

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

PRE-HEARING STATEMENT OF ITC^DELTA COM

I. INTRODUCTION.

This Docket was initiated on June 11, 1999 with the filing by ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") of a Petition for Arbitration pursuant to the Section 252 of the Telecommunications Act of 1996 ("Act").

Section 252 of the Act provides for voluntary negotiations between requesting carriers, such as ITC^DeltaCom, and incumbent local exchange carriers ("ILECs") such as BellSouth Telecommunications, Inc. ("BellSouth"). If the parties to the voluntary negotiations are unable to reach agreement on the terms of an appropriate interconnection agreement, then either party may request arbitration by the State commission. ITC^DeltaCom made such request on June 11, 1999. Pursuant to Section 262(b)(4) of the Act, this Commission shall resolve each issue set before it in the June 11, 1999 Petition.¹ In considering the June 11, 1999 filing of ITC^DeltaCom, the Commission

¹ Paragraphs 7 and 8 of the Petition which was filed on June 11, 1999 expressly incorporated Exhibits A and B of that filing into the Petition. BellSouth had adequate notice of all issues presented in the June 11, 1999 filing and responded in full to all of those issues through pre-filed testimony and other pleadings.

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should adopt policies which will best facilitate competition in the Florida local exchange market.

II. BACKGROUND.

In January 1999, ITC^DeltaCom initiated negotiations with BellSouth in an attempt to renew the interconnection agreement between those parties which previously had been approved by this Commission and which had governed the relationship between ITC^DeltaCom and BellSouth for the two-year period beginning March 12, 1997. During this period, ITC^DeltaCom made significant investments in a fiber optic-based telecommunications network in Florida. ITC^DeltaCom's decision to make such investment was a result of the terms and conditions in the interconnection agreement. ITC^DeltaCom earned a modest but healthy local exchange customer base over the past two years in Florida. Indeed, ITC^DeltaCom has been one of the most, active alternative local exchange companies ("ALECs") in Florida. ITC^DeltaCom is one the largest purchaser of Unbundled Network Elements ("UNEs") in Florida.

III. WITNESSES.

The witnesses expected be called by ITC^DeltaCom and the subject matter expected to be discussed by these witnesses are as follows:

Christopher J. Rozycki: General policy, including performance standards and guarantees and

reciprocal compensation for Internet Service Provider ("ISP") bound traffic.

Thomas Hyde: Technical issues including the continued provision of extended local loops.

Michael Thomas: Technical issues, including Operational Support Systems ("OSS") and advance notice of business rules.

Don Wood: Cost and rate issues, including cageless collocation.

IV. EXHIBITS.

Christopher Rozycki: CJR-1 Summary of Issues from Negotiations.

CJR-2 Performance Measurements from SWBT/Southside Communications Agreement.

CJR-3 BellSouth's proposed self-enforcing penalties.

Thomas Hyde:

CJR-4 BST Private Line, General
Service and Access Tariffs.

TAH-1 BellSouth Customer Problem List.

TAH-2 ITC^DeltaCom/BellSouth UNE
Conversations.

TAH-3 Confidential Exhibit. List of
BellSouth problems.

TAH-4 Nonrecurring Cost Development
Chart.

Michael Thomas:

MT-1 FPSC Order No. PSC-98-1484-FOF-
TP.

MT-2 Confidential Exhibit. Report from
January through June 1999.

MT-3 Ordering and Provisioning section
of Agreement.

Don Wood:

DJW-1 Curriculum Vitae of Don J. Wood.

V. STATEMENT OF POSITION AND SUMMARY OF THREE CRITICAL ISSUES.

(a) General Statement of Position

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.

(b) Discussion of Three Critical Controversies

Each open issue in this case, and a summary of the issues of policy, law and fact presented by such issue, will be specifically addressed below in Section V. There are three issues in controversy in this Docket that are of such importance they warrant separate discussion. Those three most critical issues are: (1) self-effectuating performance guarantees, (2) continued provisioning of extended local loops, and (3) the payment of reciprocal compensation for the termination of ISP-bound traffic. These issues also will be more specifically addressed in the detailed discussion of each issue in Section V.

(1) Self-Effectuating Performance Guarantees. A system of self-effectuating financial incentives should be included in the interconnection agreement between ITC^DeltaCom and BellSouth. Such guarantees will act as a powerful disincentive to BellSouth for non-performance. This issue will be discussed by witness Rozycki and raises important issues of law and policy. Section 251(c) of the Act

requires that BellSouth provide interconnection and unbundled access to ITC^DeltaCom at parity with the manner in which BellSouth provides such services and facilities to itself. The Act charges the Commission, with fashioning policies which ensure such parity. The evidence that will be presented by witnesses Rozycki, Hyde and Thomas will show that in many instances, BellSouth has failed to provide services to ITC^DeltaCom at parity with the services it provides to itself.

