as a subset of routine network
8 modifications. So that would mean that there are routine
9 network modifications that are not considered line conditioning
10 and that -- but there are no line conditioning functions that
11 are not considered routine network modifications. That's
12 consistent with their phrasing of this here, which is that
13 routine modifications are substantially similar to our line
14 conditioning rules.

15 Q Now under your interpretation of the FCC's line
16 conditioning rules, Mr. Fogle, if BellSouth decided not to do
17 any line conditioning for itself and not to provide any
18 advanced services to its Florida consumers, you wouldn't have
19 to do any line conditioning for the CLECs at TELRIC either;
20 correct?

21 A In a purely hypothetical sense that is correct.

22 Q So it is up to BellSouth whether it has line
23 conditioning obligations under Section 251(c)(3) or not?

24 A No. I don't believe it's up to BellSouth. I believe
25 the rule and the order are very clear that BellSouth has a line

1 conditioning obligation to perform and provide access to its
2 loops pursuant to its nondiscriminatory act under the Act,
3 excuse me, it's nondiscriminatory obligations. To the
4 degree -- if hypothetically BellSouth was not in the business
5 of offering advanced services or did no line conditioning, then
6 it would have no obligation simply -- since it's not doing it
7 for itself, it would have no nondiscriminatory obligation to
8 perform that function for the Joint Petitioners.

9 Q Mr. Fogle, would you agree with me that
10 Section 251(c)(3)'s nondiscriminatory access obligation
11 requires BellSouth to provide CLECs such as the Joint
12 Petitioners with the same access to their network
13 infrastructure including UNE loops that BellSouth has?

14 A I believe that's one interpretation you could have,
15 that nondiscriminatory access means providing the same access
16 to its infrastructure. So I agree that would be one
17 interpretation.

18 Q Would you agree with me that under the Section
19 251(c)(3) nondiscriminatory access standard that Joint
20 Petitioners have the right to make the same sorts of decisions
21 about how to use copper loops that BellSouth has?

22 A BellSouth is not attempting to dictate any particular
23 use of the copper loops. We're simply offering to perform line
24 conditioning that's consistent with the rule and the order as
25 required by the FCC, and that's a nondiscriminatory access.

1 So, again, we're not in any interest -- or not trying to
2 dictate the use of the loops for any particular purpose. But
3 our obligation is limited by what the FCC has stated in the
4 order.

5 Q Mr. Fogle, would you agree with me that the rules the
6 FCC has regarding line conditioning contemplate the
7 facilitation of broadband and the rollout of other advanced
8 services we don't even know about yet?

9 A Yes. They're not specific to any particular use of
10 facilities. They do talk about advanced services, but they
11 don't specify what types of advanced services.

12 Q So you would agree with me that this issue is not
13 about particular uses of facilities or technologies that may be
14 used on those facilities; correct?

15 A I would agree. It's simply a discussion about what
16 our obligations are, it's -- our obligations to perform line
17 conditioning for the Joint Petitioners or CLECs.

18 Q Now, Mr. Fogle, will you agree with me that this
19 interconnection agreement will have a 42-month lifespan and
20 will likely take the parties well into the Year 2009?

21 A That's my understanding. Yes.

22 Q And you will agree with me that you cannot
23 necessarily predict what kind of technologies are going to come
24 down the pipe during that time frame that would enable CLECs
25 and BellSouth to use copper loops in different ways not

1 contemplated today?

2 A I'd agree that with absolute certainty that you can't
3 predict what technologies may come down the pipe. But I do
4 know based on my years of experience with DSL or advanced
5 services technologies that any, any of the technologies that
6 are currently being developed today will be years away from
7 implementation and that they're designed to work in a standard
8 network, which is what we offer. And the line conditioning
9 we're willing to perform for the Joint Petitioners is what we
10 perform for ourselves, which is to standardize our network. So
11 that, that -- also any new technology, in order for them to
12 maximize their opportunity from a development standpoint, is
13 going to work to make sure that it works well in the standard
14 technology that we provide or the standard, excuse me, standard
15 network that we provide.

16 Q Yet, Mr. Fogle, when the ADSL technology that
17 BellSouth currently has deployed was developed, it still
18 required BellSouth to remove load coils when it was deployed;
19 correct?

20 A That is correct. On loops that are less than
21 18,000 feet, if they happen to be loaded, then we would -- we
22 did and we do remove load coils on those loops that are less
23 than 18,000 feet. That's the same thing that we now do for the
24 Joint Petitioners or CLECs. We do that at TELRIC for them as
25 we do for ourselves.

