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September 13, 1999

BY HAND DELIVERY THIS DATE

Blanca S. Bayo
Director, Division of Records and Recording
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket #990750-TP; Petition for Arbitration by ITC^DeltaCom Communications

Dear Ms. Bayo:

On behalf of ITC^DeltaCom Communications, Inc., enclosed for filing in the referenced docket are originals and 16 copies of the following rebuttal testimony and exhibits:

Witness:	Filing:
Don J. Wood	Rebuttal testimony 10970-99
Christopher J. Rozycki	Rebuttal testimony & Exhibit CJR-4 - 10971-99
Michael Thomas	Rebuttal testimony & Exhibit MT-3 - 10972-99
Thomas Hyde	Rebuttal testimony & Exhibit TAH-4 - 10973-99

Please file stamp the extra enclosed copies of each witness' testimony and exhibits and return them to our runner. Thank you for your assistance.

AFA ____
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CTR ____
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MAS 3+0&
OPC ____
PAI ____
SEC 1
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OTH ____ Enclosures
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Sincerely,

HUEY, GUILDAY & TUCKER, P.A.

J. Andrew Bertron, Jr.

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ITC^DELTACOM COMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF DON J. WOOD

Before the Florida Public Service Commission
Docket No. 990750-TP
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with
BellSouth Telecommunications, Inc.
September 13, 1999

CERTIFICATE OF SERVICE
DOCKET NO. 990750-TP

I hereby certify that a true and correct copy of the foregoing has been furnished this 13 day of September , 1999 to the following:

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don J. Wood, and my business address is 914 Stream Valley Trail, Alpharetta, Georgia 30022.

Q. ARE YOU THE SAME DON J. WOOD WHO PRESENTED DIRECT TESTIMONY ON BEHALF OF ITC^DELTACOM IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to respond to BellSouth's position on issues 6(a) through 6(e), and by extension issues 2(c)(ii) and 2(c)(iii). In doing so, I will respond to arguments made by BellSouth witnesses Varner, Taylor, and -- to the limited degree necessary -- Thierry.

Q. MR. VARNER ARGUES THAT RECENT DECISIONS BY THE UNITED STATES SUPREME COURT AND THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT IMPACT THE STANDARDS TO BE APPLIED BY THIS COMMISSION WHEN RESOLVING THE ISSUES IN THIS PROCEEDING. DO YOU AGREE?

A. Yes. Since the Commission heard evidence and issued its order in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, the Supreme Court issued an opinion on a number of issues that were outstanding at these dockets were

heard. As a result of this decision, the Eighth Circuit Court reinstated a number of FCC rules that it had previously vacated. The Commission's decision in this proceeding should, and must, take into consideration these reinstated rules. As a result, the Commission's previous conclusions in Docket Nos. 960757-TP, 960833-TP, and 960846-TP must be evaluated in light of the new legal standards that are to be applied.

I strenuously disagree, however, with Mr. Varner's assertions that the Commission should not, and need not, apply the law as it currently stands in this proceeding because the applicable law may change in the future. BellSouth should not be able to avoid providing UNEs that it is currently legally obligated to provide, at the rates at which it is currently legally obligated to provide them, merely because Mr. Varner is predicting -- with no basis whatsoever for such a prediction -- that those requirements will change in the future. Mr. Varner would have the Commission act on speculation. I urge the Commission to base its decision on the pronouncements of the Supreme Court.

Q. IN ITS ISSUES MATRIX, BELLSOUTH REFERS TO ANY ATTEMPT TO MODIFY THE COMMISSION'S CONCLUSIONS IN DOCKET NOS. 960757-TP, 960833-TP, AND 960846-TP AS A "COLLATERAL ATTACK" ON THE COMMISSION'S ORDER. IS SUCH A CHARACTERIZATION ACCURATE?

A. No. Mr. Varner's assertion in his testimony that the Commission is bound in

this proceeding by its conclusions in Docket Nos. 960757-TP, 960833-TP, and 960846-TP is both factually incorrect and clearly inconsistent with the language of the order that the Commission was making certain decisions based on the status of the law at that time. For these same reasons, BellSouth's inflammatory language that characterizes ITC^DeltaCom's request for a limited number of such updates to now be made as a "collateral attack" on the Commission's order does nothing to assist the Commission with the resolution of the disputed issues in this proceeding. Far from being an "attack" on the Commission's order, ITC^DeltaCom's requests are fully consistent with the language of the order in which the Commission stated that its decisions were based on the Eighth Circuit's stay of certain FCC requirements. It is reasonable for the Commission's conclusions to now be updated as necessary to comply with the decisions of the courts.

Mr. Varner and BellSouth would have the Commission believe that the fundamental issue to be addressed in this proceeding is "*based on the legal requirements in effect in 1998*, what UNEs and related capabilities must be offered and what rates should apply?" I would submit that the fundamental issue is the following : "*Based on the legal requirements in effect today*, what UNEs and related capabilities must be offered and what rates should apply?" As the Commission correctly made clear in its order, these are two distinct questions.

Q. DOES THE PROCESS OF UPDATING CERTAIN OF THE COMMISSION'S CONCLUSIONS REACHED IN DOCKET NOS. 960757-TP, 960833-TP, AND 960846-TP MEAN THAT EACH OF THE COMMISSION'S CONCLUSIONS IN THAT PROCEEDING MUST BE RELITIGATED AT THIS TIME?

A. No, and ITC^DeltaCom is not proposing to do so. The conclusions reached by the Commission in Docket Nos. 960757-TP, 960833-TP, and 960846-TP can be used as a starting point to resolve the issues in dispute in this proceeding. Changes in the legal and regulatory environment dictate the following, however:

(1) The Commission's conclusions must be updated to reflect the resolution of the outstanding disputes by the federal courts,

(2) For those issues for which the Commission elected not to reach a decision pending the resolution of the outstanding disputes by the federal courts, a conclusion consistent with the decisions of the courts should now be made, and

(3) Updates should be made, as necessary, to ensure ongoing compliance with the current requirements.

