

ORIGINAL



Tracy Hatch  
Law and Government Affairs  
Senior Attorney

101 North Monroe Street  
Suite 700  
Tallahassee, Florida 32301  
850 425-6360  
FAX 850 425-6361  
thatch@att.com

July 7, 2003

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
The Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

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Re: Docket Nos. 981834-TP and 990321-TP

Dear Ms. Bayó:

Enclosed for filing is an original and fifteen copies of AT&T's Response to Veriaon's Motion to Compel discovery filed on behalf of AT&T Communications of the Southern States, LLC.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed," and return to me at the time of filing. Thank you for your assistance.

Sincerely yours,

Tracy W. Hatch

TWH/las  
Enclosure

cc: Parties of Record

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 3
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
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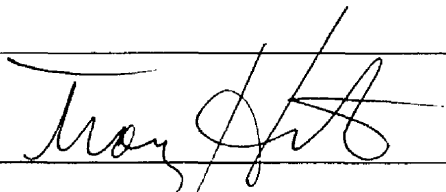
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE  
DOCKET NOS. 981834 & 990321**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via  
U.S. Mail this 7<sup>th</sup> day of July, 2003, to the following parties of record:

Wayne Knight Staff Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850	ALLTEL Communications Services, Inc. Bettye Willis One Allied Drive Little Rock, AR 72203-2177 Phone: (501) 905-8330 Fax: (501) 905-6299
Ausley Law Firm Jeffry Wahlen P.O. Box 391 Tallahassee, FL 32302 Phone: 850-224-9115 Fax: 222-7560	BellSouth Telecommunications, Inc. Nancy B. White c/o Ms. Nancy H. Sims 150 South Monroe Street, Suite 400 Tallahassee, FL 32301-1556 Phone: (850) 224-7798 Fax: 222-8640
Florida Digital Network, Inc. Matthew Feil, Esq. 390 North Orange Ave., Suite 2000 Orlando, FL 32801 Phone: (407) 835-0460 Fax: (407) 835-0309 Email: <a href="mailto:mfeil@floridadigital.net">mfeil@floridadigital.net</a>	Hopping Law Firm Richard Melson P.O. Box 6526 Tallahassee, FL 32314 Phone: 850-222-7500 Fax: 224-8551
Florida Cable Telecom. Assoc., Inc. Michael A. Gross 246 E. 6th Avenue, Suite 100 Tallahassee, FL 32303 Phone: 850-681-1990 Fax: 681-9676 Email: <a href="mailto:mgross@fcta.com">mgross@fcta.com</a>	Florida Competitive Carriers Assoc. c/o McWhirter Law Firm Vicki Kaufman 117 S. Gadsden St. Tallahassee, FL 32301 Phone: 850-222-2525 Fax: 222-5606
ITC^DeltaCom Ms. Nanette S. Edwards 4092 S. Memorial Parkway Huntsville, AL 35802-4343 Email: <a href="mailto:NEdwards@itcdeltacom.com">NEdwards@itcdeltacom.com</a>	KMC Telecom, Inc. Mr. John D. McLaughlin, Jr. 1755 North Brown Road Lawrenceville, GA 30043-8119 Phone: (678) 985-6262 Fax: (678) 985-6213 Email: <a href="mailto:jmclau@kmctelecom.com">jmclau@kmctelecom.com</a>
Sprint-Florida, Inc. F.B. (Ben) Poag PO BOX 2214, MC FLTLHO0107 Tallahassee, FL 32316-2214 Phone: 850-599-1027 Fax: 407-814-5700	MCI WorldCom Communications, Inc. Ms. Donna C. McNulty 1203 Governors Square Blvd., Suite 201 Tallahassee, FL 32301-2960 Phone: (850) 219-1008 Fax: 219-1018 Email: <a href="mailto:donna.mcnulty@wcom.com">donna.mcnulty@wcom.com</a>
Network Telephone Corporation Brent E. McMahan	Pennington Law Firm Peter Dunbar/ Marc Dunbar

