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March 30, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 990750-TP (ITC^DeltaCom)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration, Affidavit of Ronald Moreira, and Motion for Extension of Time, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Bennett L. Ross (BW)

Bennett L. Ross

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

AFA
APP
CAF
CMU
CTR
EAG
LEG 2
MAS 5
OPC
RRR
SEC 1
WAW
OTH

CERTIFICATE OF SERVICE
Docket No. 990750-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 30th day of March, 2000 to the following:

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Bennett L. Ross

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	**Docket No. 990750-TP**
	)	
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.	)	
	)	**Filed: March 30, 2000**

BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to Rule 25-22.060(1) of the Florida Administrative Code, BellSouth Telecommunications, Inc. ("BellSouth") hereby files its motion seeking reconsideration by the Florida Public Service Commission ("Commission") of three aspects of Order No. PSC-00-0537-FOF-TP issued on March 15, 2000 ("March 15 Order").

First, the Commission should reconsider the finding that the parties should pay reciprocal compensation at a rate of $.009 per minute of use. Reconsideration is required because the $.009 rate does not comply with the pricing standards set forth in 47 U.S.C. § 252(d) or with the binding rules of the Federal Communications Commission ("FCC"), which govern the establishment of rates for the transport and termination of local traffic.

Second, the Commission should reconsider the finding that BellSouth failed to provision unbundled network elements in such a manner so as to provide ITC^DeltaCom Communications, Inc. ("DeltaCom") "with a meaningful opportunity to compete with BellSouth." Reconsideration is warranted because this finding is not supported by any evidence in the record and is inconsistent with the Commission's finding that BellSouth provides DeltaCom with nondiscriminatory access to unbundled loops.

Third, the Commission should reconsider the finding that the application fee for cageless physical collocation should be $1,279. Reconsideration is warranted because the adjustments made to arrive at this figure were arbitrary, were not supported by substantial evidence in the record, and were based on a misreading of applicable FCC orders.

II. DISCUSSION

A. The Finding That The Reciprocal Compensation Rate Should Be $.009 Is Contrary To Existing Law.

DeltaCom asked this Commission to establish a rate for reciprocal compensation that would be paid by the parties for the transport and termination of local traffic. *See* Issue 24. In resolving this issue, the Commission is required to adhere to the standards set forth in the Telecommunications Act of 1996 ("1996 Act") and applicable FCC rules. Because the reciprocal compensation rate of $.009 established by the Commission does not comply with these statutory standards or FCC rules, the Commission must reconsider this issue. *See Stewart Bonded Warehouse, Inc. v. Bevis,* 294 So. 2d 315 (Fla. 1974) (reconsideration is warranted when a decision either overlooks or fails to consider certain law); *Diamond Cab Co. v. King,* 146 So. 2d 889 (Fla. 1962) (same).

The 1996 Act requires that in an arbitration a state commission establish "just and reasonable" terms for reciprocal compensation, which means that rates must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination" of local traffic and that such rates be determined "on the basis of a reasonable approximation of the additional cost of terminating such calls." 47 U.S.C. § 252(d)(2)(A). In approximating the costs of the transport and termination of local traffic, FCC rules require a state

commission to apply the FCC's forward-looking economic cost-based pricing methodology. *See* 47 C.F.R. §§ 51.501 *et seq.; see also* 47 C.F.R. § 51.705.

No serious argument can be made that a reciprocal compensation rate of $.009 is "just and reasonable" as required by Section 252(d)(2)(A) or represents the forward-looking economic cost of transporting and terminating local traffic. In fact, the Commission made absolutely no findings to that effect. Instead, the Commission established the $.009 reciprocal compensation rate because that was the rate contained in the parties' expired interconnection agreement and because, according to the Commission, "there is insufficient record evidence to conclude that a rate other than the current rate is appropriate ...." March 15 Order at 38.