To be clear, while it is essential that each of these three categories of updates be made, it is not necessary to relitigate the entire Docket Nos. 960757-TP, 960833-TP, and 960846-TP proceeding at this time. Consistent with this approach, ITC^DeltaCom is recommending only specific, targeted updates in this proceeding. Of course, for those UNEs for which no rates were set in the previous proceeding, it will be necessary for the Commission to establish rates as part of the resolution of this arbitration.

Q. MR. VARNER ARGUES THAT BECAUSE OF ISSUES CURRENTLY PENDING BEFORE THE FCC AND EIGHTH CIRCUIT COURT, "THE MOST REASONABLE COURSE" IS FOR THE COMMISSION TO CONTINUE TO APPLY ITS CONCLUSIONS FROM DOCKET NOS. 960757-TP, 960833-TP, AND 960846-TP DO YOU AGREE?

A. No. As described above, the most reasonable course is for the Commission to resolve the issues in dispute in this arbitration based on the existing legal requirements, including those articulated by the Supreme Court. Mr. Varner is advocating that the Commission resolve these issues by applying the legal standards that were in effect in 1997 and 1998 which have been superseded by decisions of the federal courts. In the alternative, Mr. Varner is inviting the Commission to join him in idle speculation regarding the likely outcome of the proceedings pending before the Eighth Circuit Court and FCC. The Commission should decline Mr. Varner's invitation, and simply apply the law.

Mr. Varner is correct that the conclusion of the Eighth Circuit Court's investigation into the FCC's pricing rules, and the FCC's investigation into the UNEs that must be provided, may impact the legal and regulatory environment here in Florida and in other states.[1] His suggestion that there is

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[1] Of course, it is also possible that the conclusion of these investigations will have no impact at all. If the Eighth Circuit Court upholds the FCC pricing rules and the FCC concludes that its previous determination regarding the list of UNEs that must be provided was correct, the current legal requirements would be unaffected.

something unique about the current situation -- one in which certain legal requirements apply which may be changed in the future -- is unfounded, however. At the time the Commission addressed the issues in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, even greater uncertainty regarding future legal requirements existed: key issues were before the Supreme Court. When reaching its conclusions in that proceeding, however, the Commission applied the legal standards that were in place at the time. It did not rely on the legal standards that had been in place eighteen months previously, and it did not engage in speculation regarding possible future standards (in fact it explicitly declined to do so but instead recognized that updates to its conclusions might be necessary when those future standards took effect). ITC^DeltaCom is now asking that the Commission take exactly the same approach in this proceeding; specifically to resolve the issues in dispute by applying the legal standards that currently exist, recognizing that updates to its conclusions may prove necessary if those legal standards change in the future. In a changing legal and regulatory environment, this is the only reasonable course of action.

Q. WHAT LEGAL REQUIREMENTS HAVE CHANGED SINCE THE COMMISSION ISSUED ITS ORDER IN DOCKET NOS. 960757-TP, 960833-TP, AND 960846-TP THAT NEED TO BE CONSIDERED IN THIS PROCEEDING?

A. Two key elements of the Supreme Court decision need to be considered by

the Commission in this proceeding. First, the FCC's pricing rules have been reinstated. As a result, rates for UNEs must comply with the requirements of the FCC's August 8, 1996 Interconnection Order and associated rules. The fact that the Eighth Circuit Court is currently investigating the merits of various challenges to these rules in no way changes the fact that these rules are in effect today. Again, the Commission should apply the requirements that are in place today, and decline Mr. Varner's invitation to speculate on whether any aspect of these rules may change in the future.

Second, the FCC rule that prevents incumbent local exchange companies, such as BellSouth, from physically separating UNEs (and thereby imposing "wasteful interconnection costs on new entrants") was upheld. As a result, the Commission can now conclude that collocation, while one possible means for competing local exchange carriers to obtain multiple UNEs, is not the only means for them to do so. Pursuant to the Supreme Court decision, BellSouth must now provide combinations of UNEs without first physically separating them. This requirement has implications for both the cost and availability of certain UNEs.

Mr. Varner's observation that "a final determination of which UNEs must remain connected and functional, as well as the prices for those combinations, will depend upon the outcome of further proceedings before the FCC and Courts" is simply irrelevant. Existing legal requirements allow this Commission to determine that any combinations of UNEs being sought should be provided by BellSouth, and mandate that the rates be based on the FCC's

pricing rules. As it did in Docket Nos. 960757-TP, 960833-TP, and 960846-TP the Commission should apply law as it currently exists; not as it previously existed and not as BellSouth hopes and speculates it might exist in the future.

Q. WHAT IS THE IMPACT OF THE REINSTATEMENT OF THE FCC'S RULES?

A. As a result of the reinstatement of the FCC's rules, certain inputs, assumptions, and methodologies inherent in the BellSouth cost studies do not comply with the current law. As I stated previously in my testimony, ITC^DeltaCom is not seeking to relitigate the issues from Docket Nos. 960757-TP, 960833-TP, and 960846-TP in this proceeding. Instead, ITC^DeltaCom has identified specific inputs, assumptions, or methodologies in the BellSouth cost studies that must be updated in order to comply with the FCC rules now in effect. Of course, these inputs and assumptions should, to the extent possible in the BellSouth cost studies filed in this proceeding, be appropriately revised in order to generate compliant rates for the UNEs at issue in this arbitration.

Q. PLEASE DESCRIBE SOME EXAMPLES OF ASSUMPTIONS IN THE BELLSOUTH COST STUDIES THAT MUST BE MODIFIED IN ORDER TO COMPLY WITH THE CURRENT LEGAL REQUIREMENTS, INCLUDING THE FCC'S PRICING RULES.

A. First, I would like to re-iterate, as I did in my testimony in Docket Nos.

960757-TP, 960833-TP, and 960846-TP that BellSouth's cost models are built upon the fundamental assumption that the existing network configuration will be used. Because the construction of these models make it impossible to change this fundamental assumption, they will ultimately prove to be inadequate when the Commission attempts to establish UNE rates that are fully compliant with the FCC pricing rules.[2]

In the interim, however, it is possible to change certain inputs and assumptions so that the results produced (and the resulting UNE prices adopted) will more closely approximate what the law requires. For example, the fill factors utilized by BellSouth in its cost studies are based, according to its engineering witness, on historic experience. An additional assumption relates to the use of the forward-looking technology for digital loop carrier systems. The use of integrated DLC ("IDLC") is now appropriate for two reasons. First, the FCC rule has been reinstated requiring BellSouth to provide the loop and port without physical separation. Second, BellSouth's previous testimony to the contrary, since the hearing in Docket Nos. 960757-TP, 960833-TP, and 960846-TP BellSouth has demonstrated that it is possible to provide a local loop UNE that is physically separate from the switch port utilizing IDLC technology. It is my understanding that BellSouth has

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[2] BellSouth loop cost model fails for an additional reason. Pursuant to the Supreme Court ruling, the Eighth Circuit Court has reinstated the FCC rule requiring that UNE prices reflect geographic variations in cost. The BellSouth loop model, because of the limitations of its construction, can only produce a statewide average cost. As a result, the BellSouth loop cost model cannot produce results that comply with the law.

provided a number of such arrangements to ITC^Deltacom. For each of these reasons, it is appropriate to replace BellSouth's assumption of obsolete universal DLC technology with the "efficient, forward-looking" IDLC technology.

The version of its cost models presented by BellSouth in Docket Nos. 960757-TP, 960833-TP, and 960846-TP are "hardwired" in such a way that IDLC assumptions cannot be introduced. BellSouth presented a version of its models in a recent Georgia proceeding,[3] however, that does permit the user to assume that IDLC facilities will be utilized. Based on my analysis conducted in that proceeding, changing this assumption causes the reported local loop cost to decrease by just over 10%.[4]

By changing only these two assumptions, it is possible to calculate a more appropriate rate for a 2-wire analog loop (this same loop that would be utilized as part of an extended loop arrangement). As I stated above, these adjustment to inputs are not sufficient to develop costs (and therefore rates) that comply with the FCC pricing rules. A change to these inputs can be used

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[3] Georgia Public Service Commission Docket No. 10692-U, BellSouth Unbundled Network Element Combinations Cost Studies, dated 6/11/99 and updated 6/28/99.

[4] This result can be obtained by varying the inputs to the BellSouth Loop Cost Model and TELRIC Calculator, and without making any alterations to the way in which these models function. Other information regarding the materials costs associated with IDLC systems and the economies that can be achieved by using those systems indicates that the actual cost reduction is probably higher than that calculated by the BellSouth models. Until a more complete investigation is possible, the Commission should treat the 10% reduction as conservatively low (and the resulting costs as conservatively high).

to produce interim rates that move in the direction of compliance, however, and should be subject to a true-up when the Commission has had the opportunity to conduct a more complete investigation.

Q. YOU STATED THAT UPDATES TO THE CONCLUSIONS IN DOCKET NOS. 960757-TP, 960833-TP, AND 960846-TP MAY BE NECESSARY IN ORDER TO "ENSURE ONGOING COMPLIANCE" WITH THE CURRENT LEGAL REQUIREMENTS. DO YOU HAVE AN EXAMPLE OF SUCH AN UPDATE?

A. Yes. Clearly, "forward-looking" costs developed pursuant to the requirements of the FCC Interconnection Order and related rules must reflect current estimates of forward-looking network design and operations, both of which directly impact cost. BellSouth's nonrecurring rate for an ADSL compatible loop illustrates the need for current information. Since the Commission's order in Docket Nos. 960757-TP, 960833-TP, and 960846-TP was issued, BellSouth has updated its FCC Tariff No. 1 for ADSL service in a way that suggests a much lower cost has been calculated (one fourth to one fifth the level of the previous calculation). As ITC^DeltaCom witness Mr. Hyde describes in his testimony, BellSouth's nonrecurring cost and rate for its ADSL service can be made directly comparable to its nonrecurring cost and rate for its ADSL-compatible UNE loop. When this new information is considered, it becomes clear, as Mr. Hyde points out, that a cost-based nonrecurring rate for an ADSL-compatible loop is significantly less than the

amount previously calculated by BellSouth.

Q. IN YOUR DIRECT TESTIMONY REGRADING ISSUE 6a, YOU ARGUED THAT EACH CARRIER, INCLUDING BELLSOUTH AND ITC^DELTACOM, SHOULD BE RESPONSIBLE FOR THE DEVELOPMENT OF ITS OWN OPERATIONAL SUPPORT SYSTEMS ("OSS"), AND THAT EACH CARRIER SHOULD BEAR ITS OWN COSTS OF DOING SO. HAS THE BELLSOUTH TESTIMONY ON THIS ISSUE CHANGED YOUR OPINION?

A. Not at all. When several misstatements of fact in the testimony of BellSouth witnesses Varner and Taylor are corrected, it becomes clear that the application of the FCC's pricing rules preclude BellSouth from recovering the OSS costs that it seeks to recover. Because the FCC's pricing rules had been vacated by the Eighth Circuit Court and Commission was not required to apply them when reaching its conclusions in previous proceedings, the Commission never reached the question in that proceeding of how much -- if any -- of the OSS development costs that BellSouth sought to recover would be permitted if the FCC pricing rules were applied. With the FCC rules now reinstated, it is necessary for the Commission to examine these costs in that light in order to update its previous conclusions to comply with these recent federal court decisions.

Q. BELLSOUTH WITNESS VARNER ARGUES THAT THIS ISSUE IS NOT BEFORE THE COMMISSION IN THIS PROCEEDING, BECAUSE THE COMMISSION HAS PREVIOUSLY AUTHORIZED BELLSOUTH TO RECOVER THE COSTS THAT IT IS SEEKING TO RECOVER. IS HE CORRECT?

A. No. Contrary to Mr. Varner's assertions, at no time did the Commission conclude that the amount of OSS development costs calculated by BellSouth was consistent with the level of cost that would be calculated if the FCC's pricing rules, including its version of the TELRIC methodology, had been used. In fact, the Commission did not conclude that the application of the FCC's methodology -- now the legal requirement -- would result in *any* OSS development costs being calculated.

Because of the Supreme Court decision (and subsequent Eighth Circuit Court action) reinstating the FCC's pricing rules, it is now necessary for the Commission to reach a conclusion regarding the level of OSS development costs -- if any -- that would result from the application of the FCC's definition of TELRIC. The results of doing so can be understood by a review of the arguments presented by BellSouth witnesses in this proceeding, especially those of Dr. Taylor.

Q. DR. TAYLOR ALSO DISCUSSES OSS ISSUES. WHAT IS YOUR OVERALL REACTION TO DR. TAYLOR'S TESTIMONY IN THIS AREA?

A. While Dr. Taylor pays lip service to the FCC's requirements regarding OSS costs, the positions he takes in his testimony are inconsistent with the FCC's rulings in a number of significant respects. In the end, Dr. Taylor's position seems to be that BellSouth is entitled to recover the OSS costs BellSouth says it has incurred, regardless of how inefficient they may be and no matter how distant they are from the FCC's TELRIC principles for pricing UNEs that Dr. Taylor agrees -- as he must -- are the appropriate and legally mandated standard.

Q. DR. TAYLOR'S TESTIMONY DISCUSSES WHAT HE CALLS A "TRADE-OFF" BETWEEN OSS DEVELOPMENT COSTS AND OSS USAGE COSTS. WHAT IS YOUR REACTION TO THIS DISCUSSION?

A. The discussion seems to be designed to confuse the entire OSS issue by inviting the reader to infer that there may be *many* combinations of up-front and on-going costs that could be deemed by the Commission to be "efficient." Dr. Taylor's bottom line is set forth in the statement that "whatever type of OSS emerges, it is certainly the case that – for a given level of quality – the technology platform should minimize the present value of the *combined* OSS development and OSS use costs associated with it. This minimization would take into account the economic trade-off between OSS development and OSS use costs discussed above."

In competitive markets, the technology employed to provide particular goods or services is not necessarily the lowest cost technology – it is the

lowest cost technology capable of providing goods or services *of the quality demanded by the market*. For example, when Sprint began advertising an all-fiber long-distance backbone with its "pin drop" commercials, AT&T was forced to convert its copper and microwave network to fiber at a substantial expense, even though continued use of its existing network to provide long-distance service would have been the lower-cost solution. At the same time AT&T was making this investment, long-distance rates continued to decline. I can agree with the above-quoted statement by Dr. Taylor *only* because he recognizes that the *quality* of service demanded by the market can impose requirements that do not necessarily "minimize the present value of the combined OSS development and OSS use costs." The problem with the balance of Dr. Taylor's testimony on OSS is that it completely ignores the implications of this constraint.

Because incumbent local exchange companies ("ILECs"), including BellSouth, do not provide UNEs (including OSS) in a competitive environment, purchasers of UNEs have no ability, through marketplace interaction, to impose a quality requirement on BellSouth, *particularly* in the OSS arena. The poor quality of BellSouth's OSS performance was discussed in the direct testimony of ITC^DeltaCom's witnesses. Recognizing this, the FCC *imposed* an OSS standard on the ILECs by requiring that they provide OSS capable of full electronic flow-through, which will minimize the time and cost required to provision UNEs and provide these services on a non-discriminatory basis to all users of the ILECs' OSS. The mere fact that

BellSouth has failed, so far, to meet this requirement should not mean – as Dr. Taylor argues – that it gets to price its OSS services on the basis of existing, inefficient legacy systems or that it should be entitled to assess the costs of upgrading these systems to its customers. Contrary to Dr. Taylor's suggestion otherwise, *neither* of these actions could be sustained in a competitive environment. Because regulation should seek to mimic the behavior of competitive markets, this Commission should reject BellSouth's efforts to take advantage of its market power in Florida to impose inefficient prices for OSS on ITC^DeltaCom (and other CLECs).

Q. DR. TAYLOR OBSERVES THAT THE 1996 ACT MAKES NO MENTION OF OSS. HE ASSERTS, THEREFORE, THAT THE FCC HAS NEVER SPECIFICALLY LIMITED RECOVERY TO SOME, BUT NOT ALL, OSS-RELATED COSTS, AND CONCLUDES THAT "THE FCC HAS INTENDED ALL ALONG THAT THE PROVIDER OF OSS SHOULD BE ABLE TO RECOVER *ALL* COSTS RELATED TO THE DEVELOPMENT AND USE OF OSS." IS HIS ASSERTION CORRECT?

A. No. This is an excellent example of the sort of sleight of hand that permeates Dr. Taylor's testimony. The fact that the 1996 Act makes no specific mention of OSS certainly does not mean that any cost (of any magnitude) that BellSouth chooses to label as "OSS" is somehow legitimized. Nowhere does the issue of efficiency enter into Dr. Taylor's discussion, and in fact if his logic is applied BellSouth would be able to recover *any* "incremental" OSS

cost, regardless of how inefficiently it is incurred by BellSouth.

Such a result runs counter to the clear language of the FCC in its *First Report and Order*. For example, ¶690 requires that TELRIC not only be forward-looking, as Dr. Taylor concedes, but that it be based on the "most efficient technology available" -- a requirement that Dr. Taylor ignores. In fact, the last sentence of ¶685 (a paragraph quoted by Dr. Taylor, but not in its entirety) states "[w]e, therefore, conclude that the forward-looking pricing methodology for interconnection and unbundled network elements should be based on costs that assume that wire centers will be placed at the incumbent LEC's current wire center locations, but that the *reconstructed* local network will employ *the most efficient technology* for reasonably foreseeable capacity requirements." Thus, the FCC *explicitly* rejects the notion that prices for UNEs (and OSS) can be based on the technology deployed in the existing network, and specifically envisions prices based on *reconstruction* of the network using *the most efficient technology*.

This requirement of the FCC pricing rules is directly at odds with the assumption in the BellSouth cost studies (and noted by the Commission) that "existing network configurations and engineering practices" will be used. For this reason, BellSouth's version of TELRIC is inconsistent with the FCC's version which now -- pursuant to the decision of the Supreme Court -- must be applied.

Q. DR. TAYLOR ARGUES THAT THE OPERATIVE ECONOMIC PRINCIPLE IS COST CAUSATION, AND IMPLIES THAT ITC^DELTACOM'S WITNESSES HAVE IGNORED THIS PRINCIPLE. IS HE CORRECT?

A. No. While I agree that the principle of cost causation is important, I disagree that this principle has been ignored by ITC^DeltaCom witnesses when reaching their conclusions.

It is important to note that Dr. Taylor defines the issue of cost causation in terms of the particular *user* of a network element. But the FCC's *First Report and Order* defines cost causation in terms of the element itself, not in terms of who is using the element (as I discuss below, the FCC's approach to cost causation is consistent with its other requirements for TELRIC, while Dr. Taylor's approach is inconsistent with TELRIC). For example, ¶691 reads:

> Any function necessary to produce a network element must have an associated cost. The study must explain with specificity why and how specific functions are necessary to provide network elements and how the associated costs were developed. Only those costs that are incurred in the provision of the network elements *in the long run* shall be directly attributable to those elements. Costs must be attributed on a cost-causative basis. Costs are causally-related to the network element being provided if the costs are incurred *as a direct result of providing the network elements, or can be avoided, in the long-run, when the company ceases to provide them* (emphasis added).

The reason Dr. Taylor adopts a perspective on cost causation that is inconsistent with the FCC's is clear -- by doing so he supports BellSouth's

efforts to require that CLECs, such as ITC^DeltaCom, be responsible for the costs that each will incur to develop its own OSS *and* BellSouth's "incremental" costs associated with providing OSS that meets the FCC's technical requirements. Dr. Taylor's theory (like BellSouth's objectives) is in direct conflict with other FCC requirements, however. ¶690, for example, requires that "[t]he increment that forms the basis for a TELRIC study shall be *the entire quantity of the network element provided.*" As a result, even if the Commission were to find that ITC^DeltaCom should pay some portion of BellSouth's OSS costs as well as its own, the FCC's TELRIC standard requires that these costs be calculated by placing *all* forward-looking, most-efficient OSS costs in the numerator, and dividing by *all* users of OSS -- including BellSouth (and its retail customers) -- in the denominator.[5]

Q. DR. TAYLOR ARGUES THAT THE FCC'S APPROACH WOULD CAUSE INEFFICIENT ENTRY. DO YOU AGREE?

A. No. Dr. Taylor argues that "[w]here social policy mistakenly attempts to ensure the entry and survival of suppliers that are less efficient than

[5] As I argued in my direct testimony, the most straight-forward way to address this issue would be for the Commission to require that each telecommunications carrier be responsible for development and deployment of its own OSS – ITC^DeltaCom to serve its retail (and, potentially, wholesale) customers, and BellSouth to comply with the FCC's order (which will serve both its retail and wholesale customers). If the Commission were to ignore the "total element" requirement of TELRIC and, instead, adopt an incremental approach, the economically correct way to implement this approach on the forward-looking basis advocated by Dr. Taylor would be (1) to calculate the forward-looking economic cost of installing the state-of-the-art OSS system, required by the FCC, for BellSouth customers, only, (2) to calculate the forward-looking economic cost of installing the state-of-the-art OSS system, required by the FCC, for *both* BellSouth customers and new entrants, and (3) subtracting (1) from (2). I believe the resulting incremental costs would be very near zero.

incumbents, consumers typically end up paying for those protections in the form of higher prices or poorer service." There are two problems with Dr. Taylor's statement. First, it would be equally accurate to say that where social policy mistakenly attempts to ensure the survival of *incumbents* that are less efficient than other suppliers, consumers typically end up paying for those protections in the form of higher prices and poorer service. This, however, is the result that Dr. Taylor seeks to achieve.

Second, the FCC has already considered and rejected Dr. Taylor's arguments. At ¶679, the FCC described TELRIC as follows:

> Adopting a pricing methodology based on forward-looking costs, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of the incumbent LEC to engage in anti-competitive behavior. Congress recognized in the 1996 Act that access to the incumbent LEC's bottleneck facilities is critical to making meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to *reap the benefits of the incumbent LEC's economies of scale and scope, as well as the benefits of competition.* Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels. We believe that our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents, which may be expected to reduce the regulatory burdens and economic impact of our decision for any parties, including both small entities seeking to enter the local exchange markets and small incumbent LECs (emphasis added).

Dr. Taylor's attempt to reargue these issues adds nothing but empty words to this proceeding; even if his arguments had merit (and they do not), the FCC's pricing rules are the applicable legal standard.

Q. DR. TAYLOR ARGUES THAT YOUR SUGGESTION THAT ALL RATEPAYERS SHOULD HELP TO DEFRAY THE COSTS OF OSS IS WRONG BECAUSE "MR. WOOD IGNORES THE FACT THAT THE OSS DEVELOPMENT COSTS PERTAIN *SOLELY* TO THE INTERFACES AND SYSTEMS BELLSOUTH HAS DEVELOPED TO SERVE CLECS LIKE ITC^DELTACOM." IS HE RIGHT?

