

BEFORE THE 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  
ORDER NO. PSC-04-0167-PHO-TP  
ISSUED: February 18, 2004

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on February 9, 2004, in Tallahassee, Florida, before Commissioner Charles M. Davidson, as Prehearing Officer.

APPEARANCES:

MATTHEW FEIL, Esquire, and SCOTT KASSMAN, Esquire 2301 Lucien Way, Suite 200, Maitland, FL 32751  
On behalf of Florida Digital Network, Inc. d/b/a FDN Communications (FDN).

MARK A. STACHIW, Esquire, and CHARLES V. GERKIN, JR., Esquire, 9201 North Central Expressway Dallas, TX 75231  
On behalf of Allegiance Telecom of Florida, Inc. (Allegiance).

SUSAN MASTERON, Esquire, P.O. Box 2214, 1313 Blairstone Road, Tallahassee, Florida 32316-2214; and J. JEFFRY WAHLEN, Esquire, Ausley & McMullen, P. O. Box 391, Tallahassee, Florida 32302  
On behalf of Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership (Sprint).

RICHARD A. CHAPKIS, Esquire, 201 North Franklin Street, FLTC0717, P. O. Box 110 (33601) Tampa, FL 33602  
On behalf of Verizon Florida, Inc. (Verizon).

TRACY HATCH, Esquire, 101 North Monroe Street, Suite 700, Tallahassee, Florida 32301  
On behalf of AT&T of the Southern States, LLC (Joint CLECs)

CHARLES (Gene) WATKINS, Esquire, 1230 Peachstreet Street, NE 19<sup>th</sup> Floor, Atlanta, Georgia 30309  
On behalf of DIECA Communications Inc. d/b/a Covad Communications Co. (Joint CLECs)

DOCUMENT NUMBER-DATE

02330 FEB 18 04

FPSC-COMMISSION CLERK

VICKI GORDON KAUFMAN, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Kaufman, & Arnold, PA., 117 South Gadsden Street, Tallahassee, Florida 32301

On behalf of Florida Competitive Carriers Association (FCCA) and DIECA Communications Inc. d/b/a Covad Communications Co. (Joint CLECs)

JOSEPH A. MCGLOTHLIN, Esquire, McWhirter Reeves McGlothlin, Davidson, Kaufman & Arnold, PA, 117 South Gadsden Street, Tallahassee, Florida 32301  
On behalf of Florida Competitive Carriers Association (FCCA),( Joint CLECs).

NANETTE EDWARDS, Esquire, 4092 S. Memorial Parkway, Huntsville, Alabama 35802

On behalf of ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (Joint CLECs)

FLOYD SELF, Esquire, Messer Caparello & Self, 215 South Monroe Street, Suite 701, Tallahassee, Florida 32302-1876

On behalf of KMC Telecom, III LLC, ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom, MCImetro Access Transmission Services, LLC, and MCI WorldCom Communications , Inc. (Joint CLECs)

DONNA CANZANO MCNULTY, Esquire, 1203 Governors Square Boulevard, Suite 201, Tallahassee, Florida 32301; and DULANEY O'ROARK, III, Esquire, 6 Concourse Parkway, Suite 600, Atlanta, Georgia 30328

On behalf of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (Joint CLECs)

JON C. MOYLE, JR., Esquire, Moyle Flanigan Katz Raymond & Sheehan , P.A. The Perkins House, 118 Gadsden Street, Tallahassee, Florida 32301

On behalf of NewSouth Communications Corp. and Nuvox Communications, Inc. (Joint CLECs)

NORMAN H. HORTON JR., Esquire, Messer Caparello & Self, 215 South Monroe Street, Suite 701, Tallahassee, Florida 32302-1876

On behalf of Xspedius Communications, LLC. (Joint CLECs)

NANCY B.WHITE, Esquire, JAMES MEZA, III, Esquire, c/o Nancy Sims, ANDREW D. SHORE, Esquire, WILLIAM J. ELLENBERG, Esquire, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301; and R. DOUGLAS LACKEY, Esquire, and MEREDITH E. MAYS, Esquire, Suite 4300, 675 W. Peachtree Street, NE, Atlanta, Georgia 30375

On behalf of BellSouth Telecommunications, Inc. (BST).

ADAM TEITZMAN, Esquire, JEREMY SUSAC, Esquire, and JASON P. ROJAS, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff (STAFF).

### **PREHEARING ORDER**

#### **I. CONDUCT OF PROCEEDINGS**

Formal hearing proceedings before the Florida Public Service Commission are governed by Chapter 120, Florida Statutes, and Chapters 25-22, 25-40, and 28-106, Florida Administrative Code. To the extent provided by Section 120.569(2)(g), Florida Statutes, the Florida Evidence Code (Chapter 90, Florida Statutes) shall apply. To the extent provided by Section 120.569(2)(f), Florida Statutes, the Florida Rules of Civil Procedure shall apply.

Rule 28-106.211, Florida Administrative Code, specifically provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of this case. This Order is issued pursuant to that authority. The scope of this proceeding shall be based upon the issues raised by the parties up to and during the prehearing conference, unless modified by the Commission or Prehearing Officer.

#### **II. CASE BACKGROUND**

In response to the Federal Communications Commission's (FCC) August 21, 2003, Triennial Review Order (TRO), this Commission opened two dockets to ascertain whether impairment exists within the state and local markets. Docket No. 030851-TP was initiated to address local circuit switching for mass market customers, and Docket No. 030852-TP was initiated to address the location-specific review for DS1, DS3, and dark fiber loops and route-specific review for DS1, DS3, and dark fiber transport. Pursuant to the TRO the state commission must complete such proceedings within nine months from the TRO's effective date.

#### **III. ATTENDANCE AT HEARING: PARTIES AND WITNESSES**

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date that:

- (i) all parties agree that the witness will not be needed for cross examination; and
- (ii) all Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

#### IV. PENDING MOTIONS

All motions pending at the time of the prehearing conference will either have been addressed by separate order or in the Rulings section of this Prehearing Order. Furthermore, to the extent possible, all other pending procedural motions will be addressed prior to hearing.

#### V. PROPOSED STIPULATIONS

None.

#### VI. OPEN PROCEEDINGS AND PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

- A. Confidential information should be treated in accordance with the provisions of the Order Establishing Procedure previously issued in this docket.
- B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.
  - 1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing by the Commission.
  - 2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing, unless approved by the Prehearing Officer for good cause shown. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b. Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c. When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

VII. PENDING CONFIDENTIALITY MATTERS

There are numerous pending requests for confidential classification that will be ruled upon by the Prehearing Officer in separate orders prior to the hearing.

VIII. HEARING FRAMEWORK/PRESENTATION OF CASES

The framework set forth herein reflects a compromise of the parties' framework proposals and reflects the most efficient means for receiving the evidence in this case within the time allotted for this hearing. As an overview, the hearing framework is as follows:

"No Impairment" Direct Case	--	2 hours
Parties' Cross-Exam of "No Impairment" Case	--	7 hours
Staff	--	1 hour
Re-Direct Exam	--	½ hour
"Impairment" Direct Case	--	2 hours
Parties' Cross-Exam of Impairment Case	--	7 hours
Staff	--	1 hour
Re-Direct Exam	--	½ hour

The following discusses the hearing framework in greater detail:

- A. *Phases of Hearing.* The hearing will be divided into 2 main phases: (i) "No Impairment" phase; and (ii) "Impairment" phase. Parties with witnesses will present their case in either the "No Impairment" phase or the "Impairment" phase, depending upon the position that they are advocating.
- B. *Equal Hearing Time.* As discussed more specifically in this section, each phase will be afforded an equal amount of hearing time. How to allocate the allotted times between the parties in a particular phase is to be decided among the parties. For example, if BellSouth and Verizon are presenting the "No Impairment" direct case, they are responsible for determining how to allocate the two (2) hours for the direct case amongst themselves.
- C. *Stipulation of Hearing Testimony.* Testimony will be stipulated into the record at the outset of the hearing (or, preferably, prior thereto), subject to the outcome of any motions to strike.
- D. *Direct Case.* The parties presenting a direct case will collectively have two (2) hours to present their direct case.
  - i. The parties presenting the direct case are responsible for determining how to allocate the two (2) hours amongst themselves. Failing agreement by the parties, the two (2) hours of hearing time will simply be divided equally among the parties presenting the direct case.

- ii. Presentation of the direct case will be coordinated among all participants on the side. It is up to the parties presenting the direct cases to determine, among other matters, how such case will be presented (*e.g.*, via opening statements, summaries of the evidence, demonstrative presentations, direct examination, friendly cross, etc.) and which witnesses will be called to the stand.
  - iii. During the presentations of each side's direct case, only Commissioners and counsel on direct examination will be allowed to question the witnesses. Opposing counsel will only interject, if necessary, for purposes of objections.
  - iv. Each side shall coordinate to determine which witnesses will take the stand and shall provide a list of such witnesses to the Commission by February 25, 2004.
- E. *Cross-Examination by Parties.* After presentation of a direct case, the parties participating in cross-examination will collectively have seven (7) hours to conduct cross-examination.
- i. The parties conducting cross-examination are responsible for determining how to allocate the 7 hours amongst themselves. Failing agreement by the parties, the 7 hours of time will simply be divided equally among the parties wishing to cross-examine witnesses.
  - ii. Cross-examination will be based upon the prefiled testimony of the witnesses, as well as the live testimony of any witnesses during the hearing.
  - iii. During the cross-examination portion of the hearing, counsel conducting cross-examination may call to the stand any witness for the opposing side, even those witnesses that did not take the stand to present the direct case. Cross-examination during this period will be coordinated among all participants on the side. Neither side will be restricted in the order in which they call witnesses to the stand.
  - iv. Each side must identify the witnesses it intends to cross-examine and notify the Commission of those witnesses by February 25, 2004. Thereafter, Commission staff must identify which witnesses they intend to cross-examine by February 26, 2004.
- F. *Re-Direct Examination.* Re-direct examination will be limited to thirty (30) minutes after cross-examination has concluded.

