HUEY, GUILDAY & TUCKER, P. A.
ATTORNEYS AT LAW
106 EAST COLLEGE AVENUE
SUITE 900, HIGHPOINT CENTER
TALLAHASSEE, FLORIDA 32301

POST OFFICE BOX 1794
TALLAHASSEE, FLORIDA 32302
www.hueylaw.com
TEL: (850) 224-7091
FAX: (850) 222-2593

e-mail: andy@hueylaw.com

ROBERT D. FINGAR
THOMAS J. GUILDAY
J. MICHAEL HUEY††
GEOFFREY B. SCHWARTZ††
VIKKI R. SHIRLEY
M. KAY SIMPSON
J. KENDRICK TUCKER*
MICHAEL D. WEST
WILLIAM E. WILLIAMS††

JOHN S. DERR
ROBIN C. NYSTROM
CLAUDE R. WALKER**†
OF COUNSEL

J. ANDREW BERTRON, JR.
ELIZABETH G. DEMME
GEORGE W. HATCH, III
ROBERTO M. VARGAS

JOHN ANDREW SMITH
CHRISTOPHER K. HANSEN
GOVERNMENTAL CONSULTANTS

*ADMITTED IN FLORIDA & DC
†BOARD CERTIFIED REAL ESTATE LAWYER
††CERTIFIED CIRCUIT CIVIL MEDIATOR
**CERTIFIED PUBLIC ACCOUNTANT, FL

RECEIVED-FPSC
99 NOV 23 PM 2:06
RECORDS AND REPORTING

ORIGINAL

November 23, 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:

Enclosed are an original and 15 copies of Petitioner ITC^DeltaCom Communications, Inc.'s Statement of Issues and Positions and Brief. Please file stamp the extra enclosed copy and return it to our runner. Thank you for your assistance.

Sincerely,

HUEY, GUILDAY & TUCKER, P.A.

J. Andrew Bertron, Jr.

JAB/
Enclosures
\\Nt1\wp\andy berton\ITC\Clerk17.ltr.wpd

AFA
APP
CAF
CMU
CTR
EAG
LEG 1
MAS 2
OPC
PAI
SEC 1
WAW
OTH

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
14444 NOV 23 99
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

IN RE: Petition by ITC^DeltaCom	)	
Communications, Inc. d/b/a	)	
ITC^DeltaCom for arbitration of	)	**DOCKET NO. 990750-TP**
certain unresolved issues in	)	
interconnection negotiations between	)	
ITC^DeltaCom and BellSouth	)	
Telecommunications, Inc.	)	

STATEMENT OF ISSUES AND POSITIONS AND BRIEF OF ITC^DELTACOM

COMES NOW, ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"), pursuant to the Commission's PreHearing Order, issued on October 25, 1999, and hereby submits this post-hearing Statement of Issues and Positions and Brief in the above-referenced arbitration with BellSouth Telecommunications, Inc. ("BellSouth") under the Telecommunications Act of 1996 (the "Act"). The hearing in this matter was conducted before a panel comprised of Commissioners Jacobs and Clark on October 27-29, 1999.[1]

PRELIMINARY ISSUE REGARDING COMMISSION JURISDICTION

The Commission has asked the parties to address a very narrow issue, in addition to those being arbitrated pursuant to the Petition: "whether the Commission has jurisdiction to assess penalties pursuant to Section 364.285, Florida Statutes, if it appears that a party is failing to

---

[1] The issues discussed herein are numbered using the numbers assigned in Attachment A to the Commission's August 13, 1999 *Order* and cross-referenced to the numbering contained in the Petition. Pursuant to this Commission's *Prehearing Order* of October 25, 1999, ITC^DeltaCom provides a statement of each issue and a position statement limited to 50 words or less. The "Analysis" section that follows each issue is ITC^DeltaCom's briefing of the issue. Discussion of the following issues has been omitted because they were removed from this arbitration pursuant to the Commission's Prehearing Order: 1, 2, 14, 16, 20(b), 46, 47, 49 and 50. Furthermore, discussion of several other issues in Attachment A to the August 13, 1999 Order is omitted from discussion herein because the parties have reached agreement thereon, to wit: Issues 4, 5, 6, 9, 10, 11, 12(a), 12(b), 13, 15, 17, 18, 19, 20(a), 20(c), 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 40(a), 43, and 44. Finally, there is no discussion of Issue 45, which was withdrawn by ITC^DeltaCom without objection by BellSouth.

DOCUMENT NUMBER-DATE
14444 NOV 23 8
FPSC-RECORDS/REPORTING

comply with a Commission-approved negotiated or arbitrated agreement." *PreHearing Order*, Docket No. 990750-TP, October 25, 1999, at p. 50.

The answer to the Commission's inquiry is yes. Florida Stat. Ann. § 364.285 (1999) states in relevant part that the Commission is empowered to

> impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $25,000, which penalty shall be fixed, imposed and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it.

This Commission will eventually enter an order approving the interconnection agreement between BellSouth and ITC^DeltaCom. If BellSouth refuses to comply with, or willfully violates the terms of, a Commission order, the Commission would have authority to impose penalties as outlined in the law. However, ITC^DeltaCom respectfully suggests that a full Commission proceeding to have BellSouth show cause why it should not be fined for each and every time it violates the order approving the interconnection agreement by failing to provide adequate service would not be the most efficient method to deal with BellSouth's non-compliance. If the past two years of non-performance are any indication, such proceedings would become numerous and tax the resources of the Commission and its Staff. More importantly, ALECs such as ITC^DeltaCom cannot match the resources of BellSouth to work through the regulatory process, nor should they have to. ITC^DeltaCom submits that the most efficient and fair method of ensuring compliance with the agreement is the inclusion of performance measures and self-effectuating guarantees in the interconnection agreement.

