

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising From Federal Communications Commission's Triennial UNE review; Location-Specific Review for DS1, DS3 and Dark Fiber Loops, And Route-Specific Review for DS1, DS3 and Dark Fiber Transport.

Docket No. 030852-TP

Filed: February 11, 2004

COMMISSION CLERK

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PRELIMINARY OBJECTIONS OF THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION TO STAFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 2-11).

Pursuant to the Order Establishing Procedure, Order No. PSC-03-1054-PCO-TP, issued September 22, 2003 ("Procedural Order"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, the Florida Competitive Carriers Association ("FCCA") submits its Preliminary Objections to Staff's Second Request for Production of Documents to FCCA (Nos. 2-11) ("Document Requests").

FCCA files these objections to comply with the seven (7) day requirement set forth in the Procedural Order. These objections are preliminary in nature. Should additional grounds for objection be discovered as FCCA prepares its responses to any discovery, FCCA reserves the right to supplement these objections.

GENERAL OBJECTIONS

FCCA makes the following general objections to Staff's Document Requests:

1. FCCA objects to the "Definitions" section and the individual items of Staff's Document Requests to the extent that they are overly broad, unduly burdensome, and/or oppressive.

2. FCCA objects to the "Definitions" and the individual items within the Document Requests to the extent they are irrelevant to the issues in this docket and not reasonably

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calculated to lead to the discovery of admissible evidence.

3. FCCA objects to the “Definitions” and the individual Document Requests to the extent they are vague, ambiguous, imprecise, or utilize terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these Requests.

4. FCCA objects to the Document Requests to the extent that they purport to impose discovery obligations on FCCA that exceed the scope of discovery allowed by the applicable Florida Rules of Civil Procedure. By way of example and not of limitation, FCCA objects to instructions that purport to require FCCA to update or supplement its answers and responses or to attempt to obtain and provide documents that are not within FCCA’s possession.

5. FCCA objects to Staff’s Document Requests to the extent that the requests seek discovery of documents, materials and/or information protected by the attorney/client privilege, the work product doctrine, the accountant/client privilege, or any other applicable privilege.

6. FCCA objects to Staff’s Document Requests to the extent that the requests would require disclosure of trade secrets and/or proprietary confidential information that either should not be disclosed at all or should be disclosed only pursuant to the terms of a mutually acceptable confidentiality agreement and the rules and orders of the Commission governing confidentiality.

7. FCCA objects to the Document Requests which would require FCCA to provide information which is already in Staff’s possession or is in the public record before the Commission. To duplicate information that Staff already has or is readily available to Staff would be unduly burdensome and oppressive.


8. FCCA objects to any of the Document Requests that require the identification of “every,” “all” or “each” responsive document, as it can not guarantee, even after a good faith and reasonably diligent attempt, that “all” or “each” responsive document will be identified.

## SPECIFIC OBJECTIONS

At this point, FCCA is able to identify the following specific items to which certain of the above General Objections apply. FCCA's substantive response will be subject to these objections.

- Request No. 4: Please provide any work papers and documents to support your response to Interrogatory No. 9.
- Objection: FCCA incorporates by reference general objections nos. 1, 5, 6, 7, and 8.
- Request No. 5: Please provide any work papers and documents that support your response to Interrogatory No. 13.
- Objection: FCCA incorporates by reference general objections nos. 1, 5, 6, 7, and 8.
- Request No. 8: Please provide any documents that support your response to Interrogatory No. 16.
- Objections: FCCA incorporates by reference general objections 1, 5, 6, 7, and 8.
- Request No. 11: Provide work papers and back-up materials supporting the study in FCCA witness Ball's rebuttal exhibit GJB-3.
- Objections: FCCA incorporates by reference general objection no. 4.

All of the above objections were provided by the undersigned counsel.

