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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

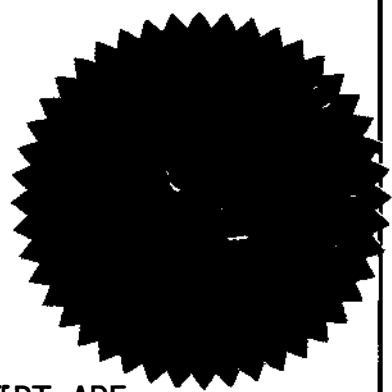
In the Matter of

PETITION OF COMPETITIVE CARRIERS  
FOR COMMISSION ACTION TO SUPPORT  
LOCAL COMPETITION IN BELLSOUTH  
TELECOMMUNICATIONS, INC.'S  
SERVICE TERRITORY.

DOCKET NO. 981834-TP

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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



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PROCEEDINGS: Prehearing Conference  
BEFORE: COMMISSIONER J. TERRY DEASON  
Prehearing Officer  
DATE: Monday, July 14, 2003  
TIME: Commenced at 1:30 p.m.  
Concluded at 2:18 p.m.  
PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida  
REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services

## 1 APPEARANCES:

2 J. PHILLIP CARVER, ESQUIRE, BellSouth  
3 Telecommunications, Inc., 150 South Monroe Street, Suite 400,  
4 Tallahassee, Florida 32301-1556, appearing on behalf of  
5 BellSouth Telecommunications, Inc.

6 VICKI GORDON KAUFMAN, ESQUIRE, McWhirter Law Firm,  
7 117 S. Gadsden Street, Tallahassee, Florida 32301 and CHARLES  
8 E. WATKINS, ESQUIRE, Covad Communications Company, 1230  
9 Peachtree Street, NE, 19th Floor, Atlanta, Georgia 30309-3574,  
10 appearing on behalf of Covad Communications Company.

11 CATHERINE KANE RONIS, ESQUIRE and DANIEL McCUAIG,  
12 ESQUIRE, Wilmer Cutler & Pickering, 2445 M Street NW,  
13 Washington, DC 20037-1420; and RICHARD A. CHAPKIS, ESQUIRE, One  
14 Tampa City Center, 201 North Franklin Street, Tampa, Florida  
15 33601, appearing on behalf of Verizon Florida, Inc.

16 TRACY HATCH, ESQUIRE, AT&T Communications of the  
17 Southern States, Inc., 101 North Monroe Street, Suite 700,  
18 Tallahassee, Florida 32301-1549, appearing on behalf of AT&T  
19 Communications of the Southern States, Inc.

20 FLOYD R. SELF, ESQUIRE, Messer Caparello & Self, P.A.  
21 Post Office Box 1876, Tallahassee, Florida 32302-1876,  
22 appearing on behalf of ITC^DeltaCom Communications, Inc. and  
23 AT&T.

24 SUSAN S. MASTERTON, ESQUIRE, P.O. Box 2214, Tallahassee,  
25 Florida 32316-2214, on behalf of Sprint-Florida, Incorporated.

1                   MATTHEW J. FEIL, ESQUIRE, and SCOTT A. KASSMAN, ESQUIRE,  
2 FDN Communications, 390 North Orange Avenue, Suite 2000,  
3 Orlando, Florida 32801-1640, appearing on behalf of FDN  
4 Communications.

5                   ADAM TEITZMAN, ESQUIRE, BETH KEATING, ESQUIRE, and  
6 JASON ROJAS, ESQUIRE, FPSC General Counsel's Office, 2540  
7 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
8 appearing on behalf of the Commission Staff.

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## P R O C E E D I N G S

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2 COMMISSIONER DEASON: Call the prehearing conference  
3 to order. Could I have the notice read, please.

4 MR. TEITZMAN: Pursuant to notice issued June 25th,  
5 2003, this time and place has been set for a prehearing  
6 conference in Docket Numbers 981834-TP, petition of competitive  
7 carriers for Commission action to support local competition in  
8 BellSouth Telecommunication, Inc.'s service territory; and  
9 990321-TP, petition of ACI Corp., doing business as Accelerated  
10 Connections, Inc., for generic investigation to ensure that  
11 BellSouth Telecommunications, Inc., Sprint-Florida,  
12 Incorporated, and GTE Florida Incorporated comply with the  
13 obligation to provide alternative local exchange carriers with  
14 flexible, timely, and cost-efficient physical collocation.

15 COMMISSIONER DEASON: Thank you. Take appearances.

16 MS. RONIS: Catherine Kane Ronis of Wilmer, Cutler &  
17 Pickering on behalf of Verizon.

18 MR. McCUAIG: Daniel McCuaig, Wilmer, Cutler &  
19 Pickering on behalf of Verizon.

20 MR. CHAPKIS: Richard Chapkis, in-house counsel for  
21 Verizon.

22 MR. CARVER: Philip Carver on behalf of BellSouth.

23 MS. MASTERTON: Susan Masterton on behalf of Sprint.

24 MR. HATCH: Tracy Hatch on behalf of AT&T.

25 MS. KAUFMAN: Vicki Gordon Kaufman of the McWhirter

1 Reeves law firm on behalf of Covad Communications.

2 MR. SELF: Floyd Self on behalf of ITC DeltaCom and  
3 also AT&T.

4 MR. FEIL: Matthew Feil on behalf of FDN  
5 Communications. Also appearing with me is Mr. Scott A.  
6 Kassman, K-A-S-S-M-A-N, also with FDN Communications.

7 MR. TEITZMAN: Adam Teitzman, Beth Keating, and Jason  
8 Rojas on behalf of the Commission.

9 MS. KAUFMAN: Commissioner Deason, I'm sorry, also on  
10 the telephone is Mr. Gene Watkins, in-house counsel to Covad  
11 Communications.

