

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. Regarding BellSouth's Practice of Refusing to Provide FastAccess Internet Service to Customers Who Receive Voice Service From a Competitive Voice Provider and Request for Expedited Relief.

Docket No.: 020507-TP

Filed: December 23, 2002

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**THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S AND  
ITC^DELTA COM COMMUNICATIONS, INC.'S  
JOINT PREHEARING STATEMENT**

The Florida Competitive Carriers Association (FCCA), and ITC^DeltaCom Communications, Inc. (DeltaCom), pursuant to Order No.PSC-02-1537-PCO-TL, submits this Joint Prehearing Statement.

**A. APPEARANCES:**

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman & Arnold, P.A.  
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On behalf of the Florida Competitive Carriers Association.

And

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On behalf of ITC^DeltaCom Communications, Inc.

**B. WITNESSES:**

**On behalf of the FCCA:**

<u>Witness</u>	<u>Proffered by</u>	<u>Issues</u>
<b>Direct</b>		
Joseph P. Gillan	FCCA	All
<b>Rebuttal</b>		
Sherry Lichtenberg	FCCA	2, 4, 5, 6a, 6b
Jay Bradbury	FCCA	2, 4, 5, 6a, 6b
Joseph P. Gillan	FCCA	All

**On behalf of DeltaCom:** At this time, DeltaCom is not sponsoring any witnesses. However, DeltaCom reserves the right to sponsor such witnesses as may be required by the addition or deletion of issues that may occur as a result of the Prehearing Conference.

**C. JOINT STATEMENT OF BASIC POSITION:**

BellSouth's policy of denying FastAccess service to a consumer who selects a provider other than BellSouth for voice service violates Florida law's prohibitions on anticompetitive behavior and discrimination.

In both the BellSouth/FDN arbitration (Docket No. 010098-TP) and the BellSouth/Supra arbitration (Docket No. 001305-TP), the Commission prohibited BellSouth from disconnecting its FastAccess service when a consumer selects a competitive voice provider. The Commission found that such behavior "unreasonably penalizes customers" and "creates a barrier to competition in the local telecommunications market in that customers could be dissuaded by this practice from choosing FDN or another ALEC as their voice service provider . . . ." Order No. PSC-02-0765-FOF-TP at 10.

Though these cases addressed current BellSouth customers, there is no reason (legally, technically or otherwise) to make a distinction between migrating customers and others. This irrelevant distinction would undermine the policy that this Commission has already articulated -- BellSouth may not punish consumers for their choice of voice providers. The Commission should lay these issues to rest once and for all in this docket and require BellSouth to provide its FastAccess service to all end users who want it, regardless of their voice carrier.

Finally, BellSouth should not be permitted to make any changes to a migrating customer's service arrangements and should not be able to assess any additional charges. As the Commission has already decided, the transition should be seamless and at no

additional cost. (Order No. PSC-02-1453-FOF-TP). As to a new end user, BellSouth should be required to provide FastAccess at the same rates, terms and conditions as it is offered to BellSouth's own end users. There are no legal, technical or operational reasons that would support a change in rates, terms or conditions.

**D. EXHIBITS**

**On behalf of the FCCA:**

<u>Witness</u>	<u>I.D.No.</u>	<u>Description</u>
<b><u>Rebuttal</u></b>		
Jay Bradbury	JMB-1	Letter of Authorization for Line Splitting
Jay Bradbury	JMB-2	FastAccess Internet Service Web Site
Jay Bradbury	JMB-3	Required Data Fields for Loop Makeup Data Query
Jay Bradbury	JMB-4	Loop Qualification System
Jay Bradbury	JMB-5	D/CLEC Pre-Ordering Guide for Electronic LoopMakeup
Jay Bradbury	JMB-6	Line Splitting -- CLEC Information Package
Jay Bradbury	JMB-7	Affidavit of William Stacy before the FCC
Joseph P. Gillan	JPG-1	BellSouth letter to FCC re UNE-P data
Joseph P. Gillan	JPG-2	BellSouth letter re provision of DSL

The FCCA reserves the right to use appropriate cross-examination exhibits.

**On behalf of DeltaCom:** At this time, DeltaCom is not sponsoring any exhibits. However, DeltaCom reserves the right to sponsor such exhibits as may be required by the addition or deletion of issues that may occur as a result of the Prehearing Conference. In addition, DeltaCom reserves the right to use appropriate cross-examination exhibits.

**E. JOINT STATEMENT OF ISSUES AND POSITIONS:**

**ISSUE 1:** Does the Commission have jurisdiction to grant the relief requested in the Complaint?

**FCCA/DeltaCom:** Yes. Florida Statutes give the Commission jurisdiction in this matter. The Commission has found on no less than three occasions that it has jurisdiction to address the BellSouth behavior that is the subject of this case. First, in Docket No. 010098-TP, it ordered BellSouth to cease disconnecting migrating FastAccess customers. Second, it made the same decision in Docket No. 001305-TP. Third, in this very docket, it denied BellSouth's motion to dismiss the FCCA's Complaint for lack of jurisdiction. Order No. PSC-02-1464-FOF-TL. In that order, the Commission found: "We,

however, have determined that we have the authority to remedy anti-competitive behavior that is detrimental to the development of a competitive telecommunications market."

