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January 6, 2004

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

via Overnight Mail

Re: Docket No. 030851-TP – In re: Implementation of Requirements arising from
Federal Communications Commission Triennial UNE Review: Local Circuit Switching
for Mass Market Customers

Dear Ms. Bayó:

Enclosed please find an original and seven (7) copies of the Prefiled Rebuttal Testimony
of FDN Communications' witness Michael P. Gallagher, along with a diskette containing
said document.

If you have any questions regarding the enclosed, please call me at 407-835-0460.

Sincerely,

Matthew Feil
General Counsel
FDN Communications

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390 North Orange Avenue Suite 2000 Orlando, FL 32801
407.835.0300 Fax 407.835.0309 www.fdn.com

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FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising)
from Federal Communications Commission)
triennial UNE review: Local Circuit Switching)
for Mass Market Customers.)
_____)

Docket No. 030851-TP

PREFILED REBUTTAL TESTIMONY OF

MICHAEL P. GALLAGHER

SUBMITTED BY:

FDN COMMUNICATIONS

Filed January 7, 2004

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

1 **Q. Please state your name and address.**

2 A. My name is Michael P. Gallagher. My business address is 390 North
3 Orange Avenue, Suite 2000, Orlando, Florida, 32801.

4 **Q. Who do you work for?**

5 A. I am Chief Executive Officer of Florida Digital Network, Inc. ("FDN").

6 **Q. What are your responsibilities as CEO of FDN?**

7 A. As CEO of FDN, I am ultimately responsible to the shareholders for all
8 aspects of FDN's operations and performance. On a management level,
9 FDN's President & Chief Operating Officer, Chief Financial Officer and
10 General Counsel report directly to me; FDN's Engineering & Operations,
11 Customer Service, and Sales Vice Presidents and its Chief Technology
12 Officer report to the President & COO, who is also in charge of FDN's
13 Marketing functions. I am involved in the day-to-day business dealings of
14 the company and the decision-making on everything from marketing and
15 sales strategies, product development, network architecture and deployment,
16 financing, human resources, customer care, regulatory changes, etc.

17 **Q. Please describe your education and your work experience in the**
18 **telecommunications sector.**

19 A. I received a B.S. Degree in Mathematics with a minor in Physics from
20 Rollins College.

21 Prior to co-founding FDN in 1998, I served as Regional Vice
22 President for Brooks Fiber Communications where I had overall
23 responsibility for operations, engineering, finance and sales in the State of

1 Texas. Brooks Fiber Communications merged into WorldCom on January
2 31, 1998. Prior to holding the VP position at Brooks, I was president of
3 Metro Access Networks (MAN), a second-generation CLEC in Texas
4 founded in 1993. At MAN, I developed all business strategies, designed
5 network architecture, secured contracts with the company's original customer
6 base, and had overall responsibility for operations and performance. MAN
7 merged into Brooks Fiber in March 1997. Prior to MAN, I worked for
8 Intermedia Communications and Williams Telecommunications Group
9 (WilTel) as sales representative securing contracts with large commercial
10 customers.

11 **Q. Have you previously testified in a regulatory proceeding before a**
12 **state utility commission, the FCC or a hearing officer?**

13 A. Yes. I have testified before this Commission in Docket No. 010098-TP
14 (FDN's Arbitration case with BellSouth), Docket No. 990649A-TP (the 120-
15 day portion of BellSouth's UNE cost case), and Docket No. 020119-TP
16 (FDN's Complaint against BellSouth for Anticompetitive Promotion
17 Practices).

18 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

19 A. FDN believes the Commission should have a balanced view of the
20 unbundled network element (UNE) switching impairment issue. FDN
21 utilizes, and has utilized since its inception in 1998, a UNE-L strategy to
22 provide service mostly to small-to-medium sized businesses, by leasing UNE

1 loops from incumbent carriers and utilizing FDN's own Class 5 switches, as I
2 will describe later. FDN believes it operates as the federal
3 Telecommunications Act of 1996 (the "Act") contemplated competition
4 would evolve, i.e., where competing carriers invest in their own facilities and
5 infrastructure and have guaranteed access, for a fee, to certain ILEC
6 property/elements only where such property/elements could not be practically
7 replicated. Indeed, switching has been and still is readily available to any one
8 willing to purchase a Class 5 type device. Advances in soft switch
9 technology also make non-Class 5 switching realistic and have led to lower
10 overall switching costs. However, the focus of my rebuttal testimony will be
11 on a few key points summarized as follows.