A. No, for all the reasons described above.[6] The FCC's TELRIC principles require that OSS prices to be paid by CLEC entrants like ITC^DeltaCom be based on the *total* quantity of the element produced – that is, on the basis of OSS provided to *all* users, not just CLEC users. Thus, if Dr. Taylor's and Mr. Varner's characterization of what BellSouth produced as OSS costs is previous proceedings before this Commission is accurate, it was the wrong analysis for setting TELRIC-based prices for OSS consistent with the FCC's definition. Of course, the resolution of the OSS cost recovery issue in this proceeding requires that the FCC's definition of TELRIC be applied.

Q. DR. TAYLOR IS CRITICAL OF BASING COSTS ON WHAT HE TERMS

[6]Mr. Varner makes a similar argument in his testimony that is invalid for the same reasons.

A "HYPOTHETICAL" NETWORK, AND ARGUES THAT THE FCC REJECTED THIS STANDARD. IS HE CORRECT?

A. No. Much of the discussion in ¶¶683 through 685 of the *First Report and Order* focused on the difference between a "scorched earth" approach to cost development – which would have developed costs without regard to *existing* wire center locations – and a "scorched node" approach – which requires forward-looking, most efficient technology be deployed under the assumption that wire centers will continue at existing locations. The FCC determined that scorched node was the proper approach. As noted earlier, however, ¶685 of the *First Report and Order* specifically contemplates a "reconstructed" network that would employ "the most efficient technology." In the OSS context, it seems clear that this would require calculation of costs on the basis of the electronic, full flow-through basis required by the FCC. As I said in my direct testimony, failure to adopt this standard would provide a disincentive for BellSouth to migrate quickly and efficiently to these systems.

Q. DR. TAYLOR ARGUES THAT BELLSOUTH HAS NO INCENTIVE TO USE EXCESSIVE RATES FOR OSS TO RAISE BARRIERS TO ENTRY, BECAUSE BELLSOUTH "HAS A KEEN ECONOMIC INTEREST IN BEING ABLE TO PARTICIPATE IN THE INTERLATA LONG DISTANCE MARKET." WHAT IS YOUR REACTION TO THIS STATEMENT?

A. Certainly Congress and the FCC have established the statutory and regulatory

requirements in a manner designed to use entry into the long-distance market as an incentive for ILECs such as BellSouth to do what is required in order to achieve authorization to enter the long-distance market. This, however, does not prevent BellSouth from seeking to interpret these requirements in a manner that is inaccurate and self-serving in an effort to raise the costs of competitive entry or to prevent it altogether. As I have demonstrated in several contexts above, Dr. Taylor repeatedly ignores or misstates the current requirements in an effort to persuade this Commission that BellSouth should be entitled to pass through whatever it asserts are its incremental OSS costs, with patent disregard for the extensive determinations by the FCC regarding how these costs should be developed. While the application of these FCC determinations was optional in previous proceedings, it is now required.

Q. YOU PREVIOUSLY CITED TO A NUMBER OF PARAGRAPHS FROM THE FCC'S *FIRST REPORT AND ORDER* WHICH DESCRIBE THE FCC PRICING RULES FOR UNES. DOES THE APPLICATION OF THE FCC'S TELRIC METHODOLOGY WHEN RESOLVING ISSUE 6b REQUIRE UPDATES TO OTHER COMMISSION CONCLUSIONS FROM DOCKET NOS. 960757-TP, 960833-TP, AND 960846-TP?

A. Yes. When applying any forward-looking costing methodology, including the FCC's TELRIC, it is necessary to ensure that the inputs and assumptions to the cost study reflect forward-looking efficient values. If significant changes occur in the values of these inputs and assumptions it is necessary to reflect

those values in the cost studies.

BellSouth's calculation of nonrecurring costs for UNEs illustrate this point. BellSouth's assumptions regarding both the work tasks that must be performed and time necessary to perform each task are a function, in part, of its overall cost study assumption that existing network configurations, engineering practices, and operational practices can be used to conduct a forward looking cost study. Application of the FCC's TELRIC methodology requires that these assumptions now be examined in the light of a different standard. Work tasks that BellSouth may perform pursuant to its existing engineering or operational practices cannot be included in its cost study if it fails to demonstrate that such tasks would be undertaken by an efficient carrier on a forward looking basis, if such a carrier were unconstrained by BellSouth's past and current operations. Similarly, the time assumed for the completion of such tasks must reflect the time required by an efficient carrier on a forward looking basis, again unconstrained by BellSouth's past and current methods of operation. In short, the reinstatement of the FCC's pricing rules based on its TELRIC principles requires the Commission to ignore how BellSouth has incurred these nonrecurring costs, and instead determine how BellSouth -- if operating efficiently -- ought to incur these costs.

Q. IN YOUR DIRECT TESTIMONY, YOU STATED THAT CLECS MUST BE ABLE TO EASILY AND RELIABLY ORDER UNES AND COMBINATIONS OF THOSE UNES, INCLUDING THOSE THAT

INCLUDE LOCAL SWITCHING. MR. VARNER HAS RESPONDED THAT BELLSOUTH HAS NO OBLIGATION TO PROVIDE UNES THAT INCLUDE LOCAL SWITCHING. IS HE RIGHT?

A. No. Mr. Varner's claim is apparently based on his *prediction* that when its Rule 319 proceeding is complete, the FCC will have concluded that local switching need not be offered as a UNE. Mr. Varner offers no basis for his prediction, other than his observation that this is the position taken by BellSouth in its Comments before the FCC. Fortunately, Mr. Varner's predictions regarding the future outcome of FCC proceedings does not create a binding requirement on this Commission (nor does it eliminate one). I could personally predict that the FCC will find that all technically feasible UNEs meet the requirements of the 1996 Act, but my doing so would not -- as Mr. Varner's idle musings do not -- affect the task before the Commission in this proceeding.

Mr. Varner goes on to make similar claims about BellSouth's obligation to provide combinations of UNEs (FCC Rule 315(b)). In doing so, Mr. Varner ignores the fact that the Supreme Court found that "in the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice," and that the Eighth Circuit court reinstated this rule.