ARBITRATED ISSUES

ISSUE 3(b).

Pursuant to this definition of parity, should BellSouth be required to provide the following, and if so, under what conditions and at what rates:

(1) Operational Support Systems ("OSS").

** Position: Yes. Access to OSS must be at parity with BellSouth's access to its own systems. Each carrier should pay its own OSS development costs. If BellSouth's OSS are working correctly, handling all orders electronically, there are no incremental or forward looking costs to justify any charges. **

Analysis

OSS are the systems used by ALECs, such as ITC^DeltaCom to enroll and begin serving customers. These systems must make available to ITC^DeltaCom the same functionalities as those enjoyed by BellSouth. In its much anticipated Rule 319 remand decision, the FCC reaffirmed its finding that OSS are UNEs for purposes of Section 251(c)(3) of the Act and that access to OSS must be made available to ITC^DeltaCom at nondiscriminatory rates, terms and conditions. *Third Report and Order*, FCC 99-238, November 5, 1999, at pp. 192-98 (¶¶424-437.) Thus, access to OSS must be at parity with BellSouth's access to its own systems.

The evidence is clear that BellSouth does not provide access to OSS at parity. The example discussed by BellSouth witness Pate during cross-examination demonstrates this point. In the example, a Florida customer desires to switch from BellSouth to ITC^DeltaCom and add PBX services, and ITC^DeltaCom submits the order for the customer to BellSouth electronically through EDI. By design, the order will fall out. (Transcript of October 27-29, 1999 Hearing, p.

1144.)[2] When that same order is placed by BellSouth to provide the same services with BellSouth as the retail provider, the order is processed completely electronically. (T-1142-43.) A similar example was discussed with witness Pate during his deposition. In that example, an order for six access lines with a hunting feature would fall out by design if placed by ITC^DeltaCom, but would not if placed for BellSouth retail service. (Exhibit 9; T-33).

The PBX feature and hunting feature are commonly ordered "complex" services and should not fall out of the system simply because ITC^DeltaCom is the ordering company. Such a result violates the Act. BellSouth admits that the heart of this problem is its failure to "map" between EDI and DOE. (T-1145.) BellSouth should be directed to complete the mapping between EDI and DOE as soon as possible for all commonly ordered "complex" services, including but not limited to PBX, hunting and ESSX services. ITC^DeltaCom has gone to great expense and effort to develop the ability to submit orders through EDI electronically. (T-245-46.) BellSouth's systems must meet the needs of ITC^DeltaCom and must provide access to OSS at least equal to that enjoyed by BellSouth.

There are two types of costs associated with OSS: development costs and usage costs. BellSouth should not be able to charge ALECs for the costs to develop OSS. BellSouth argues that ITC^DeltaCom should have to pay for OSS development because ITC^DeltaCom and other ALECs are the users of OSS. This perception -- that OSS costs are caused by new entrants -- is due to the fact that BellSouth has the vast majority of local exchange customers, and ALECs will be using BellSouth's system to migrate customers away from BellSouth. (T-586-87.) Indeed, as a practical matter, the customers will all be going from BellSouth to ITC^DeltaCom. ALECs,

---

[2] Subsequent citations to the transcript of the October 27-29, 1999 hearing shall be in the following format: ("T-[page number(s)]").

however, must build out their own systems to work with BellSouth's OSS and, as a result, incur significant development costs of their own. As previously stated, it is undisputed that ITC^DeltaCom has done so. Moreover, the development of OSS is a requirement imposed on BellSouth by Congress. In exchange for the requirement, once all applicable conditions are met, BellSouth will be permitted interLATA in-region entry. Accordingly, the Commission should find that it is in the public interest for carriers to pay their own OSS development costs. ALECs bear the costs of development on their systems and BellSouth will be rewarded with interLATA entry once all conditions are met.

With regard to charges for use of BellSouth's OSS if the systems are working correctly and orders are all handled electronically, there are no incremental costs and thus no forward looking economic costs to justify any charges. (T-585). If the order "falls out" of the system and must be handled manually, there are costs incurred by BellSouth. The parties agree that some orders will always fall out. However, the Commission should find there is no reason to treat every order as if part of it falls out. Such treatment for costs purposes ignores the anticipated efficient OSS where few orders will fall out.

(2) UNEs

** <u>Position</u>: BellSouth must provide UNEs to ITC^DeltaCom at cost-based rates that comply with Section 252(d) of the Act and FCC pricing Rules. The Commission should modify BellSouth's assumed fill factors and assume utilization of IDLC technology. Rates should be $14.38 for an SL1 loop and $17.78 for an SL2 loop. **

<u>Analysis</u>

It is undisputed that pursuant to Section 251(c) of the Act, BellSouth must provide UNEs to ITC^DeltaCom at cost-based rates that comply with Section 252(d) of the Act and the FCC's

pricing Rules which were reinstated by the United States Supreme Court in AT&T Corp. v. Iowa Utilities Bd, 525 U.S. 366 (1999). Pursuant to the FCC's Rules, the Commission should modify BellSouth's assumed fill factors and assume utilization of IDLC technology. (T-581-82.) When the higher fill factors are assumed in the BellSouth cost study, the cost of a 2-wire analog local loop decreases by approximately 4 percent. When IDLC facilities are assumed to be deployed, costs of a local loop decrease by just over 10%. Based on the adjustments presented by ITC^DeltaCom, the rates adopted for an interim period (until a fully compliant study is utilized) shall be set at $14.38 for an SL1 loop and $17.78 for an SL2 loop. Although these adjustments will not bring rates into full compliance with the FCC Pricing Rules, they will produce rates that move in the direction of compliance. (T-582.) These rates should be subject to later true-up once the Commission considers a BellSouth cost study whose framework and inputs comply with TELRIC principles.

