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May 15, 2003

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

Re: Docket No. 981834-TP
Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications Inc.'s Service Territory

Docket No. 990321-TP
Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of an Emergency Joint Motion to Strike, Or In The Alternative, For An Extension of Time for filing in the above matters. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

Richard A. Chapkis

Richard A. Chapkis

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local Competition in BellSouth Telecommunications Inc.'s service territory	)	Docket No. 981834-TP Filed: May 15, 2003
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation	)	Docket No. 990321-TP

EMERGENCY JOINT MOTION TO STRIKE, OR IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME

Pursuant to Rules 1.160 and 1.280 of the Florida Rules of Civil Procedure, and Rule 28-106.204, Florida Administrative Code, Verizon Florida Inc. ("Verizon") and Sprint-Florida, Incorporated ("Sprint") hereby request that the Commission strike the Rebuttal Testimony submitted by Steven E. Turner on behalf of AT&T Communications of the Southern States, LLC ("AT&T") to the extent that testimony requests that the Commission impose BellSouth's cost model -- and, explicitly, its inputs -- on all incumbent local exchange carriers ("ILECs") operating in the state of Florida. Mr. Turner's proposal is not properly considered in this proceeding. To the extent that the Commission believes Mr. Turner's proposal warrants consideration, the proper place to evaluate it would be the Commission's ongoing workshop exploring the possible use of a uniform model for unbundled network element ("UNE") costs.[1/]

[1/] In re: Undocketed Standardization of Unbundled Network Element Costing.

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As we show here, the proposal is far more complicated than AT&T would have the Commission believe. If the Commission declines to strike Mr. Turner's testimony (which it should not), the Commission must, at a minimum, provide Verizon and Sprint with additional time to respond to Mr. Turner's Rebuttal Testimony so that Verizon and Sprint may conduct discovery and evaluate the individual components of BellSouth's collocation cost study.

I. MR. TURNER'S PROPOSAL TO IMPOSE BELLSOUTH'S MODEL ON VERIZON AND SPRINT IS PROCEDURALLY INAPPROPRIATE.

Given the current status of this proceeding, it would be procedurally inappropriate for the Commission to adopt AT&T's proposal -- offered for the first time on rebuttal -- that the Commission impose the BellSouth collocation cost model on all Florida ILECs, including Verizon and Sprint. First, the Commission has convened a specific workshop to consider the extent to which a standardized UNE cost model may or may not be appropriate.[2] If Mr. Turner wishes to advocate a single collocation cost model, it should be within the context of that initiative.[3] As the Commission determined in Verizon's UNE proceeding, consideration of the kind of radical change that AT&T suggests here would be improper in a substantive rate-setting proceeding, given the due process requirement that parties be given adequate notice and an

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[2] *Id.*

[3] As Verizon explained in its Comments and Reply Comments in the Commission's standardization workshop, cost model standardization generally is not a worthwhile goal. Imposing any standardized cost model, including a single collocation cost model, on all of the Florida ILECs would work to the substantial *detriment* of Florida consumers. *See* In re: Undocketed Standardization of Unbundled Network Elements Costing, *Comments of Verizon Florida Inc.* (February 28, 2003) ("Verizon UNE Standardization Comments") at 6; *Reply Comments of Verizon Florida Inc.* (April 4, 2003) ("Verizon UNE Standardization Reply Comments") at 9-10. Sprint's workshop comments express similar concerns with cost model standardization. *See* In re: Undocketed Standardization of Unbundled Network Elements Costing, *Comments of Sprint-Florida, Incorporated* (February 28, 2003); *Reply Comments of Sprint-Florida, Incorporated* (April 4, 2003).

opportunity to conduct discovery and respond to a proposal that would have such a dramatic impact on their businesses. After raising the concept of a standardized UNE cost model in the UNE proceeding, the Commission recognized that carriers have "certain systems that are consistent with the overall way they have their computer systems, information systems, and other [systems] set up...[a]nd that to impose a particular model on them would be burdensome and costly."[4/]

