

**ORIGINAL**

**ITC^DELTACOM COMMUNICATIONS, INC.**

**REBUTTAL TESTIMONY OF CHRISTOPHER J. ROZYCKI**

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

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**CERTIFICATE OF SERVICE  
DOCKET NO. 990750-TP**

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1 **Q: ARE YOU THE SAME CHRISTOPHER ROZYCKI THAT FILED DIRECT**  
2 **TESTIMONY IN THIS PROCEEDING?**

3 **A:** Yes, I am.

4 **Q: WHAT IS YOUR PURPOSE IN TESTIFYING TODAY?**

5 **A:** The purpose of my testimony is to respond to a number of arguments  
6 made by BellSouth's witnesses in response to ITC^DeltaCom's petition  
7 for arbitration and related direct testimony. I would also like to clarify  
8 ITC^DeltaCom's position and provide additional information on a number  
9 of issues raised by BellSouth's witnesses in their direct testimony.

10 Issue 1 – Should BellSouth be required to comply with the performance  
11 measures and guarantees for pre-ordering/ordering, resale and  
12 unbundled network elements (“UNEs”), provisioning, maintenance,  
13 interim number portability and local number portability, collocation,  
14 coordinated conversions and the bona fide request processes as set forth  
15 fully in Attachment 10 of Exhibit A to this Petition?

16

17 **Q: ON PAGES 14-18, MR. VARNER DISCUSSES ITC^DELTACom'S PROPOSED**  
18 **PERFORMANCE MEASURES. DO YOU AGREE THAT BELLSouth'S SERVICE**  
19 **QUALITY MEASURES ARE ADEQUATE?**

20 **A:** No. While these measures are a start, they are not representative of  
21 what ITC^DeltaCom or the industry needs to assure performance.  
22 ITC^DeltaCom's Performance Measures and Performance Guarantees  
23 were developed by adapting many months of industry negotiations in  
24 Texas. We believe our proposed Performance Measures and

1 Guarantees more closely approximate industry consensus than those  
2 proposed by BellSouth. It is critical that performance measures and  
3 guarantees be implemented TODAY. Therefore, ITC^DeltaCom  
4 proposes that the Commission incorporate ITC^DeltaCom's proposed  
5 performance measures and guarantees into this interconnection  
6 agreement.

7

8 **Q: MR. VARNER GOES ON TO ARGUE THAT "ITC^DELTA COM APPARENTLY**  
9 **BELIEVES THAT PERFORMANCE MEASUREMENTS CAN ONLY BE ENFORCED**  
10 **THROUGH PENALTIES." IS HIS CHARACTERIZATION CORRECT?**

11 **A:** No, it is not. In a regulated monopoly environment it is possible that  
12 performance measurements can be enforced without penalties.  
13 However, in an industry transitioning to competition, such as, local  
14 telecommunications, we believe that self-executing performance  
15 guarantees are the only effective and responsive means to achieving  
16 and maintaining levels of service quality. The performance measures  
17 and guarantees we proposed offer a simpler, faster and more effective  
18 method of generating the kind of performance necessary to promote  
19 competition. The protracted litigation envisioned by Mr. Varner and  
20 BellSouth does not. Mr. Varner argues that "state law and  
21 commission procedures" are adequate to address any breach of  
22 contract situation that may arise. While the Commission certainly can  
23 address a breach of contract situation, this often takes many months  
24 and in some cases years and great Commission and industry

1 resources. ITC^DeltaCom could be forced to spend millions of dollars  
2 pursuing these complaints to compel adequate performance from  
3 BellSouth. Moreover, it rewards BellSouth and works a particular  
4 hardship on smaller companies such as ITC^DeltaCom. If this is the  
5 only alternative, then ITC^DeltaCom may have to file as many as fifty  
6 or more individual complaints in a two-month interval.<sup>1</sup>

7  
8 BellSouth's invitation to seek enforcement of the  
9 interconnection agreement at the Commission rather than agreeing to  
10 adequate performance measures and guarantees is inapposite to its  
11 unwillingness to agree to a "loser pays" clause in the interconnection  
12 agreement. I would add BellSouth would likely take the position that  
13 the Commission is without jurisdiction to award damages. Finally, I  
14 believe that BellSouth's suggestion that all cases of inadequate  
15 performance be resolved at the Commission in separate complaints or  
16 lawsuits is poor advice that, if accepted, will result in bad public policy.  
17 Such a position wastes the Commission's limited resources.

18  
19 **Q: HOW DO FLORIDA CONSUMERS BENEFIT FROM BELLSOUTH'S**  
20 **POSITION THAT POOR PERFORMANCE MUST BE ADDRESSED**  
21 **ON A CASE BY CASE BASIS BY THE COMMISSION?**

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<sup>1</sup> ITC^DeltaCom has experienced numerous failed cutovers, and service quality problems attributable to BellSouth. See Hyde proprietary Exhibits TAH-1,2, and 3.

1 **A:** They don't. Our complaints would do little to satisfy our customers  
2 who want results, competitive pricing and quality service now. Thus,  
3 the situation persists and customers are denied the ability to choose  
4 competitive alternatives for their telecommunications needs without  
5 being "penalized" by the roadblocks imposed by BellSouth. The  
6 Commission and the courts are simply not well-equipped to address  
7 the volume or respond quickly enough to resolve the complaints of  
8 CLECs and their end users. Likewise, CLECs are simply not able to  
9 expend the resources it would take to fight each and every  
10 performance failure or breach by BellSouth. For instance, BellSouth  
11 frequently fails to perform cutovers at the scheduled cutover time, and,  
12 in some cases, BellSouth fails to show up for the cutover at all.  
13 Further, ITC^DeltaCom's customers have, on numerous occasions,  
14 been taken out of service without notice or explanation. Such reckless  
15 acts by BellSouth frustrate customers and often cause them economic  
16 harm, and damage ITC^DeltaCom's reputation. For specific details of  
17 these BellSouth "bad acts," this Commission need only review the  
18 exhibits to Mr. Hyde's testimony.

19

20 **Q: PLEASE CLARIFY YOUR RECOMMENDATION.**

21 **A:** We believe, that the real answer to performance quality is to give  
22 BellSouth a clear and measurable performance objective and strong  
23 incentives to achieve that level of performance. The three tiers of self-  
24 executing performance guarantees set forth in Attachment 10 to our

1 proposed agreement provide such incentives. We are not alone in this  
2 belief. The Texas Public Service Commission staff has conducted an  
3 investigation of performance measures in the context of its ongoing  
4 Section 271 docket. Our position is not novel.<sup>2</sup> For example, on July 1,  
5 1999 an Administrative Law Judge (ALJ) of the California Public  
6 Utilities Commission (CPUC) issued a draft decision adopting 44  
7 performance measurements. Nearly all of these measures were  
8 agreed to by Pacific Bell and GTE California. The Commission should  
9 consider the CPUC order carefully.

10

11 **Q: DO YOU BELIEVE THAT MR. VARNER IS CORRECT IN HIS**  
12 **ASSUMPTION THAT THIS COMMISSION LACKS AUTHORITY TO**  
13 **ASSESS PENALTIES OR AWARD DAMAGES?**

14 **A:** No. This Commission certainly has authority to issue penalties as part of  
15 its authority to regulate local service in the State of Florida. For example,  
16 this Commission has approved BellSouth tariffs that contain late payment  
17 penalties and interest. In addition, this Commission has the authority  
18 under the 1996 Telecommunications Act to arbitrate the terms of this  
19 agreement. Indeed, the Act creates a duty for the Commission to  
20 arbitrate and decide the unresolved issues between the parties. Thus,  
21 this Commission has all necessary authority to determine what should  
22 and should not be included in this agreement, and can easily require

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<sup>2</sup> In addition to Texas and California, Pennsylvania, Michigan, New York, New Jersey, Vermont and Louisiana have investigated or adopted some form of ILEC performance measures and remedies.

1 specific contract language that any penalty or award of damages must be  
2 heard before court of competent jurisdiction.

3

4 I also note that Mr. Varner does not provide any specific authority for his  
5 contention that this Commission does not have authority to issue  
6 penalties or to include language that would require damages in the event  
7 of specific or continued nonperformance.

8

9 **Q: MR. VARNER STATES THAT THE COMMISSION HAS ALREADY**  
10 **ADDRESSED THIS ISSUE AND DETERMINED THAT AWARDED**  
11 **LIQUIDATED DAMAGES IS NOT APPROPRIATE. PLEASE STATE**  
12 **ITC^DELTA COM'S POSITION.**

13 **A:** As I stated earlier, enforcement mechanisms requiring performance must  
14 be included in this agreement. Already, ITC^DeltaCom has experienced  
15 problems with BellSouth repeatedly delaying cutovers and missing due  
16 dates for service completion. If this Commission cannot award damages,  
17 ITC^DeltaCom respectfully submits that it can issue penalties and require  
18 refunds and credits under the authority this Commission exercises today.  
19 Because ITC^DeltaCom's primary concern is ensuring performance not  
20 in collecting damages, ITC^DeltaCom recommends that tiers two and  
21 three of the performance measures and guarantees should be paid to the  
22 State of Florida just like any other penalty. ITC^DeltaCom firmly believes  
23 that tier one which credits or refunds ITC^DeltaCom for services  
24 BellSouth has promised but failed to deliver is also within the authority



1 that this Commission currently exercises. Through the tariff process, this  
2 Commission enforces penalties and requires credits and refunds to  
3 consumers and interexchange carriers pursuant to BellSouth filed and  
4 approved tariffs.

