

ORIGINAL

Legal Department

J. Phillip Carver
Senior Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0710

January 26, 2004

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Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket Nos. 981834-TP and 990321-TP (Generic Collocation)**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion In Limine Regarding Issues Resolved In Phase I, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies are being served via Electronic Mail and U.S. Mail to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver
J. Phillip Carver

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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 981834-TP and 990321-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand Delivery (*), First Class U.S. Mail and Electronic Mail this 26th day of January, 2004 to the following:

Beth Keating, Staff Counsel
Adam Teitzman, Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6212
Fax. No. (850) 413-6250
bkeating@psc.state.fl.us
ateitzma@psc.state.fl.us

FPSC Staff By E-Mail Only:
amaurey@psc.state.fl.us
bgardner@psc.state.fl.us
bcasey@psc.state.fl.us
cbulecza@psc.state.fl.us
david.dowds@psc.state.fl.us
irojas@psc.state.fl.us
jschindl@psc.state.fl.us
jebrown@psc.state.fl.us
lking@psc.state.fl.us
mbrinkle@psc.state.fl.us
plee@psc.state.fl.us
pvickery@psc.state.fl.us
plester@psc.state.fl.us
sasimmon@psc.state.fl.us
sbbrown@psc.state.fl.us
scater@psc.state.fl.us
tbrown@psc.state.fl.us
vmckay@psc.state.fl.us
zring@psc.state.fl.us

Joseph A. McGlothlin
Vicki Gordon Kaufman (+) (*)
Timothy Perry
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman, Arnold,
& Steen, P.A.
117 South Gadsden Street
Tallahassee, FL 32301
Tel. No. (850) 222-2525
Fax. No. (850) 222-5606
Attys. for FCCA
Attys. for Network Telephone Corp.
Attys. for BlueStar
Attys. For Covad (+)
jmcglothlin@mac-law.com
vkaufman@mac-law.com
tperry@mac-law.com

Richard A. Chapkis (+)
Terry Scobie
Verizon Florida, Inc.
One Tampa City Center
201 North Franklin Street (33602)
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110
Tel. No. (813) 483-2606
Fax. No. (813) 204-8870
Richard.chapkis@verizon.com
terry.scobie@verizon.com

Paul Turner
Supra Telecommunications & Info.
Systems, Inc.
2620 S.W. 27th Avenue
Miami, FL 33133
Tel. No. (305) 476-4247
Fax. No. (305) 476-4282
pturner@stis.com

Susan S. Masterton (+)
Sprint Comm. Co. LLP
1313 Blair Stone Road (32301)
P.O. Box 2214
MC: FLTLHO0107
Tallahassee, FL 32316-2214
Tel. No. (850) 847-0244
Fax. No. (850) 878-0777
Susan.masterton@mail.sprint.com

Sprint-Florida, Incorporated
Mr. F. B. (Ben) Poag
P.O. Box 2214 (MC FLTLHO0107)
Tallahassee, FL 32316-2214
Tel. No. (850) 599-1027
Fax. No. (407) 814-5700
Ben.Poag@mail.sprint.com

William H. Weber, Senior Counsel
Gene Watkins
Covad Communications
1230 Peachtree Street, N.E.
19th Floor
Atlanta, Georgia 30309
Tel. No. (404) 942-3494
Fax. No. (404) 942-3495
wweber@covad.com
gwatkins@covad.com

Rodney L. Joyce
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2004
Tel. No. (202) 639-5602
Fax. No. (202) 783-4211
Counsel for Network Access Solutions
rjoyce@shb.com

Verizon Florida, Inc.
Ms. Michelle A. Robinson
%Mr. David Christian
106 East College Avenue
Suite 810
Tallahassee, FL 32301-7704
Tel. No. (813) 483-2526
Fax. No. (813) 223-4888
Michelle.Robinson@verizon.com
David.Christian@verizon.com

Ms. Lisa A. Riley
Virginia C. Tate
1200 Peachtree Street, N.E.
Suite 8066
Atlanta, GA 30309-3523
Tel. No. (404) 810-7812
Fax. No. (404) 877-7646
lriley@att.com
vctate@att.com

