

ORIGINAL

Legal Department

Nancy B. White  
General Counsel - Florida

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5558

October 7, 2003

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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 No. 030851-TP: Implementation of requirements arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers**

**Re: Docket No. 030852-TP: Implementation of requirements arising from Federal Communications Commission's Triennial UNE Review: Local-Specific Review for DS1, DS3, and Dark Fiber Transport**

Dear Ms. Bayó:

I have attached a copy of BellSouth's and the FCCA's proposed modifications to the existing pre-hearing orders in the referenced dockets, as was discussed yesterday during the pre-hearing conference. We would be happy to discuss with you any of the provisions of our proposed modifications that cause any concern for the Staff. I assure you that the purpose of these modifications is to facilitate the process in these very important proceedings, not to hinder them or make them more difficult. We anticipate a lot of discovery in these proceedings, and being able to handle the discovery in the way set out in our proposed modifications would be, we believe, very efficient.

I also want to reemphasize what we said yesterday regarding scheduling. To move this proceeding back on a schedule that will allow us to present our case in the best possible fashion, we are willing to agree that as long as the Commission makes its oral decision during the 9 month period, the fact that a written order will be issued thereafter will be satisfactory.

With regard to discovery, I want to follow up on a point made during the pre-hearing conference that seemed to resonate with Commissioner Davidson. There are a number of interveners in these proceedings already, but there is no reason to believe that every telecommunications provider in Florida that might have information relevant

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*Heach L.V.P.*  
*David*

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to these dockets will intervene voluntarily. The problem this causes is clear and serious. The Commission, in order to resolve the switching case, will have to know where CLECs have switches, what kind of customers they serve, and where those customers are located. In the loop and transport case, the Commission is going to have to know where providers have facilities. While we can get that information from telecommunications carriers that intervene in these proceedings, it may be difficult to do so for other carriers.

Specifically, the rules applicable to Commission proceedings regarding discovery are the Florida Rules of Civil Procedure. There are no provisions for sending interrogatories to non-parties. If we have to conduct third-party discovery, we are going to have to do it through either oral depositions or depositions with written questions, procedures that will require the Commission to issue and enforce subpoenas to non-parties. The time required to accomplish this will be lengthy. We anticipate that if we are forced down that path, the burden on the parties and on the Commission and its staff are going to be significant.

The alternative, mentioned yesterday, is to simply make all telecommunications carriers in Florida that have received a certificate to operate, parties to this proceeding, so that written interrogatories could be sent to them. These carriers would not have to otherwise participate if they chose not to, but this would limit the number of third-depositions to entities not subject to the jurisdiction of this Commission. Following this course would probably limit needed third party discovery to entities that provide wholesale transport and loop facilities, which would be very helpful.

As for the authority in this area, under the Commission's rules, and specifically Rule 24-04.019, Florida Administrative Code the Commission has the authority to require every company under its jurisdiction to "furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require." Clearly we could prepare questions and have the Commission propound these to the telecommunications carriers subject to the Commission's jurisdiction, but that would no doubt place a lot of work on the staff that we could and are willing to do. Either making all of these carriers parties to this proceeding, or authorizing the parties to ask other telecommunications carriers for information regarding their facilities and operations pursuant to the Commission's authority set forth in the cited rule will make these proceedings considerably more manageable.

We understand that you are awaiting comments from Sprint and Verizon, and that once you receive those comments that you will be considering how to proceed. If we can do anything to facilitate that, or if a meeting between the staff and the parties would help, we are more than willing to do whatever you may need.

Sincerely,

A handwritten signature in black ink that reads "Nancy B. White". The signature is written in a cursive style with a large initial 'N'.

Nancy B. White (LWA)

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

**CERTIFICATE OF SERVICE**  
**Docket No. 030851-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and First Class U. S. Mail this 7th day of October, 2003 to the following:

Jason Rojas, Staff Counsel  
Jeremy Susac, Staff Counsel  
Adam Teitzman, Staff Counsel  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Phone: (850) 413-6212  
Fax: (850) 413-6250  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)  
[jrojas@psc.state.fl.us](mailto:jrojas@psc.state.fl.us)  
[jsusac@psc.state.fl.us](mailto:jsusac@psc.state.fl.us)

Michael A. Gross  
VP Reg. Affairs & Reg. Counsel  
Florida Cable Telecomm. Assoc.  
246 East 6th Avenue  
Tallahassee, FL 32303  
Tel. No. (850) 681-1990  
Fax. No. (850) 681-9676  
[mgross@fcta.com](mailto:mgross@fcta.com)