  
Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson,  
Kaufman & Arnold, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
(850) 222-2525  
(850) 222-5606 (fax)  
[jmcglothlin@mac-law.com](mailto:jmcglothlin@mac-law.com)  
[vkaufman@mac-law.com](mailto:vkaufman@mac-law.com)

Attorneys for Florida Competitive Carriers  
Association

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Preliminary Objections of the Florida Competitive Carriers Association to Staff's Second Request for Production of Documents (Nos. 2-11) has been provided by (\*) hand delivery, (\*\*) email and U.S. Mail this 11th day of February 2004, to the following:

(\*\*) Adam Teitzman, Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

(\*\*) Tracy Hatch  
AT&T Communications of the  
Southern States, LLC  
101 North Monroe Street  
Suite 700  
Tallahassee, Florida 32301

(\*) (\*\*) Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

(\*\*) Michael Gross  
Florida Cable Telecommunications  
246 East 6<sup>th</sup> Avenue  
Tallahassee, Florida 32302

(\*\*) Richard Chapkis  
Verizon Florida, Inc.  
201 North Franklin Street  
MC: FLTC0717  
Tampa, Florida 33602

(\*\*) Matthew Feil  
Florida Digital Network, Inc.  
2300 Lucien Way, Suite 200  
Maitland, Florida 32751

(\*\*) Susan Masterton  
Sprint Communications Company  
1313 Blairstone Road  
Post Office Box 2214  
MC: FLTLHO0107  
Tallahassee, Florida 32301

(\*\*) Jeffrey J. Binder  
Allegiance Telecom, Inc.  
1919 M Street, NW  
Washington, DC 20037

(\*\*) Donna Canzano McNulty  
MCI WorldCom  
1203 Governors Square Boulevard  
Suite 201  
Tallahassee, Florida 32301

(\*\*) Floyd R. Self  
Messer, Caparello & Self  
215 South Monroe Street, Suite 701  
Tallahassee, FL 32301

(\*\*) Norman H. Horton, Jr.  
215 South Mornoe Street  
Tallahassee, Florida 32302-1876

(\*\*) Nanette Edwards  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, Alabama 35802

(\*\*) Jake E. Jennings  
Senior Vice-President  
Regulatory Affairs & Carrier Relations  
NewSouth Communications Corp.  
NewSouth Center  
Two N. Main Center  
Greenville, SC 29601

(\*\*) Jon C. Moyle, Jr.  
Moyle, Flanigan, Katz, Raymond  
& Sheehan, P.A.  
The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

(\*\*) Bo Russell  
Vice-President  
Regulatory and legal Affairs  
NuVox Communications, Inc.  
301 North Main Street  
Greenville, SC 29601

(\*\*) Rand Currier  
Geoff Cookman  
Granite Telecommunications, LLC  
234 Copeland Street  
Quincy, MA

(\*\*) Andrew O. Isar  
Miller Isar, Inc.  
2901 Skansie Avenue, Suite 240  
Gig Harbor, WA 98335

(\*\*) Scott A. Kassman  
FDN Communications  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801

(\*\*) Rabinai Carson  
Xspedius Communications  
5555 Winghaven Blvd., Suite 3000  
O'Fallon, MO 63366-3868

  
Joseph A. McGlothlin

electronics but has not determined the relevant service or capacity provided over those facilities.

**OBJECTION:** BellSouth objects to Interrogatory No. 14 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 15:** For each customer location identified in AXB-2, please state the number of calendar days that it would take to provision (1) a DS1 loop to a customer, and (2) a DS3 loop to a customer.

**OBJECTION:** BellSouth objects to Interrogatory No. 15 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 16:** For each transport route identified in Exhibits SWP-9 and SWP-10 as satisfying the self-provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers identified as self-provisioners (i) UNE transport, (ii) UNE dark fiber or (iii) special access between the "A" and "Z" locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**OBJECTION:** BellSouth objects to Interrogatory No. 16 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. BellSouth further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. BellSouth also objects to this interrogatory to the extent that it seeks confidential information that BellSouth cannot disclose under the FCC's Customer Proprietary Network Information ("CPNI") rules, 47 CFR §64.2007 or under protective agreements with CLECs to which BellSouth is a party. BellSouth will only provide CPNI and CLEC confidential information consistent with the FCC's rules and BellSouth-executed protective agreements.

