

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida  
Competitive Carriers Association  
against BellSouth  
Telecommunications, Inc.  
regarding BellSouth's practice  
of refusing to provide  
FastAccess Internet Service to  
customers who receive voice  
service from a competitive voice  
provider, and request for  
expedited relief.

DOCKET NO. 020507-TL  
ORDER NO. PSC-03-0152-PHO-TL  
ISSUED: January 29, 2003

Pursuant to Notice and in accordance with Rule 28-106.209,  
Florida Administrative Code, a Prehearing Conference was held on  
January 6, 2003, in Tallahassee, Florida, before Commissioner  
Braulio L. Baez, as Prehearing Officer.

APPEARANCES:

VICKI GORDON KAUFMAN, Esquire, McWhirter, Reeves,  
McGlothlin, Davidson, Decker, Kaufman & Arnold, P.A., 117  
S. Gadsden Street, Tallahassee, Florida 32301  
On behalf of the Florida Competitive Carriers Association  
("FCCA").

FLOYD R. SELF, Esquire, Messer, Caparello & Self, P.A.,  
Post Office Box 1876, Tallahassee, Florida 32302-1876;  
and NANETTE S. EDWARDS, ITC^DeltaCom, 4092 South Memorial  
Parkway, Huntsville, Alabama 35802-4343  
On behalf of ITC^DeltaCom Communications, Inc.  
("DeltaCom").

NANCY B. WHITE, Esquire, c/o Nancy Sims, 150 South Monroe  
Street, Suite 400, Tallahassee, Florida 32301; and R.  
DOUGLAS LACKEY, Esquire, and MEREDITH E. MAYS, Esquire,  
675 W. Peachtree Street, NE, Suite 4300, Atlanta, Georgia  
30375  
On behalf of BellSouth Telecommunications, Inc. ("BST").

PATRICIA A. CHRISTENSEN, Esquire, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
Florida 32399-0850  
On behalf of the Commission.

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FPSC-COMMISSION CLERK

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Alternative Local Exchange Carrier (ALEC). By Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, the request for expedited relief was denied. By Order No. PSC-02-1464-FOF-TL, issued October 23, 2002, we denied BellSouth's Motion to Dismiss and FCCA's Motion for Summary Final Order without Prejudice.

Order No. PSC-02-1537-PCO-TL, issued November 12, 2002, the Order Establishing Procedure excluded BellSouth's proposed Issue 7 from this proceeding. On November 22, 2002, Order No. PSC-02-1618-PCO-TL, the Clarification Order provided clarification regarding the reasons for excluding BellSouth's proposed Issue 7 and reaffirmed the decision to exclude proposed Issue 7. At the December 17, 2002, Agenda Conference, BellSouth's Motion for Reconsideration and/or Modification of Order No. PSC-02-1618-PCO-TL to the Full Commission, or in the Alternative, Motion to Convert to a Generic Proceeding was denied.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to

the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the

Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any,

statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct/Rebuttal</u>		
Sherry Lichtenberg *	FCCA	2, 4, 5, 6a, 6b
Jay Bradbury *	FCCA	2, 4, 5, 6a, 6b
Joseph P. Gillan	FCCA	All
John Ruscilli	BST	1, 2, 3
W. Keith Milner	BST	4
Eric Fogle	BST	5, 6a, 6b
Bill Smith	BST	5
William E. Taylor *	BST	3, 4, 5

\* Rebuttal testimony only.

VII. BASIC POSITIONS

FCCA/DeltaCom: BellSouth's policy of denying FastAccess service to a consumer who selects a provider other than BellSouth for voice service violates Florida law's prohibitions on anticompetitive behavior and discrimination.

In both the BellSouth/FDN arbitration (Docket No. 010098-TP) and the BellSouth/Supra arbitration (Docket No. 001305-TP), the Commission prohibited BellSouth from disconnecting its FastAccess service when a consumer selects a competitive voice provider. The Commission found that such behavior "unreasonably penalizes customers" and "creates a barrier to competition in the local telecommunications market in that customers could be dissuaded by this practice from choosing FDN or another ALEC as their voice service provider . . . ." Order No. PSC-02-0765-FOF-TP at 10.

