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October 2, 2003

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket Nos. 981834-TP and 990321-TP (Generic Collocation)

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth's Memorandum in Opposition to AT&T's Motion to Compel Discovery, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver

J. Phillip Carver (CA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 981834-TP and 990321-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand Delivery (*), First Class U.S. Mail and Electronic Mail this 2nd day of October, 2003 to the following:

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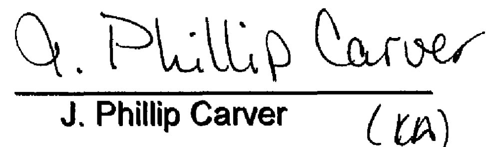

J. Phillip Carver (KA)

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Filed: October 2, 2003</td></tr>
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BELLSOUTH'S MEMORANDUM IN OPPOSITION
TO AT&T'S MOTION TO COMPEL DISCOVERY

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to the Florida Rules of Civil Procedure, and the Florida Administrative Code, its Memorandum in Opposition to AT&T's Motion to Compel Discovery, and states in support thereof the following:

1. In the *Second Order Modifying Procedure* (Order No. PSC-03-0776-PCO-TP, issued July 1, 2003), this Commission divided this proceeding into two phases: Phase I was to address issues 1A-8, and the hearing on this Phase was held August 12-13. Phase II, which addresses cost issues exclusively, was set for a later hearing date. Since the entry of this Order, AT&T has made numerous attempts to interject issues that relate exclusively to one phase into both phases. The Commission has expressly ordered that the two phases shall remain separate. Despite the Commission's ruling, AT&T's objectionable discovery, and its subsequent Motion to Compel, are simply its latest moves in its continuing gambit to improperly combine issues. AT&T's Motion should be denied.

2. In the subject Interrogatories, Nos. 40-51, AT&T requested information for BellSouth's central offices relating to total power rectifier capacity, total inventory of List 1

Drains, and inventory of the total current usage. BellSouth properly posed a relevancy objection to these interrogatories because they relate solely to the technical issues that were the proper subject of Phase I of this proceeding, not Phase II. In its Motion to Compel, AT&T offers as the sole support for the Motion the cursory claim that this information is relevant to the cost issues because it relates to BellSouth's "usage and usable capacity as is essential in determining the existing utilization factor," as well as to BellSouth's "growth expectations." (Motion to Compel, p. 4). AT&T states that these issues "would have been" relevant to the technical phase, but claims that they are also relevant to the cost phase (Id.). Although AT&T claims the stated purpose of this discovery provides some linkage to the second phase of the hearing, in reality, it only demonstrates that the information AT&T requests is, in fact, irrelevant to Phase II.

3. The first phase of this proceeding addressed technical issues and certain terms and conditions for collocation. Based on the resolution of those issues (i.e., how collocation should be offered), there will be a logical effect on the phase two issues (which pertain to the cost of providing collocation). Nevertheless, the Commission has made it clear that only issues 1-8 are to be litigated in the first phase, and issues 9 and 10 are to be litigated in the second phase. AT&T refused to accept this division, and filed its Motion For Modification of the Procedural Schedule to request that the Commission consider together all evidence from the hearings in both phases and, after the conclusion of both hearings, enter a single Order. That request was rejected by the Commission in the *Order Denying Motion for Modification of Procedural Schedule* (Order No. PSC-03-0910-PCO-TP, issued August 7, 2003), in which the Commission also expressly rejected the claim of AT&T that it would be prejudiced by the current procedural structure (Order, p. 4). Nevertheless, AT&T has apparently decided to simply ignore the ruling of the Commission, and to continue its attempts to interject phase one issues into phase two.