**Interrogatory No. 17:** For each transport route identified in Exhibits SWP-7, SWP-9 and SWP-10 as satisfying the wholesale provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers identified as wholesale providers (i) UNE transport, (ii) UNE dark fiber or (iii) special access between the “A” and “Z” locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**OBJECTION:** BellSouth objects to Interrogatory No. 17 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. BellSouth further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. BellSouth also objects to this interrogatory to the extent that it seeks confidential information that BellSouth cannot disclose under the FCC’s Customer Proprietary Network Information (“CPNI”) rules, 47 CFR §64.2007 or under protective agreements with CLECs to which BellSouth is a party. BellSouth will only provide CPNI and CLEC confidential information consistent with the FCC’s rules and BellSouth-executed protective agreements.

**Interrogatory No. 18:** For each transport route identified in Exhibits SWP-9 and SWP-10 as satisfying the self-provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers identified as self-provisioners (i) UNE transport, (ii) UNE dark fiber or (iii) special access, where one end point of the circuit or element is either the “A” or “Z” locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**OBJECTION:** BellSouth objects to Interrogatory No. 18 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. BellSouth further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. BellSouth also objects

to this interrogatory to the extent that it seeks confidential information that BellSouth cannot disclose under the FCC's Customer Proprietary Network Information ("CPNI") rules, 47 CFR §64.2007 or under protective agreements with CLECs to which BellSouth is a party. BellSouth will only provide CPNI and CLEC confidential information consistent with the FCC's rules and BellSouth-executed protective agreements.

**Interrogatory No. 19:** For each transport route identified in Exhibits SWP-7, SWP-9 and SWP-10 as satisfying the wholesale provisioning trigger, identify all instances in which BellSouth has provisioned to any of the carriers identified as wholesale providers (i) UNE transport, (ii) UNE dark fiber or (iii) special access, where one end point of the circuit or element is either the "A" or "Z" locations on the route. Provide for each carrier, the number of circuits or elements for which BellSouth is currently billing the carrier, the type of service provided (i.e., UNE transport, UNE dark fiber, special access) and the capacity level of each circuit or element provisioned. Please provide any such list in manipulable electronic format.

**OBJECTION:** BellSouth objects to Interrogatory No. 19 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. BellSouth further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. BellSouth also objects to this interrogatory to the extent that it seeks confidential information that BellSouth cannot disclose under the FCC's Customer Proprietary Network Information ("CPNI") rules, 47 CFR §64.2007 or under protective agreements with CLECs to which BellSouth is a party. BellSouth will only provide CPNI and CLEC confidential information consistent with the FCC's rules and BellSouth-executed protective agreements.

**Interrogatory No. 21:** For the past year (or such time frame dating to approximately January 1, 2003, as is readily available), state the following information separately for DS1 and DS3 transport orders:

- The number of LSRs requesting UNE transport between the "A" and "Z" end points of the routes identified in Exhibits SWP-7 and SWP-9;



**OBJECTION: BellSouth objects to Interrogatory No. 30 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.**

**Interrogatory No. 31:** Please state how many of the 387 locations BellSouth witness Mr. Banerjee identified as able to be “economically served” by competitors currently are served by a CLEC. For each location currently served by a CLEC, please state:

