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November 23, 2004

041338-TP

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

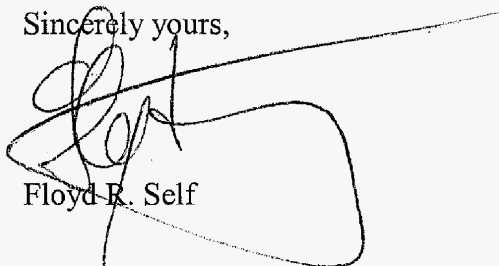
Dear Ms. Bayó:

Enclosed for filing on behalf of ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine ("ITC^DeltaCom"), Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch ("Birch"), DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), Florida Digital Network, Inc. ("FDN"), LecStar Telecom, Inc. ("LecStar"), MCI Communications, Inc. ("MCI"), and Network Telephone Corporation (hereinafter collectively "Joint CLECs") are an original and fifteen copies of their Joint Petition for Generic Proceeding to Set Rates, Terms, and Conditions for Hot Cuts and Batch Hot Cuts in the BellSouth Telecommunications, Inc. Service Area.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb  
Enclosures

DOCUMENT NUMBER-DATE

12558 NOV 23 3

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition For Generic Proceeding )  
To Set Rates, Terms, and Conditions For )  
Batch Hot Cuts For UNE-P To UNE-L Conversions ) Docket No.  
and for ILEC to UNE-L Conversions in the ) Filed: November 23, 2004  
BellSouth Telecommunications, Inc. Service Area )

**JOINT PETITION FOR GENERIC PROCEEDING TO SET RATES, TERMS,  
AND CONDITIONS FOR HOT CUTS AND BATCH HOT CUTS  
IN THE BELLSOUTH TELECOMMUNICATIONS, INC. SERVICE AREA**

ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine ("ITC^DeltaCom"), Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch ("Birch"), DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), Florida Digital Network, Inc. ("FDN"), LecStar Telecom, Inc. ("LecStar"), MCI Communications, Inc. ("MCI"), and Network Telephone Corporation (hereinafter collectively "Joint CLECs"), pursuant to Rules 25-22.036 and 28-106.201, Florida Administrative Code, hereby petition the Florida Public Service Commission ("Commission") for a generic proceeding to set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in the BellSouth Telecommunications, Inc. ("BellSouth") service area. In support of this Petition, Joint CLECs state as follows:

**Parties**

1. The competitive local exchange company ("CLEC") parties to this Petition are:
  - a) ITC^DeltaCom is an Alabama corporation having its principal place of business at 1791 O.G. Skinner Drive, West Point, Georgia 31833. ITC^DeltaCom is a certificated competitive local exchange carrier in Florida holding certificate number 4764. ITC^DeltaCom

provides local exchange and long distance services either over its own facilities or by resale of BellSouth services.

b) Covad is a telecommunications carrier, as defined by 47 U.S.C. § 153(44), headquartered at 3420 Central Expressway, Santa Clara, California 95051 and with a regional office at 1230 Peachtree Street, N.E., 19<sup>th</sup> Floor, Atlanta, Georgia 30309. Covad is a certificated competitive local exchange carrier in Florida holding certificate number 5719. Covad provides local exchange and long distance services either over its own facilities or by resale of BellSouth services.

c) Birch is a Delaware corporation having its principal place of business at 2020 Baltimore Avenue, Kansas City, Missouri 64108-1914. Birch is a certificated competitive local exchange carrier in Florida holding certificate number 7552. Birch provides local exchange and long distance services either over its own facilities or by resale of BellSouth service.

d) FDN is a Florida corporation having its principal place of business at 2301 Lucien Way, Suite 200, Maitland Florida 32751-7025. FDN is a certificated competitive local exchange carrier in Florida holding certificate number 5715. FDN provides local exchange and long distance services either over its own facilities or by resale of BellSouth services.

e) LecStar is a Georgia corporation having its principal place of business at 4501 Circle 75 Parkway, Suite D-4200, Atlanta GA 30339-3025. LecStar is a certificated competitive local exchange carrier in Florida holding certificate number 7315. LecStar provides local exchange and long distance services either over its own facilities or by resale of BellSouth service.