1 Q Now we're going to begin to bleed over into Issues 37
2 and 38.

3 Mr. Fogle, isn't it true that BellSouth regularly
4 conditions loops that are longer than 18,000 feet when it
5 provides a DS1?

6 A There are some aspects of line conditioning that are
7 required to provision DS1 loops, and we perform the same line
8 conditioning when we provision DS1 loops for ourselves as we do
9 for the CLECs.

10 Q And do you provide DS1s to the Joint Petitioners at
11 TELRIC-based rates approved by this Florida Public Service
12 Commission?

13 A Yes, we do.

14 Q Yet what is at issue in Issues 37 and 38 is
15 BellSouth's refusal to do certain load coil removal at the
16 rates, the TELRIC-based rates already set by this Commission
17 and to do bridged tap removal at the bridged tap removal rates
18 already set by this Commission; isn't that correct?

19 A I believe what is at issue is that there are specific
20 aspects of line conditioning, the two you mentioned, removing
21 load coils on loops over 18,000 feet and bridged taps that are
22 less than 2,500 feet, since BellSouth does not routinely do
23 those for itself, there's no obligation per the guidelines
24 provided by the FCC for us to perform that for the Joint
25 Petitioners. We are happy to do so, simply not at TELRIC. We

1 are happy to do so via our special construction tariffs.

2 Q Now with respect to Issue 37, which is about line
3 conditioning in particular, can you explain for us what that
4 device is you have with us -- with you?

5 A I have two.

6 Q You have two today?

7 A Yeah.

8 Q Excellent.

9 A This is actually a load coil and this is what we're
10 arguing about. And that is a real device that we place in our
11 network. It's been around for years and years and years. And
12 the reasoning behind a load coil is to promote and preserve
13 voice service on long loops. So the industry standards as well
14 as all of -- the equipment manufacturers and others are all
15 aware of the fact that we have these in our network. So for
16 loops that are over 18,000 feet, we load those loops so that
17 the voice quality is improved. This was all done via design
18 standards that are created and developed and supported by
19 Telecordia. There's what's called the revised resistance --

20 (Interruption.)

21 Excuse me. Sorry. The revised resistance design
22 standards and the carrier serving area design standards, CSA
23 design standards. And what is important to understand is an
24 ADSL technology was developed. When new advanced services
25 technologies are developed, they're designed to work on a

standard network which includes and incorporates load coils.

We do remove load coils on loops that are less than

18,000 feet, we have now for years and will continue to do so

because they don't support the voice service, they're not

5 necessary. And we do that for Joint Petitioners at TELRIC just

6 as we can do for ourselves.

7 Q Now, Mr. Fogle, on long loops where you refuse to

8 remove load coils at TELRIC-based pricing, isn't it true that

9 some of the technologies out there that would require the

10 removal of load coils would facilitate both provisioning of

11 voice services and broadband services?

12 A There are some advanced services that purport to work

13 on loops over 18,000 feet. And through the use of voice over

14 Internet protocol or other types of technologies you can

15 provide the voice service inclusive within the data service to

16 those loops.

17 Our experience with one technology in particular I

18 think the Joint Petitioners have talked about, which is a

19 G.SHDSL technology, claims to work over 18,000 feet. It does

20 so at very low data rates, 144 kilobits or 192 kilobits. So

21 it's not a full-speed high-end broadband service out at those

22 long loops unless you start to add devices to the loop called

23 repeaters that repeat the signal to allow it to reach out to

24 those technologies, to those loops. So there are advanced

25 services that claim to work beyond 18,000 feet that typically

1 do not work very well because of attenuation.

2 Q Now, Mr. Fogle, that is, in fact, what you were
3 getting at in your response to Staff's Interrogatory Number 123
4 when you said, "Manufacturers make claims that are sometimes
5 not replicated in the field"; correct?

6 A Which interrogatory was that again?

7 Q 123.

8 A Which subpart of that were you referring to?

9 Q Subpart B.

10 A Yes.

11 Q Okay. Thanks. I just have some notes on my paper.

12 Okay. And so you'll agree with me that sometimes
13 manufacturers make claims about their equipment that may not
14 prove to be -- you may not be able to verify with your use of
15 them in the network; correct?