The fact that the $.009 reciprocal compensation rate was contained in the parties' expired interconnection agreement does not and cannot justify adopting that same rate in this arbitration. The expired interconnection agreement executed by DeltaCom and BellSouth was a negotiated agreement executed in March 1997. When the Commission approved that agreement, the Commission did not determine that a reciprocal compensation rate of $.009 per minute complied with Section 252(d) of the 1996 Act or applicable FCC rules. Rather, because the expired agreement was a negotiated agreement, the Commission could approve the agreement so long as it was nondiscriminatory and not inconsistent "with the public interest, convenience, and necessity." 47 U.S.C. § 252(e)(2)(A). The Commission was not required to, nor did it, determine whether the rates in the *voluntarily negotiated agreement* complied with the pricing standards of the 1996 Act and applicable FCC rules; such a determination is only required in approving an *arbitrated agreement.* 47 U.S.C. § 252(d)(2)(A).

Furthermore, there is sufficient evidence in this record to conclude that a rate other than the current reciprocal compensation rate of $.009 is appropriate. Such evidence takes the form of

the Commission's Order No. PSC-96-1579-FOF-TP, which established the forward-looking economic cost of reciprocal compensation to be considerably less than $.009 per minute. The Commission took official recognition of Order No. PSC-96-1579-FOF-TP, and thus the Commission's findings as the cost-based rates for reciprocal compensation in that order should be considered here. Hearing Exhibit 1.

BellSouth acknowledges its part in creating confusion on the reciprocal compensation issue. As the Commission noted, BellSouth's testimony cited the incorrect Commission order and proposed rates different than those approved by the Commission for reciprocal compensation in Order No. PSC-96-1579-FOF-TP. March 15 Order at 36. This was a mistake. However, BellSouth's position is and has been throughout this entire arbitration that Commission-approved rates should govern, whether for reciprocal compensation or for unbundled loops or for collocation. *See* Varner, Tr. Vol. 5 at 680 ("Therefore, the costs that this Commission has already used to establish rates for AT&T, MCI, and other ALECs should be the same for ITC^DeltaCom or for any other ALEC.") That BellSouth's exhibit erroneously set forth the Commission-approved reciprocal compensation rates should not obscure the fact that those Commission-approved rates should apply here.

Accordingly, the Commission should reconsider this issue by ordering the parties to incorporate the reciprocal compensation rates approved by this Commission in Order No. PSC-96-1579-FOF-TP, which are as follows:

End Office Switching	Per minute	$0.002
Tandem Switching	Per minute	$0.00125
Common Transport	Per mile, per minute	$0.000012
Common Transport	Facilities termination per minute	$0.0005

The Commission has already determined that these reciprocal compensation rates comply with applicable law, and these rates should govern the transport and termination of local traffic exchanged between BellSouth and DeltaCom.

In the alternative, the Commission should reconsider its decision by making clear that the $.009 reciprocal compensation rate is an interim rate subject to true-up once the Commission establishes new rates in Docket No. 990649-TP. In that proceeding, it is expected that the Commission will establish new cost-based rates for end office and tandem switching as well as common transport, which should govern the transport and termination of local traffic exchanged between all local exchange carriers in Florida. If the $.009 reciprocal compensation rate is approved by this Commission in the DeltaCom agreement and is not made an interim rate subject to true up, every ALEC in Florida will seek to adopt that rate, thereby rendering moot whatever cost-based reciprocal compensation rates the Commission may establish in Docket No. 990649-TP. The Commission should not permit such a result.[1]

In addition to being inconsistent with applicable law, approving a reciprocal compensation rate of $.009 would unjustly enrich the ALEC industry at the expense of BellSouth. There can be no serious doubt that the moment the Commission approves an interconnection agreement containing a $.009 reciprocal compensation rate, every ALEC in Florida would seek to adopt that rate for inclusion in their interconnection agreement. BellSouth

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[1] The Commission rejected DeltaCom's argument that the rates for certain unbundled loops should be interim rates subject to true up because, according to the Commission, there was insufficient evidence in the record to conclude that such rates "will be out of compliance with the current state of the law and the FCC's rules." March 15 Order at 69. When it comes to the rate for reciprocal compensation, however, a rate of $.009 would "be out of compliance with the current state of the law and the FCC's rules." Thus, based on the Commission's own reasoning, the $.009 reciprocal compensation rate should at the very least be an interim rate subject to true up once new cost-based rates are established in Docket No. 990649-TP.

projects that ALECs in Florida will bill BellSouth reciprocal compensation for approximately 14.504 billion minutes of use in the year 2000. Moreira Affidavit ¶ 2. If all of those minutes were compensated at a rate of $.009 per minute, BellSouth would end up paying ALECs in Florida approximately $130 million in reciprocal compensation this year alone, which vastly exceeds the forward-looking cost of transporting and terminating local traffic. Such a result would be wholly inequitable and further warrants reconsideration by this Commission.