12 First, for purposes of this proceeding, FDN considers itself a self-
13 provisioned switch "trigger" company as defined by the TRO. FDN believes
14 many of the interpretative twists that others argue the Commission should
15 add to the TRO are not supportable. Further, FDN believes that the hot cut
16 process of the ILECs works well for the most part. FDN has performed
17 thousands of hot cuts with Florida's ILECs and currently performs over two
18 hundred hot cuts for DS-0's per day. Finally, if the Commission finds
19 impairment stemming from the hot cut process and therefore establishes a
20 batch process, FDN maintains that any batch process should at least
21 incorporate certain features, namely: (1) the batch process will, as required
22 by the TRO, cover hot cuts of the type FDN performs daily and not just one-
23 time conversions of UNE-P to UNE-L, (2) batch rates are structured such that

1 there is a significant and real overall reduction in NRCs, and (3) batch
2 processes reflect operational efficiencies and not needlessly extend hot cut
3 intervals. If the Commission endeavors to cure any impairment finding or
4 address perceived flaws associated with hot cuts through a more direct
5 approach or means other than a batch process, FDN would support those
6 efforts.

7 FDN believes that as the leading UNE-L based provider in Florida,
8 FDN has a unique vantage point that will be valuable to the Commission in
9 this proceeding and that FDN's input should be useful in weighing some of
10 the claims that the parties have made in their direct testimony.

11 **Q. Please briefly describe FDN's operations.**

12 A. As I mentioned, FDN is a facilities-based/UNE-L CLEC. FDN is also an
13 IXC, a data services provider (both dial-up and dedicated), and FDN offers
14 ISP and other Internet services. FDN was founded in 1998 with the mission
15 of offering packaged services (local, long distance and Internet) to small- and
16 medium-sized businesses. FDN launched operations in Orlando in April
17 1999 and expanded to Fort Lauderdale in May 1999 and to Jacksonville in
18 June 1999. A second round of expansion in West Palm Beach, Miami and the
19 Tampa Bay area was completed in the first quarter of 2000.

20 FDN owns and operates Class 5 Nortel DMS-500 central office
21 switches in Orlando, Tampa, Jacksonville, and Ft. Lauderdale. FDN's
22 switches are connected by fiber optic cable owned or leased by FDN to

1 nearby incumbent local exchange carrier (or “ILEC”) tandem switches. FDN
2 leases collocation space in over 100 ILEC wire centers throughout the state.
3 Remote DLC/DSLAM equipment is installed at these collocation sites, and
4 from these sites FDN accesses ILEC UNE loops. Connectivity from the
5 collocation sites to the central ILEC tandem switch is via FDN’s own fiber or
6 leased DS-1 or DS-3 circuits. As I mentioned, FDN relies upon its rights
7 under the Act to obtain “last mile” access to Florida consumers through the
8 purchase of UNEs from BellSouth, Verizon and Sprint.

9 FDN uses BellSouth’s TAG gateway for electronic ordering and is in
10 the process of migrating to EDI. With systems and software FDN developed
11 on its own, FDN accesses BellSouth customer service records (“CSRs”)
12 electronically, and FDN transmits virtually all of its local service requests
13 (“LSRs”) to BellSouth electronically. Most of FDN’s orders to Verizon are
14 done on a partially mechanized basis, and FDN utilizes Verizon’s Wholesale
15 Provisioning Tracking System (WPTS) for tracking service activities. The
16 vast majority of FDN’s LSRs to BellSouth, Verizon and Sprint are for 2-wire
17 voice grade UNE loops.

18 **Q. Several ALEC witnesses (Mr. Gillan 52 – 65 and Mr. Reith (virtually**
19 **throughout his direct)) laud the success of the UNE-P business model,**
20 **argue that unbundling promotes investment and criticize what they see**
21 **as the failure of the UNE-L business model. Do you agree with their**
22 **testimony?**

1 A. No. FDN maintains that this sort of testimony is not relevant to
2 the tasks which the FCC has delegated to the state Commissions. The FCC,
3 after wading through the incentive, rights and benefits arguments, and taking
4 into account the intent of the Act and the prior decisions of the courts, already
5 made the choice on what the states must do and what the states are to
6 consider. The FCC did not leave the door open for states to consider policy
7 arguments like those made by Mr. Gillan and Mr. Reith, or, for that matter, to
8 consider any ILEC arguments on the same subject. If, contrary to the TRO,
9 the Commission considers such arguments, FDN, as a UNE-L provider which
10 has invested significant sums of money in its own switching, network,
11 infrastructure and OSS and which competes against UNE-P for limited
12 capital in the emerging telecommunications sector and competes against
13 UNE-P for customers, would naturally take an opposing stance.