815 South Palafox Street Pensacola, FL 32501-5937 Phone: (850) 432-4855 Fax: (850) 437-0724	P.O. Box 10095 Tallahassee, FL 32302 Phone: 850-222-3533 Fax: 222-2126
Sprint Communications Company Limited Partnership Susan S. Masterton P.O. Box 2214 MC: FLTLHO0107 Tallahassee, FL 32316-2214 Phone: (850) 847-0244 Fax: 878-0777 Email: <a href="mailto:susan.masterton@mail.sprint.com">susan.masterton@mail.sprint.com</a>	Supra Telecommunications & Information Systems, Inc. Paul Turner 2620 S.W. 27th Avenue Miami, FL 33133 Phone: 305-531-5286 Fax: 305-476-4282
Time Warner Telecom Ms. Carolyn Marek Regulatory Affairs, Southeast Region 233 Bramerton Court Franklin, TN 37069 Phone: (615) 376-6404 Fax: (615) 376-6405 Email: <a href="mailto:carolyn.marek@twtelecom.com">carolyn.marek@twtelecom.com</a>	Verizon Florida Inc. Mr. Richard Chapkis 201 N. Franklin Street, MCFLTC0007 Tampa, FL 33601 Phone: (813) 483-2606 Fax: (813) 204-8870
Beth Keating, Esq. Division of Legal Services Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0870	MediaOne Florida Telecom., Inc. c/o Laura L. Gallagher, P.A. 101 E. College Ave., Suite 302 Tallahassee, FL 32301
BellSouth Telecom., Inc. Patrick W. Turner/R. Douglas Lackey 675 W. Peachtree St., Suite 4300 Atlanta, GA 30375	Messer Law Firm Floyd Self/Norman Horton PO BOX 1876 Tallahassee, FL 32302
Verizon Florida Inc. Ms. Michelle A. Robinson c/o Mr. David Christian 106 East College Avenue, Suite 810 Tallahassee, FL 32301-7704 Phone: (813) 483-2526 Fax: (813) 223-4888 Email: <a href="mailto:Michelle.Robinson@verizon.com">Michelle.Robinson@verizon.com</a>	Shook, Hardy & Bacon, LLP Rodney L. Joyce 600 14 <sup>th</sup> Street N.W., Suite 800 Washington, DC 20005-2004 Phone: (202) 639-5602 Fax: (202) 783-4211
Covad Communications William H. Weber / Gene Watkins 19 <sup>th</sup> Floor 1230 Peachtree Street N.E. Atlanta, GA 30309 Phone: (404) 942-3494 Fax: (404) 942-3495	



Tracy W. Hatch

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Carriers for Commission Action	)	Docket No. 981834-TP
To Support Local Competition	)	
<u>In BellSouth's Service Territory</u>	)	
In re: Petition of ACI Corp. d/b/a	)	
Accelerated Connections, Inc. for	)	Docket No. 990321-TP
Generic Investigation into Terms and	)	
Conditions of Physical Collocation	)	
<hr/>		Filed: July 7, 2003

**RESPONSE OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC.  
TO VERIZON FLORIDA'S MOTION TO COMPEL DISCOVERY**

AT&T Communications of the Southern States, LLC ("AT&T") through its undersigned counsel, responds to the motion of Verizon Florida, Inc. ("Verizon") to compel discovery in this proceeding, and states:

1. On June 27, 2003, Verizon filed its motion to compel discovery, in which Verizon requests that AT&T be compelled to provide responses to Verizon's Second Set of Interrogatories to the ALEC Coalition, Nos. 5-21.
2. The test for determining the propriety of discovery is Rule 1.280(b)(1), Florida Rules of Civil Procedure. This Rule provides "parties may obtain discovery regarding any matter, not privileged, that is relevant for the subject matter of the pending action" The Rule further provides that it is not grounds for objection if the information is reasonably calculated to lead to the discovery of admissible evidence. Verizon's Interrogatories are not a meaningful attempt to obtain information relevant to this proceeding nor is the information sought reasonably calculated to lead to the discovery of admissible evidence.
3. The scope of discovery under the Florida Rules of Civil Procedure is very liberal. However, discovery is not unlimited. The permissible scope of discovery does not

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allow for parties to go beyond to scope of a proceeding and engage in wholesale "fishing expeditions" seeking information far beyond the scope of the proceeding in question.

