

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by ITC^DeltaCom  
Communications, Inc. d/b/a  
ITC^DeltaCom for arbitration of  
certain unresolved issues in  
interconnection negotiations  
between ITC^DeltaCom and  
BellSouth Telecommunications,  
Inc.

DOCKET NO. 990750-TP  
ORDER NO. PSC-99-2117-PHO-TP  
ISSUED: October 25, 1999

Pursuant to Notice and in accordance with Rule 28-106.209,  
Florida Administrative Code, a Prehearing Conference was held on  
October 11, 1999, in Tallahassee, Florida, before Commissioner E.  
Leon Jacobs, as Prehearing Officer.

APPEARANCES:

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Tallahassee, FL 32302  
On behalf of ITC^DeltaCom Communications, Inc. d/b/a  
ITC^DeltaCom

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On behalf of ITC^DeltaCom Communications, Inc. d/b/a  
ITC^DeltaCom

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Nancy Sims, 150 South Monroe Street, Suite 400,  
Tallahassee, FL 32301  
On behalf of BellSouth Telecommunications, Inc.

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Suite 4300, BellSouth Center, Atlanta, GA 30375-0001  
On behalf of BellSouth Telecommunications, Inc.

Diana W. Caldwell, Esquire, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
Florida 32399-0850  
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

DOCUMENT NUMBER-DATE

13070 OCT 25 99

FPSC-RECORDS/REPORTING

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## II. CASE BACKGROUND

On June 11, 1999, ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom (ITC^DeltaCom) filed a Petition for Arbitration pursuant to 47 U.S.C. 252(b) to arbitrate certain unresolved issues in the interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc. (BellSouth). On July 6, 1999, BellSouth filed its response. This matter is currently set for hearing on October 27-29, 1999.

## III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall

notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

#### IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words,

set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

The following list of witnesses and issues addressed will be modified. Some testimony will be stricken at the hearing due to the decisions at the prehearing conference to remove specific issues from the list of issues to be addressed in this proceeding. I note that the parties have indicated that they will endeavor to

reach an agreement prior to hearing regarding which witnesses' testimony may be stricken based on the decisions set forth herein. To the extent, however, that they are unable to reach such an agreement prior to the hearing, we will rule on this matter at the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
Christopher Rozycki	ITC^DeltaCom	1, 3(a), 3(b), 23, 24, 45, 46, 47, 48 and 49
Michael Thomas	ITC^DeltaCom	3(b)(1), 4, 5, 6, 22, 25, 26, 27, 28, 30, 31, 32 and 34
Thomas Hyde	ITC^DeltaCom	2, 3(b)(2), 3(b)(4), 3(b)(5), 3(b)(6), 3(b)(7), 3(b)(8), 7, 8(a), 8(b), 9, 10, 11, 12(a), 12(b), 13, 14, 15, 16, 17, 18, 19, 20(a), 20(b), 20(c), 21, 29, 33, 35, 37, 39(a), 39(b) and 39(c)
Don Wood	ITC^DeltaCom	36, 38, 39(a), 39(b), 39(c), 40(b), 41 and 42
Alphonso J. Varner	BellSouth	1, 2, 3(a), 3(b)(2), 6, 7, 8(a), 8(b), 13, 14, 16, 20(b), 23, 24, 38-43, 45, 46 and 48-50.
D. Daonne Caldwell	BellSouth	38, 39 and 40

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<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
W. Keith Milner (Mr. Milner will also adopt the prefiled direct and rebuttal testimony of Mr. David Thierry)	BellSouth	3(b)(4), 3(b)(5), 11, 12, 15, 17, 20(a), 21, 29 and 36
Ronald M. Pate	BellSouth	3(b)(1), 5, 22, 34 and 38
David P. Scollard (Direct only)	BellSouth	44
David A. Coon (Rebuttal only)	BellSouth	1
Dr. William E. Taylor (Rebuttal only)	BellSouth	1, 23 and 38.

VII. BASIC POSITIONS

**ITC^DELTACOM:**

When ITC^DeltaCom began negotiations with BellSouth in January 1999, it sought only to renew its existing interconnection agreement with a few minor modifications. The reason was simple, ITC^DeltaCom wanted to preserve the climate which enabled it to make investments over the past two years and enter the Florida local exchange market. The Commission's decision in this Docket should continue the climate upon which ITC^DeltaCom based its Florida entry and investment and make certain improvements to the interconnection agreement, specifically adding a mechanism for self-effectuating performance guarantees, which will govern the relationship between ITC^DeltaCom and BellSouth for the next two years.

This case concerns many issues of law, policy and fact which are crucial to the relationship between ITC^DeltaCom and BellSouth and ultimately to Florida consumers. There are numerous issues which remained open between the parties on the 160th day following the initiation of negotiations. ITC^DeltaCom endeavored to resolve many of those issues even after the filing of the Petition on June 11, 1999. Indeed, ITC^DeltaCom was successful in many cases. However, a good

number of issues remain open as the parties move forward toward the hearings in this Docket. ITC^DeltaCom has attempted to provide the Commission with a thorough and detailed Prehearing Statement to assist it in the hearing process. In considering the issues presented in this case, the Commission should seek to further the goal of the Act, namely to bring the benefits of competition to Florida's local exchange markets.

**BELLSOUTH:**

Each of the individually numbered issues in this docket represents a specific dispute between BellSouth and ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") as to what should be included in the Interconnection Agreement between the parties. Some of these issues involve matters that are not properly within the scope of the Telecommunications Act of 1996 ("1996 Act") or the jurisdiction of this Commission and should, therefore, not be part of an arbitrated agreement. As to all other issues, BellSouth's positions are consistent with the 1996 Act, the pertinent rulings of the Federal Communications Commission ("FCC"), and the rules of this Commission. The same cannot be said for ITC^DeltaCom's proposals. Therefore, the Commission should sustain each of BellSouth's positions.

**STAFF:**

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

**NOTE:** Numerous issues were resolved by consent of the parties or removed by ruling of the Prehearing Officer. The remaining issues that follow were not renumbered from the issues identified in Order No. PSC-99-1589-PCO-TP.

**ISSUE 3(a):** What is the definition of parity?

**POSITIONS:**

**ITC^DELTACOM:**

Witnesses Rozycki and Hyde will present testimony regarding this issue. In the context of this Docket and the interconnection agreement that will result from this arbitration, parity requires that BellSouth provide facilities and services to ITC^DeltaCom in a manner equal to that which it provides to itself. In this regard, ITC^DeltaCom must receive facilities and services not only at least equal to those which are received by BellSouth's retail customers, but also at least equal to that which BellSouth has available to provide service to those retail customers. The Commission should conclude that the definition of parity that is applied in the interconnection agreement requires that BellSouth provide facilities and services to ITC^DeltaCom in a manner and at a quality which is at least equal to that provided to itself.