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

Catherine K. Ronis, Esq.
Daniel McCuaig, Esq. (+)
Jonathan J. Frankel, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1420
Tel. No. (202) 663-6000
Fax. No. (202) 663-6363
catherine.ronis@wilmer.com
daniel.mccuaig@wilmer.com

Jonathan Audu
c/o Ann Shelfer
Supra Telecommunications and
Information Systems, Inc.
1311 Executive Center Drive
Koger Center - Ellis Building
Suite 200
Tallahassee, FL 32301-5027
Tel. No. (850) 402-0510
Fax. No. (850) 402-0522
ashelfer@stis.com
jonathan.audu@stis.com

Mickey Henry
AT&T
1200 Peachtree Street, N.E.
Suite 8100
Atlanta, Georgia 30309-3523
Tel. No. (404) 810-2078
michaeljhenry@att.com

Mellony Michaux (by e-mail only)
AT&T
mmichaux@att.com

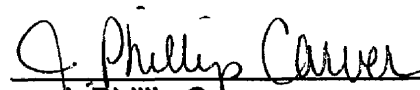
Roger Fredrickson (by e-mail only)
AT&T
rfrederickson@att.com

Tracy W. Hatch, Esq. (+)
AT&T Communications of the
Southern States, LLC
101 North Monroe Street, Ste. 700
Tallahassee, FL 32301
Tel. No. (850) 425-6360
Fax No. (850) 425-6361
thatch@att.com

Floyd Self
E. Gary Early
Messer, Caparello & Self
Post Office Drawer 1876
215 South Monroe Street, Suite 701
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
Fax. No. (850) 224-4359
Co-counsel for AT&T
fself@lawfla.com

Scott A. Kassman
FDN Communications
390 North Orange Avenue
Suite 2000
Orlando, FL 32801
Tel No. (407) 447-6636
Fax No. (407) 447-4839
www.fdn.com

Donna Canzano McNulty, Esquire
MCI WorldCom
1203 Governor Square Blvd., Ste. 201
Tallahassee, Florida 32301


J. Phillip Carver

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive)
Carriers for Commission Action) Docket No. 981834-TP
To Support Local Competition)
In BellSouth's Service Territory)

In re: Petition of ACI Corp. d/b/a)
Accelerated Connections, Inc. for) Docket No. 990321-TP
Generic Investigation into Terms and)
Conditions of Physical Collocation)

) Filed: January 26, 2004

**BELLSOUTH'S MOTION IN LIMINE REGARDING
ISSUES RESOLVED IN PHASE I**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Motion *In Limine* Regarding Issues Resolved In Phase I, and states the following:

1. Based on its Pre-Hearing Statement and other actions in this proceeding, it would appear that Covad will attempt to interject into the Phase II hearing matters that have already been ruled upon by the Commission in its Order on Phase I (Order No. 99031-TP) ("Phase I Order"), specifically, the issue of how power charges should be structured (Issue 6 in the Phase I proceeding). Further, it is reasonable to assume that Covad will spend a substantial amount of the hearing time attempting to introduce evidence on this issue. Accordingly, BellSouth requests an Order from the Commission limiting the scope of the evidence presented in Phase II at the hearing to that which is properly at issue.

2. This docket has, of course, been divided into two phases by the Commission's *Second Order Modifying Procedure* (Order No. PSC-03-0776-PCO-TP, issued July 1, 2003). Under the Commission's Order, Phase I included Issues 1-8 (technical issues and issues relating to the terms and conditions of collocation). Phase II included Issues 9 and 10 (cost issues). More specifically, Issue 6A inquired whether power should be charged on a per fused amp or per

used amp basis. Issue 6B raised the concomitant question of how power charges should be calculated, depending upon the resolution of 6A. Phase II involves setting the cost-based rates for the various collocation elements, including costs relating to power. Thus, there is certainly a relationship between Phase I and Phase II issues. However, the Commission has made it very clear that these two phases are separate, and that they are to remain separate. This necessarily means that issues are to be addressed (according to the division described above) in either Phase I or Phase II, but not both.

