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Florida Cable Telecommunications Association

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Steve Wilkerson, President

**VIA HAND DELIVERY**

February 20, 2006

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

**RE: Docket No. 050119-TP & 050125-TP**

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the Prehearing Statement of the Florida Cable Telecommunications Association.

Copies of the Prehearing Statement have been served on the parties of record by electronic and U.S. Mail delivery. Please acknowledge receipt of filing of the above by stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in processing this filing. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, reading "Michael A. Gross". The signature is written in a cursive, flowing style.

Michael A. Gross  
Vice President, Regulatory Affairs &  
Regulatory Counsel

Enclosure

cc: All Parties of Record

DOCUMENT NUMBER DATE

01459 FEB 20 08

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement of Florida Cable Telecommunications Association in Docket Nos. 050119 and 050125-TP has been served upon the following parties by electronic and U.S. Mail this 20th day of February 2006.

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Michael A. Gross

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC ["Joint Petitioners"] objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.

Docket No. 050119-TP

In re: Petition and Complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC.

Docket No. 050125-TP

PREHEARING STATEMENT OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION

Florida Cable Telecommunications Association (FCTA), pursuant to the Order Establishing Procedure, Order No. PSC-05-1206-PCO-TL, issued on December 6, 2005, of the Florida Public Service Commission, files its Prehearing Statement and states:

**A. WITNESSES**

The FCTA will present the following witnesses to offer testimony on the issues in this docket:

<u>Witness</u>	<u>Proffered by</u>	<u>Issues #</u>
Don J. Wood (Rebuttal)	FCTA	1-6, 8-9, 11, 14-17

DOCUMENT NUMBER-DATE

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**B. EXHIBITS**

<u>Witness</u>	<u>Proffered by</u>	<u>I.D. No.</u>	<u>Description</u>
Don J. Wood	FCTA	DJW-1	Qualifications
Don J. Wood	FCTA	DJW-2	Rate Page from Comcast-BellSouth Interconnection Agreement

**C. BASIC POSTION**

It is FCTA's position that the rates, terms, and conditions that govern the interconnection of two carriers, including but not limited to the rates, terms, and conditions for transit service, are properly addressed in an interconnection agreement negotiated by the carriers. If the carriers are unable to reach a resolution of any disputed issues, the issues should be brought to the Commission in the context of a §252 arbitration.

The history of the immediate dispute suggests that it began as BellSouth and certain small ILECs attempted to negotiate such rates and terms. In the context of those negotiations, BellSouth sought compensation for a network functionality – transit – that it is providing to small ILECs when the customer of the small ILEC originates a call that is ultimately terminated on the network of another carrier (one with which the small ILEC is not directly interconnected). In response to BellSouth's demand for compensation, the small ILECs took unsupportable positions regarding their interconnection obligations pursuant to §251 and refused to compensate BellSouth for the functionality being provided. Rather than initiate the process that would have brought the issue to the Commission for arbitration, BellSouth chose to file a tariff for the transit functionality that would apply in the absence of an interconnection agreement. While it appears that

the refusal of the small ILECs to compensate BellSouth is unreasonable and unlawful, the “presumptively valid, mandatory tariff” is not a remedy that is available to BellSouth. The potential impact of BellSouth’s attempt to take a shortcut through the §252 negotiation/arbitration process is compounded by the fact that the transit tariff includes a rate for an essential network function that is well above cost and duplicative of the cost recovery already being accomplished via other rates. This tariff has the potential to impact numerous other carriers and to disrupt how those carriers interconnect, exchange traffic, and compensate each other for doing so. Such a disruption would not only have business implications for a large number of carriers, it would have an adverse impact on end user customers in terms of higher rates, blocked calls, and competitive choice.

The Commission should not intervene substantively in the dispute between BellSouth and the small ILECs at this time, because the issues have not been brought before it in the form of a §252 arbitration. While the Commission has no direct role in the §252 negotiation process, it should encourage BellSouth and the small ILECs to negotiate interconnection agreements that include the rates and terms for the transit services provided by BellSouth. An interconnection agreement, rather than a tariff, is the proper place for interconnection rates and terms.

If the negotiations between BellSouth and the small ILECs fail to result in a resolution of the issue and the Commission is ultimately called upon to arbitrate this dispute pursuant to the §252 process, then it should apply the following principles: (1) The industry standard of cost causation and intercarrier compensation, created by the Act and subsequent FCC rules, requires that the originating carrier – as the cost causer – be responsible for compensating another carrier that performs transport and termination

functions in order to complete a call; (2) The small ILECs cannot be excused from their §251 obligations; (3) The rates for transit service functions, like other interconnection rates, must be cost-based.