Though these cases addressed current BellSouth customers, there is no reason (legally, technically or otherwise) to make a distinction between migrating customers and others. This irrelevant distinction would undermine the policy that this Commission has already articulated -- BellSouth may not punish consumers for their choice of voice providers. The Commission should lay these issues to rest once and for all in this docket and require BellSouth to provide its FastAccess service to all end users who want it, regardless of their voice carrier.

Finally, BellSouth should not be permitted to make any changes to a migrating customer's service arrangements and should not be able to assess any additional charges. As the Commission has already decided, the transition should be seamless and at no additional cost. (Order No. PSC-02-1453-FOF-TP). As to a new end user, BellSouth should be required to provide FastAccess at the same rates, terms and conditions as it is offered to BellSouth's own end users. There are no legal, technical or operational reasons that would support a change in rates, terms or conditions.

**BellSouth:**

The Commission does not have jurisdiction to grant the relief requested by the FCCA. The issues list in this case (specifically Issues 2, 4, 5, 6a, and 6b) relate solely to BellSouth's FastAccess Internet Service, which is an unregulated broadband offering. The Commission has no authority to regulate this service. Furthermore, none of BellSouth's practices relating to its FastAccess service violate any provisions of federal law, as the FCC has previously determined on three occasions. Likewise, none of BellSouth's practices relating to its FastAccess service violate any provisions of state law. Moreover, the relief sought by the FCCA extends well beyond this Commission's prior orders and if granted would eliminate any incentive for BellSouth to continue

to invest in DSL services in Florida, which is contrary to the goals of both federal and state law. The Commission should reject all aspects of the FCCA's Complaint.

**Staff:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

#### VIII. ISSUES AND POSITIONS

**ISSUE 1:** Does the Commission have jurisdiction to grant the relief requested in the Complaint?

#### **POSITIONS:**

**FCCA/DeltaCom:** Yes. Florida Statutes give the Commission jurisdiction in this matter. The Commission has found on no less than three occasions that it has jurisdiction to address the BellSouth behavior that is the subject of this case. First, in Docket No. 010098-TP, it ordered BellSouth to cease disconnecting migrating FastAccess customers. Second, it made the same decision in Docket No. 001305-TP. Third, in this very docket, it denied BellSouth's motion to dismiss the FCCA's Complaint for lack of jurisdiction. Order No. PSC-02-1464-FOF-TL. In that order, the Commission found: "We, however, have determined that we have the authority to remedy anti-competitive behavior that is detrimental to the development of a competitive telecommunications market."

**BellSouth:** No. By seeking an order that would require BellSouth to provide its unregulated information service to any requesting end user, the relief



requested by the FCCA exceeds this Commission's jurisdiction, seeks to extend this Commission's prior rulings well beyond the scope of the Commission's authority, and is contrary to the goals of Florida law, which seek to limit, rather than create, unnecessary regulation. Moreover, to the extent the Commission dictates the rates, terms, and conditions of BellSouth's provision of an unregulated service to an existing customer, such action is likewise beyond the scope of this Commission's jurisdiction.

**Staff:** Staff believes that the Commission has jurisdiction to hear this matter pursuant to Section 364.01(4)(g), Florida Statutes. On the issue of whether the Commission has jurisdiction to grant the relief requested in the Complaint, however, staff has no position at this time pending further development of the facts.

**ISSUE 2:** What are BellSouth's practices regarding the provisioning of its FastAccess Internet service to:

- a. a FastAccess customer who migrates from BellSouth to a competitive voice service provider; and
- a. to all other ALEC customers.

**POSITIONS:**

**FCCA/DeltaCom:** (a) It is the FCCA's and DeltaCom's understanding that it is BellSouth's practice to disconnect a BellSouth FastAccess customer who selects a different provider for voice service.