14 **Q. A number of the ALEC witnesses (Mr. Gillan on pages 35 – 51, and**
15 **Dr. Staihr on pages 11 – 23, for example) argue that the TRO should be**
16 **interpreted in ways so as to limit which CLECs may be deemed a**
17 **“trigger” company. Do you have any comment?**

18 A. Yes. First, I believe that FDN is indeed a trigger company in the markets
19 in which FDN operates.

20 I can verify the confidential information that FDN provided to
21 BellSouth and confirm BellSouth witness Tipton’s correct reliance on same
22 in reaching her conclusions regarding the TRO triggers. Similarly, I can
23 confirm Verizon witness Fulp’s reliance on FDN’s trigger presence in the

1 Verizon-defined market. FDN serves a significant number of customers with
2 one line, two lines, and three lines in its markets. So even if the “cross-over”
3 between “mass market” customer and “enterprise” customers were as low as
4 BellSouth advocates (at three lines and below), FDN would be a trigger
5 company because FDN has numerous customers everywhere it serves with
6 three lines and below, including some residential customers. At this time,
7 FDN does not disagree with how BellSouth or Verizon have defined
8 geographic markets for purposes of this proceeding.

9 FDN maintains that the Commission should critically evaluate the
10 TRO trigger test embellishments advocated by witnesses such as Mr. Gillan
11 and Dr. Staihr in their direct testimony. Notably, Mr. Gillan goes so far as to
12 say on page 51, line 22, of his direct, “It is up to the Commission to put flesh
13 on the bones, in the form of informed analysis of the trigger criteria
14 established by the FCC.” FDN does not believe that it is permissible for the
15 Commission to go that far. Certainly, there are instances where an FCC
16 directive may be unclear and require interpretation. It is not uncommon for
17 the Commission to undertake a detailed analysis of the language of an FCC
18 ruling as applied to a particular set of facts before the Commission.
19 However, a number of the Gillan/Staihr recommendations go beyond mere
20 interpretation and amounts to inappropriate addition.

21 For instance, both Gillan and Staihr argue that any switch counted
22 against the trigger must serve “predominantly” mass market customers, not
23 enterprise customers. Dr. Staihr even states that the Commission should

1 evaluate the capacity of the switch and determine what percentage of the
2 capacity is devoted to mass market customers versus enterprise customers.
3 Neither a predominance test nor Dr. Staihr's formula approach are part of the
4 TRO or FCC rules, so the Commission should refrain from considering such
5 arguments. Further, Mr. Gillan suggests the Commission make an "informed
6 assessment of the viability" of the trigger companies' viability, despite his
7 acknowledgment that the TRO bars states from evaluating individual trigger
8 companies. Again, the Commission should not inappropriately embellish the
9 TRO by adding requirements such as these or Dr. Staihr's recommendation
10 that the trigger company be capable of serving "throughout" the defined
11 market, however the market be defined. In sum, if the FCC intended to
12 require some of the things these witness advocate, the FCC would have
13 directly said so in the TRO and accompanying rules, but it did not.

14 **Q. Several CLEC witnesses (including AT&T witness Van de Water,**
15 **MCI witness Lichtenberg, and Supra Stahly) argue, essentially, that the**
16 **hot cut process of the ILECs is a source of operational impairment, while**
17 **the BellSouth and Verizon witnesses (including BellSouth witnesses**
18 **Ruscilli, Ainsworth and Varner and the "Verizon Panel") argue just the**
19 **opposite. With whom, if anyone, does FDN agree?**

20 A. As a UNE-L based CLEC that performs over two hundred hot cuts for
21 DS-0 loops daily and has performed more hot cuts than any other single
22 CLEC in the state, FDN would be hard pressed to say that the hot cut process
23 does not work well. BellSouth witness Ruscilli states in his direct that as of

1 October 2003, there were 156,746 lines in Florida served by a combination of
2 a BellSouth unbundled loop and a CLEC switch. (Ruscilli Direct, page 13,
3 line 21.) FDN believes it constitutes about two-thirds of that total. Further,
4 FDN believes it has performed more voice grade loop hot cuts in Verizon
5 Florida and Sprint Florida than any other CLEC as well.

