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October 27, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket Nos.: 030851-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:

- ▶ Florida Competitive Carriers Association's Comments on Staff's Proposed Issues List.

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

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Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising
From Federal Communications Commission
Triennial UNE review: Local Circuit Switching
For Mass Market Customers

Docket No. 030851-TP

Filed: October 27, 2003

**FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S
COMMENTS ON STAFF'S PROPOSED ISSUES LIST**

The Florida Competitive Carriers Association ("FCCA"), through its undersigned counsel and pursuant to the Commission's conference held on October 23, 2003, respectfully submits its comments on Staff's proposed issues list in the above-captioned proceeding.¹

On October 21, 2003, Staff and interested parties submitted proposed issues lists in this docket. The ILECs and Staff separately submitted lists of broadly drafted issues and FCCA submitted a more detailed list of issues. On October 23, 2003, the Florida Public Service Commission conducted an issues identification conference in these dockets with Commissioner Davidson presiding as the prehearing officer. At the conference, Commissioner Davidson requested that the parties submit comments on the Staff's and other parties' proposed issues on October 27, 2003.

From a review of the Staff's proposed list of issues, it is apparent that Staff has taken the relevant FCC rule on mass market local switching and simply de-constructed the language in each relevant rule to make up its proposed issues list. A simple recitation of the FCC rule text does not sufficiently outline the scope and the nature of the granular analysis detailed in the *TRO*. In contrast, the issues list proposed by the FCCA consisted of some 69 issues that were

¹ DIECA Communications Inc., d/b/a Covad Communications Company joins in these Comments.

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quite granular and constructed from the full body of the text of the FCC's *Triennial Review Order (TRO)*, consisting of some 800 plus paragraphs and 2400 plus footnotes. It is these 800 plus paragraphs and 2400 plus footnotes which describe how to implement and give meaning to the FCC rules. It is axiomatic that in the implementation or interpretation of an FCC rule, the Florida Commission must consider all the guidance, factors, criteria, recommendations and analytical methodology expressed by the FCC in the text of its order formulating the rule. In *AT&T Communication of the Midwest v. U S WEST Communications*, 143 F.Supp.2d 115 (D. Neb.2001), the ILECs argued that the plain language of certain FCC regulations required CLECs to give access to ILECs to their poles and ROWS. The Court, however, held that the FCC held the opposite in the text of the *Local Competition Order*, and that the Court must defer to this finding, applying the established rule that a Court must defer to an agency's reasonable interpretation of its own regulations (citing, *US v. Cleveland Indians Baseball Co.*, 532 U.S. 200 (2001)). It would clearly be improper for the Commission to render the text of the *TRO* a nullity by ignoring the directions the FCC provided therein. Similarly, even if the Commission adopted the Staff's issue list, it may not use that list to preclude the parties from presenting evidence and arguments that are based on the text of the order that underlies the FCC's rules. Therefore, the FCCA recommends that the issue list adopted by the Commission reflect the entire body of the FCC's direction.

FCCA hereby submits these comments below on the issues proposed by Verizon, BellSouth and Staff. FCCA's list of issues appears longer because FCCA has in creating its list, relied not only upon the rules established by the *TRO* but also upon the text of the order itself that provides the context as guidance as to how the state commission must consider impairment. In contrast, Staff has relied only upon the rules established by the FCC. Although the rules

represent a distillation of the *TRO*, the rules cannot be considered in a vacuum without the benefit of the discussion in the *TRO* to explain both the intent and content of how the rules should be interpreted.

FCCA contends that its more detailed list of issues should be adopted by the Commission for the conduct of this proceeding since FCCA's list more closely follows the text of the *TRO*. To the extent the Commission believes a less comprehensive list of issues is appropriate, FCCA proposes a few changes to the Staff's list. Moreover, in an effort to reconcile the issues posed by FCCA with those of Staff, Verizon and BellSouth, FCCA has attempted to "map" its issues to see if its list can be subsumed into Staff's issues list. Because the text of the *TRO* gives meaning to the rules set forth by the FCC, many of FCCA's issues can be addressed in the context of Staff's more limited issue list, if the Commission would prefer such an approach. However, it is important to emphasize that such a limited "issues list" is only reasonable when viewed in the entirety of the *TRO* itself. For those parts of the *TRO* analysis which not covered, FCCA proposes simple changes to Staff's "potential deployment" and "trigger" issues and the addition of an issue for the batch hot cut and trigger analysis.