For example, Mr. Hyde will present evidence that in the case of 47 missed customer scheduled cut over dates, BellSouth caused a majority of the missed dates. BellSouth will not dispute that it caused the missed cut overs. Indeed, the data that will be presented by witness Hyde was prepared by BellSouth. Rather, BellSouth will attempt to explain away each such instance as beyond its control or an aberration that is unlikely to be repeated. After hearing the evidence of BellSouth's failure to perform, the Commission should have cause for concern and seek a mechanism whereby BellSouth will have an incentive to provide better service.

BellSouth's position will be that the threat of complaints to the Commission by ITC^DeltaCom provides an adequate incentive for BellSouth to perform fully under the interconnection agreement. While BellSouth's argument may have some theoretical appeal, ITC^DeltaCom submits the practical application of such a policy is lacking.

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BellSouth would have ITC^DeltaCom bring a complaint to the Commission each and every time BellSouth fails to perform. Such a requirement will not facilitate competition in Florida. BellSouth's attitude in this regard ignores the costs and time associated with protracted litigation. It also ignores the Commission's limited resources and time.

Nothing in the law prohibits the inclusion of self-effectuating performance guarantees in an interconnection agreement which will be in place prior to any breach of the contract. This Commission is charged with promoting competition and should find that performance guarantees embedded in the interconnection agreement between the parties will accomplish that objective. BellSouth has not presented any proposed performance guarantees to this Commission, but has done so to the Federal Communications Commission ("FCC"). Mr. Rozycki will provide to the Commission a copy of at least one *ex parte* presentation BellSouth made to the FCC in which it proposes self-effectuating performance guarantees.

(i) Federal Law.

The Act is highly unusual for its structure and jurisdictional grant in as much as it is a case where Congress has conferred a duty upon state Commissions and a framework in which telecommunications companies are to enter into bilateral contracts. The Commission is charged - by Congress - with implementation of federal, not state

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standards. Indeed, this proceeding is being conducted for purposes of implementation of federal - not state - standards.

The Commission undoubtedly is accustomed to looking solely to state law for jurisdiction. However, in conducting arbitrations under Section 252 of the Act, the Commission may look to federal and state law. Section 252(b) and (c) of the Act specify the duties and responsibilities of this Commission with regard to this arbitration. Included in that charge is the responsibility to arbitrate "any unresolved" issues between the parties. Performance guarantees is one such issue.

Overlaid on this peculiar framework is the United States Supreme Courts pronouncement in *Iowa Utilities Bd. v. FCC* that the FCC may impose detailed mandates on the state regarding various aspects of the implementation of the Act. Section 252(b)(4)(C) of the Act states that "[t]he State commission shall resolve each issue" brought before it in an arbitration. (emphasis added) The issues of performance guarantees were properly presented and certainly may be considered by the Commission. Similarly, Section 252(c) of the Act states that "[i]n resolving by arbitration under subsection (b) any open issue and imposing conditions upon the parties" the State commission shall ensure that such resolution meets the requirements of Section 251" and any regulations prescribed by the FCC. There is certainly nothing about performance guarantees that does not meet the requirements of

Section 251 of the Act and the regulations prescribed by the FCC. Indeed, the parity requirements of the Act and the FCC's pronouncements support the system of self-effectuating guarantees supported by witness Rozycki in this testimony. Pursuant to its authority under the Act, the Commission should consider the merits of ITC^DeltaCom's proposed system of performance guarantees and by allowing ITC^DeltaCom to go forward with evidence.

BellSouth alleges in its Response to ITC^DeltaCom's Petition, that the Commission "lacks the statutory or jurisdictional authority to award or order monetary damages or financial penalties." *BellSouth Response*, p. 31. BellSouth's Response is based solely on state law.

(ii) Florida Law

In response to BellSouth's state law claim that the Commission's jurisdictional limits do not allow even the consideration of ITC^DeltaCom's proposal, it is crucial to understand that ITC^DeltaCom is not requesting an "award" of damages. Rather, ITC^DeltaCom merely asks for the opportunity to arbitrate the inclusion of performance measures and guarantees in an interconnection agreement. If the Commission finds that ITC^DeltaCom is precluded from presenting such an argument then the Commission has effectively pronounced that the issue of self-effectuating performance guarantees was closed before negotiations even began with BellSouth in January. The Commission should not close this issue as a matter of law. Rather, the

Commission should consider the evidence and assign appropriate weight to it to reach a conclusion that furthers competition.