Second, in this proceeding, Verizon, Sprint, and BellSouth were never put on notice that the Commission might consider adopting one unified collocation cost model, or that any party might advocate such a model. On the contrary, from the beginning of this case, all of the parties had a common understanding that each of the three ILECs would use its own cost methodologies and inputs to present costs for its own collocation rate structure. At the issue identification stage of this case, there was considerable discussion among the parties about the ILECs' anticipated cost submissions. Verizon and Sprint specifically noted that their collocation offerings were different from BellSouth's, and that their cost studies would address only their own collocation offerings. AT&T and the other ALECs reviewed each of the three ILEC's collocation rate element lists and all parties agreed that each ILEC would submit its own studies based on those differing lists. In discussing appropriate procedure here, a number of the parties, including AT&T and Verizon, noted that they had litigated collocation rates before in other states -- where, like here, Verizon and other ILECs had always used their own collocation cost methodologies.

[4/] *See In the Matter of Investigation into Pricing of Unbundled Network Elements* (Sprint/Verizon Track), Docket No. 990649B-TP, Transcript of Special Agenda Conference (Oct. 14, 2002) at 13 (remarks of Commissioner Deason). The Commission further noted that, in light of the significant issues raised by the possible use of a standardized model, "a workshop would be a very appropriate way to start off the process." *Id.* at 17 (remarks of Commissioner Palecki).

At no time did AT&T (or any other party) ever argue that the ILECs should use a standardized collocation cost methodology.

If AT&T wished to advocate a unified cost model in this case, it was obliged to raise this issue at the issue identification stage, where the parties undertook discussions with the express purpose of developing a common understanding of the nature and scope of the cost submissions in this case. Certainly, rebuttal testimony is far too late for AT&T to present a proposal that essentially amounts to a *new model*. This proposal, if permissible at all, should have been made in direct testimony. To require Verizon, Sprint and the other parties to defend themselves against a new model at this late stage in this proceeding is unreasonable and inappropriate. Mr. Turner's "standardization" proposal should therefore be stricken from this proceeding.

II. MR. TURNER'S PROPOSAL IS COMPLICATED AND FAR-REACHING AND SHOULD NOT BE CONSIDERED IN THIS PROCEEDING.

Even to the extent that Mr. Turner's proposal is not procedurally barred, this proceeding is not the place to consider it. Although AT&T erroneously asserts that, in the context of this case, "the Commission can readily establish consistent collocation costs that are efficient and forward-looking across all three [ILECs] in Florida while reflecting the unique cost aspects of the separate companies," Turner Rebuttal Testimony at 2, this process is far more complex than Mr. Turner would have the Commission believe. AT&T has failed to offer any evidence that the BellSouth model would be appropriate for Verizon or Sprint or that Verizon, Sprint and BellSouth even provision collocation in the same way (indeed, AT&T knows they do not). Instead, AT&T has improperly sought to foist the burden onto Verizon and Sprint to *disprove* Mr. Turner's unsubstantiated proposal. AT&T has offered no legitimate, let alone compelling, reason to impose this extraordinary burden on Verizon and Sprint.

There is no way, particularly in the limited context of this proceeding, that a one-size-fits-all model -- which neither Verizon nor Sprint has ever before used -- can be used to model every ILEC's costs. Thus, the Commission should put the issue to rest *now* so the parties do not spend unnecessary time and resources defending against Mr. Turner's proposal, instead of focusing on the models that are properly at issue in this proceeding. As should be readily apparent based on the testimony submitted in this proceeding to date, Verizon's and Sprint's collocation practices and cost studies differ significantly from those of BellSouth. For example, BellSouth's collocation model includes elements for a number of items, such as copper cable entrance facilities, security escorts, Pot Bays, and cable records that Verizon does not offer. At the same time, Verizon provides some services to ALECs that BellSouth does not. The elements and services Sprint provides are similarly differentiated from the elements and services provided by BellSouth. BellSouth's model is not properly applied to Verizon or Sprint because that model is, of course, designed to account for the costs *BellSouth* incurs, and not those that Verizon or Sprint incur.

Moreover, BellSouth and Verizon have vastly different rate structures. While BellSouth's rate structure includes multi-tiered non-recurring costs ("NRCs"), where additional orders for an element are priced differently from the first one ordered, Verizon's does not. It would take Verizon many months to do an apples-to-apples comparison and then shift to a tiered NRC cost structure. And if Verizon were forced to adopt BellSouth's rate structure, Verizon would incur many tens of thousands of dollars to change its systems to accommodate the new rate structure and to figure out how to move to the new structure, including how to grandfather services and facilities ordered under the existing structure. Similarly, Sprint's and BellSouth's

rate structures are significantly different, and Sprint would incur substantial costs to accommodate the new structure.

