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From: Elizabeth_Carrero@fpl.com
Sent: Thursday, August 25, 2005 10:30 AM
To: Filings@psc.state.fl.us
Cc: Wade_Litchfield@fpl.com; Ery_Martin@fpl.com
Subject: Electronic Filing for Docket No. 041269-TP - FPL FiberNet LLC's Objections to BellSouth's First Request for Admission (No. 1)

Attachments: Objections to BellSouth's First Request for Admission.doc



Objections
BellSouth's Fi

a. Person responsible for this electronic filing:

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b. Docket No. 041269-TP

In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law

c. Document being filed on behalf of FPL FiberNet LLC.

d. There are a total of 4 pages.

e. The document attached for electronic filing is FPL FiberNet, LLC's Objections to BellSouth's First Request for Admission (No. 1)

(See attached file: Objections to BellSouth's First Request for Admission.doc)

Thank you for your attention and cooperation to this request.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Establish Generic Docket to)	Docket No. 041269-TP
Consider Amendments to Interconnection)	
Agreements Resulting From Changes of Law)	Filed: August 25, 2005
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FPL FIBERNET, LLC's OBJECTIONS TO BELL SOUTH's FIRST REQUEST FOR ADMISSION (NO. 1)

FPL FiberNet, LLC ("FPL FiberNet") hereby submits the following general objections to BellSouth Telecommunications, Inc.'s ("BellSouth") First Request for Admission (No. 1). FPL FiberNet is not a party to the above-captioned proceeding and submits these objections only as a procedural courtesy to BellSouth. FPL FiberNet's filing should in no way be construed as an intervention or appearance either as a party or an interested party in connection with this matter. For the reasons set forth below, BellSouth's discovery is impermissible under the Florida Rules of Civil Procedure, and the rules of and/or governing practice before this Commission. FPL FiberNet reserves the right to file supplemental objections that it may deem appropriate.

GENERAL OBJECTIONS

1. FPL FiberNet objects to BellSouth's request for admission as an impermissible means of discovery given FPL FiberNet's status as a non-party to this proceeding. Neither the Florida Rules of Civil Procedure, the Uniform Rules of Procedure governing administrative practice ("Uniform Rules"), nor any other Commission Rule authorizes the use of such discovery vehicles by a party with respect to a non-party.

2. The Uniform Rules provide that "parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." Section 28-106.206, F.A.C. Florida Rules of Procedure 1.340, 1.350, and 1.370,

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respectively, only allow the use of written interrogatories, requests for the production of documents, and requests for admission, as means of obtaining discovery from other “parties” to the proceeding. No other Uniform or Commission Rule authorizes the use of such devices to obtain discovery of a non-party. BellSouth’s discovery, therefore, is impermissible and of no effect.

3. BellSouth should withdraw the improper discovery served upon FPL FiberNet. Alternatively, the pre-hearing officer in this proceeding should enter an order stating that the above-referenced discovery served upon FPL FiberNet by BellSouth is impermissible under the Florida Rules of Civil Procedure and the rules of and/or governing practice before this Commission, and therefore of no effect.

Respectfully submitted,

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Attorney for FPL FiberNet LLC

s/R. Wade Litchfield
R. Wade Litchfield

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FPL FiberNet LLC's Objections to BellSouth's First Request for Admissions (No. 1) to FPL FiberNet has been furnished by U.S. Mail this 25th day of August 2005, to the following:

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