The Commission may arbitrate performance measures because the only limit on its powers under state law is that it may not enter an award of damages which result from events completed in the past. The Commission has considered similar arguments. **ITC^DeltaCom strongly urges the Commission to look directly and carefully to the decisions of the Florida courts which have been the underlying basis for the Commission's previous consideration of performance guarantees.** When one reads those judicial pronouncements, it is clear that the request in this case is appropriate for the Commission's consideration. The root of the Commission's decisions regarding prospective jurisdiction has been the case of *Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, Inc.*, 291 So.2d 199 (Fla. 1974). That case can be easily distinguished from the issue presented by ITC^DeltaCom in the June 11, 1999 filing. In *Southern Bell*, a telephone customer sought damages resulting from the alleged negligent failure of a telephone utility to meet statutory service standards. In holding that the Commission did not have authority to award money damages for past service failures, the Florida Supreme Court stated that:

The ultimate issues raised in a suit for money damages for a **completed, past failure** to meet the statutory standards are, however, a matter of judicial cognizance and determination. . . . Nowhere in Ch. 364 is the PSC granted authority to

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enter an award of money damages (if indicated) for **past failures** to provide telephone service meeting the statutory standards.

Id. at 202 (Emphasis supplied). As explained in more detail by the lower court, the Commission did not have jurisdiction over the damages issue because the plaintiff was not seeking "future compliance," but rather was "seeking redress for alleged losses which had already accrued as a result of defendant's negligence." *Mobile America Corporation, Inc. v. Southern Bell Telephone and Telegraph Company*, 282 So.2d. 181, 183 (Fla. 1st DCA 1973), *aff'd* 291 So.2d 199. "The jurisdiction of the public service commission under the statutory provisions is broad and comprehensive. Yet that jurisdiction has generally been prospective in nature." *Id.* at 184.

The Commission's jurisdiction over prospective performance was also addressed in *Florida Power & Light Co. v. Glazer*, 671 So.2d 211 (Fla. 3d DCA 1996), which held in relevant part that:

The jurisdiction of the public service commission under the statutory provisions is broad and comprehensive. Yet that jurisdiction has generally been prospective in operation. However, it is not a proper tribunal to decide a controversy **after damage has been inflicted.**

Id. at 214, citing *Muskegon Agency, Inc. v. General Tel. Co. of Michigan*, 340 Mich. 472, 65 N.W.2d 748 (1954) (Emphasis supplied).

These cases confirm that the only limitation on the Commission's jurisdiction is that it may not "decide a controversy after damage has been inflicted." (*Id.*) ITC^DeltaCom asks that the Commission

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arbitrate the terms of the interconnection agreement. Arbitration of a performance guarantee is not an award of money damages because the guarantee, like the interconnection agreement itself, operates prospectively.

ITC^DeltaCom has presented a three-tiered set of self-effectuating performance guarantees intended to be applied to the Florida interconnection agreement. In adopting this set of performance guarantees, the Commission should note that the parties are permitted to address performance incentives as a matter of contract and the Commission has statutory authority to impose fines and penalties when companies subject to its jurisdiction violate its orders. The Commission has approved performance guarantees and incentives in the past. For example, BellSouth's tariffs require customers who fail to perform by not paying their bills to pay interest to BellSouth. When a customer's check is returned for insufficient funds, a penalty is applied. Similarly, BellSouth tariffs contain many examples of performance guarantees. For example, ITC^DeltaCom will provide as exhibits examples of instances in which BST offers to its customers "service installation guarantees," "performance guarantees," and generally applies credits where service has been interrupted. These guarantees have been approved by this Commission. Mr. Rozycki will discuss these other instances where

performance guarantees have been approved. Similar guarantees may be approved in this Docket.

(2) **Extended Loops.** The combination of an unbundled loop, cross connection and special access transport has enabled ITC^DeltaCom to provide service to rural areas of Florida for the past two years. Indeed, over the past two years, BellSouth has provisioned approximately 2500 of these extended local loops to ITC^DeltaCom. BellSouth will present the testimony of witness Varner who claims it provided this combination of network facilities in error and seeks this Commission's permission to discontinue the provision of such services. The Commission should find that without such a combination, ITC^DeltaCom will be forced to curtail its efforts to bring the benefits of competition to the state's less densely populated areas. That result is contrary to the intent of the Act and contrary to the public interest and the past policies of this Commission. The continued provision of this combination for purposes of providing extended loops to ITC^DeltaCom must be included in the interconnection agreement between the parties. ITC^DeltaCom witness Hyde will describe the network configuration at issue and witness Wood will discuss some of pricing of this combination of network elements.

(3) **Reciprocal Compensation for Termination of ISP Traffic.**

Section 251(b)(5) of the Act requires the parties to establish a mechanism whereby compensation is exchanged between incumbent local

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exchange carriers such as BellSouth and ALECs such as ITC^DeltaCom "for the transport and termination telecommunications." The duty is to provide for such compensation that is "reciprocal." This controversy presents both legal and policy questions to the Commission. Witness Rozycki will present testimony regarding the policies relating to this issue.

When examined from a policy perspective, the issue of reciprocal compensation is quite clear and relies on the fundamental principle of cost causation. The originator of a call causes the use of the telecommunications network. Without the origination of the call, the network would be idle. The placing of a call causes costs for both carriers, the company that provides service to the originator of the call and the company that terminates the call. The Commission has consistently embraced the fundamental principle of cost causation. That is to say, the party that causes the costs should bear the burden of those costs. This issue should be no exception. Thus, the company that provides service to the originator of the call must be required to compensate the carrier that terminates such call. The interconnection agreement should require that reciprocal compensation be paid to when calls are terminated on the network of a different carrier regardless of whether such calls are terminated to an ISP customer of the other carrier. The previously approved rate for such reciprocal compensation is \$.009 per minute of use. Neither party

will produce a cost study which supports a different rate. Thus, the interconnection agreement should renew the rate which was previously approved and found to be cost based.

VI. DISCUSSION OF ISSUES FOR ARBITRATION

The issues discussed above are numbered using the numbers assigned in Attachment A to the Commission's August 13, 1999 Order and cross-referenced to the numbering contained in the Petition.

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

Yes. ITC^DeltaCom will present the testimony of Mr. Rozycki in support of the principle that performance measures and guarantees are necessary and in the public interest because such provisions would create a strong disincentive to BellSouth to fail to perform. ITC^DeltaCom's performance measures and guarantees proposal consists of specified performance benchmarks (specifically set forth in Exhibit A, Attachment 10 to the Petition). The benchmarks were developed to closely match the services that BellSouth provides to itself. Section 251(c)(3) of the Act requires that BellSouth provide nondiscriminatory

access to all UNEs including OSS. ITC^DeltaCom does not seek to realize any revenues from the payment of such incentives. Indeed, Mr. Rozycki will suggest such incentives may be paid to the state treasury.

Under ITC^DeltaCom's approach, for initial failures to perform, BellSouth is required to waive any charges which would have been imposed against ITC^DeltaCom if BellSouth had fully performed. This first level of guarantees is similar to those found in existing BellSouth tariffs. The second level of guarantees are triggered when BellSouth fails to meet a single measurement for two consecutive months or twice during a quarter. Where such a "Specified Performance Breach" occurs, BellSouth should provide compensation of \$25,000. This level of payment is calculated by estimating the revenues lost from a typical ITC^DeltaCom customer (\$750 per month) over a three-year period. The third level of guarantee compensation is triggered only in cases of extreme and extraordinary nonperformance. In those cases, where BellSouth fails to meet a single measure five times during a six month period. The specific terms associated with such a "Breach of Contract" are provided in paragraph 25 of the proposed General Terms and Conditions attached to the Petition as part of Exhibit A. For those extreme cases, BellSouth must pay guarantees of \$100,000 for each default for each day the default continues.

BellSouth will not argue the Commission is without jurisdiction to impose standard performance measures. Indeed, after realizing the policies and arguments of witness Rozycki would be appealing to the Commission, BellSouth filed the testimony of witness Coons in the rebuttal phase of this proceeding. BellSouth will claim the Commission does not have any jurisdiction to require BellSouth to pay penalties as part of an interconnection agreement. BellSouth's argument is based on a faulty premise. BellSouth equates self-executing performance guarantees with an award of damages after a past event or an enforcement of a judgment. BellSouth does not acknowledge the Commission has authority to impose penalties on companies that have violated Commission orders. The most simple example of such authority is the Commission's imposition of penalties when companies engage in slamming. Moreover, BellSouth ignores this Commission's responsibility under Section 252(b)(4) to resolve open issues between the parties.