4. The purpose and scope of the instant proceeding is to determination the appropriate TELRIC costs under the Telecom Act of 1996 for the provision of collocation as an unbundled network element by Verizon, BellSouth and Sprint (the ILECs) on a wholesale basis to a CLEC for the purposes of providing access to other unbundled network elements, principally unbundled loops to enable CLECs to provide local exchange service. This is the scope and the boundaries of permissible discovery. The bulk of the interrogatories propounded by Verizon seek nothing less than a complete detailed inventory of all of AT&T's current collocation arrangements in Florida either in an ILEC central office or otherwise, all locations that house unspecified "telecommunications equipment", power plant installations and additions whether in Florida or not unspecified as to purpose and detailed breakdown of all AT&T's internal costs for cable racking again unspecified as to location or purpose. All of these interrogatories go far beyond the scope of the instant proceeding. AT&T does not and has no obligation to provide collocation on an unbundled wholesale basis to CLECs for the provision of collocation as an unbundled network element. As a result, AT&T As a competitive CLEC attempting to enter the local telecommunication service market, bears no resemblance to the least cost forward looking company serving all CLEC customers in the Verizon Florida Territory on a wholesale only basis. Accordingly, the information sought by Verizon is not and could not be relevant to the determination of Verizon's TELRIC costs for the provision of collocation as an unbundled network element.

5. In its Motion, Verizon states that its discovery "contains 17 interrogatories, many with subparts, covering a broad range of questions about AT&T's collocation activity,

provisioning of telecommunications services, and general business practices." (Verizon Motion to Compel, p. 3) This description is more than a simple understatement. Most of the interrogatories have extensive subparts. There is indeed a "broad" range of questions, which cover matters far beyond the provision of collocation by Verizon and seek extensive and completely unrelated information. Verizon's own description of the scope of its interrogatories is a clear concession that it seeks information far beyond and unrelated to the provision of collocation as an unbundled network element by an ILEC and which is irrelevant to the instant proceeding.

6. In support of its motion Verizon argues that the testimony of AT&T's witnesses Turner and King have "at times" relied on AT&T's "own operational experience" to support their respective testimonies. (Verizon Motion to Compel, p. 3) Based on this Verizon argues that AT&T has put its practices "into play" (Verizon Motion, p. 4) and essentially that all AT&T's practices should be subject to discovery to determine the appropriate collocation costs for Verizon. This argument is without merit. If AT&T's practices were similar in scope and purpose to Verizon's, then perhaps the interrogatories would pass muster. However, no such allegation has been made nor could such allegation be seriously contemplated because AT&T does not provide collocation as an unbundled network element as TELRIC prices to CLECs for access to unbundled loops or to any other unbundled network elements. There is simply no reasonable comparability between AT&T's business practices in its network sites and Verizon's obligation to provide collocation to CLECs as an unbundled network element. Without any such comparability, one is left with an "apples-to-oranges" comparison between AT&T business practices and Verizon's obligation to provide collocation under the Telecom Act. The lack of reasonable comparability rules out any relevance of Verizon's interrogatories

Nos. 5-21 and any notion that these interrogatories are reasonably calculated to lead to the discovery of admissible evidence.

7. With respect to certain groups of interrogatories Verizon makes the following specific arguments.

8. Interrogatories 5-6: Verizon argues that its request for AT&T's Florida – specific collocation practices will support Verizon's assertions regarding ALEC requirements for providing telecommunications services in the collocation context. Verizon's Interrogatories No. 5 contains 18 subparts, seeking extensive information regarding AT&T's collocation arrangements in Florida central offices and No. 6 contains 11 subparts seeking extensive information as to “each arrangement AT&T has in Florida to use non-ILEC telecommunications space.” Verizon has made no effort to show how any of the requested information would “support Verizon's assertions regarding ALEC requirements for providing telecommunications services in the collocation context.” The issue in this proceeding is Verizon's provision of collocation to CLECs on a TELRIC basis. AT&T's existing collocation arrangements are irrelevant to the determination of Verizon's forward looking TELRIC obligations. None of the information sought bears any relationship to Verizon's provision of collocation to CLECs under the Telecom Act. The information sought is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Further, the breadth of the information clearly makes these interrogatories overbroad and burdensome.

9. Interrogatories Nos. 7-10: According to Verizon, these interrogatories seek information on AT&T collocation provisioning practices. Verizon argues that this information will support cost components and rate elements of Verizon's cost study. For the reasons discussed above, AT&T's business practices regarding its own collocation