BellSouth will argue that the Commission's previous UNE cost order resulted in rates compliant with the FCC's Rules. While the previous decision was legal and proper at the time it was issued, it was based on BellSouth's cost study, which was based on the fact that the FCC's Rules had been stayed by the courts at that time. (T-581.) For example, BellSouth's study assumed that under no circumstances would BellSouth provide a UNE loop and a UNE port to ITC^DeltaCom in combined form. This is in contrast to the cost study BellSouth submitted to the Georgia Public Service Commission in Docket No. 10692-U which required that rates be set for a UNE loop and UNE port when offered in combination. See *Prefiled Rebuttal Testimony of Don Wood*, p. 10. Moreover, BellSouth's loop rates do not capture the cost differences relating to different geographic regions in Florida. While the geographic deaveraging requirement has been stayed by the FCC pending resolution of universal service issues, it is nonetheless evident

that BellSouth's cost studies, which formed the basis of the Commission's cost order, are not compliant with the now-reinstated FCC pricing rules.

(5) Unbundled Loop Using Integrated Digital Loop Carrier ("IDLC").

** Position: Yes. BellSouth must provide UNEs, including IDLC, at parity. BellSouth does not do this currently -- on almost all UNEs that are migrated from BellSouth customers that are served via IDLC or for customers' locations where BellSouth would use IDLC for its own service, BellSouth provides an inferior service to ITC^DeltaCom. **

Analysis

Section 251(c)(3) of the Act requires that BellSouth provide access to UNEs in a manner that is nondiscriminatory. Thus, BellSouth must provide access to UNEs to ITC^DeltaCom in a manner that is at parity with that which it provides to itself. On UNEs that are migrated from BellSouth customers that are served via IDLC or for customers' locations where BellSouth would use IDLC for its own service, BellSouth provides an inferior service to ITC^DeltaCom. Instead of offering the same IDLC technology to ITC^DeltaCom that it utilizes to provide to its own customers, BellSouth would have the Commission allow it to use either long copper loops that result in a substandard loop caused by excessive loss on the loops and increased likelihood of noise problems, or use the outdated UDLC technology that increases costs and will not always provide the same quality and features of IDLC.

It is noteworthy that ITC^DeltaCom's position on this issue is quite moderate. ITC^DeltaCom asks the Commission to require BellSouth to provide IDLC *equivalency*, not necessarily IDLC itself. BellSouth seeks to *convert* customers who desire to be served by ITC^DeltaCom to UDLC technology. Converting a customer from IDLC to UDLC adds two additional analog to digital conversions in the ALEC's pathway. This degrades modem

capability. There can also be loss of feature capability caused by the conversion. (T-396-97.) Moreover, it is contrary to the Act and anti-competitive for BellSouth to convert a customer from IDLC to UDLC when that customers selects ITC^DeltaCom. The Commission should require BellSouth to furnish UNE IDLC equivalency for all end users currently served by IDLC. Otherwise, the customer will experience an inferior quality of service with ITC^DeltaCom, and blame ITC^DeltaCom -- when the real fault lies with BellSouth.

In some limited instances, BellSouth currently provides IDLC-equivalent service to ITC^DeltaCom by providing loop UNEs via the "side door" IDLC methodology that splits the loop off the switch. See *Prefiled Rebuttal Testimony of Thomas Hyde*, p. 16. If this configuration works in the small number of instances where it is deployed, it will work if deployed in more instances. BellSouth does not refute the availability of the "side door" IDLC arrangement. (T-1308.)

Issue 7 -- Petition Issue 2(b)(ii).

Until the Florida Public Service Commission and Federal Communications Commission make a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC^DeltaCom under the interconnection agreement previously approved by this Commission?

** Position: Yes. The FCC has required that BellSouth continue six of the seven previous UNEs. All UNEs ordered by ITC^DeltaCom from BellSouth are included in the approved list. BellSouth must comply with FCC Rule 315(b), which prevents BellSouth from separating network elements that it "currently combines." **

Analysis

BellSouth should continue providing those unbundled network elements and combinations that it is currently providing under the existing interconnection agreement. The FCC issued its *Third Report and Order* on November 5, 1999, confirming the continuance of six of the seven previous unbundled network elements: (1) loops, including loops used to provide high-capacity and advanced telecommunications services; (2) network interface devices; (3) local circuit switching (except for larger customers in major urban markets); (4) dedicated and shared transport; (5) signaling and call-related databases; and (6) operations support systems. The FCC also required incumbents to provide unbundled access to subloops, or portions of loops, and dark fiber optic loops and transport.

With regard to combinations, the U.S. Supreme Court has affirmed the FCC's rules relating to combinations and those rules are in effect today. FCC Rule 315(b) requires that "[e]xcept upon request, an incumbent LEC shall separate requested network element that the incumbent LEC currently *combines*." (emphasis added). There can be no dispute that BellSouth currently *combines* local loops and switch ports (creating a loop-port switch combination) and local loops and transport facilities (creating extended loops as requested by ITC^DeltaCom). Because BellSouth currently combines those elements of its network, pursuant to Rule 315(b), it must make those elements available to ALECs on a combined basis and at prices that reflect the cost that would be incurred to provide these network elements in combination (pursuant to Rules 51.501 through 51.513).

In its *Third Report and Order*, the FCC cited back to its intentions when drafting Rule 315(b), stating that in the *First Report and Order*, "the Commission [FCC] concluded that the proper reading of 'currently combines' in Rule 51.315(b) means 'ordinarily combined within

their network, in the manner in which they are typically combined'" (¶ 479). Rule 315(b) uses the phrase "currently combines." It is undisputed that this rule is in effect today. Thus, this Commission should require BellSouth to provide UNEs in combined form which are ordinarily combined within its network, in the manner in which they are typically combined.