**BELLSOUTH:**

BellSouth offers services to ITC^DeltaCom at parity. BellSouth has offered to include language in the parties' interconnection agreement that defines parity as the provision of unbundled network elements ("UNEs") in a manner that gives an efficient ALEC a meaningful opportunity to compete and resell services in substantially the same time and manner as BellSouth does for itself. This definition is consistent with the 1996 Act and the FCC's rules regarding parity of services, 47 C.F.R. §51.311 (UNEs), and 47 C.F.R. §51.603 (Resale). The 1996 Act does not require BellSouth to provide ITC^DeltaCom with service at levels "greater than" that which BellSouth provides to its own end-user customers, as ITC^DeltaCom contends.

**STAFF:**

Staff takes no position at this time.

**ISSUE 3(b):** Pursuant to the definition of parity resolved in Issue 3(a), should BellSouth be required to provide the following:



(1) Operational Support Systems (OSS),

**POSITIONS:**

**ITC^DELTACOM:**

Yes. Witnesses Thomas and Wood will present testimony regarding this issue. 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, on September 15, 1999, 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. Thus, access to OSS must be at parity with BellSouth's access to its own systems. There are two types of costs associated with OSS: development costs and usage costs.

With regard to development, BellSouth will argue that ITC^DeltaCom should have to pay for OSS development because ITC^DeltaCom and other ALECs are the users of OSS. It is true that initially - during this period of time when BellSouth has the vast majority of local exchange customers - ALECs will be using BellSouth's system to migrate customers away from BellSouth. Indeed, as practical matter, the customers will all be going from BellSouth to ITC^DeltaCom. However, ALECs must build out their systems to work with BellSouth's OSS and as a result incur significant development costs of their own. 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. If the order "falls out" of the system and must be handled manually there are costs incurred by BellSouth. The parties will agree that some orders will always fall out. However, the

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Commission should find there is not 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.

**BELLSOUTH:**

BellSouth provides all ALECs, including ITC^DeltaCom, with nondiscriminatory access to its operations support systems ("OSS") through electronic and manual interfaces.

**STAFF:**

Staff takes no position at this time.

**ISSUE 3(b):** (2) UNEs,

**POSITIONS:**

**ITC^DELTACOM:**

Yes. 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 *Iowa Utilities Bd. v. FCC*. The Commission should modify BellSouth's assumed fill factors and assume utilization of IDLC technology consistent with the position of witness Wood. 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 that will be presented by ITC^DeltaCom, the rates adopted for an interim period (until a fully compliant study is utilized) shall be set at \$19.34 for an SL1 loop and \$23.10 for an SL2 loop.

**BELLSOUTH:**

BellSouth provides all ALECs, including ITC^DeltaCom, with nondiscriminatory access to UNEs pursuant to the 1996 Act, 47 U.S.C. §251(c)(3), and the FCC's rules, 47 C.F.R. §51.311. The Commission should reject any attempt to impose any additional requirements on BellSouth that are outside the

requirements expressly set out in the 1996 Act or the FCC's rules.

**STAFF:**

Staff takes no position at this time.

**ISSUE 3(b):**       **(4)** Access to Numbering Resources

**POSITIONS:**

**ITC^DELTACOM:**

Yes. ITC^DeltaCom should be provided the same access to numbering resources as that enjoyed by BellSouth. Although BellSouth is not the North American Numbering Plan Administrator, it can still effectively control access to telephone number resources by virtue of its position as the incumbent monopoly provider in its service territory. BellSouth controls most of the telephone numbers in Florida because those numbers are currently assigned to BellSouth customers. Thus, BellSouth knows which numbers have been assigned and which have not by virtue of their control of the customer base. ITC^DeltaCom acknowledges that BellSouth's systems for resale allow the identification of available telephone numbers. However, ITC^DeltaCom does not employ a resale entry strategy. This issue is covered by witness Hyde.

**BELLSOUTH:**

BellSouth is fulfilling its duties under 47 U.S.C. § 251(b)(2) and (b)(3) with respect to providing number portability and dialing parity. BellSouth should not be required to provide access to numbering resources since BellSouth has not been the North American Numbering Plan Administrator ("NANPA") since August 14, 1998.

**STAFF:**

Staff takes no position at this time.

**ISSUE 3(b):**       **(5)** An unbundled loop using Integrated Digital Loop Carrier (IDLC) technology;

**POSITIONS:**

**ITC^DELTACOM:**

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. ITC^DeltaCom will present evidence that 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. Instead of simply offering the same IDLC technology to ALECs such as 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 as well as increasing the likelihood of noise problems or they use the outdated UDLC technology that increases costs and will not always provide the same quality and features of IDLC. Again, this issue is covered by witness Hyde.

**BELLSOUTH:**

BellSouth provides all ALECs, including ITC^DeltaCom, with nondiscriminatory access to unbundled loops, including IDLC-delivered loops. When technically feasible, BellSouth will unbundle and provide loops using IDLC technology. When it is not technically feasible for BellSouth to do so, BellSouth will provide ITC^DeltaCom with loops that meet ITC^DeltaCom's specific transmission requirements. Additionally, ITC^DeltaCom may utilize the Bona Fide Request ("BFR") process to submit a request for a UNE with unique transmission parameters that ITC^DeltaCom may desire. (See BellSouth's position on Issue 6(b) for discussion of rates).

**STAFF:**

Staff takes no position at this time.

**ISSUE 5:** Should BellSouth be required to provide a download of the Regional Street Address Guide (RSAG)? If so, how?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. Section 251(c)(3) of the Act requires that all UNEs, including OSS be provided to ITC^DeltaCom in a nondiscriminatory manner or at parity. BellSouth's OSS systems for pre-ordering and ordering are integrated. However, the systems it offers to ALECs are not. Two years ago, when ITC^DeltaCom commenced operations in the Florida local exchange markets, BellSouth presented Electronic Data Interchange or "EDI" as its Section 251 compliant interface for all electronic ordering by ALECs. Based on BellSouth's representations, ITC^DeltaCom made significant investments and "built out" to BellSouth's EDI interface. Almost two years later, BellSouth informed ITC^DeltaCom that it was no longer offering EDI as the nondiscriminatory interface which could integrate ordering and preordering functionalities. None of these facts are in dispute. Moreover, ITC^DeltaCom has agreed to change its course of action and to build out to the newly offered BellSouth interface which is called the Telecommunications Access Gateway or "TAG." ITC^DeltaCom will present un rebutted evidence that it will take approximately twelve months and a great deal of money to retool its systems and build out to TAG. During the pendency of the conversion to TAG, ITC^DeltaCom has requested that BellSouth provide a periodic download of the Regional Street Address Guide ("RSAG").

BellSouth has been required to provide a download of the RSAG to MCI WorldCom in this state in response to a complaint brought before the Commission. Indeed, as a result of that decision, BellSouth has agreed to provide the download to ITC^DeltaCom in Florida. The only outstanding issue for arbitration is the cost recovery associated with providing this service and how such costs will be recovered from the ALEC community. BellSouth should be permitted to recover the non-recurring costs associated with developing the capability to provide the RSAG download, but shall spread those costs equally over all carriers who request such service. ITC^DeltaCom urges the Commission to direct BellSouth to notify all ALECs this service will become available and to apportion costs equally over all ALECs who request use of such service. This will prevent double recovery by BellSouth and will keep the download of the RSAG from being cost prohibitive. Witness Thomas presents testimony regarding this issue.