12 COMMISSIONER DEASON: Mr. Watkins?

13 MS. KAUFMAN: Watkins, yes, sir.

14 COMMISSIONER DEASON: Mr. Watkins, can you hear us  
15 okay?

16 MR. WATKINS: I can, thank you.

17 COMMISSIONER DEASON: Okay. Is there anyone else by  
18 telephone? Mr. Watkins is the only individual?

19 MR. CHAPKIS: This is Richard Chapkis by telephone.  
20 I tried to make my appearance earlier, I don't know if I was  
21 heard or not.

22 COMMISSIONER DEASON: Yes, I recall. Yes, I do have  
23 you listed, Mr. Chapkis.

24 MR. CHAPKIS: Thank you.

25 COMMISSIONER DEASON: Staff, do we have any -- I

1 think we have a list of preliminary matters we need to address,  
2 correct?

3 MR. TEITZMAN: Yes, that is correct, Commissioner.

4 COMMISSIONER DEASON: Please proceed.

5 MR. TEITZMAN: All right. I would like to start off  
6 by reminding the parties that there has been a hearing date  
7 change. The hearing is being rescheduled from August 12th and  
8 13th to August 11th and 12th of 2003.

9 Commissioner, there are several motions pending. I  
10 believe three of them we can deal with quite swiftly. FDN's  
11 notice of adoption of ITC DeltaCom and Covad's objections to  
12 Staff's first request for production of documents number one;  
13 and, if necessary, motion to accept late-filed general  
14 objections filed on April 4th, 2003; BellSouth's motion for  
15 extension of time to answer interrogatories filed on April  
16 14th, 2003; and AT&T's motion for extension of time to respond  
17 to Staff's first set of interrogatories filed on April 18th,  
18 2003.

19 The aforementioned motions sought leave to file  
20 responses to Staff's discovery late. The discovery has been  
21 provided and Staff did not object to these objections. Staff  
22 recommends that these motions be granted.

23 COMMISSIONER DEASON: Okay. Without objection -- and  
24 I assume there is no objection, show that those motions are  
25 granted. Other pending motions?

1 MR. TEITZMAN: Verizon Florida, Inc./Sprint-Florida,  
2 Incorporated's joint motion to strike revised rebuttal  
3 testimony of Steven E. Turner, and surrebuttal testimony of  
4 Jeffrey A. King filed on June 25th, 2003. BellSouth and AT&T  
5 have filed responses on July 2nd, 2003.

6 COMMISSIONER DEASON: Staff, as I understand it,  
7 there have -- Staff, you have withdrawn certain testimony to  
8 which there had been surrebuttal testimony filed, is that  
9 correct?

10 MR. TEITZMAN: That is correct. Staff revised the  
11 testimony of our witness, Roland Curry. AT&T's surrebuttal  
12 testimony of Jeffrey A. King rebutted that testimony.

13 COMMISSIONER DEASON: And Mr. King's testimony was  
14 sponsored by AT&T, is that correct?

15 MR. TEITZMAN: That is correct.

16 COMMISSIONER DEASON: Mr. Hatch.

17 MR. HATCH: Yes, sir, Commissioner Deason. With the  
18 withdrawal of the Staff's testimony on this issue, that  
19 obviates the necessity of my surrebuttal, and my surrebuttal  
20 will go away with it. So we are withdrawing it.

21 COMMISSIONER DEASON: Okay. So these motions as they  
22 relate to Witness King's surrebuttal testimony, that is a moot  
23 point at this time?

24 MR. HATCH: That is correct.

25 COMMISSIONER DEASON: Very well.

1 MS. RONIS: Catherine Ronis. I'm not sure that does  
2 completely do away with the issue. I am glad to hear that the  
3 testimony is being withdrawn, but it still does leave the issue  
4 that AT&T has apparently changed its position in this case. So  
5 I do wonder what Mr. King's testimony at the hearing is going  
6 to be, and what their position is going to be in subsequent  
7 briefing.

8 So I'm not sure how we handle it now. Maybe we wait  
9 until we see what happens. But just withdrawing the testimony  
10 I don't think completely addresses our concern, which is a  
11 reversal of AT&T's position and which has prejudiced us. And  
12 then some of it is still addressed in Mr. Turner's, which I am  
13 assuming will not be withdrawn.

14 COMMISSIONER DEASON: We haven't gotten to witness  
15 Turner's testimony yet.

16 Mr. Hatch, do you care to respond?

17 MR. HATCH: Just a quick response. Basically, I will  
18 let -- if we are going to get into that motion, Mr. Self was  
19 going to argue the motion, but just a quick response is that  
20 Mr. King's testimony and his position has never changed. I  
21 think the question that Ms. Ronis has has to do with Steve  
22 Turner's testimony and the corrections that we filed to that  
23 testimony, which would still remain as part of their motion to  
24 strike.

25 COMMISSIONER DEASON: Okay. Let's address the Turner



1 testimony, then. Staff, that is still an issue which needs to  
2 be determined. How do you suggest we proceed?

3 MR. KEATING: Commissioner, if you would like to  
4 receive oral argument, or Staff is prepared to make an oral  
5 recommendation at this time with or without oral argument.

6 COMMISSIONER DEASON: I will give an opportunity for  
7 the affected parties to address me on the question of the  
8 Turner testimony. Who filed the motion?