6 It should be noted the direct testimony of the ILECs and CLECs
7 presents the Commission with a preliminary question when evaluating the hot
8 cut process: By what standard is the hot cut process to be judged? BellSouth
9 argues that the hot cut process has already been tried and tested in the 271
10 proceeding and that, with a few modifications (and adding scale for UNE-P
11 conversions), the existing processes are good enough. The CLECs argue that
12 hot cuts must meet the same service intervals and standards as a UNE-P or
13 PIC order. This proposed standard, some of the CLEC witnesses frankly
14 admit, could not realistically be achieved, not in the confines of this nine-
15 month proceeding anyway. FDN is not necessarily advocating one or the
16 other standard, but suggests that since the hot cut process works well for the
17 most part, when and if it does not work, the CLEC should be adequately
18 compensated for, and the ILEC strongly incented to, cure problem areas.

19 FDN suggests that ILECs would be incented to cure perceived flaws
20 in the hot cut process if the Commission tilted key performance metrics and
21 compensation payments to focus more on the realities of a UNE-L world
22 rather than a UNE-P world. When an ILEC errs in processing a UNE-P
23 order, the conversion occurs earlier or later than scheduled, a customer has to

1 reset voicemail, a feature is dropped, any of a number of inconveniences, but
2 the customer is typically not left without service. If a hot cut procedure ever
3 goes awry, the customer can be left without dial tone, the customer cannot
4 receive incoming calls or has static on the line – service impacting problems
5 that have to be cured immediately. These are the sort of issues that will
6 generate customer ire and, possibly, complaints to the FPSC. Therefore, in
7 this case or in another, the Commission should re-evaluate, and insure all
8 parties of, the adequacy of existing metrics in relation to a UNE-L oriented
9 world.

10 **Q. Why do you think other carriers consider the hot cut process too**
11 **difficult?**

12 A. The large IXC's probably have trouble with the sort of one-off, customer
13 and geography specific processes required for hot cuts, and others may
14 simply not devote sufficient, specialized resources and the OSS necessary to
15 handle hot cuts. Large IXC's have been serving the mass market since
16 divestiture with bulk PIC changes processes which are relatively simplistic
17 and uniform among customers and ILECs. Service delivery for the local
18 exchange market, however, is more complex and non-uniform, by nature.
19 So, for any CLEC to successfully carry out hot cuts, the CLEC must devote
20 significant resources to the human capital, OSS and procedures needed to
21 facilitate local exchange service. Carriers like FDN have made the regional
22 resource commitment.

1 It is also true, as some of the CLEC witnesses argue, that the presence
2 of IDLC poses a customer-specific provisioning obstacle with hot cuts.
3 However, at least in BellSouth territory where IDLC is prevalent and
4 growing, the IDLC obstacle is typically overcome. As long as the
5 Commission remains vigilant and explicit in requiring ILECs to provision
6 UNE loops through IDLC without aggravating the economies of loop
7 provisioning, the hot cut process works even with IDLC. On a daily basis,
8 FDN and BellSouth work cooperatively together to install loops through
9 IDLC for mass market customers. In Sprint's incumbent territory, however,
10 FDN is often stymied when trying to acquire an IDLC served loop, either
11 because of the exorbitant NRCs (i.e. ICB prices which Sprint demands) or the
12 inability of Sprint to deliver.

