

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: )  
)  
Implementation of requirements arising from Federal ) Docket No. 030852-TP  
Communications Commission triennial UNE Review: )  
Location-Specific Review for DS1, DS3, and Dark Fiber )  
Loops, and Route-Specific Review for DS1, DS3, and ) Filed: September 24, 2003  
Dark Fiber Transport )  
)

**JOINT EMERGENCY MOTION TO AMEND**  
**PROCEDURAL SCHEDULE**

On September 22, 2003, this Commission issued Order No. PSC-03-1055-PCO-TP (“Order”) in the above-listed docket, which, in relevant part, included Controlling Dates to govern the key activities in the proceeding (p. 13). BellSouth Telecommunications, Inc. (“BellSouth”) and the Florida Competitive Carrier’s Association (“FCCA”) respectfully request that the Commission modify and amend the Order on an expedited basis in order to eliminate the current issues filing date of September 29, 2003 as well as to amend other controlling dates. The following parties have been advised of this motion: Florida Cable Telecommunications, Inc. (“FCTA”), Covad Communications Company (“Covad”), Verizon Florida, Inc. (“Verizon”) and Sprint-Florida, Incorporated (“Sprint”). FCTA, Covad, Sprint and Verizon do not object to this motion; however, Verizon will be filing a separate motion.

BellSouth and the FCCA have been engaged in, and continue to discuss mutually agreeable procedures for this docket in a manner that will avoid scheduling conflicts, that will streamline the discovery process, that will allow the parties to conduct joint discovery, that will limit and narrowly define the issues for hearing, and that will allow a coordinated approach through the Southeastern region. For example, the parties are working to establish a region-wide

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discovery process and are also working together on a procedure to obtain discovery from entities that are not parties to this case in order to bring all relevant data into the record. The parties intend to prepare joint discovery to non-parties in the hopes of eliminating protracted discovery disputes. After reviewing discovery responses, the parties will have an opportunity to refine their respective positions in this docket. This process is likely to result in new, different, or changed issues and positions, which issues may or may not need to be included as identified issues. However, the Order envisions establishing issues very soon, which may frustrate, rather than facilitate, the parties' ability to conduct a focused and streamlined proceedings before this Commission. The parties' concerns and requested amendments to the Order are as follows:

1. Issues Identification Conference – October 6, 2003; issues to be filed September 29, 2003.

Parties' Concern and Proposal – *Modify to Procedural Conference on October 6, 2003; eliminate requirement to file issues on September 29, 2003.* Filing issues and conducting an issue identification conference at this early juncture of this proceeding would be neither productive nor useful. Specifically, the parties have not yet begun to identify all the issues raised in the lengthy *Triennial Review Order* (“TRO”). This proceeding, which is designed to examine specific triggers applicable to loops and transport, will be particularly fact intensive and is expected to require more discovery and fact-finding than the parallel proceeding, Docket No. 030851-TP. Only after receiving and reviewing discovery will the parties have a clear sense of what specific triggers apply. For example, in considering impairment, the TRO sets forth a competitive wholesale facilities trigger for DS1 loops. Likewise, in considering impairment for DS3 loops, the TRO includes two triggers: a self-provisioning trigger (which also applies to dark

fiber loops) and a competitive wholesale facilities trigger. Potential deployment is also relevant when examining impairment for DS3 and dark fiber loops.

With respect to transport, there are also fact specific triggers; including the self-provisioning trigger (which applies to DS3 and dark fiber transport), the competitive wholesale facilities trigger (which applies to DS1, DS3, and dark fiber transport) and a consideration of potential deployment (which applies to DS3 and dark fiber transport). Until the parties have had an opportunity to discover facts applicable to DS1, DS3, and dark fiber loops and transport, it will not be certain what type of relief will be requested. Thus, most of the controlling dates in this proceeding require modification to allow the parties to engage in the necessary fact finding before presenting their respective positions and defenses to this Commission.