arrangements are not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, even a passing glance at Interrogatories 7 and 8 belie Verizon's assertion that the information it seeks is only about AT&T's collocation arrangements. Interrogatory No. 7 asks whether AT&T owns or controls any buildings used to house telecommunications equipment and Interrogatory 8 asks for 12 pieces of information for every AT&T property referenced in No. 7. The extraordinary breadth of these requests far exceeds the relevant scope on inquiry in this proceeding. By its terms this interrogatory applies to every building owned or leased in Florida by AT&T that contains any type of "telecommunications equipment" The term "telecommunications equipment" is a broad descriptor that encompasses virtually every piece of hardware used either to provide or to use telecommunications service. This would include locations that have nothing to do with AT&T's provision of telecommunications services such as administrative offices that contain a PBX or a warehouse that contains obsolete or idle telecommunications hardware. These interrogatories are more overbroad and burdensome than Nos. 7 and 8. Every AT&T location that houses telecommunications equipment in Florida can not be relevant to the determination of the appropriate TELRIC costs for Verizon to provide collocation to CLECs. Interrogatories 9 and 10 seek extensive information regarding all the AT&T locations identified in No. 8 that are leased to other firms. These interrogatories are irrelevant as well as overbroad and burdensome for the same reasons discussed above. In addition, these interrogatories seek information about lessees of AT&T space in Florida regardless of whether they are CLECs and regardless of whether they are involved in any collocation or even the provision of telecommunications service. These interrogatories are the ultimate example of an unbridled



attempt at a fishing expedition through AT&T's business information seeking information not relevant and not reasonably calculated to lead to the discovery of admissible evidence .

10. Interrogatories 11-14: Interrogatories 11 and 12 seek information on the three most recent complete power plant installations anywhere in the world and in Florida, respectively. Interrogatories Nos. 13 and 14 seek the most recent three power plant additions anywhere in the world and in Florida, respectively. Verizon argues that this information will support Verizon's proposed power costs. In addition, Verizon argues that AT&T witness Steve Turner's Rebuttal Testimony has placed all of AT&T's It is not clear how Verizon needs AT&T information to support its own proposed power costs. As discussed above, this argument is without merit. If AT&T's power practices were similar in scope and purpose to Verizon's, then perhaps the interrogatories would pass muster. However, no such allegation has been made nor could such allegation be seriously contemplated because AT&T does not provide power or collocation as an unbundled network element at TELRIC prices to CLECs for access to unbundled loops or to any other unbundled network elements. There is simply no reasonable comparability between AT&T's business practices in its network sites and Verizon's obligation to provide collocation to CLECs as an unbundled network element. Without any such comparability, one is left with an "apples-to-oranges" comparison between AT&T business practices and Verizon's obligation to provide collocation under the Telecom Act. Therefore, the information sought by these interrogatories is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. With respect to Verizon's argument that Steve Turner's comparison of the efficiency of an AT&T rectifier to Verizon's alleged efficiency opens the door to wholesale discovery on all of AT&T's power provisions, Verizon is simply again trying to engage in a broad fishing expedition seeking

information that, as described above, is not relevant. Rectifiers are relatively homogenous pieces of electrical equipment. This is not so with the provision of power in the aggregate. It is an impermissible leap to suggest that a narrow example of one piece of equipment used in a power plant somehow permits wholesale discovery well beyond the scope of the instant proceeding. In addition, whether information desired here was produced in another jurisdiction does not automatically make it discoverable in the instant proceeding without any showing that the information is relevant in its own right here. Such a showing has not been made here.

11. Interrogatory 15: Verizon seeks information on AT&T internal cable racking practices. Verizon argues that this information will rebut AT&T's assertion that the ILECs understate cable racking capacity. This argument is without merit. If AT&T's cable racking practices were similar in scope and purpose to Verizon's, then perhaps the interrogatories would pass muster. However, no such allegation has been made nor could such an allegation be seriously contemplated because AT&T does not provide cable racking in conjunction with the provisions of any unbundled network element at TELRIC prices to CLECs for access to unbundled loops or to any other unbundled network elements. There is simply no reasonable comparability between AT&T's cable racking practices in its network sites and Verizon's obligation to provide collocation to CLECs as an unbundled network element. Without any such comparability, one is left with an "apples-to-oranges" comparison between AT&T business practices and Verizon's obligation to provide collocation under the Telecom Act. Therefore, the information sought by these interrogatories is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