16 A That is correct.

17 Q But yet in your response to Staff's Interrogatory
18 Number 100, you refer to certain literature that claims that
19 EtherLoop works with load coils and bridged taps and that
20 G.SHDSL works fine with bridged taps.

21 A That's correct.

22 Q Could it be the case that that literature also
23 overstates what these technologies are capable of doing?

24 A I'm actually referring to different literature.

25 Q Oh.

1 A And the manufacturers, of course, are allowed to
2 promote their products, they're allowed to do that. In fact,
3 it's encouraged. But in all cases, in ADSL, G.SHDSL, VDSL, all
4 of these technologies have industry standards that are
5 developed by collaboratives, bodies of vendors and providers.
6 And those industry standards have minimum performance
7 requirements on a standard network, which would be a CSA or an
8 RRD design standard network. And in all the technologies that
9 I just mentioned, they are all required to have minimum
10 performance requirements in the presence of bridged taps in
11 order to be considered standard compliant. And equipment
12 vendors work very hard to make sure that their equipment is
13 considered standard so that people who buy that equipment know
14 that it will work.

15 Q Thank you, Mr. Fogle.

16 Mr. Fogle, could you pull for us the last part of the
17 Joint Petitioners' exhibit on line conditioning, and that is
18 the contract excerpt?

19 A Yes, I have that.

20 Q Would you agree with me that this is an excerpt from
21 the UNE rate sheets from the current interconnection agreement
22 between BellSouth and NewSouth?

23 A Yes.

24 Q And flipping to the second page, would you agree with
25 me that this rate sheet includes rates for load coil removal on

1 loops greater than 18,000 feet?

2 A Yes, it does.

3 Q And you would agree with me that this also includes
4 rates for bridged tap removal that contain no limitation with
5 respect to the length of the bridged tap?

6 A Yes. I would agree that it contains that. I'd also,
7 as we've said before in the previous hearings in relation to
8 this particular exhibit, that those particular -- some of those
9 rates are not TRO compliant, nor is the agreement this is --
10 that this rate sheet is incorporated in TRO compliant.

11 Q Just to clarify, you said that this agreement is not
12 TRO compliant; correct?

13 A I think the words I've used in the past, that it's
14 outdated. There's --

15 Q Okay. But the rates contained herein, in particular
16 in the second column under the heading "FL" for Florida, you
17 would agree with me, are the TELRIC-compliant rates established
18 by this Commission for load coil removal on long loops as well
19 as bridged tap removal?

20 A Yes, that is correct. It is TELRIC-compliant rates
21 that were applied by this Commission. And it's the rates we
22 used when we did all 14 load coil removals last year and all
23 55 bridged tap removals that were requested by CLECs across all
24 nine states and all CLECs. So we're full in compliance,
25 compliant with this particular rate sheet.

1 Q And those Florida PSC-approved TELRIC rates are the
2 same, very same rates you refused to include in the new
3 interconnection agreement; correct?

4 A No. I believe we do plan to include these rates
5 where we have an obligation to provide line conditioning at
6 TELRIC. Specifically those, those functions that we perform
7 for ourselves, removal of load coils on loops less than
8 18,000 feet, the TELRIC rate that is here will apply. And then
9 for those bridged tap removals between 2,500 and 6,000 feet,
10 that we've agreed to do at TELRIC. The TELRIC rate that is
11 here would apply.

12 Q Mr. Fogle, are you aware of a process by which
13 BellSouth notifies the Florida Public Service Commission that
14 it is no longer going to comply with its TELRIC rates for load
15 coil removal on loops greater than 18,000 feet?

16 A I don't believe there's -- I'm not familiar with the
17 legal process necessarily that you would use to notify, but we
18 will stay in compliance with the orders as they stand. I
19 believe we'll work through a change of law proceeding to
20 implement the clarifications that are provided by the FCC in
21 the TRO.

22 Q Would you agree with me that that change of law
23 proceeding you referred to has not finished and resulted in any
24 change of law?

25 A I'm not sure of the current status of that, but I'm

1 assuming it's -- I don't believe that it's finished.

2 Q Okay. Now with regard to load coil removal,
3 Mr. Fogle, you say that BellSouth currently doesn't have an
4 obligation to remove them on loops greater than 18,000 feet.
5 Would you agree with me that that position is patently
6 inconsistent with the Note 1947 that's contained in the TRO
7 which says that you do have an obligation to remove load coils
8 and loops of any length?

9 A No. I don't believe it's inconsistent at all with
10 the Footnote 1947. Specifically let me get to the right
11 footnote here.

