

WILMER, CUTLER & PICKERING

2445 M STREET, N.W.  
WASHINGTON, DC 20037-1420

TELEPHONE +1 (202) 663 6000  
FACSIMILE +1 (202) 663 6363  
WWW.WILMER.COM

WASHINGTON  
NEW YORK  
BALTIMORE  
NORTHERN VIRGINIA  
LONDON  
BRUSSELS  
BERLIN

DANIEL MCCUAIG  
(202) 663 6024  
DANIEL.MCCUAIG@WILMER.COM

October 16, 2003

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

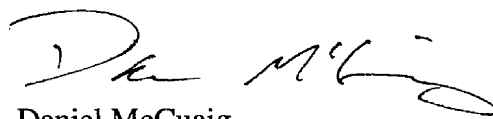
**Re: Docket Nos. 981834-TP and 990321-TP (Generic Collocation)**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Verizon Florida Inc.'s Response to Covad's Motion to Compel Verizon to Respond to Covad's Second Set of 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,



Daniel McCuaig

cc: All Parties of Record  
Charles Schubart

DOCUMENT NUMBER DATE

10184 OCT 17 8

FPSC-COMMISSION CLERK

**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 FedEx or regular U.S. Mail this 16th day of October, 2003 to the following.

Beth Keating, Staff Counsel  
C. Lee Fordham, Staff Counsel  
Adam Teitzman, Staff Counsel  
Andrew Maurey; Betty Gardner  
Cheryl Bulecza-Banks  
David Dowds  
Jackie Schindler  
Jason-Earl Brown  
Laura King; Bob Casey  
Pat Lee; Stephanie Cater  
Paul Vickery  
Pete Lester; Zoryana Ring  
Sally Simmons  
Shevie Brown  
Todd Brown  
Victor Mckay  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6212  
Fax. No. (850) 413-6250  
bkeating@psc.state.fl.us  
cfordham@psc.state.fl.us  
ateitzma@psc.state.fl.us  
amaurey@psc.state.fl.us  
bgardner@psc.state.fl.us  
cbulecza@psc.state.fl.us  
david.dowds@psc.state.fl.us  
jschindl @psc.state.fl.us  
jebrown@psc.state.fl.us  
lking@psc.state.fl.us; bcasey@psc.state.fl.us  
plee@psc.state.fl.us; scater@psc.state.fl.us  
pvickery@psc.state.fl.us  
plester@psc.state.fl.us; zring@psc.state.fl.us  
sasimmon@psc.state.fl.us  
sbbrown@psc.state.fl.us  
tbrown@psc.state.fl.us  
vmckay@psc.state.fl.us

Terry Monroe  
Vice President, State Affairs  
Competitive Telecomm. Assoc.  
1900 M Street, N.W. Suite 800  
Washington, D.C. 20036  
Tel. No. (202) 296-6650  
Fax. No. (202) 296-7585  
tmonroe@comptel.org

Marilyn H. Ash  
MGC Communications, Inc.  
3301 North Buffalo Drive  
Las Vegas, Nevada 89129  
Tel. No. (702) 310-8461  
Fax. No. (702) 310-5689  
mash@mgccom.com

J. Phillip Carver  
Senior Attorney  
Nancy Sims Nancy  
White Stan Greer  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
Tel. No. (404) 335-0710  
J.Carver@bellsouth.com  
nancy.sims@bellsouth.com  
nancy.white@bellsouth.com  
stan.greer@bellsouth.com

Peter M. Dunbar, Esq. Pennington,  
Moore, Wilkinson & Dunbar, P.A.  
Post Office Box 10095 Tallahassee,  
Florida 32302  
Tel. No. (850) 222-3533  
Fax. No. (850) 222-2126  
pete@penningtonlawfirm.com

Jonathan Audu  
Paul Turner  
Supra Telecommunications  
& Information Systems, Inc.  
2620 S.W. 27th Avenue  
Miami, FL 33133  
Tel. No. (305) 531-5286  
Fax. No. (305) 476-4282  
jonathan.audu@stis.com  
pturner@stis.com

Florida Digital Network, Inc.  
Matthew Feil, Esq  
Scott Kassman.  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
Tel. No. (407) 835-0460  
Fax. No. (407) 835-0309  
mfeil@floridadigital.net

Rodney L. Joyce  
Shook, Hardy & Bacon, L.L.P.  
600 14th Street, N.W.  
Suite 800  
Washington, DC 20005-2004  
Tel. No. (202) 639-5602  
Fax. No. (202) 783-4211  
Counsel for Network Access Solutions  
rjoyce@shb.com