**BELLSOUTH:**

BellSouth currently makes the Regional Street Address Guide ("RSAG") database available on a real-time basis electronically through the Local Exchange Navigation System ("LENS") and the Telecommunications Access Gateway ("TAG") pre-ordering interfaces. This access includes updates to the RSAG database. Thus, BellSouth is providing nondiscriminatory access to its OSS in a manner that allows ITC^DeltaCom and other ALECs to access the RSAG database, even though ITC^DeltaCom may prefer a different method of access. To the extent ITC^DeltaCom wants an initial and subsequent downloads of the RSAG database, ITC^DeltaCom should be required to bear the costs of such downloads.

**STAFF:**

Staff takes no position at this time.

**ISSUE 6:** Should BellSouth be required to provide changes to its business rules and guidelines regarding resale and UNES at least 45 days in advance of such changes being implemented? If so, how?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. When BellSouth changes the business rules and protocols necessary to operate on its systems, ALECs must modify and adjust their systems. ITC^DeltaCom asks this Commission to incorporate into the interconnection agreement between the parties a forty-five (45) day advance notice requirement. ITC^DeltaCom will present evidence through witness Thomas describing instances where business rules were changed without any advance notice. ITC^DeltaCom asks that BellSouth be required to provide such notice via e-mail or fax through the BellSouth account team and publish the proposed change on the BellSouth web site. ITC^DeltaCom acknowledges that in some instances, forty-five (45) days notice may not be possible and stated its willingness to work with BellSouth regarding instances where a Commission rule or order would require a shorter notice period. The FCC has directly addressed this

issue. In the FCC's *Ameritech Michigan* order at Paragraph 137,<sup>1</sup> the FCC stated that an ILEC is obligated to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with the ILEC's legacy systems and any interfaces utilized by the ILEC for such access. The ILEC must provide all of the information necessary to format and process electronic requests so that the requests flow through the interfaces as quickly and efficiently as possible. The ILEC must disclose any internal "business rules" including information concerning ordering codes.

**BELLSOUTH:**

BellSouth posts changes to its business rules and guidelines on the BellSouth Interconnection Web Page which provides fair and reasonable notice to all ALECs, including ITC^DeltaCom. BellSouth makes its best effort to provide thirty (30) days advance notice of any such changes, which strikes a reasonable balance between BellSouth's need for flexibility to modify its processes and the ALECs' need to have advance notice of such modifications. Individual notices to ITC^DeltaCom or other ALECs (whether by e-mail, facsimile transmission or U.S. Mail) would involve additional administrative expense and could potentially cause discriminatory treatment if some, but not all, ALECs received such individual notice or if receipt of the notice varied in time between ALECs.

**STAFF:**

Staff takes no position at this time.

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<sup>1</sup> In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, Memorandum Opinion and Order, CC Docket 97-137, Para. 137 (August 19, 1997).

**ISSUE 7:** 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?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. BellSouth should continue providing those unbundled network elements and combinations that it is currently providing under the existing interconnection agreement pending the release of the FCC's written decision on unbundled network elements. Although the written order has not been issued, on September 15, 1999, the FCC issued a press release stating that it will adopt rules to continue 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 affirmed the FCC's rules related to combinations and those rules are in effect today. FCC Rule 315(b) explicitly states that except upon request, an ILEC shall not separate network elements that the ILEC currently combines. Witnesses Hyde and Wood present testimony on this issue.

**BELLSOUTH:**

BellSouth will continue to comply with its obligations under the 1996 Act and applicable FCC rules. BellSouth also will continue to provide any individual UNE currently offered until the FCC completes its Rule 51.319 proceedings consistent with the U.S. Supreme Court's decision in the *Iowa Utilities Board* case. Although the FCC issued a press release on September



15, 1999 regarding its rule 319 proceeding, there is no written order yet, and it appears that the FCC intends to conduct further proceedings. The 1996 Act does not require BellSouth to combine network elements for ALECs, and the FCC's rules (47 C.F.R. §§51.315(c) - (f)) which purported to impose such an obligation on incumbent LECs such as BellSouth were vacated and remain so today. Thus, this issue is not appropriate for arbitration. BellSouth is, however, willing to negotiate a voluntary commercial agreement with ITC^DeltaCom (and other ALECs) to perform certain services or functions that are not subject to the requirements of the 1996 Act.

**STAFF:**

Staff takes no position at this time.

**ISSUE 8(a):** Should BellSouth be required to provide to ITC^DeltaCom extended loops or the loop/port combination?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. 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, in fact, has provided 2500 extended loops to ITC^DeltaCom. Extended loops permit ITC^DeltaCom to offer service into sparsely populated areas. Witness Hyde will present testimony regarding this issue.

**BELLSOUTH:**

No. Although the FCC recently issued a press release regarding its Rule 319 proceeding, there is no written order yet, and it appears that the FCC intends to conduct further proceedings. Second, even after the FCC issues its order, BellSouth is only obligated to provide combinations of those elements where they are currently combined in BellSouth's network. BellSouth is not obligated under the 1996 Act or the FCC's rules to combine network elements on behalf of ALECs such as ITC^DeltaCom, including "extended loops" (e.g., UNE loop and UNE dedicated transport) or a "loop/port" (e.g., UNE loop and UNE switch port) combinations. Further, there is no requirement for BellSouth to combine UNEs with tariffed services such as a loop combined with BellSouth's tariffed special access transport service. With respect to any previously provided combinations of loops and special access services, BellSouth was not required to do so under the prior agreement and does not agree to do so under the parties' new agreement.

**STAFF:**

Staff takes no position at this time.

**ISSUE 8(b):** If so, what should the rates be?

**POSITIONS:**

**ITC^DELTACOM:**

See Response to 8(a).

**BELLSOUTH:**

Because BellSouth is not required to combine network elements for ALECs under the 1996 Act, the issue of applicable rates for such network combinations is not properly the subject of arbitration. To the extent the Commission concludes otherwise or determines to establish rates for network elements that are currently combined in BellSouth's network, the Commission should do so in the context of its current UNE pricing docket (Docket No. 990649-TP) rather than through an

arbitration involving one ALEC. Thus, this issue is not appropriate for arbitration.

**STAFF:**

Staff takes no position at this time.

**ISSUE 11:** Should BellSouth be required to provide NXX testing functionality to ITC^DeltaCom? If so, how?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. ITC^DeltaCom has requested a methodology which BellSouth can easily utilize which allows BellSouth to provide NXX testing capabilities to ALECs such as ITC^DeltaCom at a reasonable cost based price. Indeed, it is not disputed that ITC^DeltaCom has actually made several proposals to accomplish this testing over the past year. The latest proposal made by ITC^DeltaCom is to order remote call forwarding at cost based rates rather than tariffed rates. Witness Hyde will discuss this proposal.