9 MS. RONIS: Verizon jointly with Sprint.

10 COMMISSIONER DEASON: Okay. Who wishes to make the  
11 argument?

12 MS. RONIS: I will. This is Catherine Ronis.

13 With the withdrawal of the King testimony, I don't  
14 believe it resolves all of our concerns, so let me proceed.  
15 First, Mr. Turner's revised surrebuttal was not provided for in  
16 the Commission's procedural rules, AT&T didn't ask for  
17 permission to file it. Contrary to AT&T's statement, it does  
18 reverse a position previously made by Mr. Turner as well as Mr.  
19 King in Mr. King's direct and rebuttal testimony.

20 Before I get into the details, let me first state  
21 what Verizon's policy is with respect to billing for DC power,  
22 because it is important to keep it in mind as I proceed to  
23 discuss the merits. Verizon quite simply bills the CLEC for  
24 the amount of power that they order. It can be what we refer  
25 to in these motions as the List 1 drain, or it can be something

1 less. So a CLEC simply tells Verizon how much power it wants  
2 and Verizon bills them for it.

3 Now, to proceed to the merits of our motion, I think  
4 it is very important to review the time line here. And I think  
5 in doing so you will see how Verizon and Sprint have been  
6 significantly prejudiced by the new testimony of Mr. Turner.  
7 You first should take a look at the direct testimony of Mr.  
8 Reese, that is Verizon's witness. In December of 2002 on Issue  
9 6 he made two points. First, that there is serious operational  
10 and safety issues involved in metering DC power. He then also  
11 argued and explained how Verizon bills for DC power, and I just  
12 explained that, and said that that is what the Commission  
13 should do in this case. So that was our proposal.

14 Mr. King, on behalf of AT&T, in his direct testimony  
15 proposed two methods of billing for DC power. He did recommend  
16 that power be metered, but he had a second proposal and that  
17 was billing for power based on the List 1 drain of the  
18 equipment. Again, keep in mind that Verizon -- if the CLEC  
19 wants to ask for the List 1 drain, Verizon will bill them for  
20 it. If it wants to ask for something else, it can. So Verizon  
21 does one better, I think, than even Mr. King was proposing in  
22 his second method.

23 But what is really important is he went on to say  
24 that the List 1 drain is, "A suitable proxy for actual usage  
25 when metering is not feasible." So then the parties filed

1 rebuttal testimony in January. And Mr. Reese again on behalf  
2 of Verizon basically said, well, we have no issue in this  
3 respect with AT&T, because Verizon does allow the CLECs to  
4 order List 1 drain and will bill the CLECs for that.

5           And Mr. King in his rebuttal, first of all, didn't  
6 respond to Verizon's direct testimony at all, and did not  
7 address the issue of whether metering was technically feasible.  
8 In fact, he spent all of his time addressing the BellSouth  
9 proposal, and Verizon does not bill in the same manner that  
10 BellSouth does.

11           But most importantly, he then proceeded to discuss  
12 his second methodology, again. And said, and I am quoting,  
13 "AT&T would propose that the monthly recurring power charges  
14 should be based on List 1 drain requirements of the installed  
15 equipment." And that is on Line 6 of his rebuttal. But then  
16 on Line 15 he then says something that is very important to  
17 this whole issue. He says, and again I am quoting, "I would  
18 note that this is the methodology used by Sprint-Florida as  
19 well as Verizon-Florida." So he was just really complaining  
20 about the BellSouth testimony in his rebuttal testimony, and  
21 that is Mr. King.

22           So in January, Verizon believed this issue was  
23 resolved as it relates to Verizon. We didn't conduct further  
24 discovery, we didn't develop testimony, we thought the issue  
25 had been resolved. Mr. Turner in his April testimony on the

1 cost issues, again stated that DC power should be billed  
2 according to the List 1 drain. So Verizon once again assumed  
3 we don't have any dispute among AT&T, Sprint, and Verizon on  
4 Issue 6.

5 Well, something happened between April and June.  
6 AT&T, in our opinion, believed that it wanted to change its  
7 position. It now says that List 1 drain is not a suitable  
8 proxy, and Mr. Turner has revised his testimony to take out the  
9 words List 1 drain and to insert the words actual usage. He  
10 also adds a paragraph on the issue of metering. Again, without  
11 addressing Mr. King's testimony, I guess, because it has been  
12 withdrawn, but Mr. King did have in his June testimony a very  
13 specific proposal on how the List 1 drain should be withdrawn.  
14 So I'm not sure if AT&T is still going to advance that at the  
15 hearing or not. I just don't know.

16 So Mr. Turner's revised testimony clearly is a  
17 reversal of Mr. King's position where he said Verizon's  
18 methodology of billing for List 1 drain is acceptable, or at  
19 least consistent with his proposal. And now they have teed up  
20 a whole issue that is very significant and very complex. We  
21 are only a few weeks now to go to the hearings. Verizon again  
22 thought the issue had been resolved among the parties, so we  
23 have been significantly prejudiced by AT&T's actions.

24 Now, if I may respond just briefly to AT&T's response  
25 to our motion. Frankly, it is quite astonishing, and I think

1 demonstrates why this Commission needs to send AT&T a strong  
2 message that it can't change its position right before the  
3 hearings. What AT&T has said is it could have done this on the  
4 stand, and that by providing the parties advanced notice it was  
5 doing us a favor, I guess, is their testimony.

6 But at least in any hearing I have been in no party  
7 corrects its testimony by completely reversing its position.  
8 And, again, the reversal is saying List 1 drain is a suitable  
9 proxy, and then saying it is not a suitable proxy and  
10 recommending that it be adjusted downward by up to 50 percent.