(b) It is the FCCA's and DeltaCom's understanding that it is BellSouth's practice to refuse to provide its FastAccess service to a customer who requests it but is receiving service from a voice provider other than BellSouth.

**BellSouth:** 1) BellSouth's policy has and remains that it will continue to provide its FastAccess service to existing FastAccess customers that migrate voice service to a competitive voice carrier so long as the voice service is provided over a resold BellSouth line. In addition, BellSouth has proposed methods and procedures to implement this Commission's prior orders relating to BellSouth's FastAccess service. Such methods and procedures will apply so long as these orders remain effective.

2) BellSouth provides its FastAccess service to end user customers that receive voice service on a BellSouth line or via a resold BellSouth voice line. BellSouth does not provide its retail FastAccess service to end user customers that receive voice service from an ALEC using its own facilities or using unbundled network elements, except as otherwise ordered by this Commission and as long as such orders remain effective.

**Staff:** Staff has no position at this time.

**ISSUE 3:** Do any of the practices identified in Issue 2 violate state or federal law?

**POSITIONS:**

**FCCA/DeltaCom:** Yes. BellSouth's practices violate both state and federal law. As to state law, as this Commission has already found, BellSouth's practice violates § 364.10, Florida Statutes as well as §§ 364.01(4)(b), (4)(d), (4)(g). It is the FCCA's and DeltaCom's position that it also violates §§ 364.051, 364.08(1) and 364.3381, Florida Statutes. Further, BellSouth's practice violates § 202 of the federal Telecommunications Act of 1996.

**BellSouth:** No. BellSouth's business decision to deploy network facilities capable of providing DSL service

and providing such unregulated service as an overlay to an existing exchange facility is wholly appropriate.

Staff: Staff has no position at this time.

ISSUE 4: Should the Commission order that BellSouth may not disconnect the FastAccess Internet service of an end user who migrates his voice service to an alternative voice provider?

POSITIONS:

FCCA/DeltaCom: Yes. The Commission has already made this finding on two other occasions -- in the BellSouth/FDN arbitration and in the BellSouth/Supra arbitration. The Commission should confirm that BellSouth may not engage in this anticompetitive behavior as to any consumer who chooses a competitive voice provider.

BellSouth: No. The Commission should not attempt to regulate the circumstances under which BellSouth makes available its unregulated information service offering. Moreover, as set forth above, the Commission has no jurisdiction to enter such an order.

Staff: Staff has no position at this time.

ISSUE 5: Should the Commission order BellSouth to provide its FastAccess Internet service, where feasible, to any ALEC end user that requests it?

POSITIONS:

FCCA/DeltaCom: Yes. There is absolutely no distinction between customers that have already chosen a new voice provider and customers that are migrating to a new voice provider. BellSouth should not be permitted

to refuse to provide FastAccess service whether the customer has already purchased FastAccess or is requesting the service as a new customer. In both situations, this practice is discriminatory, anticompetitive and inconsistent with encouraging voice competition and the deployment of advanced services.

**BellSouth:** No. It is not practicable, reasonable, or realistic to enter such an order since BellSouth has no particular advantage in the broadband market, and ALECs provide their own broadband service and are capable of providing their own broadband service to the extent such service is not currently provided. Moreover, such an order exceeds this Commission's jurisdiction. Finally, ALECs have any number of alternatives that allow the provision of broadband services to ALEC customers. ALECs should not be permitted to benefit from BellSouth's investment decisions when unwilling to make similar investments.

**Staff:** Staff has no position at this time.

**ISSUE 6(a):** If the Commission orders that BellSouth may not disconnect its FastAccess Internet service, where a customer migrates his voice service to an ALEC and wishes to retain his BellSouth FastAccess service, what changes to the rates, terms, and condition of his service, if any, may BellSouth make?