The parties propose that the Issues Identification conference scheduled for October 6, 2003 be modified so that a procedural conference takes place on that date instead; during the procedural conference the parties can discuss procedural matters including, but not limited to, how the parties anticipate conducting region-wide discovery, and how service will be accomplished, and what types of confidential agreements/orders will be required. Reaching closure on these procedural issues will help ensure the smooth handling of this complex proceeding and will be more productive than debating the merits of issues that the parties may not have formalized a policy or position on.

2. Direct Testimony – November 7, 2003

Parties' Concern and Proposal – *Modify to January 23, 2003*. The parties request that the schedule be modified so that direct testimony and exhibits are filed on January 23, 2004, which will allow sufficient time to obtain discovery responses and focus testimony with the benefit of the discovery responses. Requiring direct testimony to be filed at an earlier time will

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result in premature testimony that would otherwise likely require amendments, which could result in more, rather than less, pleadings filed with the Commission.

3. Rebuttal Testimony – December 29, 2003

Parties' Concern and Proposal – *Modify to February 13, 2004.* The parties request that the schedule require rebuttal testimony and exhibits to be filed on February 13, 2004 for the same reasons that the direct testimony date be changed.

4. Prehearing Statements/Conference/Order – January 2, 12, 16, 2004

Parties' Concern and Proposal – All of these proposed dates precede the parties' requested dates for filing rebuttal testimony. The parties request that these events take place after the filing of rebuttal testimony.

5. Hearing – January 28-30, 2004

Parties' Concern and Proposal – The parties request that the hearing in this docket take place *after* the hearing in Docket No. 030851-TP, and specifically request that hearings be set for March 3 - 5, 2004. In the event the parties' request hearing dates conflict with the Commission's calendar, the parties respectfully request the hearing be set after March 3, 2004, and that the parties, the Commission, and the Commission staff mutually agree upon a hearing date.

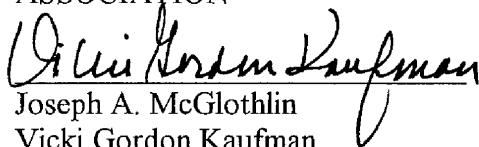
6. Briefs – March 5, 2004

Parties' Concern and Proposal – The parties request that the briefing schedule consist of direct briefs filed on March 30, 2004 and reply briefs filed on April 16, 2004. Due to the complex issues involved, which issues may have significant business impacts on the parties and to ensure that all parties have an opportunity to fully present their arguments, the parties are requesting two rounds of briefs, to be filed simultaneously.

The parties recognize the enormous task facing this Commission and remain committed to develop procedures that alleviate, streamline and focus these proceedings. In order to accomplish this, the parties have been diligently working to mutually agree on as many processes, procedures, and filing dates as possible. While the parties appreciate this Commission's prompt action to establish a framework for this proceeding, the controlling dates ordered in this docket would seriously jeopardize the ongoing work of the parties and would prejudice the parties' ability to present their best cases to this Commission. When considering that the federal government required over six months to issue a written order that is hundreds of pages long, it is only fitting to allow the parties charged with implementing the TRO with the additional time requested in this joint motion.

Respectfully submitted this 24th day of September, 2003.

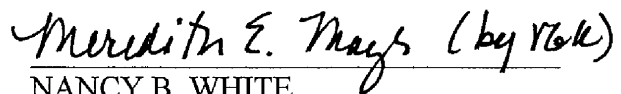
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Joint Emergency Motion to Amend Procedural Schedule has been provided by (\*) hand delivery or U.S. Mail this 24th day of September 2003, to the following:

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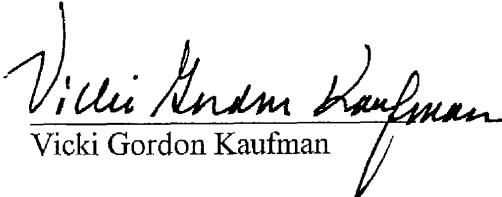
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