5

6 **Q: ARE PERFORMANCE GUARANTEES A NEW CONCEPT?**

7 **A:** No. Mr. Varner states that a guarantee is completely unnecessary and  
8 state law and Commission procedures are available. What Mr. Varner  
9 fails to mention is that BellSouth already offers performance guarantees  
10 to both its access and retail customers. Today, ITC^DeltaCom, a  
11 customer and competitor of BellSouth, is not offered similar performance  
12 guarantees through its interconnection agreement. Clearly, BellSouth  
13 considers performance guarantees and penalties appropriate in certain  
14 circumstances, but not for its competing customer, ITC^DeltaCom.  
15 Attached to my rebuttal testimony as Exhibit CJR-4 are tariff pages where  
16 BellSouth currently provides customer guarantees.

17

18 **Q: ARE PERFORMANCE MEASURES AND ENFORCEMENT**  
19 **MECHANISMS PARTICULARLY IMPORTANT AND NECESSARY FOR**  
20 **ITC^DELTACOM?**

21 **A:** Yes. A facilities-based carrier such as ITC^DeltaCom is dependent upon  
22 BellSouth for essential network elements. Preordering, ordering,  
23 provisioning, billing, repair and maintenance of these leased facilities is

1 provided by BellSouth. ITC^DeltaCom is similarly dependent upon  
2 BellSouth with respect to resold services. If BellSouth's performance on  
3 any of these functions is in any way deficient, ITC^DeltaCom's customer  
4 holds ITC^DeltaCom responsible. Thus, it is easy to understand why  
5 BellSouth would prefer their proposed Service Quality Measurements or  
6 no measures at all, to our proposed performance guarantees. Under  
7 BellSouth's "proposed" Service Quality Measures, if BellSouth fails to  
8 perform there are only occasional refunds of NRCs and there are no  
9 predetermined consequences for repeated failures. There really is very  
10 little risk to BellSouth if they fail to perform, but there is a significant cost  
11 to the CLEC to file and litigate a complaint before the Commission. Most  
12 importantly, however, the consumers of Florida will be better protected  
13 and better served if solid performance measures and guarantees are put  
14 in place.

15

16 **Q: DO THE FCC'S RULES SPEAK TO PERFORMANCE STANDARDS**  
17 **AND ENFORCEMENT MECHANISMS?**

18 **A:** Yes. The Telecommunications Act of 1996 (the "Act") and FCC rules  
19 require that incumbent local exchange companies provide  
20 interconnection, access to unbundled network elements and resale at  
21 parity to that which it provides to itself. See 47 U.S.C. § 251(c)(2)(C);  
22 47 C.F.R. § 51-503(a)(3). Access to network elements must be  
23 provided on a nondiscriminatory basis, and the level of access must be  
24 equal in terms of "quality, accuracy, and timeliness." *Application of*

1           *Ameritech Michigan Pursuant to § 271 of the Communications Act of*  
2           *1934, as Amended, to Provide In-Region, InterLATA Services in*  
3           *Michigan, CC Docket 96-98, ¶¶ 139* Also, in its decision rejecting  
4           BellSouth's second Louisiana Section 271 application, the FCC cited  
5           the Louisiana Commission's requirement that BellSouth develop  
6           performance standards and, indeed, applauded the Louisiana  
7           Commission for taking these steps. *In the Matter of Application of*  
8           *BellSouth Corporation, BellSouth Telecommunications, Inc., and*  
9           *BellSouth Long Distance, for Provisions of In-Region, InterLATA*  
10           *Services in Louisiana, CC Docket 98-121, ¶¶ 93.* In addition, this  
11           Commission also has general supervisory authority over telephone  
12           companies.

13

14   **Q: HAS BELL SOUTH OFFERED PERFORMANCE GUARANTEES OR**  
15   **ANY TYPE OF CREDIT OR REFUND FOR SERVICES NOT**  
16   **DELIVERED OR PERFORMED SIMILAR TO THAT BELL SOUTH**  
17   **CURRENTLY PROVIDES TO ITS RETAIL AND ACCESS**  
18   **CUSTOMERS?**

19   **A:** No. BellSouth has not offered ITC^DeltaCom a comparable guarantee  
20   to that which is currently contained in BellSouth's tariffs. BellSouth's  
21   access tariff contains a Commitment Guarantee Program providing  
22   credits should BellSouth fail to meet its installation or repair of services  
23   (E2.4.16). BellSouth offers an "unconditional satisfaction guarantee" in  
24   its general subscriber services tariff (A12.20.3). Why do retail

1 residential and business retail customer obtain credits for a “missed  
2 installation or repair” (A2.17) pursuant to the Commitment Guarantee  
3 Program and not CLECs? Surely ITC^DeltaCom (a wholesale  
4 purchaser) deserves the same “Commitment Guarantee.”  
5 ITC^DeltaCom simply wants assurance in its interconnection  
6 agreement from BellSouth that it will issue credits or refunds if  
7 BellSouth misses an installation or repair commitment. This is tier one  
8 of the Performance Measures and Guarantees.  
9 ITC^DeltaCom does not believe that BellSouth has successfully  
10 negotiated with any CLEC to include any such guarantees in the  
11 interconnection agreements. In the end, ITC^DeltaCom, a wholesale  
12 purchaser of UNEs, is accorded less treatment than BellSouth’s other  
13 customers, retail and access.

14

15 **Q: MR. VARNER STATES THAT BELL SOUTH IS “WORKING WITH THE FCC TO**  
16 **FINALIZE A BELL SOUTH PROPOSAL FOR SELF-EFFECTUATING ENFORCEMENT**  
17 **MEASURES.” DO YOU THINK THE COMMISSION SHOULD WAIT FOR THESE**  
18 **“MEASURES?”**

19 **A:** No. ITC^DeltaCom is not a party to these discussions, so we have no  
20 idea what the outcome might be. We believe that our approach, or  
21 some variation of the performance guarantees proposed by  
22 ITC^DeltaCom will prove to be far more effective than the BellSouth  
23 proposed self-effectuating enforcement measures. In addition, as Mr.  
24 Varner points out, BellSouth’s self-effectuating enforcement measures

1 would not be effective until BellSouth is granted interLATA authority by  
2 the FCC. Based on the performance ITC^DeltaCom, and other  
3 CLECs, receive from BellSouth today, the term of this agreement may  
4 have expired before BellSouth's FCC proposed enforcement  
5 measures go into effect. ITC^DeltaCom and its customers must have  
6 relief today, through specified performance measures and guarantees  
7 in the parties' interconnection agreement. Our approach will spur  
8 competition in Florida.

9  
10 Issue 2: Should BellSouth be required to waive any nonrecurring charges  
11 when it misses a due date?

12  
13 **Q: BELL SOUTH WITNESS VARNER INDICATES THAT A WAIVER OF NON-**  
14 **RECURRING CHARGES FOR A MISSED DUE DATE IS A "PENALTY OR**  
15 **LIQUIDATED DAMAGES PROVISION." [P. 16] WHAT IS YOUR RESPONSE?**

16 **A:** I disagree. It is a performance guarantee similar to that which  
17 BellSouth offers to its customers today out of its tariffs. Each time  
18 BellSouth schedules a due date with ITC^DeltaCom and the customer,  
19 it is critical that the due date be met. ITC^DeltaCom incurs cost for  
20 each scheduled event. If BellSouth fails to show up, which happens  
21 frequently, we incur the cost of our technician's time. The waiver of  
22 non-recurring charges is a way for ITC^DeltaCom to avoid penalties  
23 resulting from BellSouth's inaction and non-performance. The

1 customer may also have scheduled a technician or vendor to be on-  
2 site during the event. The customer incurs the cost of the  
3 technician/vendor time. In addition, to the real monetary costs  
4 incurred by ITC^DeltaCom and its customer, the failure to complete  
5 the work as scheduled causes the customer to lose confidence in the  
6 ability of ITC^DeltaCom to effectively manage the customer's  
7 telecommunications needs. This significantly damages the reputation  
8 and good name ITC^DeltaCom has worked so hard to establish.  
9 Conversely, without performance guarantees, BellSouth incurs no  
10 costs associated with their failure to meet their commitment. Without  
11 performance guarantees, BellSouth has both economic and  
12 competitive incentives to miss scheduled due dates. These incentives  
13 are offset somewhat by imposing a nonrecurring charge waiver on  
14 BellSouth.

15 **Q: IS BELL SOUTH'S POSITION CONSISTENT?**

16 **A:** No. While Mr. Varner argues that a waiver of non-recurring charges for  
17 a missed due date is a "penalty", BellSouth, in its self-effectuating  
18 enforcement measures document agrees to refund "the Non-Recurring  
19 Charge for all orders...where BellSouth missed the due date." I  
20 attached BellSouth's Proposal for Self-Effectuating Enforcement  
21 Measures as Exhibit CJR-3 to my direct testimony. In the same  
22 document BellSouth refers to the waiver of nonrecurring charges as  
23 "enforcement payments." According to BellSouth, when it fails to  
24 meet one of its performance measures BellSouth will "compensate the

1 CLEC based on the charges for a service BellSouth committed to  
2 perform and then did not perform as specified." This document,  
3 therefore, is contrary to Mr. Varner's view that the performance  
4 guarantees are a penalty. Additionally, in Tennessee, BellSouth filed a  
5 brief in which it proposed to have certain charges waived for missed  
6 due dates.

7

8 Issue 23 - Should BellSouth be required to pay reciprocal compensation to  
9 ITC^DeltaCom for all calls that are properly routed over local trunks, including  
10 calls to Internet Service Providers ("ISPs")?

11 Issue 24 – What should be the rate for reciprocal compensation?

12

13 **Q: HAVE THE PARTIES AGREED TO A RECIPROCAL COMPENSATION RATE?**

14 **A:** No.