To test whether this method would work, ITC^DeltaCom has already purchased out of the retail tariff remote call forwarding for the sole purpose of testing NXX codes loaded by BellSouth. ITC^DeltaCom recommends that BellSouth provide this feature functionality at the rate that BellSouth provided remote call forwarding for interim number portability to ITC^DeltaCom, which is \$2.73 per month per call forward number. In addition, ITC^DeltaCom has requested that it be able to purchase the software function for Remote Call Forward with Remote Access without having to buy a business line as specified in the general subscriber services tariff. This is necessary in order for ITC^DeltaCom to test that ITC^DeltaCom's customer can properly receive calls that are translated by BellSouth's switch and test the number that the call rings to. At bottom, this is a quality of service issue.

**BELLSOUTH:**

BellSouth is not required to provide NXX testing functionality to ITC^DeltaCom. Nonetheless, BellSouth has offered to

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provide an NXX testing option to ITC^DeltaCom that is equivalent to the means by which BellSouth carries out NXX testing for itself, which involves the use of a foreign exchange ("FX") line. ITC^DeltaCom is simply unwilling to pay for the FX line to accomplish its testing.

**STAFF:**

Staff takes no position at this time.

**ISSUE 12:** What should be the installation interval for the following loop cutovers:

(a) single

**POSITIONS:**

**ITC^DELTACOM:**

ITC^DeltaCom has requested that the Commission embrace a policy that no Florida customers should be out of telephone service for more than 15 minutes when switching to a ALEC. It is technically feasible to meet this requirement and BellSouth should be required to do so. The specter of losing service for extended periods of time has far reaching affects on the success of competition in Florida. Where service disconnection can be avoided, there simply is no excuse for a customer being completely out of service for more than fifteen minutes on any cut over, regardless of whether it is a single or multiple line cut over. The terms of the interconnection agreement between ITC^DeltaCom and BellSouth must require that when effectuating a service cut over, BellSouth shall disconnect the customers lines one at a time, cut the line over to ITC^DeltaCom and restore service to that line so that no one line is out of service for longer than fifteen minutes. BellSouth does not dispute that it is able to make a one loop cut over in fifteen minutes. Witness Hyde will present testimony regarding this issue.

**BELLSOUTH:**

BellSouth has proposed a loop cutover installation interval time of fifteen (15) minutes for a single circuit loop conversion.

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**STAFF:**

Staff takes no position at this time.

**ISSUE 12:** (b) multiple

**POSITIONS:**

**ITC^DELTACOM:**

Response included in 12(a).

**BELLSOUTH:**

With respect to multiple loop cutovers or circuit conversions, BellSouth has proposed to use fifteen (15) minutes as the maximum interval time for one loop with multiple loop cutovers being accomplished in increments of time per loop or circuit conversion of less than fifteen (15) minutes. The loop cutover process is a multiple step process that requires a great deal of mutual cooperation and coordination between BellSouth and the ALEC. Thus, it is appropriate for different installation intervals to be established based upon the number of loops to be cutover to the ALEC (i.e. ITC^DeltaCom).

**STAFF:**

Staff takes no position at this time.

**ISSUE 13:** Should SL1 orders without order coordination be specified by BellSouth with an a.m. or p.m. designation?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. BellSouth is able to provide an a.m. or p.m. designation to SL1 orders. Parity requires that ITC^DeltaCom be provided the same information as that available to BellSouth to serve BellSouth's retail customers. ITC^DeltaCom must have an a.m. or p.m. designation so that ITC^DeltaCom's technician can stand in the shoes of the BellSouth technician, not in the shoes of the retail end user. Section 251(c) requires access at parity. Thus, BellSouth must provide the same service to

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ITC^DeltaCom to that which BellSouth provides itself, its affiliates or its end user. Witness Hyde will discuss this issue.

**BELLSOUTH:**

BellSouth will agree to accept a customer's request for an A.M. or P.M. designation when access to the customer's premises is required. In those instances where access to the customer's premises is not required, or if access is required but the customer is indifferent as to the time of day, BellSouth should not be required to designate A.M. or P.M. installation. This process is comparable to the scheduling BellSouth offers to its retail customers, which places ITC^DeltaCom at parity with BellSouth.

**STAFF:**

Staff takes no position at this time.

**ISSUE 15:** Should BellSouth be required to designate specific UNE Center personnel for coordinating orders placed by ITC^DeltaCom?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. This issue relates to whether ITC^DeltaCom should have a designated, but not exclusively dedicated, person who will act as ITC^DeltaCom's "point person" at the BellSouth UNE center. ITC^DeltaCom urges the Commission to require BellSouth to designate UNE center personnel in part because the USE center closes at 7:00 p.m. and if ITC^DeltaCom is late starting a cut, regardless of whether that is caused by BellSouth, ITC^DeltaCom or the customer, ITC^DeltaCom could contact their designated representative directly and arrange for overtime work or whatever arrangements would be necessary to effectuate the cut over as soon as possible. A common pool for personnel, with no accountability for particular ALECs, is not conducive to building relationships between ITC^DeltaCom and BellSouth which ultimately benefit Florida

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consumers. ITC^DeltaCom's request seems simple. ITC^DeltaCom wants a person identified as their contact at the UNE Center. Witness Hyde will discuss this issue.

**BELLSOUTH:**

BellSouth should not be required to specifically dedicate its personnel to serve only ITC^DeltaCom or any other individual ALEC. BellSouth incurs significant costs in connection with providing personnel to handle all ALEC orders for services and UNEs. BellSouth reviews anticipated and historical staffing requirements and appropriately assigns work activity in the most efficient manner possible in order to complete all necessary work functions for all ALECs.

**STAFF:**

Staff takes no position at this time.

**ISSUE 17:** Should BellSouth be responsible for maintenance to HDSL and ADSL compatible loops provided to ITC^DeltaCom?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. In order to be HDSL or ADSL compatible, loops must meet certain strict engineering requirements. ITC^DeltaCom's position regarding this issue is that if ITC^DeltaCom buys a UNE that is HDSL or ADSL compatible, it should remain HDSL or ADSL compatible as long as ITC^DeltaCom continues to pay for that loop. If a change in BellSouth's network, such as the addition of taps or other network event somehow renders the facility to be no longer HDSL or ADSL compatible (i.e. diminishes the quality of service on that loop) then BellSouth should repair the facility to return that compatibility. During the hearings, BellSouth seems to have agreed to ensure that HDSL or ADSL compatibility is maintained. Witness Hyde will discuss this issue.

**BELLSOUTH:**

BellSouth will provide maintenance and repair for HDSL and ADSL compatible loops as the parties may agree. However, the

loop modifications requested by ITC^DeltaCom are not a UNE offering. Thus, if BellSouth is providing a loop that has been modified from its original technical standards at the request of ITC^DeltaCom, such as HDSL or ADSL compatibility, then BellSouth cannot guarantee that the modified loop will meet the technical standards of a non-modified loop.