**ISSUE 2:** What are BellSouth's practices regarding the provisioning of its FastAccess Internet service to:

- (a) a FastAccess customer who migrates from BellSouth to a competitive voice service provider; and
- (b) to all other ALEC customers.

**FCCA/DeltaCom:** (a) It is the FCCA's and DeltaCom's understanding that it is BellSouth's practice to disconnect a BellSouth FastAccess customer who selects a different provider for voice service.

(b) It is the FCCA's and DeltaCom's understanding that it is BellSouth's practice to refuse to provide its FastAccess service to a customer who requests it but is receiving service from a voice provider other than BellSouth.

**ISSUE 3:** Do any of the practices identified in Issue 2 violate state or federal law?

**FCCA/DeltaCom:** Yes. BellSouth's practices violate both state and federal law. As to state law, as this Commission has already found, BellSouth's practice violates § 364.10, Florida Statutes as well as §§ 364.01(4)(b), (4)(d), (4)(g). It is the FCCA's and DeltaCom's position that it also violates §§ 364.051, 364.08(1) and 364.3381, Florida Statutes. Further, BellSouth's practice violates § 202 of the federal Telecommunications Act of 1996.

**ISSUE 4:** Should the Commission order that BellSouth may not disconnect the FastAccess Internet service of an end user who migrates his voice service to an alternative voice provider?

**FCCA/DeltaCom:** Yes. The Commission has already made this finding on two other occasions -- in the BellSouth/FDN arbitration and in the BellSouth/Supra arbitration. The Commission should confirm that BellSouth may not engage in this anticompetitive behavior as to *any* consumer who chooses a competitive voice provider.

**ISSUE 5:** Should the Commission order BellSouth to provide its FastAccess Internet service, where feasible, to any ALEC end user that requests it?

**FCCA/DeltaCom:** Yes. There is absolutely *no* distinction between customers that have already chosen a new voice provider and customers that are migrating to a new voice provider. BellSouth should not be permitted to refuse to provide FastAccess service whether the customer has already purchased FastAccess or is requesting the service as a new customer. In both situations, this practice is discriminatory, anticompetitive and inconsistent with encouraging voice competition and the deployment of advanced services.

**ISSUE 6(a):** If the Commission orders that BellSouth may not disconnect its FastAccess Internet service, where a customer migrates his voice service to an ALEC and wishes to retain his BellSouth FastAccess service, what changes to the rates, terms, and condition of his service, if any, may BellSouth make?

**FCCA/DeltaCom:** BellSouth should not be permitted to make any changes to the customer's network serving arrangement or assess any additional charges. The Commission has already decided this issue in Order No. PSC-02-1453-FOF-TL, where it found that the transition for the migrating customer must be seamless and at no additional cost.

**ISSUE 6(b):** If the Commission orders BellSouth to provide its FastAccess service to any ALEC end user that requests it, where feasible, then what rates, terms and conditions should apply?

**FCCA/DeltaCom:** BellSouth should be required to provide FastAccess service to any ALEC end user under the same terms, conditions and prices that it would offer FastAccess to its own end users.

**F. STIPULATED ISSUES:**

None.

**G. PENDING MOTIONS:**

The FCCA and DeltaCom have no motions pending.

**H. PENDING CONFIDENTIALITY CLAIMS:**

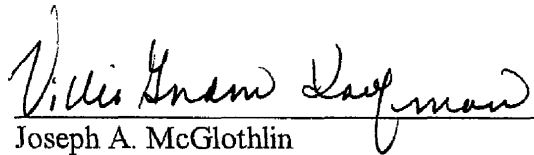
The FCCA and DeltaCom have no pending confidentiality claims.

**I. REQUIREMENTS WHICH CANNOT BE COMPLIED WITH:**

The FCCA and DeltaCom are aware of no requirements with which each cannot comply with at this time.

**J. DECISIONS PREEMPTING THE COMMISSION'S ABILITY TO RESOLVE THIS MATTER:**

The FCCA and DeltaCom are aware of no FCC or court decisions that would preempt or impact the Commission's ability to resolve the matters at issue in this case.



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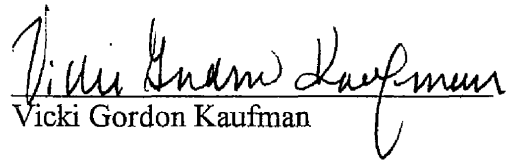
Attorneys for ITC^DeltaCom  
Communications, Inc.

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Competitive Carriers Association's and ITC^DeltaCom Communications, Inc.'s Joint Prehearing Statement has been furnished by (\*) hand delivery, (\*\*) electronic mail, or by U.S. Mail this 23<sup>rd</sup> day of December, 2002, to the following:

(\*) (\*\*) Patricia Christensen  
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