15 **Q: WHERE DO THE PARTIES STAND ON THIS ISSUE?**

16 **A:** ITC^DeltaCom originally proposed the rate that is in our current  
17 agreement, \$.009 per minute of use. This is the rate approved by this  
18 Commission as compliant with Sections 251 and 252 of the Act. I have  
19 proposed a rate of \$0.0045 per MOU for the first year, with a reduction  
20 of \$0.0005 per MOU per year until the rate equals BellSouth's  
21 proposed elemental rate. As always, ITC^DeltaCom stands ready to  
22 negotiate a fair and equitable solution to this issue.

23

1 **Q: WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?**

2 **A:** During negotiations BellSouth argued that no compensation was due  
3 for ISP-bound traffic. Mr. Varner's testimony, however, puts forth a  
4 brand new argument as to why BellSouth should not pay for using  
5 ITC^DeltaCom's network. Mr. Varner's argument can be summarized  
6 as follows:

- 7
- 8 • Paying reciprocal compensation for ISP-bound traffic is inconsistent
  - 9 with the law and is not sound public policy;
  - 10 • The Commission's efforts to arbitrate this issue would be "fruitless"
  - 11 and a "wasted effort" and therefore this issue should not be
  - 12 addressed or arbitrated; and
  - 13 • ISPs are carriers and, therefore, ITC^DeltaCom should pay
  - 14 BellSouth access on ISP-bound traffic.
  - 15

16 **Q: DOES MR. VARNER ACCURATELY DESCRIBE HOW ITC^DELTA COM**  
17 **PROVIDES SERVICE TO ISP CUSTOMERS?**

18 **A:** No. Once again, BellSouth is describing models and services that  
19 ITC^DeltaCom does not provide. ITC^DeltaCom provides its ISP  
20 customers local service in the form of local lines purchased from local  
21 tariffs. ISPs buy these local lines or services in order to receive local  
22 calls from end users.

23

24 **Q: MR. VARNER STATES THAT LOCAL TRUNKS MAY CARRY**  
25 **ACCESS OR TOLL TRAFFIC. HOW IS ITC^DELTA COM'S**  
26 **TRUNKING NETWORK ARRANGED?**



1    **A:**    ITC^DeltaCom has two way trunk groups in Florida and local traffic  
2           (including ISP traffic) is on one trunk group and all other traffic goes on  
3           another trunk group.

4

5    **Q:**    **MR. VARNER STATES ON PAGE 41 THAT ISPS ARE CARRIERS.**  
6           **IS THIS TRUE?**

7    **A:**    No. ISPs do not currently obtain certificates of authority to provide  
8           telecommunications services in Florida nor are they regulated as  
9           carriers by the FCC.

10

11   **Q:**    **ARE YOU AWARE OF ANY DECISIONS BY THE FCC THAT**  
12           **SPECIFICALLY STATE ISPS ARE CARRIERS?**

13   **A:**    No. Although Mr. Varner states on page 41 that ISPs are carriers, he  
14           does not provide the order or ruling to support this statement. After  
15           much research, I found the following:

16

17           First, based on FCC rules, it is not appropriate to treat ISPs as  
18           carriers. In the FCC's *Computer II Inquiry* (77 FCC 2 d 384, 387 –  
19           released May 2, 1980), the FCC found that ESPs (of which ISPs are a  
20           subset) are not common carriers within the meaning of Title II of the  
21           Communications Act. This FCC decision was codified in FCC rule  
22           64.702. Section 64.702 of the FCC rules provides:

23

1 [T]he term enhanced service shall refer to services offered over  
2 common carrier transmission facilities used in interstate  
3 communications which employ computer processing  
4 applications that act on the format, content, code, protocol or  
5 similar aspects of the subscriber's transmitted information;  
6 provide the subscriber additional, different or restructured  
7 information, or involve subscriber interaction with stored  
8 information. Enhanced services are not regulated under Title II  
9 of the Act. [emphasis added]  
10

11 Second, FCC regulations clearly specify that ISPs are to be treated as  
12 end users. The FCC's declaratory ruling at paragraph 15 specifically  
13 comments on the status of ISPs:

14 The Commission's treatment of ESP [enhanced service  
15 providers, of which ISPs are a subset] traffic dates from 1983  
16 when the Commission first adopted a different access regime  
17 for ESPs. Since then, the Commission has maintained the ESP  
18 exemption, pursuant to which it treats ESPs as end users under  
19 the access charge regime and permits them to purchase their  
20 links to the PSTN through intrastate local business tariffs rather  
21 than through interstate access tariffs. As such, the Commission  
22 discharged its interstate regulatory obligations through the  
23 applications of local business tariffs. Thus, although  
24 recognizing that it was interstate access, the Commission has  
25 treated ISP-bound traffic as though it were local. [emphasis  
26 added]  
27

28 Mr. Varner's characterization of ISPs as carriers rather than end users  
29 is incorrect and this nullifies his argument that ITC^DeltaCom should  
30 share revenues it receives from its ISP customers with BellSouth.

31

32 **Q: DO YOU AGREE WITH BELL SOUTH'S POSITION THAT RECIPROCAL**  
33 **COMPENSATION RATES ARE NOT APPLICABLE TO ISP BOUND TRAFFIC AND**  
34 **THAT THIS COMMISSION SHOULD NOT ADDRESS THIS ISSUE?**

1 **A:** No, I do not. The FCC's *Declaratory Ruling in C.C. Docket No. 96-98*  
2 *and Notice of Proposed Rulemaking in CC Docket No. 99-68*  
3 (hereafter "*Declaratory Ruling*"), provides to the states an enormous  
4 responsibility to determine the proper compensation that carriers  
5 should receive for this traffic until a national rule is established. The  
6 following excerpt from paragraph 26 of the FCC's *Declaratory Ruling* is  
7 dispositive:

8 Although reciprocal compensation is mandated under Section  
9 251(b)(5) only for the transport and termination of local traffic,  
10 neither the statute nor our rules prohibit a state commission from  
11 concluding in an arbitration that reciprocal compensation is  
12 appropriate in certain instances not addressed by section  
13 251(b)(5), so long as there is no conflict with governing federal  
14 law. A state commission's decision to impose reciprocal  
15 compensation obligations in an arbitration proceeding – or a  
16 subsequent state commission decision that those obligations  
17 encompass ISP-bound traffic – does not conflict with any  
18 Commission rule regarding ISP-bound traffic. *By the same token,*  
19 *in the absence of governing federal law, state commissions also*  
20 *are free not to require the payment of reciprocal compensation for*  
21 *this traffic and to adopt another compensation mechanism.*  
22 [footnotes omitted, emphasis added]  
23

24 **Q:** **ARE THERE OTHER NOTEWORTHY SECTIONS WITHIN THE FCC DECLARATORY**  
25 **RULING?**

26 **A:** Yes. In paragraph 29 the FCC states:  
27

28 We acknowledge that, no matter what the payment arrangement,  
29 LECs incur a cost when delivering traffic to an ISP that originates  
30 on another LEC's network.  
31

1 From these two paragraphs it is clear that while a state Commission is  
2 "...free not to require the payment of reciprocal compensation for this  
3 traffic...", if it chooses this path it must "adopt another compensation  
4 mechanism." Thus, the FCC does not sanction simply ignoring the  
5 issue.

6

7 **Q: HASN'T THE FCC SPECIFICALLY HELD THAT ISP-BOUND TRAFFIC IS**  
8 **INTERSTATE IN NATURE?**

9 **A:** Yes. That is discussed in footnote number 87 in the FCC's  
10 *Declaratory Ruling*. However, the issue of determining the appropriate  
11 level of compensation for ISP bound traffic isn't simplified by this  
12 finding. In its *Declaratory Ruling* the FCC makes it clear that in the  
13 past it has treated ISP bound traffic as local in nature and as I  
14 discussed earlier the FCC has left it to the State Commissions to  
15 establish compensation mechanisms based upon this assumption in  
16 the future.

17

18 **Q: WHY DO YOU STATE THAT RECIPROCAL COMPENSATION RATES MAY STILL BE**  
19 **APPLICABLE TO ISP-BOUND TRAFFIC?**

20 **A:** The FCC has obviously left the state commissions to determine an  
21 appropriate rate of compensation one LEC should pay another for ISP-  
22 bound traffic. It appears that the FCC has given the state  
23 commissions an option to either adopt the reciprocal compensation  
24 rates that they have already put in place as reasonable payment for all

1 other types of local traffic, or, to construct another means of  
2 compensation specific to ISP-bound traffic. Hence, while ISP-bound  
3 traffic may no longer meet the legal definition of "local traffic" that the  
4 FCC has found appropriate for compensation under Section 251(b)(5)  
5 of the TA96, the FCC has given a strong indication that such reciprocal  
6 compensation rates are a good place to start when determining  
7 reasonable rates for ISP-bound traffic.

8  
9 **Q: HAVE OTHER STATE COMMISSIONS MADE DECISIONS IN THIS RESPECT SINCE**  
10 **THE FCC ISSUED ITS DECLARATORY RULING?**

11 **A:** Yes. 16 states have issued decisions since the FCC's issuance of its  
12 Declaratory Ruling. Among those that have interpreted the FCC's  
13 Declaratory Ruling for purposes of governing interconnection  
14 agreements within their intra-state jurisdictions, the Maryland  
15 Commission provides the most reasoned reading to date of the FCC's  
16 intentions. In *Order No. 75280* at pages 16 and 17 the Maryland  
17 Commission finds as follows:

18  
19 Thus, under the FCC's *ISP Order*, it is incumbent upon this  
20 Commission to determine an interim cost recovery methodology  
21 which may be used until the FCC completes its rulemaking on this  
22 issue and adopts a federal rule governing inter-carrier  
23 compensation arrangements.