**STAFF:**

Staff takes no position at this time.

**ISSUE 20(a):** Should BellSouth be required to coordinate with ITC^DeltaCom 48 hours prior to the due date of a UNE conversion?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. ITC^DeltaCom submits that BellSouth should be required to coordinate UNE conversions with ITC^DeltaCom. BellSouth does not disagree but does not want such a requirement to be included in the interconnection agreement. Of course, if order coordination is not incorporated into the contract, ITC^DeltaCom will have no assurance it will continue.

Order coordination ensures customer cut overs are completed efficiently and smoothly. ITC^DeltaCom requests that BellSouth's UNE center contact ITC^DeltaCom's installation group or allow ITC^DeltaCom's installation group to contact BellSouth to validate due dates, engineering requirements and other technical issues. The parties engage in this activity today, one day in advance where ITC^DeltaCom initiates the contact, and have done so for several months. However, experience shows that one day advance coordination is not sufficient. ITC^DeltaCom has asked that coordination be required 48 hours in advance and that this process be memorialized in the interconnection agreement to ensure that BellSouth will not unilaterally discontinue the practice of order coordination. Witness Hyde will discuss this issue.

**BELLSOUTH:**



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No. BellSouth does not agree that coordination 48 hours prior to the due date is necessary on every type of UNE conversion. However, with respect to SL2 type loops only, BellSouth will agree to use its best efforts to schedule a conversion date and time 24 to 48 hours prior to the conversion.

**STAFF:**

Staff takes no position at this time.

**ISSUE 21:** Should BellSouth be required to establish Local Number Portability (LNP) cutover procedures under which BellSouth must confirm with ITC^DeltaCom that every port subject to a disconnect order is worked at one time?

**POSITIONS:**

**ITC^DELTACOM:**

Because of problems experienced with BellSouth not completing the disconnect order for a customer porting LNP numbers, ITC^DeltaCom has requested that BellSouth ensure the disconnect order is completed such that customers can receive calls without impairment of service quality. This requirement was established in the FCC's LNP Order. The "minimum impairment of quality" standard imposed by the FCC requires that a disconnect order will be worked in no less than 2 hours, otherwise the customer cannot receive calls from their neighbors. Witness Hyde will discuss this issue.

**BELLSOUTH:**

Although BellSouth cannot agree with the timeframes proposed by ITC^DeltaCom (which were not raised directly in the Petition), BellSouth agrees that coordination between itself and ITC^DeltaCom is important for Local Number Portability ("LNP") order cutovers. Additionally, BellSouth already has LNP cutover procedures in place and will agree to language to ensure that the disconnect order is completed for all ported numbers once the Number Portability Administration Center ("NPAC") notification of ITC^DeltaCom's Activate Subscription Version for those numbers has been received by BellSouth. The issue to which BellSouth cannot agree is the timeframes

proposed by ITC^DeltaCom. The proposed timeframes are not reasonable and should not be adopted by the Commission.

**STAFF:**

Staff takes no position at this time.

**ISSUE 22:** Should "order flow-through" be defined? If so, how?

**POSITIONS:**

**ITC^DELTACOM:**

BellSouth argues that "order flow-through" need not be defined in the interconnection agreement. This is in marked contrast to BellSouth's position regarding the definition of the term "local traffic." (Petition Issue 5(c)) In that case, BellSouth seeks a definition that is even more specific than the one it successfully urged the Commission to adopt when it submitted for approval the interconnection agreement that governed the relationship between the parties for the two years beginning June 1997.

**BELLSOUTH:**

BellSouth does not agree with ITC^DeltaCom's proposed definition of "flow-through" nor does BellSouth believe that it is necessary for the interconnection agreement to contain a definition of "flow-through." However, to the extent such a definition is necessary, the Commission should adopt a definition that is consistent with the FCC's use of the term. See FCC Second Louisiana Order, at ¶107, CC Docket 98-121 (August 13, 1998). Based upon the FCC's definition, an order "flows through" an ordering system only when a ALEC or BellSouth representative takes information directly from an end user customer, inputs it directly into an electronic order interface without making any changes or manipulating the customer's information, and sends the complete and correct order downstream for mechanized order generation.

**STAFF:**

Staff takes no position at this time.

**ISSUE 23:** 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)?

**POSITIONS:**

**ITC^DELTACOM:**

When a BellSouth customer places or originates a call and uses the ITC^DeltaCom network to complete that call, ITC^DeltaCom incurs costs. The costs are a result of the use of ITC^DeltaCom's network. When the call is completed to a standard residential or standard business customer, BellSouth has agreed to pay reciprocal 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.

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 complete that call. 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 recent Declaratory Ruling at paragraph 25 evidences the FCC's view that compensation must be paid to carriers for termination of calls to ISPs. Paragraph 25 states 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." (Paragraph 25, FCC Declaratory Ruling (emphasis added)) Subsequent to this pronouncement, the states of California and Maryland have 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 Public Staff has recommended that reciprocal compensation be applied to ISP-bound calls.

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. 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. Witness Rozycki will cover this issue.

**BELLSOUTH:**

Under the 1996 Act (47 U.S.C. § 251 (b)(5)) and the FCC's rules (47 C.F.R. § 51.701), it is clear that reciprocal compensation is applicable only to local traffic, not to all traffic that may be routed over "local" trunks. "Local" trunks may actually carry access, or toll, traffic in addition to local traffic. ISP-bound traffic, even if routed over local interconnection trunks, is not subject to the 1996 Act's requirement of reciprocal compensation. The FCC's recent Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released on February 26, 1999, confirmed unequivocally that ISP-bound traffic is interstate in nature, not local. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.

The FCC is developing an inter-carrier compensation mechanism for ISP-bound traffic outside the scope of the requirements of Section 251(b)(5) of the 1996 Act. (See FCC's Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released February 26, 1999, at FN 87). Although BellSouth does not believe that compensation for ISP-bound traffic is subject to a Section 252 arbitration since ISP traffic is interstate, BellSouth has proposed an interim inter-carrier compensation mechanism for ISP-bound traffic until such time as the FCC issues a final order in its pending inter-carrier compensation docket.

**STAFF:**

Staff takes no position at this time.

**ISSUE 24:** What should be the rate for reciprocal compensation?

**POSITIONS:**

**ITC^DELTACOM:**

Section 252(d)(2)(A)(i) and (ii) of the Act require that the rate paid for reciprocal compensation be based on cost. Specifically, 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." (Section 252(d)(2)(A)) This Commission approved a rate for reciprocal compensation when it approved the interconnection agreement which governed the relationship between the parties for the past two years. Put simply, this Commission determined the previous rate for reciprocal compensation to be compliant with the requirements of Section 252(d) of the Act. The interconnection agreement between the parties which was previously approved by the Commission set forth a rate of \$.009 per minute for termination of local traffic including ISP-bound traffic. BellSouth has not produced a cost study which proposes a different rate.