In order to avoid a disruption in the way that carriers interconnect today and in the future, the Commission should conclude that BellSouth's tariff for transit services seeks to preempt rates and conditions that are properly contained within an interconnection agreement, and therefore the tariff is both unnecessary and an inappropriate intrusion on the negotiation process. If BellSouth's tariff is not rejected by the Commission, the Commission should require that the language be changed to make it clear (1) that the application of the tariff is strictly limited to those instances in which the originating carrier elects not to seek an interconnection agreement with BellSouth, and (2) that the existence of the tariff cannot interfere in any way with the negotiation of the rates or terms of future interconnection agreements. If BellSouth has in place a "transit traffic tariff" that contains a rate that is well above cost and that will apply if no agreement is reached by the parties, BellSouth's incentive to meet its §251(c)(1) obligation to "negotiate in good faith" will be reduced. The existence of the tariff would give BellSouth the leverage to insist on a higher rate or even to try to remove the rates and terms for transit functionalities from the interconnection agreement negotiation entirely.

In summary, the present proceeding has evolved from a specific dispute between carriers, and its focus should remain on that dispute while avoiding a disruption of how other carriers interconnect, exchange traffic, and compensate each other. BellSouth is performing a service for the small ILECs for which it should be fairly compensated at a rate that will permit cost recovery, but the proper remedy for BellSouth is negotiation and



if necessary arbitration, not an end-run around the negotiation process with a tariff filing.

#### **D.-F. POSITIONS ON THE ISSUES**

##### **Issue 1**

Is BellSouth's Transit Service Tariff an appropriate mechanism to address transit service provided by BellSouth?

##### **FCTA Position**

No. BellSouth should pursue compensation for transit service through the negotiation (and if necessary, arbitration) of an interconnection agreement.

##### **Issue 2**

If an originating carrier utilizes the services of BellSouth as a tandem provider to switch and transport traffic to third party not affiliated with BellSouth, what are the responsibilities of the originating carrier?

##### **FCTA Position**

The responsibilities of the originating carrier, if a request is made by BellSouth, are to (1) negotiate in good faith with BellSouth to develop an interconnection agreement that sets forth the rates and terms for the transit functions performed by BellSouth, and (2) to compensate BellSouth, pursuant to a negotiated or arbitrated cost-based rate, for providing this function.

##### **Issue 3**

Which carrier should be responsible for providing compensation to BellSouth for the provision of the transit transport and switching services?

##### **FCTA Position**

The originating carrier is responsible for compensating the transit provider.

**Issue 4**

What is BellSouth's network arrangement for transit traffic and how is it typically routed from an originating party to a terminating third party?

**FCTA Position**

FCTA believes that BellSouth is in the best position to provide information regarding its network arrangements.

**Issue 5**

Should the FPSC establish the terms and conditions that govern the relationship between an originating carrier and the terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

**FCTA Position**

No. The terms and conditions that govern interconnection and intercarrier compensation should be negotiated by the carriers. It is not necessary for an originating carrier to have an interconnection agreement with the terminating carrier in order for the originating carrier to properly compensate BellSouth. If the terminating carrier elects to pursue compensation for this traffic, it should initiate negotiations with the originating carrier for the development of an interconnection agreement.

**Issue 6**

Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should

an originating carrier be required to obtain direct interconnection with a terminating carrier?

**FCTA Position**

No. Carriers should be permitted to determine how best to efficiently interconnect their networks.

**Issue 7**

How should transit traffic be delivered to the small LEC's networks?

**FCTA Position**

The FCTA does not have a position on this issue. The FCTA reserves its right to take a position in its posthearing brief (1) to respond to this issue and/or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any issue and position properly identified and/or properly stated by any other party or the Commission.

**Issue 8**

Should the FPSC establish the terms and conditions that govern the relationship between BellSouth and a terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

**FCTA Position**

No. The terms and conditions that govern interconnection and intercarrier compensation should be negotiated by the carriers. It is not necessary for an originating carrier to have an interconnection agreement with the terminating carrier in order for the

originating carrier to properly compensate BellSouth.

**Issue 9**

Should the FPSC establish the terms and conditions of transit traffic between the transit service provider and the small LECs that originate and terminate transit traffic? If so, what are the terms and conditions?