G. *Cross-Examination by Staff.* Commission staff will be allowed to conduct cross-examination of individual witnesses called to the stand while that witness is still on the stand for the cross-examination period of any side, as long as such examination is not anticipated to last longer than ten (10) minutes. Otherwise, Commission staff, will be allotted a one-hour period at the conclusion of each side's cross-examination period (for a total of two hours).

H. *Conclusion.* This hearing framework is based on a compromise of the parties' proposals as to how this hearing can most efficiently proceed given the number of issues, parties, and witnesses. It is incumbent on the parties to proceed according to the framework set forth herein. It is also incumbent on the parties to resolve disputes relating to this framework amongst themselves.

IX. WITNESSES: OATH, PREFILED TESTIMONY, EXHIBITS, AND CROSS-EXAMINATION

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read. However, all testimony remains subject to appropriate objections. Upon insertion of a witness' testimony into the record, exhibits appended thereto may be marked for identification.

Cross-examination will proceed as set forth in Section VIII above. Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and staff have had the opportunity to object and cross-examine, exhibits may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

X. WITNESSES

Witnesses will be heard pursuant to the hearing framework agreed upon by the parties at the prehearing conference and further elucidated in Section VIII of this Order. Discussion among the parties at the Prehearing Conference indicated that each side ("impairment" and "no impairment") would only call those witnesses that are deemed most appropriate given the time constraints and the number of witnesses. As set forth explicitly in Section VIII above, the parties are to provide Commission staff counsel with a list of witnesses that they plan to call for direct or



for cross prior to the hearing. Thus, while the witnesses identified below accurately reflect the prefiled testimony of the parties, the order in which the witnesses are identified may not reflect the order in which the witnesses take the stand, if at all.

<u>Witness</u>	<u>Proffered By</u>	<u>Issue Nos.</u>
<b><u>Direct</u></b> Orville D. Fulp and John White (Panel)	Verizon	1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, and 20
Shelly W. Padgett	BST	Ms. Padgett provides information concerning the high capacity loop and transport triggers in BellSouth's serving territory and provides information concerning the specific locations and routes that satisfy the FCC's triggers tests. Ms. Padgett also addresses the appropriate transition time for BellSouth's provision of high capacity loops and transports at UNE prices after a location or route is no longer subject to unbundling. Ms. Padgett addresses Issues 1-3, 5, 7-12, 14-18, and 20.
A. Wayne Gray	BST	Mr. Gray addresses network issues and addresses the typical network configuration used by CLECs. Mr. Gray supports the network costs that are used by Dr. Banerjee in analyzing potential deployment issues. Mr. Gray's testimony addresses, in part, all issues with the exception of Issue 20.
Dr. Aniruddha Banerjee	BST	Dr. Banerjee identifies the locations and routes in BellSouth's serving territory that satisfy the FCC's potential deployment analysis. His testimony addresses Issues 4, 6, 13, and 19.
Gary J. Ball (Revised 1/15/04)	FCCA	All
Jake E. Jennings (Amended 12/29/03)	NewSouth	1, 2, 3, 5, 7, 9, 11, 14, 16, 20

**Supplemental Direct**

Shelly W. Padgett	BST	Ms. Padgett provides information concerning the high capacity loop and transport triggers in BellSouth's serving territory and provides information concerning the specific locations and routes that satisfy the FCC's triggers tests. Ms. Padgett also addresses the appropriate transition time for BellSouth's provision of high capacity loops and transports at UNE prices after a location or route is no longer subject to unbundling. Ms. Padgett addresses Issues 1-3, 5, 7-12, 14-18, and 20.
Dr. Aniruddha Banerjee	BST	Dr. Banerjee identifies the locations and routes in BellSouth's serving territory that satisfy the FCC's potential deployment analysis. His testimony addresses Issues 4, 6, 13, and 19.
Orville D. Fulp and John White (Joint)	Verizon	1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, and 20
<b><u>Rebuttal</u></b>		
Shelly W. Padgett	BST	Ms. Padgett provides information concerning the high capacity loop and transport triggers in BellSouth's serving territory and provides information concerning the specific locations and routes that satisfy the FCC's triggers tests. Ms. Padgett also addresses the appropriate transition time for BellSouth's provision of high capacity loops and transports at UNE prices after a location or route is no longer subject to unbundling. Ms. Padgett addresses Issues 1-3, 5, 7-12, 14-18, and 20.
Ryan Hand	FDN	1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 20
Richard Anderson	Allegiance	1, 3, 7, 9, 11, 14, 16 and 20
Kent W. Dickerson	Sprint	1-19
Gary J. Ball	FCCA	All
Jay Bradbury	AT&T	All

James C. Falvey	Xspedius	All
Marva Brown Johnson	KMC	1, 2, 3, 5, 7, 8, 9, 11, 12, 14, 16, 17, 20
Steve Brownworth	ITC^DeltaCom	17, 20
Lonnie Hardin	MCI	7, 9, 11, 14, 16
<b><u>Surrebuttal</u></b>		
Shelly W. Padgett	BST	Ms. Padgett provides information concerning the high capacity loop and transport triggers in BellSouth's serving territory and provides information concerning the specific locations and routes that satisfy the FCC's triggers tests. Ms. Padgett also addresses the appropriate transition time for BellSouth's provision of high capacity loops and transports at UNE prices after a location or route is no longer subject to unbundling. Ms. Padgett addresses Issues 1-3, 5, 7-12, 14-18, and 20.
A. Wayne Gray	BST	Mr. Gray addresses network issues and addresses the typical network configuration used by CLECs. Mr. Gray supports the network costs that are used by Dr. Banerjee in analyzing potential deployment issues. Mr. Gray's testimony addresses, in part, all issues with the exception of Issue 20.
Dr. Aniruddha Banerjee	BST	Dr. Banerjee identifies the locations and routes in BellSouth's serving territory that satisfy the FCC's potential deployment analysis. His testimony addresses Issues 4, 6, 13, and 19.
Orville D. Fulp and John White (Joint)	Verizon	1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, and 20
Kent W. Dickerson	Sprint	1-19
Gary J. Ball	FCCA	All
Jay Bradbury	AT&T	All

XI. EXHIBIT LIST

The following lists the exhibits proffered by parties and staff prior to the hearing. However, parties and staff reserve the right to identify additional exhibits for the purpose of cross-examination during the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<b><u>Direct</u></b>			
A. Wayne Gray	BST	<u>                    </u> (AWG-1)	Cost Elements for Network Extension (High Capacity Loops)-Diagram
A. Wayne Gray	BST	<u>                    </u> (AWG-2)	Network Architecture/ Equipment Needed For Fiber Extension (High Capacity Loops)
A. Wayne Gray	BST	<u>                    </u> (AWG-3)	Cost Elements for Network Extension (High Capacity Loops)-Cost Figures
A. Wayne Gray	BST	<u>                    </u> (AWG-4)	Network Architecture/Equipment Needed for Fiber Extension (Dedicated Transport)
A. Wayne Gray	BST	<u>                    </u> (AWG-5)	Network Architecture/Equipment Needed for Fiber Extension (Dedicated Transport)
A. Wayne Gray	BST	<u>                    </u> (AWG-6)	Cost Elements for Network Extension (Dedicated Transport)-Cost Figures
Dr. Aniruddha Banerjee	BST	<u>                    </u> (AXB-1)	Curriculum Vitae of Dr. Banerjee

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Orville D. Fulp/John White	Verizon	_____ (A)	Map presenting direct transport routes in Tampa LATA meeting one or both of the FCC's dedicated transport triggers
Orville D. Fulp/John White	Verizon	_____ (B)	Competing carriers with operational, fiber-based collocation arrangements in Verizon wire centers
Orville D. Fulp/John White	Verizon	_____ (C)	Direct transport routes meeting the FCC's wholesale provider trigger by Verizon wire center and wholesale provider
Orville D. Fulp/John White	Verizon	_____ (D)	Pairs of Verizon wire centers that meet either of the FCC's two transport triggers
Orville D. Fulp/John White	Verizon	_____ (E.1 – E.11)	Public evidence from competing carriers' websites that they deploy FS3 and DS1 circuits over their OC transport facilities
		_____ (E.1)	AT & T
		_____ (E.2)	FPL FiberNet
		_____ (E.3)	KMC Telecom
		_____ (E.4)	Level 3
		_____ (E.5)	Progress Telecom

