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November 8, 2002

**VIA HAND DELIVERY**

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Re: Docket No.: 020507-TP

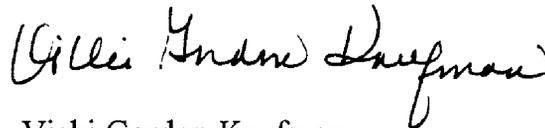
Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

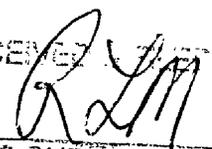
- ▶ The Florida Competitive Carriers Association's Brief on Contested Issue 7.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,



Vicki Gordon Kaufman

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of the Florida  
Competitive Carriers Association  
Against BellSouth Telecommunications, Inc.  
and Request for Expedited Relief

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Docket No. 020507-TP  
Filed: November 8, 2002

**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S  
BRIEF ON CONTESTED ISSUE 7**

Pursuant to the agreement of the parties at the issue identification meeting, the Florida Competitive Carriers Association (FCCA) files this brief on proposed Issue 7 raised by BellSouth Telecommunications, Inc. (BellSouth). It is FCCA's position that Proposed Issue 7 is beyond the scope of this proceeding and should be excluded.

**INTRODUCTION**

1. On October 30, 2002, Staff held an issue identification meeting in this docket. At the meeting, BellSouth proposed Issue 7<sup>1</sup>, which reads:

Should any decisions made in this proceeding apply equally to all ILECs and ALECs?

FCCA objects to this issue because it is far beyond the scope of the issues raised by the Complaint that will be considered in this docket. To resolve the question of whether BellSouth's proposed issue should be included for consideration, the parties agreed to submit briefs to the Prehearing Officer on the disputed issue.<sup>2</sup>

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<sup>1</sup> Despite the fact that BellSouth now argues the importance of this issue, it did not raise the issue when it filed its list of proposed issues on October 29, 2002.

<sup>2</sup> The parties also could not agree on Proposed Issues 8 and 9 that the FCCA presented. The FCCA has not pursued either of these issues. Staff has indicated that Issue 9 can be covered under other issues. As to Issue 8, the FCCA believes that whatever order the Commission issues at the conclusion of this proceeding, will speak for itself.

## DISCUSSION

2. The FCCA initiated this case by filing a Complaint on June 12, 2002. FCCA's Complaint relates directly to the conduct of BellSouth -- that is, BellSouth's refusal to provide its FastAccess internet service to consumers who exercise the competitive option of receiving voice service from a competitive voice provider. The issue before the Commission is whether BellSouth should be permitted to engage in such conduct.<sup>3</sup>

3. FCCA's Complaint is clear that BellSouth's anticompetitive practice is directly related to its position as an incumbent local monopoly and is an attempt to further entrench its voice monopoly.<sup>4</sup> It is *BellSouth's conduct* to which the FCCA Complaint is addressed. BellSouth's attempt to enlarge the scope of the docket to issues not raised by the FCCA must be rejected for the following reasons.

4. First, as noted above, this is a complaint proceeding that FCCA initiated. It is directed specifically to BellSouth's anticompetitive behavior. The parameters of FCCA's Complaint and its allegations must govern this matter. To the extent BellSouth can demonstrate that it has been harmed by anticompetitive behavior, which FCCA believes would be a very difficult burden for BellSouth to meet given its monopoly status, it may take such action as it deems necessary to address the conduct it claims has

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<sup>3</sup>BellSouth's anticompetitive behavior has been the subject of at least two other dockets before this Commission. *Petition by Florida Digital Network, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*; *Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc.*, Docket No. 001305-TP.

<sup>4</sup>FCCA Complaint, ¶ 14.

occurred.<sup>5</sup> However, BellSouth's attempt to graft unrelated issues onto FCCA's Complaint in this case is inappropriate.

5. Second, when the FCCA filed its Complaint in June of this year, it requested expedited consideration. BellSouth's conduct occurs every day in the marketplace and every day that it is permitted to continue creates an on-going barrier to local competition. Consideration of the Complaint was delayed, in part, when BellSouth filed a motion to dismiss (which the Commission found had no merit).<sup>6</sup>

6. This matter is currently scheduled for one day on January 30, 2003 and tight timeframes have been established for the filing of testimony.<sup>7</sup> Expansion of the scope of the hearing to unrelated matters (as well as the need to notice and involve other parties) could result in this matter being delayed further.

6. BellSouth argues that its proposed issue should be included to deal with the Commission's attempt to impose "regulatory oversight"<sup>8</sup> or "regulatory-intensive requirements"<sup>9</sup> on BellSouth that it does not impose on others. BellSouth claims that such action would be "arbitrary, capricious [and] discriminatory."<sup>10</sup> However, BellSouth fundamentally has misconstrued the issues in this case -- the FCCA's Complaint is not about "regulatory oversight" nor does it involve this Commission's rulemaking authority. Rather, it is about ensuring that BellSouth follows the law and does not engage in clearly prohibitive conduct that is anticompetitive so as to strengthen its own voice monopoly position in the market to the detriment of end users.

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<sup>5</sup> The FCCA notes that nowhere in its Brief does BellSouth complain of any anticompetitive conduct on the part of another party.

<sup>6</sup> Order No. PSC-02-1464-FOF-TI.

<sup>7</sup> The current schedule calls for direct testimony to be filed on November 26<sup>th</sup>.

<sup>8</sup> BellSouth Brief at p. 3.

<sup>9</sup> BellSouth Brief at p. 5.

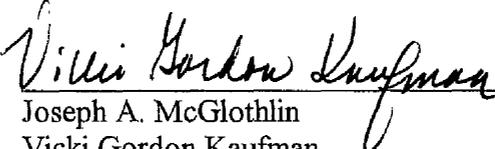
<sup>10</sup> BellSouth Brief at p. 3.

7. BellSouth further argues that the FCCA asks the Commission to "regulate" BellSouth's unregulated FastAccess.<sup>11</sup> BellSouth is wrong again -- this case is about the anticompetitive consequences of BellSouth *refusing to serve* certain customers. The FCCA's Complaint alleges that this conduct is violative of Florida law and the Commission's mandate to open the local markets to competition. This is the ultimate issue that the Commission will decide in this case.

8. Finally, while BellSouth argues that failure to include its issue would require the Commission to "render its decision in a vacuum"<sup>12</sup>, the opposite is actually the case. Exclusion of the broad, open-ended issue BellSouth promotes will permit the Commission and the parties to focus on the matters raised in the FCCA's Complaint.

#### CONCLUSION

**WHEREFORE**, proposed Issue 7 should not be included in this proceeding.

  
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<sup>11</sup> In making this argument, BellSouth strays into arguing about the manner in which FastAccess is provided as well as the provision of other DSL technology. See BellSouth Brief at pp.4-5. These matters are irrelevant to whether the inclusion of Proposed Issue 7 is appropriate in this complaint proceeding.

<sup>12</sup> BellSouth Brief at p. 5.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Competitive Carriers Association's Brief on Contested Issue 7 has been furnished by (\*) hand delivery, (\*\*) electronic mail or U.S. Mail this 8th day of November, 2002, to the following:

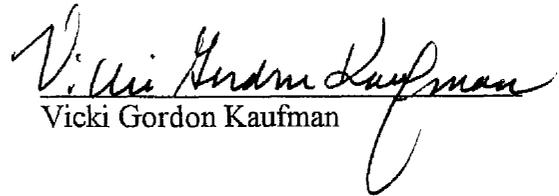
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