12 I mean, the Commission tried to set forth an
13 obligation that is based on nondiscrimination and a parity
14 obligation to provide for the CLECs as we do for ourselves.
15 They didn't want to create artificial limitations outside of
16 that obligation and so the obligation is the same, has been the
17 same throughout, which is what we do for ourselves, we must do
18 for the CLECs and the Joint Petitioners.

19 In this particular case, they're responding to, I
20 believe, some litigation where I believe it was Verizon was
21 saying that since they had not conditioned that particular loop
22 or were not offering advanced services on a particular loop,
23 that they did not have to do so for the Joint Petitioners, and
24 the CLEC was rejecting that particular argument. And it's
25 not -- it's fully consistent with their position all across the

1 board as well as BellSouth's position to comply with their
2 interpretation of obligations.

3 Q You would agree with me, however, in Footnote 1947,
4 Mr. Fogle, the FCC acknowledges in the last sentence that it
5 had refined its conditioning obligation to cover loops of any
6 length; correct?

7 A Yes, it says that, which is fully consistent. If
8 BellSouth were to start conditioning loops over 18,000 feet for
9 itself, then it would be still required to do so for the Joint
10 Petitioners or the CLECs. So there's no -- they're not
11 attempting to artificially limit at a particular loop length.
12 Our obligation is the same whether it be a short loop or a long
13 loop or short bridged taps or long bridged taps. What we do
14 for ourselves is our obligation to do for you.

15 Q Mr. Fogle, what percentage of customers are served in
16 Florida by loops greater than 18,000 feet?

17 A I think it's about 16 percent.

18 Q 60 or --

19 A 1-6, 16 percent.

20 Q So you would agree with me, Mr. Fogle, that for those
21 16 percent of the -- is it 16 percent of the customers or
22 loops, Mr. Fogle?

23 A Of loops.

24 Q For those 16 percent of the loops here in the state
25 of Florida, BellSouth will simply not provide advanced services

1 over those loops?

2 A For the specific loops themselves that are loaded
3 that are over 18,000 feet, we won't use those loops. But the
4 customers have multiple other options for broadband services,
5 and even we, BellSouth, have other options. We can use other
6 loops that are not -- that are less than 18,000 feet through
7 the deployment of remote terminals or fiber technology. We
8 bring our equipment closer to the customer to shorten the loop
9 lengths. So there are options to serve these customers where
10 you don't have to use the particular loop that's over
11 18,000 feet.

12 Q Would you agree with me that among the other options
13 the customers may have to get broadband would be from the Joint
14 Petitioners?

15 A Yes.

16 Q And that the Joint Petitioners have a right to use
17 BellSouth's copper loops in order to provide broadband to those
18 customers?

19 A I believe you do, yes.

20 Q And in order to create a product for that market for
21 which BellSouth is not going to condition loops in order to
22 provide ADSL, wouldn't it be better for the Joint Petitioners
23 to have a set rate such as the Florida PSC's TELRIC rates in
24 order for them to plan a product offering?

25 A I don't believe that it'd be better necessarily to

1 have a set rate. Keep in mind, in all of 2004 for all CLECs
2 region-wide we had two requests even at TELRIC to remove load
3 coils on loops over 18,000 feet. So to create a product where
4 there are only two being sold region-wide a year I think would
5 be -- I'm not sure that you would need any particular rate.
6 Our perspective and our preference is to, when we have both of
7 those requests this year, to use our special construction
8 process. Which one note in particular is that the TELRIC rate
9 for load coil removal is 700 and some dollars. Special
10 construction rate may be higher or lower depending on the
11 amount of work that's required to do that. **If it's actually** an
12 easy load coil to remove, the Joint Petitioners may actually
13 get a lower rate than the TELRIC-approved flat rate.

14 Q Mr. Fogle, isn't it true that the special access
15 construction pricing in your FCC tariff starts with a minimum
16 of a \$1,400 administrative fee before you get any work done?

17 A No, that is not true. Our special construction, if
18 you go through the tariff, you'll see numerous examples where
19 the entire obligation or entire rate paid by the customer was
20 only a few hundred dollars, especially if we're doing very
21 minimal special construction work like extending copper or
22 redundant routes and other types of things. **So there are many**
23 cases where the entire cost to the customer is only a few
24 hundred dollars.

25 Q Mr. Fogle, your special access pricing or special

1 access tariff in which your special construction provisions are
2 contained is an FCC tariff, is it not?