11 So the Commission should not let a party change its  
12 position before the hearing and certainly shouldn't let them do  
13 it at the hearing because it just makes a mockery of this whole  
14 process. We have had nine months of rounds of testimony and  
15 discovery. And, you know, AT&T believes it can on the stand  
16 just come up with a new position, but it would deprive Verizon  
17 and others of the ability to probe that and conduct discovery.  
18 And AT&T is also just wrong that Verizon can handle this all on  
19 cross. Again, we need discovery and the opportunity to develop  
20 our own testimony and develop our own experts on quite a  
21 significant issue in this case.

22 AT&T's third point is that the testimony should be  
23 allowed because it is in the interest of the consumers of  
24 Florida, that it is important that we develop an adequate  
25 record, and that the Commission's purpose here is to engage in

1 fact finding. But, again, I think it is AT&T that has thwarted  
2 the fact-finding process here, and it apparently doesn't want  
3 an adequate record on the issue because it has sprung this on  
4 Sprint and Verizon with just a month and a half or so to go  
5 before the hearing.

6           The bottom line is that AT&T believes it can do  
7 whatever it wants whenever it wants. That is really the import  
8 of their position here, because it is in the interest of the  
9 consumers that information be presented to the Commission. But  
10 we submit that that can't be the case, that they have thwarted  
11 the fact-finding process here, and that the Commission should  
12 send a strong message that they can't get away with it. They  
13 violated the procedural orders, they have reversed their  
14 position at the last minute, and it shouldn't be acceptable.  
15 So, therefore, Verizon asks that the testimony be stricken.

16           COMMISSIONER DEASON: Mr. Hatch and Mr. Self.

17           MR. SELF: Thank you, Commissioner Deason. Sitting  
18 and listening to the argument, I think, demonstrates exactly  
19 why the motion should fail. You heard a very extensive  
20 discussion about what the evidence said, what they think it  
21 says, or doesn't say, or how it may or may not conflict with  
22 other testimony that has already been filed. That is exactly  
23 the purpose for the hearing and for Verizon and Sprint and any  
24 of the parties to pursue in discovery.

25           When they filed this request, there was still time

1 left on the calendar for this case to pursue discovery. They  
2 never availed themselves of that opportunity to pursue any of  
3 that discovery. And as you heard in the argument itself, the  
4 problems that they think they have with the testimony go to the  
5 weight of the evidence, go to the internal consistency of the  
6 evidence, and those are matters that you probe through  
7 discovery and through cross-examination at the hearing itself.  
8 When they --

9 COMMISSIONER DEASON: Mr. Self, let me ask you, did  
10 your position change?

11 MR. SELF: No, sir.

12 COMMISSIONER DEASON: It's your position that your  
13 position did not change?

14 MR. SELF: It is our position that the position taken  
15 in the testimony did not change.

16 COMMISSIONER DEASON: And that the testimony of your  
17 various witnesses are consistent?

18 MR. SELF: Yes, sir.

19 COMMISSIONER DEASON: And remain so now?

20 MR. SELF: Yes, sir.

21 COMMISSIONER DEASON: Okay. Please proceed.

22 MR. SELF: And that is exactly the kinds of questions  
23 that they can pursue through cross-examination. The new  
24 testimony, the surprise testimony that they claim that is at  
25 issue right now is three sentences. And, simply, it was added

1 because based upon some of the other things that were going on  
2 in the ceas, it was clear to us that there may be some  
3 confusion about what the position of AT&T was in the case. So  
4 we simply added the three sentences. There is a few other  
5 changes, but those are just for consistency standpoint.

6 But the testimony of Mr. Turner, which is really the  
7 only thing that is left now in terms of their motion, is indeed  
8 consistent with that of Mr. King. And if it is not, or if they  
9 believe it is not, then that is what they should be probing  
10 through discovery and cross-examination. I forget -- at the  
11 time that they filed the motion, it had been several weeks  
12 since the testimony had been filed. They could have pursued  
13 discovery at any point in that process. And yet they have  
14 chosen to pursue this through a motion to strike. That is  
15 their choice. But if they really had the kinds of questions  
16 that they were concerned with, they had the time to file the  
17 discovery. This is not a surprise.

18 Moreover, as you well know, and I believe all the  
19 parties know from proceedings here at the Commission in the  
20 past, you find yourselves in situations lots of time where  
21 positions need to get clarified as they go along. If, in fact,  
22 a party's prefiled testimony is totally and completely cast in  
23 concrete, can never be changed, modified, clarified, or  
24 corrected up to the time of the hearing, then there is no  
25 purpose in filing prefiled testimony, we ought to just make it



1 all live.

2           The process of discovery, the process leading up to  
3 the hearing creates situations where parties recognize that  
4 perhaps their testimony may require clarification, it may be  
5 unclear, or indeed in some situations they may actually need to  
6 change the testimony. I have been to lots of hearings in this  
7 Commission where live on the stand at the hearing when they are  
8 in the process of adopting testimony the witness makes changes  
9 to the testimony, some of which are substantive. Some of which  
10 may have even constituted a change in position. And the  
11 Commission has accepted those, and has allowed the parties to  
12 conduct cross-examination to probe the basis for those changes  
13 as well as the nature of those changes.

14           We tried to do the parties a favor by putting them on  
15 notice in writing, in advance, within the discovery window,  
16 leaving them time to pursue additional discovery with us  
17 regarding this changed or new testimony, and they haven't  
18 availed themselves of that. That is a decision they made and  
19 they should be able to live with it.

20           Otherwise, I believe that everything that we have  
21 stated in our response more than adequately goes to the legal  
22 basis of their motion for which there is none. This is purely  
23 a matter of the weight of the evidence and matters that should  
24 be probed through discovery or cross-examination, which they  
25 had at the time ample opportunity for discovery. I am not

1 certain if the discovery window has closed yet. There still  
2 are depositions that probably will be conducted in the matter,  
3 which they could also have noticed us for depositions, but have  
4 not done so yet.