ITC^DeltaCom asserts that the \$.009 rate is still reasonable and meets the requirements of the Act. Indeed, nothing has changed in the past two years that should cause the Commission to conclude the underlying costs associated with transport and termination have changed.

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**BELLSOUTH:**

The appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching and common transport that are used to transport and terminate local traffic and were established in the Commission's Order No. PSC-98-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, dated April 29, 1998. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function.

**STAFF:**

Staff takes no position at this time.

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**ISSUE 29:** If ITC^DeltaCom needs to reconnect service following an order for a disconnect, should BellSouth be required to reconnect service within 48 hours?

**POSITIONS:**

**ITC^DELTACOM:**

The interconnection agreement resulting from this docket should first and foremost further the interests of Florida consumers. There are instances where consumers are disconnected by either ITC^DeltaCom or BellSouth in error either because of non-payment issues, slamming issues, or other unusual circumstances. To address the concerns that arise when such a disconnection occurs, ITC^DeltaCom has sought a commitment from BellSouth that it will reconnect the customer, if facilities are available, within forty-eight hours of the customer reporting the error. Witness Hyde presents this issue.

**BELLSOUTH:**

No. BellSouth cannot reserve facilities for 48 hours following an order for a disconnect, as ITC^DeltaCom contends. As a practical matter, once a UNE facility has been disconnected for any reason, that facility is subject to immediate reuse, whether by other ALECs or BellSouth's end-users. BellSouth should not be required to maintain facilities for any set period of time once service has been disconnected. Nonetheless, BellSouth will agree to use its best efforts to reconnect service as expeditiously as possible.

**STAFF:**

Staff takes no position at this time.

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**ISSUE 34:** What type of repair information should BellSouth be required to provide to ITC^DeltaCom such that ITC^DeltaCom can keep the customer informed?

**POSITIONS:**

**ITC^DELTACOM:**

The Act requires that ITC^DeltaCom be at parity with BellSouth. This includes access to the information BellSouth has to provide service to its retail customers, including information relating to repairs. Specifically, ITC^DeltaCom's has requested the ability to enter customer trouble tickets into the BellSouth maintenance system, retrieve and track the current status of the tickets, received an estimated time of repair on a real time basis. Additionally, ITC^DeltaCom has asked that in cases where a technician is not going to be able to meet the anticipated schedule of repair that ITC^DeltaCom receive notice, that ITC^DeltaCom be able to retrieve a list of itemized time and material charges so that those charges can be verified and billed to ITC^DeltaCom's customers correctly.

**BELLSOUTH:**

BellSouth provides ITC^DeltaCom with nondiscriminatory access to BellSouth's maintenance and repair OSS today by providing electronic interfaces such as the Trouble Analysis and Facilities Interface ("TAFI") and the Electronic Communications Trouble Administration ("ECTA") Gateway as well as manual interfaces. Among other things, these interfaces allow ITC^DeltaCom to enter customer trouble tickets into the BellSouth system, retrieve and track current status on all ITC^DeltaCom trouble and repair tickets, and receive an estimated time to repair on a real-time basis. ITC^DeltaCom is at parity with BellSouth since ITC^DeltaCom and BellSouth both can use TAFI to check the status of repair tickets and to view end user customer's maintenance histories. BellSouth is willing to negotiate mutually acceptable language on this issue for inclusion in the agreement, although BellSouth does not agree that it is necessary or appropriate to include a list of the information that ITC^DeltaCom seeks to be included in the interconnection agreement. Additionally, TAFI does not provide itemized time and material charges for BellSouth's own



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retail units, and thus, BellSouth is not required to provide them for ITC^DeltaCom or any other ALEC.

**STAFF:**

Staff takes no position at this time.

**ISSUE 36:** Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed?

**POSITIONS:**

**ITC^DELTACOM:**

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, 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. Cageless collocation does not require the construction of an enclosure for ITC^DeltaCom to place its equipment in the BellSouth central office. Witness Wood addresses this issue.

**BELLSOUTH:**

No. BellSouth is not required by the 1996 Act or the FCC's rules to provide cageless collocation within 30 days after a firm order has been placed. The FCC recently stated that it was not adopting specific provisioning intervals at this time. (See First Report and Order and Further Notice of Proposed Rulemaking, Docket No. CC 98-147, at ¶ 54). In addition, given the numerous factors and activities required to fulfill a collocation request, it is neither practical nor feasible to require BellSouth to complete the collocation request within 30 days. The absence of enclosure construction has little, if any, bearing on the overall provisioning interval for collocation since permitting, space preparation and network infrastructure work, among others, must still be completed regardless of the type of arrangement selected.

**STAFF:**

Staff takes no position at this time.

**ISSUE 38:** What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?

**POSITIONS:**

**ITC^DELTACOM:**

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. Competitive local exchange carriers also incur costs associated with this transition. ALECs 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 CLECs are the users of OSS. Witnesses Thomas and Wood discuss this issue.

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. 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.

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 are

presented in a costs study and subject to scrutiny in an evidentiary hearing before the Commission may BellSouth charge ITC^DeltaCom for use of OSS.

**BELLSOUTH:**

BellSouth is entitled under the 1996 Act and the FCC's orders and rules to recover the reasonable charges it incurs in developing, providing, and maintaining the interfaces that make BellSouth's OSS accessible to competitors such as ITC^DeltaCom. (See *AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc. et al.*, slip Op. No. 97-79 (E. D. Ky., September 9, 1998)) ("Because the electronic interfaces will only benefit the ALECs, the ILECs, like BellSouth, should not have to subsidize them ... there is absolutely nothing discriminatory about this concept."). BellSouth is submitting the cost study results for the development and implementation of the OSS Electronic Interfaces which were previously filed on December 3, 1998 in Docket No. 981052-TP. The OSS Electronic Interfaces are the systems that BellSouth developed specifically to provide ALECs with the ability to transmit a local service request ("LSR") electronically. Both resale and UNE LSRs can be transmitted via these interfaces. The cost studies reflect both recurring and nonrecurring costs and the studies are based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, dated April 29, 1998.

**STAFF:**

Staff takes no position at this time.

**ISSUE 39:** 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, or
- c) two-wire SL1 loops.

**POSITIONS:**

**ITC^DELTACOM:**

In response to (a)-(c), ITC^DeltaCom states, 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.

ITC^DeltaCom asks the Commission to 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. Witnesses Wood and Hyde cover this issue.

To accomplish the task of establishing these interim rates, ITC^DeltaCom proposes a series of adjustments to BellSouth's cost study.