24  
25 In fact, according to the FCC, "State commissions are free to  
26 require reciprocal compensation for ISP-bound calls, or not require  
27 reciprocal compensation and **adopt another compensation**  
28 **mechanism**, bearing in mind that ISP/ESPs are exempt from  
29 paying access charges." This directive does not leave us the

1 option of providing for no compensation for ISP-bound calls. State  
2 commissions must either require reciprocal compensation or  
3 develop another compensation mechanism. To fail to provide for  
4 any compensation would violate the 1996 Act, which states:

5  
6 A State commission shall not consider the terms and  
7 conditions for reciprocal compensation to be just and  
8 reasonable unless such terms and conditions provide for  
9 the mutual and reciprocal recovery by each carrier of  
10 costs associated with the transport and termination on  
11 each carrier's network facilities of calls that originate on  
12 the network facilities of the other carrier. 47 USC §  
13 252(d)(2)(A).  
14

15 We are very concerned that the adoption of BA-MD'S position  
16 will result in CLECs receiving no compensation for terminating  
17 ISP-bound traffic. Such an effect will be detrimental to our  
18 efforts to encourage competition in Maryland. No one disputes  
19 that local exchange carriers incur costs to terminate the traffic of  
20 other carriers over their network. In the absence of finding that  
21 reciprocal compensation applies, a class of calls (ISP traffic) will  
22 exist for which there is no compensation. The reciprocal  
23 compensation rates established by our arbitration order and  
24 contained in the approved Statement of Generally Available  
25 Terms ("SGAT") reflect the costs of this termination. Until the  
26 FCC establishes an appropriate inter-carrier compensation  
27 mechanism for ISP-bound traffic, we find that it is in the public  
28 interest to require BA-MD to pay our arbitrated reciprocal  
29 compensation rates contained in the SGAT as an **interim**  
30 compensation mechanism. [footnotes omitted, emphasis in  
31 original]  
32  
33

34 **Q: MR. VARNER SUGGESTS IN HIS TESTIMONY ON PAGE 34 THAT**  
35 **"COMPENSATION FOR ISP BOUND TRAFFIC IS NOT SUBJECT TO A SECTION**  
36 **252 ARBITRATION." DO YOU AGREE?**

37 **A:** No, I do not and neither does the FCC. In footnote 87, found in  
38 paragraph 26 of the FCC's *Declaratory Ruling*, the FCC states as  
39 follows:

1           **As discussed, *supra*, in the absence of a federal rule, state**  
2           **commissions have the authority under section 252 of the Act**  
3           **to determine inter-carrier compensation for ISP-bound traffic.**

4           Moreover, in its *Notice of Proposed Rulemaking* included as a portion  
5           of its *Declaratory Ruling*, the FCC tentatively concludes that even if the  
6           FCC ultimately adopts a federal policy, states should still set inter-  
7           carrier compensation rates for ISP-bound traffic:

8

9           **30. We tentatively conclude that, as a matter of federal**  
10          **policy, the inter-carrier compensation for this interstate**  
11          **telecommunications traffic [ISP-bound traffic] should be**  
12          **governed prospectively by interconnection agreements**  
13          **negotiated and arbitrated under sections 251 and 252 of the**  
14          **Act. Resolution of failures to reach agreement on inter-**  
15          **carrier compensation for interstate ISP-bound traffic then**  
16          **would occur through arbitrations conducted by state**  
17          **commissions, which are appealable to federal district courts.**

18

19       **Q: MR. VARNER BELIEVES THAT RECIPROCAL COMPENSATION FOR ISP-BOUND**  
20       **TRAFFIC IS INCONSISTENT WITH SOUND PUBLIC POLICY. DO YOU AGREE?**

21       **A:** No, I do not. Good public policy and sound economic principles  
22       require the Commission to reject BellSouth's proposal and find that  
23       ITC^DeltaCom must be allowed to recover from BellSouth costs it  
24       incurs for carrying BellSouth's traffic.

1 **Q:** DO YOU AGREE WITH BELLSOUTH'S POSITION THAT ITC^DELTA COM SHOULD  
2 PAY BELLSOUTH FOR ORIGINATING CALLS FROM BELLSOUTH CUSTOMERS  
3 WHICH ARE ULTIMATELY DELIVERED TO AN ISP SERVED BY ITC^DELTA COM?

4 **A:** No, I do not. BellSouth's position is switched access charges should  
5 apply to traffic passed to ISP customers and that the switched access  
6 charge regime is the proper framework within which to view ISP.<sup>3</sup>  
7 Within the switched access charge framework, long distance carriers  
8 compensate local exchange carriers both to originate and terminate  
9 calls placed over their networks. In contrast to the switched access  
10 regime, reciprocal compensation obligates the local exchange carrier  
11 originating the call to compensate the carrier terminating the call for  
12 carrying the traffic on its network. The switched access charge regime  
13 is an old model that is currently being challenged in every state and is  
14 being revised substantially by the FCC. If the Commission chooses to  
15 view ISP bound traffic as part of the switched access regime, it will be  
16 going in exactly the opposite direction of where the rest of the country,  
17 including the FCC, is headed. That is, this Commission will be  
18 embracing a structure that a growing number of states have found to  
19 be significantly out-of-line with cost causation and in bad need of  
20 repair.

21

---

<sup>3</sup> See BellSouth's *Comments* to the FCC in C.C. Docket No. 99-68, pages 8-9, as well as Mr. Varner's testimony at pages 50-60 including Exhibit AJV-7.



1 More importantly, calls to an ISP customer do not resemble switched  
2 access traffic, as they are not purchased as switched access traffic  
3 and the FCC has already found that switched access charges do not  
4 apply to such traffic. Hence, it is important that even if this  
5 Commission decides that the reciprocal compensation rate paid for all  
6 other local traffic is not applicable to ISP-bound traffic and that some  
7 other rate should apply, it must find that the reciprocal compensation  
8 *framework* (i.e. the originating carrier is responsible for costs  
9 associated with carrying the call) is the proper framework within which  
10 to establish reasonable rates for ISP-bound traffic. If any semblance  
11 of economic cost causality is to remain in the local exchange  
12 marketplace, BellSouth's proposal to charge CLEC's for carrying its  
13 own traffic must not be adopted.

14

15 **Q: Is ITC^DELTACOM "ATTEMPTING TO AUGMENT THE REVENUES IT**  
16 **RECEIVES FROM ITS ISP CUSTOMERS AT THE EXPENSE OF BELL SOUTH'S**  
17 **END-USERS" AS BELL SOUTH CLAIMS?**

18 **A:** No. ITC^DeltaCom's ISP customers pay for the services they purchase  
19 from ITC^DeltaCom. By making calls to the ISP customers of  
20 ITC^DeltaCom, BellSouth's end users causes ITC^DeltaCom to incur  
21 switching and transport expense not covered in the rates charged to  
22 ISPs. ITC^DeltaCom requests that BellSouth compensate  
23 ITC^DeltaCom for the use of those services through an appropriate,

1 mutually agreed upon per minute of use reciprocal compensation  
2 mechanism.

3

4 **Q: IS THERE EVIDENCE THAT ITC^DELTA COM INTENDS TO SERVE NON-ISP**  
5 **CUSTOMERS?**

6 **A:** Absolutely. First, ITC^DeltaCom has tariffs on file in each of the states  
7 it operates for local residential and business service. Although the  
8 number of customers ITC^DeltaCom has in this market are small when  
9 compared to BellSouth, ITC^DeltaCom continues its efforts to attract  
10 these customers and to grow.

11

12 Second, the Commission need look no further than the evidence  
13 presented by ITC^DeltaCom in this case to determine that  
14 ITC^DeltaCom is serious about providing a wide range of local  
15 telecommunications services in Florida. Of the testimony filed by  
16 ITC^DeltaCom, only a fraction comprises testimony dealing with the  
17 reciprocal compensation issue. Other witnesses present testimony  
18 dealing with charges for operations support systems, performance  
19 benchmarks, parity and remedies. These issues are not specific to  
20 ITC^DeltaCom's ability to serve ISP customers, but are **critical** to the  
21 ability of ITC^DeltaCom to serve a wide range of customers.

22

23 **Q: ITC^DELTA COM'S LOCAL MARKET SHARE IS SMALL IN COMPARISON TO THAT**  
24 **OF BELL SOUTH. IS THERE A REASON FOR THAT DISCREPANCY?**

1 **A:** Yes. First, ITC^DeltaCom has many hurdles to overcome as it enters  
2 the market including acquisition of adequate financing and  
3 development of name recognition among customers. Most  
4 importantly, ITC^DeltaCom must overcome the obstacles BellSouth  
5 presents as the two parties negotiate this interconnection agreement.  
6 Until these arbitration issues are resolved, ITC^DeltaCom can not  
7 make a determination as to whether aggressive market entry is  
8 warranted.

9  
10 Issue 3: What is the definition of parity? Pursuant to this definition, should  
11 BellSouth be required to provide the following: (1) Operational Support  
12 Systems ("OSS"), (2) UNEs, (3) White Page Listings, and (4) Access to  
13 Numbering Resources (5) An unbundled loop using Integrated Digital Loop  
14 Carrier (IDLC) technology; (6) Interconnection; (7) Service Intervals on  
15 winbacks; (8) Priority guidelines for repair and maintenance and UNE  
16 provisioning; and (9) White Page Listings to independent third party  
17 publishers?

18  
19 **Q: MR. VARNER CLAIMS THAT BELL SOUTH IS ALREADY OBLIGATED, BY THE ACT**  
20 **AND FCC RULES TO PROVIDE ITC^DELTACOM AND ANY OTHER CLEC**  
21 **NONDISCRIMINATORY ACCESS TO TELECOMMUNICATIONS MUNICATION SERVICES,**  
22 **UNBUNDLED NETWORK ELEMENTS, AND INTERCONNECTION. IS THAT OBLIGATION**  
23 **SUFFICIENT PROTECTION FOR ITC^DELTACOM?**

1 **A:** No it is not. First of all, it simply makes good sense to include specific  
2 language to enhance the parties' understanding of their commitments.  
3 While Mr. Varner is correct that BellSouth is required by the  
4 Telecommunications Act, FCC Rules and Orders, and State  
5 Commission Orders to provide nondiscriminatory access and parity of  
6 service to that which BellSouth provides to itself, its affiliates and  
7 subsidiaries, and other requesting telecommunications providers,  
8 ITC^DeltaCom simply wants specific contract language in the parties'  
9 Interconnection Agreement to make clear the parties' obligations under  
10 the law.

11

12 **Q: WHAT IS YOUR UNDERSTANDING OF MR. VARNER'S CLAIM THAT**  
13 **BELLSOUTH IS OFFERING SERVICES AT PARITY?**

14 **A:** Mr. Varner quotes FCC Rule 51.311, which states: "the quality of an  
15 unbundled network element, as well as the quality of the access to  
16 such unbundled network element, that an incumbent LEC provides to  
17 a requesting telecommunications carrier shall be at least equal in  
18 quality to that which the incumbent LEC provides itself." Mr. Varner  
19 then claims, "BellSouth complies with its obligations under the Act and  
20 FCC Orders to provide services to CLECs in a nondiscriminatory  
21 manner." As stated above, it is ITC^DeltaCom's position that clear and  
22 explicit language must be included in our interconnection agreement  
23 because we are not receiving service quality "at least equal in quality  
24 to that which the incumbent LEC provides itself." This is extremely

1           troubling, because we often sell our new customer service that is very  
2           similar or identical to the service it previously received from BellSouth.  
3           Further, ITC^DeltaCom believes that BellSouth often takes apart the  
4           customer's existing bundled elements and reassembles them in a  
5           substandard manner. This is clearly not the intent of the "at least  
6           equal in quality" clause quoted above. For example, with regard to  
7           unbundled network elements, Mr. Varner claims that ITC^DeltaCom is  
8           requesting "an impossible circumstance, not parity." BellSouth states  
9           that it does not provide UNEs to itself or its retail customers, and thus,  
10          BellSouth is not required to provide parity. Mr. Varner, however,  
11          correctly states that BellSouth is required to provide UNEs in a manner  
12          that allows ITC^DeltaCom a meaningful opportunity to compete. This  
13          does not mean that BellSouth may provide substandard service to  
14          ITC^DeltaCom. Unbundled Network Elements are simply pieces of the  
15          network that BellSouth, just as ITC^DeltaCom, combines to make a  
16          finished service. ITC^DeltaCom, in order to have a meaningful  
17          opportunity to compete, should be able to purchase unbundled  
18          network elements from BellSouth such that the individual elements are  
19          equal to the quality of the same elements that are found in BellSouth's  
20          retail services.

21

22       **Q:     IN ADDITION TO THE FCC RULE CITED BY MR. VARNER IN HIS TESTIMONY,**  
23       **HAS THE FCC FURTHER DEFINED PARITY?**

1   **A:**           Yes. In its First Report and Order, released Aug. 8, 1996, the FCC  
2           provided the following:

3                   Accordingly, we conclude that the phrase  
4                   “nondiscriminatory access” in section 251(c)(3) means at  
5                   least two things: first, the quality of an unbundled  
6                   network element that an incumbent LEC provides, as  
7                   well as the access provided to that element, must be  
8                   equal between all carriers requesting access to that  
9                   element; second, where technically feasible, the access  
10                  and unbundled network element provided by an  
11                  incumbent LEC must be at least equal-in-quality to that  
12                  which the incumbent LEC provides to itself.<sup>4</sup> [Para. 312]  
13

14          The footnote to this passage is also enlightening:

15                   “We note that providing access or elements of lesser  
16                   quality than that enjoyed by the incumbent LEC would  
17                   also constitute an “unjust” or “unreasonable” term or  
18                   condition.”<sup>5</sup>  
19

20          This means that each time BellSouth delivers ITC^DeltaCom an  
21          unbundled network element, such as a local loop, of lesser quality than it  
22          provided itself in the process of providing service to the same end user, it  
23          is in violation of the Act. Today, BellSouth provides ITC^DeltaCom with  
24          numerous local loops that are not equal to those they provide to  
25          themselves.  
26

27          **Q: IS IT TRUE THAT THE FCC ALLOWS BELL SOUTH TO PROVIDE LOCAL LOOPS OF**  
28          **LESSER QUALITY TO CLEC'S THAN IT PROVIDES TO ITSELF?**

---

<sup>4</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 ¶ 312 (August 8, 1996).

<sup>5</sup> *Id.* at ¶ 312, footnote 676.

1   **A:**    No. In fact, paragraph 313 of the first Report and Order the FCC  
2   states:

3                   We believe that Congress set forth a “nondiscriminatory  
4                   access” requirement in section 251(c)(3), rather than an  
5                   absolute equal-in-quality requirement, such as that set  
6                   forth in section 251(c)(2)(C), because, in rare  
7                   circumstances, it may be technically infeasible for  
8                   incumbent LECs to provide requesting carriers with  
9                   unbundled elements, and access to such elements, that  
10                  are equal-in-quality to what the incumbent LECs provide  
11                  themselves.<sup>6</sup>  
12

13                In order for BellSouth to gain permission to provide local loops of  
14                lesser quality to ITC^DeltaCom, BellSouth must prove to the state  
15                commission that it is technically infeasible to provide access to  
16                unbundled elements, or the unbundled elements themselves, at the  
17                same level of quality that the incumbent LEC provides itself.

18

19   **Q:**    **HAS BELL SOUTH MADE SUCH A SHOWING OF PROOF BEFORE THIS**  
20            **COMMISSION?**

21   **A:**    I am not aware of such a filing.

22

23   **Q:**    **ON PAGE 22, MR. VARNER STATES THAT YOU CLAIM THAT BELL SOUTH**  
24            **ATTEMPTS TO WIN BACK CUSTOMERS PRIOR TO THE CUSTOMER’S SERVICE**  
25            **BEING “TURNED UP” BY ITC^DELTA COM. DID YOU MAKE THIS CLAIM AND**  
26            **DOES IT HAPPEN?**

---

<sup>6</sup> *Id at* ¶ 313.

1   **A:**   ITC^DeltaCom is experiencing the repercussions of purchasing UNEs  
2           at less than parity. In numerous instances the winback process for  
3           BellSouth begins while the customer is waiting for their service to be  
4           turned up by ITC^DeltaCom. The unreasonable delays caused by  
5           BellSouth forces customers to wait for their service to be activated.  
6           This delay provides BellSouth with ample time –too much time – to  
7           approach the customer and attempt to win them back by offering to get  
8           them back in service more quickly. This “window of opportunity” is  
9           made possible by the disparity in provisioning that ITC^DeltaCom  
10          experiences.

11

12           Issue 38 What charges, if any, should BellSouth be permitted to impose  
13           on ITC^DeltaCom for BellSouth’s OSS?

14

15   **Q:**   **ON PAGE 61 OF HIS TESTIMONY, VARNER STATES THAT OSS**  
16           **CHARGES SHOULD BE IMPOSED. PLEASE COMMENT.**

17   **A:**   As stated in my direct testimony, BellSouth’s OSS does not work – it  
18           simply does not provide ITC^DeltaCom or any CLEC with parity to the  
19           system access enjoyed by BellSouth. ITC^DeltaCom and many other  
20           CLECs are struggling to develop electronic interfaces to make the  
21           ordering process more efficient. ITC^DeltaCom has worked very hard to  
22           develop the capability on its side of the interfaces in order to send as  
23           many electronic orders as possible. I believe that BellSouth would agree



1 that it is, or at least should be, more efficient for ITC^DeltaCom to submit  
2 electronic orders to BellSouth, and that it is, or should be, more efficient  
3 for BellSouth to process CLEC orders electronically. Manually faxing  
4 orders to BellSouth is simply not an efficient method to submit local  
5 service requests. Further, ITC^DeltaCom and other CLECs do not have  
6 an electronic alternative available for the submission of LSRs to  
7 BellSouth. CLECs rely solely on the information, systems, databases and  
8 interfaces that BellSouth controls. Thus, the CLECs electronic ordering  
9 capabilities are dependent upon BellSouth, whether or not these systems  
10 and interfaces provide nondiscriminatory access to BellSouth's OSS.  
11 What is even more troubling with the small number of electronic orders  
12 submitted to BellSouth, is the fact that ITC^DeltaCom has constantly  
13 battled problems and experienced such poor results from the OSS  
14 BellSouth has created for CLECs. Certainly BellSouth could not  
15 electronically complete its millions of orders with such a poor OSS.