3. During the Phase I hearing, there was discussion of a proposal to separate the charge for electrical power into two components: one charge for infrastructure, and another charge for energy. Although a number of witnesses were asked questions regarding this proposal, no witness that testified actually supported this proposal in their filed testimony. Moreover, the Commission did not adopt this approach in its Order on Phase I. Specifically, the Order states as follows:

While the proposal to separate infrastructure from power consumption that was discussed at the hearing is conceptually sound, paying for power plant infrastructure costs up-front might pose a barrier to entry for most CLECs. We believe Sprint's alternative proposal is the most reasonable option presented.

(Phase I Order, pp. 39-40).

Covad is well aware that this issue was ruled upon in Phase I because it filed a Motion For Reconsideration that addressed this specific issue.

4. Nevertheless, Covad has propounded upon BellSouth a massive amount of discovery relating to this issue that the Commission has already resolved in Phase I. The Commission denied most of Covad's discovery requests, but did instruct BellSouth to Answer Covad's Interrogatory Nos. 13-16, which inquired as to what BellSouth would charge for power infrastructure on a non-recurring basis if it were ordered by the Commission to recover its cost in

this manner (Order Granting, In Part, and Denying, In Part, Motions To Compel). BellSouth is filing its responses today. In its ruling, the Commission specifically noted that “what is relevant for purposes of discovery is a broader matter than what is relevant and admissible at hearing.” (*Id.*, p. 5).

5. Finally, (as set forth in the Prehearing Order) Covad’s Statement of its Position on Issue 9A, is that Covad supports AT&T’s position with one exception. Specifically,

Covad respectfully asks the Commission to separate the DC portion of the power charge for power provided to the CLECs’ collocation space from the infrastructure portion of the power charge and provide the infrastructure charge as either a Monthly Recurring Charge (MRC) or as an alternative Non-Recurring Charge (NCR).

(Prehearing Order, pp. 12-13)

Thus, Covad’s primary position on this Phase II issue is, in effect, a request that the Commission reverse the ruling that it has already made in Phase I on this very same issue.

6. Every indication at this juncture is that Covad will attempt to conduct itself in Phase II of the hearing as it did in Phase I. In other words, in Phase I, Covad did not pre-file testimony of a witness, but rather attempted to make its case through extensive cross examination of the witnesses of other parties. Since Covad has not filed a witness in Phase II, presumably it will do the same. Presumably Covad will also attempt to introduce into evidence BellSouth’s responses to Interrogatories No. 13-16, even though they clearly go to a power issue that were resolved by the Commission in Phase I of the proceeding.

7. Given the above, BellSouth objects to any attempt by Covad to interject this Phase I Issue into Phase II and requests that the Commission enter an Order limiting the evidence to be presented. All evidence in Phase II should be limited to that which is within the proper scope of this phase of the proceeding. Again, based on Covad’s discovery and their Pre-Hearing

Statement, every indication is that Covad will attempt to utilize this hearing for the primary purpose of rearguing a position that the Commission has already considered and rejected when it declined in the Phase I Order to require separate charges for power infrastructure and for energy. Covad has already raised this issue on reconsideration. Covad should not be allowed to misuse the hearing to have a third bite at the apple on an issue that is clearly not before the Commission as part of Phase II.

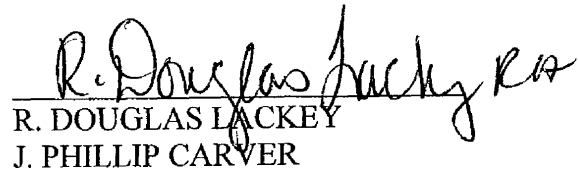
8. Accordingly, BellSouth requests that the Commission rule at the outset of the hearing that the evidence should be strictly limited to that which is within the scope of the Phase II issues. More specifically, Covad and other parties should not be permitted to ask questions of witnesses, or to introduce discovery responses or other evidence relating to the proposal to bifurcate power issue charges, which have been thoroughly presented in Phase I, considered by the Commission and ruled upon.

WHEREFORE, BellSouth respectfully requests the entry of an Order granting this Motion *In Limine* as set forth above.

Respectfully submitted this 26th day of January, 2004.



NANCY B. WHITE
Museum Tower
150 West Flagler Street
Suite 1910
Miami, Florida 33130



R. DOUGLAS LACKEY
J. PHILLIP CARVER
General Attorneys
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0710

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

523370