

ORIGINAL

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January 8, 2004

Mrs. Blanca S. Bayó  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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Re: Docket No. 030852-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications Inc.'s Motion to Strike Portions of the Direct Testimony filed on behalf of NewSouth Communications Corp. and the Florida Competitive Carriers Association, in the above referenced 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.

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FPSC-BUREAU OF RECORDS

Sincerely,

*Nancy B. White*  
Nancy B. White (KA)

Enclosure

cc: All Parties of Record

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5 \_\_\_\_\_
- CTR \_\_\_\_\_
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Nancy B. White (KA)

**(+) signed protective agreement  
via Hand Delivery(\*)  
via FedEx (⊗)**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising )  
from Federal Communications Commission )  
triennial UNE review: Location-Specific Review ) Docket No. 030852-TP  
for DS1, DS3 and Dark Fiber Loops, and )  
Route-Specific Review for DS1, DS3 and Dark ) Filed: January 8, 2004  
Fiber Transport )  
\_\_\_\_\_ )

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION TO STRIKE PORTIONS  
OF THE DIRECT TESTIMONY FILED ON BEHALF OF  
NEWSOUTH COMMUNICATIONS CORP. AND  
THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion to Strike the Direct Testimony Filed on Behalf of NewSouth Communications Corp. ("NewSouth") and the Florida Competitive Carriers Association ("FCCA") ("Motion to Strike"). The Florida Public Service Commission ("Commission") should strike the vast majority of this testimony because it has no relevance to the issues identified for this docket and embodied in Order No. PSC-03-1265-PCO-TP ("Second Order on Procedure") issued on November 7, 2003. In relevant part, the Second Order on Procedure states "[a]ttached to this order as Appendix 'B' is a list of the issues identified in Docket No. 030852-TP. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix 'B.'" (emphasis added). In support of this Motion to Strike, BellSouth states as follows:

1. On October 6, and October 23, 2003, Issue Identification Conferences were conducted between the Prehearing Officer and all the parties to discuss the issues that needed to be identified for resolution in this proceeding. After considering the arguments presented at the conferences, on November 7, 2003, the Prehearing Officer

issued the Second Order on Procedure, which both established the issues in the proceeding and expressly required that prefiled testimony address the specified issues. The issues were grouped in the following categories: (1) DS-1 Loops; (2) DS-3 Loops; (3) Dark Fiber Loops; (4) Dedicated DS-1 Transport; (5) Dedicated DS-3 Transport; and (6) Dark Fiber Transport. The last issue, Issue 20, relates to a transitional period.

2. Direct testimony was filed in this docket on December 22, 2003. NewSouth filed the direct testimony of Jake Jennings and the FCCA filed the direct testimony of Gary J. Ball. On December 29, 2003, NewSouth filed the amended direct testimony of Jake Jennings.

3. The amended direct testimony of Jake Jennings consists of 16 pages. None of this testimony cites to a single issue in the Second Order on Procedure. Mr. Jennings provides a lengthy history of NewSouth and the services it provides and discusses general language in the *Triennial Review Order*. Mr. Jennings describes the purpose of his testimony as providing “(1) an overview of FCCA and its member companies; (2) an overview of NewSouth and its entry into the local market as a facilities-based CLEC and the benefits of competition that NewSouth, like other facilities-based CLECs, provides to Florida customers; (3) a brief overview of the FCC’s Triennial Review Order (TRO) and to highlight the importance of continued access to unbundled loops and transport to those companies; and finally, (4) an explanation, from a business perspective, as to why the Commission must provide for a systematic transition program that will allow carriers to transition effectively from the ILECs’ unbundled network elements to alternative arrangements if, and when a network element is delisted as a UNE under Section 251(c)(3) of the Telecommunications Act.”

(Amended Direct Testimony, pp. 2-3). The only portion of Mr. Jennings' testimony that marginally relates to the issues set by this Commission concerns the transitional issue (Issue 20).

4. BellSouth submits that the only portion of Mr. Jennings testimony that should not be stricken as irrelevant is as follows:

- A. Page 1, line 1 through page 2, line 19
- B. Page 15, line 10 through page 16, line 9

The remainder of Mr. Jennings' testimony should be stricken in its entirety as irrelevant and non-responsive to the issues to be decided in this docket.

5. The direct testimony of Gary J. Ball consists of 33 pages. Mr. Ball's testimony contains various headings that set forth the organizational structure of his testimony; however, it also fails to cite to a single issue from the Second Order on Procedure. Mr. Ball describes his testimony as providing the Commission with a "workable framework for evaluating ILEC claims of non-impairment." (p. 3). None of the issues established by this Commission seek input on the framework to be utilized in this proceeding.

6. BellSouth submits that the only portion of Mr. Ball's testimony that should not be stricken as irrelevant is as follows:

- A. Page 1, line 1 through page 2, line 15
- B. Page 33, line 5 through page 36, line 8

7. The remainder of Mr. Ball's testimony is nothing more than a regurgitation of the *Triennial Review Order*, various descriptions of CLEC networks, and self-serving interpretations of *TRO* that fail to provide any useful evidence whatsoever.

8. Because most of the testimony of both Mr. Jennings and Mr. Ball fails to address the issues set forth in the Second Order on Procedure, to allow the referenced testimony to remain in the record would violate the Second Order on Procedure. In light of the timeframes for conducting this proceeding, irrelevant testimony that fails to address the issues for resolution is particularly egregious.

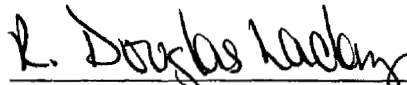
For the foregoing reasons, BellSouth respectfully requests that the Commission grant this Motion to Strike.

This 8th day of January, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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