- (a) The identify of the CLEC;
- (b) The total number of tenants/customers in each building;
- (c) The number of tenants/customers currently served by the CLEC in each building;
- (d) The capacity of the loop service provided by the CLEC;
- (e) The revenue received by the CLEC for the provision of each capacity level;
- (f) Whether the CLEC has access to all of the customers in the building;
- (g) The terms, rates, and conditions imposed upon the CLEC by the building owner;
- (h) Whether there are any exclusivity agreements between the CLEC and the building owner;
- (i) The total number of DS1 circuits currently provided by BellSouth into the building;
- (j) The total number of DS3 circuits currently provided by BellSouth into the building;
- (k) The total number of OC(3) and above circuits currently provided by BellSouth into the building;
- (l) The total number of dark fiber circuits currently provided by BellSouth into the building;
- (m) Any long term contracts between the CLEC and tenants/customers of the building for high capacity loop, private line, or special access arrangements;
- (n) Whether common equipment space is currently available for new CLECs to deploy equipment in the building, and whether new CLECs will have access to house and riser cable in the building;
- (o) Whether conduit space into the building is currently available for new CLECs to pull fiber;
- (p) Whether a manhole or comparable access point is readily available to allow new CLECs to splice fiber into the building; and
- (q) Please provide each long term contracts between BellSouth and tenants/customers of the building for high capacity loop, private line, or special access arrangements at the DS1, DS3, OC(3) and above, and dark fiber capacity levels.

**OBJECTION: BellSouth objects to Interrogatory No. 31 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the**

discovery of admissible evidence. BellSouth further objects to this interrogatory to the extent that it seeks confidential information that BellSouth cannot disclose under the FCC's Customer Proprietary Network Information ("CPNI") rules, 47 CFR §64.2007 or under protective agreements with CLECs to which BellSouth is a party. BellSouth will only provide CPNI and CLEC confidential information consistent with the FCC's rules and BellSouth-executed protective agreements.

**Interrogatory No. 32:** Of the 387 buildings Mr. Banerjee identified as able to be "economically served" by CLECS, how many currently have no CLECs serving the location. For each buildings, please state:

- (a) The total number of tenants/customers in each building;
- (b) The terms, rates, and conditions that the building owner would impose upon a CLEC;
- (c) Whether a CLEC has ever attempted to access the building, and if so, the reason the CLEC did not receive access;
- (d) The total number of DS1 circuits currently provided by BellSouth into the building;
- (e) The total number of DS3 circuits currently provided by BellSouth into the building;
- (f) The total number of OC(3) and above circuits currently provided by BellSouth into the building;
- (g) The total number of dark fiber circuits currently provided by BellSouth into the building;
- (h) Whether common equipment space is currently available for new CLECs to deploy equipment in the building, and whether new CLECs will have access to house and riser cable in the building;
- (i) Whether conduit space into the building is currently available for new CLECs to pull fiber;
- (j) Whether a manhole or comparable access point is readily available to allow new CLECs to splice fiber into the building; and
- (k) Please provide each long term contracts between BellSouth and tenants/customers of the building for high capacity loop, private line, or special access arrangements.

**OBJECTION:** BellSouth objects to Interrogatory No. 32 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the

discovery of admissible evidence. BellSouth further objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive.

**Interrogatory No. 33:** For each of the 387 buildings referenced in Mr. Banerjee testimony on page 8, please provide:

- (l) The estimate of wireline telecommunications spending per tenant provided by TNS Telecom;
- (m) Whether TNS provided revenue estimates specific to DS1 channel terminations or equivalent, DS3 channel terminations or equivalent, or OC(n) channel terminations or equivalent, or dark fiber? If so, please provide those estimates;
- (n) The monthly revenue currently received by Bellsouth for DS1 channel terminations or equivalent into the building, total and per DS1;
- (o) The monthly revenue currently received by Bellsouth for DS3 channel terminations or equivalent into the building, total and per DS3;
- (p) The monthly revenue currently received by Bellsouth for OC(3) and above channel terminations or equivalent into the building, total and per OC(3)/above; and
- (q) The monthly revenue currently received by Bellsouth for dark fiber strands or equivalent into the building, per fiber strand;

**OBJECTION:** BellSouth objects to Interrogatory No. 33 to the extent that it seeks confidential information that BellSouth cannot disclose under nondisclosure agreements to which BellSouth is a party. BellSouth will only provide such confidential information consistent with such nondisclosure agreements.