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold PA  
117 South Gadsden Street  
Tallahassee, FL 32301  
Tel. No. (850) 222-2525  
Fax. No. (850) 222-5606  
Attys. for Covad  
[imcglathlin@mac-law.com](mailto:imcglathlin@mac-law.com)  
[vkaufman@mac-law.com](mailto:vkaufman@mac-law.com)

Charles E. Watkins  
Covad Communications Company  
1230 Peachtree Street, N.E.  
19<sup>th</sup> Floor  
Atlanta, Georgia 30309  
Tel. No. (404) 942-3492  
Fax. No. (404) 942-3495  
[gwatkins@covad.com](mailto:gwatkins@covad.com)

Nanette Edwards, Esq.  
Director – Regulatory  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, AL 35802  
Tel. No. (256) 382-3856  
[nedwards@itcdeltacom.com](mailto:nedwards@itcdeltacom.com)

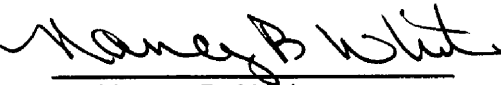
Floyd Self, Esq.  
Messer Caparello & Self  
215 South Monroe Street, Suite 701  
Tallahassee, FL 32301  
Tel. No. (850) 222-0720  
Fax. No. (850) 224-4359  
Represents ITC^DeltaCom  
Represents KMC  
[fself@lawfla.com](mailto:fself@lawfla.com)

Tracy Hatch, Esq.  
AT&T  
101 North Monroe Street  
Suite 700  
Tallahassee, FL 32301  
Tel. No. (850) 425-6360  
[thatch@att.com](mailto:thatch@att.com)

Lisa A. Sapper  
AT&T  
1200 Peachtree Street, N.E.  
Suite 8100  
Atlanta, GA 30309  
Tel. No. (404) 810-7812  
[lsapper@att.com](mailto:lsapper@att.com)

Marva Brown Johnson, Esq.  
KMC Telecom III, LLC  
1755 North Brown Road  
Lawrenceville, GA 30034-8119  
[marva.johnson@kmctelecom.com](mailto:marva.johnson@kmctelecom.com)

Susan S. Masterton, Esq.  
Sprint-Florida, Inc.  
Sprint Communications Co. L.P.  
1313 Blair Stone Road  
P.O. Box 2214  
Tallahassee, FL 32316-2214  
Tel. No. (850) 599-1560  
Fax. No. (850) 878-0777  
[susan.masterton@mail.sprint.com](mailto:susan.masterton@mail.sprint.com)

---

Nancy B. White (CA)

**CERTIFICATE OF SERVICE**  
**Docket No. 030852-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and First Class U. S. Mail this 7th day of October, 2003 to the following:

Jason Rojas, Staff Counsel  
Jeremy Susac, Staff Counsel  
Adam Teitzman, Staff Counsel  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Phone: (850) 413-6212  
Fax: (850) 413-6250  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)  
[jrojas@psc.state.fl.us](mailto:jrojas@psc.state.fl.us)  
[jsusac@psc.state.fl.us](mailto:jsusac@psc.state.fl.us)

Michael A. Gross  
VP Reg. Affairs & Reg. Counsel  
Florida Cable Telecomm. Assoc.  
246 East 6th Avenue  
Tallahassee, FL 32303  
Tel. No. (850) 681-1990  
Fax. No. (850) 681-9676  
[mgross@fcta.com](mailto:mgross@fcta.com)

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold PA  
117 South Gadsden Street  
Tallahassee, FL 32301  
Tel. No. (850) 222-2525  
Fax. No. (850) 222-5606  
[jmclglothlin@mac-law.com](mailto:jmclglothlin@mac-law.com)  
[vkaufman@mac-law.com](mailto:vkaufman@mac-law.com)

Matthew Feil  
Florida Digital Network  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
Tel. No. (407) 835-0460  
Fax. No. (407) 835-0309  
[mfeil@floridadigital.net](mailto:mfeil@floridadigital.net)

Scott A. Kassman  
Florida Digital Network  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
Tel. No. (407) 447-6636  
[skassman@mail.fdn.com](mailto:skassman@mail.fdn.com)


Nanette Edwards, Esq.  
Director – Regulatory  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, AL 35802  
Tel. No. (256) 382-3856  
[nedwards@itcdeltacom.com](mailto:nedwards@itcdeltacom.com)