3 A Yes, it is.

4 Q And are BellSouth's pricing under that FCC tariff
5 governed by the TELRIC standards?

6 A No, I do not believe they are.

7 Q Does the Florida Public Service Commission approve
8 your pricing under that tariff?

9 A I believe it's an FCC tariff, so I think the FCC
10 approves those, those prices.

11 Q Now, Mr. Fogle, another aspect of your testimony --
12 one more question on special construction.

13 Mr. Fogle, does the FCC ever in its Triennial Review
14 Order say that line conditioning is special construction?

15 A I don't believe they use those exact words, no.

16 Q But yet you would agree with me that the FCC does
17 address special construction in its order. It is yet another
18 separate section from the line conditioning.

19 A Can you show me the section where they refer to
20 special construction?

21 Q Yes. It's on Page 403 of the order I have. It is
22 the section that follows immediately after the line
23 conditioning section. Paragraph 645 would be the first
24 paragraph of that section.

25 A Yes. I see they have a separate section called

1 "Special Construction of Transmission Facilities."

2 Q And would you agree with me that special construction
3 of transmission facilities is different than line conditioning?

4 A It's in a different section. I don't -- I would have
5 to go through here and read to see if the FCC provided any
6 particular clarifying language about the relationship between
7 the two, you know, like they do for routine network
8 modifications and line conditioning.

9 Q Now, Mr. Fogle, on your testimony you reference a
10 shared loop collaborative; isn't that right?

11 A Yes.

12 Q Now by shared loop, would you agree with me that
13 typically that means a line splitting or line sharing
14 arrangement?

15 A Yes. It's where voice and the data services are
16 being used by the same loop facility.

17 Q And by shared loop in particular, the reference is to
18 two providers providing services over the same facility, is it
19 not?

20 A It could be one provider providing two services or
21 two providers providing two services.

22 Q Mr. Fogle, when have you ever seen a reference to a
23 single provider of services over a loop being characterized as
24 a shared loop?

25 A I've just -- I think the term "sharing" can be used

1 in terms of the two services are sharing a loop or two
2 providers are sharing a loop. I mean, I think the term
3 "shared" has been used in the industry to mean that something
4 is being shared.

5 So I, I know in language and in discussion and
6 conversations and talkings with folks about what a shared loop
7 is, it could mean both: It's being shared by two services or
8 being shared by two providers.

9 Q Would you agree with me that if it was going, if a
10 loop was going to be shared by two services rather than two
11 providers, the CLECs wouldn't have had a need to have a
12 collaborative with BellSouth?

13 A I think, I mean, the main premise of the
14 collaborative is where the CLEC was providing the data service
15 and BellSouth was providing the voice service. That was the
16 original reason for the collaborative.

17 It then went on to line splitting services. That was
18 with a service that's called line sharing. Then it went on to
19 develop and work with line splitting services where one CLEC
20 was providing the voice service and another CLEC was providing
21 the data service via line splitting. So that's where the
22 majority of the work of the collaborative has been is working
23 with customers or CLECs who are offering those types of
24 services.

25 Q Now you understand that Joint Petitioners don't want

1 line conditioning for shared loop uses; in other words, for
2 sharing the loop with another provider such as BellSouth.
3 Correct?

4 A To the best of my understanding, the Joint
5 Petitioners don't want it for that purpose. I mean, they've
6 all of 2004 did not order any line conditioning, so I'm not
7 sure they want it for any purpose at this point.

8 Q Would you agree with me that by arbitrating for their
9 rights that the FCC has given to CLECs, that Joint Petitioners
10 are preserving their opportunity to develop and deploy products
11 that may require line conditioning during the 42-month term of
12 this contract?

13 A In a purely hypothetical sense I would agree that
14 that's a right you're preserving. Based on any practical
15 experience I'm not aware of any technology on the horizon that
16 it would be useful for. I know that through the five hearings
17 we've talked about the Joint Petitioners have not provided or
18 offered any technology that's not designed to be used in an
19 industry-compliant network. And, again, what we do for
20 ourselves is we condition our lines back to industry compliance
21 for use by ourselves and for use by the Joint Petitioners. So
22 what we offer is providing an industry-compliant network, which
23 I believe maximizes the opportunity that the CLECs and the
24 Joint Petitioners have going forward to use our loops.