**Interrogatory No. 38:** Please provide the project lives and discount rates that Bellsouth uses internally for analyzing deregulated projects, including

- (a) Wireless investments, including Cingular investments
- (b) Out-of-region long distance investments
- (c) Internet and data investments

**OBJECTION:** BellSouth objects to Interrogatory No. 38 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. BellSouth further objects to this interrogatory on the



**STATE OF NEW JERSEY**  
*Board of Public Utilities*  
Two Gateway Center  
Newark, NJ 07102  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

TELECOMMUNICATIONS

IN THE MATTER OF THE )  
IMPLEMENTATION OF THE FEDERAL )  
COMMUNICATIONS COMMISSION'S )  
TRIENNIAL REVIEW ORDER )

DOCKET NO. TO03090705

On Wednesday, January 14, 2004, XO New Jersey, Inc. ("XO") and SniP LiNK LLC ("Snip Link") submitted a request that the Board order Verizon New Jersey Inc. ("Verizon") to respond to requests three through six of XO and Snip Link's first set of discovery requests to Verizon. XO and Snip Link assert that these requests are relevant to determining the identity of potential trigger candidates on the transport routes that Verizon identified in its December 3, 2003 *prima facie* case. Each request asked Verizon to identify situations where carriers identified as trigger candidates were purchasing UNE transport, UNE dark fiber or special access on all or part of the routes identified by Verizon. On Friday, January 14, 2004, Verizon filed a response opposing XO and Snip Link's request. Verizon asserts that the information sought by XO and Snip Link is unduly burdensome upon Verizon and is irrelevant to these proceedings.

As to relevance, Verizon states:

The test of whether specific facilities are in place is neither a policy question nor a subjective dispute between witnesses as to what they saw or believe. Instead, the Board has been charged with an objective test regarding whether certain facilities are present, not whether *other* substitute facilities are also in place. And the existence of *any* of these facilities, regardless of whether other types of facilities are also present, satisfies the FCC's applicable trigger.

Verizon is correct that the Board's ultimate determination is whether certain facilities are present. The burden of proving that facilities exist is upon Verizon. Verizon, in its *prima facie* case, set forth its evidence supporting the existence of certain facilities. To prove its case, Verizon asserts that it is reasonable to assume that carriers have their own facilities when fiber-fed collocations in the central offices representing end points of the transport routes exist. Verizon's assumption is that traffic is actually flowing between these points. Verizon relies upon undisclosed data that it compiled from its own internal databases and resources to support this assumption.

Verizon is correct that its provision of UNEs or special access services have no bearing on the issue in this matter. To the extent the provision of these services precludes relevant services, however, this information is relevant. Verizon has the burden of proving the existence of facilities. In its *prima facie* case, Verizon relies upon an assumption of essentially "where there's smoke there's fire." The information sought by XO and Snip Link is to determine what actually flows through the fiber identified by Verizon.

Nor can Verizon argue that it is up to XO and Snip Link to prove that the facilities do not exist. Essentially, Verizon would have XO and Snip Link disprove Verizon's assumption. Verizon carries the burden of proof. Verizon must demonstrate the facilities exist. This includes responding to questions concerning the data underlying Verizon's assumptions. It cannot insist that other parties rely upon Verizon's assumptions. The parties have a right to know whether the facilities do in fact exist, and Verizon has a duty to provide evidence. Verizon cannot abdicate its responsibility in this matter.

In order to permit the parties to test the validity of the data utilized by Verizon in its *prima facie* case, the parties are entitled to responses from Verizon because it is the party that not only presented the data, but it is also expected to benefit from its inclusion in the record. I cannot allow Verizon to seek admission of this data without allowing other interested parties the opportunity to impeach the same data. Verizon asserts that even if it provides the evidence sought by XO and Snip Link, the other parties will not believe that evidence because it comes from Verizon. That does not excuse Verizon from proving its case. Verizon must put forth evidence supporting its case, and the parties are then free to challenge that evidence. Once the parties have put forth their evidence, the Board will be able to make a decision based upon the facts, and not upon any party's assumption. To the extent the information sought proves whether facilities exist on the transport routes identified by Verizon, the information is relevant.

