BELLSOUTH

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October 10, 2003

Drop Box

OCT 10 2003

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Review of Federal Communications Commission's Triennial Review Order Regarding Unbundling Requirements for Individual Network Elements
PSC 2003-00379

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of the Motion of BellSouth Telecommunications, Inc. Requesting the Commission to Modify the Procedural Schedule, a First Set of Interrogatories, and First Requests of Production of Documents. BellSouth and CompSouth also have reached agreement to file an Agreed Motion of BellSouth and CompSouth to establish procedural guidelines and Joint Protective Agreement, both of which we expect to file shortly.

The Interrogatories and Requests for Production of Documents are duplicates of the ones served in the Florida TRO proceeding. If any party to the Agreed Motion intends to provide complete answers in Florida that will disclose the information relating to Kentucky, unless the Commission otherwise directs, that party can so advise BellSouth rather than answering the Interrogatories and Requests for Production of Documents again here.

Your assistance in filing these documents is appreciated. Please do not hesitate to contact me if I can provide any information or assistance.

Very truly yours,

Dorothy J. Chambers

Enclosures
508228

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER REGARDING UNBUNDLING REQUIREMENTS FOR INDIVIDUAL NETWORK ELEMENTS	))))	CASE NO. 2003-00379

MOTION OF BELLSOUTH TELECOMMUNICATIONS, INC.
REQUESTING THE COMMISSION TO MODIFY THE PROCEDURAL SCHEDULE

BellSouth Telecommunications, Inc. ("BellSouth"), by counsel, moves the Commission to modify the procedural schedule established by this Commission, by Order dated October 2, 2003.

In that October 2, 2003, order setting out an initial procedural schedule relative to the Federal Communications Commission ("FCC") release of its Triennial Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers ("Triennial Review Order"), effective October 2, 2003, this Commission gave notice to all Independent Local Exchange Carriers ("ILECs"), Competitive Local Exchange Carriers ("CLECs"), all wireless providers, the Attorney General of the Commonwealth of Kentucky, and the Kentucky Cable Telecommunications Association. The order also provided that all persons served with the order who wish to become parties could "opt in" to the proceeding upon written notice of intervention to the Commission within ten days. The order also set out initial data requests to ILECs to be filed by October 10, 2003, with responses due in 21 days. Further, the Commission set an informal conference for October 14, 2003, and required BellSouth, Kentucky ALLTEL, Inc., and

Cincinnati Bell Telephone Company to file petitions by October 24, 2003, seeking to overcome the national presumption that impairment exists in the markets addressed in the proceeding.

BellSouth applauds the Commission's prompt initiation of this proceeding and the effort to establish a procedural framework. At the same time, BellSouth believes some modifications are appropriate to the initial schedule. BellSouth also believes, as the Commission no doubt intends, that further procedural and scheduling orders will need to be established to deal with the myriad of logistical questions, discovery issues, and scheduling issues which are likely to arise. As the Commission is aware, BellSouth has been working with a CLEC coalition, CompSouth[1], to try to reach agreement, where possible, on as many of the numerous procedural, logistical, and scheduling matters present in this proceeding in an effort to be able to propose a joint prehearing order and procedural type orders to each of the state commissions in the nine states in which BellSouth operates as an ILEC. The purpose of this effort is to avoid conflicts, where possible, between state jurisdictions with regard to these scheduling issues, to minimize duplicative discovery, and to minimize the inconvenience, expense, and time for the state commissions and all parties involved. BellSouth and CompSouth have agreed to propose guidelines for switching, loop and transport issues to each of the nine state commissions in BellSouth's region. An Agreed Motion of BellSouth Telecommunications, Inc. and CompSouth to Establish Procedural Guidelines and a Joint Protective Agreement are expected to be filed shortly.

[1] CompSouth members include: ITC DeltaCom; MCI; Business Telecom Inc.; NewSouth Communications Corp.; AT&T; Nuvox Communications Inc.; Access Integrated Networks, Inc.; Birch Telecom; Talk America; Cinergy Communications Company; Z-Tel Communications; Network Telephone Corp.; Momentum Business Solutions; Covad; KMC Telecom; IDS Telecom and Xspedius Corp.

BellSouth also wishes to bring to the Commission's attention some other questions resulting from the Commission's October 2, 2003, initial scheduling order. First, BellSouth notes there are potential procedural encumbrances likely to result from the "opt in" procedure of the Commission's initial order. In the absence of inclusion of all parties with relevant information, the Commission is likely to not have the information necessary for this proceeding. For example, BellSouth believes the interexchange carriers, any other providers of telecommunications services, including local governments and other utilities such as power companies, must be included in this proceeding so that relevant information in their possession can be discovered efficiently and is available to the Commission and other parties.

At the absolute minimum, all telecommunications carriers, including interexchange carriers, that operate in Kentucky under a certificate of authority from this Commission must be included. The reason for this is simple and compelling. The FCC, in the Triennial Review Order, created certain switching, loop and transport "triggers," which if met compel a finding of "no impairment" in the relevant geographic areas. For instance, one of the "triggers" for switching is a finding that there are three facilities-based CLECs in a geographic market providing qualifying services to mass market customers. Without knowing which CLECs have switches, what services they are providing, what customers they are serving, and where those customers are located, the Commission will not have the necessary information to determine whether the "triggers" have been met. Requiring all of the CLECs in Kentucky to participate in these proceedings, at least to the extent of responding to discovery regarding such matters, will be imperative for the Commission to accomplish the task that the FCC has set for it.

If the Commission does not join these parties, at least for purposes of discovery, the intervening parties will be left to utilize third party discovery procedures, i.e., with depositions, issuance of subpoenas, and/or subpoena duces tecum, which will be time consuming, and will require the active participation of the Commission and its Staff. On the other hand, if the Commission decides to join parties in this proceeding as BellSouth has proposed, those parties would not need to participate further than responding to written interrogatories, unless they chose to further participate.

BellSouth also notes that the Commission's October 2, 2003, Order provides for discovery to ILECs but does not provide for discovery from ILECs to other parties. As noted above, the ability to serve discovery on CLECs and others is critical to allow BellSouth to obtain information necessary to present its case. BellSouth is filing interrogatories herewith and respectfully moves for leave to file these interrogatories and seeks leave to file other appropriate discovery as the schedule is further developed. BellSouth also notes that responses from the ILECs to this first wave of discovery is required in 21 days. Because of the volume of data expected to be requested and for conformity with the procedures likely to be adopted in other states, BellSouth requests that this period be extended to 30 days for all parties to respond.

Letters making this same request to the Florida and to the Georgia Public Service Commissions with regard to joining all telecommunications carriers as parties to the triennial review proceeding and the UNE review are attached.

BellSouth files this motion in good faith with the intent to try to make these proceedings as expeditious, cost effective, and provide as little inconvenience to the Commission and the parties as possible. BellSouth remains committed to working with

the Commission and the other parties to try to continue this process and will be happy to discuss these or any other issues at any time, including at the October 14, 2003, informal conference set in the Commission's order.

Respectfully submitted,

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October 7, 2003

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

Re: Docket No. 030851-TP: Implementation of requirements arising from Federal Communications Commission Triennial UNE Review: Local Circuit Switching for Mass Market Customers

Re: Docket No. 030852-TP: Implementation of requirements arising from Federal Communications Commission's Triennial UNE Review: Local-Specific Review for DS1, DS3, and Dark Fiber Transport

Dear Ms. Bayó:

I have attached a copy of BellSouth's and the FCCA's proposed modifications to the existing pre-hearing orders in the referenced dockets, as was discussed yesterday during the pre-hearing conference. We would be happy to discuss with you any of the provisions of our proposed modifications that cause any concern for the Staff. I assure you that the purpose of these modifications is to facilitate the process in these very important proceedings, not to hinder them or make them more difficult. We anticipate a lot of discovery in these proceedings, and being able to handle the discovery in the way set out in our proposed modifications would be, we believe, very efficient.

I also want to reemphasize what we said yesterday regarding scheduling. To move this proceeding back on a schedule that will allow us to present our case in the best possible fashion, we are willing to agree that as long as the Commission makes its oral decision during the 9 month period, the fact that a written order will be issued thereafter will be satisfactory.

With regard to discovery, I want to follow up on a point made during the pre-hearing conference that seemed to resonate with Commissioner Davidson. There are a number of interveners in these proceedings already, but there is no reason to believe that every telecommunications provider in Florida that might have information relevant

to these dockets will intervene voluntarily. The problem this causes is clear and serious. The Commission, in order to resolve the switching case, will have to know where CLECs have switches, what kind of customers they serve, and where those customers are located. In the loop and transport case, the Commission is going to have to know where providers have facilities. While we can get that information from telecommunications carriers that intervene in these proceedings, it may be difficult to do so for other carriers.

Specifically, the rules applicable to Commission proceedings regarding discovery are the Florida Rules of Civil Procedure. There are no provisions for sending interrogatories to non-parties. If we have to conduct third-party discovery, we are going to have to do it through either oral depositions or depositions with written questions, procedures that will require the Commission to issue and enforce subpoenas to non-parties. The time required to accomplish this will be lengthy. We anticipate that if we are forced down that path, the burden on the parties and on the Commission and its staff are going to be significant.

The alternative, mentioned yesterday, is to simply make all telecommunications carriers in Florida that have received a certificate to operate, parties to this proceeding, so that written interrogatories could be sent to them. These carriers would not have to otherwise participate if they chose not to, but this would limit the number of third-depositions to entities not subject to the jurisdiction of this Commission. Following this course would probably limit needed third party discovery to entities that provide wholesale transport and loop facilities, which would be very helpful.

As for the authority in this area, under the Commission's rules, and specifically Rule 24-04.019, Florida Administrative Code the Commission has the authority to require every company under its jurisdiction to "furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require." Clearly we could prepare questions and have the Commission propound these to the telecommunications carriers subject to the Commission's jurisdiction, but that would no doubt place a lot of work on the staff that we could and are willing to do. Either making all of these carriers parties to this proceeding, or authorizing the parties to ask other telecommunications carriers for information regarding their facilities and operations pursuant to the Commission's authority set forth in the cited rule will make these proceedings considerably more manageable.

We understand that you are awaiting comments from Sprint and Verizon, and that once you receive those comments that you will be considering how to proceed. If we can do anything to facilitate that, or if a meeting between the staff and the parties would help, we are more than willing to do whatever you may need.

Sincerely,

Nancy B. White

Nancy B. White

cc: All Parties of Record
Adam Teitzman
Marshall M. Criser III
R. Douglas Lackey

CERTIFICATE OF SERVICE
Docket No. 030851-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 7th day of October, 2003 to the following:

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Nancy B. White (LA)

CERTIFICATE OF SERVICE
Docket No. 030852-TP

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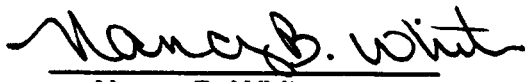

Nancy B. White (WBA)

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October 9, 2003

via Hand Delivery

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

Re: Docket No. 030852-TP In re: Implementation of Requirements Arising from FCC Triennial UNE Review: Location-Specific Review for DS1, DS3 and Dark Fiber Loops, Route-Specific Review for DS1, DS3 and Dark Fiber Transport

Dear Ms. Bayó:

This letter is being filed in response to a letter dated October 8, 2003, sent to the Florida Public Service Commission and the parties to the referenced docket, on behalf of Florida Digital Network, Inc. (FDN). Mr. Mathew Feil, in accord with discussions during the pre-hearing conference held on October 6, 2003, wrote on behalf of FDN, raising several issues with certain proposals that BellSouth and the FCCA had made at the pre-hearing conference.

Since the Staff is presumably considering Mr. Feil's comments as it decides what to recommend concerning the proposed modifications, BellSouth has several comments that may facilitate those considerations.

First, Mr. Feil's point regarding discovery taken in another state is a good one. BellSouth was not attempting to bind the Staff, or any public agency in the way discovery would be conducted in Florida. It seems reasonable that parties in Florida who were not parties to the proceedings in other states where the discovery was taken should not be limited in either the objections they might raise to the admissabity of the evidence, or in taking further depositions. Consequently, BellSouth would not oppose changing its proposed modifications to the pre-hearing order to reflect this.

Second, Mr. Feil raises an issue, assuming that electronic service is allowed, about when the time starts for responding to requests such as interrogatories that are electronically served after 5 p.m. This is unclear from the proposed modifications, and BellSouth would agree that when a pleading that requires a response is served electronically after 5 p.m, the

filing would be treated for purposes of determining when a response is due as if it were served on the next business day following the day of electronic service. BellSouth certainly didn't intend to have anyone serve discovery, for instance, at 11 p.m on Friday, and have the time for responding start then, and Mr. Feil's point is a good one.

Mr. Feil's last point, however, is considerably more troubling, and in fact is an example of exactly what BellSouth is concerned about in these dockets. It is fortunate that it has come up this early in the process, because it is clearly something that the Commission is going to have to address.

The FCC has established triggers that when met require the states to make a finding of "no impairment,' not only for switching, but for high capacity loops and transport as well. Without attempting to repeat what the FCC said word for word, if the Commission finds that three facilities-based CLECs are providing qualifying services to mass market customers in a relevant geographic market, the Commission, in the words of the FCC, "must" find "no impairment." Obviously one of the issues that the Commission must address is identifying the CLECs that have switches (irrespective of where they are located) that provide qualifying services to mass market customers in Florida. Further, the Commission must address the issue of where the mass market customers of those CLECs are located. If the CLECs in Florida that are providing qualifying services to mass market customers do not elect to participate in the docket the Commission has opened to consider these matters, it seems clear that the Commission is going to have to do something to facilitate the collection of the information from those CLECs anyway.

One possibility is for the parties who have intervened to utilize the discovery process that is allowed for non-parties generally. This involves taking depositions of those non-parties, either orally or through written questions. It is reasonably certain that the Commission would have to participate in such activities by issuing subpoenas, and enforcing the subpoenas to implement this process. Such a process, given the number of CLECs certified in Florida, will be expensive and time consuming.

The other alternative was the one mentioned in the earlier letter BellSouth sent transmitting the proposed modifications. The Commission itself has the authority to ask anyone subject to its jurisdiction, whether they are a party to a particular proceeding or not, for information regarding their operations and facilities. BellSouth could submit its questions to the Staff, who could then serve the questions on the CLECs who have the relevant information, but there are obvious problems with this. First, the Staff would have to do this on behalf of all the parties who were interested in obtaining such information, and that might require a lot of time and effort by the Staff, in addition to their normal duties. Second, to the extent a non-party objected, the Staff would have to deal with those objections. Finally, to the extent that a non-party refused to cooperate, the Staff would have to deal with that as well.

All BellSouth proposed in its letter is to have the Commission order all of the entities the Commission has certificated, to cooperate with regard to the discovery needed in these cases, so that the parties rather than the Staff or the Commission can deal with these issues.

Of course, this is not mere a hypothetical problem that is being raised. FDN, based on publicly available data, is a facilities-based carrier providing local, long distance and high speed internet service to more than 30,000 business customers in more than 100 cities in Florida. Further, according to publicly available information, FDN has more than 100,000 voice and data lines in service in Florida. Simple math indicates that some significant number of FDN's customers will have to be mass market customers irrespective of the definition that the

Commission ultimately approves. In light of this, BellSouth believes that FDN will be one of the three facilities-based carriers serving mass market customers in Florida that can be used to satisfy the FCC's trigger test. In order to make that determination, however, someone is going to have to develop admissible evidence that FDN has switches, where FDN's switches are located, and, significantly, where its customers are located. Without FDN's voluntary participation in the docket the Commission has opened to deal with switching, determining the facts regarding FDN is going to be problematic. With that said, and to make the point as clear as possible, based on the most recent information available from the Commission, FDN has chosen to intervene in the docket dealing with loops and transport; however, it has not intervened in the docket dealing with switching. Therefore, unless it chooses to intervene in the switching docket, some method is going to have to be implemented to obtain the information that the parties and the Commission will need from FDN Communications.

Again, BellSouth suggests, as it did during the pre-hearing conference, that the Commission simply direct all of the entities subject to its jurisdiction to cooperate with regard to discovery in these proceedings. BellSouth needs this information, the other parties will need it and, most importantly, the Commission will need it. The FCC has only allowed 9 months to complete this process, and anything that slows discovery down is going to make accomplishing that task more difficult than it already is.

Sincerely,

Nancy B. White (ICA)

Nancy B. White

Enclosures

Cc: All Parties of Record (by e-mail only)
Adam Teitzman (hand delivery)

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October 9, 2003

DELIVERED BY HAND

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, GA 30334-5701

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

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

Dear Mr. McAlister:

BellSouth Telecommunications, Inc. ("BellSouth") and the Competitive Carriers of the South ("CompSouth") have reached agreement on proposed procedures to facilitate the Georgia Public Service Commission's ("Commission") resolution of the above-referenced proceedings. Enclosed please find an original and seventeen (17) copies of a Proposed Order setting forth those agreed to procedures, which BellSouth and CompSouth respectfully request that the Commission adopt. I would appreciate your filing same and returning the two (2) extra copies stamped "filed" in the enclosed self-addressed and stamped envelopes.

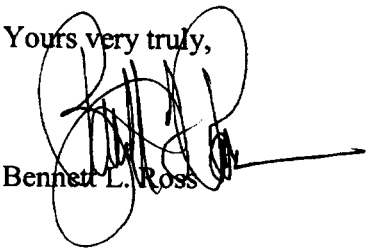
With regard to discovery, BellSouth believes it unlikely that every telecommunications carrier in Georgia with information relevant to these dockets will intervene voluntarily. The problem this causes is clear and serious. In order to resolve Docket No. 17749-U, for example, the Commission will have to learn where competitive carriers' switches are located, what kind of customers these switches serve, and where these customers are located. In Docket No. 17741-U, the Commission will have to learn where providers have located transport facilities in the State of Georgia. While getting this information from parties that have intervened in these proceedings should be relatively straight-forward, obtaining information from carriers that have consciously elected not to participate may be more difficult.