Verizon and BellSouth also provision power and cross-connects to collocators in significantly different ways. On the one hand, Verizon provides cross-connect facilities and offers power cables (the ALECs also have the option to supply their own), and installs and terminates both kinds of cables. BellSouth, on the other hand, requires collocators to provide, install, and terminate their own power cables and cross connects (apparently allowing the ALECs to terminate their cross connects directly to the MDF). Verizon thus incurs a number of costs that BellSouth does not. At the same time, BellSouth presumably incurs costs in mitigating the safety and network integrity risks inherent in turning such provisioning responsibilities over to third parties that Verizon does not incur. Thus, as this example shows, imposing BellSouth's cost model on Verizon would have implications reaching far beyond rate structure differences. For Sprint, as well, rate structure is inextricably associated with provisioning, and a change to BellSouth's model would have similar implications reaching far beyond the rate structure differences.

These are just a few examples of the differences that Verizon and Sprint could readily determine based on a cursory review of BellSouth's cost studies and testimony; to understand all the differences, however, and to truly defend itself against Mr. Turner's proposal, Verizon and Sprint would have to undertake significant discovery to understand (1) how BellSouth provisions collocation; (2) how BellSouth captured these processes into cost studies; and (3) how Verizon's or Sprint's processes and costs could be reflected in the BellSouth model, if at all. Verizon and Sprint also would have to conduct discovery on AT&T in order to defend BellSouth's model against AT&T's attacks. Since the ILECs filed their cost studies in their direct testimony in

February, AT&T will have had several months to conduct discovery related to the ILECs' models. Since AT&T has waited until the rebuttal phase to suggest its single cost model proposal, the time Verizon and Sprint will have to conduct the extensive discovery required has been unfairly foreshortened.

Even if Verizon and Sprint undertook the significant effort to understand all of the different ways that Verizon, Sprint and BellSouth provision collocation, and understand how BellSouth's cost studies reflect its collocation processes, it may in any event be impossible to use BellSouth's model[5/] to account for Verizon's or Sprint's costs without requiring Verizon and Sprint to change the way they provision collocation to ALECs -- a result that has no support in the record and is far outside the scope of this proceeding. Thus, Mr. Turner's proposal has potentially far-reaching consequences beyond a simple analysis of the competing cost studies.

For example, Sprint uses a single collocation price list format in its 18 states, which simplifies ordering for ALECs who order from Sprint nationally. To require Sprint to adopt a separate price list format for Florida will create confusion for ALECs ordering for multiple states because they would have to order differently with Sprint in Florida than they do in Sprint's 17 other states. Even if the Commission were to require all Florida ILECs to use a single collocation cost model (which they should not for the reasons discussed herein), AT&T would still need to work with collocation cost studies produced by ILECs, such as SBC, Qwest and Verizon, in proceedings in other states. Any perceived benefit to AT&T from standardization of a collocation model just for Florida is more than outweighed by the costs to the ILECs, who

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5/ In fact, the term "model" is something of a misnomer when applied to the BellSouth collocation study proposed by Mr. Turner: it is a series of *spreadsheets* with various BellSouth-specific collocation elements and cost inputs.

would incur significant costs to modify processes and systems to accommodate the differences resulting from use of other ILECs' models in other states.

Finally, if the BellSouth model cannot be altered in a way that would properly account for Verizon or Sprint's costs, then it may not be used to set rates for Verizon or Sprint. The Telecommunications Act of 1996 requires rates to reflect the "costs that [Verizon or Sprint] *actually expect[s] to incur* in making network elements available to new entrants."[6/] The Commission has an obligation to set rates that reflect Verizon's or Sprint's -- and not BellSouth's -- forward-looking costs of providing collocation services in Florida. Indeed, courts have held that a state commission's decision under the Act must be supported by "substantial evidence."[7/] There is clearly no "substantial evidence" to support AT&T's proposal to impose BellSouth's cost model and inputs on Verizon or Sprint.