Issue 8(a) -- Petition Issue 2(b)(iii).

Should BellSouth be required to provide to ITC^DeltaCom extended loops or the loop/port combination?

** Position: Yes. The existing interconnection agreement compels BellSouth to negotiate in good faith to provide extended loops. Indeed, pursuant to the existing agreement, BellSouth has provided 2500 such extended loops, which allow ITC^DeltaCom to serve more sparsely populated areas. **

Analysis

ITC^DeltaCom's existing interconnection agreement, which was approved by this Commission pursuant to Section 252 of the Act, contained a provision stating that, "the Parties shall attempt in good faith to mutually devise and implement a means to extend the unbundled loop sufficient to enable DeltaCom to use a collocation arrangement at one BellSouth location per LATA (*e.g.* tandem switch) to obtain access to the unbundled loop(s) at another such BellSouth location over BellSouth facilities."

BellSouth admits that it has provided 2500 extended loops to ITC^DeltaCom pursuant to the current interconnection agreement. (T-795.)[3] Extended loops permit ITC^DeltaCom to offer

[3] Currently, ITC^DeltaCom purchases special access transport out of BellSouth's FCC Tariff No. 1 in order to extend the UNE loop. This Commission should affirm that ITC^DeltaCom will continue to have the option to connect UNE loops to special access transport as a means of extending the UNE loop. ITC^DeltaCom currently pays BellSouth the special

service into sparsely populated areas by allowing ITC^DeltaCom to efficiently enter markets without having to install a dedicated collocation space in each and every BellSouth central office. (T-400.) This creates efficiency in that ITC^DeltaCom can put collocation spaces in central offices where there is sufficient demand, and still use that space to serve remotely located customers. (Id.)

Furthermore, BellSouth is required to provide extended loops to ITC^DeltaCom under the law. Witness Wood's unrebutted testimony is that BellSouth currently combines local loops and transport facilities in its network today to provide service to retail customers. (T-583.) The FCC has noted that "incumbent LECs routinely combine loop and transport elements for themselves." *Third Report and Order*, November 5, 1999, ¶ 481. As discussed above, FCC Rule 315(b) requires that "[e]xcept upon request, an incumbent LEC shall separate requested network element that the incumbent LEC currently *combines*." (emphasis added). There can be no dispute that BellSouth currently *combines* local loops and switch ports (creating a loop-port switch combination) and local loops and transport facilities (creating extended loops as requested by ITC^DeltaCom).

Several other state commissions have made it clear that extended loops, or "extended links" ("EELs") must be provided to CLECs. For example, the California Public Utilities Commission has required Pacific Bell to demonstrate that it has made the "extended link UNE -- which consists of the loop functionality delivered to a distant central office -- available to

---

access rates for dedicated transport, which are well above TELRIC-based costs for the provision of the service.

CLECs."[4] Pennsylvania has required the UNE-P and EEL except where Bell Atlantic proves by a preponderance of the evidence that collocation is a more reasonable economical alternative to the provision of the EEL.[5] The states of Texas, New York, and Alabama have also ensured that EELs (or "extended loops") are made available to CLECs.

In order for ITC^DeltaCom to effectively compete with BellSouth, BellSouth must follow the law and provide the combinations which comprise extended loops at FCC-compliant rates. Given the importance of extended loops to retail competition, it is no surprise that BellSouth wants to discontinue this offering -- and even threatens to take away existing service. This Commission should compel BellSouth to continue providing extended loops to comply with the FCC Rules and to promote competition in Florida.

Issue 8(b) -- Petition Issue 2(b)(iii).

If so, what should the rates be?

** Position: BellSouth should be required to submit a cost study for extended loops that recognizes the price for combinations is less than the sum of the elements which are combined. The interim price should be the sum of the TELRIC-based price of the components of the extended loop. **

---

[4] *Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks*, California PUC Decision No. 98-12-069, p. 156 (December 17, 1998.)

[5] *Joint Petition of NextLink Pennsylvania, Inc., et al for Adoption of Partial Settlement Resolving Pending Telecommunications Issues*, Pennsylvania PUC Docket No. P-00991648, *Opinion and Order*, p. 83 (August 26, 1999).

__Analysis__

Because BellSouth currently combines those elements of its network, pursuant to Rule 315(b), it must make those elements available to ALECs on a combined basis and at prices that reflect the cost that would be incurred to provide these network elements in combination (pursuant to Rules 51.501 through 51.513). BellSouth should be required to submit a cost study for extended loops that recognizes the price for such combinations must be less than the sum price of the elements which are combined. Until such a study is filed and adopted, the price should be the sum of the TELRIC-based prices of the components of the extended loop.

__Issue 23 -- Petition Issue 3__.

Should BellSouth be required to pay reciprocal compensation to ITC^DeltaCom for all calls that are properly routed over local trunks, including calls to Internet Service Providers ("ISPs")?

** __Position__: Yes. Where costs are incurred by ITC^DeltaCom for carrying the traffic of a BellSouth customer, BellSouth must compensate ITC^DeltaCom for such carriage, consistent with principles of cost causation. The fact that an ISP business customer, contrasted with other business customers, is the recipient of such calls makes no difference. **

__Analysis__

BellSouth admits that when a BellSouth customer places or originates a call and uses the ITC^DeltaCom network to complete that call, ITC^DeltaCom incurs costs. (T-821-23, 975.) If the call is never made by the BellSouth customer, there is no cost. (T-975.) The costs are a result of the use of ITC^DeltaCom's network. When the call is completed to any residential or business customer (other than an ISP), BellSouth has agreed to pay compensation as required by the Act to ITC^DeltaCom. Compensation for those calls is not in dispute in this docket.

