

ORIGINAL

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COMMISSION  
CLERK

May 1, 2003

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

Re: Docket Nos. 981834-TP and 990321-TP (Generic Collocation)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of the Protective Agreement between BellSouth Telecommunications, Inc. and Sprint Communications and AT&T Communications of the Southern States, Inc., which we ask that you file in the captioned dockets. On April 18, 2003, Staff filed and served the parties with its "Redacted" Rebuttal Testimony of David J. Gabel and Rowland L. Curry. The testimony itself contains confidential portions of BellSouth, Sprint and AT&T information. At this time, BellSouth is requesting that Staff provide them with copies of the confidential testimony of David J. Gabel and Rowland L. Curry.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Nancy B. White*  
Nancy B. White (KA)

RECEIVED & FILED

*Th*  
FPSC-BUREAU OF RECORDS

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5 each
- CTR \_\_\_\_\_
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- MMS \_\_\_\_\_
- SEC 1
- OTH Marguerite

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey

(AT+T)  
03996-03

(sprint)  
DOCUMENT NUMBER-DATE  
03995 MAY-18

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**  
**Docket No. 981834-TP and 990321-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

First Class U.S. Mail, and Electronic Mail this 1st day of May, 2003 to the following:

Beth Keating, Staff Counsel  
Adam Teitzman, Staff Counsel  
Wayne Knight, Staff Counsel (#)  
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[lking@psc.state.fl.us](mailto:lking@psc.state.fl.us)  
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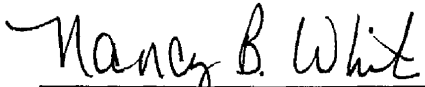
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\_\_\_\_\_  
Nancy B. White (LA)

**(+) Signed Protective Agreement**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Carriers for Commission Action ) Docket No. 981834-TP  
To Support Local Competition )  
In BellSouth's Service Territory )  
  
In re: Petition of ACI Corp. d/b/a )  
Accelerated Connections, Inc. for ) Docket No. 990321-TP  
Generic Investigation into Terms and )  
Conditions of Physical Collocation )  
\_\_\_\_\_ ) Dated: January 20, 2003

**PROTECTIVE AGREEMENT**

**STIPULATION AND AGREEMENT**

To expedite the production of material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that the protection is afforded to material so entitled, the undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

1. *Exchange of Confidential Information.* The signatory parties will be bound by the terms of this Protective Agreement upon executing it. Parties may exchange Confidential Information upon executing this Protective Agreement. Any party shall be entitled to seek enforcement of (or other appropriate relief pertaining to) this Protective Agreement before the Florida Public Service Commission ("FPSC"), a member of the FPSC, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. This Protective Agreement shall control the production and disclosure of all materials deemed confidential pursuant to paragraph 2 below.

2. *Confidential Information.* Any materials generated or provided by a party or information derived from tours given of central offices may be designated as "Confidential Information" by that party if the party believes in good faith that the materials or tour information are confidential or proprietary and are entitled to protection from disclosure under Florida's trade secret law or any other provision of Florida or Federal law, or are subject to existing non-disclosure obligations to a third party. The parties to this Protective Agreement agree that the designation of materials or tour information as "Confidential Information," or the failure to designate materials or tour information as "Confidential Information," shall in no way affect the right of the producing party to challenge the release of such materials or the information obtained from tours. In particular, the designation of materials or tour information as "Confidential Information," or the failure to designate materials or tour information as "Confidential Information," shall in no way affect the right of the producing party to assert that such materials are exempt from disclosure. Any party asserting confidentiality for such material shall so indicate by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as "Confidential-Subject to Protective Agreement in Docket Nos. 981834-TP and 990321-TP before the Florida Public Service Commission" or other markings that are reasonably

calculated to alert custodians of the material to its confidential or proprietary nature. Except with the prior written consent of the party or other person who has designated a document to be stamped as Confidential Information, or as hereinafter provided, no Confidential Information may be disclosed to any person.

For purposes of the Protective Agreement, the term "document" means all written, recorded or graphic material, and non-paginated items such as computer tapes, diskettes, CD ROMs and photographs, whether produced or created by a party or another person, whether produced pursuant to the FPSC's rules, subpoena, by agreement or otherwise. Prefiled testimony and exhibits, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection.

3. *Permissible Disclosure of Confidential Information.*

(a) Notwithstanding paragraph 2, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior consent only to the following persons, only in prosecuting this Proceeding, and only to the extent necessary to assist in prosecuting this Proceeding:

(1) Counsel of record representing a party in this Proceeding, any legal support personnel (e.g., paralegals and clerical employees) employed by such attorneys provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(2) The FPSC or its staff, pursuant to the rules of the FPSC.

(3) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions provided that all parts of the record having the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(4) Any person designated by the FPSC in the interest of justice, upon such terms as the FPSC may deem proper, and pursuant to the rules of the FPSC.

(5) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this Proceeding, provided that all portions of the record containing the Confidential Information shall only be accessible to those having access thereto under this Protective Agreement.