Michael A. Gross  
VP Reg. Affairs & Reg. Counsel  
Florida Cable Telecomm. Assoc.  
246 East 6th Avenue, Suite 100  
Tallahassee, FL 32303  
Tel. No. (850) 681-1990  
Fax. No. (850) 681-9676  
mgross@fcta.com

TCG South Florida  
c/o Rutledge Law Firm  
Kenneth Hoffman  
P.O. Box 551  
Tallahassee, FL 32302-0551  
Tel. No. (850) 681-6788  
Fax. No. (850) 681-6515  
ken@reuphlaw.com

Laura L. Gallagher  
Laura L. Gallagher, P.A.  
101 E. College Avenue Suite 302  
Tallahassee, FL 32301  
Tel. No. (850) 224-2211  
Fax. No. (850) 561-3611  
Represents MediaOne  
gallagherl@gtlaw.com

Susan S. Masterton  
Charles J. Rehwinkel  
Sprint Comm. Co. LLP  
P.O. Box 2214  
MC: FLTLHOO107  
Tallahassee, FL 32316-2214  
Tel. No. (850) 847-0244  
Fax. No. (850) 878-0777  
susan.masterton@mail.sprint.com

Sprint-Florida, Incorporated  
Mr. F. B. (Ben) Poag  
P.O. Box 2214 (MC FLTLHOO107)  
Tallahassee, FL 32316-2214  
Tel: 850-599-1027  
Fax: 407-814-5700  
Ben.Poag@mail.sprint.com

William H. Weber, Senior Counsel  
Gene Watkins  
Covad Communications  
1230 Peachtree Street, N.E.  
19th Floor  
Atlanta, Georgia 30309  
Tel. No. (404) 942-3494  
Fax. No. (404) 942-3495  
wweber@covad.com  
gwatkins@covad.com

J. Jeffry Wahlen  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, FL 32302  
jwahlen@ausley.com

Network Access Solutions Corp.  
Mr. Don Sussman  
Three Dulles Tech Center  
13650 Dulles Technology Drive  
Herndon, VA 20171-4602  
Tel. No.: (703) 793-5102  
Fax. No. (208) 445-7278  
dsussman@nas-corp.com

Ms. Lisa A. Riley  
Michael Henry  
Roger Fredrickson  
1200 Peachtree Street, N.E.  
Suite 8066  
Atlanta, GA 30309-3523  
Tel. No. (404) 810-7812  
Fax. No. (404) 877-7646  
lisariley@att.com  
michaeljhenry@att.com  
rfredrickson@att.com

Tracy Hatch  
AT&T  
101 North Monroe Street, Suite 700  
Tallahassee, FL 32301-1549  
Tel. No. (850) 425-6360  
thatch@att.com

FPTA, Inc.  
Mr. David Tobin Tobin & Reyes  
7251 West Palmetto Park Road  
#205  
Boca Raton, FL 33433-3487  
Tel. No. (561) 620-0656  
Fax. No. (561) 620-0657  
dst@tobinreyes.com

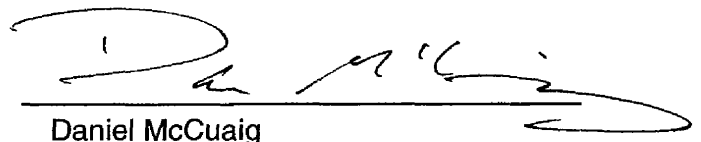
John McLaughlin  
KMC Telecom. Inc.  
Mr. John D. McLaughlin, Jr.  
1755 North Brown Road  
Lawrenceville, GA 30043  
Tel. No. (678) 985-6261  
Fax. No. (678) 985-6213  
jmclau@kmctelecom.com

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
Tim Perry  
McWhirter, Reeves, McGlothlin,  
Davidson, Decker, Kaufman, Arnold,  
& Steen, P.A.  
117 South Gadsden Street  
Tallahassee, FL 32301  
Tel. No. (850) 222-2525  
Fax. No. (850) 222-5606  
Attys. for FCCA  
Atty. for Network Telephone Corp.  
Atty. for BlueStar  
jmcglothlin@mac-law.com  
vkaufman@mac-law.com  
tperry@mac-law.com