BellSouth's position is that whenever the customer on the other end of that call happens to be an Internet Service Provider ("ISP") no compensation is due to ITC^DeltaCom. Thus, BellSouth's argument turns completely on who is on the other end of the telephone when the call is terminated.

BellSouth does not dispute that the caller -- the person who places the call -- is the causer of that call, and thus is also the causer of the costs that are incurred to compete that call. (T-975.) That caller is using the network of his carrier and another carrier to complete a single call. ITC^DeltaCom submits that it is the responsibility of the carrier serving the caller who places the call to ensure the call is completed. Indeed, the carrier serving the caller is in privity with the caller and collects rates from the caller in exchange for service. If use of the network of another company is needed to complete that call, the caller's carrier must compensate the other carrier for use of that carrier's network. Presumably, the costs associated with such compensation will be collected from the caller, who after all, was the cost causer.

The FCC's February 25, 1999 Declaratory Ruling evidences the FCC's view that compensation must be paid to carriers for termination of calls to ISPs. The FCC held that "[w]hile to date the Commission has not adopted a specific rule governing the matter, we do note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that **compensation is due for that traffic**." FCC *Declaratory Ruling*, February 25, 1999, ¶ 25 (emphasis added). Subsequent to this pronouncement, the states of California, Maryland and Florida have all determined that compensation is due when traffic is terminated to an ISP. In all of those cases, the decisions were made on a prospective basis in the context of arbitrations under Section 252 of the Act. In other words, they were not cases in which existing contracts were being interpreted.

Additionally, very recently, the North Carolina Utilities Commission held that reciprocal compensation be applied to ISP-bound calls.[6]

BellSouth argues that ISP-bound traffic is interstate in nature and thus is not subject to the Act's requirements that reciprocal compensation be exchange between carriers. Whether the traffic is interstate, intrastate or jurisdictionally mixed is not outcome determinative of this issue. Regardless of the jurisdictional nature of the traffic, compensation must still be paid when a carrier terminates the calls of another carrier's customers. It is undisputed evidence in this Docket that ITC^DeltaCom uses exactly the same facilities to deliver calls to ISPs as with any other call. (T-118.) Not applying reciprocal compensation to ISP-bound traffic would afford BellSouth free use of ITC^DeltaCom's network when BellSouth customers place calls to ISP customers of ITC^DeltaCom. (Id.)

At bottom, where costs are incurred by ITC^DeltaCom for carrying the traffic of a BellSouth customer, BellSouth must compensate ITC^DeltaCom for such carriage. Accordingly, ITC^DeltaCom's proposed contract language covering this issue should be incorporated into the interconnection agreement between the parties.

Issue 24 -- Petition Issue 3.

What should be the rate for reciprocal compensation?

** Position: The current rate is $.009 per minute of use. ITC^DeltaCom has proposed an interim rate of $.0045 until cost-based rates are established. If the Commission establishes a

---

[6] *In the Matter of ICG Telecom Group, Inc., For Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996*, NCUC Docket No. P-582, Sub 6, p. 17 (November 4, 1999).

permanent rate, the rate should be based on the tandem local interconnection rate established in Docket No. 960833-TP. **

Analysis

Sections 252(d)(2)(A)(i) and (ii) of the Act require that the rate paid for reciprocal compensation be based on cost. Specifically, Section 252(d)(2)(A) states that the rate must be based on the cost associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier and must reflect "a reasonable approximation of the additional costs of terminating such calls." This Commission approved the $.009 rate for reciprocal compensation when it approved the interconnection agreement which governed the relationship between the parties for the past two years. That rate was in the public interest. If it had not been, this Commission would have rejected it pursuant to Section 252(e)(2)(A)(ii), which states that the Commission can reject a negotiated agreement when such agreement is "not consistent with the public interest, convenience, and necessity."

The $.009 rate is still reasonable and meets the requirements of the Act. The Commission could choose to simply continue that rate going forward as it did in the recent arbitration between MediaOne and BellSouth.[7] If the Commission is inclined to adopt an interim rate until cost-based rates for reciprocal compensation can be established, ITC^DeltaCom proposed as a compromise in an effort to settle the issue (BellSouth would not negotiate this issue) an interim rate of $.0045 per minute of use. (T-119.) ITC^DeltaCom would accept this as

[7] In that proceeding, the Commission declined to set an interim rate for reciprocal compensation. Instead, the Commission directed the parties to continue to operate under the terms of the current contract. *In Re: Petition by MediaOne Florida Telecommunications, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 990149-TP, *Order*, p. 4 (October 14, 1999).

an interim rate if applied to the termination of all local traffic including that bound for ISPs. Furthermore, ITC^DeltaCom even expressed a willingness to accept elemental billing rates ("tandem local interconnection rate") as long as tandem switching was included as part of that rate. (T-141-42.) Thus this Commission could also establish a permanent rate for reciprocal compensation -- including traffic bound for ISPs -- based on the tandem local interconnection rate established for local interconnection, transport, and tandem switching established by the Commission in Docket No. 960833-TP.

Issue 36 -- Petition Issue 4(a).

Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed?

** Position: Yes. Cageless collocation should be provisioned at intervals shorter than standard physical collocation and similar to virtual collocation. ITC^DeltaCom must have collocation to effectively compete. BellSouth does not depend upon collocation. Unnecessary delays will give BellSouth a competitive advantage. **

Analysis

In past proceedings, the Commission considered the appropriate terms and conditions associated with collocation where construction of walled enclosures is required. Pursuant to the FCC's *Advanced Wireline Services Order*[8], ITC^DeltaCom is entitled to utilize "cageless collocation" in BellSouth central offices. Indeed, the availability of cageless collocation is a critical element required for ITC^DeltaCom to effectively compete for local services in Florida.