Verizon also asserts that the requests are unduly burdensome, and that it would be more direct and efficient for XO and Snip Link to seek the information from the CLECs whose facilities are at issue. At first blush this argument is enticing; however, it ignores one simple fact: Verizon carries the burden of proof. It is Verizon's burden to prove the existence of facilities, not XO and Snip Link's burden to prove that the facilities do not exist. Verizon cannot meet its burden based upon assumptions; it must provide factual support for its position. In presenting its *prima facie* case, Verizon relies upon data that it obtained from its own internal databases, but when questioned on that precise data, Verizon expects other parties to respond to data requests to support its *prima facie* filing. While admittedly burdensome, it is not unduly burdensome to require Verizon to provide the factual support for its position.

Based upon the foregoing, Verizon is hereby DIRECTED to provide responses to requests three to six of XO and Snip Link's first set of discovery requests. Given the large volume of information sought by these requests and in recognition that rebuttal testimony is due on February 2, 2004, Verizon must provide responses by January 28, 2004.

DATED: January 22, 2004

BY:

/S/  
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CONNIE O. HUGHES  
COMMISSIONER

c: Jeanne M. Fox, President  
Carol J. Murphy, Commissioner  
Frederick F. Butler, Commissioner  
Jack Alter, Commissioner  
Kristi Izzo, Board Secretary

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

JAN 23

DOCKET NO. P-100, SUB 133Q

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Triennial Review Order – UNE-P

) ORDER GRANTING AT&T'S  
) MOTION TO REQUIRE BELLSOUTH  
) TO RESPOND TO DISCOVERY

BY THE PRESIDING COMMISSIONER: On January 14, 2004, AT&T Communications of the Southern States, LLC (AT&T) filed a Motion to Require BellSouth Telecommunications, Inc. (BellSouth) to Disclose Certain Information contained in BellSouth's business records concerning competitive local providers (CLP) identified as self-providers of local switching to serve the mass market in the Direct testimony of BellSouth's Witness Pamela A. Tipton. AT&T attached to its Motion the Second Set of Interrogatories that it served on BellSouth on January 14, 2004.

In its Motion, AT&T represented that BellSouth was concerned that the information requested contains Customer Proprietary Network Information (CPNI) with restrictions upon disclosure absent an Order from this Commission. BellSouth has no objection to the entry of such an Order so long as the appropriate protections for the confidential nature of the information are contained in the Order. The Commission has received no objections from any other party, although all parties of record were served with AT&T's Motion.

The Presiding Commissioner believes based on the representations contained in AT&T's Motion, and in the interest of having a full and complete record presented to the Commission in the above-referenced Docket that good cause exists to require BellSouth to provide the information sought by AT&T in its Second Set of Interrogatories served on BellSouth on January 14, 2004, subject to BellSouth's right to lodge other appropriate discovery objections and subject to all the protections contained in the Confidentiality Agreement between the parties to this Docket. As agreed to by the parties, BellSouth shall make its best efforts to provide this information to AT&T, all other parties of record that have entered into the appropriate protective agreements, and to the Commission on and not before January 29, 2004.

The Presiding Commissioner further believes good cause exists that BellSouth and the other parties to this proceeding may file with this Commission and, may provide to all other parties of record that have entered into the appropriate protective agreements, information that may consist of or that may contain CPNI in order to facilitate the timely exchange of information.

Any party objecting to this Order, in whole or in part, shall file any and all such objections with the Commission and shall serve all such objections on all parties of record no later than 5:00 p.m., January 28, 2004. If there are no objections filed accordingly, BellSouth shall provide the requested information on January 29 as ordered by this Commission.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 23<sup>rd</sup> day of January, 2004.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk