BELLSOUTH

BellSouth Telecommunications, Inc.
Legal Department
1600 Williams Street
Suite 5200
Columbia, SC 29201

patrick.turner@bellsouth.com

Patrick W. Turner
General Counsel-South Carolina

803 401 2900
Fax 803 254 1731

November 12, 2003

The Honorable Bruce Duke
Acting Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order
(Docket No. 2003-326-C)

Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial Review Order
(Docket No. 2003-327-C)

Dear Mr. Duke:

Enclosed for filing are an original and fifteen copies of BellSouth Telecommunications Inc.'s Motion For Order Making All Entities That Have A Certificate To Operate As A Telephone Utility In South Carolina Parties To These Proceedings For The Limited Purpose Of Discovery and BellSouth Telecommunications, Inc.'s Proposed Order Making All Entities That Have A Certificate of To Operate As A Telephone Utility in South Carolina Parties To These Proceedings for the Limited Purpose Of Discovery in the above-referenced matters.

As explained in the attached Motion, the Public Service Commission of South Carolina will need to consider a great deal of carrier-specific information at a "granular" level in order to resolve these dockets. While getting this and other relevant information from parties that have intervened in these proceedings should be relatively straight-forward, obtaining this and other relevant information from carriers that have consciously elected not to participate may be more difficult.

To avoid the burdens associated with having the Commission's Staff serve data requests or subpoenas on non-parties, BellSouth urges the Commission to enter an Order making all telephone utilities that have a certificate to operate as a telephone utility in South Carolina parties to these proceedings for the limited purpose of discovery. This is similar to the approach taken by other state Commissions in BellSouth's operating region. Following this approach would be very helpful in meeting the tight deadlines the FCC's Triennial Review Order has imposed on the Commission and the parties in this proceeding, and it would be significantly less burdensome on the Commission and its Staff than other possible approaches.

Finally, BellSouth urges the Commission to enter such an Order as quickly as possible. The sooner the parties are authorized to serve discovery on non-party telephone utilities, the sooner they can begin obtaining relevant information and the better their ability to prepare as complete and accurate a record as possible for the Commission to consider in making the critically important decisions the FCC has asked it to make in these proceedings. Toward that end, BellSouth has attached a Proposed Order Order for the Commission's consideration.

By copy of this letter I am serving AT&T, CompSouth, the Consumer Advocate and the Commission Staff with these pleadings as indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosures
cc: F. David Butler, Esquire
Elliott F. Elam, Jr., Esquire
John J. Pringle, Jr., Esquire
Robert E. Tyson, Jr., Esquire

512434

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2003-326-C AND 2003-327-C

IN RE:

Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-326-C)	)
And	)
Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-327-C)	)

MOTION FOR ORDER MAKING ALL ENTITIES THAT HAVE A CERTIFICATE TO OPERATE AS A TELEPHONE UTILITY IN SOUTH CAROLINA PARTIES TO THESE PROCEEDINGS FOR THE LIMITED PURPOSE OF DISCOVERY

BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves the Public Service Commission of South Carolina ("the Commission") to take an approach similar to those taken by other state Commissions in BellSouth's nine-state operating region and enter an Order making all entities that have a certificate to operate as a telephone utility in South Carolina parties to these proceedings for the limited purpose of discovery.[1]

[1] Other state Commissions in BellSouth's nine-state operating region have entered similar orders. The Alabama Public Service Commission, for example, has ruled that "all providers of telecommunications service in Alabama, including those who do not specifically intervene, will be considered parties to the proceedings in this cause for the purposes of discovery" and that all such providers "will thus be required to respond to

BellSouth further requests that the Commission enter such an Order in these proceedings as quickly as possible. The grounds for BellSouth's Motion and request are set forth below.

BellSouth believes it unlikely that every telephone utility in South Carolina with information relevant to these proceedings will intervene voluntarily. The problem this causes is clear and serious. In order to resolve Docket No. 2003-326-C, for example, the Commission will want to learn information such as where competitive carriers' switches are located, what kind of customers these switches serve, and where these customers are located.[2] In order to resolve Docket No. 2003-327-C, the Commission will want to learn information such as where providers have located transport facilities in the State of South Carolina.[3] While getting this and other relevant information from parties that have intervened in these proceedings should be relatively straight-forward, obtaining this and other relevant information from entities that have consciously elected not to participate

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Discovery requests by the Commission and/or other parties who are actively participating in the proceedings herein." *See* Exhibit A at 10-11. The Georgia Public Service Commission has entered an Order stating that "for the purpose of discovery, all telecommunications carriers that have a certificate of authority in Georgia are parties to these proceedings." *See* Exhibit B at p. 5. Similarly, the Mississippi Public Service Commission has entered an Order stating that "[a]ny telecommunications carrier regulated by this Commission may be called upon to provide relevant information to these dockets, and the Commission may, at its discretion, require a party that is not actively participating in this docket to actively participate herein." *See* Exhibit C at p. 3. Additionally, the North Carolina Utilities Commission has entered an Order stating that "[a]ll incumbent local exchange companies and competing local providers will be considered parties to these dockets" and that "any telecommunications carrier regulated by this Commission may be called upon to provide relevant information to these dockets . . . ." *See* Exhibit D at p. 2.

[2] *See, e.g.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Service Offering Advanced Telecommunications Capability*, 2003 WL 22175730 (F.C.C.), 30 Communications Reg. (P&F) 1 at ¶¶ 501, 504 (Rel. August 21, 2003).

[3] *See, e.g., Id.* at ¶¶ 329, 400.

may be more difficult. Non-parties, for example, might object to, or even ignore, interrogatories and requests for production of documents served by parties. *See, e.g., Lehman v. Kornblau*, 206 F.R.D. 345, 346 (E.D.N.Y. 2001) ("Any interrogatories or requests for production of documents served on non-parties are a nullity.").

Clearly, the Commission's Staff could draft questions designed to elicit relevant information, serve these questions on all certificated telephone utilities, and initiate appropriate action against any telephone utilities that were not responsive. Additionally, the Staff could issue subpoenas requested by the parties, serve these subpoenas on non-party telephone utilities, and initiate appropriate action against any telephone utilities that were not responsive. Either approach, however, undoubtedly would place a considerable burden on the Commission and its Staff.

To avoid such burdens, BellSouth urges the Commission to enter an Order making all entities that have a certificate to operate as a telephone utility in South Carolina parties to these proceedings for the limited purpose of discovery. This would allow the parties to conduct discovery on other telephone utilities that have elected not to intervene. These other telephone utilities would not have to otherwise participate in these proceedings if they choose not to do so. Following this approach would be very helpful in meeting the tight deadlines the FCC's Triennial Review Order has imposed on the Commission and the parties in this proceeding, and it would be significantly less burdensome on the Commission and its Staff than other possible approaches.

The approach suggested by BellSouth also is consistent with South Carolina law. Among other things, South Carolina statutes authorize the Commission to:

"investigate and examine the condition and operation of telephone utilities or any particular telephone utility" either "with or without a hearing as it may deem best" (S.C. Code Ann. §58-9-780);

require telephone utilities to files special reports under oath (S.C. Code Ann. §58-9-370);

order the production of a telephone utility's "books, accounts, papers, or records" relating to its "business or affairs within the State . . . ." (S.C. Code Ann. §58-9-1070); and

"inspect the property, plant and facilities of any telephone utility and inspect or audit . . . the accounts, books, papers and documents of any telephone utility." (S.C. Code Ann. §58-9-790).

Clearly, the Commission is authorized to enter the Order requested by BellSouth.

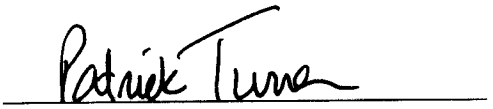
Finally, BellSouth urges the Commission to enter such an Order as quickly as possible. The sooner the parties are authorized to serve discovery on non-party telephone utilities, the sooner they can begin obtaining relevant information and the better their ability to prepare as complete and accurate a record as possible for the Commission to consider in making the critically important decisions the FCC has asked it to make in these proceedings. Toward that end, Exhibit E to this Motion is a Proposed Order that BellSouth respectfully submits for the Commission's consideration.

CONCLUSION

For all the reasons set forth above, BellSouth urges the Commission to enter an Order making all entities that have a certificate to operate as a telephone utility in South Carolina parties to these proceedings for the limited purpose of discovery, and to enter such an Order as quickly as possible.

This 12th day of November, 2003.