**BELLSOUTH:**

With respect to two-wire ADSL compatible loops, two-wire HDSL compatible loops, and four-wire HDSL compatible loops this issue is not appropriate for arbitration since the Commission has previously determined in its Order No. PSC-98-0604-FOF-TP the appropriate rates for these individual UNEs that ITC^DeltaCom is seeking in this arbitration. These UNE rates approved by the Commission should simply be incorporated into the parties' interconnection agreement. (See Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP dated April 29, 1998). ITC^DeltaCom's request for a "four-wire ADSL compatible loop" is also not appropriate for arbitration since ADSL functionality is not applicable to four-wire loops. The rates for the requested UNEs are set forth in Exhibit AJV-1, attached to the testimony of BellSouth witness, Mr. Varner. Finally, with respect to the issue of two-wire SL1 loops, since the Commission has not previously established a rate for this UNE, BellSouth is presenting a cost study for the two-wire SL1 loop. This cost study is based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP dated April 29, 1998. The Commission should approve BellSouth's cost study and set the rate for this UNE accordingly.

**STAFF:**

Staff takes no position at this time.

**ISSUE 40(a):** Should BellSouth be required to provide:

1. two-wireSL2 loops or
2. two-wireSL2 loop Order Coordination for Specified Conversion Time?

**POSITIONS:**

**ITC^DELTACOM:**

Yes. These are UNEs that must be provided. Witness Hyde covers this issue.

**BELLSOUTH:**

With respect to the issues of two-wire SL2 loops and two-wire SL2 loop with Order Coordination for Specified Conversion Time, BellSouth is willing to provide these UNEs to ITC^DeltaCom and other ALECs in Florida. Since the Commission had not previously established rates for these items, BellSouth is presenting cost studies for two-wire SL2 loops and for Order Coordination for Specified Conversion Time. These cost studies are based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP and 960846-TP, dated April 29, 1998.

**STAFF:**

Staff takes no position at this time.

**ISSUE 40(b):** If so, what are the appropriate recurring and non-recurring rates and charges?

**POSITIONS:**

**ITC^DELTACOM:**

See answer to 39 above. Witnesses Wood and Hyde cover this issue.

**BELLSOUTH:**

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Response to 40(b) included in 40(a).

**STAFF:**

Staff takes no position at this time.

**ISSUE 41:** Are there costs associated with disconnection, and if so, what should BellSouth be permitted to charge ITC^DeltaCom for disconnection?

**POSITIONS:**

**ITC^DELTACOM:**

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. This circumstance occurs when 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, which if warm dial tone is being provided did not actually occur. Witness Hyde discusses this issue.

**BELLSOUTH:**

BellSouth disagrees with the underlying assumption of this issue since BellSouth does incur costs in disconnecting service. If there are any instances when BellSouth does not incur any costs associated with a disconnection, BellSouth agrees that it should not charge ITC^DeltaCom. However, BellSouth is entitled to recover its costs incurred to disconnect services for ITC^DeltaCom and other ALECs.

**STAFF:**

Staff takes no position at this time.

**ISSUE 42:** What should be the appropriate recurring and non-recurring 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?

**POSITIONS:**

**ITC^DELTACOM:**

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 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).

Like virtual collocation, with cageless collocation, a collocator's equipment is placed within the ILEC equipment line-ups 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 the ILEC - BellSouth - but rather are incurred by the ALEC - ITC^DeltaCom. The only major difference between virtual and cageless collocation are the differences associated with installation, maintenance and repair and training.

Thus, calculation of the rates that may be charged for cageless collocation are relatively simple. The Commission utilizes 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. Once such a study is presented and scrutinized, the rates for cageless collocation may need to be modified. Until that time, the Commission should direct that the interconnection agreement include rates for cageless collocation which are equal to the virtual collocation rates minus the costs which will be incurred directly by the ALEC. Witness Wood covers this issue.

**BELLSOUTH:**

Rates for many of the collocation elements were previously approved by this Commission in its Order No. PSC-98-0604-TP in Docket Nos. 960752-TP, 960833-TP, and 960846, dated April 29, 1998. (Cost Reference Nos. H.1.1-H.1.19). To order cageless and shared collocation, ITC^DeltaCom would simply order the amount of floor space necessary for their collocation arrangement. The floor space rate has already been approved by this Commission and is still appropriate for caged, cageless or shared collocation. Thus, with respect to these previously determined rates, there is no need for further review through this arbitration. Finally, BellSouth is also proposing a single interim rate for card key security access to collocation space, until such time as permanent rates can be established. The interim rate is from the Commission's Order No. PSC-98-0604-TP dated April 29, 1998 ("Physical Collocation - Security Access System - New Access Card Activation, per request - 5 cards"). BellSouth will file with the Commission a complete cost study, using the previously accepted cost study methodology and inputs specified by the Commission, in order to establish permanent rates for Security Access Systems.

**STAFF:**

Staff takes no position at this time.

**ISSUE 43:** Should BellSouth be permitted to charge ITC^DeltaCom for conversions of customers from resale to unbundled network elements? If so, what is the appropriate charge?

**POSITIONS:**

**ITC^DELTACOM:**

The U.S. Supreme Court's decision in the *Iowa Utilities Bd.* case greatly altered the landscape regarding UNE pricing and UNE combinations. When a customer is served through resale, BellSouth provides use of its network at wholesale rates to a ALEC. The network is nothing more than a group of combined or connected UNEs. When a customer served through resale is converted to a USE based platform, and no changes are made to the network.

**BELLSOUTH:**

There is no requirement in the 1996 Act or in the FCC's rules that obligates BellSouth to convert a ALEC's customer from resale to UNEs at no cost. BellSouth is entitled to recover its reasonable costs if it performs this function. Moreover, ITC^DeltaCom and other ALECs cannot convert resale service to unbundled elements since such conversion would require BellSouth to provide a combination of UNEs. BellSouth is not obligated to combine UNEs, and the UNEs that an incumbent must provide on an individual, let alone combined basis, will not be defined until the FCC completes its Rule 319 proceedings. (See BellSouth's position on Issues 7 and 8(a) herein).

**STAFF:**

Staff takes no position at this time.

**ISSUE 44:** What procedures should ITC^DeltaCom and BellSouth adopt for meet-point billing?

**POSITIONS:**

**ITC^DELTACOM:**

BellSouth has not demonstrated any need for a meet point billing arrangement. Witness Hyde discusses this issue.

**BELLSOUTH:**

BellSouth's position regarding Meet Point Billing ("MPB") arrangements is to utilize, to the extent possible, the

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standard industry procedures that have been in place for ILECs and the Interexchange Carriers ("IXCs") since 1986. These procedures are documented in the Multiple Exchange Carrier Access Billing ("MECAB") and Multiple Exchange Carrier Ordering Document ("MECOD") documents which were developed by the Ordering and Billing Forum ("OBF") and are contained in the OBF Guidelines.

Alternatively, BellSouth proposes that default parameters be used in lieu of the National Exchange Carriers Association ("NECA") FCC Tariff No. 4 which is the foundation for the MECAB and MECOD methods. Under this proposal, all meet point arrangements will be billed on a multi-tariff, multi-bill method with the border interconnection percentage ("BIP") fixed at 95% BellSouth and 5% ITC^DeltaCom. This interim method would be discontinued once ITC^DeltaCom becomes a member of NECA and begins to use the NECA infrastructure (e.g. MECAB and MECOD methods) or when the industry develops an alternative solution.