13 **Q. You referred to not "aggravating the economies of loop**
14 **provisioning" when IDLC is involved. What did you mean by that?**

15 A. The presence of IDLC should not cause undue difficulty in the
16 ability of CLECs to provision and service UNE loops. In its direct filing in
17 this proceeding, Verizon is proposing to completely revamp its hot cut NRCs,
18 not just to add a new rate for batch cuts, but to revise/restate the hot cut
19 NRCs the Commission recently approved and to add an IDLC surcharge.
20 (FDN does not believe proposed rates are confidential but refers the
21 Commission to the Panel's Confidential Exhibit III-A.) Given the frequency
22 with which Verizon advises FDN that a loop must be a designed loop
23 (probably because of IDLC), FDN believes Verizon's proposal would mean

1 an overall increase in NRC costs, not a decrease. The TRO's directive was
2 for the states to evaluate and, where possible, **remove** causes of impairment,
3 not to impose brand new ones. The batch processes and batch rates the states
4 were to consider per the TRO were for the express purpose of reducing the
5 per unit cost of NRCs. FDN supports Commission action to make
6 meaningful reductions to NRCs, whether as part of a batch process or
7 otherwise. An IDLC surcharge will actually hamper UNE-L competition, not
8 help it. And if UNE-P competition is foreclosed, as Verizon and BellSouth
9 advocate, UNE-L competition should be facilitated, not deterred.

10 **Q. BellSouth's witnesses (primarily BellSouth witness Pate) indicate that**
11 **the batch cut process the Commission must approve should be**
12 **exclusively for one-time UNE-P to UNE-L migrations. Does FDN agree?**

13 A. No. The FCC rule defines a batch process as

14 [A] process by which the incumbent LEC simultaneously migrates
15 two or more loops **from one carrier's local circuit switch to**
16 **another carrier's local circuit switch**, giving rise to operational and
17 economic efficiencies not available when migrating loops **from one**
18 **carrier's local circuit switch to another carrier's local circuit**
19 **switch** on a line-by-line basis.

20
21 (Emphasis added.) The rule does not restrict batch processing to cuts from
22 UNE-P to UNE-L. Though one-time UNE-P conversions would be the chief
23 beneficiary of a batch process, the rule does not say one-time UNE-P
24 conversions are to be the sole purpose for which the batch process is put in
25 place. Verizon in the Panel direct testimony at least recognizes that ILEC-to-
26 CLEC hot cuts may be ordered by a batch process going-forward.

1 BellSouth's proposed batch process does not pass muster because its chief
2 restriction is that it is reserved for one-time UNE-P conversions only.

3 Aside from the supporting language of the FCC rule quoted above,
4 FDN's position is also bolstered by reason. According to the TRO, if the
5 absence of a batch process is a source of economic or operational
6 impairment, the states are directed to remove the impairment by approving a
7 batch process. So, if a batch process is required to alleviate impairment, and
8 no UNE-L based CLEC can use the batch process, the impairment to UNE-L
9 that necessitated the batch process in the first place would persist. The TRO
10 did not suggest a batch process for improving the status of UNE-P providers
11 only. And a batch process that could only be used by UNE-P providers --
12 with only UNE-P providers being eligible to take advantage of a discount --
13 would be unfair and discriminatory toward UNE-L providers.

14 **Q. FDN has performed thousands of hot cuts on an individual basis.**

15 **Why is FDN concerned with a batch process?**

16 A. A batch can be for as few as two loops. If at the conclusion of this case
17 the only means available for FDN to obtain reductions to NRCs is by
18 ordering via a batch process, FDN may choose to avail itself of a batch
19 process. With the volume of hot cuts FDN carries out, it is relatively
20 common for FDN to submit multiple hot cut orders on the same day or within
21 the same week for a single ILEC CO. FDN also regularly submits orders for
22 numerous loops to one customer. All such orders should be eligible for batch
23 ordering status under the BellSouth and Verizon proposals.

1 **Q. You have discussed Verizon’s NRC proposal briefly. BellSouth**
2 **witness Ruscilli (on page 18 of his direct) recommends a 10% discount to**
3 **certain NRCs for BellSouth’s batch process. Does FDN support the**
4 **ILEC batch rate proposals made in the ILECs’ direct testimony?**

5 A. FDN does not support BellSouth’s proposed 10% discount. Aside from a
6 10% discount being nominal at best, the discount is completely unsupported
7 in Mr. Ruscilli’s testimony. Mr. Ruscilli makes only vague reference to a
8 “recent cost study” not provided. Although, as I discuss above, Verizon’s
9 proposal for an IDLC surcharge should be rejected, Verizon’s pricing
10 structure for batch rates at least recognizes that there should be a discount for
11 the first loop cut (off the regular hot cut price for initial loops) and a
12 substantial discount for all additional loops in the batch (off the regular hot
13 cut price for additional loops). Although not agreeing with Verizon’s
14 numbers, FDN thinks at least the batch pricing structure is a first step in the
15 right direction.