25 Q Now, Mr. Fogle, with respect to the shared loop

1 collaborative, on Page 7 of your rebuttal testimony you refer
2 to the CLECs and a, quote, unquote, joint policy. You're not
3 referring to the Joint Petitioners there, are you?

4 A That was Page 7?

5 Q Yes.

6 A Which lines are you referring to?

7 Q Lines 18 and 19, "The CLECs."

8 A Yes.

9 Q Lines 22 and 23, "Joint Policy." Who are the CLECs
10 you're referring to? Not the Joint Petitioners; correct?

11 A No, it's not the Joint Petitioners. The Joint
12 Petitioners have chosen not to participate in the industry
13 collaborative. The point of this whole line of questions in my
14 rebuttal testimony is that for people who are deploying
15 advanced services, BellSouth as well as Joint Petitioners find
16 no need to remove bridged taps on loops, combined bridged taps
17 on less than 2,500 feet. They've not requested it from us, no
18 one is ordering that at TELRIC to do that.

19 So, again, the point is that there's a number of
20 people in the industry, both at BellSouth and CLECs, who don't
21 find any need to remove bridged taps, combined bridged taps
22 less than 2,500 feet. And so that's the point of this
23 particular line is I'm not referring to the Joint Petitioners
24 because they've not participated in these collaboratives.

25 Q Who were the Joint -- excuse me. Who were the CLECs?

1 Was Northpoint one of them?

2 A I believe before they went bankrupt they were a
3 participant in the collaborative.

4 Q Was Rhythms one of them?

5 A I believe before they went bankrupt, yes, they were
6 also a participant in the collaborative.

7 Q Was Concentric one of them?

8 A I'm not sure about them. I don't know.

9 Q Was Covad one of them?

10 A Covad, yes.

11 Q Did Covad go bankrupt?

12 A I believe they did. But then to provide a little bit
13 of a history lesson, Covad went bankrupt and then came out of
14 bankruptcy and is now obviously providing services. They have
15 both voice services and data services and seem to be doing
16 quite well.

17 Rhythms and North Point, their assets were actually
18 purchased by AT&T and MCI, and both AT&T and MCI continue to
19 use those, their equipment and those assets to provide data
20 services to customers. So, I mean, their, their corporate
21 structures may have changed over time, but those assets and the
22 use of those services are still in use today.

23

24

25

1 of the Joint Petitioners?

2 A No, I don't believe so.

3 Q Will Covad be forced to accept the bargain struck by
4 the Joint Petitioners and BellSouth in this interconnection
5 agreement, negotiation and arbitration?

6 A I don't believe they'd be forced to, but they could
7 choose to adopt your interconnection agreement in its entirety.

8 Q Now when you refer on Lines 22 and 23, the joint
9 policy you refer to is not a joint policy of the Joint
10 Petitioners and BellSouth; correct?

11 A No. It's a joint policy in that the, the CLECs who
12 are deploying advanced services both today and will do so over
13 the next few years in working with BellSouth in determining
14 what load coils to remove and what bridged taps to remove, the
15 collaborative was the place to determine what standards we
16 needed to work with. And so they all have agreed and we've got
17 consensus at the collaborative and that is what we, what we do
18 for them.

19 It's important to note that BellSouth does not remove
20 any bridged taps for itself, and yet we do remove bridged taps
21 to a degree voluntarily on behalf of the CLECs based on our
22 ability to drive consensus in the shared collaborative, the
23 shared loop collaborative. So we do more, actually exceed our
24 obligation in the area of bridged tap removal.

25 Q Mr. Fogle, finally I want to point you to Staff's

1 Interrogatory Number 64. Do you have that in front of you?

2 A Yes, I have that in front of me.

3 Q Could you read staff's request for us, please?

4 A It says, "Please identify any FCC orders, state
5 commission orders or legal documents where it has been
6 concluded that loop conditioning costs under any circumstance
7 should be recovered by other than TELRIC-based rates."

8 Q And do you see where your response says, "47 USC
9 Section 251(c)(3)"?

10 A Yes. And it concludes with "and Triennial Review
11 Order."

12 Q Could you tell me what part of 47 USC Section
13 251(c)(3) concludes that loop conditioning costs under any
14 circumstance should be recovered by other than TELRIC-based
15 rates?