B. The Finding That DeltaCom Has Been Denied A Meaningful Opportunity To Compete Against BellSouth Overlooks The Evidence In The Record And Is Inconsistent With Other Findings Of The Commission.

One of the issues raised by DeltaCom in its Arbitration Petition was whether BellSouth should be required to provide unbundled network elements at "parity." *See* Issue 3(b)(2). According to the Commission, "This issue seeks [to] determine what constitutes parity in the provision of UNEs for the purpose of the parties' interconnection agreement." March 15 Order at 11. Thus, on its face this issue was limited to the appropriate contract language to govern BellSouth's provision of unbundled network elements on a going-forward basis. Yet, in resolving this issue the Commission found that "the quality of the access to the UNEs or the UNEs that BellSouth has provisioned in this proceeding do not provide ITC^DeltaCom with a meaningful opportunity to compete." March 15 Order at 17. The Commission should reconsider this finding because it lacks the requisite foundation of competent and substantial evidence.

In making its decisions, the Commission must rely upon evidence that is "sufficiently relevant and material that a reasonable man would accept it as adequate to support the conclusion reached." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1st DCA 1957); *see also Agrico Chem. Co. v. State of Fla. Dep't of Environmental Reg.*, 365 So. 2d 759, 763, (Fla. 1st DCA 1979);

Ammerman v. Fla. Board of Pharmacy, 174 So. 2d 425, 426 (Fla. 3d DCA 1965). The evidence must "establish a substantial basis of fact from which the fact at issue can reasonably be inferred." *DeGroot*, 95 So. 2d at 916. The Commission should reject evidence that is devoid of elements giving it probative value. *Atlantic Coast Line R.R. Co. v. King*, 135 So. 2d 201, 202 (1961). "The public service commission's determinative action cannot be based upon speculation or supposition." 1 Fla. Jur. 2d, § 174, *citing Tamiami Trail Tours, Inc. v. Bevis*, 299 So. 2d 22, 24 (1974).

In this case, there is no record evidence upon which the Commission could find that DeltaCom has been denied a meaningful opportunity to compete against BellSouth. The only "evidence" cited in the March 15 Order was DeltaCom's bald assertion that an alternative local exchange carrier ("ALEC") would be denied a meaningful opportunity to compete if its customers has "to give up features, such as forward disconnect ... or suffer modem degradation ...." March 15 Order at 17. However, there is no evidence that any of DeltaCom's customers in Florida have actually had to give up any features or suffered any modem degradation after leaving BellSouth.

The only evidence presented by DeltaCom concerning its access to unbundled network elements centered on 64 orders DeltaCom submitted across the BellSouth region in January and February 1999 and June and July 1999. Hearing Exhibit 19. However, it is impossible to draw any conclusions about "the quality of the access to the UNEs or the UNEs that BellSouth has provisioned in this proceeding ..." based upon such data. March 15 Order at 17.

First, nothing in the record suggests whatsoever that these 64 orders were intended to be a random sample of the orders BellSouth routinely receives and provisions for DeltaCom, and there is no indication what percentage these 64 orders represented of the total orders submitted

by DeltaCom during this same time period. Indeed, of the 64 orders selected by DeltaCom, only one involved a customer in Florida, and in that case, the order was completed on the due date, although there was a minor delay while both parties ran tests to identify a jack problem. Milner, Tr. Vol. 9 at 1240.