To avoid the burden on the parties and the Commission in obtaining relevant discovery, BellSouth urges the Commission to make all telecommunications carriers that have a certificate of authority in Georgia parties to these proceedings for the limited purpose of discovery. This would allow the parties to serve written discovery on other carriers that have elected not to intervene. These carriers 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 very tight deadlines under which the Commission and the parties are operating.

This approach is consistent with Georgia law. Specifically, O.G.C.A. § 46-2-20(e) authorizes the Commission to "examine the affairs of all companies under its supervision and to keep informed as to the general condition ... and the manner in which the lines owned, leased, or controlled by them are managed, conducted, and operated ...." Likewise, O.G.C.A. § 46-2-57(a) authorizes the Commission to issue an order "permitting its employees and agents to take depositions and otherwise obtain discovery of any matter, not privileged, which is relevant" to a Commission proceeding. Clearly, the parties could prepare questions for the Commission to propound to telecommunications carriers that have elected not to participate in these proceedings but that undoubtedly would place a considerable burden on the Commission's staff. In BellSouth's view, either making all telecommunications carriers in Georgia parties to these proceedings for the limited purpose of discovery under O.G.C.A. § 56-2-57(a) or authorizing the parties to ask other telecommunications carriers for information regarding their facilities and operations pursuant to O.C.G.A. § 46-2-57(a) will make these proceedings considerably more manageable.

I thank you for your attention to this matter.

Yours very truly,



Bennett L. Ross

BLR:nvd
Enclosures

cc: Daniel S. Walsh, Esquire (w/enclosure)
Mr. Leon Bowles (w/enclosure)
Ms. Kristy R. Holley (w/enclosure)
Suzanne W. Ockleberry, Esquire (w/enclosure)

508093/507937/507940

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

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

PROPOSED ORDER ESTABLISHING 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:

(A) 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.

(B) Every party to this proceeding shall provide every other party with an e-mail 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 party shall do so promptly, and in no event less than 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 e-mail address.

(C) 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 e-mail 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 p.m., the filing shall be treated as if it 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 e-mails 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 e-mail. 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 e-mail 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.

(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 below 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 proceeding 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 Pre-Hearing Officer, or by a staff attorney 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 Dockets 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 the Consumers' Utility Counsel or the Attorney General, upon request by such public agency, (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.

507937

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

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

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 State 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 state 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 Georgia 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 Nos. 17741-U and 17749-U and any appeals thereof to the FCC or a court of competent jurisdiction, as well as any similar proceedings in any of the nine states in the BellSouth region initiated to implement the states responsibilities under 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 Georgia (Docket Nos. 17741-U and 17749-U)" 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 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) - (C) 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 distroyed. 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 filed objecting to the proposed disclosure, a disclosure is not permissible unless and until the Commission has denied such motion.

5. **Declassification.** A party may apply, to the Commission for a ruling that documents, categories of documents, deposition transcripts or other non-written information, stamped or designated as confidential, are not entitled to such status and protection. The party or other person that designated the document or other non-written information, as Confidential Information shall be given notice of the application and an opportunity to respond.

6. **Confidential Information Offered in Evidence or Filed in the Record.** Subject to paragraph 5, Confidential Information may be offered into evidence or in the record made by the parties and submitted to the Commission in this proceeding provided that the submission is done in camera or under seal, as applicable. If Confidential Information will be the subject of any cross-examination questions by a party or otherwise made a part of the record in the Proceeding, the cross-examining party or party desiring to offer the information into the record shall provide advance notice, either verbally or in writing, to the party who provided the Confidential Information and allow the providing party a reasonable time to ask the Commission to impose protective measures to preserve the confidentiality of the Confidential Information.

7. **Subpoena by Courts or Other Agencies.** If a court or other administrative agency subpoenas or orders production of Confidential Information which a party has obtained under the terms of this Protective Agreement, such party shall promptly (within one (1) business day) notify the party (or other person who designated the document or non-written information as confidential) of the pendency of 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 agreed to submit to the jurisdiction of state or federal courts within the State of Georgia.

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 Nos. 17741-U and 17749-U, 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 Nos. 17741-U and 17749-U 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:

_____

507940