f) MCI is a Delaware corporation having its principal place of business is 22001 Loudoun County Parkway, Ashburn, Virginia 20147. MCI is a certificated competitive local exchange carrier in Florida holding certificate number 4040. MCI provides local exchange and long distance services either over its own facilities or by resale of BellSouth service.

g) Network Telephone Corporation is a Florida corporation. Network Telephone Corporation is a certificated competitive local exchange carrier in Florida holding certificate number 5613. Network Telephone Corporation provides local exchange and long distance services either over its own facilities or by resale of BellSouth service.

2. BellSouth is an incumbent local exchange carrier as defined by § 251(f) of the Telecommunications Act of 1996, 47 USC § 251(f). BellSouth provides local exchange and exchange access service in Florida subject to the regulatory authority of this Commission.

3. All notices, orders, pleadings, discovery, and correspondence regarding this Complaint should be provided to the following counsel on behalf of the indicated Joint CLECs:

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On behalf of MCI

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On behalf of Network Telephone Corporation

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#### **Jurisdiction & Statement of Applicable Law**

4. The Commission has the jurisdiction and authority to conduct the requested proceeding and set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in the BellSouth service area pursuant to Florida Statutes Sections 120.80(13), 364.01, 364.07, 364.16, 364.161, and 364.162, Florida Administrative Code Rules 25-22.036 and 28-106.201, and Sections 251 and 252 of the Telecommunications Act of 1996, codified at 47 USC §§ 252, 252 (“the Act” or “the Federal Act”).

## Background & Statement of Relief

5. The Joint CLECs need this Commission to set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in the BellSouth service area.

6. The term UNE-P refers to the combination of local loop, local switching, and shared transport unbundled network elements (“UNEs”) that a CLEC obtains from an incumbent local exchange carrier (“ILEC”). The Commission has recognized that a large number of Floridians served by CLECs are provided local service via UNE-P.<sup>1</sup> For the mass market customers, UNE-P is especially important as the lower investment costs of UNE-P service enable a CLEC to achieve operational economies of scale that enables the CLEC to make other necessary investments for the benefits of customers (*i.e.*, OSS, marketing, managerial, customer services, etc.). As noted by the Commission’s report to the Florida legislature, CLECs are finding it increasingly difficult to compete in today’s market and regulatory environment.<sup>2</sup> For those customers served via UNE-P today, there must be an efficient and economical transition mechanism for UNE-L (unbundled loops).

7. The term UNE-L refers to the local loop UNE. In order for a CLEC to provide service to a customer via only a local loop UNE (*i.e.*, UNE-L), the CLEC must have its own local switching, transport, and other network facilities. The UNE-L market approach is in many respects the preferred marketing approach for facilities-based CLECs as it puts the CLEC in a better position to control the ultimate delivery of service to its customers.

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1 See pages 7 and 8 of the Competition report (draft of November 2, 2004) stating “Many CLECS serve the residential and small business markets primarily by leasing ILEC unbundled loops, transport and switching (known as UNE-Platform, or UNE-P), and to a much lesser extent, through resale.” See also, page 36 Figure 11 showing that 77% of the residential lines served by CLECs are served using UNE-P.

2 *Id* at page 28.

8. There are other technical issues associated with a market strategy utilizing UNE-L. Each ILEC's outside plant facilities were built (and are largely maintained) specifically to support the ILEC's retail services, and such services are usually well integrated in order to achieve economies of scope and scale. In a UNE-L environment, the ILEC is required to separate network elements that have been inherent to the provision of local service as well as UNE-P service.

9. As the Commission is well aware, the future availability of UNE-P service is, at this point in time, very limited. Thus, to the extent that UNE-P is no longer going to be available to CLECs, the transitioning of CLEC customers from UNE-P competition to UNE-L competition will require various technical and systems changes and improvements. Moreover, the same types of transitional issues exist in moving customers from an existing ILEC retail service to a CLEC's UNE-L service.

