

ORIGINAL



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February 16, 2004

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
The Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

RECEIVED FPSC  
FEB 16 PM 4:54  
COMMISSION  
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Re: Docket No. 030851-TP

Dear Ms. Bayó:

Enclosed for filing are an original and 15 copies of AT&T Communications of the Southern States, LLC's Response to Verizon's Motion to Compel in the above-referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning to me.

Thank you for your assistance with this filing.

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FPSC-BUREAU OF RECORDS

Sincerely yours,

Tracy W. Hatch

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DOCUMENT NUMBER DATE

02165 FEB 16 04

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In Re: Implementation of Requirements )**  
**Arising From Federal Communications )** Docket No.: 030852-TP  
**Commission Triennial UNE Review: )**  
**Location Specific-Review for DS1, DS3, )** Filed: February 16, 2004  
**And Dark Fiber Loops and Route- )**  
**Specific Review for DS1, DS3, and Dark )**  
**Fiber Transport )**

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**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC'S RESPONSE**  
**TO VERIZON FLORIDA, INC.'S MOTION TO COMPEL**

In response to Verizon Florida Inc.'s Motion to Compel AT&T Discovery (hereinafter "Verizon Motion"), AT&T respectfully shows the Commission the following:

**BACKGROUND**

On December 22, 2003, Verizon Florida, Inc. (hereinafter "Verizon") served Verizon's First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents (hereinafter "Verizon Discovery") on AT&T. AT&T filed objections to the Verizon Discovery on December 24, 2003.<sup>1</sup> AT&T provided timely responses to those interrogatories on January 12, 2004. Almost a full month later, Verizon filed its Motion to Compel AT&T Discovery.

**ARGUMENT**

Although AT&T believes that its discovery responses, as originally written, were appropriate, responsive and within the parameters prescribed by the Order Establishing Procedure, Order No. PSC-03-1054-PCO-TP, issued September 22, 2003, and Second Order on Procedure, Order No. PSC-03-1265-PCO-TP issued November 7, 2003, by the Florida Public Service Commission (hereinafter "Commission"), Rule 28-106.206 of the Florida Administrative Code, and Rules 1.280, 1.340, 1.350 and 1.380 of the Florida Rules of Civil Procedure, AT&T has supplemented its response to Interrogatory 1. AT&T's supplemental response is attached hereto as Exhibit B.

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<sup>1</sup> AT&T's objections to Verizon's First Request for Admissions, First Set of Interrogatories and First Request for Production of Documents are attached as Exhibit A.

DOCUMENT NUMBER-DATE

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In light of AT&T's supplementation, the Verizon Motion is moot. Nevertheless, AT&T will address each of the points contained in the Verizon Motion below.

### **Interrogatories 1-20**

Verizon maintains that "virtually all of AT&T's objections and refusals to provide the requested information arise from" the rationale contained in AT&T's response to Interrogatory 1. See, Verizon Motion at 4. AT&T has now supplemented that response to indicate that AT&T quite simply *does not own, maintain, or wholesale* transport facilities in Florida as defined within the parameters of the discovery issued by Verizon or within the parameters of the Triennial Review Order (hereinafter "TRO").

Verizon's discovery to AT&T defined the terms "transport services" and "transport facilities" as follows:

The terms "transport services" or "transport facilities" include but are not limited to transport services or facilities that directly or indirectly connect a Verizon wire center or switch to another Verizon wire center or switch.

Verizon Discovery at 6.

AT&T's original responses and clarified supplemental responses to the interrogatories pertaining to this definition, specifically, Interrogatories 1-20, are very clear, unambiguous and responsive to the questions asked. Simply put, AT&T does not have any such facilities.

The Verizon Motion seeks to compel AT&T to provide the responses that Verizon would like for AT&T to provide instead of the responses that AT&T has given, which is outside of the scope of a Motion to Compel. If Verizon believes that AT&T's responses are incorrect, or are an inaccurate reflection of AT&T's Florida-based facilities and services, then Verizon is free to either (1) serve additional discovery on AT&T with more specific, clearly defined terminology or (2) cross examine the AT&T witnesses at the hearing about the facilities and services that AT&T provides in Florida.