**FCTA Position**

No. These terms and conditions should be negotiated by the carriers. The Commission's involvement should be limited to those occasions in which the parties are unable to reach an agreement and have submitted the dispute to the Commission for arbitration.

**Issue 10**

What effect does transit service have on ISP bound traffic?

**FCTA Position**

The FCTA does not have a position on this issue. The FCTA reserves its right to take a position in its posthearing brief (1) to respond to this issue and/or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any issue and position properly identified and/or properly stated by any other party or the Commission.

**Issue 11**

How should charges for BellSouth's transit service be determined?

- (a) What is the appropriate rate for transit service?
- (b) What type of traffic do the rates identified in (a) apply?

**FCTA Position**

The appropriate rate for transit service is the rate negotiated by the parties to an interconnection agreement. If no agreement is reached and the issue is submitted for arbitration, the appropriate rate is a cost-based rate as determined by the Commission. This rate would apply whenever a carrier that is not the originating or terminating carrier delivers a local call to the terminating carrier so that the call can be completed.

**Issue 12**

Consistent with Order Nos. PSC-05-0517-PAA-TP AND PSC-05-0623-CO-TP, have the parties to this docket (“parties”) paid BellSouth for transit service provided on or after February 11, 2005? If not, what amounts if any are owed to BellSouth for transit service provided since February 11, 2005?

**FCTA Position**

The FCTA does not have a position on this issue. The FCTA reserves its right to take a position in its posthearing brief (1) to respond to this issue and/or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any issue and position properly identified and/or properly stated by any other party or the Commission.

**Issue 13**

Have parties paid BellSouth for transit service provided before February 11, 2005? If not, should the parties pay BellSouth for transit service provided before February 11, 2005, and if so, what amounts, if any, are owed to BellSouth for transit service provided before February 11, 2005?

### **FCTA Position**

The FCTA does not have a position on this issue. The FCTA reserves its right to take a position in its posthearing brief (1) to respond to this issue and/or any new issues generated by the evidence during the hearing and/or properly raised by other parties or the Commission, and (2) to adopt any issue and position properly identified and/or properly stated by any other party or the Commission.

### **Issue 14**

What action, if any, should the FPSC under take at this time to allow the small LECs to recover the costs incurred or associated with BellSouth's provision of transit service?

### **FCTA Position**

It is FCTA's position that any questions regarding the recovery of costs by the small ILECs are separate and distinct from questions regarding the appropriate method of compensation for transit services. Any action regarding small ILEC cost recovery is properly addressed within the context of the Commission's regulation of each individual ILEC.

### **Issue 15**

Should BellSouth issue an invoice for transit services and if so, in what detail and to whom?

### **FCTA Position**

BellSouth should seek payment from the originating carrier according to the terms set forth in its interconnection agreement with that carrier.

**Issue 16**

Should BellSouth provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination? If so, what information should be provided by BellSouth?

**FCTA Position**

Yes. The scope and form of this information should be pursuant to the terminating carrier's interconnection agreement with BellSouth.

**Issue 17**

How should billing disputes concerning transit service be addressed?

**FCTA Position**

Billing disputes for transit services, like other interconnection services, should be handled according to the dispute resolution language in each carrier's interconnection agreement with BellSouth.

**G. STIPULATED ISSUES**

The FCTA has not stipulated to any issues with any other parties and is unaware that any other parties have done so between or among themselves.

**H. PENDING MOTIONS**

The FCTA has no pending motions or other matters it seeks action upon.

**I. CONFIDENTIALITY CLAIMS**

The FCTA has no pending requests or claims for confidentiality of any material filed.

**J. COMPLIANCE WITH REQUIREMENTS OF ORDER NO. PSC-05-1206-PCO-TP**

There are no requirements of Order No. PSC-05-1206-PCO-TP that the FCTA cannot comply with.

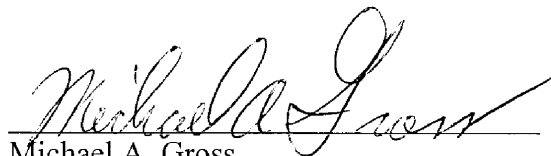
**K. PREEMPTION OR IMPACT OF DECISIONS OR PENDING DECISIONS OF THE FCC OR ANY COURT**

The FCTA is unaware of any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter.

**L. OBJECTIONS TO ANY WITNESS'S QUALIFICATIONS AS AN EXPERT**

The FCTA has no objections to any witness's qualifications as an expert in this docket.

Respectfully submitted this 20<sup>th</sup> day of February 2006.



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