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		_____ (E.6)	SBC Telecom
		_____ (E.7)	TelCove
		_____ (E.8)	Time Warner
		_____ (E.9)	MCI WorldCom
		_____ (E.10)	XO Florida
		_____ (E.11)	Xspedius
Orville D. Fulp/John White	Verizon	_____ (E. 12)	Universal Access website material indicating that many of its customers are carriers
Orville D. Fulp/John White	Verizon	_____ (F. 1)	Direct transport routes meeting FCC's self-provisioning trigger for dark fiber
Orville D. Fulp/John White	Verizon	_____ (F. 2)	Direct transport routes meeting FCC's self-provisioning trigger for DS-3 capacity
Orville D. Fulp/John White	Verizon	_____ (F. 3)	Direct transport routes meeting FCC's self-provisioning trigger for DS1s and DS3s.
Orville D. Fulp/John White	Verizon	_____ (F. 4)	Direct transport routes meeting FCC's wholesale trigger for dark fiber

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Orville D. Fulp/John White	Verizon	(F. 6 – F.8)	Carrier website information identifying carriers that hold themselves out as wholesale providers
		(F. 6)	Progress Telecom
		(F. 7)	XO Florida
		(F. 8)	MCI
<b><u>Rebuttal</u></b>			
Richard Anderson	Allegiance	(RA-1)	Design of Allegiance's distribution network
Kent W. Dickerson	Sprint	(KWD-1)	CLEC Fiber for Local Service Loop to Switch backhaul Facilities
Kent W. Dickerson	Sprint	(KWD-2)	Wholesale Common Transport For Multiple CLECs
Kent W. Dickerson	Sprint	(KWD-3)	Separate Non-connected Fiber Rings
Gary J. Ball	FCCA	(GJB-1)	Partially-Corrected BellSouth Loop Trigger Analysis-Buildings
Gary J. Ball	FCCA	(GJB-2)	Partially-Corrected BellSouth Loop Trigger Analysis-Routes
Gary J. Ball	FCCA	(GJB-3)	AT&T Analysis Costs/Revenues for Extension of CLEC Network to New Building
Jay Bradbury	AT&T	(JMB-R1)	Key Network Architecture Equipment

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jay Bradbury	AT&T	_____ (JMB-2)	Key Network Architecture Equipment
James C. Falvey	Xspedius	_____ (JCF-1)	Xspedius; Revised Responses to Bellsouth's First Set of Interrogatories
James C. Falvey	Xspedius	_____ (JCF-2) (Proprietary)	Xspedius Lit Buildings in Florida
Marva Brown Johnson	KMC	_____ (MBJ-1) (Proprietary)	Bellsouth and Verizon Alleged KMC Routes
Marva Brown Johnson	KMC	_____ (MJB-2)	KMC Network Architecture
<b><u>Surrebuttal</u></b>			
Shelly W. Padgett	BST	_____ (SWP-1)	Carriers Classified as Wholesalers in Analysis of FCC's Triggers for High Capacity Loops
Shelly W. Padgett	BST	_____ (SWP-2)	Customer Locations in BellSouth Territory Where DS1 Loop Triggers Met
Shelly W. Padgett	BST	_____ (SWP-3) proprietary	Competitive Carriers with High Capacity Loop Facilities to Customer Locations in BellSouth Territory
Shelly W. Padgett	BST	_____ (SWP-4)	Customer Locations in BellSouth Territory Where DS3 Loop Triggers are Met



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Shelly W. Padgett	BST	_____ (SWP-5)	Customer Locations in BellSouth Territory Where Dark Fiber Triggers are Met
Shelly W. Padgett	BST	_____ (SWP-6)	Carriers Classified as Wholesalers in Analysis of FCC's Triggers for Dedicated Transport
Shelly W. Padgett	BST	_____ (SWP-7)	Interoffice Routes in BellSouth Territory Where DS1 Transport Triggers are met
Shelly W. Padgett	BST	_____ (SWP-8) proprietary	Competitive Carriers with Transport Facilities on Routes Between BellSouth Wire Centers in the Same LATA
Shelly W. Padgett	BST	_____ (SWP-9)	Interoffice Routes in BellSouth Territory Where DS3 Transport Triggers are Met
Shelly W. Padgett	BST	_____ (SWP-10)	Interoffice Routes in BellSouth Territory Where Dark Fiber Transport Triggers are Met
Shelly W. Padgett	BST	_____ (SWP-11)	Evidence of Willingness to Wholesale Loops
Shelly W. Padgett	BST	_____ (SWP-12)	Evidence of Willingness to Wholesale Transport
Shelly W. Padgett	BST	_____ (SWP-13)	Carriers for Which BellSouth used GeoResults for Loops

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Shelly W. Padgett	BST	<u>(SWP-14)</u>	Carriers for Which BellSouth Supplemented Carrier's Discovery Responses for Transport with BellSouth Internal Data
Shelly W. Padgett	BST	<u>(SWP-15)</u>	Entrance Facilities As Building Blocks At CLEC Transport Routes
A. Wayne Gray	BST	<u>(AWG-3)</u>	Cost Elements for Network Extension (High Capacity Loops)-Cost Figures
A. Wayne Gray	BST	<u>(AWG-6)</u>	Cost Elements for Network Extension (Dedicated Transport)-Cost Figures
Dr. Aniruddha Banerjee	BST	<u>(AXB-2)</u>	(Revised) Potential Deployment - Customer Locations
Dr. Aniruddha Banerjee	BST	<u>(AXB-3)</u>	(Revised) Potential Deployment - Transport Routes
Orville D. Fulp/John White	Verizon	<u>(F. 5)</u>	(Revised) Identifies CLECs with loop facilities at each customer location in Florida meeting FCC's hi-cap loop triggers
Orville D. Fulp/John White	Verizon	<u>(G. 1)</u>	AT&T filed comments in CC Docket No. 01-338
Orville D. Fulp/John White	Verizon	<u>(G. 2)</u>	KMC Telecom 10-K Form, Fiscal Year 2001
Orville D. Fulp/John White	Verizon	<u>(G. 3)</u>	AT&T 10-K Form, Fiscal Year 2002

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Kent W. Dickerson	Sprint	_____ (KWD-4)	Dark Fiber Billing Data (Confidential)
Gary J. Ball	FCCA	_____ (GJB 4A)	Raw Loop Data (Confidential)
Gary J. Ball	FCCA	_____ (GJB 4B)	Competitive Carriers' Loop Locations (Confidential)
Gary J. Ball	FCCA	_____ (GJB 4C)	Loops-DS3 Level (Confidential)
Gary J. Ball	FCCA	_____ (GJB 4D)	Loops -DS1 Level (Confidential)
Gary J. Ball	FCCA	_____ (GJB-4E)	Loops-Dark Fiber (Self- Provisioning) (Confidential)
Gary J. Ball	FCCA	_____ (GJB-4F)	Loops-DS3 Level (Self- Provisioners) (Confidential)
Gary J. Ball	FCCA	_____ (GJB-5A)	Raw dedicated transport data (Confidential)
Gary J. Ball	FCCA	_____ (GJB-5B)	Ded. Transport Routes-1 or more carriers (Confidential)
Gary J. Ball	FCCA	_____ (GJB-5C)	Ded. Transport (Dark Fiber- Wholesale) (Confidential)
Gary J. Ball	FCCA	_____ (GJB-5D)	Ded. Transport Routes (wholesale-DS3) (Confidential)
Gary J. Ball	FCCA	_____ (GJB-5E)	Ded. Transport (wholesale-DS1) (Confidential)

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Gary J. Ball	FCCA	<u>(GJB 5F)</u>	Ded. Transport (Self-Provisioners-dark Fiber) (Confidential)
Gary J. Ball	FCCA	<u>(GJB-5G)</u>	Ded. Transport (Self-Provisioning-DS3) (Confidential)
Gary J. Ball	FCCA	<u>(GJB-6)</u>	CLEC Dedicated Transport Diagram (Confidential)
Gary J. Ball	FCCA	<u>(GJB-7)</u>	CLEC Switched Transport Diagram (Confidential)
Jay Bradbury	AT&T	<u>(JMB-SR1)</u>	AT&T Network Practice
Jay Bradbury	AT&T	<u>(JMB-SR2)</u>	Hypothetical CLEC Ring
Jay Bradbury	AT&T	<u>(JMB-SR3)</u>	Direct Testimony of Scott J. Alexander on behalf of SBC California. Filed before the California Public Utilities Commission

**XII. BASIC POSITIONS**

**BST:**

The FCC, through its Triennial Review Order (TRO), issued August 21, 2003, has attempted to delegate to the state commissions, the duty and obligation to determine whether Competitive Local Exchange Carriers (“CLECs”) are “impaired” within the meaning of the Federal Telecommunications Act of 1996, without access to unbundled DS1 loops and transport, unbundled DS3 loops and transport, and unbundled dark fiber loops and transport provided by the Incumbent Local Exchange Company (ILEC). The FCC required that the state commissions make a finding of “no impairment” relating to certain customer locations or routes, based upon certain triggers. The FCC also created a “potential deployment” test, requiring the state commissions to find “no impairment” when high capacity loops and transport facilities can be economically deployed in certain circumstances. Finally, the FCC required the state

commissions to establish an appropriate transition period relating to high capacity loops and transport facilities that are no longer required to be unbundled.

The evidence in this proceeding will demonstrate a number of locations and routes for which the FCC's loop and transport triggers are met, and additional locations and routes where the application of the FCC's "potential deployment" test demonstrates that CLECs are not impaired without unbundled high capacity loops and transport facilities. The Commission should find that CLECs are not impaired without access to BellSouth's unbundled loop and transport facilities as identified in the pre-filed exhibits of witnesses Shelley Padgett and Dr. Andy Banerjee.