Andrew Isar  
Telecomm. Resellers Assoc.  
7901 Skansie Avenue  
Suite 240  
Gig Harbor, WA 98335  
Tel. No. (253) 851-6700  
Fax. No. (253) 851-6474  
aisar@millerisar.com

Floyd R. Self, Esq.  
Messer, Caparello & Self, P.A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
Tel. No. (850) 222-0720  
Fax. No. (850) 224-4359  
Represents AT&T  
fself@lawfla.com

Richard D. Melson  
Hopping Green Sams & Smith, P.A.  
Post Office 6526  
123 South Calhoun Street  
Tallahassee, FL 32314  
Tel. No. (850) 222-7500  
Fax. No. (850) 224-8551  
Atty. For ACI  
rmelson@hgslaw.com



Daniel McCuaig

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Competitive Carriers for )  
Commission action to support local )  
Competition in BellSouth Telecommunications )  
Inc.'s service territory )

Docket No. 981834-TP

---

In re: Petition of ACI Corp. d/b/a Accelerated )  
Connections, Inc. for generic investigation to )  
ensure that BellSouth Telecommunications, )  
Inc., Sprint-Florida, Incorporated, and GTE )  
Florida Incorporated comply with obligation to )  
provide alternative local exchange carriers )  
with flexible, timely, and cost-efficient physical )  
collocation. )

---

Docket No. 990321-TP

**VERIZON FLORIDA INC.'S RESPONSE TO COVAD'S MOTION TO COMPEL  
VERIZON TO RESPOND TO COVAD'S SECOND SET OF DISCOVERY**

Verizon Florida Inc. ("Verizon") urges the Commission to reject DIECA Communications, Inc. d/b/a Covad Communications Company's ("Covad") Motion to Compel Verizon Florida Inc. to Respond to Covad's Second Set of Discovery ("Motion to Compel") because Covad's discovery: (1) seeks information pertaining to issues that were appropriately addressed at the August hearing and for which the record is now closed; (2) is unduly burdensome; and (3) would require Verizon to perform a special cost study solely for purposes of responding to discovery.

## ARGUMENT

### I. COVAD'S DISCOVERY IMPROPERLY SEEKS TO RELITIGATE AN ISSUE ADDRESSED AT THE AUGUST HEARING AND FOR WHICH THE RECORD IS NOW CLOSED.

On September 15, 2003, Covad served Verizon with its Second Set of Interrogatories (Nos. 6-31) and Request for Production No. 2. Notwithstanding the Commission's clear declaration that the record for Phase I Issues closed with the conclusion of the Phase I hearing, several of Covad's interrogatories focus exclusively on issues that, if relevant at all, were addressed exhaustively as part of Issue 6B in the first phase of this litigation.<sup>1</sup> Indeed, these interrogatories go to the very heart of the issue, extensively litigated during the August hearing, of whether ILECs should be required to offer DC power to collocators on metered basis. Covad's attempts to reopen the record and relitigate this issue should be rejected.

In its June 11, 2003 Order Approving Agreement, the Commission determined that Issue 6B ("If power is charged on a per-amp-used basis or on a fused capacity basis, how should the charge be calculated and applied?") should be addressed at the Phase I Hearing in August.<sup>2</sup> AT&T challenged this determination in its Motion for Modification of the Procedural Schedule, arguing "the policy question on charges for electric power should not be determined without also looking at the cost issues leading to the development of the rates for electric power consumption," and thus that the Commission should not decide Issue 6B until *after* the *Phase II* Hearing.<sup>3</sup> The

---

<sup>1</sup> See Covad Interrogatory Nos. 6, 7, 12, and 20-31.

<sup>2</sup> Order Approving Agreement, Order No. PSC-03-0702-FOF-TP, Docket Nos. 981834-TP & 990321-TP (June 11, 2003), at 4.

<sup>3</sup> AT&T's Motion for Modification of the Procedural Schedule, filed in Docket Nos. 981834-TP & 990321-TP on July 24, 2003, at 3.

Commission squarely rejected AT&T's argument, finding that "[t]he parties have been on notice for quite some time when Issues 6A-6C would be addressed, . . . [and] there appears to be no undue prejudice that will result from maintaining the current schedule and no other overriding reason to do otherwise."<sup>4</sup> Accordingly, the Commission has made clear that Issue 6B is a Phase I issue.

The Phase I Hearing concluded on August 12, 2003, following extensive discovery, prefiled testimony, live testimony, and briefing regarding the very issues that are the subject of Covad's discovery. The record is now closed and the Commission is scheduled to rule on the Phase I Issues at its November 3, 2003 Agenda.