---

[8] *Advanced Wireline Services Order*, No. FCC 99-48, FCC Docket No. CC 98-147 (March 31, 1999).

Cageless collocation does not require the construction of an enclosure for ITC^DeltaCom to place its equipment in the BellSouth central office.

This Commission should require BellSouth to provide cageless collocation to ITC^DeltaCom within 30 days after a firm order confirmation ("FOC") for such form of collocation is placed. BellSouth takes the position that the proper interval for provisioning cageless collocation should be 90 to 130 days. In an effort to construct a barrier to the utilization of cageless collocation in Florida, BellSouth has suggested that the same intervals needed for caged separate collocation arrangements are applicable. This position strains credulity. The 90 to 130 day interval involves "space identification, build-outs of enclosures, power, HVAC, all those things that aren't necessary in a cageless environment." (T-580-81.) Furthermore, pursuant to the *Advanced Wireline Services Order*, the FCC has directed ILECs to identify existing space to make cageless arrangements available. If BellSouth fulfills this duty imposed upon it by the FCC, cageless collocation can be provided to competing carriers without significant delay. (T-581.)

The FCC emphasized the importance of the timely and efficient provisioning of cageless collocation at ¶ 54 of the *Advanced Wireline Service Order*. (T-1288.) Indeed, the FCC encouraged the state commissions to adopt specific intervals and implies that such intervals should be markedly shorter than those for more cumbersome forms of collocation which require separate space. See *Advanced Wireline Services Order*, ¶ 38. Cageless collocation is akin to virtual collocation. Indeed, without examination of equipment ownership labels, even a telecommunications engineer could not distinguish virtual collocation arrangements from cageless collocation arrangements in a central office. (T-579.)

Other state commissions have examined this issue and established cageless collocation intervals which are substantially less than what BellSouth proposes in this case. For example, the Texas Public Utility Commission has established, for active collocation space, a cageless collocation interval of seventy (70) days where Southwestern Bell installs the bays/racks and fifty-five (55) days where such work is done by the CLEC.[9] The Utah Commission requires, pursuant to R746-365-3(c)(iv) ("Network Guidelines Applicable to All Telecommunications Corporations"), that collocation arrangements must be completed by an ILEC within 45 days of the telecommunications corporation's acceptance of the ILEC's quotation.

More recently, the Virginia Commission Staff filed its report and recommendation that the provisioning intervals for space that is already conditioned should be comparable to that for virtual collocation of equipment in a premise. This is consistent with the testimony of Witness Wood on behalf of ITC^DeltaCom that virtual collocation is very similar to cageless collocation and should be provided in the same or similar time frames. The Virginia Staff also recommended that Bell Atlantic must provide cageless collocation within an interval of sixty (60) calendar days.[10]

Issue 38 -- Petition Issue 6(a).

What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?

---

[9] *Investigation of Southwestern Bell Telephone Company's Entry Into Texas InterLATA Telecommunications Market*, Texas PUC Order No. 51, Project No. 16251, *Approving Time Intervals for Provisioning Collocation Under Revised Collocation Tariff* (August 18, 1999).

[10] Re: Application of Bell Atlantic -- Virginia, Inc., For Approval of its Network Services Interconnection Tariff, SCC-Va.- No. 218, Case No. PUC990101, p. 39 (October 27, 1999).

** Position: BellSouth should not be allowed to impose OSS development costs on ITC^DeltaCom. For orders handled electronically, there is no justification for any charges. For orders that "fall out," BellSouth should not be able to impose charges until it submits a TELRIC-compliant cost study subject to scrutiny in a hearing. **

Analysis

Each telecommunications carrier should be responsible for its own OSS development costs. BellSouth should not be able to capitalize on its monopoly position by imposing only its OSS charges on competing carriers. Electronic interfaces that allow competing carriers to have real-time electronic access to BellSouth's systems are a requirement of Section 251(c) of the Act. This requirement for equal access reflects the telecommunications policies of the Congress. The costs associated with the transition to the competitive model espoused by Congress are not attributable to a particular carrier's competitive entry into the local exchange market. Instead, the costs derive from the Act's requirement that local exchange markets shall be open to competition.

ALECs also incur costs associated with this transition. ALEC are required to bear their own costs. BellSouth and other ILECs should similarly bear the transition costs imposed by Congress. Development of OSS is a classic *transition* cost. The development of OSS will track the transition to competition. With regard to development, BellSouth argues that ITC^DeltaCom should have to pay for OSS development because ITC^DeltaCom and other ALECs are the users of OSS. This is, of course, primarily true at the present time since BellSouth has the vast majority of local exchange customers, and ALECs will be using BellSouth's system to migrate customers away from BellSouth. (T-586-87.) It does not, however, change the fact that ALECs will incur transition OSS costs as well. In the future, all carriers will use each other's OSS

systems to migrate customers in a fully competitive environment. Allowing one of these carriers to impose its OSS development costs on the other carriers simply because it starts out with all of the customers would hinder the benefits of competition for Florida consumers. This Commission should not allow BellSouth to impose OSS development charges on ALECs.

BellSouth proposes to charge the same for access to OSS regardless of whether an order falls out or flows through. (T-974.) BellSouth's own economist agreed that it would be good policy to "discriminate" between orders handled manually and those that "flow through" BellSouth's system. (T-972.) BellSouth's OSS witness stated that BellSouth has the ability to identify which orders "fall out." (T-1147). If the systems are working correctly, and an order processes electronically through that system, there are no incremental costs and thus no forward looking economic costs to justify any charges. (T-585.) If the order "falls out" of the system and must be handled manually, there are costs incurred by BellSouth. Rather than spreading such manual charges over all orders (including ones that do not fall out) based on an assumption that OSS will not work properly, the Commission should establish a rate structure which recovers BellSouth's manual processing charges only for orders which must be manually processed. (T-585-86.)