Floyd Self, Esq.  
Messer Caparello & Self  
215 South Monroe Street, Suite 701  
Tallahassee, FL 32301  
Tel. No. (850) 222-0720  
Fax. No. (850) 224-4359  
Represents ITC^DeltaCom  
[fself@lawfla.com](mailto:fself@lawfla.com)

Tracy Hatch, Esq.  
AT&T  
101 North Monroe Street  
Suite 700  
Tallahassee, FL 32301  
Tel. No. (850) 425-6360  
[thatch@att.com](mailto:thatch@att.com)

Lisa A. Sapper  
AT&T  
1200 Peachtree Street, N.E.  
Suite 8100  
Atlanta, GA 30309  
Tel. No. (404) 810-7812  
[lsapper@att.com](mailto:lsapper@att.com)

Susan S. Masterton, Esq.  
Sprint-Florida, Inc.  
Sprint Communications Co. L.P.  
1313 Blair Stone Road  
P.O. Box 2214  
Tallahassee, FL 32316-2214  
Tel. No. (850) 599-1560  
Fax. No. (850) 878-0777  
[susan.masterton@mail.sprint.com](mailto:susan.masterton@mail.sprint.com)

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Nancy B. White (USA)

## **PROPOSED MODIFICATIONS TO ORDERS ESTABLISHING PROCEDURE**

BellSouth and the FCCA requests that the Pre-hearing Officer make the following modifications to the Orders Establishing Procedure in the above captioned dockets. These modifications involve procedures for (1) service of all pleadings, discovery and responses, testimony, briefs and other required filings; (2) discovery, including but not limited to, interrogatories, requests for production of documents, requests for admissions, depositions; and (3) confidential treatment of responses to discovery.

### **(1) Service of Pleadings, Discovery and Responses, Testimony, Briefs and Other Required Filings.**

All filings by the Parties to this proceeding and the service of said filings by Parties shall be made as follows:

- (i) All filings required to be made to the Commission shall be made pursuant to the ordinary rules of practice and procedure that apply to matters pending before the Commission, on the dates specified by the Commission and in the manner such filings are ordinarily made; provided, however, that unless the Commission specifically orders otherwise with regard to a particular filing or submission, the parties may hand deliver any required pleading to the Commission by 11 a.m. on the day following the date the filing was due, and provided that service on the other parties was made in accord with the requirements of this order, such filing shall be considered timely.
- (ii) Every party to this proceeding shall provide every other party with an email address of a person who shall be authorized to receive service copies for that party of all filings that have to be filed at the Commission or otherwise served on the parties. If the person authorized to receive service for any party changes, that party shall be responsible for notifying all other parties of such change. For any party who has already intervened in this proceeding and who has not provided such an e-mail address, such party shall do so promptly, and in no event less than 10 days following the date of this order. Failure



to provide such an address shall excuse any party from any alleged failure to serve the party who has failed to provide the appropriate e-mail address.

- (iii) For the purpose of this proceeding, where a responsive submission is made, service shall be deemed complete when the person making the filing sends the filing to the appropriate email address. For filings that require a responsive filing from other parties, such as interrogatories, requests for admission and requests for production of documents, the time for complying with the request shall begin when the party to whom the request is made receives the request. The parties are admonished to (1) request “receipt” and “read” indicators for all emails to insure that they are delivered and received in a timely manner and (2) to insure that the person designated to receive service, or someone acting in his or her stead, can regularly access email. Upon agreement of the parties, each party may designate up to three persons to receive service to alleviate any concerns about the availability of someone to receive service.
- (iv) Because some filings, such as testimony, or the responses to filings such as interrogatories or responses to requests for production may be voluminous, the parties can elect, for non-confidential materials, to create a publicly accessible website where any such filing can be posted. If a party elects to post a responsive filing to this web site, and sends an email with a URL link to that publicly accessible website to the appropriate representatives of the other parties, such a posting shall be considered service of the responsive document. This vehicle may be used for the posting of testimony and responses to discovery, but shall not be used for the filing of matters that require a response from other parties, such as interrogatories, requests for admission or requests for the production of documents.
- (v) The purpose of providing for service in the foregoing ways is to facilitate the exchange of information between the parties so that this proceeding can go forward in a timely and efficient manner. Any disputes as to whether there has been compliance with these requirements should be discussed among the parties and resolved amicably if at all possible. Prior to bringing any dispute regarding

these matters to the Commission, the parties will be required to certify that they have met and discussed the dispute, and succinctly detail exactly what the dispute is. The Commission will not entertain disputes involving a question of whether a filing was made timely unless the aggrieved party can demonstrate that it has been substantially prejudiced.