4. Although AT&T claims that the discovery relates to Phase II because it involves utilization factors and growth expectations, this claim is clearly belied by a review of the pre-filed testimony. Neither of these issues is specifically addressed in the testimony of BellSouth's witness, nor did AT&T's sole cost witness, Mr. Turner, address these issues specifically in his rebuttal testimony. Moreover, BellSouth does not in its cost study, make use of "utilization factors," as that term is used by AT&T, in any direct way. To the contrary, BellSouth bases the pertinent rates on necessary augments for collocation. AT&T is well aware of this practice, as reflected by the fact that its witness, Mr. Turner, specifically takes issue with this practice in his testimony (Turner Rebuttal, p. 20).[1]

5. What the "utilization factor" does relate to is rather strange theory espoused from the stand by AT&T witness, Jeffrey King during the phase one hearing. As this Commission is well aware, BellSouth and AT&T disagree as to whether the Commission should resolve Issue 6A (which was addressed in Phase I of the proceeding) by ruling, as BellSouth advocates, that power should be charged based on fused amps or, as AT&T advocates, that power charges should be based on amps used. More specifically, Mr. King expounded at some length from the stand in the Phase I hearing on the position of AT&T, that AT&T should only pay for the power it uses, even if it uses a very small percentage of what it has ordered, and even if AT&T's substantially larger power order has caused BellSouth to incur costs to supply the infrastructure that AT&T has said it will need. Mr. King attempted to justify this position, in part, by claiming that the per amp charge for power is set on the assumption that the entire power plant will not be used. Thus, he attempted

[1] Further, if AT&T really wished to obtain information about how BellSouth uses (or does not use) utilization factors in its cost study, it would have propounded discovery that specifically raised this question. AT&T has not done so, either in these interrogatories or in any of the extensive discovery that it has propounded in this case.

to create the impression that BellSouth (and other ILECs) charge for power in a way that will allow them to fully recoup their costs, even if only a small portion of the power plant is used.

6. Mr. King's contention is wrong. The reality is that utilization factors are used principally to determine when additions are needed to the existing power plant. For example, if the utilization factor is 75%, then the use of this particular factor is based on the conclusion that operational procedures require that (on average) there be a twenty-five percent difference between the anticipated power use and the actual capacity of the plant. Thus, if seventy-five percent plant capacity is reached, then the ILEC would augment the plant to increase capacity, and would immediately incur additional costs.

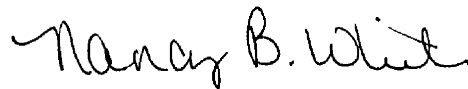
7. This point aside, the fact remains that this is a phase one issue, and one that was addressed at great length during the Phase I hearing. A great deal of the two days of the Phase I hearing was devoted exclusively to the question of how power chargers should be structured. Again, the pertinent issue in Phase I was whether power should be charged on a per fused amp or per used amp basis. AT&T chose to address this issue by contending, albeit implausibly, that the use of a per fused amp price structure would necessarily result in overcharges. However, AT&T apparently does not believe that it made its case in Phase I, and is now attempting to interject this precise same issue into Phase II. Again, this is improper, and the interrogatories at issue are irrelevant to the issues that are within the proper scope of Phase II.

8. In the context of Phase I, BellSouth made a specific proposal on the issue of how power should be charged, as did AT&T. Prior to the commencement of the Phase II hearing, the Commission will enter an Order resolving that issue. The purpose of Phase II will be, in part, to determine whether BellSouth's proposed costs are appropriate, given the Commission's resolution of this and other Phase I issues. The purpose of Phase II is not to relitigate the issue of

whether power should be charged on a per fused amp or per used amp basis. This is, however, precisely what AT&T is attempting to do, and the subject objectionable discovery is merely part of that attempt.

The Commission should not allow AT&T to introduce into Phase II evidence that is irrelevant to this phase, particularly when this action by AT&T would clearly violate the mandate of the Commission's *Order Denying Motion for Procedural Modification.* Likewise, the Commission should not allow AT&T to misuse the discovery process to obtain this irrelevant information. Accordingly, AT&T's Motion to Compel should be denied in its entirety.

Respectfully submitted this 2nd day of October, 2003.



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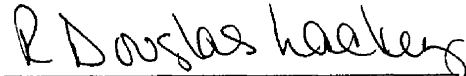

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