Respectfully submitted,



Patrick W. Turner
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
ATTORNEY FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

511621

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications Inc.'s Motion For Order Making All Entities That Have A Certificate To Operate As A Telephone Utility In South Carolina Parties To These Proceedings For The Limited Purpose Of Discovery in Docket No. 2003-326-C and Docket No. 2003-327-C to be served upon the following this November 12, 2003:

F. David Butler, Esquire
General Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U.S. Mail and Electronic Mail)

Elliott F. Elam, Jr., Esquire
S. C. Department of Consumer Affairs
3600 Forest Drive, 3rd Floor
Post Office Box 5757
Columbia, South Carolina 29250-5757
(Consumer Advocate)
(U. S. Mail and Electronic Mail)

John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(AT&T)
(U. S. Mail and Electronic Mail)

Robert E. Tyson, Jr., Esquire
Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina 29211
(CompSouth)
(U. S. Mail and Electronic Mail)

Nyla M. Laney

PC Docs # 512354

EXHIBIT A

STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

IN RE: Implementation of the Federal Communications Commission's Triennial Review Order

DOCKET 29054

NOTICE CONCERNING THE STATUS OF PHASE I AND THE PROCEDURAL SCHEDULE FOR PHASES II AND III

BY THE COMMISSION:

I. The Status of Phase I

By Order entered on September 18, 2003, the Commission established this Docket for purposes of fulfilling its responsibilities under the *Triennial Review Order* issued by the Federal Communications Commission (the "FCC").[1] Said Order established as Phase I of this Docket, the inquiry of whether the FCC's national presumption that competitors of Incumbent Local Exchange Carriers ("ILECs") will not be impaired without access to unbundled local circuit switching for enterprise customers should be challenged.[2] More specifically, the Commission's September 18, 2003 Order noted that the Commission did not, on its own motion, intend to institute proceedings aimed at rebutting the FCC's national presumption of no impairment with respect to local circuit switching for enterprise customers. The Commission based that preliminary determination on staff investigations which revealed that the number of unbundled

[1] *Review of the §251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003 (the "*Triennial Review Order*").
[2] *Id.* at ¶451.

network element ("UNE") combinations consisting of DS-1 loops and unbundled local switching in Alabama were *de minimis*.

The Commission did indicate, however, that the proceedings necessary to rebut the aforementioned FCC presumption would be established in the event that an affected party submitted a properly supported petition requesting such action by the Commission no later than October 7, 2003. The Commission did not receive any such petition from an interested and/or affected party prior to the established deadline of October 7, 2003.

The only pleading thus far received by the Commission that is specifically related to Phase I in this cause is the October 7, 2003 Petition to Intervene in Phase I which was submitted by the Competitive Carriers of the South, Inc. ("Comp. South").[3] Comp. South indicated in its Petition to Intervene that Comp. South did not seek to have the Commission challenge the FCC's national presumption that competing carriers are not impaired in their ability to serve enterprise customers without access to unbundled local circuit switching. Comp. South did, however, reserve the right to submit evidence and make arguments in support of such a request should one be made by another party. Comp. South's Petition to Intervene is due to be granted by the Commission.

On October 9, 2003, CenturyTel of Alabama, LLC ("CenturyTel") also submitted a Petition to Intervene in this cause. CenturyTel's Petition did not raise issues specific to any particular phase of this Docket, but CenturyTel did request that it be allowed to participate in the proceedings in this matter generally. CenturyTel's Petition to Intervene is due to be granted.

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[3] The members of Comp. South include Access Integrated Networks, Inc., MCI, Birch Telecom, Business Telecom, Inc., Covad Communications Company, AT&T, New South Communications Corp., Talk America, Nuvox Communications, Inc., ITC DeltaCom, Expedius Communications, Momentum Business Solutions, Synergy Communications Company, Network Telephone Corp., KMC Telecom, ZTel Communications, Inc., and IDS Telecom, LLC.

Given the absence of any request for the Commission to undertake proceedings aimed at overcoming the FCC's national presumption of no impairment with respect to local circuit switching for enterprise customers, the Commission herein determines that Phase I of the proceedings in this Docket are concluded. As recognized by the FCC, however, the conclusion of Phase I at this juncture does not preclude the Commission from later revisiting the issue of whether Competitive Local Exchange Carriers ("CLECs") are impaired without access to unbundled local circuit switching to serve enterprise customers. Such reassessments can be made in the future in the event of changes in the operational and economic criteria that determine whether impairment exists with respect to local switching for enterprise customers.[4]

II. The Procedural Schedule for Phases II and III

The Commission's September 18, 2003 Order in this cause also established that Phase II of this Docket would likely deal with issues related to the continued availability of unbundled local switching for mass market customers (the "UNE-P case") while Phase III would likely deal with issues related to the continued availability of unbundled high capacity loops and transport at certain locations (the "high capacity loop transport case"). The UNE-P case and the high capacity loop transport case were bifurcated into separate phases because the FCC established criteria the Commission must evaluate for each case will differ.

With respect to the UNE-P case, the FCC adopted the national presumption that, absent state commission findings to the contrary, CLECs are impaired without access to unbundled switching for mass market customers.[5] ILECs must accordingly provide access to circuit switching on an unbundled basis to CLECs serving mass market end-user customers until such

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[4] *See Triennial Review Order* at ¶455 and footnote 1398.

time as the applicable state commission finds that CLECs are not impaired in a particular market, or that existing impairments can be cured by the implementation of transitional unbundled circuit switching in a given market.

The *Triennial Review Order* does, however, impose an affirmative duty on state commissions to identify and alleviate impairment in the mass market.[6] In order to achieve that objective, state commissions must determine the relevant geographic area to include in each market under their jurisdiction. In defining markets, the FCC directed state commissions to consider a number of factors including the locations of mass market customers actually being served, if any, by competitors; the variation in factors affecting the CLECs ability to serve each group of customers and the ability of ILEC competitors to target and serve specific markets profitably and efficiently using currently available technologies. The FCC specifically precluded state commissions from defining the relevant geographic area as an entire state.[7]

In defining the mass market, state commissions are also required to identify the appropriate cut-off for multi-line DS-0 customers.[8] Until state commissions complete their review in this regard, ILECs are required to comply with the four line "carve-out" for unbundled switching established in the FCC's *UNE Remand Order*.[9]

In evaluating whether requesting carriers in the markets defined are in fact impaired in those markets, the FCC established two different triggers as the principle mechanisms that

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[5] *Triennial Review Order* at ¶459. Mass market customers are residential and very small business customers who, unlike larger business customers, do not require high bandwith connectivity at DS-1 capacity and above. *See Triennial Review Order* at footnote 1402.

[6] *Triennial Review Order* at ¶¶459-460.

[7] *Triennial Review Order* at ¶¶495-496.

[8] The FCC notes that the appropriate cut-off may be the point where it makes economic sense for a multi-line customer to be served by a DS-1 loop. *See Triennial Review Order* at ¶497.

states were to utilize in their impairment evaluations. The FCC established triggers are contingent on the number of carriers that self-provision switches or the number of competitive wholesalers offering independent switching capacity in a given market. If either of those triggers is met, the relevant state commission must, absent exceptional circumstances, conclude that no impairment exists in that geographic market.[10]

In applying the local switching, self-provisioning trigger, the FCC determined that the non-impairment trigger would be activated if three or more competing providers not affiliated with each other or the ILEC are each serving mass market customers in a particular market with use of their own local circuit switches. State commissions may, however, consider intermodal providers of service using self-provisioned switching to the extent the services such providers offer are comparable in cost, quality, and maturity to ILEC services.[11]

The local switching, competitive wholesale facilities trigger applies when two or more competing providers not affiliated with each other or the ILEC each offer wholesale local circuit switching service to carriers serving DS-0 capacity loops in the market in question using their own switches. In making their assessments in this regard, state commissions may also consider intermodal providers of wholesale service using self-provisioned switching to the extent the services they offer are comparable in cost, quality, and maturity to ILEC services.[12]

In scenarios where the FCC defined triggers are satisfied, state commissions must determine that no impairment exists. If neither of the triggers discussed above has been

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[9] *Triennial Review Order* at ¶525. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3699, para. 2 (1999) (*UNE Remand Order*), *reversed and remanded in part sub. Nom. United States Telecom ASS'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (USTA), *cert. denied sub nom. WorldCom, Inc. v. United States Telecom Ass'n*, 123 S.Ct 1571 (2003 Mem.).

[10] *Triennial Review Order* at ¶494.

[11] *Triennial Review Order* at ¶¶501-503 and 521-523.

[12] *Triennial Review Order at* ¶¶504-506 and 521-523.

satisfied, however, state commissions must then consider whether switches actually deployed in the market at issue can permit competitive entry in the absence of unbundled circuit switching. As part of that analysis, the state commissions must consider operational and economic barriers as established by the FCC. Included among the operational barriers which must be considered are whether the ILEC's performance in provisioning loops, difficulties in obtaining collocation space due to the lack of space or delays in provisioning by the ILEC, or difficulties in obtaining cross-connects in an ILEC's wire center render entry uneconomic for a CLEC in the absence of unbundled access to circuit switching.[13] The economic barriers which must be considered by state commissions include whether the cost of migrating ILEC loops to the CLEC switches with the cost of backhauling voice circuits to requesting telecommunications carrier switches from the end offices serving their end user customers render entry uneconomic for requesting carriers.[14]

If the above-discussed triggers have not been satisfied with regard to a particular market and the state commission review has resulted in a finding that CLECs are impaired without access to circuit switching on an unbundled basis in that market, the state commission must next consider whether the existing impairment would be cured by transitional or "rolling" access to circuit switching on an unbundled basis for a period of ninety (90) days or more.[15] As defined by the FCC, "rolling" access means the use of unbundled circuit switching for a limited period of time for each end-user customer to whom a requesting telecommunications carrier seeks to provide service. If the state commission determines that transitional access to unbundled circuit switching would cure any impairment, the state commission must require

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[13] *Triennial Review Order* at ¶¶511-514.
[14] *Triennial Review Order* at ¶521-523.
[15] *Triennial Review Order* at ¶¶521-523.

ILECs to make unbundled circuit switching available to requesting telecommunications carriers for ninety (90) days or more.[16]

In the event that a state commission finds that no impairment exists in the market or that any impairment could be cured by transitional access to unbundled circuit switching, all CLECs in that market must commit to an implementation plan with the ILEC for the migration of their embedded unbundled switching mass market customer base within eleven months of the effective date of the *Triennial Review Order*. CLECs will no longer obtain access to unbundled circuit switching five months after the state determination of no impairment except where applicable on a transitional basis.[17]

The FCC also concluded in the *Triennial Review Order* that a seamless, low cost batch-cut process for switching mass market customers from one carrier to another is necessary for carriers to compete effectively in the mass market. Accordingly, state commissions must, in each of the markets they define, either establish an ILEC "batch-cut" process to render the hot-cut process more efficient and reduce per line hot-cut costs or issue detailed findings explaining why such a process is unnecessary.[18] The aforementioned determinations regarding hot-cuts must be concluded by state commissions within nine months of the effective date of the *Triennial Review Order*. Further, state commissions must establish batch hot-cut processes according to the guidelines established in the *Triennial Review Order*.[19]

With respect to dark fiber, DS-3 and DS-1 loops ("high capacity loops"), the FCC affirmatively determined that, on a national basis, the limited deployment of high capacity loops

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[16] *Triennial Review Order* at ¶524.

[17] *Triennial Review Order* at ¶¶525-532.

[18] The FCC defines the "batch-cut" process as a process by which the ILEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops from one carrier's local circuit switch to another carrier's local circuit switch on a line by line basis.

justified a finding of impairment. The FCC recognized, however, that there could well be alternative deployments of the high capacity loop types discussed above at particular customer locations which would justify findings of no impairment for the specific areas in question. The FCC accordingly delegated to the state commissions the responsibility of identifying the areas where competing carriers are not impaired without access to unbundled high capacity loops.

The FCC delineated two triggers which state commissions are to utilize in the conduct of their high capacity loop impairment analysis. If a state commission determines that the federal triggers for a finding of non-impairment have been satisfied for a specific type of high capacity loop at a particular customer location, the incumbent LEC will no longer be required to unbundle that loop type at the location according to the transition schedule adopted by the reviewing state commission. Incumbent LECs will, however, be required to make the unbundled high capacity loops available to qualifying carriers at locations other than those where a state commission's review has confirmed that no impairment exists and unbundling is no longer required.[20]

The two non-impairment high capacity loop triggers delineated by the FCC include: (1) scenarios where a specific customer location is identified as being currently served by two or more unaffiliated competitive LECs with their own loop transmission facilities at their relevant loop capacity level (the "self-provisioning trigger"); and (2) scenarios where two or more unaffiliated competitive providers have deployed transmission facilities to the location and are offering alternative loop facilities to competitive LECs on a wholesale basis at the same capacity level (the "competitive wholesale facilities trigger"). Although both of the aforementioned triggers focus on whether there are two alternative loop providers at a particular customer location, they differ because the competitive wholesale facilities trigger can be

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[19] *Triennial Review Order* at ¶¶488-490.

satisfied by alternative loop providers that have deployed their own facilities or by alternative providers that are using unbundled network elements but otherwise satisfy the "wholesaling" requirement of competitive wholesale facilities trigger.[21]

With respect to dedicated transport, the FCC generally determined from its capacity-based impairment analysis that requesting carriers are impaired without access to unbundled dark fiber, DS-3 and DS-1 transport ("unbundled transport"). The FCC concluded, however, that evidence suggests that requesting carriers are likely not impaired without access to unbundled transport in some particular instances. The FCC delegated to the state commissions the responsibility of further investigating the evidence in this regard in order to identify the specific routes where competitive carriers are not impaired without access to unbundled transport pursuant to two FCC established trigger mechanisms.[22]

The first dedicated transport trigger established by the FCC is designed to identify routes along which the ability to self-provide transport facilities is evident based on the existence of several competitive transport facilities. Specifically, in scenarios where three or more competing carriers, not affiliated with each other or the incumbent LEC, each have deployed non-incumbent LEC transport facilities along a specific route, the FCC concluded that there exists sufficient evidence that competing carriers are capable of self-deploying, regardless of whether the carriers in question make such transport available to other carriers.[23]

The second dedicated transport trigger established by the FCC is designed to identify where competitive wholesale alternatives are available. Specifically, the FCC concluded that competing carriers are not impaired where such competing carriers have available two or more

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[20] *Triennial Review Order* at ¶328.
[21] *Triennial Review Order* at ¶329.
[22] *Triennial Review Order* at ¶394.

alternative transport providers, not affiliated with each other or the incumbent LEC, immediately capable and willing to provide transport at a specific capacity on any given route between incumbent LEC switches or wire centers. In situations where state commissions find no impairment for a specific capacity of transport on a route, the incumbent LECs will no longer be required to unbundle that transport along the route identified in accordance with the transition schedule adopted by the relevant state commission.[24]

As is apparent from the foregoing, this Commission has substantial responsibilities under the FCC's *Triennial Review Order* with respect to unbundled local switching and high capacity loops and transport. In order to fulfill these responsibilities, the Commission deems it appropriate and necessary to establish a procedural schedule which will be adhered to in the conduct of the proceedings necessitated by the FCC's *Triennial Review Order.*

The Commission first requires all telecommunications carriers who intend to participate in the proceedings envisioned herein for Phases II and III in this Docket to submit Petitions to Intervene within thirty (30) days of the effective date of this notice. Said Petitions shall set forth the petitioning party's position with respect to the national presumptions established by the FCC in its *Triennial Review Order* and the extent to which the petitioning party anticipates participating in the Phase II and III proceedings envisioned herein by the Commission.

In light of the extensive market and location specific evidence which the Commission will be required to accumulate and evaluate in Phases II and III, the Commission hereby gives notice that all providers of telecommunications service in Alabama, including those who do not specifically intervene, will be considered parties to the proceedings in this cause for purposes of

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[23] *Triennial Review Order* at ¶400.
[24] *Id.*

discovery.[25] The Commission also reserves its right to require any telecommunications provider that has not specifically intervened to participate as directed by the Commission.

As per Rule 16 of the Commission's Rules of Practice, the parties to this proceeding have the flexibility to engage in any discovery permissible under the Alabama Rules of Civil Procedure.[26] Any party seeking to invoke the Commission's assistance where discovery issues are concerned should file an appropriate motion requesting the action desired. With respect to the parameters of service and discovery, however, the Commission finds meritorious the proposed procedural guidelines jointly submitted by BellSouth Telecommunications, Inc. ("BellSouth") and CompSouth on October 20, 2003. We hereby adopt, for purposes of this Docket, the procedural guidelines regarding service and discovery jointly submitted by BellSouth and CompSouth. Said guidelines are attached hereto as Appendix I.[27] All parties shall adhere to the aforementioned guidelines to the fullest extent possible.

We further find that the protective agreement attached to the proposed procedural guidelines jointly submitted by BellSouth and CompSouth is approved for purposes of this Docket. Parties other than BellSouth and CompSouth and its membership are encouraged to use the protective order in question as a template. Said protective agreement is attached hereto as Appendix II.

The specific deadlines for the filing of testimony in the proceedings discussed herein and the dates of those proceedings are set forth below:

- January 20, 2003 - Direct testimony due in Phase II – (Local Circuit Switching)

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[25] All providers of telecommunications service in Alabama will thus be required to respond to Discovery requests by the Commission and/or other parties who are actively participating in the proceedings herein.
[26] The parties are also required to serve all Discovery requests and responses with the Commission pursuant to Rule 16 of the Commission's Rules of Practice.
[27] Minimal modifications were made to the joint proposal of BellSouth and CompSouth.

DOCKET 29054 - #12

- March 5, 2003 - Rebuttal testimony due on Phase II – (Local Circuit Switching) and Direct testimony due in Phase III – (High Capacity Loops and Transport)
- March 24, 2003 - Rebuttal testimony due on Phase II – (Local Circuit Switching) and Rebuttal testimony due on Phase III – (High Capacity Loops and Transport)
- March 29 – April 2 - hearings on Phases II and III
- April 29 – Simultaneous Direct Briefs on all issues due
- May 14 – Simultaneous Reply Briefs on all issues due
- June 2 – Oral Arguments.

IT IS SO RULED.

DONE at Montgomery, Alabama this 28th day of October, 2003.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

APPENDIX I

SERVICE AND DISCOVERY GUIDELINES FOR DOCKET 29054

(1) Service of Pleadings, Discovery and Responses, Testimony, Briefs and Other Required Filings.

All filings by the Parties to this proceeding and the service of said filings by Parties shall be made as follows:

(A) All filings required to be made to the Alabama Public Service Commission ("the Commission) shall be made pursuant to the ordinary rules of practice and procedure that apply to matters pending before the Commission, on the dates specified by the Commission and in the manner such filings are ordinarily made.[28]

(B) Every party to this proceeding shall provide every other party with an email address of a person who shall be authorized to receive service copies for that party of all filings that have to be filed at the Commission or otherwise served on the parties. If the person authorized to receive service for any party changes, that party shall be responsible for notifying all other parties of such change. For any party who has already intervened in this proceeding and who has not provided such an e-mail address, such parties shall do so promptly, and in no event less than ten (10) days following the date of this order. Failure to provide such an address shall excuse any party from any alleged failure to serve the party who has failed to provide the appropriate email address.

(C) For the purpose of this proceeding, where a responsive submission is made to a party other than the Commission, service shall be deemed complete when the person making the filing sends the filing to the appropriate email address. For filings that require a responsive filing from other parties, such as interrogatories, requests for admission and requests for production of documents, the time for complying with the request shall begin when the party to whom the request is made receives the request; provided that if the filing is served electronically and is received after 4:00 P.M., the filing shall be treated as if it

[28] For purposes of this proceeding, the parties are required to submit electronic versions of their filings with the Commission in Microsoft Word® format for text documents and Excel® for spread sheets.

were served and received on the next business day following the date on which the electronic filing was received. The parties are admonished to (1) request "receipt" and "read" indicators for all emails to insure that they are delivered and received in a timely manner and (2) to insure that the person designated to receive service, or someone acting in his or her stead, can regularly access email. Upon agreement of the parties, each party may designate up to three persons to receive service to alleviate any concerns about the availability of someone to receive service.

(D) Because some filings, such as testimony, or the responses to filings such as interrogatories or responses to requests for production may be voluminous, the parties can elect, for non-confidential materials, to create a publicly accessible website where any such filing can be posted. If a party elects to post a responsive filing to this web site, and sends an email with a URL link to that publicly accessible website to the appropriate representatives of the other parties, such a posting shall be considered service of the responsive document. This vehicle may be used for the posting of testimony and responses to discovery, but shall not be used for the filing of matters that require a response from other parties, such as interrogatories, requests for admission or requests for the production of documents. This vehicle may not, however, be utilized for filings made in response to inquiries or directives from the Commission.

(E) The purpose of providing for service in the foregoing ways is to facilitate the exchange of information between the parties so that this proceeding can go forward in a timely and efficient manner. Any disputes as to whether there has been compliance with these requirements should be discussed among the parties and resolved amicably if at all possible. Prior to bringing any dispute regarding these matters to the Commission, the parties will be required to certify that they have met and discussed the dispute, and succinctly detail exactly what the dispute is. The Commission will not entertain disputes involving a question of whether a filing was made timely unless the aggrieved party can demonstrate that it has been substantially prejudiced.

(F) Where a party receives an electronic copy of a document, the party can request a paper copy of the document, but the responding party shall have one week after the request is made to furnish the paper copy.

(2) Discovery

(A) Interrogatories, Requests to Produce Documents, Requests for Admissions.

(i)Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may be served requesting state-specific responses and information or, at a party's discretion, seeking responses and information concerning all nine states in the BellSouth region. It shall not be an appropriate or sustainable objection that such discovery seeks information concerning states other than the state in which the discovery is served. Subject to the Confidentiality provisions in Section 3 of this Appendix and any other evidentiary objections, discovery obtained in other states in the BellSouth region shall be available for use in this proceeding or where appropriate, in appeals from such state commission's orders to a court of competent jurisdiction or the FCC, subject to the normal rules applying to the admission of evidence.

(ii)Where requested, the parties shall respond, except as provided below, to Interrogatories, Requests to Produce and Requests for Admissions within 30 calendar days of service.

(iii)If a party believes that a particular request is unduly voluminous or would otherwise require additional time to respond to (and the request is not otherwise objectionable) the parties are admonished to work together to agree on an appropriate time frame for responding to the discovery, given the circumstances that exist at the time. In resolving such issues, the parties are directed to consider whether the requests can be broken into smaller groups, with some groups being responded to more quickly than others, or whether there is some other innovative way to address such issues, without bringing them to the Commission for resolution. Again, should a party seek the Commission's intervention in such a dispute, the complaining party should be prepared to explain in detail why it has been unable to reach a satisfactory resolution, and why it is prejudiced by the solution offered by the non-complaining party.

(iv)Objections to Discovery

(a) Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery shall be made within 10 calendar days after service. Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may include, but not be limited to:

(1) Legal Objections

(2) Objections to the time required for the production of region-wide discovery responses, in which event the objecting party shall provide a time frame and/or date certain for response to the region-wide discovery. Such Objections may include the fact that certain discovery responses may be voluminous and/or require answers from individuals from multiple states.

(b) Where objections are made pursuant to (2)(A)(iv) (a) (1), the objecting party shall state whether it intends to provide a partial response subject to the objection. Parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.

(c) Where objections are made pursuant to (2)(A)(iv) (a) (2), the parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.

(v) Where the parties are unable to resolve a discovery dispute as outlined in the proceeding sections, the parties shall seek expedited rulings on any discovery dispute, and the Commission shall resolve any such dispute expeditiously.

(B) Depositions

(i) Depositions of employees, consultants, contractors and agents who will not be filing testimony in the above-styled Docket may be taken pursuant to the ordinary rules of practice and procedure before the Commission, including any objections that may be raised.

(ii) Depositions of persons whom the parties will sponsor as witnesses in the above-styled Docket shall be limited as follows, after testimony is filed:

(a) Any party may depose a person who files testimony, subject to (2)(B)(ii)(b) below, after the filing of:

(1) direct testimony; and

(2) rebuttal testimony; and

(3) surrebuttal testimony

(b) Once a witness has been deposed regarding such testimony in any state in the BellSouth region, that witness may only be deposed again (1) upon the request of the staff of the Commission, or if there is participation by a public agency such as a consumer advocate or the Attorney General, upon request by such public agency, or (2) by any party, if the testimony offered by the witness contains state specific information which is different from previous testimony filed by the witness, in which case the deposition will be limited to questions about the state specific material and related items.

(c) Should a witnesses' testimony in this state change materially, other than by reason of the inclusion of state specific material discussed in (b) above, the witness may be deposed again, but only in connection with the testimony that has changed.

(d) The purpose of these deposition requirements is to conserve the resources of the parties, and to encourage the parties to work jointly and cooperatively to conduct necessary discovery.

(e) If the parties have a dispute regarding the taking of depositions in any particular situation, the parties are admonished to work together to resolve such differences, and if those differences cannot be reconciled, the parties should be prepared to present a very brief explanation of the dispute and the aggrieved party should be prepared to demonstrate how it is prejudiced by its failure to comply with the requests or objections of the opposing party.

(3) Confidentiality of Information

The parties may require the execution of a confidentiality agreement where appropriate.[29]

[29] A confidentiality agreement deemed acceptable by the Commission follows this document and is identified as Appendix II.

APPENDIX II

BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION

RE:	In the Matter of Implementation of The FCC's Triennial Review Order (Phase II- Local Switching for Mass Market Customers and Phase III- High Capacity Loop and Transport	)))))	Docket No. 29054

PROTECTIVE AGREEMENT

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential ("Confidential Information"), and to ensure that the protection is afforded to material so entitled, [company name] and [company name], the undersigned parties, through their respective attorneys, hereby stipulate and agree as follows:

Definitions:

1. The term "Confidential Information" refers to any information in written, oral or other tangible or intangible forms which may include, but is not limited to, ideas, concepts, know-how, models, diagrams, flow charts, data, computer programs, marketing plans, business plans, customer information, and other technical, financial or business information, designated as "Confidential Information" by a producing party if the party believes in good faith that the material is confidential or proprietary and is entitled to protection from disclosure under any provision of Alabama or Federal law and the material is furnished pursuant to discovery requests, depositions, or otherwise produced during this Proceeding. "Confidential Information" shall not include information contained in the public files of any federal or state agency that is subject to disclosure under relevant Alabama statutes nor shall it include information that, at the time it is

provided through discovery or otherwise during this Proceeding or prior thereto, is or was public or that becomes public other than through disclosure in violation of this Agreement. Nor shall "Confidential Information" include information found by the Alabama Public Service Commission ("Commission") or its representative/agent or a court of competent jurisdiction not to merit the protection afforded Confidential Information under the terms of this Agreement.

2. The term "This Proceeding," for the purposes of this Protective Agreement, shall include only Docket No. 29054 and any appeals thereof to the Federal Communications Commission ("FCC") or a court of competent jurisdiction, as well as any other state proceedings in any of the nine states in the BellSouth region that relate to the state's implementation of the FCC's Triennial Review Order, together with any appeals related to such proceedings to the FCC or to a court of competent jurisdiction.

Confidential Information

1. **General.** The parties will be bound by the terms of this Protective Agreement upon its execution and may thereafter exchange Confidential Information. Either party shall be entitled to seek enforcement of (or other appropriate relief, including sanctions, pertaining to) this Protective Agreement before the Commission, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Agreement. With respect to the foregoing, the Parties agree that monetary damages would be an inadequate remedy for any breach or threatened breach of this Protective Agreement and that injunctive relief from a court of competent jurisdiction is appropriate for any breach or threatened breach of this Protective Agreement. This

Protective Agreement shall control the production and disclosure of all materials deemed "Confidential Information."

2. **Designation of Material.** Confidential written information shall be so indicated by clearly marking each page, or portion thereof, for which a Confidential Information designation is claimed with a marking such as "Confidential-Subject to Protective Agreement in Alabama Docket No. 29054" or other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection under this Agreement are accorded status as a stamped confidential document, and to the extent feasible, shall be prepared in such a manner that the Confidential Information is bound separately from that not entitled to protection. Confidential non-written information shall be so indicated by asserting the confidentiality of such information at the time of disclosure.

3. **Material Provided to the Parties.** Except with the prior written consent of the party who has designated a document or other non-written information as "Confidential Information," or as hereinafter provided, no Confidential Information may be disclosed to any person.

4. **Permissible Disclosure of Confidential Information.**

(A) Notwithstanding paragraph 3, Confidential Information provided pursuant to this Protective Agreement may be disclosed without prior written consent only to the following persons, only in prosecuting this Proceeding, and only to the extent necessary to assist in prosecuting this Proceeding:

(i) Counsel of record representing a party in this Proceeding and any legal support personnel (e.g., paralegals and clerical employees) acting at the direction of counsel.

(ii) Other employees, officers, or directors of a party, or consultants or experts retained by a party, who are not engaged in strategic or competitive decision making, including, but not limited to, the sale or marketing or pricing of any products or services on behalf of the receiving party, unless the producing party gives prior written authorization for specific individuals in the prohibited categories above, to review the Confidential Information. If the producing party refuses to give such written authorization, the receiving party may, for good cause shown, request an order from the Alabama Commission or its designated representative, allowing an individual involved in the prohibited categories above to have access to the Confidential Information. Individuals who become reviewing representatives under this paragraph agree that they will not use the Confidential Information made available in this Proceeding to engage or consult in the development, planning, marketing, procurement, manufacturing, pricing or selling of telecommunication services, equipment, software or other offerings, strategic or business planning, competitive assessment, and/or network planning, operations or procurement.

(iii) Court reporters, stenographers, or persons operating audio or video recording equipment at hearings or depositions.

(iv) Persons noticed for depositions or designated as witnesses, to the extent reasonably necessary in preparing to testify or for the purpose of examination in this Proceeding.

(B) Persons obtaining access to Confidential Information under this Protective Agreement shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this Proceeding before the Commission. Each individual who is provided access to Confidential Information must receive a copy of this Agreement and sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Agreement and understands and agrees to be bound by the limitations it imposes on the signing party before being provided copies of any Confidential Information. The form of the notarized statement to be used is attached as Attachment A to this Agreement.

(i) No copies or notes of materials marked as Confidential Information may be made except copies or notes to be used by persons designated in paragraphs (A) - (D) of this section. Each party shall maintain a log, recording the number of copies made of all Confidential Information, and the persons to whom the copies have been provided. Any note memorializing or recording of Confidential Information shall,

immediately upon creation, become subject to all provisions of this Protective Agreement.

(ii) Within ninety (90) days of the completion of this Proceeding, including all motions and appeals, all originals and reproductions of Confidential Information, along with the log recording persons who received copies of such materials, shall be returned to the producing party or destroyed. In addition, upon such termination, any notes or other work product, derived in whole or in part from the Confidential Information shall be destroyed, and counsel of record for the receiving party shall notify counsel for the party who produced the materials in writing that this has been completed. If materials are destroyed rather than returned to the producing party, a sworn statement to that effect by counsel of record for the receiving party shall be provided to the producing party.

(C) Before a Party that has received Confidential Information may disclose a document or other non-written information designated as or marked as Confidential Information to any person who (i) has executed a Certificate of Authorized Reviewing Representative agreeing to be bound by the Provisions of this Protective Agreement and (ii) is employed by a competitor of the party that so designated the document or other non-written information, the party wishing to make such disclosure shall give at least five (5) days advance notice in writing to the counsel or party who designated such information as Confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purposes of such disclosure. If, within the five day period, a motion is

such subpoena or order to allow that party time to object to that production or seek a protective order.

8. **Client Consultation.** Nothing in this Protective Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure or reference to any Confidential Information except under the procedures on paragraph 4 above.

9. **Use.** Persons obtaining access to Confidential Information under this Protective Agreement shall use the information only for preparation of and the conduct of litigation in this Proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings.

10. **Non-Termination.** The obligations of the parties with respect to Confidential Information received pursuant to this Protective Agreement shall survive and continue after any expiration or termination of this Agreement.

11. **Preservation of Rights.** Nothing in this Protective Agreement shall prevent any party from objecting to discovery or challenging the admissibility of any and all information and data that it believes to be otherwise improper.

12. **Responsibilities of the Parties.** The parties are responsible for employing reasonable measures to control, consistent with this Protective Agreement, duplication of, access to, and distribution of Confidential Information. A receiving Party shall protect such Confidential Information by using the same degree of care

(which shall be no less than reasonable care) to prevent its unauthorized disclosure as the receiving Party exercises in the protection of its own confidential information.

13. **Severability and Jurisdiction.** It is further agreed that if any provision of this agreement shall contravene any statute or constitutional provision or amendment either now in affect or which may, during the term of this agreement be enacted, then that conflicting provision in the agreement shall be deemed null and void with respect to the Commission. The parties agree to submit to the jurisdiction of state or federal courts within the State of Alabama.

14. **Counterparts.** This Protective Agreement may be executed by one or more parties to this Protective Agreement on any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument binding on and inuring the benefit of each party so executing this Protective Agreement with the same effect as if all such parties had signed the same instrument at the same time and place.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____
Title: _____
Date: _____

CLEC
By: _____
Title: _____
Date: _____

STATE OF _____

COUNTY OF _____

CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE

BEFORE ME, the undersigned authority, duly Commissioned and qualified in and for the State and County aforesaid, personally came appeared _____ _____(insert name), who, being by me first duly sworn, deposed and said as follows:

I understand that the Confidential Protected Materials that will be provided to me in this proceeding are being provided pursuant to the terms and restrictions of the Protective Agreement in Docket 20954 pending before the Alabama Public Service Commission, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of "Confidential Information", and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purposes of these proceedings in Docket 20954 as set forth in the Protective Agreement.

Signature:

_____

Date of Execution: _____

(Type or Print below)

Name: _____

Title: _____

Company: _____

Address: _____

_____

_____

Requesting Party: _____

SWORN TO AND SUBSCRIBED BEFORE ME on this ____ day of ____, 2003.

_____

(NOTARY PUBLIC)

My Commission expires:

_____

508448

EXHIBIT B

RECEIVED OCT 28 2003 GENERAL COUNSEL-GEORGIA

RECEIVED OCT 27 2003 EXECUTIVE SECRETARY G.P.S.C.

