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May 6, 2005  
**Via Electronic Mail**

Blanco Bayo  
Director, Division of Records and Reporting  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. 041269-TP

Dear Ms. Bayo:

During the status conference call held on April 29, 2005 in the above-referenced docket, the Commission Staff asked the parties to identify which issues on the first issues list distributed by Staff are "threshold issues" in need of resolution prior to the evidentiary hearing. Staff also requested that parties identify "strictly legal issues" that could be resolved without testimony and solely on legal briefs.

**CompSouth Recommendation**

**Threshold Issues**

CompSouth believes that none of the issues identified in this proceeding are threshold issues.

**Legal Issues**

CompSouth believes that none of the issues identified in this proceeding are strictly legal issues. Each issue identified in this proceeding involves a mixed question of fact and law.

This proceeding is no different than the many other proceedings the Commission has held in the past. The Commission should proceed with the proposed procedural schedule, which includes the filing of testimony and exhibits, conducting discovery, holding an evidentiary hearing, and filing one post-hearing brief addressing all of the issues. Breaking this proceeding up into one in which some issues are decided pre-hearing, either in whole or in part, creates significant potential for interlocutory appeals which could substantially hinder the timely and efficient disposition of the issues raised.

### **CompSouth Position on the Issues**

The central issue in this proceeding – which must be addressed in nearly every issue on the issues list – involves determinations of which parties’ contract language is more faithful to the FCC’s TRRO, the portions of the TRO that remain in effect, and the federal Telecommunications Act. In this case in particular, the parties are well aware of the law, and the Commission’s decision for most issues will involve nuances regarding the specific proposed contractual language. This proceeding thus presents a number of issues where the mixture of law, policy, and the facts related to them are best considered through the examination of testimony as well as legal arguments.

The distinctions BellSouth has attempted to draw between “threshold” or “legal” and other contested issues on the Issues List are not substantive, and the outcome of bifurcating this proceeding into threshold, hearing, and legal portions will add to the already substantial administrative burden of processing this generic arbitration proceeding.

For example, BellSouth has long claimed that the issues regarding the status of Section 271 checklist items are “purely” legal. However, that issue presents factual and technical issues (as do many of the other issues generated by the TRO and TRRO). For instance, CLECs may assert that BellSouth should be obligated to include Section 271 checklist items in its interconnection agreements because BellSouth voluntarily negotiated such terms under the holding of the Fifth Circuit’s *Coserv* decision. In addition, the dispute over whether “commingling” applies to Section 271 checklist items is affected by an examination of whether a 271 checklist item is offered as a wholesale service – a question that may require a factual examination of BellSouth’s existing or planned service offerings. As these examples point out, even issues that may appear “purely legal” have factual, technical, or policy nuances that are best addressed at hearing.

CompSouth strongly urges the Commission not to set aside any of the interrelated issues as “threshold” issues. BellSouth’s arguments that the Section 271 issues are “threshold” because their outcome determines whether BellSouth must present a rate case on “just and reasonable” rates under Section 271 is a red herring. Neither BellSouth nor the CLECs have asked the Commission to set a permanent rate for Section 271 checklist elements in this proceeding. CompSouth seeks a determination regarding what interconnection agreement terms and conditions should be implemented regarding Section 271 checklist items. If the Commission determines the Section 271 checklist items should be in the amended BellSouth interconnection agreements, CompSouth seeks only an interim rate at this time. There is no need for anyone to prepare for a “rate case” to set permanent Section 271 “just and reasonable” rates. Rather, the issue of whether Section 271 checklist items belong in BellSouth’s Section 252 interconnection agreements is, like most of the issues on the issues list, a question that should be determined based on the evidence and legal arguments presented in the parties’ testimony and other pleadings. Nothing of substance would be gained by trying that issue first as a “threshold” matter and separating its consideration from the issues related to it (e.g., such as the related commingling issue discussed above).

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Since CompSouth does not believe there are any threshold issues and that the issues in this proceeding essentially are mixed questions of law and fact, CompSouth respectfully requests the Commission to move forward with the proposed schedule and address *all* of the issues in an evidentiary hearing with one post-hearing brief.

Sincerely,

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman  
Counsel for the Competitive Carriers of the Southeast (CompSouth)

Cc: Adam Teitzman  
Parties of record