16

17 **Q: WHAT IS ITC^DELTA COM'S POSITION ON OSS CHARGES?**

18 **A:** The Telecommunications Act of 1996, FCC Orders and State  
19 Commission Orders have all required BellSouth to provide non-  
20 discriminatory access to BellSouth's OSS. In fact, the FCC ordered that  
21 non-discriminatory access to OSS functions be provided to CLECs by  
22 January 1, 1997. BellSouth could have modified its existing OSS  
23 interfaces for use by CLECs to comply with the FCC Order. BellSouth  
24 was not required to build separate systems for ITC^DeltaCom. This

1           undoubtedly would have been less costly, and would have provided  
2           CLECs with direct, non-discriminatory access to BellSouth's OSS.  
3           Instead, it is now third quarter 1999 and ITC^DeltaCom still does not  
4           have parity of OSS. BellSouth continues to develop new interfaces to  
5           provide "non-discriminatory access" to BellSouth's OSS, even though  
6           BellSouth argues, and has unsuccessfully argued for several years, that  
7           its current OSS interfaces provide non-discriminatory access to CLECs.  
8           Two years ago BellSouth claimed that LENS and EDI provided  
9           nondiscriminatory access, with EDI being the interface that BellSouth  
10          relied upon as its "nondiscriminatory ordering interface." Now BellSouth  
11          has developed yet another "non-discriminatory" interface, TAG. What's  
12          next? Constantly building OSS interfaces is extremely burdensome to a  
13          new entrant, especially when it is uncertain whether the "new" interface  
14          will provide nondiscriminatory access. ITC^DeltaCom will spend millions  
15          of dollars chasing a moving target – all the while we are receiving  
16          substandard OSS. Further, BellSouth wants ITC^DeltaCom, and all  
17          CLECs, to pay for every OSS interface that it builds, notwithstanding the  
18          costs ITC^DeltaCom and all CLECs incur to build out their side of the  
19          interfaces. This is nothing short of outrageous, and should be expressly  
20          rejected by this Commission.

21  
22  
23

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

1 audit reveals that either party was found to have overstated the PLU or  
2 PIU by 20 percentage points or more?

3  
4 **Q: WHAT IS ITC^DELTACom'S RESPONSE TO BELLSouth'S POSITION ON THE**  
5 **ISSUE OF WHO PAYS FOR AUDITS?**

6 **A:** ITC^DeltaCom agrees that the party requesting an audit should bear the  
7 cost. ITC^DeltaCom, however, would point out that BellSouth's proposed  
8 language contains a penalty provision. BellSouth's states that if the  
9 "audit reveals that a CLEC has overstated the PLU/PIU percentages by  
10 20 percentage points or more, that CLEC should pay for the audit."  
11 BellSouth argues that the Commission is not allowed to approve the  
12 performance guarantees ITC^DeltaCom has proposed in Attachment 10  
13 (penalties according to BellSouth), but then, argues that it is totally  
14 justified in demanding a penalty requirement when its auditors find an  
15 error in ITC^DeltaCom's PLU/PIU percentage. Further, Mr. Varner claims  
16 that this is "industry practice and custom." ITC^DeltaCom disagrees with  
17 this claim. Our current agreement with BellSouth does not include such  
18 language, nor does any other interconnection agreement that  
19 ITC^DeltaCom has entered into with other ILECs.

20  
21 Issue 46 – Should the losing party to an enforcement proceeding or  
22 proceeding for breach of the interconnection agreement be required to  
23 pay the costs of litigation?

1 **Q: WOULD THIS PROVISION ENCOURAGE FORUM SHOPPING AS**  
2 **ARGUED BY MR. VARNER?**

3 **A:** No. First, the proposed language is in the Parties existing  
4 interconnection agreement so BellSouth has agreed to this language  
5 previously. It did not produce any forum shopping that we are aware of.  
6 Second, the purpose of this provision is to encourage parties to meet  
7 their commitments under this agreement. If either party fails to meet its  
8 commitments and the issue is adjudicated, the responsible party pays the  
9 price for not settling the dispute in addition to its failure to meet the terms  
10 of the agreement. This provision actually encourages parties to settle  
11 rather than face a negative decision. It is ironic that BellSouth is not  
12 arguing for this provision as it would be in BellSouth's best interest to  
13 defray the costs of its defense, assuming, of course, BellSouth prevailed.

14

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

18

19 **Q: MR. VARNER STATES THAT THE CONTRACT SHOULD CLEARLY**  
20 **DEFINE THE PARTIES OBLIGATIONS. DO YOU AGREE?**

21 **A:** Yes. Even though we did not have tax language in our last agreement  
22 and have not had any problems on this issue, ITC^DeltaCom proposed  
23 tax language as an alternative to the confusing and lengthy language

1 proposed by BellSouth. ITC^DeltaCom does not know why its proposed  
2 language is not suitable. The language ITC^DeltaCom proposed comes  
3 from its interconnection agreements with other ILECs. A careful reading  
4 of BellSouth's language shows that it is, in places, inconsistent and  
5 confusing. ITC^DeltaCom's position is simply that each Party should  
6 comply with all applicable local, state and federal rules and regulations.

7

8 Issue 49 – Should BellSouth be required to compensate ITC^DeltaCom  
9 for breach of material terms of the contract?

10

11 **Q: DOES THIS COMMISSION HAVE AUTHORITY TO IMPOSE**  
12 **PENALTIES?**

13 **A:** Yes. As stated earlier in my testimony, I am not a lawyer but I believe that  
14 this Commission does have all necessary authority to impose penalties  
15 and does so today. However, if this Commission determines that it is not  
16 appropriate to assess penalties or damages then I would point out that  
17 this Commission can still arbitrate this issue just as it can arbitrate the  
18 issue of whether tax language should be included in the agreement.  
19 Thus, I disagree with Mr. Varner that this issue cannot be arbitrated just  
20 because the authority that would hear the dispute may not be this  
21 Commission but a court of a competent jurisdiction.

22

23

1 **Q: DOES THIS CONCLUDE YOUR TESTIMONY.**

2 **A:** Yes, however at this time the Parties positions continue to evolve as we  
3 continue to negotiate with BellSouth and we receive responses to  
4 discovery. To the extent my opinions are impacted by such  
5 developments, I intend to supplement my testimony.

6

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
ISSUED: July 1, 1996  
BY: Joseph P. Lacher, President - FL  
Miami, Florida

EFFECTIVE: July 15, 1996

## B7. DIGITAL NETWORK SERVICE<sup>1</sup>

### B7.8 SMARTPath<sup>®</sup> Service (Cont'd)

#### B7.8.1 General (Cont'd)

- B. SMARTPath<sup>®</sup> service is a service for transmission of digital signals only and uses only digital transmission facilities.
- C. SMARTPath<sup>®</sup> service is a shared high capacity network service capable of providing a 1.544 Mbps transport link with high performance and reliability parameters and a level of redundancy/diversity designed to limit a single event from interrupting service.
- D. This service is available only in those locations within specified SMARTPath<sup>®</sup> service Areas which the Company determines can be incorporated into the SMARTPath<sup>®</sup> service network enabling the Company to provide the specified level of performance and reliability. For locations where a customer requests SMARTPath<sup>®</sup> service and facilities are not available, construction charges will apply as set forth on Section B5. preceding.
- E. SMARTPath<sup>®</sup> service Areas are identified in the NATIONAL EXCHANGE CARRIER TARIFF (NECA) F.C.C. No. 4.
- F. The technical specifications and standard network interfaces for SMARTPath<sup>®</sup> service are contained in BellSouth Services Technical Reference Publication 73575. This publication is available from BellSouth Services Documentation Operations, North WSA1, 3535 Colonnade Parkway, Birmingham, Alabama 35243.
- G. DS1s carried over Synchronous Optical Network (SONET) transport systems can incur phase transients as a result of pointer adjustments. In some instances timing problems could surface in customer's equipment with Stratum 3 or better clocks. This may result in the customer's clock disqualifying its synchronization reference, generating an alarm and/or selecting an alternate reference or entering holdover. To insure proper operation, channelized DS1 circuits must comply with Bellcore Technical Advisory, TA-NWT-000436, Digital Synchronization Network Plan, and ANSI T1.101-1994. When timing is taken from a Company transported DS1, the customer's equipment must be capable of accommodating SONET pointer adjustments.

#### B7.8.2 Regulations

##### A. Description of Service

1. SMARTPath<sup>®</sup> service provides a transport link between a customer designated premises where the network is accessed and (1) another customer designated premises, in the same SMARTPath<sup>®</sup> service Area or (2) a serving wire center in the same SMARTPath<sup>®</sup> service Area for connection to (a) MegaLink<sup>®</sup> Channel Service, FlexServ<sup>®</sup> service, or LightGate<sup>®</sup> service, or (b) a SMARTPath<sup>®</sup> service Area Junction of another SMARTPath<sup>®</sup> service area in the same Metropolitan Area.
2. The performance objectives for SMARTPath<sup>®</sup> service are as follows:
  - a. Meet or exceed 99.99 percent Circuit Availability on a monthly basis. This objective applies except where a customer's equipment is disconnected and/or inoperative.
  - b. Meet or exceed 99.95 percent Error Free Seconds on a monthly basis.
  - c. Meet or exceed .009 percent Severely Errored Seconds on a monthly basis.
3. The performance guarantee for SMARTPath<sup>®</sup> service is as follows:
  - a. Guaranteed Service Installation - the Company will meet negotiated due date or credit an amount equal to the nonrecurring charge according to the Service Installation Guarantee described in B2.4.17.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

EXHIBIT CJA-4

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BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA  
ISSUED: July 1, 1996  
BY: Joseph P. Lacher, President - FL  
Miami, Florida

EFFECTIVE: July 15, 1996

**B7. DIGITAL NETWORK SERVICE<sup>1</sup>**

(N)

**B7.8 SMARTPath<sup>®</sup> Service (Cont'd)****B7.8.2 Regulations (Cont'd)****A. Description of Service (Cont'd)**

3. The performance guarantee for SMARTPath<sup>®</sup> service is as follows: (Cont'd)

- b. Service Continuity - in the event of primary facility failure, service is guaranteed to switch to an alternate facility path in sixty seconds or less. Failure to meet this guarantee will result in a credit as described in B7.8.2.E.2. following where the trouble is in the network on public right-of-way.

**B. Definitions****SMARTPath<sup>®</sup> service Area Connection**

The SMARTPath<sup>®</sup> service Area Connection provides for the connection at the designated premises where the customer gains access to SMARTPath<sup>®</sup> service and transport to a designated junction in the same SMARTPath<sup>®</sup> service Area.