10. The term "hot cut" refers to a process by which the ILEC migrates loops from one carrier's local switch to another carrier's local switch. This migration requires that the loop be manually disconnected from the ILEC switch and reconnected to the CLEC switch, the so-called "hot cut." This manual process is subject to both human and systems errors that can result in various customer impacts, ranging from incorrect directory listing information to loss of dial tone. Even before the cut can be ordered, pre-order information must be gathered from a number of sources, particularly when the customer is migrated from another CLEC. As the cut is made, the customer's new information must be populated in multiple data bases, the customer's number must be ported to the new carrier, and switch translations must be completed. In Docket No 030851-TP, BellSouth proposed inadequate batch cut processes and rates that are not conducive to facilities based competition. Additionally, there are no procedures or rates for batch hot cuts from BellSouth retail service to UNE-L.

11. The loop provisioning process, whether it involves a hot cut, a new installation, or the porting in or out of a customer's telephone number, encompasses all of the steps necessary to migrate the customer from one carrier to another. This process includes the preorder exchange of customer and facilities information necessary to construct the order and post-ordering coordination that must take place, including establishing the ported number in the downstream data bases, creating new or changed directory listings, and managing customer trouble and churn in a multi-party environment. All must function smoothly for a trouble-free customer migration experience.

12. If the migration of a customer to UNE-L service is unsuccessful, the outcome can be a disaster: the customer may lose dial tone altogether, may be unable to receive calls, or may find that an unlisted telephone number is published in every directory in that city. The transition to UNE-L depends on the use of a number of information exchange systems that were tested only in passing during the Section 271 process. Here, on the basis of the experience of the CLECs and information submitted in Docket No. 030851-TP, it is not so certain that BellSouth can meet the service volume requirements of the numerous carriers that will be transitioning their customer base to UNE-L. In addition, because the testing that occurred during the section 271 reviews a few years ago focused primarily on the migration of customers to UNE-P, it did not include a review of Customer Service Record exchange between CLECs (and between the losing CLEC and the ILEC in winback situations), the Local Number Portability process, updates to data bases (like the Number Portability Administration Center ("NPAC") and the Local Exchange Routing Guide ("LERG")), directory listings changes, or the ability to resolve customer impacting troubles (such as loss of dial tone) in a timely fashion.

13. The amendments to Florida law and Federal law in 1995 and 1996 that removed the historic legal monopolies precluding local exchange competition clearly contemplated a system by



which the competing local companies would interconnect, exchange traffic, and, in some instances, use the unbundled network facilities of the incumbent local exchange carriers. *See, e.g.*, the unbundling and resale provisions of Florida Statutes Section 364.161(1), and 47 USC § 251(c)(3).

14. Since the adoption of the Federal Act, the Federal Communications Commission and the federal courts have attempted to address the statutory obligations of section 251(c)(3) of the Act. While in the current federal regulatory environment the industry is presently awaiting issuance of permanent unbundling rules, the statutory obligation to unbundle remains.

15. With respect to the Florida law unbundling requirements, this Commission has not promulgated specific unbundling rules pursuant to Florida Statutes Chapter 120. However, this Commission has handled various petitions for arbitration and has otherwise approved interconnection, unbundling, and resale agreements pursuant to the provisions of Florida Statutes section 364.161.

16. On the basis of the federal and state statutory enactments and the federal implementing rules, numerous CLECs, including petitioners, have developed and implemented business plans in reliance upon UNE-P, especially to serve the mass market customers.

17. While this Commission has set a non-recurring rate for individual hot cuts for a UNE-P to UNE-L conversion or a retail to UNE-L conversion, this Commission has not, in a comprehensive or integrated manner, set the rates, terms, and conditions for batch hot cuts for UNE-P to UNE-L conversions or for retail to UNE-L conversions in the BellSouth service area. The FCC has said that the state commissions should adopt batch hot cut rates that reflect the efficiencies associated with the batched migration of loops to a requesting telecommunications carriers' switch.<sup>3</sup>

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<sup>3</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, paras 487-490 (Rel. Aug. 21, 2003).