As explained below, the trigger analysis is not simply a mechanical rote counting exercise but also requires the state commissions to address other objective criteria in the context of that analysis. FCCA proposes that the Commission adopt FCCA's list of issues on triggers or, in the alternative, simply add one issue to Staff's list, such as "what other criteria should the Commission consider in the context of the trigger analysis and what is the impact of those criteria?"

FCCA addresses each subject area as follows:

Relevant Markets:

BellSouth's Issue 1, Verizon's Issue 3 and Staff's Issue 1 and 2 regarding the definition of relevant markets are too broad. There is no simple or simplistic methodology for defining geographic markets in the impairment cases. The FCC's *TRO* makes it clear that the issue can only be resolved only through a fact-intensive inquiry and analysis of many different factors, including but not limited to:²

1. "variation in ... competitors' ability to target and serve specific markets economically and efficiently using currently available technologies,"³
2. whether a CLEC with a switch serving some existing customers is "capable of serving" other areas;⁴
3. variation in costs and revenue opportunities in different areas;⁵
4. any other "variation in factors affecting competitors' ability to serve each group of customers," such as variations in:
 - a. line densities and other factors that may affect the scale and scope economies associated with switch deployment; or⁶
 - b. "the capabilities of wire centers to provide adequate collocation space and handle large numbers of hot cuts."⁷

Thus, there are many varied factors the Commission needs to consider in the context of this analysis.

Moreover, the many aspects of operational and economic impairment are of necessity relevant to a proper definition of geographic markets in this case. Indeed, the FCC has

² *TRO*, ¶¶ 495-496.

³ *TRO*, ¶ 495.

⁴ *TRO*, fn 1552.

⁵ *Id.* 519-520.

⁶ *Id.*, ¶ 495 & n. 1536.

⁷ *TRO*, ¶ 496.

specifically asked the states to “attempt to distinguish among markets where different findings of impairment are likely.”⁸ Thus, investigation of the causes of impairment and definition of geographic markets will, of necessity, go hand in hand.

The Staff, BellSouth and Verizon issues ignore the complexities of the analysis. There are many specific considerations to determine geographic market, such as data indicating operational or economic viability of serving mass market customers in an area using a CLECs own switches, variations in revenue opportunities in a given market, UNE loop rates across the state, availability of collocation space, etc.

FCCA believes its issues more accurately reflect the FCCA’s clear direction regarding definition of geographic market. Alternatively, FCCA believes that its issues can be addressed in the context of staff’s broader issues.

Batch Hot Cut Process:

BellSouth’s issues 7-9, Verizon’s issue 5 and Staff’s issue 3 regarding the batch hot cut process are again too broad. The state commissions must approve “a seamless, low-cost batch cut process for switching mass market customers from one carrier to another is necessary, at a minimum, for carriers to compete effectively in the mass market.” *TRO*, ¶ 487.

A batch hot cut process must satisfy requirements of:

scope – be able to handle (i) ILEC-to-CLEC, CLEC-to-ILEC, and CLEC-to-CLEC hot cuts, *TRO*, ¶ 478, involving (ii) copper-fed loops, IDLC-fed loops, customers with voice and DSL service (in both a UNE-P and UNE-L configuration), and all other possible flavors of retail service, *TRO*, ¶¶ 297, 489; and

⁸ *TRO*, ¶ 495.

scale – be able to handle the hot cut volumes that would be required in a hypothetical competitive environment with no UNE-P. *TRO*, ¶¶ 423, 469 & fn. 1435.

Critically, there must be concrete evidence that the final batch hot cut process will provide a “low cost and seamless” means of transferring customers. *E.g.*, *TRO*, ¶¶ 127, 471. The state commissions must also consider such factors as not only scalability but also reliability at commercially reasonable volumes, testing and implementation, performance metrics and consequences for inadequate performance, and TELRIC rates. State commissions cannot rely upon the “paper promises” of the ILECs.