Because BellSouth will offer high capacity loops and transport facilities at market based rates, no transitional period is necessary. In the event that this Commission elects to establish a transition period during which CLECs can continue to access, on an unbundled basis, unbundled high capacity loops and transport, any such period should not exceed a time period of 90 days.

VERIZON:

In its direct and supplemental testimony, Verizon presented evidence that 67 routes (or pairs of Verizon wire centers) in the Tampa LATA meet one or both of the FCC's two objective triggers for dedicated transport. Verizon also presented evidence that 12 customer locations meet one or both of the FCC's triggers for high capacity loops. Based on this evidence, the Commission should find that competing carriers are not impaired without access to Verizon's unbundled dedicated interoffice transport facilities for the 67 routes and that competing carriers are not impaired without access to Verizon's unbundled high capacity loops at the 12 locations. Since information essential to the application of the FCC's triggers has not been provided by a number of carriers, most notably AT&T, Verizon reserves the right to change the number of transport routes and building locations it claims meet the triggers when that information becomes available.

FDN:

FDN is a self-provisioned dedicated transport "trigger" company on only a handful of routes in BellSouth territory and is not a self-provisioned dedicated transport "trigger" company on any routes in Verizon territory. FDN is neither a self-provisioned nor a wholesale loop "trigger" company at any customer locations in either BellSouth or Verizon territory. Similarly, FDN is not a wholesale dedicated transport "trigger" company on any routes in BellSouth or Verizon territory.

Moreover, FDN agrees with FCCA and Covad that the cases presented by BellSouth and Verizon are based on erroneous assumptions, flawed inferences, hearsay and, to put it succinctly, evidence woefully inadequate to grant any relief under the TRO and Florida's APA. The FCCA's motion to strike and Covad's motion for summary order should be granted.

ALLEGIANCE:

The Commission should find that the loop triggers have been met only in those locations where there is verifiable evidence that (a) at least two carriers not affiliated with each other or the ILEC have self-provisioned DS-3 or higher capacity loops of the relevant type that provide access to all end user customers at that location or (b) at least two entities not affiliated with each other or the ILEC actually have loop facilities in place that they make available on a wholesale basis at the relevant level of capacity and which they are operationally ready to provide. Similarly, the Commission should find that the transport triggers have been met only for those routes between ILEC wire centers or switches where there is verifiable evidence that (a) at least three carriers not affiliated with each other or the ILEC have actually self-provisioned operationally ready transport of the relevant type and capacity between the end points of the route or (b) at least two entities not affiliated with each other or the ILEC actually have operationally ready and available transport capacity that they make available on a wholesale basis at the relevant level of capacity. The ILECs' analysis of the loop and transport triggers is based upon unsupportable assumptions concerning CLECs' network configurations and the willingness, ability and operational readiness of potential non-ILEC transport providers to actually provide transport capacity over particular routes. Similarly, their analysis of potential deployment of transport capacity is based upon unsupportable assumptions concerning the economic feasibility of provisioning transport at different levels of capacity even where facilities are in place. The Commission should establish a verification process in order to make certain that it does not incorrectly determine that the loop or transport triggers are met in locations and for routes where they are not in fact met. In any instance where the Commission finds that CLECs are not impaired without access to high capacity UNE loops or UNE dedicated transport, the Commission should mandate a transition period of at least (a) twelve months or (b) the duration of any existing longer-term contracts that are in place on the affected locations or routes during which the existing TELRIC prices remain effective in order to give CLECs adequate time to negotiate new prices with the ILECs or make arrangements with other providers.

SPRINT:

Under the self-provisioning trigger, the competitive wholesale facilities trigger or the potential deployment trigger, BellSouth and Verizon have failed to provide route and location specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to Dedicated Transport and high capacity loops.

JOINT CLECs:

The evidence offered by BellSouth and Verizon (referred to as the "ILECs") does not meet the exacting requirements of the Triennial Review Order ("TRO") and does not satisfy the triggers. The ILECs have failed to prove the triggers for self-provisioned and wholesale loops and for self-provisioned and wholesale dedicated transport. They have likewise failed to show potential deployment of loops in the manner required by the TRO. The ILECs' evidence is based on faulty assumptions and generalizations rather than "granular" data specific to each

location or route in question. Absent evidence of the nature, quality and specificity required by the TRO, the ILECs' requests for unbundling relief must be denied.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

XIII. ISSUES AND POSITIONS

**ISSUE 1: To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 facilities including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and offer DS-1 loops over their own facilities on a widely available basis to other carriers? For each such location, do the wholesale providers have access to the entire customer location, including each individual unit within the location?**

BST:

The customer locations that satisfy the wholesale trigger for DSL loops are listed in Exhibit SWP-2.

VERIZON:

Based on information obtained as of the filing of Verizon's supplemental testimony on January 9, 2004, Verizon has identified four locations that meet the above criteria. These customer locations are contained in Exhibit F.5 of the testimony of Verizon witnesses Orville D. Fulp and John White. Verizon relied almost exclusively on carrier's responses to the Commission's discovery requests. Since responses were not received from all carriers when Verizon prepared its supplemental testimony, Verizon reserves the right to add locations when additional information becomes available. With regard to whether wholesale providers have access to the entire customer location, the Commission requested this information in its loop data requests to the CLECs. Where CLECs did not provide such information, Verizon is continuing to investigate those carriers' ability to access the entire location. Absent evidence to the contrary, however, it is reasonable to assume that a carrier with fiber optic facilities into a large commercial building has access to the entire building.

FDN:

FDN does not offer DS-1 loops (or any loops) on a widely available basis to other carriers. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The errors in the ILECs' identification of locations at which they contend that CLEC shave self-provisioned high capacity loops or are wholesaling high capacity loops establish the need for a verification process before the Commission can find that the loop triggers have been satisfied at any customer locations.

SPRINT:

BellSouth and Verizon have not provided location specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-1 loops. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual DS-1 loop services are available from two or more competing providers to all customers at the claimed trigger location. Therefore, the wholesale trigger has not been satisfied for DS-1 loops

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own DS1 loop facilities to the location, and offers DS1 wholesale loops on a widely available basis to other carriers desiring to serve customers at the location, and that each competing provider has access to the entire premises, including each individual unit. The ILECs assume that if a CLEC is willing to wholesale at any capacity level anywhere in the U.S., then it is willing to wholesale at each and every location in Florida at which it has facilities, and at the DS1 capacity level. These assumptions are directly contrary to the requirement of the TRO that the competitive wholesale trigger can only be satisfied by actual proof specific to a particular customer location that two or more wholesalers are actually offering loops on a widely available basis. The ILECs also offer no evidence whatsoever with respect to access to each individual unit in multiunit locations, again relying on assumptions rather than evidence. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 2: To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, either (1) deployed their**



**own DS-3 facilities and actually serve customers via those facilities or (2) deployed DS-3 facilities by attaching their own optronics to activate dark fiber obtained under a long-term infeasible right of use and actually serve customers via those facilities at that location?**

BST:

The customer locations that satisfy the self-deployment trigger for DS3 loops are listed in Exhibit SWP-4.

VERIZON:

Based on information obtained as of the filing of Verizon's supplemental testimony on January 9, 2004, Verizon has identified five locations that meet the above criteria. These customer locations are contained in Exhibit F.5 of the testimony of Verizon witnesses Orville D. Fulp and John White. Verizon relied almost exclusively on carrier's responses to the Commission's discovery requests. Since responses were not received from all carriers when Verizon prepared its supplemental testimony, Verizon reserves the right to add locations when additional information becomes available.

FDN:

FDN does not serve any customer locations using DS-3 loops as described in the issue. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The errors in the ILECs' identification of locations at which they contend that CLECs have self-provisioned high capacity loops or are wholesaling high capacity loops establish the need for a verification process before the Commission can find that the loop triggers have been satisfied at any customer locations.

SPRINT:

BellSouth and Verizon have not provided location specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-3 loops. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual DS-3 loop facilities have been deployed by two or more competing providers. Therefore, the self-provisioning trigger has not been satisfied for DS-3 loops.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own DS3 loop facilities to the location, and is serving customers at that location with those facilities at the DS3 capacity level. The ILECs fail to carry their evidentiary burden because they assume that each and every CLEC fiber loop is operationally ready to provide DS3 service, without any proof that the equipment necessary to actually do so

has in fact been installed. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 3: To what specific customer locations have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and offer DS-3 loops over these facilities on a widely available wholesale basis to other carriers? For each such location, do the wholesale providers have access to the entire customer location, including each individual unit within the location?**

BST:

The customer locations that satisfy the wholesale trigger for DS3 loops are listed in Exhibit SWP-4.

VERIZON:

Based on information obtained as of the filing of Verizon's supplemental testimony on January 9, 2004, Verizon has identified four locations that meet the above criteria. These customer locations are contained in Exhibit F.5 of the testimony of Verizon witnesses Orville D. Fulp and John White. Verizon relied almost exclusively on carrier's responses to the Commission's discovery requests. Since responses were not received from all carriers when Verizon prepared its supplemental testimony, Verizon reserves the right to add locations when additional information becomes available. With regard to whether wholesale providers have access to the entire customer location, the Commission requested this information in its loop data requests to the CLECs. Where CLECs did not provide such information, Verizon is continuing to investigate those carriers' ability to access the entire location. Absent evidence to the contrary, however, it is reasonable to assume that a carrier with fiber optic facilities into a large commercial building has access to the entire building.