Covad disingenuously asserts that "a brief review" of its interrogatories will reveal that they are relevant to Phase II of this proceeding because they go to the "costs" Verizon incurs to provide DC power to collocators.<sup>5</sup> Although Verizon agrees that one subpart of Covad's first two interrogatories specifically asks for costs,<sup>6</sup> the word "cost" (or any synonym thereof) appears *only* those two times in the interrogatories Verizon challenges here.<sup>7</sup> By contrast, the word "capacity" appears *thirty* times and the word "amperes" *twenty-one* times in the same group of interrogatories. Thus, Covad clearly is not seeking information regarding the *cost* of each amp of DC power infrastructure, but rather whether Verizon in fact builds DC power infrastructure capacity to accommodate ALEC orders, as all three ILEC witnesses confirmed at the August

---

<sup>4</sup> Order Denying Motion for Modification of Procedural Schedule, Order No. PSC-03-0910-PCO-TP, Docket Nos. 981834-TP & 990321-TP (Aug. 7, 2003), at 4.

<sup>5</sup> Motion to Compel ¶ 6.

<sup>6</sup> Covad Interrogatory Nos. 6(c), 7(c). Verizon does not challenge the relevancy of these two subparts, but objects to them because they are unduly burdensome for the reasons discussed below.

<sup>7</sup> Covad Interrogatory Nos. 6, 7, 12, and 20-31.



hearing.<sup>8</sup> Because this latter issue is precisely the question raised by Issue 6B,<sup>9</sup> for which the record is now closed, Covad's Motion to Compel should be denied.

The only power question that remains to be answered in Phase II of this proceeding is *how much* Verizon should be compensated for each amp of capacity it provides to the ALECs. Apart from two isolated subparts, which are unduly burdensome as described below, the disputed Covad interrogatories do not even purport to address this question.

Thus, Covad's claim that the information it seeks is relevant to Phase II of this proceeding because it goes to Verizon's "costs" is incorrect.<sup>10</sup>

## **II. COVAD'S DISCOVERY REQUESTS ARE UNDULY BURDENSOME.**

Covad's discovery requests should also be denied because responding to them would be unduly burdensome. In its Motion to Compel, Covad concedes (as it must) that the disputed interrogatories are unduly burdensome on their face.<sup>11</sup> Covad therefore offers to reduce its request in Interrogatory Nos. 6 and 7 from all power plant construction and augment jobs since January 1, 1996 to Verizon's five most recent jobs,<sup>12</sup> and to reduce its request in Interrogatory Nos. 20-31 from "all Verizon central offices in Florida today"<sup>13</sup> to the "Verizon central offices where Covad is collocated."<sup>14</sup> Covad's so-called "offer" to make its requests less burdensome falls short of the mark.

---

<sup>8</sup> See, e.g., 8/11/03 Tr. at 184, 187 (Milner); *id.* at 366-69 (Davis); 8/12/03 Tr. at 536 (Bailey).

<sup>9</sup> Issue 6B asks "how should the [power] charge be calculated and applied?"

<sup>10</sup> Covad's suggestion that Interrogatory Nos. 6, 7, 12, and 20-31 are meant to advance not Covad's own interests but rather the Commission's is particularly insincere. See Motion to Compel ¶¶ 9. Staff appropriately ceased promulgating discovery regarding Phase I Issues once that phase of this proceeding closed; the Commission should order Covad to do the same.

<sup>11</sup> See Motion to Compel ¶¶ 11, 12.

<sup>12</sup> Motion to Compel ¶ 11.

<sup>13</sup> Covad Interrogatory No. 20.

Covad implies that the information it seeks in Interrogatory No. 6 is the same as Verizon provided in response to Covad Interrogatory No. 3, with the only difference being that it is now seeking information from Verizon's last five power jobs whereas Interrogatory No. 3 asked only about Verizon's last two power jobs.<sup>15</sup> That is not true. Covad Interrogatory No. 3 asked specifically about Verizon's power costs and did not request any of the irrelevant information Covad seeks in this set of discovery.<sup>16</sup> Interrogatory Nos. 6 and 7, by contrast, seek power plant capacity information.<sup>17</sup>

The detailed cost information Verizon provided in response to Covad Interrogatory No. 3, moreover, was burdensome to produce. It required many engineer labor hours to gather the relevant information for Verizon's two most recent Florida power plants. Verizon's Real Estate and Cost Groups also made significant contributions to Verizon's responses. Just gathering the *cost* information for three additional (and necessarily older) power plants (and five augments) would impose a significant burden on Verizon: Verizon's power engineers estimate that responding to Interrogatory Nos. 6 and 7 would take approximately 60 hours. And the *capacity* information that Covad seeks is not information that Verizon keeps in the ordinary course of business and thus would be extremely burdensome, if not impossible, to produce.