In order to provide some measure of support for these wholly

insupportable claims, Mr. Varner engages in what can only be characterized as an attempt to mislead this Commission regarding the decision of the Supreme Court. At page 30, he provides a quote which he says comes from the "Supreme Court's January 25, 1999 decision." A careful review of that opinion, however, reveals that the quote provided by Mr. Varner does not appear in the Supreme Court's decision. Justice Scalia delivered the Opinion of the Court, but Mr. Varner's quote actually comes from the opinion of Justice Breyer, *concurring in part and dissenting in part* with the Court's opinion. I would like to be clear that I, like Mr. Varner, am not an attorney. It is my understanding, however, that the law of the land is the Opinion of the Court, not a concurrence and certainly not a dissent. In other words, it is the Opinion of the Court, in this case written by Justice Scalia, that is binding.

Q. MR. VARNER GOES ON TO ARGUE THAT BELLSOUTH IS NOT OBLIGATED TO PROVIDE EXTENDED LOOPS TO ITC^DELTACOM. DO HIS ARGUMENTS HAVE MERIT?

A. No. BellSouth's position on this issue is simply an attempt to impose higher costs on ITC^DeltaCom. As Mr. Hyde points out in his rebuttal testimony, the use of extended loops allows ITC^DeltaCom to offer service without establishing expensive collocation space in each BellSouth central office. If BellSouth can somehow prevent ITC^DeltaCom from utilizing this more efficient arrangement, it can create a barrier to entry: in order to provide service to the customers served by a given BellSouth central office,

ITC^DeltaCom would be required to incur the expense of establishing a collocation arrangement in that office. With extended loops, however, ITC^DeltaCom could serve those same customers in a more timely and less expensive way by utilizing a previously established collocation space.

BellSouth's arguments in support of its refusal to provide extended loops are paper thin. First, it is not clear that BellSouth can refuse to provide these facilities. An extended loop consists of an unbundled loop from the retail customer to the serving central office, and a transport facility from the serving central office to the central office in which ITC^DeltaCom has a collocation space. If an extended loop is viewed as a UNE loop and UNE transport, then the extended loops currently in use by ITC^DeltaCom are without question "currently combined" and therefore -- pursuant to the decision of the Supreme Court -- BellSouth must provide them in order to comply with applicable law. If an extended loop is viewed as a UNE loop and interoffice transport purchased from the access tariff, then BellSouth again has no basis to refuse to provide this capability. ITC^DeltaCom has the right to purchase both an unbundled loop and access transport from the applicable BellSouth tariffs, pay BellSouth the tariffed rates, and utilize those capabilities to provide service to a retail customer.

Second, Mr. Varner's claim that BellSouth never intended to provide ITC^DeltaCom with extended loops appear disingenuous at best. As Mr. Hyde points out, paragraph IV B14 of the existing interconnection agreement between BellSouth and ITC^DeltaCom explicitly refers to an agreement for

good faith efforts by the parties to "mutually devise and implement" these facilities. It is inescapable, therefore, that either (1) Mr. Varner's testimony that BellSouth never intended to provide extended loops is inaccurate, or (2) BellSouth never intended to comply with the provisions of its interconnection agreement with ITC^DeltaCom.

Third, it is difficult to understand how BellSouth could have "accidentally" provided ITC^DeltaCom with an extended loop. It is simply beyond credibility, however, to believe that it then repeated this mistake 2500 times. A much more likely scenario is that BellSouth provided extended loops to ITC^DeltaCom pursuant to the terms of the existing interconnection agreement, but at some point realized that ITC^DeltaCom was effectively (and reasonable efficiently) utilizing these facilities to provide service to retail customers. In order to create an effective barrier to entry (and ultimately to keep competitive entry a manageable levels), BellSouth decided to violate the existing agreement and discontinue offering extended loops.

Fourth, Mr. Varner's claim that BellSouth "never intended" to provide extended loops is inconsistent with BellSouth's recent actions in other states. As recently as June 28, 1999, BellSouth produced a cost study showing the cost for nine different kinds of extended loops.[7] Clearly, while BellSouth may not favor the provision of extended loops because they permit CLECs to offer

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[7] Georgia Public Service Commission Docket No. 10692-U, BellSouth Unbundled Network Element Combinations Cost Studies, dated 6/11/99 and updated 6/28/99.

service to customers in a reasonably efficient way, it nevertheless expects to do so and has gone to the efforts to conduct a cost study of nine different kinds of extended loops.

Q. IN YOUR DIRECT TESTIMONY ADDRESSING ISSUE 6d, YOU STATED THAT BELLSOUTH'S RATES FOR VIRTUAL COLLOCATION (ADJUSTED TO REMOVE CERTAIN COSTS) SHOULD BE USED AS INTERIM RATES FOR CAGELESS COLLOCATION UNTIL BELLSOUTH PERFORMS A COST STUDY FOR CAGELESS COLLOCATION THAT COMPLIES WITH THE APPLICABLE FCC TELRIC COSTING PRINCIPLES. MR. VARNER ARGUES THAT BELLSOUTH'S *PHYSICAL* COLLOCATION RATES SHOULD APPLY TO A CAGELESS COLLOCATION ARRANGEMENT. IS HE RIGHT?

A. No. There is apparently a fundamental misunderstanding by Mr. Varner regarding the nature of a cageless collocation arrangement.

Q. PLEASE DESCRIBE THE CHARACTERISTICS OF A CAGELESS COLLOCATION ARRANGEMENT.

A. The FCC describes cageless collocation in the Advanced Services Order as an alternative collocation arrangement to physical collocation because it does not require the use of a cage. This is not, however the only distinction the FCC makes. As noted in the Advanced Services Order at ¶42, "caged collocation space results in the inefficient use of the limited space in a LEC premises, and

we consider the efficient use of collocation space to be crucial to the continued development of the competitive telecommunication market."" The FCC proceeded to state that the "incumbent LECs must allow competitors to collocate in any unused space in the incumbent LEC's premises, without requiring the construction of a room, cage, or similar structure, and without the creation of a separate entrance to the competitor's space." The FCC further noted that "incumbent LEC's must permit competitors to have direct access to their equipment." They also required at ¶43 that incumbent LECs "make collocation space available in single-bay increments" to ensure that competitors only have to purchase space sufficient for their needs.