FDN:

FDN does not offer DS-3 loops (or any loops) on a widely available basis to other carriers. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The errors in the ILECs' identification of locations at which they contend that CLECs have self-provisioned high capacity loops or are wholesaling high capacity loops establish the need for a verification process before the Commission can find that the loop triggers have been satisfied at any customer locations.

SPRINT:

BellSouth and Verizon have not provided location specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-3 loops. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual DS-3 loops are available from two or more competing providers to all customers at the claimed trigger location. Therefore, the wholesale trigger has not been satisfied for DS-3 loops.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own DS3 loop facilities to the location, that each competing provider is operationally ready for serving customers at the location at the DS3 capacity level, that each competing provider has the ability and is willing to provide wholesale loops on a widely available basis to other carriers at that location, and that each competing provider has access to the entire premises, including each individual unit. The ILECs assume that if a CLEC is willing to wholesale at any capacity level anywhere in the U.S., then it is willing to wholesale at each and every location in Florida at which it has facilities, and at the DS3 capacity level. These assumptions are directly contrary to the requirement of the TRO that the competitive wholesale trigger can only be satisfied by actual proof specific to a particular customer location that two or more wholesalers are actually offering loops on a widely available basis. The ILECs also offer no evidence whatsoever with respect to access to each individual unit in multiunit locations, again relying on assumptions rather than evidence. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 4: If neither the self-provisioning or the wholesale triggers for DS-3 loops is satisfied at a specific customer location, using the potential deployment criteria specified in §51.319(a)(5)(ii), what evidence of non-impairment for a DS-3 loop at a specific customer location exists? Is this evidence sufficient to conclude that there is no impairment at a specific customer location?**

BST:

Exhibit AXB-2 shows the list of customer locations that meet the test for potential deployment of DS3 loops, and there is no impairment for these facilities at the locations on that list.

VERIZON:

Verizon does not take a position on this issue at this time.

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment to any specific customer locations.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

BellSouth's potential deployment analysis is fundamentally flawed and does not provide sufficient evidence to conclude that there is not impairment at the locations included in BellSouth's analysis. BellSouth did not provide any supporting documentation, workpapers, calculations or even the basic formulas used to show how the locations allegedly qualify for potential deployment. Furthermore, BellSouth's calculations of potential deployment costs performed by their BellSouth Analysis of Competitive Entry (BACE) model cannot be viewed and are not auditable. BellSouth's analysis is based on uniform cost and revenue assumptions and fails to meet the FCC's requirement that a potential deployment analysis be completed on a location specific basis. BellSouth overstates the potential revenue available from deployment and makes unfounded and unrealistic generalizations related to the cost of acquiring customers at the locations. Therefore, the BellSouth potential deployment analysis for DS-3 loops should be rejected by the Commission. Verizon did not present a potential deployment analysis so there are no Verizon customer locations which satisfy the FCC's potential deployment criteria.

JOINT CLECs:

There is no evidence of non-impairment using the potential deployment analysis for DS-3 loops at any specific customer location. This is so because the ILECs' evidence consists of unfounded and erroneous assumptions and averages for revenues and costs that are applied in blanket fashion to every location, regardless of the specific facts at any of them. Such evidence does not meet the evidentiary requirements of the TRO and is therefore insufficient to support a finding of no impairment.

STAFF:

Staff has no position at this time.

**ISSUE 5: To what specific customer locations have two or more competing providers deployed their own dark fiber facilities, including dark fiber owned by the carrier or obtained –under 8 long-term indefeasible right of use (but excluding ILEC unbundled dark fiber)?**

BST:

The customer locations are listed in Exhibit SWP-5.

VERIZON:

Based on information obtained as of the filing of Verizon's supplemental testimony on January 9, 2004, Verizon has identified 12 locations that meet the above criteria. These customer locations are contained in Exhibit F.5 of the testimony of Verizon witnesses Orville D. Fulp and John White. Verizon relied almost exclusively on carrier's responses to the Commission's discovery requests. Since responses were not received from all carriers when Verizon prepared its supplemental testimony, Verizon reserves the right to add locations when additional information becomes available.

FDN:

FDN does not serve any customer locations using dark fiber loops. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The errors in the ILECs' identification of locations at which they contend that CLECs have self-provisioned high capacity loops or are wholesaling high capacity loops establish the need for a verification process before the Commission can find that the loop triggers have been satisfied at any customer locations.

SPRINT:

BellSouth and Verizon have not provided location specific data regarding deployment of dark fiber facilities sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market for any customer location. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual dark fiber facilities have been deployed by two or more competing providers. Therefore, the self-provisioning trigger for dark fiber loops has not been satisfied.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own dark fiber loop facilities to the particular location. The ILECs' evidence merely assumes that any location at which a CLEC has loop facility necessarily has dark fiber loops, nor is their evidence granular. The ILECs cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis

STAFF:

Staff has no position at this time.

**ISSUE 6: If the self-provisioning trigger for dark-fiber loops is not satisfied at a specific customer location, using the potential deployment criteria specified in § 1.3 19(a)(6)(ii), what evidence of non-impairment for dark fiber loops at a specific customer location exists? Is this evidence sufficient to conclude that there is no impairment at a specific customer location?**

BST:

Exhibit AXB-2 shows the list of customer locations that satisfy the test for potential deployment of dark fiber, and there is no impairment for these facilities at the locations on that list.

VERIZON:

Verizon does not take a position on this issue at this time.

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment to any specific customer locations.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

BellSouth's potential deployment analysis is fundamentally flawed and does not provide sufficient evidence to conclude that there is not impairment at the locations included in BellSouth's analysis. BellSouth did not provide any supporting documentation, workpapers, calculations or even the basic formulas used to show how the locations allegedly qualify for potential deployment. Furthermore, BellSouth's calculations of potential deployment costs performed by their BellSouth Analysis of Competitive Entry

(BACE) model cannot be viewed and are not auditable. BellSouth's analysis is based on uniform cost and revenue assumptions and fails to meet the FCC's requirement that a potential deployment analysis be completed on a location specific basis. BellSouth overstates the potential revenue available from deployment and makes unfounded and unrealistic generalizations related to the cost of acquiring customers at the locations. Therefore, the BellSouth potential deployment analysis for dark fiber loops should be rejected by the Commission. Verizon did not present a potential deployment analysis so there are no Verizon customer locations which satisfy the FCC's potential deployment criteria.

JOINT CLECs:

Like their other potential deployment analyses, the ILECs rely on a series of inaccurate assumptions, averages and hypotheticals which are applied in blanket fashion to all locations identified. Their "evidence" is insufficient because it is not based on actual facts particular to the locations in question or the criteria established in the TRO. They assume that any location at which a CLEC has lit fiber loops necessarily also has dark fiber loops. The CLECs have demonstrated the inaccuracy of this assumption.

STAFF:

Staff has no position at this time.

**ISSUE 7: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-1 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are willing to provide DS-1 level transport immediately over their own facilities on a widely available basis to other carriers?**

BST:

The routes that satisfy the wholesale trigger for DS 1 transport are listed in Exhibit SWP-7.

VERIZON:

Based on the information Verizon had on January 9, 2004, when it filed its supplemental testimony, there are 67 routes that meet one or both of the FCC's triggers. These routes are contained in Exhibit F.3 of the testimony of Verizon witnesses Orville D. Fulp and John White. Because some carriers did not provide any information and others did not provide complete information, Verizon reserves the right to change the number of transport routes when additional information becomes available.

FDN:

Neither BellSouth nor Verizon have identified FDN as a wholesale provider of DS-1 dedicated transport and, FDN affirmatively states that it is not a wholesale provider of DS-1 dedicated transport (or dedicated transport at any capacity level). FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The ILECs have incorrectly identified Allegiance as a wholesaler of DS-1 transport on a number of routes in Florida. Allegiance is not operationally ready to provide DS-1 level transport to other carriers over any routes in Florida.

SPRINT:

BellSouth and Verizon have not provided route specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-1 level transport. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual DS-1 transport services are available from two or more competing providers who are operationally ready and are providing DS-1 transport. Therefore, the wholesale trigger has not been satisfied for DS-1 level transport.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own dedicated transport facilities on a route between two ILEC wire centers and is operationally ready and willing immediately to provide to other carriers, on a widely available basis, DS1 service with those facilities, and that those facilities terminate in collocation arrangements at those wire centers. The evidence does not identify wholesale triggers for several reasons, including: 1) the ILECs merely assume that carriers having collocations and fiber facilities at any two ILEC wire centers must necessarily be providing dedicated transport between those points; 2) carriers having collocations and fiber facilities at any two ILEC wire centers in fact have not deployed and are not operationally ready to provide transport between those points; 3) backhaul links between collocations in any two wire centers and a CLEC's switch do not constitute a dedicated transport route; 4) if a CLEC allegedly offers to provide or provides wholesale service anywhere it is not necessarily providing service at the DS-1 capacity at the "route" in question; 5) a CLEC is not necessarily operationally ready to provide service at the DS1 service level if it has merely deployed fiber facilities entering its collocations; and 6) CLECs merely offering to provide wholesale service or providing wholesale service generally do not necessarily provide wholesale service on the route in question. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.