16 A Do you have a copy of 251(c)(3) that you could share
17 with me?

18 Q Yes. You're going to get a very well-worn book.

19 A It opens right to that section too.

20 Q It's tabbed.

21 A Now can you repeat your question for me so I can get
22 the most succinct answer for you?

23 Q Yes. I would like you to point -- I said, "Can you
24 please point me to the part of 47 USC Section 251(c)(3) where
25 it has been concluded that loop conditioning costs under any

1 circumstance should be recovered by other than TELRIC-based
2 rates?"

3 A I think what's important and the reason for the cite
4 to 251(c)(3) --

5 Q Mr. Fogle, if you can answer yes or no first and then
6 explain. I'd like that courtesy, please.

7 A Okay. No. 251(c)(3) doesn't talk about things that
8 BellSouth is not obligated to perform. It sets the limitations
9 of what BellSouth is obligated to perform, which we are
10 required to do at TELRIC. It doesn't incorporate the entire
11 universe of things that BellSouth is not obligated to perform.

12 Q Now, Mr. Fogle, with respect to the Triennial Review
13 Order, can you point us to specific language where it has been
14 concluded that loop conditioning costs under any circumstance
15 should be recovered by other than TELRIC-based rates?

16 A Again, similar to 251(c)(3), no, it does not
17 specifically talk about the universe of things it is not
18 requiring us to perform.

19 The TRO in 251(c)(3) set forth our obligation, and
20 our obligation is to provide line conditioning for the Joint
21 Petitioners as we do for ourself at TELRIC.

22 The entire universe of things that are not covered,
23 that we're not required to do, it doesn't discuss any kind of
24 pricing methodology for how we might choose to make an
25 agreement with the CLECs and Joint Petitioners. Our offer is

1 to use our special construction tariffs because that's the best
2 method that we have for these relatively rare, nonstandard
3 requests for line conditioning.

4 MR. HEITMANN: I have nothing further for Mr. Fogle.

5 MS. SCOTT: Staff has no questions for Mr. Fogle.

6 COMMISSIONER BRADLEY: Redirect.

7 MR. MEZA: Very brief redirect, sir.

8 REDIRECT EXAMINATION

9 BY MR. MEZA:

10 Q Mr. Fogle, do you remember Mr. Heitmann asking about
11 whether Rhythms and other carriers were members of the
12 collaborative?

13 A Yes.

14 Q Can you identify some other members that Mr. Heitmann
15 may be familiar with?

16 A I'd have to refer to some of my notes. I don't
17 believe any of the Joint Petitioners have participated in the
18 collaborative. I know AT&T and MCI have; those are fairly
19 well-known companies. Covad participated and is obviously very
20 involved in the collaborative, as well as numerous other CLECs
21 have participated at various times, some of which may even be
22 Mr. Heitmann's clients. I don't, I don't know.

23 Q Now did MCI file for bankruptcy?

24 A No. Well, actually I don't recall exactly if they
25 have or not, so.

1 Q Okay. Can you explain in relation to Mr. Heitmann's
2 questions about the special construction charges why you
3 believe those charges are appropriate for removing load coils
4 in excess of 18,000 feet?

5 A Well, I showed one load coil. This is out of a
6 laboratory, so it's nice and clean, it's very easy to pick up,
7 that type of thing.

8 In the field we do banks of load coils, there are
9 400 of them in a very large vault that is buried, it's been in
10 place sometimes 20, 30, 40 years. So it's very difficult to
11 remove one load coil in that we have to send out a crew, we
12 have to dig up the load bank, load coil bank, open it up, find
13 the particular load coil, remove it, and then, of course, bury
14 it and put it back. And so from a special construction
15 perspective what we prefer to do is determine which load coils
16 need to be removed and determine the actual cost it takes to do
17 that and then provide that as an estimate to the CLEC before
18 moving forward.

19 And, again, the other primary reason for that is
20 we've had two requests in all of 2004 to remove load coils on
21 loops over 18,000 feet. So when we get both requests this
22 year, then we'd like to be able to, to determine the actual
23 costs of that individual request and use the special
24 construction process to, to recover those costs.

25 Q Now, Mr. Fogle, while there may be circumstances

1 where it's difficult to remove load coils, aren't there
2 situations where they're fairly easy?

3 A Yes. There can also be situations where a load coil
4 is on an aerial cable, there are only 25 of them, it's in a
5 smaller cable in a remote area, and so the opportunity to
6 remove that would be relatively short, straightforward and
7 would cost less than the 700 TELRIC rate, which is a blended
8 rate across all the possible scenarios.