5 The other issue is a lot of this goes to Turner's  
6 testimony, which is in Phase II, which is the October hearing,  
7 which is many, many months from now, and for which there is  
8 still more than adequate time to pursue that through discovery  
9 in the interim.

10 COMMISSIONER DEASON: Thank you.

11 MR. SELF: Thank you.

12 COMMISSIONER DEASON: Staff, I will reserve ruling,  
13 but I can advise the parties an order will be issued shortly.

14 MS. RONIS: May I ask just one clarifying question on  
15 the last point made by counsel?

16 COMMISSIONER DEASON: Sure.

17 MS. RONIS: It is true Mr. Turner will not be  
18 appearing until the November hearings, but is it out of place  
19 for Verizon to ask what Mr. King's position is going to be on  
20 the stand next month on this issue, whether it is going to be  
21 his position from his direct and rebuttal, or whether it is  
22 going to be more in line -- because I do think it is an issue  
23 that is teed up next month, so I am very confused over what we  
24 are supposed to be doing next month on this issue.

25 MR. HATCH: Commissioner Deason, at this point I can

1 tell you it is AT&T's intent to go forward with Mr. King's  
2 position as it is in his direct and rebuttal testimony. Now, I  
3 think what they are talking about his rebuttal is they mean his  
4 surrebuttal, which has now been removed from the case. I'm not  
5 sure that that is still an issue. Now, there is some  
6 information in there that he advocates that I expect we will  
7 still be advocating as part of the hearing. But, of course, we  
8 will have to build an adequate record for that advocacy when we  
9 get down to the end of the case.

10 But his direct testimony is very clear about his  
11 advocacy of power being metered, and only when it is not  
12 capable of being metered, then and only then would you use a  
13 List 1 type surrogate. And we would also, as I would expect at  
14 the end of this case, advocate that there be some adjustments  
15 to that List 1 surrogate.

16 MS. RONIS: That is the very thing we are disputing,  
17 so it sounds like he is confirming that Mr. King is going to  
18 say pretty much what his surrebuttal testimony is saying.

19 COMMISSIONER DEASON: If you want to discuss this  
20 further you can do so with counsel outside of the context of  
21 this prehearing conference. I have heard enough. Thank you.

22 Okay. Other pending matters?

23 MR. KEATING: There is Verizon's motion to compel  
24 discovery that was filed on June 27th. AT&T responded on July  
25 7th.

1           COMMISSIONER DEASON: Does anyone have any burning  
2 desire to offer any arguments on this motion?

3           MR. McCUAIG: This is Dan McCuaig representing  
4 Verizon. If you want to here them, I am happy to give them to  
5 you. But if you don't, then I don't need to.

6           COMMISSIONER DEASON: You're a wise man. I really  
7 don't care to. Staff, I think, is in the process or has  
8 completed a review of this, and I will be conferring with them.  
9 And it is our intention to be issuing an order shortly.  
10 However, I don't want to deny anyone an opportunity to present  
11 argument to me directly if you feel so compelled. I understand  
12 you do not feel so compelled.

13           MR. McCUAIG: That's right, unless AT&T has their  
14 say.

15           COMMISSIONER DEASON: I understand. Mr. Hatch.

16           MR. HATCH: With Verizon having graciously given up  
17 their opportunity, then I must equally graciously give up my  
18 own.

19           COMMISSIONER DEASON: Very well. An order will be  
20 issued shortly. Other preliminary matters?

21           MR. KEATING: Staff just wanted to note there are a  
22 number of pending confidentiality requests, but separate orders  
23 have been drafted to address those.

24           COMMISSIONER DEASON: And they will be issued  
25 shortly, is that correct?

1 MR. KEATING: Yes, sir.

2 COMMISSIONER DEASON: Okay.

3 MR. KEATING: Also, we had received an indication  
4 from Comcast that they intend to withdraw, but to date we have  
5 not received any formal documentation of that.

6 COMMISSIONER DEASON: You received this by just  
7 verbal communication with Comcast, is that correct?

8 MR. KEATING: Yes, sir.

9 COMMISSIONER DEASON: Okay. How do you suggest that  
10 we -- should we acknowledge that in the prehearing order which  
11 gets issued in this case, or how should we -- or should we  
12 address it at all?

13 MR. KEATING: I would probably not address it at all  
14 and just let it lie, because by virtue of not appearing for the  
15 prehearing conference they waive their position on any of the  
16 issues anyway. But we just wanted to bring it up just because  
17 they had contacted us about it.

18 COMMISSIONER DEASON: Very well. Do any of the  
19 parties have any information or feelings on that? Very well.  
20 I do have a letter from Michael Gross on behalf of the FCTA  
21 indicating that there is a request to be excused from the  
22 hearing.

23 Staff, are you aware of this?

24 MR. KEATING: Yes.

25 COMMISSIONER DEASON: Since this is a letter in

1 writing, should we acknowledge this in the prehearing order?

2 MR. KEATING: It is in there.

3 COMMISSIONER DEASON: Okay. Very well.

4 MR. KEATING: The last thing that Staff has is we  
5 just wanted to make a note about the stipulated exhibit package  
6 that Staff usually puts together prior to these hearings. As  
7 most of you all are aware, we usually take the discovery that  
8 staff has received in the case and try to get stipulated  
9 exhibits into the record. Because this hearing is split into  
10 two parts, and our discovery is not divided necessarily along  
11 the issue and subject matter lines, our intent is that if we  
12 can get agreement from the parties to allow our exhibits in as  
13 stipulated exhibits, we will likely enter them not only at the  
14 August hearing, but also again at the November hearing just to  
15 keep us from having to jump back between two transcripts.