**SMARTPath<sup>®</sup> service Area Junction**

The SMARTPath<sup>®</sup> service Area Junction provides for the connection between the SMARTPath<sup>®</sup> service network and (1) another customer designated premises, in the same SMARTPath<sup>®</sup> service Area or (2) a serving wire center in the same SMARTPath<sup>®</sup> service Area for connection to (a) DS1 Basic Channelization, FlexServ service, or LightGate service, or (b) a SMARTPath<sup>®</sup> service Area Junction of another SMARTPath<sup>®</sup> service Area in the same Metropolitan Area.

**C. Application of Rates**

1. Monthly rates and charges as specified in B7.8.3 following apply for each SMARTPath<sup>®</sup> service. The transport provided within a SMARTPath<sup>®</sup> service Area is provided at 1.544 Mbps. Rate categories include a SMARTPath<sup>®</sup> service Area Connection, and a SMARTPath<sup>®</sup> service Area Junction.
2. Recurring and nonrecurring charges apply for each SMARTPath<sup>®</sup> service Area connection and SMARTPath<sup>®</sup> service Area Junction Connection.
3. SMARTPath<sup>®</sup> service is available under several payment plans: Month-to-month (with a 4 month minimum), Plan A (24-48 Months), Plan B (49-72 Months). Plan A and Plan B are provided under conditions specified in the Channel Services Payment Plan (CSPP), B2.4.9.B. preceding.
4. The rates applicable to a month-to-month payment plan are subject to Company initiated changes. Rates stabilized under a CSPP arrangement are exempt from Company initiated increases, however, decreases for any rate element will automatically flow through to the customer.
5. A SMARTPath<sup>®</sup> service performance credit, as specified in B7.8.2.E.2. will apply.

**D. Connections**

1. Customer-Provided Terminal Equipment, Customer-Provided Derivation Equipment and Customer-Provided Communications Systems may be connected to SMARTPath<sup>®</sup> service when such connection is made in accordance with the provisions specified in 2. and 3. following.
2. Responsibility of the Company
  - a. The responsibility of the Company shall be limited to the furnishing and maintenance of SMARTPath<sup>®</sup> service to a network interface on the customer's premises.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

EXHIBIT CJR-4



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TELECOMMUNICATIONS, INC.  
FLORIDA  
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Miami, Florida

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## A12. CENTRAL OFFICE NON-TRANSPORT SERVICE OFFERINGS<sup>1</sup>

(M)

### A12.20 MultiServ<sup>®</sup> Service (Cont'd)

#### A12.20.2 Regulations (Cont'd)

- R. During collection or distribution of the subscriber's ACD-NMR and/or Switch-Computer Application Interface (SCAI) Link data, due to faults or defects in telephone equipment, data may be destroyed. The Company shall not be liable, directly or indirectly, for damages, except as outlined in A2.5.1 of this Tariff.
- S. Customer Premises Equipment (CPE) and software for use with ACD and/or Switch-Computer Application Interface (SCAI) Link is the responsibility of the user for provisioning. The Company shall not be responsible if changes in any of the equipment, operations, or procedures of the Company utilized in the provision of ACD Service render any facilities provided by the customer obsolete, or require modification or alteration of such equipment or system, or otherwise affect its use or performance.
- T. A mixture of Flat Rate and Message Rate Local Exchange Service will not be allowed.
- U. Account Codes/Customer-Dialed Account Recording (CDAR) may be furnished only in conjunction with Station Message Detail Recording - RAO or Station Message Detail Recording - Premises subject to the availability of facilities. An Account Codes/CDAR number will appear in the SMDR record with a maximum of eight digits. The number of digits will be predesignated by the customer and must be uniform for all Account Codes/CDAR numbers per customer.
- V. ISDN Individual Business Service (ISDN - IBS) lines may be purchased out of Section A42. of this Tariff to be associated with MultiServ<sup>®</sup> service or MultiServ PLUS<sup>®</sup> service. Terms and conditions of MultiServ<sup>®</sup> service and MultiServ PLUS<sup>®</sup> service will apply to these ISDN - IBS lines except as otherwise stated in Section A42. of this Tariff.  
Each ISDN Basic Rate DSL Access Arrangement will be counted as a MultiServ<sup>®</sup> service or MultiServ PLUS<sup>®</sup> service line in determining the total system size.  
MultiServ<sup>®</sup> service Optional Features compatible with ISDN may be purchased for use with these ISDN - IBS lines. MultiServ<sup>®</sup> service Feature Groups are not available for use with these ISDN - IBS lines.  
ISDN - IBS lines not associated with a MultiServ<sup>®</sup> service or MultiServ PLUS<sup>®</sup> service may not purchase features from this section of the Tariff.
- W. Expanded local serving Area Calling Plans are not available to MultiServ<sup>®</sup> service and MultiServ PLUS<sup>®</sup> service subscribers in Florida. Flat Rate and Message Rate service is available to the subscriber as outlined in Section A3. of this Tariff.

#### A12.20.3 Unconditional Satisfaction Guarantee

- A. If the subscriber is not completely satisfied with MultiServ<sup>®</sup> service within ninety (90) days of the effective billing date, all payments will be handled as indicated in this paragraph.
  - 1. The following charges will be refunded:
    - a. Nonrecurring and recurring charges (up to ninety days recurring billing) for rate elements as specified in this sub-section for MultiServ<sup>®</sup> service.
    - b. Service charges from Section A4. of this Tariff.
  - 2. The following charges will not be refunded:
    - a. End User Common Line Charges as specified in BellSouth Telecommunications, Inc., FCC No. 1, Section 4.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

EXHIBIT CJR-4

BELLSOUTH  
TELECOMMUNICATIONS, INC.

## GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 14

FLORIDA

ISSUED: July 1, 1996

EFFECTIVE: July 15, 1996

BY: Joseph P. Lacher, President - FL  
Miami, Florida

A12. CENTRAL OFFICE NON-TRANSPORT SERVICE OFFERINGS<sup>1</sup>

(0)

A12.20 MultiServ<sup>®</sup> Service (Cont'd)

## A12.20.3 Unconditional Satisfaction Guarantee (Cont'd)

- A. If the subscriber is not completely satisfied with MultiServ<sup>®</sup> service within ninety (90) days of the effective billing date, all payments will be handled as indicated in this paragraph. (Cont'd)
2. The following charges will not be refunded: (Cont'd)
    - b. Usage Charges from Section A3. of this Tariff.
  3. Customer-provided equipment acquired for use with MultiServ<sup>®</sup> service will not be included in this plan.
  4. This guarantee will not apply to transfers of service, moves, conversions or recasts.
  5. MultiServ<sup>®</sup> service will be disconnected no later than ten (10) days after receipt of notification of dissatisfaction.
  6. Subscribers requesting an extension of the ten (10) day disconnection interval to accommodate installation of a replacement product/service, will be billed the recurring rates for that period, not to exceed six (6) months.
  7. Subscribers must retain continuous service beyond the ninety (90) days via other Local Exchange Services as offered in Section A3. of this Tariff.

## A12.20.4 Intercept of Calls

- A. Rerouting of calls that cannot be completed to the number originally dialed will be offered either standard Intercept or Automatic Number Referral.
1. Intercept - Incoming calls from the exchange and long distance message networks to unassigned station numbers are intercepted by the same standard central office recorded announcement equipment used to intercept such calls for exchange services. The announcement provided states that the number called is not in service.  
Intercommunicating calls to unassigned station numbers are intercepted by central office recorded announcement equipment which is common to all subscriber's MultiServ<sup>®</sup> service systems served out of the same office. The announcement states that the number is not in service and advises that the attendant or the directory number of the caller's system should be consulted.
  2. Automatic Number Referral - Incoming calls to a telephone number that has been disconnected or changed may be routed to a mechanized announcement that tells the calling party that they have not reached the number they dialed, the reason the number is not in service and the new number to call, if available. Telephone numbers that are listed in the directory for main station lines will be provided Automatic Number Referral (if desired) at no charge if disconnected or changed. For numbers that are not listed, charges from A12.20.13 apply per telephone number referred.

## A12.20.5 Conversions

- A. ESSX<sup>®</sup> Service<sup>2</sup> may be converted to MultiServ<sup>®</sup> service as follows.

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

Note 2: Denotes Centrex, ESSX-1 service, ESSX<sup>®</sup> service - VS, S, M, L or Digital ESSX<sup>®</sup> service - VS, S, M, L.

EXHIBIT CJR-4

Gen. Subscriber tariff

## A12. CENTRAL OFFICE NON-TRANSPORT SERVICE OFFERINGS<sup>1</sup>

### 2.21 MultiServ PLUS<sup>®</sup> Service (Cont'd)

#### A12.21.1 General (Cont'd)

- A. Subscribers requesting ten (10) or more main station lines in a system may subscribe to MultiServ PLUS<sup>®</sup> service at the rates and regulations specified in this Tariff. These subscribers may apply for rates developed and offered via a Contract Service Arrangement as specified in Section A5. of this Tariff and further modified in A12.21.8 and A12.21.9 of this Tariff.
- B. Rules, Regulations and Rates from A12.20 of this Tariff apply to MultiServ PLUS<sup>®</sup> service unless specifically amended or abridged herein.