With respect to Interrogatory Nos. 20-31, Covad's proposed "compromise" to limit the scope of these interrogatories to the 24 Verizon central offices where Covad has

---

<sup>14</sup> Motion to Compel ¶ 12.

<sup>15</sup> See Motion to Compel ¶ 11 n.4.

<sup>16</sup> See Covad Interrogatory No. 3.

<sup>17</sup> See Covad Interrogatory Nos. 6(d)-(i), 7(d)-(i).

collocation arrangements does not cure their unduly burdensome nature. These interrogatories seek detailed information dating as far back as January 1, 1996 that Verizon does not keep in the ordinary course of business. Gathering such information would be extremely burdensome if not impossible, especially for such a large number of central offices.

Finally, in Interrogatory No. 12, Covad seeks capacity information from the 46 Verizon central offices in which ALECs are collocated. It would be extremely burdensome for Verizon to gather detailed information for so many central offices.

Thus, the Commission should reject Covad's Motion to Compel the disputed discovery requests on the grounds that they are unduly burdensome, particularly in light of their complete lack of relevance to this phase of the proceeding.<sup>18</sup>

### **III. SEVERAL OF COVAD'S DISCOVERY REQUESTS WOULD REQUIRE A SPECIAL COST STUDY AND ARE SPECULATIVE.**

Covad's Motion to Compel completely fails to address Verizon's objection that Interrogatory Nos. 13-16 and Request for Production No. 2 would require Verizon to perform a special cost study for purposes of discovery. Verizon is *not* obligated to conduct new cost studies to answer Covad's discovery, and therefore Covad's Motion to Compel should be denied.<sup>19</sup>

With respect to Verizon's other objection to these discovery requests — that they are speculative — Covad argues that they are not speculative because the Commission

---

<sup>18</sup> Fla. R. Civ. P. 1.280(c). *See generally Palmer v. WDI Sys., Inc.*, 588 So.2d 1087, 1088 (Fla. Dist. 5 Ct. App. 1991) ("As a practical matter, a trial court weighs a variety of factors in deciding whether to refuse discovery to a party.").

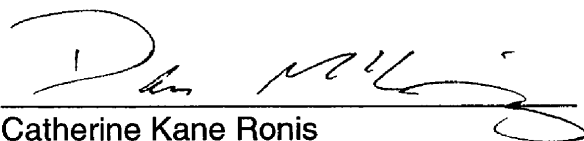
<sup>19</sup> *See, e.g., Scales v. Swill*, 715 So.2d 1059, 1060-61 (Fla. Dist. 5 Ct. App. 1998) ("An expert cannot be compelled to . . . produce nonexistent documents."); *Balzebre v. Anderson*, 294 So.2d 701, 702 (Fla. Dist. 3 Ct. App. 1974) (party not required to produce in discovery a statement reflecting net

suggested at the August hearing that it might consider ordering the ILECs to bifurcate their DC power charges into infrastructure and electric utility components.<sup>20</sup> -But by inferring that the Commission not only will order such a bifurcation but also will order that the infrastructure costs be recovered via an NRC, Covad engages in second derivative speculation. If the Commission does indeed order Verizon to recover its power infrastructure costs via a standalone NRC, Verizon will perform the cost study required to establish appropriate rates. Unless and until the Commission does so, however, Covad's requests are wholly speculative and its Motion to Compel should be denied.

### CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission deny Covad's Motion to Compel.

Respectfully submitted,



Catherine Kane Ronis  
Daniel McCuaig  
Wilmer, Cutler & Pickering  
2445 M Street, NW  
Washington, DC 20037-1420  
(202) 663-6000

Richard A. Chapkis  
Verizon Florida Inc.  
201 N. Franklin Street  
FLTC0717  
P.O. Box 110  
Tampa, Florida 33601  
(813) 483-1256

Dated: October 16, 2003

Attorneys for Verizon Florida Inc.

---

worth, assets, and liabilities because "a party may not be required to produce documents which it does not have and which are not shown to exist.").

<sup>20</sup> See Motion to Compel ¶ 13.