**POSITIONS:**

**FCCA/DeltaCom:** BellSouth should not be permitted to make any changes to the customer's network serving arrangement or assess any additional charges. The Commission has already decided this issue in Order No. PSC-02-1453-FOF-TL, where it found that the transition for the migrating customer must be seamless and at no additional cost.

**BellSouth:**

The Commission should not enter such an order, which exceeds the Commission's jurisdiction and which seeks to regulate an unregulated service offering. Notwithstanding that such an order would exceed this Commission's jurisdiction, an overview of changes BellSouth may need to make are as follows:

1. BellSouth must be permitted to implement credit card billing for the end user customer receiving FastAccess service.
2. If the end user is served via an ALEC loop, the ALEC needs to provide a splitter to be added between the BellSouth DSLAM and the ALEC loop.
3. If the end user is served via an ALEC loop, the ALEC would need to provide BellSouth access to the mechanized loop testing capability on the ALEC voice switch in order to conduct troubleshooting as needed.
4. BellSouth needs the flexibility, in its discretion, to deploy a second line to the end user customer's home; such loop could be used either to provide FastAccess service and/or to provide the unbundled loop and/or UNE-P service.
5. To the extent that providing FastAccess over an ALEC line leads to higher costs incurred by BellSouth to provision this service (which was designed, priced, and implemented as an overlay service, and not a standalone service offering), BellSouth must be able to recover such costs from the cost-causer (the ALEC and its customers).

In addition, BellSouth reserves the right to identify other changes; and specifically reserves the right to respond and/or to identify other

changes for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

**Staff:** Staff has no position at this time.

**ISSUE 6(b):** If the Commission orders BellSouth to provide its FastAccess service to any ALEC end user that requests it, where feasible, then what rates, terms and conditions should apply?

**POSITIONS:**

**FCCA/DeltaCom:** BellSouth should be required to provide FastAccess service to any ALEC end user under the same terms, conditions and prices that it would offer FastAccess to its own end users.

**BellSouth:** BellSouth incorporates by reference as if fully stated herein its response to 6a. In addition, BellSouth adds that to the extent that it is ordered to provide FastAccess service to a customer that is not an existing FastAccess customer, there would be additional non-recurring costs to establish such service, which it must be able to recover.

BellSouth also reserves the right to identify other changes; and specifically reserves the right to respond and/or to identify other changes for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

**Staff:** Staff has no position at this time.

IX. EXHIBIT LIST

Direct

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ruscilli	BST	_____ (JAR - 1)	FCC's July 2002 Report on High-Speed Services for Internet Access

Rebuttal

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Bradbury	FCCA	_____ (JMB - 1)	L e t t e r o f Authorization for Line Splitting
		_____ (JMB - 2)	Fast Access Internet Service Web Site
		_____ (JMB - 3)	Required Data Fields for Loop Makeup Data Query
		_____ (JMB - 4)	Loop Qualification System
		_____ (JMB - 5)	D/CLEC Pre-Ordering Guide for Electronic Loop Makeup
		_____ (JMB - 6)	Line Splitting -CLEC Information Package
		_____ (JMB - 7)	Affidavit of William Stacy before the FCC
Gillan	FCCA	_____ (JPG - 1)	BellSouth letter to FCC re UNE-P data
		_____ (JPG - 2)	BellSouth letter re provision of DSL

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ruscilli	BST	_____ (JAR - 2)	FCC's December 2002 Report on High-Speed Services for Internet Access
Milner	BST	_____ (WKM - 1)	Publicly available information relating to FCCA members' provision of DSL service
		_____ (WKM - 2)	Supplier correspondence with DSLAM list price information
		_____ (WKM - 3)	Business Case Internal Rate of Return
Fogle	BST	_____ (EF - 1)	Overview of Agreed upon Contractual Terms
		_____ (EF - 2)	Cost Estimate to Deploy Fast Access over UNE loops
Taylor	BST	_____ (WET - 1)	Curriculum Vitae

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.