COMMISSIONERS:
ROBERT B. BAKER, JR., CHAIRMAN
DAVID L. BURGESS
H. DOUG EVERETT
ANGELA E. SPEIR
STAN WISE

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

REECE McALISTER
EXECUTIVE SECRETARY

Georgia Public Service Commission

(404) 656-4501
(800) 282-5813

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

DOCKET # 17741 17749
DOCUMENT # 67841 67842

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

In Re:

FCC's Triennial Review Order Regarding the Impairment for High Capacity Enterprise and Dedicated Transport Loops	)	Docket No. 17741-U

In Re:

FCC's Triennial Review Order Regarding the Impairment of Local Switching for Mass Market Customers	)	Docket No. 17749-U

ORDER ESTABLISHING PROCEDURE

The Commission enters the following Initial Pre-Hearing Order governing procedures in the above-styled Docket for (1) service of all pleadings, discovery and responses, testimony, briefs and other required filings; (2) discovery, including but not limited to, interrogatories, requests for production of documents, requests for admissions, depositions; and (3) confidential treatment of responses to discovery. Any issue regarding these matters that are not addressed in this Initial Pre-Hearing order will be governed by the Commission's normal rules of practice and procedure.

(1) Service of Pleadings, Discovery and Responses, Testimony, Briefs and Other Required Filings.

All filings by the Parties to this proceeding and the service of said filings by Parties shall be made as follows:

(i) All filings required to be made to the Commission shall be made pursuant to the ordinary rules of practice and procedure that apply to matters pending before the Commission, on the dates specified by the Commission and in the manner such filings are ordinarily made; provided, however, that unless the Commission specifically orders otherwise with regard to a particular filing or submission, the

parties may hand deliver any required pleading to the Commission by 11 a.m. on the day following the date the filing was due, and provided that service on the other parties was made in accord with the requirements of this order, such filing shall be considered timely.

(ii) Every party to this proceeding shall provide every other party with an email address of a person who shall be authorized to receive service copies for that party of all filings that have to be filed at the Commission or otherwise served on the parties. If the person authorized to receive service for any party changes, that party shall be responsible for notifying all other parties of such change.

(iii) For the purpose of this proceeding, where a responsive submission is made, service shall be deemed complete when the person making the filing sends the filing to the appropriate email address. For filings that require a responsive filing from other parties, such as interrogatories, requests for admission and requests for production of documents, the time for complying with the request shall begin when the party to whom the request is made receives the request provided that that if the filing is served electronically and is received on the next business day following the date on which the electronic filing was received. The parties are admonished to (1) request "receipt" and "read" indicators for all emails to ensure that they are delivered and received in a timely manner and (2) to ensure that the person designated to receive service, or someone acting in his or her stead, can regularly access email. Upon agreement of the parties, each party may designate up to three persons to receive service to alleviate any concerns about the availability of someone to receive service.

(iv) Because some filings, such as testimony, or the responses to filings such as interrogatories or responses to requests for production may be voluminous, the parties can elect, for non-confidential materials, to create a publicly accessible website where any such filing can be posted. If a party elects to post a responsive filing to this web site, and sends an email with a URL link to that publicly accessible website to the appropriate representatives of the other parties, such a posting shall be considered service of the responsive document. This vehicle may be used for the posting of testimony and responses to discovery, but shall not be used for the filing of matters that require a response from other parties, such as interrogatories, requests for admission or requests for the production of documents.

(v) The purpose of providing for service in the foregoing ways is to facilitate the exchange of information between the parties so that this proceeding can go forward in a timely and efficient manner. Any disputes as to whether there has been compliance with these requirements should be discussed among the parties and resolved amicably if at all possible. Prior to bringing any dispute regarding these matters to the Commission, the parties will be required to certify that they have met and discussed the dispute, and succinctly detail exactly what the dispute is. The Commission will not entertain disputes involving a question of whether a

filing was made timely unless the aggrieved party can demonstrate that it has been substantially prejudiced.

(vi) Where a party receives an electronic copy of a document, the party can request a paper copy of the document, but the responding party shall have one week after the request is made to furnish the paper copy.

(2) Discovery

(A) Interrogatories, Requests to Produce Documents, Requests for Admissions.

(i)Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may be served requesting state-specific responses and information or, at a party's discretion, seeking responses and information concerning all nine states in the BellSouth region It shall not be an appropriate or sustainable objection that such discovery seeks information concerning states other than the state in which the discovery is served. Subject to the Confidentiality provisions in Section 3 of this Order and any other evidentiary objections, discovery obtained in other states in the BellSouth region shall be available for use in this proceeding or where appropriate, in appeals from Commission orders to a court of competent jurisdiction or the FCC, subject to normal rules applying to the admission of evidence.

(ii)Where requested, the parties shall respond, except as provided below to Interrogatories, Requests to Produce and Requests for Admissions within 21 calendar days of service.

(iii)If a party believes that a particular request is unduly voluminous or would otherwise require additional time to respond to (and the request is not otherwise objectionable) the parties are admonished to work together to agree on an appropriate time frame for responding to the discovery, given the circumstances that exist at the time. In resolving such issues, the parties are directed to consider whether the requests can be broken into smaller groups, with some groups being responded to more quickly than others, or whether there is some other innovative way to address such issues, without bringing them to the Commission for resolution. Again, should a party seek the Commission's intervention in such a dispute, the complaining party should be prepared to explain in detail why it has been unable to reach a satisfactory resolution, and why it is prejudiced by the solution offered by the non-complaining party.

(iv)Objections to Discovery.

(a) Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery shall be made within 10 calendar days after service. Objections to Interrogatories, Requests to

Produce Documents and Requests for Admissions and other Discovery may include, but not be limited to:

(1) Legal Objections

(2) Objections to the time required for the production of region-wide discovery responses, in which event the objecting party shall provide a time frame and/or date certain for response to the region-wide discovery. Such Objections may include the fact that certain discovery responses may be voluminous and/or require answers from individuals from multiple states.

(b) Where objections are made pursuant to (2)(A)(iv) (a) (1), the objecting party shall state whether it intends to provide a partial response subject to the objection. Parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.

(c) Where objections are made pursuant to (2)(A)(iv) (a) (2), the parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.

(v) Where the parties are unable to resolve a discovery dispute as outlined in the preceding sections, the parties shall seek expedited rulings on any discovery dispute, and the Commission shall resolve any such dispute expeditiously. The resolution of discovery disputes may be determined by the Commission, by a Pre-Hearing Officer, or by an attorney representing the Commission appointed for that purpose on an ad hoc basis.

(B) Depositions

(i) Depositions of employees, consultants, contractors and agents may be taken pursuant to the ordinary rules of practice and procedure before the Commission, including any objections that may be raised.

(ii) Depositions of persons whom the parties will sponsor as witnesses in the above-styled Docket shall be limited as follows, after testimony is filed:

(a) Any party may depose a person who files testimony, subject to (2)(B)(ii)(b) below, after the filing of:

(1) direct testimony; and

(2) rebuttal testimony; and

(3) surrebuttal testimony

(b) Once a witness has been deposed regarding such testimony in any state in the BellSouth region, that witness may only be deposed again (1) upon the request of the staff of the Commission, or if there is participation by a public agency such as a consumer advocate or the Attorney General, upon request by such public agency, or (2) any party to this proceeding that was not a party to the proceeding in which the deposition was taken, or (3) by any party, if the testimony offered by the witness contains state specific information which is different from previous testimony filed by the witness, in which case the deposition will be limited to questions about the state specific material and related items.

(c) Should a witnesses' testimony in this state change materially, other than by reason of the inclusion of state specific material discussed in (b) above, the witness may be deposed again, but only in connection with the testimony that has changed.

(d) The purpose of these deposition requirements is to conserve the resources of the parties, and to encourage the parties to work jointly and cooperatively to conduct necessary discovery.

(e) If the parties have a dispute regarding the taking of depositions in any particular situation, the parties are admonished to work together to resolve such differences, and if those differences cannot be reconciled, the parties should be prepared to present a very brief explanation of the dispute and the aggrieved party should be prepared to demonstrate how it is prejudiced by its failure to comply with the requests or objections of the opposing party.

(3) Confidentiality of Information

To facilitate the flow of discovery material, the parties may require the execution of a protective agreement where appropriate to protect trade secret information. A form protective agreement is attached to this Order.

Ordering Paragraphs

WHEREFORE IT IS ORDERED, that the parties to this docket shall comply with the discovery procedures set forth above.

ORDERED FURTHER, that for the purpose of discovery, all telecommunications carriers that have a certificate of authority in Georgia are parties to these proceedings.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument shall not stay the effectiveness of this order unless expressly ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 21st day of October, 2003.