16 **Q. Does FDN have any other concerns with the batch processes**
17 **proposed by BellSouth and Verizon?**

18 A. Any batch process is supposed to alleviate impairment found in
19 the hot cut process and is to reflect improved operational and economic
20 efficiencies for the hot cut process. A CLEC should not have to endure
21 added restrictions, such as waiting 20 plus days to cut the order, just to get
22 the trade off of a minimal discount on NRCs. In other words, FDN questions
23 how much efficiency is really added by the batch processes proposed.

1 It is not clear how or if BellSouth's proposal would change if it had to
2 cover ILEC to UNE-L migrations, as it should. Verizon's proposal is sketchy
3 in a number of respects. The number of days for reaching critical mass per
4 CO and other details are noticeably absent. Further, Verizon's notifying
5 NPAC on behalf of the CLEC upon execution of the cut may not work
6 considering the CLEC must also coordinate its own switch activity
7 contemporaneous to the cut.

8 **Q. Does that conclude your rebuttal testimony?**

9 A. Yes.

10

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CERTIFICATE OF SERVICE

Docket 030851-TP

I hereby certify that a copy of the foregoing was sent by e-mail and regular mail to the persons listed below, other than those marked with an (*) who have been sent a copy via overnight mail, this 10th day of January, 2004.

BellSouth Telecommunications, Inc.
D. Lackey/M. Mays/N. White/J. Meza/A. Shore
c/o Ms. Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301-1556
nancy.sims@bellsouth.com
linda.hobbs@bellsouth.com
chantel.stevens@bellsouth.com
douglas.lackey@bellsouth.com
meredith.mays@bellsouth.com
nancy.white@bellsouth.com

McWhirter Law Firm
Vicki Gordon Kaufman
117 South Gadsden Street
Tallahassee, FL 32301
vkaufman@mac-law.com

Verizon Florida, Inc.
Richard Chapkis/Kimberly Caswell
One Tampa City Center
201 North Franklin Street (33602)
P.O. Box 110, FLTC 0007
Tampa, FL 33601-0110
richard.chapkis@verizon.com
david.christian@verizon.com
terry.scobie@verizon.com

AT&T Communications of the
Southern States, LLC
Ms. Lisa A. Sapper
1200 Peachtree Street, N.E.
Suite 8100
Atlanta, GA 30309-3579
lisariley@att.com

Mr. Adam Teitzman/Jason Rojas
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ateitzma@psc.state.fl.us
jrojas@psc.state.fl.us
jsusac@psc.state.fl.us
wgarcia@psc.state.fl.us
vmckay@psc.state.fl.us

Covad Communications Company
Mr. Charles E. Watkins
1230 Peachtree Street, N.E.
19th Floor
Atlanta, GA 30309-3574
gwatkins@covad.com

Florida Cable Telecom Assoc., Inc.
Michael A. Gross
246 East 6th Avenue
Suite 100
Tallahassee, FL 32303
mgross@fcta.com

AARP
200 West College Street
Tallahassee, FL 32301

AT&T
Tracy Hatch
101 North Monroe Street
Suite 700
Tallahassee, FL 32301-1549
thatch@att.com

ITC DeltaCom
Ms. Nanette S. Edwards
4092 South Memorial Parkway
Huntsville, AL 35802-4343
nedwards@itcdeltacom.com

KMC Telecom III, LLC
Marva Brown Johnson, Esq.
1755 North Brown Road
Lawrenceville, GA 30043-8119
marva.johnson@kmctelecom.com

Messer Law Firm
Floyd Self/Norman Horton
P.O. Box 1876
Tallahassee, FL 32302-1876
fself@lawfla.com
nhorton@lawfla.com

Sprint Communications Corp.
Susan Masterton
P.O. Box 2214
Tallahassee, FL 32316-2214
susan.masterton@mail.sprint.com
chrystal.whitt@mail.sprint.com

Allegiance Telecom, Inc.
Charles Gerkin, Jr., Esq.
9201 N Central Expressway
Dallas, TX 75231
charles.gerkin@allegiancetelecom.com

Moyle Law Firm
Jon Moyle, Jr.
The Perkins House
118 N Gadsden Street
Tallahassee, FL 32301
jmoylejr@moylelaw.com