Because there are certain factors addressed in the *TRO* regarding the batch hot cut process which do not appear to be covered by staff’s issues, FCCA urges the Commission, if it does not adopt FCCA’s list, to add another issue such as “what other factors should the Commission consider in approving a batch hot cut process?”

Trigger Analysis:

The issue for the trigger analysis proposed by Verizon Issue 2, a. & b., BellSouth Issue 4, a. & b. and the Staff’s Issue are insufficient and do not cover the qualitative analysis required by the *TRO*. The *TRO* is clear that the trigger analysis is not a simple matter of counting switch providers, but rather there is an extensive list of objective criteria that the Commission must consider in determining that a switch is, in fact, a mass-market (not enterprise) switch that the switch is offering a “true alternative”, and that existence of the alleged self-provider is operating at a level and scope needed to demonstrate the absence of impairment.

Commissioner Davidson at the Issues Conference asked the FCCA about the basis in the

TRO for an analysis based on objective criteria rather than simply counting the number of self-providing or wholesale switch providers. FCCA addresses Commissioner Davidson's question below.⁹

The Trigger Aspect Of The Mass Market Switching Impairment Analysis Cannot be Completed Through a Truncated Analysis.

The purpose of *TRO*'s mass market switching triggers is to allow a state commission to determine whether actual experience of CLECs in a given geographic market is sufficient to rebut the FCC's national finding that CLECs are impaired in seeking to enter the local exchange market without unbundled mass market switching. *TRO*, ¶¶ 498, 501, 504. Under the *TRO*, the purpose of the trigger is to ensure that objective data demonstrates that the national economic and operational impairments have in fact been overcome in the market. Contrary to Verizon's suggestion, this is not a "simple" question. It cannot be answered merely by counting CLEC switches, indeed, the Order specifically rejects the notion that the exercise involves merely counting switches, for "switches serving the enterprise market do not qualify for the triggers..." (*TRO* ¶ 508). Moreover, the *TRO* requires states to consider whether a competitor is using its switch to use " ...the incumbent's loop or its own loop should bear on how much weight to assign..." that switch, "at least until such time as the incumbent loops are no longer to be unbundled." (*TRO*, footnote 1572). Thus, the *TRO* expressly contemplates that state commissions will pay attention to marketplace realities, including whether switches are principally used to compete in the enterprise market, what types of loops are being used, as well

⁹ At the conference, counsel for Verizon stated that the FCC filed a brief in the D.C. Circuit's Mandamus docket that states the trigger analysis is an automatic exercise of counting in threes. This is simply not true. On October 9, 2003, the FCC filed a response to two petitions for a writ of mandamus at the D.C. Circuit Court of Appeals. The FCC's filing simply reiterates that the *TRO* sets forth a trigger analysis. In this filing, the FCC does not discuss its

as whether providers are “currently offering and able to provide service, and are likely to continue to do so.” (*TRO*, ¶ 500). *TRO*, ¶ 94. Merely because a CLEC is using its own switch to provide service to some customers does not mean that it can be counted toward the self-provisioning trigger. *TRO*, ¶ 94. To the contrary, the self-provisioning trigger is only satisfied if the candidate CLECs suffice to “demonstrate[] adequately the technical and economic feasibility of an entrant serving the mass market with its own switch.” *TRO*, ¶ 501.

The FCC has stressed that “[a]ny reasonable application of the impairment standard and unbundling requirements should be economically rational.” *TRO*, ¶ 78. This means that the trigger aspect of the mass market switching analysis must be applied in a manner which will produce economically rational results. *See also*, *TRO*, ¶ 55-56, 69. Thus, and as explained in more detail below, nothing in the *TRO* requires – or permits -- the Commission to undertake a mechanical exercise of counting CLEC facilities that turns a blind eye to competitive realities.

A candidate CLEC must have an economically viable business that imposes pricing discipline on the ILEC.

With respect to the self-provisioning trigger, only carriers that are “actively providing voice service to mass market customers in the market” count. *TRO*, ¶ 499. Similarly, with respect to the wholesale trigger, carriers do not count unless they are “actively providing [on a wholesale basis] voice service used to serve the mass market, and be operationally ready and willing to provide service to all competitive providers in the designated market.” *TRO*, ¶ 499.