(b) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this Proceeding before this FPSC or any arbitrator appointed by this FPSC. Each individual who is provided access to Confidential

Information pursuant to paragraph 3(a), (1), (4), or (5), must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(c) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Each party shall maintain a log, recording the number of copies made of all Confidential Information, and the persons to whom the copies have been provided. Any note memorializing or recording of Confidential Information shall, immediately upon creation, become subject to all provisions of this Protective Agreement.

(d) Within ninety (90) days of termination of this Proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall be destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed upon written request of the producing party. If materials are destroyed rather than returned to the producing party, a written statement to that effect by counsel of record for the receiving party shall be provided to the producing party. A limited exception to the provisions of this Section is recognized for the FPSC wherein the FPSC shall be allowed to retain, under seal, one copy of all Confidential Information for purposes of preserving the official record of the Commission. Further, all FPSC staff notes or work product shall be accumulated and kept under seal with all other confidential information which compiles the official record of the FPSC.

(e) The number of reviewing representatives designated by a party to review Confidential Information under paragraph 3(a)(1) may not exceed twenty (20) individuals (excluding paralegals and clerical employees) unless (i) the party producing the Confidential Information, consents to additional reviewing representatives, or (ii) the FPSC or the Prehearing Officer denies a motion to bar disclosure of the Confidential Information to additional reviewing representatives. Failure to file such a motion within ten days after receiving written Notice that a reviewing party intends to designate additional reviewing representative(s) shall constitute consent to the designation. The written Notice shall (a) identify the additional reviewing representative(s), (b) identify the Confidential Information that is proposed to be disclosed, and (c) provide the current employment and position of the proposed additional reviewing representative(s).

4. *Declassification.* A party may apply, to the FPSC for a ruling that documents, categories of documents, or deposition transcripts, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or testimony as Confidential Information shall be given notice of the application and an opportunity to respond.

5. *Confidential Information in Depositions.* In the event that depositions are to be taken in This Proceeding:

(a) A deponent may, during the deposition, be shown and examined about Confidential Information if the deponent already knows the Confidential Information contained therein or if the provisions of paragraph 3 above are complied with.

(b) Parties (and deponents) may, within fifteen (15) days after receiving a depositions transcript, designate pages of the transcript (and exhibits thereto) as Confidential Information. Confidential Information within the deposition transcript may be designated by marking the portions of the pages that are confidential and marking such pages with the following legend: "Confidential - Subject To Protective Agreement in Docket Nos. 981834-TP and 990321-TP before the Florida Public Service Commission." Until expiration of the 15-day period, the entire deposition will be treated as Confidential Information subject to protection against disclosure under this Protective Agreement. If no party or deponent timely designates Confidential Information in a deposition, then none of the transcript or its exhibits shall be filed (to the extent such filing may be required) under seal separately from the portions and exhibits not so marked.

6. *Confidential Information Offered in Evidence or Filed in the Record.* Subject to the FPSC's rules and applicable state statutes, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the FPSC (or to an arbitrator appointed by the FPSC) in this Proceeding, provided that the proponent does so in the manner set forth in this Protective Agreement and provides reasonable advance written notice of the party's intent to do so. Pursuant to this Agreement, any party may move before the FPSC (or a presiding officer of the FPSC, or an arbitrator appointed by the FPSC) for any order that the evidence being received shall only be accessible to those having access thereto under the Protective Agreement or in camera or under other conditions to prevent unnecessary disclosure. The FPSC, presiding officer, or arbitrator will then determine whether the proffered evidence should continue to be treated as Confidential Information and, if so, what protection, if any, may be afforded such information at any hearing or other proceeding.

7. *Subpoena by Courts or Other Agencies.* If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within two (2) business days) notify the party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

8. *Filing.* Confidential Information need not be filed with the FPSC except when required in connection with motions under the FPSC's rules and regulations or other matters pending before the FPSC or an arbitrator appointed by the FPSC. If filed, such information shall be filed under seal and shall remain sealed while in the office as the FPSC may designate so long as they retain their status as Confidential Information.



9. *Client Consultation.* Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures or paragraph 3 above.

10. *Use.* Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in this Proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

11. *Non-Termination.* The provisions of this Protective Agreement shall not terminate at the conclusion of this Proceeding.

12. *Modification Permitted.* Nothing in this Protective Agreement shall prevent any party from objecting to discovery that it believes to be otherwise improper.

13. *Responsibilities of the Parties.* The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information.

14. *Definition of "This Proceeding".* For the purposes of this Protective Agreement, the phrase "This Proceeding" shall only include FPSC Docket Nos. 981834-TP and 990321-TP and any appeals thereof.

15. *Counterparts.* This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring to the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

Dated: January 20, 2003

Sprint  
(Company Name)

By: Susan S. Masterton  
Susan S. Masterton  
(Print Name)

Title: Attorney

BELLSOUTH TELECOMMUNICATIONS, INC.

By: Nancy B. White  
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(Print Name)

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