Reece McAlister
Executive Secretary

10-24-03
Date

Robert B. Baker, Jr.
Chairman

Oct. 24, 2003
Date

EXHIBIT C

BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION

In re:	)	
	)	
Generic Proceeding to Review the Federal Communications Commission's Triennial Review Order	)	Docket No. 2003-AD-714
	)	
	)	
	)	
	)	

ORDER ESTABLISHING DOCKET, PROCEDURE AND SCHEDULE

COMES NOW, the Mississippi Public Service Commission ("Commission"), *sua sponte*, and opens the above-referenced generic proceeding to review the Federal Communications Commission's ("FCC") Triennial Review Order, released on August 21, 2003, regarding the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers[1] ("Triennial Review Order"). The Triennial Review Order was published in the *Federal Register* on September 2, 2003 and, thus will become effective on October 2, 2003, unless otherwise stayed.

The FCC's Triennial Review Order encompasses a number of issues which this Commission and other state regulatory bodies must address. The issue which must first be addressed by the Commission relates to whether local circuit switching for enterprise customers should continue to be provided on an unbundled basis. More specifically, the FCC has established a national presumption that competitors of Incumbent Local Exchange Carriers ("ILECs") will not be impaired without access to unbundled local circuit switching

[1] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand, CC Docket No. 01-00338, Rel. August 21, 2003.

for enterprise customers.[2] The FCC established, however, that the aforementioned national presumption can be overcome through a "geographic specific analysis" demonstrating that competitive carriers are indeed impaired without access to ILEC local circuit switching.[3]

With respect to overcoming the national presumption discussed above, the FCC concluded that state commissions are uniquely positioned to evaluate local market conditions and to determine whether enterprise customers should be granted access to unbundled ILEC circuit switching.[4] In particular, the FCC noted that it would permit state commissions to rebut the national presumption of no impairment without ILEC local circuit switching by undertaking a more granular analysis utilizing the economic and operational criteria established by the FCC in the Triennial Review Order. In order to support a petition for a waiver of the national finding of no impairment, the FCC concluded that state commissions must make an affirmative finding of impairment showing that carriers providing service at the DS1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market.[5] The FCC established that state commissions have ninety (90) days from the effective date of its Triennial Review Order to petition the FCC to waive the finding of no impairment.

Given the October 2, 2003 effective date of the Triennial Review Order and the expedited schedule which must be adhered to for overcoming the national presumption of no impairment with respect to local circuit switching, the Commission herein establishes this Docket for purposes of fulfilling the Commission's responsibilities under the FCC's Triennial

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[2] *Id.* at ¶451.
[3] *Id.* at ¶454.

[4] *Id.* at ¶455.

[5] *Id.*

Review Order. The Commission will conduct this docket in two separate phases in order to fulfill all of its responsibilities with respect to the FCC's Triennial Review Order. The first phase of this docket will be to consider the impairment of DS1 enterprise customers within the ninety (90)-day time frame set out by the FCC, and the second phase will be to consider the balance of the matters that will need to be addressed by the Commission pursuant to the Triennial Review Order within the nine (9)-month time frame set out by the FCC. The ninety (90)-day time frame will expire on or about Tuesday, December 30, 2003, while the nine (9)-month time frame will expire on or about Friday, July 2, 2004. Parties may intervene in this docket pursuant to the Commission's rules governing intervention. Any telecommunications carrier regulated by this Commission may be called upon to provide relevant information to these dockets, and the Commission may, at its discretion, require a party that is not actively participating in this docket to actively participate herein. A procedural schedule for conducting phase one of this proceeding is set forth in this Order establishing this docket. The Commission will issue another order at a later date establishing a procedural schedule that will address phase two of this docket.

The Commission has determined through preliminary investigation conducted by the Mississippi Public Utilities Staff ("MPUS") that the number of unbundled network element ("UNE") combinations consisting of a DS1 loop and above with unbundled local circuit switching in Mississippi is *de minimis*. Accordingly, we are hereby adopting the recommendation of the MPUS that specific proceedings in phase one of this docket should not be undertaken absent a specific request from an affected party seeking to rebut the national presumption established by the FCC with regard to local circuit switching.

Based upon the foregoing, we find that any party seeking to have the Commission undertake proceedings aimed at rebutting the FCC's no impairment finding regarding local circuit switching for enterprise customers should submit a petition requesting such action by the Commission no later than October 14, 2003.[6] Any party petitioning for such action by the Commission should identify the particular geographic area(s) for which it is requesting that the Commission to rebut the national finding and should also be prepared to actively participate in any proceedings initiated, including the presentation of "actual marketplace evidence," sworn expert testimony, and comments in support thereof.[7] Parties opposing any such petition(s) should submit their responses, supporting evidence and comments no later than October 24, 2003. Any evidence and comments to be filed in rebuttal by a petitioning party must be filed no later than October 31, 2003. Proposed orders from all parties must be submitted no later than November 20, 2003.

IT IS, THEREFORE, ORDERED that this Docket is hereby established for purposes of fulfilling the Commission's responsibilities under the FCC's Triennial Review Order and the Commission hereby adopts the schedule set forth above in connection with phase one of this docket which concerns issues related to the FCC's finding that competitors of ILECs are not impaired without access to unbundled local circuit switching for enterprise customers. The Commission will establish a procedural schedule for conducting phase two of this docket through a subsequent order.

This Order shall be effective as of the date hereof.

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[6] As indicated in the Triennial Review Order, this does not preclude a party from filing such a petition at a later time. Such petition, however, will not be considered as part of this 90-day proceeding. Instead, such petition will be considered within the six-month deadline required by the Triennial Review Order. (See footnote 1398 of the Triennial Review Order)

[7] Triennial Review Order at ¶93.

Chairman Michael Callahan voted aye; Vice-Chairman Bo Robinson voted Aye;

Commissioner Nielsen Cochran voted Aye.

SO ORDERED on this the 29th day of September, 2003.

MISSISSIPPI PUBLIC SERVICE COMMISSION

MICHAEL CALLAHAN, CHAIRMAN

BO ROBINSON, VICE CHAIRMAN

NIELSEN COCHRAN, COMMISSIONER

ATTEST: A TRUE COPY

BRIAN U. RAY
Executive Secretary

EXHIBIT D

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-100, SUB 133p
DOCKET NO. P-100, SUB 133q

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-100, Sub 133p In the Matter of Triennial Review Order—DS1 Enterprise Customer Impairment Docket No. P-100, Sub 133q In the Matter of Triennial Review Order—Main Proceeding	)))))))))))	ORDER ESTABLISHING DOCKETS AND PRESCRIBING PROCEDURE FOR DOCKET NO. P-100, SUB 133p

BY THE CHAIR: On August 21, 2003, the Federal Communications Commission (FCC) issued its long-awaited *Triennial Review Order* (*TRO*). With respect to enterprise customers, the FCC found the following:

> The evidence in our record establishes that, in most areas, competitive LECs [local exchange companies] can overcome barriers to serving enterprise customers economically using their own switching facilities in combination with unbundled loops (or loop facilities)....Accordingly, we make a national finding that competitors are not impaired without unbundled access to incumbent LEC local circuit switching when serving DS1 enterprise customers. We recognize, however, that special circumstances may create impairment without access to unbundled local circuit switching to serve enterprise customers in particular markets. We thus allow states 90 days to petition the Commission to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers. (*TRO*, Para. 421)

The criteria by which impairment is to be demonstrated are set out generally in *TRO*, Paras. 455-458. The criteria for defining the relevant markets are set out generally in *TRO*, Paras. 495-497.

After careful consideration, the Chair concludes the following:

1. That two dockets should be established—namely, Docket No. P-100, Sub 133p, to consider the impairment of DS1 enterprise customers within the 90-day time frame set out by the FCC, and Docket No. P-100, Sub 133q, to consider the balance of matters to be addressed by this Commission pursuant to the *TRO* within the 9-month time frame set out by the FCC.[1] The 90-day time frame will expire on or about Tuesday, December 30, 2003, while the 9-month time frame will expire on or about Friday, July 2, 2004. All incumbent local exchange companies and competing local providers will be considered parties to these dockets. Intervention may be sought according to Commission rules. Parties that desire to participate actively in these dockets should so notify the Commission by fax at (919) 733-7300 by no later than Thursday, September 25, 2003. All others will be considered not to be actively participating in these dockets and need not be served by parties who are actively participating. Nevertheless, any telecommunications carrier regulated by this Commission may be called upon to provide relevant information to these dockets, and the Commission may, at its discretion, require a party that is not actively participating in these dockets to actively participate in them. This Procedural Order, aside from establishing the two dockets and regulating participation, concerns Docket No. P-100, Sub 133p. A later procedural order will address Docket No. P-100, Sub 133q.