The “actively providing” requirement means, among other things, that any candidate CLEC must be “currently offering and able to provide service, and [be] likely to continue to do

views on the details of a trigger analysis that is fully set forth in paragraphs 498-505 of the *TRO*. Attached is a copy of the FCC’s filing, see pages 22-23.

so.” *TRO*, ¶ 500. For example, a CLEC without adequate scale in its current operations has not demonstrated a likelihood that it will be able to continue to offer service. *See TRO*, ¶ 500. The mass market is characterized by low margins and substantial churn. *TRO*, ¶ 471, 474. Therefore, scale is critical in the mass market, because competitors cannot rely on long term contracts to assure that they will recover the additional costs they must incur (a large portion of which are sunk) to initiate service for each individual analog loop.

Furthermore, providers of telephony services may not be counted toward the trigger aspect of the impairment analysis unless they are shown to provide “alternatives [that] are comparable in cost, quality, and maturity to incumbent LEC services.” *TRO*, fn. 1549. In particular, no carrier providing an “intermodal alternative” to traditional wireline service may be counted toward the triggers unless it meets this test. *TRO*, ¶ 97 & fn. 1549. For this reason, the FCC has made clear that providers of wireless alternatives should not be counted toward the mass market switching triggers. *TRO*, ¶¶ 230, 445 & fn. 1549.

Another key aspect of any mass market trigger review will be to determine whether carriers other than the ILEC are currently capable of “provid[ing] competitive pressures on pricing and terms.” *TRO*, ¶ 505. For example, a carrier that only engages in “umbrella pricing,” *i.e.* one that offers services at prices “immediately below the price of the larger market leader,” perhaps only for some segment of the mass market as a whole, “but does not have sufficient presence market-wide to affect the market leader’s price,” does not have the kind of market presence that should be counted toward the triggers. *TRO*, ¶¶ 505, 413, & fn. 1275.

This is consistent with the proper focus of the entire impairment analysis on consumer welfare. *TRO*, ¶¶ 1, 139, 161. The mass market switching triggers are not met unless the facts on the ground prove that the mass market is generally contestable by CLECs without using

unbundled switching, *i.e.* that there is sufficient market pressure to restrain ILEC pricing and force product innovations. *TRO*, ¶ 94.

CLECs that use non-ILEC switches to offer service only to small market niches or segments do not provide evidence of non-impairment.

For a CLEC to serve as evidence of non-impairment, it must demonstrate an “ability to serve each group of customers” within the relevant geographic market. *TRO*, ¶ 495. Since the mass market consists of both residential and small business customers that can only be economically served through the use of voice grade loops, *TRO*, ¶ 459, a CLEC that does not provide service to both groups of customers in the relevant geographic market would not qualify for purpose of the trigger analysis.

Similarly, a CLEC that is not “currently serving, or capable of serving,” customers in all areas of the defined geographic market does not provide evidence of non-impairment. *TRO*, fn. 1552. For example, a CLEC with its own switch cannot offer service where it does not have collocation arrangements in place, and thus in those locations does not function as a competitive alternative to the ILEC.

A CLEC that has only a minimal market share is not serving a competitively meaningful number of customers, and thus its presence in the market is not meaningful evidence of non-impairment. *TRO*, ¶ 438. In such cases, the CLEC has not reached a reasonable scale that demonstrates it is likely to be able to continue to provide service into the foreseeable future. *TRO*, ¶ 500. Nor does it offer evidence that the significant operational impairments CLECs face in accessing ILEC loops have been overcome, since, as the FCC recognizes, the volumes of loop cutovers that will be required in an environment without UNE-P are substantially greater than those that have typically been ordered to date. *TRO*, ¶69. Further, a carrier that is using its own

switching only to serve “legacy” customers and not adding new customers using UNE-L is not “actively” providing service.

Candidate CLECs should not be counted toward the mass market switching triggers unless their facilities-based experience constitutes strong evidence that new carriers could enter the local exchange market without access to unbundled switching.