12. Interrogatories 16-20: Verizon seeks information regarding AT&T's depreciation lives, rates and methods. Verizon argues that the information will likely support Verizon's proposed depreciation lives, rates, and methods because similarities will confirm the reasonableness of Verizon's proposals. This argument is without merit. If AT&T's depreciation rates, lives and methods were similar in scope and purpose to Verizon's, then perhaps the interrogatories would pass muster. The flaw in Verizon's argument is that AT&T's network is primarily a long distance network whereas Verizon's network is primarily a local exchange network. Moreover, the question at issue in this proceeding is the appropriate depreciation lives, rates, and methods for a TELRIC compliant ILEC for the provision of collocation to CLECs as an unbundled network element to enable CLECs to access other unbundled network elements for the provision of local exchange service. This fundamental difference in the operating characteristics of each company renders any comparison useless. There is simply no reasonable comparability between AT&T's depreciation practices regarding its network assets and Verizon's forward looking least cost obligations pursuant to a TELRIC standard to provide collocation to CLECs as an unbundled network element. Without any such comparability, one is left with an "apples-to-oranges" comparison between AT&T practices and Verizon's obligation to provide collocation under the Telecom Act. Therefore, the information sought by these interrogatories is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

13. Interrogatory 21: Verizon seeks AT&T's information regarding AT&T's cost of capital. Verizon argues that the cost of capital comparisons with other telecommunications companies is useful to determine the appropriate cost of capital for Verizon in the instant proceeding. Verizon further points out that this information has been produced in other

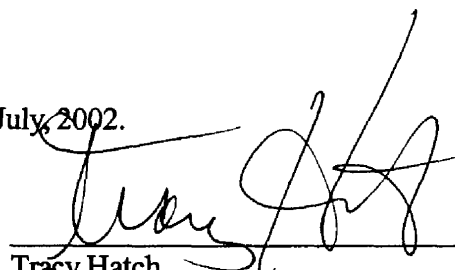
jurisdictions. AT&T agrees that certain comparisons with other telecommunications companies' cost of capital may be useful in determining the appropriate TELRIC cost capital for an ILEC providing unbundled network elements. However, the flaw in Verizon's argument is that the telecommunications carriers must be comparable in terms of its telecommunications activities and market risk. It is ludicrous to suggest that AT&T as an IXC in an intensely competitive long distance market and as a CLEC in a struggling competitive local market is in any way comparable in its activities or its market risk to that of Verizon as the largest ILEC in the country and the third largest IXC in the country. The cost of capital for a competitive CLEC entering the market is not probative of the appropriate cost of capital to be used in establishing the appropriate TELRIC price to be charged by Verizon for unbundled network elements. AT&T in attempting to enter the local telecommunications service market, bears no resemblance to the least cost forward looking company serving all customers in the Verizon-Florida territory on a wholesale only basis.

14. With respect to Verizon's statement that the information sought has been produced in other jurisdictions, the fact that the information sought has been produced in other jurisdictions does not simply in and of itself guarantee relevance in this proceeding. Verizon does not make any claim that the issues in those other proceedings were the same or even close to the issues in this proceeding. More importantly, nowhere in its motion does Verizon state or otherwise indicate how an CLEC's internal cost of capital would be relevant to the determination of the prices for collocation that Verizon should charge to CLECs. Black's Law Dictionary (5<sup>th</sup> Edition) defines relevancy as "That quality of evidence which renders it properly applicable in determining the truth and falsity of the matters in issue between the parties to a suit." Verizon presents no argument that in any way suggests that the cost of

capital for the CLECs in evaluating whether to provide retail local exchange service prove or disprove the appropriate cost of capital for Verizon's wholesale provision of Collocation as a UNE. No CLEC's attempt to enter the retail local exchange market dominated by Verizon can be reasonably compared to Verizon's monopoly provision of wholesale UNEs. The market risks of a competitive ALEC in providing local exchange service can not be validly compared to the market risk faced by Verizon in the essentially monopoly provision of UNEs. Verizon has failed to provide any basis to support a claim of relevance or that the information sought would lead to the discovery of admissible evidence. Finally, Verizon noted that this information was provided in other jurisdictions. What Verizon failed to note was that this same request was propounded by Verizon in Docket No. 990649B and in the face of identical arguments by Verizon, the Commission ruled that the information sought was not relevant. See Order No. PSC- 02-0510-PCO-TP. Therefore, Verizon's motion to compel response to Interrogatory No. 21 should be denied.

WHEREFORE, based on foregoing, AT&T opposes Verizon's Motion to Compel and requests that the Motion be denied.

RESPECTFULLY SUBMITTED 7<sup>th</sup> day of July, 2002.

A handwritten signature in black ink, appearing to read 'Tracy Hatch', is written over a horizontal line.

Tracy Hatch  
101 North Monroe Street  
Suite 700  
Tallahassee, FL 32301  
(850) 425-6360  
For AT&T