16 COMMISSIONER DEASON: Any questions or objections to  
17 Staff's procedure?

18 MR. HATCH: No objections from AT&T, Commissioner.

19 MR. CARVER: No objection.

20 MS. RONIS: No objection.

21 MS. MASTERTON: I guess I have a question. I mean,  
22 to the extent that a discovery response might be related to the  
23 testimony that was presented in the second part of the hearing,  
24 I mean, does that then bring it in? As I understand the  
25 schedule, the briefs and the order and all on the first part is

1 going to come out before the second part. I mean, how is that  
2 going to --

3 MR. KEATING: We don't intend to actually make use of  
4 anything that pertains to the November hearing issues in  
5 Staff's recommendation and analysis of the issues that are  
6 being addressed in August. We are just trying to eliminate the  
7 need to go through every single interrogatory and figure out  
8 whether Part A of the interrogatory goes to the October -- I  
9 mean, the August issues and whether Part B might go to the  
10 November issues.

11 MS. MASTERTON: Okay. And with that understanding,  
12 then, Sprint doesn't have a problem with it.

13 COMMISSIONER DEASON: Very well. Thank you.

14 Staff, do you have any other preliminary matters?

15 MR. KEATING: No, sir, none that I am aware of.

16 COMMISSIONER DEASON: Okay. Let me open it up to the  
17 parties. Any preliminary matters? Go down the row.

18 Ms. Masterton, any preliminary matters?

19 MS. MASTERTON: I did have a question. Is there  
20 going to be -- I don't know where we are. This is preliminary.  
21 I will wait, I'm sorry.

22 COMMISSIONER DEASON: Mr. Hatch, Ms. Kaufman?

23 MS. KAUFMAN: No, sir.

24 MR. HATCH: No, sir.

25 COMMISSIONER DEASON: Okay. Then we can proceed

1 through the draft prehearing order. But before we do so, it is  
2 my understanding that Staff has provided a document to the  
3 parties concerning the potential for stipulations on some of  
4 the issues.

5 Staff, have you had an opportunity to discuss that at  
6 all with the parties prior to now?

7 MR. TEITZMAN: I don't believe there have been any  
8 discussions as of yet. It was provided to the parties on  
9 Friday, and I don't believe we have discussed it with them as  
10 of yet.

11 COMMISSIONER DEASON: I take it the parties have  
12 received, is this correct? Is there anyone that has not  
13 received it? Okay. I take the silence to mean that everyone  
14 has it. Has everyone had ample opportunity to review this?

15 MR. HATCH: No, Commissioner Deason. The problem is  
16 that the folks that I need to talk to have not had a chance to  
17 review it and get their input back to me as to whether it is  
18 going to work or not work, or whether we need any changes or  
19 can't agree at all. I just don't know at this point. I think  
20 that there probably is a substantial base in order to agree to  
21 a lot of these issues. I'm hopeful that we can work some of  
22 these certainly. But at this point I can't commit to anything.  
23 I just haven't had enough time.

24 MR. CHAPKIS: Commissioner Deason, Covad has the same  
25 problem. We haven't had time to fully evaluate this, but my



1 preliminary review of it, it looks like we could agree to a  
2 great many of these things.

3 COMMISSIONER DEASON: Well, that is encouraging.

4 Mr. Carver, you have been very quiet. Do you have  
5 anything to add?

6 MR. CARVER: I'm in a similar situation in that some  
7 of my clients have had an opportunity to look at it, some of  
8 them haven't. So as I sit here today I can't agree to all of  
9 it, but I think in general it looks reasonable. I do have  
10 questions about a couple of things in the stipulation, so I  
11 would welcome the opportunity to speak with Staff and the  
12 parties about some of these things that we would like some  
13 clarification on.

14 COMMISSIONER DEASON: Okay. Well, what I propose to  
15 do then is as we proceed through the draft prehearing order and  
16 we look at the section of specific issues, I will make a  
17 notation as to those where Staff has suggested language or  
18 proposed a potential stipulation. I want the parties and Staff  
19 to have ample time to communicate. And to the extent that  
20 there is common ground it needs to be acknowledged. And if it  
21 will facilitate the hearing, it certainly will facilitate my  
22 fellow Commissioners review of this matter when they are  
23 preparing for hearing to know what areas there may be potential  
24 agreement. And I would very much like to have that  
25 incorporated into the prehearing order before it is distributed

1 to Commissioners.

2           So I guess I need a little guidance as to how we  
3 proceed to allow that time. I understand there needs to be  
4 time to digest this and to discuss it with clients, but at the  
5 same time if this is to be a fruitful endeavor it needs to be  
6 done in a time frame which allows it to be included --  
7 organized and included in the prehearing order. So if anyone  
8 has any thoughts or comments about that, I would welcome that.

9           MR. CARVER: If we could discuss questions and  
10 clarifications today, I think BellSouth could provide a  
11 definitive answer by the end of the week.

12           MR. CHAPKIS: That holds true for Covad, as well.

13           MS. MASTERTON: That is true for Sprint, as well.

14           MR. HATCH: I would expect so, but it is just a  
15 matter of getting to the right clients and getting their input  
16 on the thing. I would hope by the end of the week, but I can't  
17 guarantee it.

18           MS. RONIS: And Verizon has reviewed them and  
19 generally we are fine. In fact, we think we are there. So  
20 certainly by the end of week we can confirm that.

21           COMMISSIONER DEASON: Okay. I'm sure AT&T, if all  
22 the other telephone companies said they can do it by the end of  
23 week, I'm sure AT&T can.