The FCC expressly rejected arguments by Verizon and other ILECs that “evidence of facilities deployment by competitive CLECs” must or even can be treated as “conclusive or presumptive of a particular outcome without additional information or analysis. *TRO*, ¶ 94. A commission must determine whether evidence of facility deployment by CLECs is sufficient to “indicate a lack of impairment,” but it should not treat such evidence as “dispositive or creat[ing] a rebuttable presumption of no impairment.” *TRO*, ¶ 94. Instead, “[i]n deciding what weight to give this evidence” and whether it is probative of a claim of non-impairment, a commission must consider factors such as “how extensively carriers have been able to deploy such alternatives, to serve what extent of the market, and how mature and stable that market is.” *TRO*, ¶ 94. Similarly, it may be appropriate to “give less weight to intermodal alternatives [such as providers of cable telephony] that do not contribute to the creation of a wholesale market in accessing the customer or do not provide evidence that self-deployment of such access is possible to other entrants.” *TRO*, ¶ 98.

Thus, the Commission should not find that either mass market switching trigger has been met unless it is quite confident that the objective data demonstrate that all significant economic and operational impairments have in fact been overcome in the affected market. *TRO*, ¶ 501. Otherwise, a finding of non-impairment based on the trigger aspect of the analysis would incorrectly mask the existence of probable impairment to any future competitive entry. Evidence

that some CLECs may have deployed alternative facilities is “not necessarily dispositive of a lack of impairment,” because it may not show that a retail market is truly “contestable” by multiple CLECs using non-ILEC switching. *TRO*, ¶ 94.¹⁰

Significant barriers to further entry must be considered in applying the trigger aspect of the impairment analysis.

If some market appears “facially [to] satisfy the self-provisioning trigger,” the Commission will also have to determine whether a “significant barrier to entry exists such that service to mass market customers is foreclosed even to carriers that self-provision switches.” *TRO*, ¶ 502.

If the evidence shows that further entry is not feasible, and that the presence of a few self-provisioning carriers does not in fact refute the FCC’s finding that the absence of unbundled switching would impair competitive entry, then counting up three self-provisioning carriers in some area would not constitute sufficient evidence to overcome the nationwide finding of impairment.

Applying the Trigger Aspect of the Mass Market Switching Impairment Analysis Will Necessarily Involve Definition of Geographic Markets.

The Commission has been asked to apply the trigger aspect of the mass market switching impairment analysis by looking separately at each identifiable geographic market. *TRO*, ¶ 495.

¹⁰ This understanding of the trigger aspect of the mass market switching impairment analysis is consistent with the enterprise loop and dedicated transport triggers, which are designed to test whether retail customers at a particular location (for loops) or CLECs needing to transport traffic along a particular route (for transport) have actual access to meaningful competitive alternatives to unbundled ILEC facilities. *TRO*, 329, 400-401. The FCC has emphasized that its approach in delegating to state commissions authority to analyze mass market switching impairment is “essentially identical” to what it has done with respect to dedicated transport and enterprise loops. *TRO*, fn. 1315. If the enterprise loop trigger is met with respect to any customer location then all affected end users will have access to alternative suppliers. If the transport triggers are met with respect to any particular route, there will be meaningful alternative sources of supply available to any affected party seeking transport. Similarly, the mass

There is no simple methodology for defining geographic markets in the UNE impairment cases. The issue can only be resolved after a fact-intensive inquiry and analysis of many different factors, including:

“variation in ... competitors’ ability to target and serve specific markets economically and efficiently using currently available technologies, *TRO*, ¶ 495;

whether a CLEC with a switch serving some existing customers is “capable of serving” other areas, *TRO*, fn 1552;

variation in costs and revenue opportunities in different areas, *TRO*, ¶ 496; and

any other “variation in factors affecting competitors’ ability to serve each group of customers,” such as variations in line densities and other factors that may affect the scale and scope economies associated with switch deployment, “the capabilities of wire centers to provide adequate collocation space and handle large numbers of hot cuts,” *TRO*, ¶¶ 495-496.

In sum, the many aspects of operational and economic impairment are inextricably related to a proper definition of geographic markets in this case. Indeed, the FCC has specifically asked the states to “attempt to distinguish among markets where different findings of impairment are likely.” *TRO*, ¶ 495. Thus, investigation of impairment via the mass market switching triggers and definition of geographic markets will of necessity go hand in hand.