9 Q Mr. Fogle, Mr. Heitmann handed you, I think,
10 composite Exhibit 24. Do you still have that?

11 A I have it in places, so you have to point to which
12 particular piece you want me to look at.

13 Q It's the well-known Vin diagram.

14 A Yes, I have that.

15 Q Do you have that?

16 A Yes.

17 Q And with the Chair's permission I would like to have
18 the witness for your benefit redraw the diagram according to
19 his interpretation of what the rule says so that everyone can
20 see it.

21 Mr. Fogle, would you please erase my drawing and
22 replace it with your drawing of what you believe the Vin
23 diagram should state.

24 A Certainly.

25 (Witness drawing.)

1 The drawing is based on my years of experience and
2 some time in mathematics classes through school and my
3 engineering background. I will have to admit it's personal,
4 but I'm excited to see a Vin diagram in a courtroom because
5 it's a relatively disciplined area of mathematics to try to
6 take words and sentences and turn them into mathematical
7 drawings. It's an area called set theory.

8 And so to -- specifically when you talk about the
9 relationship between routine network modifications and line
10 conditioning, the relationship is clearly articulated in a
11 couple of places in the Triennial Review Order. But in
12 particular, in Paragraph 643 the FCC says that line
13 conditioning is properly seen as a routine network
14 modification. The key word here is properly. So if you go to
15 a dictionary and look for the mathematical definition of
16 properly, which is what you would do if you were to attempt to
17 draw a Vin diagram of that particular sentence, properly is
18 defined as a subset. A subset means that it's wholly contained
19 within. So you could say that line conditioning is wholly
20 contained within routine network modifications or that line
21 conditioning is a subset of routine network modifications. So
22 the proper drawing of a subset is what I've shown you on this,
23 which is a larger circle which is routine network
24 modifications, and that line conditioning is a subset or an
25 area contained within the routine network modifications. And

1 all the other references to the relationship between these two
2 where they say routine network modifications are substantially
3 similar, all of the other references are consistent with this
4 particular drawing and their definition of line conditioning as
5 a subset of routine network modifications.

6 MR. MEZA: Thank you. I have no further questions.

7 COMMISSIONER BRADLEY: Excuse me. I'm going to take
8 a five-minute recess.

9 (Recess taken.)

10 COMMISSIONER BRADLEY: Okay. We need to reconvene.
11 I think this is a natural breaking point for us to break for
12 lunch, but I would like to ask the parties a question. Do you
13 all have any idea how much longer you all are going to need in
14 order for us to deal with the remaining witnesses?

15 MR. HEITMANN: Mr. Chairman, I would estimate at this
16 point that we will be most certainly finished some point
17 tomorrow morning. I would say that the possibility of
18 finishing this afternoon is relatively remote, but I would say
19 for certain that we would finish sometime tomorrow morning.

20 COMMISSIONER BRADLEY: Okay. Mr. Meza.

21 MR. MEZA: Yes, sir. I have no control of
22 Mr. Heitmann's questions, but I will keep my redirect as short
23 as possible to facilitate timely resolution. And I'd also note
24 that BellSouth is willing to stay as late as we need to today
25 to get finished today. It would be nice to have tomorrow free,

1 if we can.

2 COMMISSIONER BRADLEY: Okay. Thank you. Just trying
3 to get a gauge.

4 Why don't we take a one-hour break for lunch then and
5 just reconvene at around, what, around 1:35.

6 MR. HEITMANN: Mr. Chairman, before we break, could
7 we just --

8 COMMISSIONER BRADLEY: I need to excuse the witness.

9 MR. HEITMANN: Could we move in Exhibit 24 as well?

10 COMMISSIONER BRADLEY: I'm sorry. Yes. Yes. Yes,
11 we do need to take care of that. Go ahead.

12 MR. HEITMANN: Mr. Chairman, can Exhibit -- can we
13 have Exhibit 24 moved into the record?

14 MR. MEZA: No objection.

15 COMMISSIONER BRADLEY: Without objection, show
16 Exhibit 24 is admitted into the record.

17 (Exhibit 24 admitted into the record.)

18 And now we can excuse the witness and take a recess.

19 I'm sorry.

20 (Recess taken.)

21 (Transcript continues in sequence with Volume 6.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

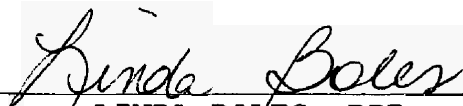
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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 10th DAY OF MAY, 2005.


LINDA BOLES, RPR
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