ITC^DeltaCom does not dispute that BellSouth should be able to recover manual processing costs when an order falls out because the submitting carrier made an error. BellSouth simply should not be allowed to assume an inefficient system and spread those costs over all users. Moreover, BellSouth should not be allowed to levy OSS-related charges on ALECs where the BellSouth system does not provide OSS access at parity, in particular when the discriminatory system performs as such "by design."

With regard to orders that fall out, in the interim (pending BellSouth's submission of a cost study for manual processing), BellSouth may not charge usage fees to ITC^DeltaCom. Only after cost based TELRIC rates for manually processed orders are presented in a cost study and subject to scrutiny in an evidentiary hearing before the Commission may BellSouth charge ITC^DeltaCom for use of OSS. The cost study relied upon by BellSouth for OSS usage charges in this case does not comply with the FCC's pricing Rules. (See T-587-88.) BellSouth admits that OSS is a UNE. (T-1025-26.) BellSouth admits that it has existing OSS legacy systems which are used to provide retail service to its own customers. (T-1027.) BellSouth further admits that in developing its cost study, it did not factor in these existing legacy systems, but only the only OSS systems used to serve ALECs. (T-1026.) This violates FCC Rule § 51.511, which requires BellSouth to consider the "total number of units of the element that the incumbent LEC is likely to use in offering its own services . . ." when determining forward-looking economic costs. BellSouth's approach also is not compliant with Rule § 51.505(b), which requires BellSouth to factor in the "total quantity" demanded of each element when pricing UNEs.

Issues 39 and 40(b) -- Petition Issue 6(b).

What are the appropriate recurring and non-recurring rates and charges for:

- **(a) two-wire ADSL/HDSL compatible loops,**
- **(b) four-wire ADSL/HDSL compatible loops,**
- **(c) two-wire SL1 loops,**
- **(d) two-wire SL2 loops,**
- **(e) two wire SL2 loop Order Coordination for Specified Conversion Time,**

** Position: The Commission should adopt rates which move closer toward FCC compliant TELRIC rates. The Commission should adopt the adjustments to BellSouth's cost study submitted by ITC^DeltaCom. The resulting interim rates should be subject to true-up pending a final determination of rates in light of the FCC Rules. **

Analysis

The "forward looking" costs developed pursuant to the requirements of the *FCC Interconnection Order* and related requirements must reflect current estimates of forward-looking network design and operations, both of which directly impact cost. The Commission should make adjustments to the rates to be included in the existing interconnection agreement and to make those rates subject to a true-up pending a final determination of rates in light of the FCC Rules.

To accomplish the task of establishing these interim rates, ITC^DeltaCom proposed a series of adjustments to BellSouth's cost study. Pursuant to the FCC's Rules, the Commission should modify BellSouth's assumed fill factors and assume utilization of IDLC technology consistent with the position of witness Wood. See *Prefiled Rebuttal Testimony of Don Wood*, pp. 8-11; (T-581-82.) Witness Hyde addresses the appropriate non-recurring charges. See *Prefiled Rebuttal Testimony of Thomas Hyde*, pp. 7-12 and Exhibit TAH-4. Although these adjustments will not bring rates into full compliance with the FCC Pricing Rules, they will produce rates that move in the direction of compliance. These rates should be subject to later true-up once the Commission considers a BellSouth cost study whose framework and inputs comply with TELRIC principles.

Issue 41 -- Petition Issue 6(c).

Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?

** Disconnect charges should not be charged to ITC^DeltaCom when no physical disconnection occurs. Further, when a disconnect takes place because the customer chooses an alternative provider, BellSouth should not be allowed to charge a disconnect and a reconnect fee -- this would be double-counting charges for the same work activity. **

Analysis

In response to a motion by BellSouth to exclude consideration of Issue 41, the Commission held that Issue 41 would remain in the case, but that testimony regarding "recovery of damages" would not be entertained. *PreHearing Order*, Docket. No. 990750-TP, October 25, 1999, at pp. 49-50. However, testimony regarding parity was not stricken. ITC^DeltaCom will not address any issues relating to the recovery of damages.

BellSouth seeks to assess ITC^DeltaCom disconnection charges any time ITC^DeltaCom loses a customer - even when no physical disconnection occurs and thus no cost is incurred. ITC^DeltaCom asserts that if a disconnect does not actually occur, there clearly are no costs and thus, no disconnection charges should be assessed. It is the standard practice of ILECs to charge disconnect charges to retail customers when service is installed to ensure recovery. ALECs are not retail customers and should not be treated as such -- they have an ongoing business relationship which makes the ILEC policy toward retail customers inapplicable here. See *Prefiled Direct Testimony of Don Wood*, p 26. In many cases, a line is maintained for purposes of providing "warm dial tone" service. In particular, it is inappropriate to charge a non-recurring charge for this disconnection because such a rate seeks to recover actual labor for the

disconnection. If warm dial tone is being provided, this labor did not actually occur. Id. at pp. 26-27. In any event, this Commission should not allow BellSouth to impose a disconnect fee when no disconnection actually occurs.

The Commission should also not allow BellSouth to double-recover costs when a physical disconnect actually takes place. When a customer selects a new carrier, BellSouth charges a disconnect fee to the initial carrier and a reconnect fee to the new carrier. This is a double-recovery of costs because it represents the same work activity. Only in rare circumstances will BellSouth disconnect a customer and not reconnect that customer at the same time to a different carrier. Id. at p. 27.