**STAFF:**

Staff takes no position at this time.

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**ISSUE 45:** Which party should be required to pay for the Percent Local Usage (PLU) and Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?

**POSITIONS:**

**ITC^DELTACOM:**

The parties appear to agree that it is reasonable for either party to request and audit of PLU and PIU reports. These reports are crucial to the relationship between the parties. ITC^DeltaCom asserts that the Party requesting the audit should pay for the audit. BellSouth asserts that where the audit reveals incorrect reporting a penalty should be assessed against the party that is responsible for the poor reporting performance. Specifically, BellSouth asserts that a party that is caught overstating the PIU/PLU by twenty percentage points or more, should be required to pay for the audit. Witness Hyde discusses this issue.

**BELLSOUTH:**

BellSouth agrees that the party requesting an audit should be responsible for the costs of the audit, if no substantial irregularities are identified. In the event the audit reveals that either party is found to have overstated the percent local usage ("PLU") or percent interstate usage ("PIU") by 20 percentage points or more, then the responsible party should be required to reimburse the other party for the costs of the audit. This is a fair and reasonable provision for the protection of both parties and is based upon BellSouth's standard agreement and industry practice and custom. Contrary to ITC^DeltaCom's position, such a contract provision is not a "penalty" provision since the costs are those actually incurred in performing the audit.

**STAFF:**

Staff takes no position at this time.

**ISSUE 48:** Should language covering tax liability be included in the interconnection agreement, and if so, whether that language should simply state that each Party is responsible for its tax liability?

**POSITIONS:**

**ITC^DELTACOM:**

The interconnection agreement between these parties which was previously approved by the Commission 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." However, BellSouth did not offer any proposed language which would govern tax liability. ITC^DeltaCom suggest that tax liability should be assessed outside the interconnection agreement and are a matter between the particular companies and the taxing authorities. Witness Rozycki covers this issue.

**BELLSOUTH:**

Tax issues are not addressed in Sections 251 or 252 of the 1996 Act. Thus, this issue is not appropriate for arbitration under Section 252 of the 1996 Act. If the Commission chooses to address this issue, the Commission should simply order the parties to include language in the agreement that clearly defines the respective duties of each party in the handling of tax issues. BellSouth has proposed fair and reasonable language.

**STAFF:**

Staff takes no position at this time, although staff believes this issue is not within the scope of this arbitration proceeding.

IX. EXHIBIT LIST

As with the list of witnesses set forth in Section VI, the following list of witnesses and exhibits will be modified. Some exhibits will be stricken or withdrawn at the hearing due to the decisions at the prehearing conference to remove specific issues from the list of issues to be addressed in this proceeding. I note that the parties have indicated that they will endeavor to reach an agreement prior to hearing regarding which witnesses' exhibits may be stricken based on the decisions set forth herein. To the extent, however, that they are unable to reach such an agreement prior to the hearing, we will rule on this matter at the hearing.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Christopher Rozycki	ITC^DeltaCom	<u>CJR-1</u>	Summary of Issues from Negotiations
		<u>CJR-2</u>	Performance Measurements from SWBT/ Southside Communications Agreement
		<u>CJR-3</u>	BellSouth's Proposed Self-Enforcing Penalties
		<u>CJR-4</u>	BST Private Line, General Service and Access Tariffs.
Thomas Hyde	ITC^DeltaCom	<u>TAH-1</u>	BellSouth Customer Problem List
		<u>TAH-2</u>	ITC^DeltaCom/ BellSouth UNE Conversations

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>TAH-3</u>	Confidential Exhibit. List of BellSouth problems
		<u>TAH-4</u>	Nonrecurring Cost Development Chart
Michael Thomas	ITC^DeltaCom	<u>MT-1</u>	FPSC Order No. PSC-98-1484-FOF-TP
		<u>MT-2</u>	Confidential Exhibit. Report from January through June 1999
		<u>MT-3</u>	Ordering and Provisioning section of Agreement
Don Wood	ITC^DeltaCom	<u>DJW-1</u>	Curriculum Vitae of Don J. Wood
Alphonso J. Varner	BellSouth	<u>AJV-1</u>	Florida UNE Rate and Cost Analysis
		<u>AJV-2</u>	ISP Traffic Diagrams (A and B)
		<u>AJV-3</u>	ISP Traffic Diagrams (C and D)

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<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>AJV-4</u>	BellSouth's Inter-Carrier Compensation Proposal at the FCC
		<u>AJV-5</u>	ISP Traffic Diagrams (E and F)
		<u>AJV-6</u>	ISP Traffic Diagram (G)
		<u>AJV-7</u>	Proposed Interim Inter-Carrier Access Service Compensation Plan
		<u>AJV-8</u>	Calculation of Sharing Percentage
D. Daonne Caldwell	BellSouth	<u>DDC-1</u>	Cost Study
D. Daonne Caldwell	BellSouth	<u>DDC-2</u>	Cost Study
		<u>DDC-3</u>	Cost Study
		<u>DDC-4</u>	Cost Study
		<u>DDC-5</u>	Cost Study
		<u>DDC-6</u>	Pages from BellSouth's FCC Tariff No. 1



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
W. Keith Milner	BellSouth	<u>WKM-1</u>	Pictures demonstrating loop cut-over process
Ronald M. Pate	BellSouth	<u>RMP-1</u>	Flow-through Report and Flow Chart
		<u>RMP-2</u>	Flow chart
		<u>RMP-3</u>	Flow chart
Dr. William Taylor	BellSouth	<u>WET-1</u>	Curriculum Vita for Dr. Taylor
David A. Coon	BellSouth	<u>DAC-1</u>	ITC^DeltaCom's Proposed Performance measurements
David A. Coon	BellSouth	<u>DAC-2</u>	BellSouth's Service Quality Measurements ("SQMs")
		<u>DAC-3</u>	Measurement by Measurement Comparison

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. RULINGS

- A. BellSouth's Motion to Remove Issues from Arbitration, filed October 1, 1999, is granted with the exception of Issue 41. Testimony regarding these issues that reaches

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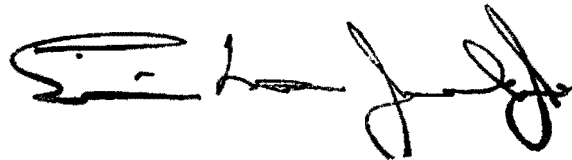
appears that a party is failing to comply with a Commission-approved negotiated or arbitrated agreement.

- B. ITC^DeltaCom's Motion to Extend Filing date to September 23, 1999, for Prehearing Statements is granted.
- C. It is expected that the FCC will issue its Order on the Rule 319 remand very soon. Therefore, the parties may file supplemental testimony to address the FCC's Order up to seven (7) days prior to the hearing. Otherwise, if the FCC's Order is not issued prior to the hearing, but is issued prior to the filing of post-hearing briefs, then the parties may include discussion of the Order therein.

It is therefore,

ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 25th day of October, 1999.



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E. LEON JACOBS, JR.  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.