XI. PENDING MOTIONS

1. FCCA's Motion for Reconsideration of Order No. PSC-03-0084-PCO-TL, filed January 17, 2003. FCCA's Request for Oral Argument on its Motion for Reconsideration filed January 17, 2003.
2. BellSouth's Second Emergency Motion to Compel Against FCCA, filed January 17, 2003.
3. BellSouth's Response in Opposition to Motion for Reconsideration of FCCA, filed January 22, 2003.

XII. PENDING CONFIDENTIALITY MATTERS

1. BellSouth's Notice of Intent to Request Specified Confidential Classification of DN 00435-03 (x-ref. 00046-03) filed January 14, 2003.
2. BellSouth's Notice of Intent to Request Specified Confidential Classification of DN 00046-03 filed January 2, 2003.
3. FCCA's Claim of Confidentiality for its Responses to BellSouth's Third Set of Interrogatories and Third Requests for Production of Documents, DN 00465-02, filed January 15, 2003.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

- A. Decisions BellSouth Asserts May Impact the Commission's Resolution of Issues
1. Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1*, 13 F.C.C. rcd 22,466 (October 30, 1998).

2. *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.*
3. *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, CC Docket No. 02-150, Rel. September 18, 2002.*
4. *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 Florida and Tennessee, CC Docket No. 02-307, Rel. December 19, 2002.*
5. *In re: Application by SBC Communications, Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services for Authorization to Provide In-Region, InterLATA Services in California, CC Docket No. 02-306, Rel. December 19, 2002.*
6. *In the Matter of Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd. 7571 (1991).*
7. *United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002.*
8. *In the Matter of the Petition of MCImetro Access Transmission Services, LLC for Arbitration with Ameritech Ohio, Case No. 01-1319-TP-ARB, Ohio Public Service Commission, November 7, 2002.*
9. *In re: the Commissions' own motion to Consider Ameritech Michigan's compliance with the competitive checklist in Section 271, Case No. U-12320, Michigan Public Service Commission, October 3, 2002.*

10. Memorandum Opinion and Order, *In Re the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunication Services*, CC Docket No. 01-337, released December 31, 2002.

B. Decisions the FCCA Asserts May Impact the Commission's Resolution of Issues

1. Order No. PSC-02-0878-FOF-TP, issued July 1, 2002, in Docket No. 001305-TP, *In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.* at pages 1, 49-51.
2. Order No. PSC-02-0765-FOF-TP, issued June 5, 2002, in Docket No. 010098-TP, *In re: 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.*
3. Order No. PSC-02-1453-FOF-TP, issued October 21, 2002, in Docket No. 010098-TP, *In re: 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.*
4. Staff's Final Recommendation (Final Order pending), Louisiana Public Service Commission (approved by the Commission on December 18, 2002), Docket No. R-26173, *In re: BellSouth's provision of ADSL Service to end-users over CLEC loops- Pursuant to the Commission's directive in Order U-22252-E.*
5. Order Dated July 12, 2002, Kentucky Public Service Commission, Case No. 2001-00432, *In the matter of: Petition of Cinergy Communications Company for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. pursuant to U.S.C., Section 252.*

6. Order Dated October 15, 2002, Kentucky Public Service Commission, Case No. 2001-00432, *In the matter of: Petition of Cinergy Communications Company for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. pursuant to U.S.C., Section 252.*
7. Final Report and Decision of the Commission on Emerging Services: Line Sharing and Sub-loop Unbundling (January 11, 2002), pages 1-18, Montana Public Service Commission, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. D2000.5.70.

IV. RULINGS

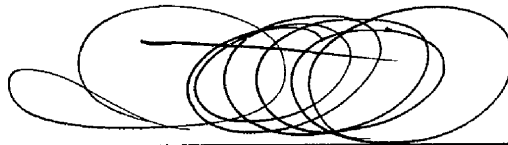
1. Opening statements, if any, shall not exceed ten minutes per side.
2. Direct and Rebuttal testimony will be addressed together.

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It is therefore,

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 29th Day of January, 2003.



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BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

( S E A L )

PAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.