Issue 42 -- Petition Issue 6(d).

What should be the appropriate recurring and nonrecurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket No. CC 98-147?

** Position: Until BellSouth produces, and the Commission adopts, the results of an FCC-compliant TELRIC cost study for cageless collocation, interim rates should be based on BellSouth's rates for virtual collocation with adjustments to remove charges for installation, maintenance and repair and training. **

Analysis

This Commission should establish interim rates for cageless collocation that are based on BellSouth's rates for virtual collocation with adjustments to remove charges for installation, maintenance and repair and training. The FCC's description of cageless collocation mirrors the characteristics of a virtual collocation arrangement. (T-580.) The exception is that under a virtual collocation arrangement, the ALEC does not have physical access to the ILEC premises

and their equipment is under the physical control of the ILEC (including installation, maintenance and repair responsibilities). From a cost and rate perspective, the characteristics of a virtual collocation arrangement are the same as a cageless collocation arrangement. In fact, if a telecommunications engineer were to visit a BellSouth central office, he would not be able to decipher the difference between a virtual collocation arrangement and a physical collocation arrangement until an engineer came to perform maintenance. The party paying the maintenance engineer would be the only means for determining whether it was a virtual collocation (BellSouth would be paying for maintenance) or cageless collocation (the ALEC would be paying for the maintenance directly). (T-580.) The ALEC is also responsible for training and repair charges in a cageless collocation arrangement. Under cageless collocation, therefore, BellSouth will incur less costs than under virtual collocation. (T-579.)

Thus, calculation of the rates that may be charged for cageless collocation are relatively simple. The Commission should utilize the BellSouth rates for virtual collocation with adjustments to remove charges for installation, maintenance and repair and training. Those functions are to be performed directly by the ALEC and thus the costs are to be borne directly by the ALEC, not the ILEC. These rates should remain in effect in the absence of a cost study performed specifically for cageless collocation -- something BellSouth has not done. BellSouth's position is that the rates for physical collocation should apply to cageless collocation.

Given the stark, undisputed factual differences between these two forms of collocation, it is obvious that using physical collocation rates would greatly overstate the actual costs to BellSouth. BellSouth should be required to produce a cageless collocation cost study which can be scrutinized by this Commission. Until it does so, the rates should be the same as those for

virtual collocation, adjusted to remove costs related to installation, maintenance and repair and training.

Issue 48 -- Petition Issue 8(e).

Should language covering tax liability be included in the interconnection agreement, and if so, should that language simply state that each Party is responsible for its tax liability?

** Position: Language is not necessary. If it must be included, it should simply require parties to implement the contract consistent with applicable tax laws. Each party should bear its own tax liability. **

Analysis

The interconnection agreement does not need to include language relating to the payment of taxes. The previously approved interconnection agreement between the parties contained no provisions related to taxes. There is no evidence that the failure to include such a provision has created any problem for either party over the past two years. BellSouth argues that provisions covering tax liability should be included in the interconnection agreement because "taxes tend to be very complicated." BellSouth eventually introduced extensive language relating to taxes which was extremely complicated in itself. In the spirit of compromise, ITC^DeltaCom proposed language which was less verbose and easier to understand. See *Prefiled Direct Testimony of Christopher Rozycki*, p. 21. BellSouth has not accepted this language. In any event, there is no need to address tax liability in the interconnection agreement. This is a matter between the particular companies and the relevant taxing authorities.

Respectfully submitted this 23rd day of November, 1999.

J. Michael Huey (Fla. Bar # 0130971)
J. Andrew Bertron, Jr. (Fla. Bar # 982849)
Huey, Guilday & Tucker, P.A.
106 E. College Ave., Suite 900 (32301)
Post Office Box 1794
Tallahassee, Florida 32302
(850) 224-7091
(850) 222-2593 (facsimile)

David I. Adelman, Esq.
Charles B. Jones, III, Esq.
Sutherland Asbill & Brennan LLP
999 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 853-8000

Nanette S. Edwards, Esq.
Regulatory Attorney
ITC^DeltaCom Communications, Inc.
700 Boulevard South, Suite 101
Huntsville, Alabama 35802
(256) 382-3957

Attorneys for ITC^DeltaCom

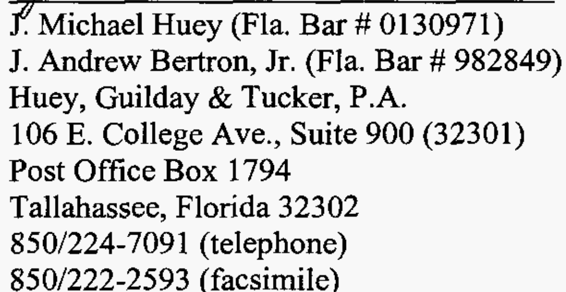
CERTIFICATE OF SERVICE
DOCKET NO. 990750-TP

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail this 23 day of November , 1999 to the following:

Diana Caldwell
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(hand-delivery)

Nancy B. White
Michael P. Goggin
BellSouth Telecommunications, Inc.
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(hand-delivery)

R. Douglas Lackey
Thomas B. Alexander
E. Earl Edenfield, Jr.
BellSouth Telecommunications, Inc.
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, Georgia 30375
(overnight delivery)



J. Michael Huey (Fla. Bar # 0130971)
J. Andrew Bertron, Jr. (Fla. Bar # 982849)
Huey, Guilday & Tucker, P.A.
106 E. College Ave., Suite 900 (32301)
Post Office Box 1794
Tallahassee, Florida 32302
850/224-7091 (telephone)
850/222-2593 (facsimile)