- (vi) Where a party receives an electronic copy of a document, the party can request a paper copy of the document, but the responding party shall have one week after the request is made to furnish the paper copy.

## **(2) Discovery**

- (A) Interrogatories, Requests to Produce Documents, Requests for Admissions.

(i) Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may be served requesting state-specific responses and information or, at a party's discretion, seeking responses and information concerning all nine states in the BellSouth region. It shall not be an appropriate or sustainable objection that such discovery seeks information concerning states other than the state in which the discovery is served. Subject to the Confidentiality provisions in Section 3 below and any other evidentiary objections, discovery obtained in other states in the BellSouth region shall be available for use in this proceeding or where appropriate, in appeals from Commission orders to a court of competent jurisdiction or the FCC.

(ii) Where requested, the parties shall respond, except as provided below, to Interrogatories, Requests to Produce and Requests for Admissions within 21 calendar days of service.

(iii) If a party believes that a particular request is unduly voluminous or would otherwise require additional time to respond to (and the request is not otherwise objectionable) the parties are admonished to work together to agree on an appropriate time frame for responding to

the discovery, given the circumstances that exist at the time. In resolving such issues, the parties are directed to consider whether the requests can be broken into smaller groups, with some groups being responded to more quickly than others, or whether there is some other innovative way to address such issues, without bringing them to the Commission for resolution. Again, should a party seek the Commission's intervention in such a dispute, the complaining party should be prepared to explain in detail why it has been unable to reach a satisfactory resolution, and why it is prejudiced by the solution offered by the non-complaining party.

(iv) Objections to Discovery.

(a) Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery shall be made within 10 calendar days after service. Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may include, but not be limited to:

(1) Legal Objections

(2) Objections to the time required for the production of region-wide discovery responses, in which event the objecting party shall provide a time frame and/or date certain for response to the region-wide discovery. Such Objections may include the fact that certain discovery responses may be voluminous and/or require answers from individuals from multiple states.

(b) Where objections are made pursuant to (2)(A)(iv) (a) (1), the objecting party shall state whether it intends to provide a partial response subject to the objection. Parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.

(c) Where objections are made pursuant to (2)(A)(iv) (a) (2), the parties shall agree upon a time frame and/or date certain for

responses, and the responding party will engage in its best efforts to respond as quickly as possible.

(v) Where the parties are unable to resolve a discovery dispute as outlined in the proceeding sections, the parties shall seek expedited rulings on any discovery dispute, and the Commission shall resolve any such dispute expeditiously. The resolution of discovery disputes may be determined by the Pre-Hearing Officer, or by a staff attorney the Commission appointed for that purpose on an ad hoc basis.

(B) Depositions

(i) Depositions of employees, consultants, contractors and agents may be taken pursuant to the ordinary rules of practice and procedure before the Commission, including any objections that may be raised.

(ii) Depositions of persons whom the parties will sponsor as witnesses in the above-styled Docket shall be limited as follows, after testimony is filed:

(a) Any party may depose a person who files testimony, subject to (2)(B)(ii)(b) below, after the filing of:

(1) direct testimony; and

(2) rebuttal testimony; and

(3) surrebuttal testimony

(b) Once a witness has been deposed regarding such testimony in any state in the BellSouth region, that witness may only be deposed again (1) upon the request of the staff of the Commission, or if there is participation by a public agency such as a consumer advocate or the Attorney General, upon request by such public agency, or (2) by any party, if the testimony offered by the witness contains state specific information which is different from previous testimony filed by the witness, in which case the deposition will be limited

to questions about the state specific material and related items.

- (c) Should a witnesses' testimony in this state change materially, other than by reason of the inclusion of state specific material discussed in (b) above, the witness may be deposed again, but only in connection with the testimony that has changed.
- (d) The purpose of these deposition requirements is to conserve the resources of the parties, and to encourage the parties to work jointly and cooperatively to conduct necessary discovery.
- (e) If the parties have a dispute regarding the taking of depositions in any particular situation, the parties are admonished to work together to resolve such differences, and if those differences cannot be reconciled, the parties should be prepared to present a very brief explanation of the dispute and the aggrieved party should be prepared to demonstrate how it is prejudiced by its failure to comply with the requests or objections of the opposing party.

### **(3) Confidentiality of Information**

The Pre-Hearing Officer is requested to issue a protective order similar to that used in other dockets, such as the 271 docket, to protect confidential information. In addition, the parties may require the execution of a confidentiality agreement where appropriate.