### **Interrogatory 21:**

Identify the points in Florida at which local network facilities that you own or use are connected to the networks of carriers other than the incumbent LECs, including interconnection with other CLECs, interexchange carriers, or internet service providers at any

point of presence, network access point, collocation hotel, data center, or similar facility (collectively or individually, “interconnection points” or “IPs”).

**AT&T’s Response:**

AT&T objects to providing the points (or network diagrams showing the points) at which its network connects to the network of other CLECS, Interexchange Carriers, ISPs due to the fact that it is not relevant and not likely to lead to the discovery of admissible evidence in any loop and transport trigger or potential deployment case. Where a CLECs network connects to the networks of others is not relevant to “transport” as defined in the TRO. The TRO, at paragraphs 335 and 410 discuss the factors to be considered by a state Commission in a potential deployment case. The points at which the AT&T network connects to the networks of carriers and firms other than Verizon has no relevance to whether AT&T could potentially deploy a high capacity loop from its network to a specific customer location or provide high capacity transport between Verizon wire centers. AT&T does not intend to provide this information to Verizon absent a Motion to Compel and Order of a Commission requiring AT&T to do so.

**Interrogatory 22:**

In the TRO, the FCC repeated AT&T’s comment that it “often engages in joint builds with other CLECs in order to share the high fixed costs of construction.” (See, TRO at ¶379 n.1166.) Identify the carriers and transport facilities that AT&T has built jointly with other carriers.

**AT&T’s Response:**

AT&T’s reporting of “joint builds” in the Fea/Giouvannucci Reply Declaration referenced in footnote 1166 was written under the pre-TRO definition of “transport” that would have included the construction of a broader range of facilities than are now within the new TRO definition, for example, the prior definition would have included ILEC wire center to CLEC switch facilities, entrance facilities, and even CLEC customer to CLEC switch fiber ring facilities that are not included in the current definition. Under the ILEC wire center to ILEC wire center definition, AT&T has no such facilities and therefore has not engaged in any “joint builds”. Further, a review of AT&T’s records reveals that no facilities “joint

builds” of any type have been undertaken in Verizon’s Florida territories.

**Interrogatory 23:**

In the TRO, the FCC repeated AT&T’s comment that it “uses non-incumbent LEC facilities, including its own facilities, for a substantial portion of its DS3 transport[.]” (See, TRO at ¶ 387 n. 1197.) Identify by 11-digit CLLI, the self-provisioned facilities AT&T uses for its DS3 transport. Also identify by 11-digit CLLI and carrier name, the DS3 facilities that it obtains from carriers other than the incumbent LEC.

**AT&T’s Response:**

The statement “AT&T uses non-incumbent LEC facilities, including its own facilities, for a substantial portion of its DS3 transport” at footnote 1197 is the FCC’s, not AT&T’s. See response to Request for Production of Documents #11 below for the Confidential pages 140-151 of AT&T’s Comments filed with the FCC. As noted above in Response to Interrogatory 22, the definition of transport was changed by the TRO, and in interrogatory 1, AT&T does not self-provide any transport that meets the current definition. Further, AT&T does not obtain any transport (as defined *by* the TRO) from carriers other than the incumbent LEC.

**Interrogatory 24:**

If the information sought by these requests is contained in a response to a prior request, it is acceptable simply to refer to that prior response.

- A. Identify by CLLI code and street address (1) the Verizon wire center at which AT&T has fiber, (b) the optical terminating and multiplexing equipment AT&T has at those Verizon wire centers, (c) and precisely where the AT&T fiber goes after it leaves each Verizon wire center. (For example, if AT&T has fiber at five Verizon wire centers, and all of the fiber runs to an AT&T POP, identify the street address and CLLI of the AT&T POP, and a description of precisely where the fiber goes at the AT&T POP.)
- B. Identify by CLLI code and street address where AT&T’s POPs or transport facilities interconnect with each other.

