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February 2, 2004

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 030852-TP

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ FCCA's Motion to Compel and, in the Alternative, Motion to Strike.

Please acknowledge receipt of the above on the extra copy and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Joe McGlothlin
Joseph A. McGlothlin

Enclosures

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, KAUFMAN & ARNOLD, P.A. 01494 FEB-2 3

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re Implementation of requirements arising
from Federal Communications Commission's
Triennial UNE Review: Location-Specific Review
for DS1, DS3 and Dark Fiber Loops, and Route-
Specific Review for DS1, DS3 and Dark
Fiber Transport

Docket No. 030852-TP

Filed: February 2, 2004

**FCCA'S MOTION TO COMPEL AND, IN THE ALTERNATIVE,
MOTION TO STRIKE**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.380(a), Florida Rules of Civil Procedure, the Florida Competitive Carriers Association ("FCCA"), through its undersigned counsel, moves for an order compelling BellSouth Telecommunications, Inc. ("BellSouth") to respond to Item No. 5 of FCCA's First Request for Production of Documents ("Item 5").¹ If BellSouth does not produce the documentation requested in Item 5, namely, the GeoLIT Plus Report ("GeoLIT Report"), then FCCA moves to strike those portions of BellSouth's testimony that rely on the GeoLIT Report. Pursuant to Rule 28-106.204, Florida Administrative Code, and given the time constraints in this proceeding, FCCA also moves that BellSouth be required to respond to this Motion to Compel within three business days.² FCCA also respectfully requests the Prehearing Officer to expedite the ruling on this Motion. FCCA reserves the right to seek leave to supplement its testimony if review of the withheld information indicates such an opportunity is needed to protect its interests. In support of its Motion to Compel, FCCA states:

¹ We are continuing to review BellSouth's objections to FCCA's discovery requests and to speak with BellSouth about such objections, and we reserve the right to bring additional issues to the Commission's attention at a later time.

² Rule 28-106.204, Florida Administrative Code, provides for a response period of 7 days "when time allows." Due to the tight deadlines in this proceeding, FCCA requests that the Commission shorten this time frame.

BACKGROUND

On December 31, 2003, FCCA served its First Set of Interrogatories and First Request for Production of Documents ("Discovery Requests") on BellSouth. FCCA sought information to obtain data pertaining to the claims that BellSouth made in its testimony in this proceeding. On January 7, 2004, BellSouth filed objections to FCCA's discovery requests. On January 20, 2004, BellSouth responded to certain FCCA Discovery Requests, while maintaining its objections to the remaining requests.

FCCA has endeavored to work with BellSouth to resolve this outstanding dispute before bringing this issue to the Commission. After receiving BellSouth's objections to FCCA's Discovery Requests, counsel to FCCA contacted BellSouth in an effort to determine whether the parties could narrow their issues in dispute. At that time, BellSouth stated that it wanted to defer addressing its objections until after it answered FCCA's Discovery Requests. After receiving BellSouth's responses on January 20, 2004, FCCA again contacted BellSouth in an effort to narrow the remaining issues in dispute. Although the parties are continuing to work together to reach a resolution of certain discovery disputes, to this point BellSouth has indicated that it will not produce the GeoLIT Report in the absence of an order from this Commission. While the parties continue to discuss the possibility of resolving this issue, due to the press of time the FCCA must file this Motion to protect its interests.

ARGUMENT

In Item 5, FCCA seeks a copy of the GeoLIT Plus Report upon which BellSouth relies to support its claim that carriers provide loops at certain customer locations. BellSouth has objected to producing the GeoLIT Report on the basis that the report contains confidential information that BellSouth cannot disclose, in the absence of an order from this Commission,

pursuant to a nondisclosure agreement.³ The requested information is relevant to the Commission's evaluation of whether, as BellSouth claims, the Federal Communications Commission's trigger for loops has been satisfied at particular customer locations. The Commission should reject BellSouth's objection, and should order BellSouth to produce a copy of the GeoLIT Report upon which it relies. Alternatively, the Commission should strike those portions of BellSouth's testimony that rely on the GeoLIT Report.

The Commission should order BellSouth to produce a copy of the GeoLIT Report. In its testimony, BellSouth identifies certain carriers as trigger candidates based on their inclusion in the GeoLIT Report and BellSouth's refinement of the information contained in that report. Specifically, BellSouth has claimed that certain carriers self-provision loops at customer locations based on data contained in the GeoLIT Report.⁴ To date, however, BellSouth has refused to produce a copy of this report, thus precluding carriers from evaluating the sufficiency or verifying the accuracy of the information contained therein. BellSouth cannot simply assert that a carrier satisfies a trigger based on information in an undisclosed and unverified report. Further, carriers must have the opportunity to review and refute the information contained therein, where appropriate.

Because the information is relevant to BellSouth's trigger claims, BellSouth's objection is improper. Moreover, FCCA members and BellSouth have executed a proprietary agreement regarding the exchange of information in this proceeding. FCCA would accord the GeoLIT Report confidential treatment in accordance with the terms of the agreement. BellSouth

³ See BellSouth Telecommunications, Inc. Responses to Florida Competitive Carriers Association's First Set of Interrogatories and First Request for Production of Documents, Item No 5 (Jan. 20, 2004).

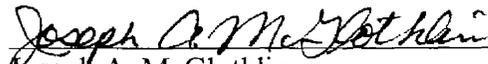
⁴ See Padgett Direct Testimony at 6-8.

bears the burden of proof in this case, and it cannot rely on data that it has refused to produce to other carriers for review.

In the alternative, if the Commission denies FCCA's motion to compel BellSouth to produce the GeoLIT Report, then FCCA moves to strike those portions of BellSouth's testimony relying on the report. As stated above, in its testimony, BellSouth claims that it identified certain customer locations and carriers serving those locations based on information contained in the GeoLIT report. BellSouth, however, neither has produced the report nor demonstrated that it has verified any of the information contained therein. BellSouth also has not produced any information in addition to the report to support its claims that the self-provisioning trigger has been satisfied at certain customer locations. Accordingly, BellSouth's claims are unsubstantiated. To allow BellSouth to continue to maintain these assertions while blocking FCCA's ability to challenge or test their validity after evaluating the GeoLIT Report would severely and unfairly prejudice FCCA's litigation posture. Either BellSouth must produce the GeoLIT Report, or the Commission must strike BellSouth's testimony that relies on the report from the record.

CONCLUSION

For the foregoing reasons, FCCA respectfully requests that the Commission grant its motion and order BellSouth to produce the GeoLIT report upon which it relies.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Competitive Carriers Association's Motion to Compel and Alternative Motion to Strike has been provided by (*) hand delivery, (**)email and U.S. Mail this 2d day of February, 2004 to the following:

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