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**Kathleen B. Levitz**  
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**NOTICE OF WRITTEN EX PARTE**

December 17, 2003

Ms Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. 96-98, Report No. NCD-839

Dear Ms. Dortch:

Attached is a letter that I have sent to Scott Bergmann, Deputy Chief of the Wireline Competition Bureau's Competition Policy Division. The letter clarifies the nature of network changes that were the subject of Network Change Number 20030167 for which the Commission issued Report NCD-839.

Sincerely,



Kathleen B. Levitz

cc: Scott Bergmann  
Michelle Carey

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## WRITTEN EX PARTE

December 17, 2003

Scott Bergmann  
Deputy Chief, Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re:CC Docket 96-98, Report No. NCD-839

Dear Mr. Bergmann:

On August 27, 2003, through its publicly accessible Internet web site, BellSouth provided separate notices to the public of network changes for copper facilities' replacements in Louisville, Kentucky (No. ND 20030167) and Allapattah, Florida (No. ND 20030128), in accordance with Commission rules. The changes were scheduled to occur on May 1, 2004, more than six months after the notice was given. On August 29, 2003 BellSouth filed its certification with the Commission, as required under Section 51.331(a)(1) of the Commission's rules. The Wireline Competition Bureau released its Public Notice of BellSouth's certification on September 29, 2003. Subsequently COVAD filed an opposition to the replacement of the facilities in Louisville.

Prior to the Triennial Review Order, the Commission's rules did not provide for objections to notices of network changes scheduled to occur more than six months after the notice was given. The Triennial Review Order created a narrow exception, however, by amending the rules governing notices of network changes to permit objections to such a "long term" notice only when that notice expressed an "intent to retire copper loops or copper subloops and replace such loops or subloops with

fiber-to-the-home loops.”<sup>1</sup> Because the notice of the planned network changes in Louisville was given more than six months in advance of the planned replacement date, if the amended rules were to apply, a valid objection to the notice could arise only if the proposed network change involved replacement of copper facilities with fiber-to-the-home loops or subloops. This is not the case, however. As the notice of network change makes clear, “Copper facilities will be replaced with Fiber Optic cable and Digital Loop Carrier systems,” and not fiber-to-the-home loops or subloops.

BellSouth hopes this clarification removes any confusion about the nature of the network change covered by the notice to which COVAD objected. I am filing a copy of this letter with the Commission’s Secretary and have requested that she place it in the record of this proceeding. Please call me at 202.463.4113 if you have any questions related to this filing.

Sincerely,

A handwritten signature in black ink that reads "Kathleen B. Levitz". The signature is written in a cursive, flowing style.

Kathleen B. Levitz

cc: Michelle Carey

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<sup>1</sup> Section 51.333(c), as amended by the TRO. BellSouth’s Response to the COVAD Opposition expresses BellSouth’s view that because they did not become effective until October 2, 2003, the revisions to the network notice rules adopted in the Triennial Review Order were not in effect when BellSouth filed its long-term notification disclosure on August 27, 2003. BellSouth Response at n.11.