The Cutover Between the Mass Market and the Enterprise Market Must Be Defined.

market switching trigger will not be met unless mass market customers in the relevant geographic market have

The cut-off between the mass market and the enterprise market must also be established as part of the application of the trigger aspect of the mass market switching impairment analysis. Before the Commission can apply a trigger to determine whether a CLEC is using its own switching to serve the mass market, it must determine the number of voice grade lines that represent a reasonable cross-over between the mass market and the enterprise market. *TRO*, ¶ 497.

A Comprehensive Batch Hot Cut Process Must be In Place, Priced, and Working Before Any Finding of Non-Impairment Could Take Effect.

Even if, hypothetically, the ILECs could rebut the FCC's finding of impairment with respect to mass market switching in some limited areas, the ILECs would have to continue to provide unbundled switching for use with mass market customers without restriction unless and until it can put in place a batch hot cut migration process adequate to meet the stringent standards discussed below. *TRO*, ¶ 527. This is required, among other reasons, not only so that customers served by UNE-P in the affected market could be transitioned, but also so that existing or future UNE-L customers can readily change local carriers

In short, as the FCC has explained, “[t]o the extent the impairment test for switching is not simple, ... it is because the facts surrounding impairment are not simple.” *TRO*, fn 1600. It is therefore unsurprising that the *TRO* as a whole makes clear that the analyses which the Commission must undertake in order to complete and apply the trigger aspect of the mass market impairment test are unlikely to be simple, and they are certainly not going to be as narrow in scope as the ILECs try to pretend.

meaningful access to competitive sources of supply of the same range of services available through the ILECs.

Although, the FCCA supports its detailed list of issues for the trigger analysis, alternatively it proposes that the Commission could make some changes to Staff's existing issues and add an all encompassing broad issue such as "what other factors should the Commission consider in the context of the trigger analysis and what is the impact of those factors?" A proposed mark-up of Staff's issue follows:

6. (a) In which markets in ~~BellSouth's~~ the ILEC's service area are there three or more CLECs not affiliated with each other or ~~BellSouth's~~ the ILEC's, including intermodal providers of service comparable in quality to that of BellSouth, who are actively serving mass market customers with their own switches?
7. What other factors should the Commission consider in the context of the trigger analysis and what is the impact of those factors?

(b) In which markets in the BellSouth's the ILEC's service area are there two or more CLECs not affiliated with each other or BellSouth's the ILEC's, including intermodal providers of service comparable in quality to that of BellSouth, who have their own switches and are actively serving offering wholesale local switching to customers serving DS0 capacity loops in that market, and are operationally ready and willing to provide wholesale service to all competitive providers in the designated market?

What other factors should the Commission consider in the context of the trigger analysis and what is the impact of those factors?

Potential Deployment:

BellSouth's issue 5 and staff's issues 9-11 regarding potential deployment of switching facilities by CLECs, the FCCA again views those issues as too broad as they do not address in sufficient detail, the operational and economic considerations that are spelled out in the TRO. The TRO makes a national finding of impairment if CLECs are not permitted to utilize ILEC local switching to serve the mass market. This impairment results from both economic and operational conditions. With regard to the conditions that cause the economic impairment, the Commission must consider all of the potential revenues and costs that would obtain in order to "determine if entry is economic by conducting a business case analysis for an efficient CLEC" . Par. 517, footnote 1579. This involves a consideration of all the revenues listed in Par. 519 and costs listed in Par 520 in this "efficient CLEC" business case analysis. In addition to the economic impairment finding made by the FCC, the TRO provides the state commission with a national finding that the hot cut process results in impairment without access to unbundled local switching to serve mass market customers. The analysis for the commission is to determine whether a "batch hot cut process" can be designed and implemented to provide a "seamless" and "low cost" system to provision mass market loops to CLEC switches in a manner that eliminates the impairment. The determination of whether this operational impairment can be removed in

turn depends upon a review of multiple factors, such as the ILEC's actual hot cut performance metrics (Par. 512); capacity constraints with existing systems (Par.468); the amount of IDLC equipment in the ILEC network (Par. 512) and the risks of service disruption (Par. 503,513), among other issues.

Accordingly, FCCA proposes at the very least for the staff to make the following changes to its issues.

Accordingly, FCCA proposes at the very least for the S taff to make the following changes to its issues. They are shown in type and strike format below.