24           MR. HATCH: I can only hope, Commissioner Deason.

25           COMMISSIONER DEASON: Okay. Let's then proceed

1 through the draft prehearing order. As is my custom, I will  
2 proceed section-by-section. Moving rapidly, unless there are  
3 errors, or questions, or clarifications, or changes that need  
4 to be made. And with that we will proceed with Section I,  
5 conduct of proceedings.

6 MS. KAUFMAN: Commissioner Deason?

7 COMMISSIONER DEASON: Yes.

8 MS. KAUFMAN: Down here.

9 COMMISSIONER DEASON: Yes, Ms. Kaufman.

10 MS. KAUFMAN: We have a correction on the appearance  
11 section.

12 COMMISSIONER DEASON: Sure.

13 MS. KAUFMAN: The very first page. Maybe that was a  
14 preliminary matter. At any rate, myself and Mr. Watkins are  
15 representing Covad Communications, and so we should be shown  
16 separately.

17 COMMISSIONER DEASON: Sure. We can make that change.  
18 That should be no problem. Staff acknowledges that? Okay.

19 Back to Section I, conduct of proceedings. Section  
20 II, case background. Section III, confidential information.  
21 Section IV, post-hearing procedures. Section V, prefiled  
22 testimony and exhibits. Section --

23 MR. HATCH: There would be a correction to remove  
24 Jeff King's surrebuttal testimony. I assume that is going to  
25 get picked up, but I thought I would mention it while we were

1 going through.

2 COMMISSIONER DEASON: Okay. We will make that  
3 notation. That will be deleted.

4 Section VI, order of witnesses. I'm sorry.

5 MS. MASTERTON: I'm sorry, go ahead.

6 COMMISSIONER DEASON: Yes. We are on order of  
7 witnesses now.

8 MS. MASTERTON: Yes.

9 COMMISSIONER DEASON: Any changes to the order of  
10 witnesses?

11 MR. CARVER: I just had a suggestion, not a change so  
12 much. But I was going to suggest that the direct and rebuttal  
13 testimony be presented at one time so that the witnesses can  
14 just take the stand once.

15 COMMISSIONER DEASON: There has been a suggestion  
16 that we take direct and rebuttal testimony -- I assume you  
17 include -- well, we no longer have surrebuttal testimony. Are  
18 there any thoughts or objections to that process?

19 Staff is in agreement?

20 MR. TEITZMAN: Staff is okay with that.

21 COMMISSIONER DEASON: Any party have an objection to  
22 taking direct and rebuttal together?

23 MR. HATCH: No.

24 MS. MASTERTON: No, Commissioner.

25 COMMISSIONER DEASON: Very well. We will follow that

1 procedure. And, Staff, you may wish to make that notation in  
2 the order.

3 MR. TEITZMAN: We shall do so.

4 COMMISSIONER DEASON: And I would take it then that  
5 the order of witnesses is satisfactory. I hear no objections  
6 to the order as laid out in the draft prehearing order. Very  
7 well. Section VII, basic positions. Changes or corrections?

8 MS. KAUFMAN: Commissioner, on that section, and this  
9 is true for each of the individual issues, as well, Covad's  
10 position isn't listed, but I think that all the Staff needs to  
11 do is do AT&T/Covad, because we filed a joint prehearing  
12 statement.

13 MR. HATCH: That is correct, Commissioner Deason.

14 COMMISSIONER DEASON: Very well. Staff, you can just  
15 make that change. Okay. Issue 1A. Issue 1B I show as an  
16 issue that there is the possibility of a stipulation, or at  
17 least some agreement, and that the parties will endeavor to  
18 communicate with Staff concerning that.

19 Staff, let me ask a question at this point. Would it  
20 be beneficial to be able to discuss this with the parties  
21 jointly, or do you intend to have each party discuss their  
22 particular position to you individually? Would a conference  
23 call be advantageous, or how do you -- what process do you  
24 intend to follow or suggest?

25 MR. TEITZMAN: Staff is actually prepared to meet

1 today after this prehearing conference concludes to start  
2 discussing the matter if the parties are available.

3 COMMISSIONER DEASON: Very well. Are parties  
4 available? You should be available, because, you know, you  
5 don't know how long this hearing conference is going to last.  
6 In fact, I may recess the prehearing conference and reconvene  
7 at 5:00 o'clock if some people need time. But, anyway, I would  
8 suggest that you make yourselves available for this to discuss  
9 it with Staff this afternoon. Is that satisfactory?  
10 Seriously, is it satisfactory?

11 MR. CARVER: Yes, it is.

12 MS. RONIS: Yes.

13 COMMISSIONER DEASON: Very well. Okay. Issue 1B.  
14 Issue 1C, likewise can be discussed.

15 MR. FEIL: Commissioner, if I may. This is Matt Feil  
16 with FDN. On all of the FDN positions for 1A throughout where  
17 it says, "Agree with AT&T Witness King's prefiled as it," the  
18 word "it" probably should be deleted.

19 COMMISSIONER DEASON: I'm sorry, could you explain  
20 again what should be deleted?

21 MR. FEIL: Beginning with Issue 1A on Page 12, FDN's  
22 position, just the word "it" should be deleted.

23 COMMISSIONER DEASON: Okay.

24 MR. FEIL: And on all positions like it.

25 COMMISSIONER DEASON: Very well. Staff, do you

1 understand that change?

2 MR. TEITZMAN: Yes.

3 COMMISSIONER DEASON: Okay. Issue 2A. That will be  
4 further discussed. Any of these matters that are going to be  
5 further discussed, if you need to make changes or corrections  
6 to your position, please indicate as we proceed. Issue 2B also  
7 will be discussed. Issue 2C likewise will be discussed. Issue  
8 2D, that issue also will be discussed. Issue 3. Issue 4.  
9 Issue 5. Issue 6A. 6B. Issue 6C, this issue as well will be  
10 discussed. Issue 7. Issue 8. And that is the last issue for  
11 this phase of the hearing. Is that correct, Staff?

