

ORIGINAL

David B. Erwin  
Attorney At Law

127 Riversink Road  
Crawfordville, Florida 32327

Telephone 850.926.9331  
Fax 850.926.8448  
daveerwin@direcway.com

December 2, 2002

RECEIVED-FPSC  
02 DEC -2 AM 8:00  
COMMISSION  
CLERK

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

Re: Docket No. 021061-TP  
Petition of CNM Network, Inc., for Declaratory Statement Regarding  
Florida Public Service Commission Jurisdiction

Dear Ms. Bayo:

Enclosed please find the original and 15 copies of ITS Telecommunications Systems, Inc.'s Response in Opposition to CNM Network, Inc.'s Motion to Dismiss the Petitions for Intervention, or, in the Alternative, to Conduct a Generic Proceeding or Rulemaking or to Stay Pending FCC Action, which we ask that you file in the captioned docket.

Copies have been served to those parties shown on the attached Certificate of Service.

Sincerely,



David B. Erwin

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM \_\_\_\_\_  
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ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC \_\_\_\_\_  
OTH \_\_\_\_\_

Cc: All Parties of Record  
Don Hartsfield

*Handwritten:* Done 12/05/02

DOCUMENT NUMBER-DATE  
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: In Re Petition of CNM Network, Inc.  
for Declaratory Statement Regarding Florida  
Public Service Commission Jurisdiction

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DOCKET NO. 021061-TP  
FILED: December 2, 2002

**ITS TELECOMMUNICATIONS SYSTEMS, INC.'S RESPONSE  
IN OPPOSITION TO CNM NETWORK, INC.'S  
MOTION TO DISMISS THE PETITIONS FOR INTERVENTION, OR, IN  
THE ALTERNATIVE, TO CONDUCT A GENERIC PROCEEDING  
OR RULEMAKING OR TO STAY PENDING FCC ACTION**

ITS TELECOMMUNICATIONS SYSTEMS, INC. ("ITS" or the "Company"), pursuant to Rule 28-106.204, Florida Administrative Code, Uniform Rules of Procedure, responds in opposition to CNM Network, Inc.'s ("CNM") Motion to Dismiss the Petitions for Intervention, or, in the Alternative, to Conduct a Generic Proceeding or Rulemaking or to Stay Pending FCC Action ("Motion to Dismiss"), stating as follows:

1. On October 18, 2002, CNM filed its petition requesting that the Commission issue a declaratory statement "determining that phone-to-phone Internet protocol ("IP") telephony is not telecommunications under Florida law." CNM further seeks a declaratory statement from the Commission that "CNM is not a telecommunications company subject to the Commission's certification and tariffing requirements."

2. ITS' Petition to Intervene alleges that any decision made in the proceeding will necessarily affect the substantial interests of ITS. CNM has responded in its motion to dismiss the petition of ITS that ITS has not demonstrated how CNM's "phone-to-phone telephony" constitutes "telecommunications." ITS would remind the Commission that the core business of ITS is "phone-to-phone telephony," which is how CNM has characterized

its business activity. (Only the method of transport from phone-to-phone appears to differ between the two companies.) If the activities of CNM do turn out to be "telecommunications," then ITS stands to receive compensation. Clearly, ITS has a substantial interest in the matter to be decided by the Commission.

3. ITS adopts the response of NEFTC, filed December 2, 2002, and incorporates that response herein by reference.

WHEREFORE, having demonstrated that its "substantial interests" will be determined or affected through CNM's Petition for Declaratory Statement, CNM's Motion to Dismiss should be denied and ITS' Petition to Intervene should be granted. Further, CNM's request for alternative relief should also be denied.

DATED this 2nd day of December, 2002.

Respectfully submitted,



David B. Erwin  
127 Riversink Road  
Crawfordville, FL 32327  
(850) 926-9331

ATTORNEY FOR ITS  
TELECOMMUNICATIONS SYSTEMS, INC.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail, or hand delivery this 2nd day of December, 2002, to the following:

Samantha Cibula  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

BellSouth Telecommunications, Inc.  
c/o Nancy B. White  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301-1556

Floyd Self  
Messer, Caparello & Self, P.A.  
215 South Monroe Street, Suite 701  
P. O. Box 1876  
Tallahassee, FL 32302

Bettye Willis/Steve Rowell  
ALLTEL  
One Allied Drive  
Little Rock, AR 72203-2177

Benjamin Dickson  
Blooston Law Firm  
2120 L St., NW, Suite 300  
Washington, DC 20037

CNM Network Inc.  
4100 Guardian Street  
Simi Valley, CA 93063

Angela Green  
Coral Telecom, Inc.  
2292 Wednesday St., Suite 2  
Tallahassee, FL 32308-4334

Michael A. Gross  
FCTA  
246 E. 6th Avenue  
Tallahassee, FL 32301

Charles J. Rehwinkel/Susan Masterton  
Sprint-Florida, Inc.  
MCFLTH00107  
P. O. Box 2214  
Tallahassee, FL 32316

John P. Fons  
J. Jeffry Wahlen  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, Florida 32302

Kimberly Caswell  
Verizon Florida, Inc.  
201 N. Franklin St., FLTC 0007  
Tampa, FL 33602

Lynn B. Hall  
Smart City Telecom  
P. O. Box 22555  
Lake Buena Vista, FL 32830-2555

Chris Burke  
Frontier Communications of the South  
180 South Clinton Avenue  
Rochester, NY 14646

Tom McCabe  
TDS Telecom/Quincy Telephone  
P. O. Box 189  
Quincy, FL 32351



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Attorney