#### A12.21.2 Regulations

- A. Charges from Section A3. for Network Access Registers (NARs) apply. Each subscriber to MultiServ PLUS<sup>®</sup> service must subscribe to a minimum of one (1) Network Access Register.
- B. Rates and charges from A12.20 of this Tariff apply for the following:
  - 1. Common Rates and Charges
    - a. Training Charges
    - b. Interoffice Channels
    - c. Miscellaneous Charges
  - 2. Feature Groups
  - 3. Tandem Switching Features (TSF)
  - 4. Systems Communication Service (SCS)
  - 5. Optional Service Features
  - 6. Electronic Business Set Service (EBS)
  - 7. Multi-Account Service (MAS)
  - 8. Customer Control
- C. Rates and Charges herein apply for the following:
  - 1. Service Establishment
  - 2. Cancellation Charge
  - 3. Main Station Links
- D. If a partial disconnect of MultiServ PLUS<sup>®</sup> service would result in a system of less than ten (10) main station lines, the subscriber may retain billing for ten (10) main station lines or convert to MultiServ<sup>®</sup> service.

#### A12.21.3 Unconditional Satisfaction Guarantee

- A. The following charges will also be refunded to a MultiServ PLUS<sup>®</sup> service subscriber:
  - 1. Network Access Register recurring charges
  - 2. Grouping recurring charges

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

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## A12. CENTRAL OFFICE NON-TRANSPORT SERVICE OFFERINGS<sup>1</sup>

### A12.21 MultiServ PLUS<sup>®</sup> Service (Cont'd)

#### A12.21.3 Unconditional Satisfaction Guarantee (Cont'd)

- A. The following charges will also be refunded to a MultiServ PLUS<sup>®</sup> service subscriber: (Cont'd)
2. Grouping recurring charges (Cont'd)  
(Further explanation regarding Unconditional Satisfaction Guarantee is available in A12.20.3 of this Tariff.)

#### A12.21.4 Intercept of Calls

- A. Automatic Number Referral  
Telephone numbers that are listed in the directory for main station lines will be provided Automatic Number Referral (desired) at no charge if disconnected or changed. For numbers that are not listed, charges from A12.20.13 apply per line referred.  
(Further explanation regarding Intercept of Calls is available in A12.20.4 of this Tariff.)

#### A12.21.5 Conversions

- A. ESSX<sup>®</sup> service and MultiServ<sup>®</sup> service may be converted with an equal number of main station lines and the same equivalent optional features.
1. Nonrecurring charges from this sub-section of this Tariff will not apply.
  2. Termination liability or cancellation charges for original service do not apply.
  3. Service Charges from Section A4. of this Tariff will not apply.
  4. Changes, additions and rearrangements:
    - a. Nonrecurring Charges from this section of this Tariff will apply.
    - b. Service Charges from Section A4. of this Tariff will apply.
- B. Subscribers to analog Feature Groups must convert according to A12.20.5.  
(Further explanation regarding Conversions is available in A12.20.5 of this Tariff.)

#### A12.21.6 Payment Schedules

Information shown in A12.20.6 of this Tariff is applicable for MultiServ PLUS<sup>®</sup> service.

#### A12.21.7 Cancellation Charges and Moves of Service

Information shown in A12.20.7 of this Tariff is applicable for MultiServ PLUS<sup>®</sup> service.

#### A12.21.8 Common Rates and Charges

- A. Service Establishment Charges
1. The following charges for service are in addition to any applicable service connection, move, change and installation charges provided for in other sections of this Tariff:

Note 1: Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this filing.

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## A2. GENERAL REGULATIONS<sup>1</sup>

### A2.16 Reserved for Future Use

### A2.17 Commitment Guarantee Program

#### A2.17.1 General

- A. The Commitment Guarantee Program provides a credit to residence and business customers should the Company fail its commitment in connection with installation or repair of service provided over Company's facilities.<sup>2</sup>

#### A2.17.2 Application

- A. When initiated by the customer, the Company will arrange for a credit of \$25.00 on a residence account or \$100.00 on a business account for the missed commitment, unless an exception is applicable. The credit will be applied against the amount due on the customer's bill.
- B. One credit will apply per customer request for a commitment missed for installation or repair. A customer request including the service that is to be installed or repaired on the same date and on the same system. Multiple attempts to invoke the guarantee for the same commitment and for the same customer are not to be considered as separate requests.
- C. The credit will apply in addition to waivers, promotions, or other guarantees in effect at the time of the missed commitment unless specifically excluded.
- D. The plan may be suspended by the Company during or following a natural disaster such as described in A4.2.6.
- E. The guarantee is applicable to services provided in this Tariff except as noted in A2.17.3 following.

#### A2.17.3 Limitations

- A. The Commitment Guarantee Program credit will not apply to:
1. Commitments missed due to customer initiated action.
  2. Maintenance requests resulting from negligence, willful act of the subscriber or suspension of service for non-payment of charges.
  3. Commitments missed during or as a result of labor difficulties, natural disasters, governmental orders, civil commotion, general network failure, or circumstances beyond the control and/or knowledge of the Company.
  4. Services provided in conjunction with disaster relief in Section A4.
  5. Directory Advertising.
  6. Public Telephone Service.
  7. 911 and E911 services.

**Note 1:** Text is shown as new due to reissue of all Tariff Sections. No changes in rates or regulations were made with this Filing.

**Note 2:** Where a service is jointly provided with another Local Exchange Carrier, the guarantee is applicable only to the installation or repair commitment made by the Company to ensure service. This guarantee is not applicable to commitments made by other Local Exchange Carriers regardless of their concurrence in this Tariff.

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## A2. GENERAL REGULATIONS<sup>1</sup>

### 2.17 Commitment Guarantee Program (Cont'd)

#### A2.17.3 Limitations (Cont'd)

A. The Commitment Guarantee Program credit will not apply to: (Cont'd)

8. Active and retired employees.

**Note 1:** Text is shown as new due to reissue of all Tariff Sections. No changes in rates or reg were made with this Filing.

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FL Access tariff

## E2. GENERAL REGULATIONS

### E2.4 Payment Arrangements and Credit Allowances (Cont'd)

#### E2.4.10 Service Installation Guarantee (Cont'd)

E. Service Installation Guarantees do not apply: (Cont'd)

2. to service requiring Special Construction as set forth in Section E14. following,
3. to Specialized Service or Arrangements or Individual Case Basis filings,
4. for jointly provisioned services,
5. to BellSouth Virtual Expanded Interconnection service arrangements, except for the cross-connect element, as set forth in E20.1.6 following, or
6. to other telephone companies concurring in the rates and regulations of the Company; provided however, that the following telephone company does also concur in the preceding provisions of E2.4.10, and E6. following.

Vista-United Telecommunications

7. to BellSouth SWA or Dedicated Access installation, moves and arrangements of service *with an agreed upon set date interval* of four *business* days or less *following* the Application Date of the service order.

In addition, Service Installation Guarantees will not apply during a declared National Emergency. Priority installation of National Security Emergency Preparedness (NSEP) telecommunications services shall take precedence.

#### E2.4.11 Reserved for Future Use

#### E2.4.12 Reserved for Future Use

#### E2.4.13 Reserved for Future Use

#### E2.4.14 Reserved for Future Use

#### E2.4.15 Reserved for Future Use

#### E2.4.16 Commitment Guarantee Program

A. General

1. The Commitment Guarantee Program will provide a credit to end users should the Company fail to meet its commitment in connection with installation or repair of service(s) provided via Company facilities. The term "Commitment" denotes an undertaking by the Company to install or repair service(s) as agreed to by the Company.
2. The failure of the Company to meet its commitment will result in a credit being applied to the end user's bill, if contact is initiated by the end user, unless an exception is applicable.
3. Where a service is jointly provided with another Local Exchange Carrier (LEC), the guarantee is applicable to the installation or repair commitments made to end users by the Company. This guarantee is not applicable to commitments made by other LECs, regardless of their concurrence in this Tariff.

B. Application

1. In the event Company contact is initiated by the end user, in reference to the provisions of A. preceding, the Company will arrange for a credit of \$100.00 on an end user's account for the missed commitment, unless an exception is applicable. The credit will be applied against the total amount due on the end user's bill.

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## E2. GENERAL REGULATIONS

### 2.4 Payment Arrangements and Credit Allowances (Cont'd)

#### E2.4.16 Commitment Guarantee Program (Cont'd)

##### B. Application (Cont'd)

2. One credit will apply, under the provisions of 1. preceding, per end user commitment missed.
3. More than one attempt to invoke the guarantee, for the same commitment and end user, will be disallowed.
4. The credit will apply in addition to waivers, promotions, or other guarantees in effect at the time of the commitment unless specifically excluded.
5. The guarantee is applicable to services provided in this Tariff except as noted in C. following.
6. Receipt of a credit under the provisions of 1. through 5. preceding will have no effect on recurring rates, nonrec charges, or minimum service periods according to the appropriate schedules for services filed elsewhere in this Tariff.
7. Credits issued to an end user's account, in excess of the total monthly rate in any one monthly billing period, will be applied to the following monthly billing period.
8. When service is terminated, any credit due will be applied to the final amount due the Company.
9. The program may be suspended by the Company during or following a natural disaster.

##### C. Exceptions

The Commitment Guarantee Program credit will not apply to:

1. commitments missed as a result of action initiated by, or information omitted by, the end user, any other end user, third party,
2. maintenance requests resulting from:
  - a. interruptions of service due to the failure of equipment or systems provided by others,
  - b. interruptions of a service where the Company is not afforded access to the premises where the service is terminated,
  - c. interruptions of a service which continue because of the failure of the end user to authorize replacement element of Special Construction, as set forth in E14.2.6 following,
  - d. negligence, or a willful act by the end user, or
  - e. suspension of service for non-payment of charges.
3. commitments missed during or as a result of labor difficulties, governmental orders, civil commotion, criminal against the Company, natural or man-made disasters, war, general network failures, a declared national emergency or any other circumstances beyond the control and/or knowledge of the Company,
4. service(s) provided in conjunction with disaster relief,
5. *BellSouth SWA* service in Section E6. following, or
6. Interexchange Carrier services.

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