STAFF:

Staff has no position at this time.

**ISSUE 8:** For any particular route where at least two competing providers will provide wholesale DS-1 dedicated transport, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?

BST:

All the facilities used in the trigger analysis terminate in collocation arrangements on both ends. BellSouth also provides cross-connects as detailed in the testimony of John A. Ruscilli, as adopted by A. Wayne Gray.

VERIZON:

Yes. Verizon relied on its visual inspection process, and information provided by competing carriers, to confirm that the competing carriers' transport facilities terminate in collocation arrangements at Verizon wire centers, are operational, and are fed by non-Verizon fiber. To Verizon's knowledge, no competing carrier has claimed or submitted evidence showing that for a particular transport route, or for all transport routes, there is not reasonable and nondiscriminatory access to the competing providers' termination points at the ILEC premises.

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of DS-1 transport. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

See Issue 7. BellSouth and Verizon have not provided route specific data sufficient to show that at least two competing providers are providing DS-1 dedicated transport.

JOINT CLECs:

The applicable trigger requires evidence that each competing provider has deployed its own dedicated transport facilities on a route between two ILEC wire centers and is operationally ready and willing immediately to provide, on a widely available basis, DS1 service with those facilities, and that those facilities terminate in collocation arrangements at those wire centers. The evidence does not identify wholesale triggers for several reasons, including: 1) the ILECs merely assume that carriers having collocations and fiber facilities at any two ILEC wire centers must necessarily be providing dedicated transport between those points; 2) carriers having collocations and fiber facilities at any two ILEC wire centers in fact have not deployed and are not operationally ready to provide transport between those points; 3) backhaul links between collocations in any two wire centers and a CLEC's switch do not constitute a dedicated transport route; 4) a CLEC is not necessarily operationally ready to provide service at the DS1 service level if it has merely deployed fiber facilities entering its collocations; and 5) CLECs merely offering to provide wholesale service or providing wholesale service generally do not necessarily provide wholesale service on the route in question. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

ISSUE 9:

**Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality to that of the ILEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber) and are operationally ready to use those transport facilities?**

BST:

The routes that satisfy the self-provisioning trigger for DS3 transport are listed in Exhibit SWP-9.

VERIZON:

Based on the information Verizon had on January 9, 2004, when it filed its supplemental testimony, there are 25 transport routes meeting this trigger. These routes are shown on Exhibit F.2 of the supplemental testimony of Verizon witnesses Orville D. Fulp and John White. Verizon reserves the right to change the number of transport routes as additional information becomes available.

FDN:

FDN has self-deployed and operational DS-3 dedicated transport on only a handful of routes in BellSouth's footprint. FDN has not self-deployed transport on any routes in Verizon's footprint. BellSouth's assumptions regarding the CLECs network architecture are not correct. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The ILECs have incorrectly identified Allegiance as a self-provisioner of DS-3 level dedicated transport facilities. Allegiance has not self-provisioned dedicated DS-3 transport facilities over any routes in Florida. The errors in the ILECs' identification of routes over which they contend that CLECs have self-provisioned dedicated transport or are wholesaling dedicated transport establish the need for a verification process before the Commission can find that the transport triggers have been satisfied for any routes.

SPRINT:

BellSouth and Verizon have not provided route specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-3 level dedicated transport facilities. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual DS-3 transport facilities have been deployed by three or more competing providers and that the providers are operationally ready to use such transport facilities. Therefore, the self-provisioning trigger for DS-3 transport has not been satisfied.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own dedicated transport facilities on a route between two ILEC wire centers and is operationally ready to use those facilities and provide service at the DS3 capacity level, and that those facilities terminate in collocation arrangements at those wire centers. The evidence does not identify self-provisioning triggers for several reasons, including: 1) the ILECs merely assume that carriers having collocations and fiber facilities at any two ILEC wire centers must necessarily be providing dedicated transport between those points; 2) carriers having collocations and fiber facilities at any two ILEC wire centers in fact have not deployed and are not operationally ready to provide transport between those points; 3) backhaul links between collocations in any two wire centers and a CLEC's switch do not constitute a dedicated transport route; 4) a CLEC is not necessarily operationally ready to provide service at the DS3 service level if it has merely deployed fiber facilities entering its collocations. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 10:** For any particular route where at least three competing providers have self-provisioned DS-3 level dedicated transport facilities, do the competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise?

BST:

Yes.

VERIZON:

Yes. Verizon relied on its visual inspection process, and information provided by competing carriers, to confirm that the competing carriers' transport facilities terminate in collocation arrangements at Verizon wire centers are operational, and are fed by non-Verizon fiber.

FDN:

For those routes which FDN may be counted as having self-deployed DS-3 dedicated transport for the purposes of this proceeding, FDN's facilities terminate in a BellSouth collocation arrangement. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

See Issue No. 9. BellSouth and Verizon have not provided location specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-3 level dedicated transport facilities.

JOINT CLECs:

The ILECs' evidence on this issue suffers from the same defects as their identification of DS-3 dedicated transport routes described in response to Issue 9. The ILECs have thus failed to identify any routes meeting the self-provisioning trigger for DS-3 dedicated transport.

STAFF:

Staff has no position at this time.

**ISSUE 11:** Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, including intermodal providers of service comparable in quality, to that of the JLEC, deployed their own DS-3 level dedicated transport facilities (including leased, purchased or UNE dark fiber with the carrier's own optronics attached to activate the fiber), are operationally ready to use those transport facilities, and are willing to provide DS-3 level dedicated transport immediately over their facilities on a widely available wholesale basis to other carriers?

**BST:**

The routes that satisfy the wholesale trigger for DS3 transport are listed in Exhibit SWP-9.

**VERIZON:**

Based on the information Verizon had when it filed its supplemental testimony on January 9, 2004, there are 67 transport routes meeting this trigger. These routes are shown in Exhibit F.3 of the supplemental testimony of Verizon witnesses Orville D. Fulp and John White. Since a number of competitive carriers did not provide complete information by January 9, 2004, Verizon reserves the right to change the number of transport routes it claims meet the triggers when that information becomes available.

**FDN:**

Neither BellSouth nor Verizon have identified FDN as a wholesale provider of DS-3 dedicated transport and FDN affirmatively states that it is not a wholesale provider of DS-3 dedicated transport (or dedicated transport at any capacity level). FDN otherwise agrees with Joint CLECs.

**ALLEGIANCE:**

The ILECs have incorrectly identified Allegiance as a self-provisioner and wholesaler of dedicated DS-3 transport. Allegiance has not self-provisioned any DS-3 dedicated transport facilities in Florida and is not operationally ready to provide DS-3 level dedicated transport over its own facilities on a wholesale basis on any routes in Florida. The errors in the ILECs' identification of routes over which they contend that CLECs have self-provisioned dedicated transport or are wholesaling dedicated transport establish the need for a verification process before the Commission can find that the transport triggers have been satisfied for any routes.

**SPRINT:**

BellSouth and Verizon have not provided route specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-3 level dedicated transport

facilities. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual DS-3 transport services are available from two or more competing providers and are offered on a widely available wholesale basis to other carriers. Therefore, the wholesale trigger for DS-3 transport has not been satisfied.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own dedicated transport facilities on a route between two ILEC wire centers and is operationally ready and willing immediately to provide to other carriers, on a widely available basis, DS3 service with those facilities, and that those facilities terminate in collocation arrangements at those wire centers. The evidence does not identify wholesale triggers for several reasons, including: 1) the ILECs merely assume that carriers having collocations and fiber facilities at any two ILEC wire centers must necessarily be providing dedicated transport between those points; 2) carriers having collocations and fiber facilities at any two ILEC wire centers in fact have not deployed and are not operationally ready to provide transport between those points; 3) backhaul links between collocations in any two wire centers and a CLEC's switch do not constitute a dedicated transport route; 4) if a CLEC allegedly offers to provide or provides wholesale service anywhere it is not necessarily providing service at the DS-1 capacity at the "route" in question; 5) a CLEC is not necessarily operationally ready to provide service at the DS3 service level if it has merely deployed fiber facilities entering its collocations; and 6) CLECs merely offering to provide wholesale service or providing wholesale service generally do not necessarily provide wholesale service on the route in question. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 12: For any particular route where at least two competing providers will provide wholesale DS-3 level dedicated transport, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers' obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?**

BST:

All the facilities used in the trigger analysis terminate in collocation arrangements on both ends. BellSouth also provides cross-connects as detailed in the testimony of John A. Ruscilli, as adopted by A. Wayne Gray.

VERIZON:

Yes. Verizon relied on its visual inspection process, and information provided by competing carriers, to confirm that the competing carriers' transport facility terminate in collocation arrangements at Verizon wire centers, are operational, and are fed by non-Verizon fiber. To Verizon's knowledge, no competing carrier has claimed or submitted evidence showing that for a particular transport route, or for all transport routes, there is not reasonable and nondiscriminatory access to the competing providers' termination points at the ILEC premises.

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of DS-3 transport. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

See Issue 11. BellSouth and Verizon have not provided route specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to DS-3 level dedicated transport facilities.