Florida Competitive Carriers Assoc
C/O McWhirter Law Firm
Joseph McGlothlin/Vicki Kaufman
117 South Gadsden Street
Tallahassee, FL 32301
jmclothlin@mac-law.com

MCI WorldCom Communications, Inc.
Ms. Donna C. McNulty
1203 Governors Square Boulevard
Suite 201
Tallahassee, FL 32301-2960
donna.mcnulty@mci.com

MCI WorldCom Communications, Inc.
De O'Roark, Esq.
Six Concourse Parkway
Suite 3200
Atlanta, GA 30328
de.oroark@wcom.com

Xspedius Communications
Ms. Rabinai E. Carson
5555 Winghaven Boulevard
Suite 300
O'Fallon, MO 63366-3868
rabinai.carson@xspedius.com

Allegiance Telecom, Inc. (IL)
Theresa Larkin
700 East Butterfield Road
Lombard, IL 60148
terry.larkin@algx.com

Casey & Gentz, LLP
Bill Magness
919 Congress Avenue, Suite 1060
Austin, TX 78701

Supra Telecom
Jonathan Audu
1311 Executive Center Drive Suite 220
Tallahassee, FL 32301-5027
jonathan.audu@stis.com

BellSouth BSE, Inc
Mr. Mario L. Soto
400 Perimeter Center Terrace
Suite 400
Atlanta, GA 30346-1231
mario.soto@bellsouth.com

Supra Telecom
Jorge Cruz-Bastillo
2620 S.W. 27th Avenue
Miami, FL 33133-3005
jorge.cruz-bastillo@stis.com

NewSouth Communications Corp.
Jake E. Jennings
Two North Main Center
Greenville, SC 29601-2719
jejennings@newsouth.com

Access Integrated Networks, Inc.
Mr. Mark A. Ozanick
4885 Riverside Drive, Suite 107
Macon, GA 31210-1148
mark.ozanick@accesscomm.com

Comm. South Companies, Inc.
Sheri Pringle
P.O. Box 570159
Dallas, TX 75357-9900
springle@commsouth.net

Firstmile Technologies, LLC
Michael Farmer
750 Liberty Drive
Westfield, IN 46074-8844
mfarmer@gotown.net

Granite Telecommunications, LLC
Rand Currier/Geoff Cookman
234 Copeland Street
Quincy, MA 02169-4005
rcurrier@granitenet.com

Miller Isar, Inc.
Andrew O. Isar
7901 Skansie Avenue, St. 240
Gig Harbor, WA 98335
aisar@millerisar.com

Phone Club Corporation
Carlos Jordan
168 S.E. 1st Street, Suite 705
Miami, FL 33131-1423
phoneclubcorp@aol.com

Ben Johnson Associates, Inc.
John Nesmith
2252 Killlearn Center Blvd.
Tallahassee, FL 32309
in@benjohnsonassociates.com

Tier 3 Communications
Kim Brown
2235 First Street, Suite 217
Ft. Myers, FL 33901-2981
steve@tier3communications.net

Universal Telecom, Inc.
Jennifer Hart
P.O. Box 679
LaGrange, KY 40031-0679
Jenniferh@universaltelecominc.com

Sprint (KS)
Kenneth A Schiffman
6450 Sprint Parkway
Mailstop: KSOPHN0212-2A303
Overland Park, KS 66251-6100

Sprint (NC)
H. Edward Phillips, III
14111 Capital Boulevard
Mailstop: NCWKFR0313-3161
Wake Forest, NC 27587-5900

Z-Tel Communications, Inc.
Thomas Koutsky
1200 19th Street, NW
Suite 500
Washington, DC 20036
tkoutsky@z-tel.com

Office of the Public Counsel
C/O The Florida Legislature
Charles J. Beck, Deputy Public Counsel
111 Wets Madison Street
Room 812
Tallahassee, FL 32399-1400
beck.charles@leg.state.fl.us

Michael B. Twomey, Esq.
PO Box 5256
Tallahassee, FL 32314-5256
miketwomey@talstar.com



Matthew Feil
Scott A. Kassman
FDN Communications
390 North Orange Avenue
Suite 2000
Orlando, FL 32801
(407) 835-0460
(407) 447-6636
mfeil@mail.fdn.com
skassman@mail.fdn.com