9. a. In which markets in (ILEC) service area are there either two wholesale providers or three self-provisioners of local switching not affiliated with each other or (ILEC), serving end users using DS1 or higher capacity loops? Where there are, are there any operational or economic barriers that prevent the use of these switches ~~can these switches be used to serve DS0 capacity loops to mass market customers in an economic fashion?~~

b. In which markets in (ILEC) service area is there a carrier with a self-provisioned switch, including an intermodal provider of service comparable in quality to that of (ILEC), serving end users using DS0 capacity loops? Where there is, are there any operational or economic barriers to prevent the use of ~~can this switch be used to serve DS0 capacity loops to mass market customers. in an economic fashion?~~

c. In which markets in (ILEC) service area ~~do any of the following potential~~ are there any operational barriers ~~render to CLEC entry uneconomic~~ absent access to unbundled local circuit switching, including but not limited to:

(i) (ILEC) performance in provisioning loops;

(ii) difficulties in obtaining collocation space due to lack of space or delays in provisioning by (ILEC); or

(iii) difficulties in obtaining cross-connects in (ILEC) wire centers?

d. In which markets in (ILEC) service are there any ~~area do any of the following potential~~ economic barriers to prevent ~~render CLEC entry uneconomic~~ absent access to unbundled local circuit switching, including but not limited to:

- (i) the costs of migrating (ILEC) loops to CLECs' switches; or
 - (ii) the costs of backhauling voice circuits to CLECs' switches from the end offices serving the CLECs' end users?
- e. For each market in (ILEC) service area, taking into account the point at which the increased revenue opportunity at a single location is sufficient to overcome impairment and the point at which multiline end users could be served economically by higher capacity loops and a CLEC's own switching (and thus be considered part of the DS1 enterprise market), what is the maximum number of DS0 loops that a CLEC can serve using unbundled local switching, when serving multiline end users at a single location?
- f. Taking into consideration the above factors, in what markets in (ILEC) service area is it operationally or economically viable for CLECs to self-provision local switching and CLECs are thus not impaired without access to unbundled local circuit switching?

Potential Transitional Use of Unbundled Local Switching:

BellSouth's issue 6 and Staff's Issue 12 regarding the potential transitional use of unbundled local switching needs to be expanded to address other factors. For example, pursuant to the *TRO*, the Commission should specifically consider whether a batch hot cut process is adequate and the transition steps necessary if no impairment is found. Further the Commission should address the procedures and standards the Commission should adopt for future reviews of impairment. Accordingly, FCCA proposes the following changes;

Transitional use of unbundled local switching (§51.319(d)(2)(iii)(C))

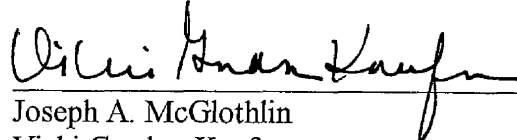
If the triggers in §51.319(d)(2)(iii)(A) have not been satisfied for a given ~~BellSouth~~ ILEC market and the economic and operational analysis described in §51.319(d)(2)(iii)(B) resulted in a finding that CLECs are impaired in that market absent access to unbundled local switching, what are the factors that the Commission should consider to determine whether would the CLECs' impairment would be cured by rolling availability of switching for acquisition of customers if unbundled local switching were only made available for a transitional period of 90 days or more? If so impairment is cured, what should be the duration of the transitional period?

If the Commission finds no impairment in one or more Florida markets, what transition steps should the Commission take to effectuate its decision?

What procedures and standards should the Commission adopt regarding the timing, scope, and content of future ILEC requests to review the status of unbundled local switching in a given market?

Conclusion

The Commission should adopt the changes to the issues discussed by the FCCA herein. Such changes are moderate in scope and will ensure that this proceeding efficiently address all critical issues.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Competitive Carriers Association's Comments on Staff's Proposed Issues List has been provided by (*) hand delivery, (**)email and U.S. Mail this 27th day of October 2003, to the following:

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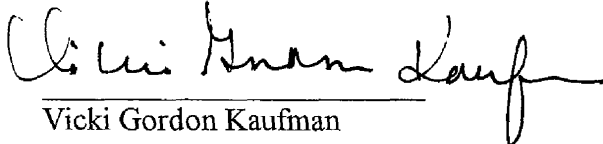
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