- C. Describe how AT&T's fiber connects or terminates at each AT&T POP, AT&T wire center, or AT&T collocation arrangement.
- D. Identify the termination equipment at each AT&T POP, AT&T wire center, or AT&T collocation arrangement.
- E. Identify the services or capacities offered to end users over AT&T's OC-n level transport facilities.
- F. Identify (i) the number of strands of fiber deployed in each transport facility leaving each Verizon wire center or switch, (ii) the number of unlit fibers in each transport facility leaving each Verizon wire center or switch, and (iii) the number of dark fiber in each transport facility leaving each Verizon wire center or switch (if different from (ii)).

**AT&T's Response:**

AT&T objects to providing the information requested which includes the points (or network diagrams showing the points) at which its networks connect internally to each other or to Verizon's network due to the fact that it is not relevant and not likely to lead to the discovery of admissible evidence in any loop and transport trigger or potential deployment case. Where a CLEC's networks interconnect internally or connects to the networks of others is not relevant to "transport" as defined in the TRO. The TRO, at paragraphs 335 and 410 discuss the factors to be considered by a state Commission in a potential deployment case. The points at which the AT&T network connects to itself and to the network of Verizon has no relevance to whether AT&T could potentially deploy a high capacity loop from its network to a specific customer location or provide high capacity transport between Verizon wire centers. AT&T does not intend to provide this information to Verizon absent a Motion to Compel and Order of a Commission requiring AT&T to do so.

Relevant information about the deployment of AT&T's switches and collocations, including their association can be found in the documents being provided in response to Request for Production of Documents 2 below.

### **Request for Production of Documents 6:**

Provide all documents that discuss or describe the capacity or capacity of services (e.g., DS-1, DS-3) that you offer in Florida to retail customers, or have offered to retail customers.

### **AT&T's Response:**

AT&T objects to this request on the grounds that the information sought is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence.

These interrogatories and the objections to these interrogatories deal with whether or not the requested information is relevant to the issues before the Commission based on the TRO. Accordingly, these responses will be discussed together.

AT&T objected to these discovery requests because, pursuant to the unequivocal terms of the TRO, the information requested by Verizon in Interrogatories 21-24 and Request for Production 6 is outside the scope of the proceedings currently before the Commission. Despite the incorrect assertion made by Verizon, AT&T contends that these discovery requests are collectively objectionable because they seek information that is irrelevant and not likely to lead to the discovery of admissible evidence pursuant to Fla. R. Civ. P. 1.280. Accordingly, the Verizon Motion should be denied.

All of the discovery requests at issue seek information pertaining to AT&T's transport facilities in Florida without regard to whether or not those facilities are "dedicated transport" facilities as defined by the TRO. As stated on numerous occasions in the filed testimony, as well as in discovery responses, "the only transport facilities that AT&T has self-provisioned in Florida are entrance facilities that connect an ILEC wire center and AT&T's own switch." See, Bradbury Rebuttal Testimony at 15. Furthermore, as Mr. Bradbury testified,

. . . AT&T's local fiber networks are not configured to enable it to carry traffic from its collocation facilities in one ILEC wire center to its collocation facilities in another ILEC wire center passed by its fiber ring. The AT&T network, as are most CLEC networks, is more logically thought of as a hub-and-spoke arrangement where traffic flows from the AT&T collocation arrangement to the AT&T local switch. This is central-point-to-any-point architecture, not an any-point-to-any-point architecture . . . AT&T's fiber transport network is configured to flow traffic between an AT&T switch and

(1) either an ILEC tandem or end office switch . . . or (2) an AT&T collocation arrangement at an ILEC wire center.