2. That BellSouth Telecommunications, Inc. (BellSouth), Verizon South, Inc. (Verizon) and Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Sprint) are directed to provide to the Commission by no later than Friday, September 19, 2003, a statement of how many unbundled network element (UNE) combinations consisting of a DS1 loop with unbundled local switching they are currently providing in North Carolina. The Chair believes that it is a reasonable conclusion that, if there are relatively few of this type of UNE combinations being ordered, it is highly unlikely that a showing of impairment can be sustained. If the Commission finds that the provision of such loop combinations is either non-existent or *de minimis*, then the Commission will conclude that there is no impairment; provided, however, that a competing local provider (CLP) whose substantial interests are affected by this action may file a Petition as set out below. In the absence of a timely filing of such Petition(s), then the Commission's finding that there is no impairment will become final and effective, and no further investigation in Docket No. P-100, Sub 133p will be undertaken.

3. That any CLP with substantial interests in this matter desiring to contest the presumption of non-impairment with respect to DS1 enterprise customers must file a Petition to do so and shall bear the burden of proof. Any such Petitions shall contain all the proof that is necessary to rebut the FCC's presumption of non-impairment.

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[1] The Commission will not utilize the Docket No. P-100, Sub 133o because of the similarity of the upper-case "o" to zero and the potential for confusion.

4. That, due to the shortness of time in which the Commission has to accomplish this review, this proceeding shall be conducted on the pleadings by way of Petition, Comments, and Reply Comments. The Petition, Comments, and Reply Comments shall be considered evidence and, to that end, all such pleadings shall be verified as to their veracity. There shall be no extensions of time granted except under the most exigent circumstances.

5. That the parties shall submit proposed orders and/or briefs after the Petition/Comment/Reply Comment cycle together with a matrix summary keyed to the criteria set out in the *TRO* for decision on this matter. The *TRO* is a document of great length and complexity. It is, therefore, of the utmost importance both for the parties themselves and for the Commission that, at all stages of the pleadings, the parties should present their arguments concisely and structure their pleadings according to the decisional criteria set out in the *TRO*, so as to be able to prove or refute the necessary elements therein. The parties are encouraged to confer with a view toward arriving at a common format.

6. That the schedule for Petitions, Comments, and Reply Comments shall be as follows:

a. Petitions from CLPs to rebut the presumption of non-impairment, by no later than Friday, October 3, 2003.

b. Comments from those opposing the Petitions, by no later than Monday, October 13, 2003.

c. Reply Comments from Petitioners and intervenors supporting the Petitions by no later than Monday, October 20, 2003.

d. Proposed Orders and/or Briefs and matrix summaries from all parties, no later than Monday, November 10, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of September, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

dl091003.01

EXHIBIT E

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2003-326-C AND 2003-327-C

IN RE:

Analysis of Continued Availability of Unbundled Local Switching for Mass Market Customers Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-326-C)	)
And	)
Continued Availability of Unbundled High Capacity Loops at Certain Locations and Unbundled High Capacity Transport on Certain Routes Pursuant to the Federal Communication Commission's Triennial Review Order (Docket No. 2003-327-C)	)

BELLSOUTH'S PROPOSED ORDER MAKING ALL ENTITIES THAT HAVE A CERTIFICATE TO OPERATE AS A TELEPHONE UTILITY IN SOUTH CAROLINA PARTIES TO THESE PROCEEDINGS FOR THE LIMITED PURPOSE OF DISCOVERY

This matter comes before the Public Service Commission of South Carolina ("the Commission") upon BellSouth Telecommunications, Inc's. ("BellSouth's") Motion for Order Making All Entities That Have a Certificate to Operate as a Telephone Utility in South Carolina Parties to These Proceedings for the Limited Purpose of Discovery. For the reasons set forth below, the Commission has determined that BellSouth's Motion should be granted.

On August 21, 2003, the Federal Communications Commission ("FCC") released its *Triennial Review Order*.[1] The FCC directed the Commission to apply various triggers and other analysis developed by the FCC to determine the extent to which certain loop, transport, and switching facilities will remain unbundled network elements ("UNEs") in South Carolina. *See, e.g., Triennial Review Order* at ¶¶ 339, 417, 488, 527. Applying these triggers and other analysis requires the Commission to consider a great deal of carrier-specific information at a "granular" level including, without limitation: the number of competing carriers serving specific customer locations with their own loop transmission facilities at certain loop capacity levels (¶329); the number of competing carriers that have deployed transmission facilities to specific customer locations and that are offering alternative loop facilities to competing carriers on a wholesale basis at the same capacity level (¶329); the number of competing carriers that have deployed non-incumbent LEC transport facilities along a specific route (¶400); the number of alternative transport providers immediately capable and willing to provide competing carriers with transport at specific capacity along a given route between incumbent LEC switches or wire centers (¶400); the number of competing carriers serving mass market customers in a particular market with the use of their own switches (¶501); and the number of competing carriers that offer wholesale switching service for a particular market using their own switches (¶504). The Commission is expected to apply these

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[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Service Offering Advanced Telecommunications Capability*, 2003 WL 22175730 (F.C.C.), 30 Communications Reg. (P&F) 1 (Rel. August 21, 2003).

various triggers and other analysis and make various findings within nine months of the effective date of the *Triennial Review Order*. *See Id.*, at ¶¶ 339, 417, 488, 527.

In order to resolve these dockets, the Commission will want the record in these proceeding to include as much relevant information as possible. While obtaining such information from parties that have intervened in these proceedings should be relatively straight-forward, obtaining information from entities that elect not to participate may be more difficult. Non-parties, for example, might object to, or even ignore, interrogatories and requests for production of documents served by parties. *See, e.g., Lehman v. Kornblau*, 206 F.R.D. 345, 346 (E.D.N.Y. 2001) ("Any interrogatories or requests for production of documents served on non-parties are a nullity.").

Clearly, the Commission's Staff could draft questions designed to elicit relevant information, serve these questions on all certificated telephone utilities, and initiate appropriate action against any telephone utilities that were not responsive. Additionally, the Staff could issue subpoenas requested by the parties, serve these subpoenas on non-party telephone utilities, and initiate appropriate action against any telephone utilities that were not responsive. Either approach, however, undoubtedly would place a considerable burden on the Commission and its Staff.

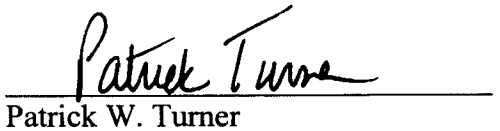
To avoid these burdens, the Commission finds that all entities that have a certificate to operate as a telephone utility in South Carolina should be made parties to these proceedings for the limited purpose of discovery. This will allow the parties to conduct discovery on other telephone utilities that have elected not to intervene. These other telephone utilities would not have to otherwise participate in these proceedings if they choose not to do so. The Commission finds that this approach will be very helpful

in meeting the tight deadlines the FCC's Triennial Review Order has imposed on the Commission and the parties in this proceeding, and it will be significantly less burdensome on the Commission and its Staff than other possible approaches. The Commission finds that is authorized by law (including without limitation S.C. Code Ann. §§ 58-9-780, 58-9-370, 58-9-1070, and 58-9-790) to take this approach under these circumstances.

Accordingly, BellSouth's Motion is granted, and the Commission hereby orders that all entities that have a certificate to operate as a telephone utility in South Carolina are parties to these proceedings for the limited purpose of discovery.

This Order shall remain in full force and effect until further Order of the Commission.

Respectfully submitted,



Patrick W. Turner
1600 Williams Street, Suite 5200
Columbia, South Carolina 29201
ATTORNEY FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

511629

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s BellSouth Telecommunications, Inc.'s Proposed Order Making All Telephone Entities That Have A Certificate To Operate As A Telephone Utility In South Carolina Parties To These Proceedings For The Limited Purpose Of Discovery in Docket No. 2003-326-C and Docket No. 2003-327-C to be served upon the following this November 12, 2003:

F. David Butler, Esquire
General Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(U.S. Mail and Electronic Mail)

Elliott F. Elam, Jr., Esquire
S. C. Department of Consumer Affairs
3600 Forest Drive, 3rd Floor
Post Office Box 5757
Columbia, South Carolina 29250-5757
(Consumer Advocate)
(U. S. Mail and Electronic Mail)

John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(AT&T)
(U. S. Mail and Electronic Mail)

Robert E. Tyson, Jr., Esquire
Sowell Gray Stepp & Laffitte
1310 Gadsden Street
Columbia, South Carolina 29211
(CompSouth)
(U. S. Mail and Electronic Mail)

Nyla M. Laney

PC Docs # 512354