JOINT CLECs:

The applicable trigger requires evidence that each competing provider has deployed its own dedicated transport facilities on a route between two ILEC wire centers and is operationally ready and willing immediately to provide, on a widely available basis, DS3 service with those facilities, and that those facilities terminate in collocation arrangements at those wire centers. The evidence does not identify wholesale triggers for several reasons, including: 1) the ILECs merely assume that carriers having collocations and fiber facilities at any two ILEC wire centers must necessarily be providing dedicated transport between those points; 2) carriers having collocations and fiber facilities at any two ILEC wire centers in fact have not deployed and are not operationally ready to provide transport between those points; 3) backhaul links between collocations in any two wire centers and a CLEC's switch do not constitute a dedicated transport route; 4) a CLEC is not necessarily operationally ready to provide service at the DS1 service level if

it has merely deployed fiber facilities entering its collocations; and 5) CLECs merely offering to provide wholesale service or providing wholesale service generally do not necessarily provide wholesale service on the route in question. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 13:** If neither the self-provisioning nor the wholesale triggers for DS-3 level dedicated transport is satisfied along a route, using the potential deployment criteria specified in 55 1.3 19(e)(2)(ii), what evidence of non-impairment for DS-3 level dedicated transport on a specific route exists? Is this evidence sufficient to conclude that there is no impairment along this route?

BST:

Exhibit AXB-3 shows the list of routes (pairs of wire centers) that satisfy the potential deployment test for DS3 transport facilities. There is no impairment for DS3 transport on the routes on that list.

VERIZON:

If neither the self-provisioning nor the wholesale triggers for DS-3 level dedicated transport is satisfied along a route, using the potential deployment criteria specified in §51.319(e)(2)(ii), what evidence of non-impairment for DS-3 level dedicated transport on a specific route exists? Is this evidence sufficient to conclude that there is no impairment along this route?

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment for any particular routes.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

BellSouth's potential deployment analysis is fundamentally flawed and does not provide sufficient evidence to conclude that there is not impairment for the transport routes included in BellSouth's analysis. BellSouth did not provide any supporting



documentation, workpapers, calculations or even the basic formulas used to show how the routes allegedly qualify for potential deployment. Furthermore, BellSouth's calculations of potential deployment costs performed by their BellSouth Analysis of Competitive Entry (BACE) model cannot be viewed and are not auditable. BellSouth's analysis is based on uniform cost assumptions and fails to meet the FCC's requirement that a potential deployment analysis be completed on a route specific basis. BellSouth has understated the costs of deploying transport routes through use of broad assumptions for fiber cable and construction-related costs. Therefore, the BellSouth potential deployment analysis for transport should be rejected by the Commission. Verizon did not present a potential deployment analysis so there are no Verizon transport routes which satisfy the FCC's potential deployment criteria.

JOINT CLECs:

Like their other potential deployment analyses, the ILECs' evidence on this issue is not based on evidence particular to the locations in question or the criteria established in TRO ¶ 410. Instead, it is a series of inaccurate assumptions, averages and hypotheticals that are applied in blanket fashion to all locations identified. It is insufficient to conclude that there is no impairment based on the ILECs' evidence.

STAFF:

Staff has no position at this time.

**ISSUE 14: Along what particular routes have three or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities?**

BST:

The routes that satisfy the self-provisioning trigger for dark fiber transport are listed in Exhibit SWP-IO.

VERIZON:

Based on the information Verizon had on January 9, 2004, when it filed its supplemental testimony, there are 25 transport routes meeting this trigger. These routes are shown on Exhibit F.1 of the supplemental testimony of Verizon witnesses Orville D. Fulp and John White. Verizon reserves the right to change the number of transport routes as additional information becomes available.

FDN:

FDN has self-deployed dark fiber dedicated transport on only a handful of routes in BellSouth's footprint. FDN has not self-deployed transport on any routes in Verizon's

footprint. BellSouth's assumptions regarding CLECs' network architecture are not correct. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The ILECs have incorrectly identified Allegiance as a self-provisioner of dark fiber transport facilities. Allegiance has not self-provisioned dark fiber transport facilities over any routes in Florida. The errors in the ILECs' identification of routes over which they contend that CLECs have self-provisioned dedicated transport or are wholesaling dedicated transport establish the need for a verification process before the Commission can find that the transport triggers have been satisfied for any routes.

SPRINT:

BellSouth and Verizon have not provided route specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to dark fiber transport. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual dark fiber transport facilities have been deployed by three or more competing providers. Therefore, the self-provisioning trigger for dark fiber transport has not been satisfied.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own dedicated dark fiber transport facilities on a route between two ILEC wire centers, and that those facilities terminate in collocation arrangements at those wire centers. The evidence does not identify self-provisioning triggers for several reasons, including: 1) the ILECs merely assume that carriers having collocations and fiber facilities at any two ILEC wire centers must necessarily be providing dedicated transport between those points; 2) carriers having collocations and fiber facilities at any two ILEC wire centers in fact have not deployed and are not operationally ready to provide transport between those points; and 3) backhaul links between collocations in any two wire centers and a CLEC's switch, do not constitute a dedicated transport route. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 15: For any particular route where at least three competing providers have self-provisioned dark fiber dedicated transport facilities, do the competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise?**

BST:

Yes.

VERIZON:

Yes. Verizon relied on its visual inspection process, and information provided by competing carriers, to confirm that the competing carriers' transport facilities terminate in collocation arrangements at Verizon wire centers, are operational, and are fed by non-Verizon fiber.

FDN:

For those routes which FDN counted as self-deploying dark fiber dedicated transport for the purposes of this proceeding, FDN's facilities terminate in a BellSouth collocation arrangement. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

See Issue No. 14. BellSouth and Verizon have not provided route specific data sufficient to overturn the Federal Communications Commission's national findings that CLECs are impaired when competing in the local market without unbundled access to dark fiber transport.

JOINT CLECs:

The ILECs' evidence on this issue suffers from the same defects identified in response to Issue 14.

STAFF:

Staff has no position at this time.

**ISSUE 16: Along what particular routes have two or more competing providers, not affiliated with each other or the ILEC, deployed their own dark fiber transport facilities (including dark fiber obtained from an entity other than the ILEC), are operationally ready to lease or sell those transport facilities to provide transport along the route, and are willing to provide dark fiber immediately over their facilities on a widely available wholesale basis to other carriers?**

BST:

The routes are listed in Exhibit SWP-10.

VERIZON:

Based on the information Verizon had when it filed its supplemental testimony on January 9, 2004, there are 67 transport routes meeting this trigger. These routes are shown in Exhibit F.4 of the supplemental testimony of Verizon witnesses Orville D. Fulp and John White. Since a number of competitive carriers did not provide complete information by January 9, 2004, Verizon reserves the right to change the number of transport routes it claims meet the triggers when that information becomes available.

FDN:

Neither BellSouth nor Verizon have identified FDN as a wholesale provider of dark fiber dedicated transport and, for avoidance of doubt, FDN affirmatively states that it is not a wholesale provider of dark fiber dedicated transport (or dedicated transport at any capacity level). FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

The ILECs have incorrectly identified Allegiance as a self-provisioner and wholesaler of dark fiber transport facilities. Allegiance has not self-provisioned dark fiber transport facilities over any route in Florida and is not operationally ready to provide dark fiber over its own facilities on a wholesale basis to other carriers over any route in Florida. The errors in the ILECs' identification of routes over which they contend that CLECs have self-provisioned dedicated transport or are wholesaling dedicated transport establish the need for a verification process before the Commission can find that the transport triggers have been satisfied for any routes.

SPRINT:

BellSouth and Verizon have not provided route specific data sufficient to overturn the FCC's national findings that CLECs are impaired when competing in the local market without unbundled access to dark fiber transport. BellSouth and Verizon fail to provide verifiable evidence to satisfy the FCC's trigger requirements that actual dark fiber transport services are available from two or more competing providers and are offered on a widely available wholesale basis to other carriers. Therefore, the wholesale trigger for dark fiber transport has not been satisfied.

JOINT CLECs:

This trigger requires evidence that each competing provider has deployed its own dark fiber dedicated transport facilities on a route between two ILEC wire centers and is operationally ready and willing immediately to provide to other carriers, on a widely available basis, dark fiber with those facilities, and that those facilities terminate in collocation arrangements at those wire centers. The evidence does not identify wholesale

triggers for several reasons, including: 1) the ILECs merely assume that carriers having collocations and fiber facilities at any two ILEC wire centers must necessarily be providing dedicated transport between those points; 2) carriers having collocations and fiber facilities at any two ILEC wire centers have not deployed and are not operationally ready to provide transport between those points; 3) backhaul links between collocations in any two wire centers and a CLEC's switch do not constitute a dedicated transport route; 4) if a CLEC allegedly offers to provide or provides wholesale service anywhere it is not necessarily providing dark fiber at the "route" in question; 5) a CLEC is not necessarily operationally ready to provide dark fiber if it has merely deployed fiber facilities entering its collocations; and 6) CLECs merely offering to provide wholesale service or providing wholesale service generally do not necessarily provide wholesale service on the route in question. The ILECs' evidence on these matters is not granular and they cannot carry their evidentiary burden by means of unfounded assumptions and deficient analysis.

STAFF:

Staff has no position at this time.