The Commission should therefore strike Mr. Turner's proposal and confirm that the scope of this proceeding is limited to considering the three ILEC cost studies, as contemplated from the outset of this proceeding, and it should reject AT&T's late-designated issue of whether one unified model should be imposed on all three companies. Such a ruling at this point in the case will avoid wasting limited Commission and industry resources.

6/ *See* First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15849 ¶ 685 (1996) (emphasis added).

7/ *See U S WEST Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124, n.15 (9th Cir. 1999), *cert. denied*, 530 U.S. 1284 (2000); *accord MCI WorldCom Communications, Inc. v. Pacific Bell Tel. Co.*, No. C-00-2171VRW, 2002 WL 449662, at *3 (N.D. Cal. Mar. 15, 2002). *See also New England Tel. and Tel. Co. v. Conversant Communications*, 178 F. Supp. 2d 81, 91 (D.R.I. 2001) (reversing the state commission because its decision was arbitrary and capricious and violated Verizon's due process rights).

III. IF THE COMMISSION DETERMINES THAT CONSIDERATION OF MR. TURNER'S UNIFIED COST MODEL PROPOSAL IS APPROPRIATE IN THIS PROCEEDING (WHICH IT SHOULD NOT), THE COMMISSION MUST ENSURE THAT INTERESTED PARTIES ARE GIVEN SUFFICIENT TIME TO EVALUATE AND RESPOND TO THAT PROPOSAL.

As explained above, the Commission should strike Mr. Turner's proposal to impose the BellSouth model on Verizon and Sprint or otherwise make it clear, before surrebuttal testimony is filed in this case, that Verizon and Sprint are not required to undertake the significant discovery and analysis required to adequately defend against Mr. Turner's proposal. But if the Commission were inclined to consider Mr. Turner's proposal in this proceeding, it should do so only after giving Verizon, Sprint and the other parties sufficient time to consider and respond to that proposal.

As discussed above, Verizon and Sprint would need an opportunity to thoroughly evaluate each separate cost element in the BellSouth cost study to determine how Verizon's and Sprint's collocation processes and costs could be reflected in that model. To accomplish this significant undertaking, Verizon and Sprint would need to conduct extensive discovery on BellSouth, including conducting depositions and issuing discovery requests intended to provide a clearer understanding of the individual elements that make up BellSouth's collocation cost model. Verizon and Sprint would also need the opportunity to perform and submit counterproposals (essentially prepare new cost studies using whatever they can from the BellSouth "model") to Mr. Turner's proposal -- as to which AT&T would no doubt want its own discovery. Such detailed discovery and analysis on an entirely new issue, let alone preparing testimony based on that discovery, could not possibly be completed in the six weeks that remain for filing surrebuttal testimony.

Verizon and Sprint therefore respectfully request that, if the Commission decides not to strike Mr. Turner's proposal, they be given an additional six months to properly respond to it. It

is well established that parties must be granted sufficient notice and an adequate opportunity to comment before an agency may act.[8] Verizon and Sprint cannot possibly be expected to respond to Mr. Turner's proposal, as well as defend their own models, in the eight weeks provided for surrebuttal testimony.

IV. CONCLUSION.

For all of the foregoing reasons, Verizon and Sprint respectfully request that the Commission strike the portions of Mr. Turner's testimony regarding a uniform collocation cost model for all Florida ILECs. If the Commission wishes to consider that proposal at all, it should do so in a separate forum. Alternatively, in the event that the Commission does decide to consider Mr. Turner's proposal in this proceeding, Verizon and Sprint request a six-month extension of time to file surrebuttal testimony so that they may conduct discovery, analyze Mr. Turner's proposal, and properly respond.

Because surrebuttal testimony is due on June 18, 2003, Verizon and Sprint respectfully request that the parties be given 5 business days to respond to this motion and that the Commission decide this motion on an expedited basis.

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[8] *See, e.g.*, *St. Francis Hosp., Inc. v. Dep't of Health and Rehab. Servs.*, 553 So.2d 1351, 1354 (Fla. 1st Dist. Ct. App. 1989).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Emergency Joint Motion to Strike, Or In The Alternative, For An Extension of Time in Docket Nos. 981834-TP and 990321-TP were sent via electronic mail and U.S. mail on May 15, 2003 to the parties on the attached list.

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