Second, DeltaCom's "performance" data do not reflect how many of the problems allegedly encountered with these 64 orders were the responsibility of BellSouth. In fact, BellSouth could not even locate several of the orders at issue, nor did DeltaCom produce these orders at the hearing. Of those orders that could be located, some of those orders contained errors made by DeltaCom or experienced difficulties caused by DeltaCom's own vendors. Hearing Exhibit 19 (TAH-2, at 6 & 10). Other problems were the result of a lack of facilities, which affect DeltaCom and BellSouth end users in the same manner. Milner, Tr. Vol. 9 at 1240.

Third, even for those problems for which BellSouth was responsible (none of which occurred in Florida), the record is devoid of any evidence comparing BellSouth's performance for DeltaCom on the 64 orders at issue with the performance for BellSouth's retail operations. According to the Commission, such evidence is essential in determining whether BellSouth is providing nondiscriminatory access to unbundled network elements. *See* March 15 Order at 18 ("UNEs and access to UNEs must be at parity with any equivalent functions which BellSouth performs in the provision of retail services"). Absent data concerning BellSouth's performance for its retail operations, the Commission can only speculate as to whether the quality of access to unbundled network elements BellSouth has provided to DeltaCom is worse than, better than, or the same as the access BellSouth provides itself.

In addition to not being supported by substantial evidence, the finding that DeltaCom has been denied a meaningful opportunity to compete is impossible to reconcile with other findings

in the March 15 Order. In particular, in resolving the issue concerning access to unbundled loops using Integrated Digital Loop Carrier technology, the Commission expressly found "that the record supports that BellSouth has met its obligation under Section 251 of the Act to provide non-discriminatory access to UNE loops." March 15 Order at 24. Because the provisioning of unbundled loops are the only UNEs about which DeltaCom has complained, there is no record evidence to support a finding that BellSouth has provided DeltaCom with nondiscriminatory access to unbundled loops but has denied DeltaCom nondiscriminatory access to other unspecified UNEs. Under these circumstances, the Commission should grant reconsideration of this issue.

C. The Finding That BellSouth's Cageless Physical Collocation Application Fee Should Be $1,279 Is Arbitrary, Not Supported By Substantial Evidence, And Is Contrary To Existing Law.

DeltaCom asked this Commission to establish rates for cageless physical collocation, including the application fee. DeltaCom proposed that the cageless physical collocation application fee should be set at the application fee established by the Commission for virtual collocation, while BellSouth proposed that the Commission-approved application fee for physical collocation should apply to cageless collocation as well. *See* March 15 Order at 76. The Commission did not accept either of these proposals. Instead, the Commission made a series of adjustments to the approved physical collocation application fee to arrive at a rate of $1,279. The Commission should reconsider these adjustments because they are arbitrary, not supported by substantial evidence, and are contrary to existing law. *See Caranci v. Miami Glass & Engineering Co.*, 99 So. 2d 252, 254 (Fla. 3d DCA 1957) ("Findings wholly inadequate or not supported by the evidence will not be permitted to stand").

In arriving at this $1,279 cageless physical collocation application fee, the Commission noted that it was derived "based upon testimony and evidence presented in this case." March 15 Order at 81. However, the March 15 Order never identifies the "testimony and evidence" relied upon. In fact, BellSouth is not aware of any "testimony or evidence" in the record that would justify the adjustments to the work times assumed by the Commission in calculating the $1,279 fee, since neither party advocated any such adjustments.

The Commission apparently was persuaded that less application and planning time would be involved in provisioning cageless physical collocation because, according to the Commission, the FCC's *Advanced Services Order* "clearly requires ILECs to make space availability information accessible to ALECs who may want to collocate." March 15 Order at 77 (quoting *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761 (1999) (hereinafter referred to as *"Advanced Services Order"*). Even assuming the Commission's reading of the *Advanced Services Order* is correct, however, that "space availability information" must be provided to ALECs does not reduce the work times involved in processing an application for physical collocation, whether cageless or caged.