**ISSUE 17: For any particular route where at least two competing providers will provide wholesale dark fiber, do both competing providers' facilities terminate in collocation arrangements at an ILEC premise or a similar arrangement in a non-ILEC premise? If so, can requesting carriers obtain reasonable and nondiscriminatory access to those competing providers' termination points through a cross-connect to the providers' collocations either at the ILEC premise or similar arrangement if located at a non-ILEC premise?**

BST:

All the facilities used in the trigger analysis terminate in collocation arrangements on both ends. BellSouth also provides cross-connects as detailed in the testimony of John A. Ruscilli, as adopted by A. Wayne Gray.

VERIZON:

Yes. Verizon relied on its visual inspection process, and information provided by competing carriers, to confirm that the competing carriers' transport facility terminate in collocation arrangements at Verizon wire centers, are operational, and are fed by non-Verizon fiber. To Verizon's knowledge, no competing carrier has claimed or submitted evidence showing that for a particular transport route, or for all transport routes, there is not reasonable and nondiscriminatory access to the competing providers' termination points at the ILEC premises.

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of dark fiber transport. FDN otherwise agrees with Joint CLECs.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

See Issue No. 16. BellSouth and Verizon have not provided route specific data sufficient to show that the wholesale trigger has been satisfied for dark fiber transport.

JOINT CLECs:

The ILECs' evidence on this issue suffers from the same defects identified in response to Issue 16.

STAFF:

Staff has no position at this time.

**ISSUE 18: For any particular route where at least two competing providers will provide such wholesale dark fiber, do these providers have sufficient quantities of dark fiber available to satisfy current demand along that route? If not, should the wholesale trigger for dark fiber be determined to be satisfied along that route?**

BST:

There are sufficient quantities of dark fiber in all routes in Exhibit SWP- 10 to satisfy current demand.

VERIZON:

The best evidence of whether wholesale providers of dark fiber actually have dark fiber is publicly available information (e.g., website materials and tariffs) in which those carriers offer to provide dark fiber. As a general rule, a carrier deploying fiber transport facilities will deploy extra fiber.

FDN:

The ILECs have presented inadequate evidence to support their positions regarding wholesale availability of dark fiber transport. Accordingly, the wholesale trigger should not be deemed satisfied on any route.

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

See Issue No. 16. BellSouth and Verizon have not provided route specific data sufficient to show that the wholesale trigger has been satisfied for dark fiber transport.

JOINT CLECs:

Since there is no evidence of sufficient granularity to determine the actual, as opposed to assumed, deployment of dark fiber along any route, it is not possible to compare the actually available dark fiber to current demand along any particular route.

STAFF:

Staff has no position at this time.

**ISSUE 19: If neither the self-provisioning or the wholesale triggers for dark fiber transport is satisfied along a route, using the potential deployment criteria specified in §51.319(e)(3)(ii), what evidence of non-impairment for dark fiber on a specific route exists? Is this evidence sufficient to conclude that there is no impairment along this route?**

BST:

Exhibit AXB-3 shows the list of routes (pairs of wire centers) that satisfy the potential deployment test dark fiber transport facilities. There is no impairment for dark fiber transport on the routes on that list.

VERIZON:

Verizon does not take a position on this issue at this time.

FDN:

BellSouth has not properly evaluated the potential deployment criteria of the TRO and, therefore, no evidence exists to support a finding of no impairment for any particular routes

ALLEGIANCE:

Allegiance takes no position on this issue at this time. Allegiance reserves the right to take a position on this issue following the hearing, depending upon the evidence introduced at the hearing.

SPRINT:

BellSouth's potential deployment analysis is fundamentally flawed and does not provide sufficient evidence to conclude that there is not impairment for the transport routes included in BellSouth's analysis. BellSouth did not provide any supporting documentation, workpapers, calculations or even the basic formulas used to show how the routes allegedly qualify for potential deployment. Furthermore, BellSouth's calculations of potential deployment costs performed by their BellSouth Analysis of Competitive Entry (BACE) model cannot be viewed and are not auditable. BellSouth's analysis is based on uniform cost assumptions and fails to meet the FCC's requirement that a potential deployment analysis be completed on a route specific basis. BellSouth has understated the costs of deploying transport routes through use of broad assumptions for fiber cable and construction-related costs. Therefore, the BellSouth potential deployment analysis for transport should be rejected by the Commission. Verizon did not present a potential deployment analysis so there are no Verizon transport routes which satisfy the FCC's potential deployment criteria.

JOINT CLECs:

Like their other potential deployment analyses, the ILECs' evidence on this issue is not based on evidence particular to the routes in question or the criteria established in TRO ¶ 410. Instead, it is a series of inaccurate assumptions, averages and hypotheticals that are applied in blanket fashion to all locations identified.

STAFF:

Staff has no position at this time.

**ISSUE 20: If unbundling requirements for loops at customer-specific locations or dedicated transport along a specific route are eliminated, what are the appropriate transition period and requirements, if any, after which a CLEC no longer is entitled to these loops or transport under Section 25 1 (c)(3)?**

BST:

BellSouth will continue to offer loops and transport at a market rate so a transition period is unnecessary. However, if the Commission determines that a transition period is required, 90 days is reasonable.

VERIZON:

The Commission should not address a transition plan in this nine-month case. The FCC's loop rules limit the nine-month state loop proceedings to the impairment review contained in rules 319(a)(4) – (6). 47 C.F.R. §51.319(a)(7). Likewise, the transport rules limit the nine-month transport proceedings to the impairment review contained in rules 319(e)(1) – (3). These rules do not discuss adoption of a transition plan. 47 C.F.R §§



51.319(a)(4) – (6) and (e)(1) – (3). Thus, while the FCC expected state commissions to develop a transition plan for transport routes and customer locations where it found no impairment, it did not require them to do so in the initial nine-month review. Given the significant amount of work the Commission must complete in its nine-month triggers review, it should not add an issue that could extend its decision-making process beyond the nine-month deadline. Instead, as detailed below, the Commission can (and should) address the transition period issue in a separate arbitration proceeding to determine the terms for amendments to interconnection agreements in connection with the TRO.

FDN:

The Commission should require a reasonable transition period. Furthermore, FDN maintains that the Commission should address such specifics as how CLECs will order loops and transport after they are “de-listed” e.g., what “form” the orders will take, how the ordering process will work, and what ordering and provisioning intervals will apply.

ALLEGIANCE:

Allegiance believes that the Commission should order that the existing month-to-month TELRIC prices for any customer-specific locations or dedicated transport routes for which unbundling requirements are eliminated be maintained for at least twelve months to give CLECs adequate time to negotiate new prices with the ILECs or to make arrangements with other providers. In addition, the pricing in any existing longer-term contracts that are in place at the affected locations or over the affected routes should be maintained through the end of the contract period.

SPRINT:

No position at this time.

JOINT CLECs:

FCCA submits that the Commission should not address transition issues in this proceeding. The Commission should adopt a multi-tiered transition process such as the one applicable to mass market switching. More specifically, CLECs should continue to be able to order new UNEs for locations and routes that have been delisted for a minimum of nine months following the Commission's order. The Commission also should grandfather any UNEs delisted that are currently being used to serve customers. If conversions are to occur, then prior to any conversion, the Commission should establish pricing for delisted UNEs. The Commission also should ensure, among other things, that the ILECs have processes and procedures for converting UNEs to delisted elements, that electronic ordering and provisioning is available, and that collocated carriers can cross-connect to each other at the same intervals and pricing as they can cross-connect to the ILEC. The Commission also should address any other issues that will ensure that Florida CLECs are not harmed and that will facilitate seamless service to Florida customers.

STAFF:

Staff has no position at this time.

XIV. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Various carriers have filed appeals of the FCC's *Triennial Review Order* which are pending in the United States Court of Appeals for the District of Columbia. See *United States Telecom Ass'n v. FCC*, No. 00-1012 (D.C. Circuit). Otherwise, the parties and Commission staff are unaware of any pending FCC or court decision that may preempt or otherwise impact the Commission's ability to resolve any of the above issues.

XV. POST-HEARING PROCEDURES

The Commission (or assigned panel of Commissioners) has the authority and discretion to render a bench decision at the time of the hearing or to render a decision without any post hearing submissions by the parties. Such a determination may be with or without the oral or written recommendation of the Commission staff, at the Commission's (or assigned panel's) discretion.

If the Commission (or assigned panel) does not make a bench decision at the hearing, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 75 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 75 pages and shall be filed at the same time, unless modified by the Presiding Officer.

XVI. RULINGS

A. No witness shall be present in the deposition of another witness in this docket irrespective of whether that deposition is taken in person or telephonically.


B. The following individuals are hereby authorized to appear as a Qualified Representative in this docket:

<b>Qualified Representative</b>	<b>On behalf of</b>
Meredith E. Mays	BellSouth
R. Douglas Lackey	BellSouth
Nancy B. White	BellSouth
William J. Ellenberg, II	BellSouth
Lisa S. Foshee	BellSouth
Richard Chapkis	Verizon
Charles E. Watkins	Covad
Scott A. Kassman	FDN
H. Edward Phillips, III	Sprint
Kenneth A Shifman	Sprint
Bill Magness	FCCA

It is therefore,

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 18th day of February, 2004.

  
\_\_\_\_\_  
CHARLES M. DAVIDSON  
Commissioner and Prehearing Officer

(SEAL)

AJT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.