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June 9, 2006 – VIA ELECTRONIC MAIL

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

Re: Docket No. 050119-TP  
Joint Petition of 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 Petitioner") objecting to and requesting suspension of Proposed Transit Traffic  
Service Tariff filed by BellSouth Telecommunications, Inc.

Docket No. 050125-TP  
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

Dear Ms. Bayo:

Enclosed is Verizon Access Transmission Services' Post-Hearing Brief for filing in the above-referenced matters. The required diskette with a copy of the Brief in Word format will be overnighted to your office. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 770-284-5498.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

**CERTIFICATE OF SERVICE**

I hereby certify that copies of Verizon Access Transmission Services' Post-Hearing Brief in Docket Nos. 050119-TP and 050125-TP-TP were sent via U.S. mail on June 9, 2006 to the parties on the attached list.

s/ Dulaney L. O'Roark III

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint Petition of TDS Telecom d/b/a ) Docket No. 050119-TP  
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 Petitioner") objecting to )  
and requesting suspension of Proposed )  
Transit Traffic Service Tariff filed by )  
BellSouth Telecommunications, Inc. )  
)  
In re: Petition and complaint for suspension ) Docket No. 050125-TP  
and cancellation of Transit Traffic )  
Service Tariff No. FL2004-284 filed by )  
BellSouth Telecommunications, Inc., ) Filed: June 9, 2006  
by AT&T Communications of the )  
Southern States, LLC. )  
)  

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**POST-HEARING BRIEF OF VERIZON ACCESS TRANSMISSION SERVICES**

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon Access") intervened in this case to address Issue 5, which concerns whether the Commission should establish terms and conditions between originating and terminating carriers when BellSouth serves as the transit carrier between them. Verizon Access requests that the Commission decide Issue 5 in a manner that continues to permit competitive local exchange carriers ("CLECs") to establish reciprocal compensation arrangements with remote carriers through tariffs

when the parties have not entered into an interconnection agreement.<sup>1</sup> Verizon Access submits this Post-Hearing Brief in support of that request.

## ISSUE 5

**SHOULD THE COMMISSION 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?**

**Verizon Access's Position:** \*The Commission should not establish such terms and conditions in this docket. In deciding this issue, the Commission should continue to permit CLECs to establish reciprocal compensation arrangements with remote carriers through tariffs when the parties do not have an interconnection agreement.\*

The Telecommunications Act of 1996 ("Act") imposes on all local exchange carriers ("LECs") the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). The Act does not dictate how CLECs must make such arrangements with remote carriers.<sup>2</sup> There are at least three permissible ways of doing so – by agreement, by a default bill-and-keep arrangement and by tariff.

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<sup>1</sup> The Commission, of course, has the authority to review such tariffs and ensure they meet applicable standards. Verizon Access, for example, sets its tariffed reciprocal compensation rate equal to the Regional Bell Operating Company's approved rate for tandem-routed reciprocal compensation to ensure that the state commission's standards are met.

<sup>2</sup> See *T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order (FCC Rel. February 24, 2005) CC Docket No. 01-92, FCC 05-42 at ¶ 4. ("*T-Mobile Order*"). As discussed below, the FCC in *T-Mobile* did change its rules going forward to prevent LECs from imposing reciprocal compensation obligations on CMRS providers via tariff. This rule change does not prevent CLECs from establishing reciprocal compensation arrangements via tariff with other remote carriers.

Carriers may establish reciprocal compensation arrangements with one another through interconnection agreements or other billing agreements. Guepe, T.293-94. Under the Act, however, a CLEC may not use the Section 252 arbitration process to compel another CLEC to negotiate or arbitrate an interconnection agreement because Section 252 arbitration only applies to interconnection agreements with incumbent LECs. 47 U.S.C. § 252(b); Guepe, T.293. Thus, a CLEC that wants to establish a reciprocal compensation arrangement with another CLEC cannot do so through an interconnection agreement if the other CLEC is not willing to enter into an agreement. If the other CLEC refuses to agree to reasonable terms and conditions, the requesting CLEC cannot compel it to do so.

An alternative approach available to a CLEC exchanging traffic with a remote carrier is a default bill-and-keep arrangement, which permits each carrier to terminate traffic on the other carrier's network at no cost without an interconnection agreement. Guepe Direct at 9; Guepe, T.293. Such an arrangement may work well when carriers are exchanging relatively low volumes of traffic or when the traffic is balanced, but when there is a substantial imbalance of traffic, bill-and-keep works to the disadvantage of the carrier terminating more traffic than it originates. Verizon Access intervened in this case because it often faces such traffic imbalances as the carrier terminating the lion's share of the traffic. Because the originating carriers typically have no incentive to enter into interconnection agreements with Verizon Access, and bill-and-keep does not adequately compensate Verizon Access for the use of its network, Verizon Access seeks to ensure that it may continue to establish reciprocal compensation arrangements with other carriers via tariff.

The FCC has upheld using tariffs to establish reciprocal compensation arrangements when the tariffing party does not have an interconnection agreement with the originating party or the ability to require that party to enter into an interconnection agreement. In the *T-Mobile Order*, the FCC addressed claims by wireless carriers that LECs should not be permitted to establish reciprocal compensation rates in their tariffs. The FCC noted that “[a]lthough section 251(b)(5) and the Commission’s reciprocal compensation rules reference an ‘arrangement’ between LECs and other telecommunications carriers, including CMRS providers, they do not explicitly address the type of arrangement necessary to trigger the payment of reciprocal compensation or the applicable compensation regime, if any, when carriers exchange traffic without making prior arrangements with each other.” *Id.* ¶ 4. The FCC concluded that “[b]ecause the existing rules do not explicitly preclude tariffed compensation arrangements, we find that incumbent LECs were not prohibited from filing state termination tariffs and CMRS providers were obligated to accept the terms of applicable state tariffs.” *Id.* ¶ 9. The FCC then changed its rules on a prospective basis to (i) prohibit LECs from establishing reciprocal compensation arrangements with CMRS providers through tariffs; and (ii) provide LECs the right to compel negotiation and arbitration of interconnection agreements with CMRS providers. *Id.* ¶¶ 14, 16.

The FCC’s analysis in the *T-Mobile Order* compels the conclusion that CLECs may establish reciprocal compensation arrangements with remote carriers (other than CMRS providers) through tariffs. The FCC has never amended its rules to prevent CLECs from establishing reciprocal compensation arrangements through tariffs, nor has it amended them to require CLECs to negotiate and submit to arbitration pursuant to Section 252. As was the case with LECs and CMRS providers before *T-Mobile*, the Act



and the FCC's rules permit CLECs to establish reciprocal compensation arrangements with remote carriers using tariffs when no interconnection agreement is in place. In deciding Issue 5, therefore, the Commission should not prevent CLECs from establishing reciprocal compensation arrangements via tariff in those circumstances.

Respectfully submitted on June 9, 2006.

By:           s/ Dulaney L. O'Roark III            
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