Additionally, this Commission needs to re-examine the non-recurring charges for conversions from UNE-P to UNE-L as those rates were set several years ago and are too high to promote facilities based competition.

18. In Docket No. 040301-TP, a case involving Supra Telecommunications and Information Systems, Inc. and BellSouth (“the Supra case”), the revised issues for the hearing to be conducted in December 2004 identifies four issues relating to hot cuts. Order No. PSC-04-0959-PCO-TP, at page 4. While the Commission has made it clear that the resolution of the Supra case is a two-party only proceeding based upon the underlying contract between the parties, the disposition of the Supra case does have the potential to set a precedent for migrations to UNE-L service that BellSouth could seek to apply as a determination of this Commission for other CLECs that come behind Supra. Indeed, in prefiled testimony a BellSouth witness has said that to the extent Supra is attempting to establish a different rate structure, the appropriate forum would be a generic cost proceeding in which all the CLECs would have an opportunity to participate. Docket No. 040301-TP, Prefiled Rebuttal Testimony Of D. Daonne Caldwell, at 4-5 (filed Oct. 8, 2004).

#### **Disputed Issues of Material Fact**

19. Other states, such as Delaware, Michigan, and New York, have recognized the importance of establishing a comprehensive hot cuts and batch hot cuts process, and have recently instituted similar generic type proceedings to address this critical issue.

20. What rates, terms, and conditions should apply for a hot cut from a UNE-P service to a UNE-L service?

21. What rates, terms, and conditions should apply for a batch hot cut from a UNE-P service to a UNE-L service?

22. What rates, terms, and conditions should apply for a hot cut from a BellSouth retail service to a UNE-L service for a CLEC?

23. What rates, terms, and conditions should apply for a batch hot cut from a BellSouth retail service to a UNE-L service for a CLEC?

24. Whether any recurring or nonrecurring rate set in Docket No. 040301-TP has any precedential value for this proceeding, or whether any Supra case decision would be an interim rate subject to the final rates, terms, and conditions determined in this proceeding?

### **Statement of the Ultimate Facts**

25. The Commission has not previously set rates, terms, and conditions for batch hot cuts in a comprehensive or complete manner and needs to re-examine what rates should apply for individual hot cuts

26. The Joint CLECs specifically, and the overall CLEC industry, especially needs rates, terms, and conditions for individual and batch hot cuts as soon as possible, in advance of any discontinuation of UNE-P services.

27. The CLEC industry needs rates, terms, and conditions for hot-cuts and/or migrations from UNE-P and retail loops to xDSL-capable UNE loops providing data and Voice-over-Internet Protocol services.

28. The just and reasonable rates, terms, and conditions for individual and batch hot cuts from UNE-P and retail loops to UNE-L and from UNE-P and retail loops to xDSL capable UNE loops should be based upon cost and be TELRIC-compliant. In addition, the operational, technical, and managerial systems and processes need to be in place and capable of handling the volumes and being able to transition customers in a seamless, trouble-free manner.

29. The Commission should establish an expedited schedule by which BellSouth will be required to file a TELRIC-complaint cost studies for individual and batch hot cuts from UNE-P and retail loops to UNE-L and from UNE-P and retail loops to xDSL capable UNE loops within 60 days.

**Request for Relief**

WHEREFORE, the Petitioners, respectfully request that the Commission conduct the requested generic proceeding and set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in the BellSouth service area; and to grant such other and further relief as is necessary and appropriate.

Respectfully submitted, this 23<sup>rd</sup> day of November, 2004.



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following parties by Hand Delivery (\*), and/or U. S. Mail this 23<sup>rd</sup> day of November, 2004.

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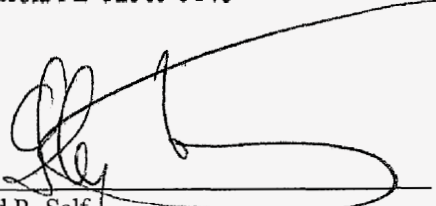
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