Furthermore, two days after the Commission issued its March 15 Order, the United States Court of Appeals for the District of Columbia Circuit reversed and vacated certain portions of the FCC's *Advanced Services Order. See GTE Service Corp. v. FCC*, 2000 US App. LEXIS 4111 (D.C. Cir. March 17, 2000). In particular, the D.C. Circuit vacated portions of paragraph 42 of the FCC's *Advanced Services Order* which required that incumbent local exchange carriers "give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment." *Id.* at *26. Importantly,

this language which the Court of Appeals has vacated was relied upon by DeltaCom witness Don Wood in support of DeltaCom's view that cageless physical collocation resembles virtual collocation. March 15 Order at 75. The Court of Appeals' decision also eliminates the rationale ostensibly relied upon by the Commission for treating the prices and rate structure for cageless physical collocation differently than the prices and rate structure for caged physical collocation. Accordingly, the Commission should reconsider this issue.

III. CONCLUSION

For the foregoing reasons, the Commission should grant BellSouth's motion for reconsideration.

Respectfully submitted this 30th day of March, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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203438

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	**Docket No. 990750-TP**
	)	
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.	)	
	)	**Filed: March 30, 2000**

BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR EXTENSION OF TIME TO FILE INTERCONNECTION AGREEMENT

Pursuant to Rule 25-22.006 of the Florida Administrative Code, BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Motion for Extension of Time to File Interconnection Agreement ("Motion") as ordered by the Florida Public Service Commission ("Commission") in its Order No. PSC-00-0537-FOF-TP issued on March 15, 2000 ("March 15 Order").

1. By Order No. PSC-00-0537-FOF-TP in the ITC^DeltaCom Communications, Inc. ("DeltaCom") Arbitration proceeding with BellSouth issued on March 15, 2000, the Commission ordered "that the parties shall submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of this Order." March 15 Order at 84.

2. On March 30, 2000, simultaneous with the filing of this Motion, BellSouth filed its Motion for Reconsideration in which BellSouth sought review by the Commission of three aspects of the March 15 Order in this Arbitration proceeding.

3. The Commission's decision on BellSouth's Motion for Reconsideration, particularly if granted in part or in full, will have an affect on the Interconnection Agreement that

the parties will prepare and submit to the Commission for its review and approval using the Commission's decisions in this Arbitration. Consequently, in order to prepare the final Interconnection Agreement the parties will need to first have the Commission's decisions on the three (3) matters raised in BellSouth's Motion for Reconsideration.

4. In light of BellSouth's Motion for Reconsideration, BellSouth believes that it would be in the best interests of all parties, the Staff, and the Commission if the Commission would extend the time in which it has given the parties to prepare and submit their Interconnection Agreement based upon the Commission's decisions in this Arbitration.

5. For the reasons discussed above, BellSouth requests that the Commission grant an extension of time to file the final arbitrated Interconnection Agreement with the Commission until fourteen (14) days after the Commission issues its final Order in this proceeding, including on Reconsideration.

WHEREFORE, BellSouth respectfully urges the Commission to extend the time for filing the final arbitrated Interconnection Agreement from the current deadline until fourteen (14) days after the Commission issues its Order resolving the Motion for Reconsideration.

Respectfully submitted this 30th day of March, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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203574

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	Docket No. 990750-TP
	)	
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.	)	
	)	Filed: March 30, 2000

AFFIDAVIT OF RONALD MOREIRA

Ronald Moreira, being first duly sworn, deposes and says:

1. I have been employed by BellSouth Telecommunications, Inc. ("BellSouth") for twenty-five years and am currently Senior Analyst in BellSouth's Interconnection Purchasing Center in Birmingham, Alabama. This center is responsible for BellSouth's day-to-day operations for invoice verification and payment and administrative service requests with alternative local exchange carriers ("ALECs") such as ITC^DeltaCom Communications, Inc.

2. For the period from October through December 1999, ALECs in Florida billed BellSouth approximately 3.626 billion minutes of use for which ALECs sought the payment of reciprocal compensation. If this amount were annualized and assuming no growth in the minutes of use for the upcoming year (which is probably an unrealistic assumption), it is projected that ALECs will bill BellSouth at least approximately 14.504 billion minutes of use in Florida in 2000.

This the 29th day of March, 2000.

Ronald Moreira

Ronald Moreira

Sworn to and subscribed before me
this the 29 day of March, 2000

Rita R. Barnwell
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: Dec. 28, 2000.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

203177