12 MR. TEITZMAN: That is correct, Commissioner.

13 COMMISSIONER DEASON: Do parties agree that this  
14 constitutes the issues for this phase of the hearing? Yes.

15 MS. RONIS: Commissioner, I do have a question, and I  
16 really hope I don't try your patience. Back on Issue 6.

17 COMMISSIONER DEASON: Sure.

18 MS. RONIS: I am just looking for guidance. In  
19 particular at 6B under AT&T's position, again, the specific  
20 proposal that the List 1 drain be adjusted downward was in Mr.  
21 King's testimony for the first time in surrebuttal. That has  
22 now been withdrawn. Is it appropriate for them to keep then  
23 this proposal in this prehearing statement?

24 COMMISSIONER DEASON: Is there a response, Mr. Hatch?

25 MR. HATCH: Yes, sir. That is our position going in,

1 and that is our position. Now, whether we can build an  
2 adequate record for it at the end of the day when the dust  
3 settles and the record is compiled, can we support that  
4 position, can the Commission then adopt that based on the  
5 record, that is a question for another day.

6 But as to what our position is, there is no  
7 limitations, or should not be any limitations on what we  
8 propose going into as what we think the right solution ought to  
9 be.

10 COMMISSIONER DEASON: Very well. When I discuss the  
11 motion and the response with Staff and when the order is  
12 issued, depending upon my ruling, I will direct Staff either to  
13 make a change to AT&T's position or to leave it as is.

14 MS. RONIS: Thank you, Commissioner.

15 COMMISSIONER DEASON: Okay. Mr. Hatch, I understand  
16 your position, that your position is your position regardless  
17 and that you have the right to do that.

18 MR. HATCH: Unsupportable or not.

19 COMMISSIONER DEASON: Based upon my discussions with  
20 Staff, though, I reserve the ability to make a change to that.  
21 And what I will do is for purposes of the prehearing order, if  
22 I choose to make a change, I will leave the language in and  
23 there will just be a notation concerning the ruling on the  
24 motion to strike and what the ruling was and how that -- so  
25 that the reader of the prehearing order, the Commissioners and



1 anyone else, will be up to speed and will be prepared for the  
2 hearing when the matter comes up.

3 MR. HATCH: Very well.

4 COMMISSIONER DEASON: Okay. Section IX, exhibit  
5 list. Section X. We hope to have a very long list of  
6 stipulations when this order is issued, but we have none at  
7 this point. Section XI. I think we -- did we address all  
8 pending motions or are there other matters we need to address  
9 within Section XI? There are no others?

10 MR. TEITZMAN: I believe we have addressed all the  
11 matters listed in that section.

12 COMMISSIONER DEASON: Very well. And we will be  
13 addressing confidentiality matters through orders shortly.  
14 That is also correct?

15 MR. TEITZMAN: That is correct.

16 COMMISSIONER DEASON: Section XIII. Section XIV.  
17 Any rulings which need to be included will be, and if there are  
18 rulings made by other orders, they will be made in that manner.  
19 I'm not exactly sure how we are going to proceed at this point.  
20 I know that there are a number of things we want to have issued  
21 quickly, so those probably will be by separate order. Staff is  
22 in agreement with that?

23 MR. TEITZMAN: That is correct.

24 MR. CARVER: Could I propose something on Number XIV,  
25 Section XIV?

1 COMMISSIONER DEASON: Surely.

2 MR. CARVER: There is a statement about opening  
3 statements, if any, shall not exceed 10 minutes per party. I  
4 understand we have a short time frame for this hearing and we  
5 are trying to move it along. Particularly if we stipulate a  
6 lot of issues, I don't see the issues that remain as being that  
7 complex, and I don't really believe there is a need for opening  
8 statements.

9 What we get into a lot of times is a situation where  
10 some parties make some other parties feel compelled to make  
11 them. So I just want to throw out the option as maybe all the  
12 parties waiving their opening statements in order to move  
13 things along. And BellSouth would certainly be willing to do  
14 so if other parties would.

15 COMMISSIONER DEASON: Is there anyone that feels  
16 compelled to make an opening statement? I see there is no one  
17 indicating a strong desire to make an opening statement. Then  
18 we will include in the ruling that there will not be opening  
19 statements, so that no one comes unprepared and feels like they  
20 have somehow been misled. So there will be no opening  
21 statements.

22 MR. CARVER: Thank you.

23 COMMISSIONER DEASON: Okay. I think that concludes  
24 the draft prehearing order. I want to give ample time for  
25 there to be fruitful discussions this afternoon, so I will ask

1 is there anything else to come before the prehearing officer at  
2 this time. Hearing none, I would encourage you to take full  
3 advantage of the opportunity to discuss these matters with  
4 Staff. And to the extent that there can be agreement, I think  
5 it would be certainly in your interest as well as the  
6 Commission's interest to have this matter proceed efficiently  
7 and expeditiously and with a minimization of costs for everyone  
8 involved.

9           Having said that, thank you all. This prehearing  
10 conference is adjourned.

11           (The prehearing concluded at 2:18 p.m.)

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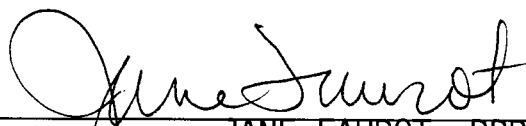
COUNTY OF LEON     )

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 17th day of July, 2003.




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