Q. WHAT FORM OF COLLOCATION DOES A CAGELESS ARRANGEMENT MOST CLOSELY RESEMBLE?

A. The FCC's description of cageless collocation mirrors the characteristics of a virtual collocation arrangement. The exception is that under a virtual collocation arrangement, the competing provider does not have physical access to the incumbent LEC's premises and their equipment is under the physical control of the incumbent LEC (including installation, maintenance and repair responsibilities). From a costing perspective, however, the characteristics of a virtual collocation arrangement are more applicable to a cageless arrangement than are those of a physical collocation arrangement. Like virtual collocation, cageless collocation involves a collocator's equipment placed within the ILEC equipment lineups without using a

segregated area of the central office. In cageless collocation, however, the collocator retains ownership of the collocated equipment. As a result, training charges are unnecessary and maintenance costs are not incurred by BellSouth.. The only major difference between the costs associated with a virtual arrangement and a cageless arrangement are those associated with installation, maintenance and repair of the collocating carrier's equipment.

Until BellSouth produces, and the Commission adopts, the results of a cost study for cageless collocation consistent with FCC's TELRIC pricing rules, interim rates should be based on BellSouth's rates for virtual collocation with appropriate adjustments to remove costs associated with installation, maintenance and repair of ITC^DeltaCom's equipment.

Q. MR. THIERRY ARGUES THAT THE FCC'S ADVANCED SERVICES ORDER DOES NOT ADOPT SPECIFIC PROVISIONING INTERVALS FOR THE NEW COLLOCATION ARRANGEMENTS. DOES THE FCC IMPOSE ANY REQUIREMENTS ON INCUMBENT LECS THAT WOULD ACCELERATE PROVISIONING OF THE NEW COLLOCATION ARRANGEMENTS?

A. Yes. The FCC at ¶40 of the Advanced Services Order requires "incumbent LECs to make each of the new arrangements outlined below available to competitors as soon as possible, *without* waiting until a competing carrier requests a particular arrangement, so that competitors will have a variety of collocation options from which to choose" (emphasis added). The FCC went

on to say that the parties can agree to different terms and conditions than required in the Order through voluntary negotiation. Given the requirement by the FCC that BellSouth take a proactive approach to making these new forms of collocation available to competitors, the time frame required to provision a new arrangement once requested *must* be less than would otherwise be required. ITC^DeltaCom requests that the interval for provisioning a cageless arrangement from the time of request be 30 days.

BellSouth's proposal that the interval be a maximum of 90 business days under normal conditions and 130 business days under extraordinary conditions is simply unreasonable for at least two reasons. First, it completely fails to consider the FCC's requirement in the Advance Services Order that BellSouth take proactive efforts to identify such space so that no provisioning delay will be necessary when a CLEC such as ITC^DeltaCom makes a request for cageless collocation. Second, BellSouth's proposed provisioning interval fails to reflect the fact that the interval that should be significantly shorter for cageless collocation than for walled or caged collocation. In a cageless arrangement, BellSouth will not need to determine if room exists within its central office for the construction of a physically separated space, design the enclosure, or have it constructed. Since competitors will occupy space in existing climate-controlled areas in existing equipment line-ups, the total provisioning time should be much shorter than for a traditional physical caged arrangement.

Q. IN YOUR DIRECT TESTIMONY ADDRESSING ISSUE 6c, YOU STATED THAT BELLSOUTH SHOULD NOT BE PERMITTED TO IMPOSE DISCONNECT COSTS ON ITC^DELTACOM THAT WILL PERMIT IT TO RECOVER COSTS NOT ACTUALLY INCURRED OR TO DOUBLE RECOVER ITS COSTS. HAS BELLSOUTH EFFECTIVELY ADDRESSED THIS ISSUE IN ITS TESTIMONY?

A. No. Mr. Varner merely asserts that "BellSouth incurs costs to disconnect services" to CLECs such as ITC^DeltaCom. The issue in dispute between the parties to the arbitration is not simply a question of whether such costs might exist, but rather a question of in what circumstances (if any) are such costs incurred, and will BellSouth's proposal for disconnection charges permit it to double recover these costs? As I described in my direct testimony, it is not appropriate for BellSouth to assess a disconnect charge if no physical disconnect actually occurs, and BellSouth should not be permitted to recover the same costs in both the connection and disconnection rates. BellSouth has chosen not to address these issues.

Q. ISSUE 6e RELATES TO THE IMPOSITION OF CHARGES BY BELLSOUTH WHEN CONVERTING FROM A RESALE TO A UNE PROVISIONING SCENARIO. HAS BELLSOUTH EFFECTIVELY ADDRESSED THIS ISSUE IN ITS TESTIMONY?

A. No. Mr. Varner argues that it is not necessary for the Commission to address this issue in this proceeding because BellSouth has no statutory obligation to

provide combinations of UNEs. As described previously in my testimony, Mr. Varner is wrong. The Supreme Court upheld the FCC rule requiring that BellSouth provide such combinations of UNEs, and the Eighth Circuit court subsequently reinstated the FCC rule. Resolution of this issue is certainly timely given BellSouth's existing legal obligations.

The fact remains that when Mr. Varner's inaccurate characterizations of the Supreme Court decision are set aside, BellSouth has not provided any cost data to support its claim that such costs exist. Clearly, the imposition of unnecessary charges for the conversion of a customer from resale-based to UNE-based service will create an artificial barrier to the development of facilities-based competition in Florida.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, at this time.