The TRO defines “dedicated transport” in a specific, separate portion of the TRO, appropriately titled “Definition of Dedicated Transport.” See, TRO at ¶365-67. In those paragraphs, the FCC re-defines the term “dedicated transport” to exclude facilities like those deployed by AT&T. In Paragraph 359 of the TRO, the FCC notes that “[a]s an initial matter, we limit our definition of the dedicated transport network element to only those transmission facilities connecting incumbent LEC switches or wire centers.” Paragraph 365 of the TRO defines “dedicated transport” as “transmission facilities connecting incumbent LEC switches and wire centers within a LATA.” TRO at ¶365 (footnote omitted). As explained by Mr. Bradbury above, AT&T does not have any transport facilities that meet these definitions. AT&T’s network is configured to carry traffic from wire center A to the CLEC switch, and similarly, from wire center B to the CLEC switch. The network does not carry traffic from ILEC wire center A to ILEC wire center B as required by the definition of “dedicated transport” in the TRO.

With regard to AT&T’s collocation arrangements at an ILEC wire center, Paragraph 365 of the TRO states that “[u]nlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection, *we find that the Act does not require incumbent LECs to unbundled transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic.*” *Id.* at ¶365 (emphasis added)(citations omitted). While backhaul facilities were previously included in the FCC definition of “dedicated transport,” the FCC changed the definition so that the “dedicated transport” network element includes “only those ‘features, functions, and capabilities’ of equipment facilities that coincide with the incumbent LEC’s transport network – the transmission links connecting incumbent LEC switches or wire centers.” *Id.* at ¶366.

Verizon’s position obliterates the distinction, so carefully traced by the FCC, between backhaul on the one hand and dedicated transport on the other. In ¶ 367 of the TRO, the FCC explained that “the economics of dedicated facilities used for backhaul between networks are sufficiently different from transport within an incumbent LEC’s network that our analysis must adequately reflect this distinction.” The economics differ in that a CLEC can exert some control over its backhaul expenses by choosing to locate its switch close to an ILEC wire center, limiting the backhaul distance that must be traversed. *Id.* By contrast, CLECs “have no such choice in seeking transport within the network of incumbent LECs.” *Id.* In other words, the distance between the various points *within* the ILEC network is fixed by the ILEC,



whereas the distance between the CLEC switch and its point of connection with the ILEC network is fixed by the CLEC. Footnote 1119 in ¶ 367 makes the point this way:

Although we are not in this subsection conducting an impairment analysis, we find that this economic difference significantly distinguishes our analysis of *intra-incumbent* LEC transmission facilities – which we define to be transport – from *inter-network* transmission facilities used for backhaul. See *supra* Part V.B. (discussing the impairment standard).

[Emphasis added]. This distinction is the reason why dedicated transport and backhaul are treated differently for purposes of unbundling. The FCC decided that “no requesting carrier shall have access to unbundled inter-network transmission facilities [i.e., backhaul]. . . [h]owever, all telecommunications carriers . . . will have the ability to access transport facilities *within* the incumbent LEC’s network . . . [i.e. dedicated transport].” TRO at ¶ 368 (emphasis in original).

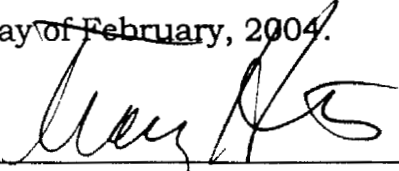
Despite this clear distinction, Verizon insists there is none, and that AT&T’s backhaul facilities constitute dedicated transport. Verizon’s contention is utterly without merit.

Verizon correctly points out in its Motion that very few, if any, CLEC facilities in Florida would count towards the trigger analysis. Verizon Motion at 11. In fact, the FCC reached the exact same conclusion in their impairment analysis. See, e.g., TRO at ¶387 (finding that alternative transport facilities are not available to competing carriers in a majority of areas).

In light of the fact that AT&T’s facilities do not qualify as “dedicated transport” facilities pursuant to the governing instrument in these proceedings, the discovery requests posed by Verizon are irrelevant, burdensome and not likely to lead to the discovery of admissible evidence pursuant to Fla. R. Civ. P. 1.280. Finding otherwise would subject the Commission to a great deal of surplus information that has no bearing on the duties delegated to the Commission by the FCC.

Based on the definition of “dedicated transport” provided in the TRO, AT&T’s objections to the discovery requests propounded by Verizon should be sustained and the Verizon Motion should be denied.

Respectfully submitted, this the 16<sup>th</sup> day of February, 2004.



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