BellSouth argues that ITC^DeltaCom should seek relief from the court or the Commission through individual lawsuits in every case of non-performance.² This approach is impractical and inefficient. To the extent BellSouth fails to perform in a particular instance, ITC^DeltaCom will lose the customer whose order was the subject of the

² In an apparent contradiction, BellSouth has suggested its own set of self-effectuating performance guarantees to the FCC. BellSouth's proposal to the FCC is attached to witness Rozycki's testimony.

nonperformance. That customer is gone as far as ITC^DeltaCom is concerned. No lawsuit can bring that customer back. Moreover, ITC^DeltaCom's reputation suffers each time such nonperformance occurs. Litigation is costly and time consuming. It is against the public interest to push all disputes to the courts. Moreover, it makes Florida an inhospitable environment for would be local exchange competitors.

2. Petition Issue 1(b): Should BellSouth be required to waive any nonrecurring charges when it misses a due date?

Yes. This issue will be presented by witnesses Rozycki and Hyde. This issue specifically delineates the first order of performance guarantees contained in the ITC^DeltaCom proposed system of measures and guarantees. The specific question presented is whether in cases where BellSouth misses a due date (e.g. fails to cut over a customer on the scheduled date for such a cut over) should BellSouth be allowed to impose nonrecurring charges for such a missed appointment and should BellSouth be permitted to impose charges when it finally meets the deadline. The answer is clearly no. When BellSouth misses a due date, it has incurred no cost. Rates charged by BellSouth must be cost based. Indeed, ITC^DeltaCom has incurred all of the cost - not to mention the diminished standing with the customer. BellSouth must be given an incentive to perform fully in the first instance. BellSouth cannot be permitted to charge when it does not perform.

Waiver of the nonrecurring charges for the next scheduled date for that conversion is simply a credit or refund to ITC^DeltaCom for costs incurred when BellSouth misses a scheduled conversion and provides an incentive to BellSouth to fully perform in the first instance.

BellSouth seems to have agreed that nonrecurring charges should be waived in a recent brief filed with the Tennessee Regulatory Authority.³ In that Brief, which was filed earlier this month, BellSouth states that it is "willing to voluntarily agree to waiver of certain charges regarding conversion of UNE loops" including charges for loop cut overs where scheduled due dates are not rescheduled more than 24 hours before the due date. (*Id.*) Put simply, if the due date is rescheduled by BellSouth with less than 24 hours notice or is not rescheduled at all and is simply missed, BellSouth appears to have voluntarily agreed to waive and/or refund the non-recurring charges applicable to the rescheduled conversion time and new conversion time, including time specific charges, if included. (*Id.*)

3(a). Petition Issue 2 - What is the definition of parity?

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

³ See Brief of BellSouth Telecommunications, Inc. Regarding the Appropriateness of Certain Issues for this Arbitration Proceeding, Tennessee Regulatory Authority, Docket No. 99-00430, August 19, 1999, p. 6.

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.

3(b). Pursuant to this definition, should BellSouth be required to provide the following, and if so, under what conditions and at what rates:

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

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 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.

(2) UNES

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 full 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.

(3) White Page Listings. This issue is closed.

(4) Access to Numbering Resources.

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.

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

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.

(6) Interconnection.

Yes. Mr. Hyde will discuss this parity issue.

(7) Service Intervals on winbacks.

Yes. A more complete discussion is found at Issue 29.

(8) Priority guidelines for repair and maintenance and UNE provisioning.

ITC^DeltaCom believes this issue is closed or will be closed prior to the hearing.

(9) White Page Listings to independent third party publishers.

ITC^DeltaCom believes this issue is closed.

4. Petition Issue 2(a)(i): Should BellSouth be required to provide the specifications to enable ITC^DeltaCom to parse the Customer Service Records (CSRs)? If so, how?

This issue is closed.

5. Petition Issue 2(a)(i): Should BellSouth be required to provide a download of the Regional Street Address Guide ("RSAG")? If so, how?

Yes. Section 251(c)(3) of the Act requires that all UNEs, including OSS be provided to ITC^DeltaCom at 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

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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 is 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.

6. Petition Issue 2(a)(ii): Should BellSouth be required to provide changes to its business rules and guidelines regarding resale and UNEs at least forty-five days in advance of such changes being implemented? If so, how?

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 137,⁴ 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

⁴ *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).

ILEC must disclose any internal "business rules" including information concerning ordering codes.

7. **Petition Issue 2(b)(ii):** Until the Commission makes 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?

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.

8(a) and (b). Petition Issue 2(b)(iii): Should BellSouth be required to provide to ITC^DeltaCom extended loops or the loop/port combination? If so, what should the rates be?

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.

9. Petition Issue 2(b)(iv): Should BellSouth be required to provide UNE testing results to ITC^DeltaCom? If so, how?

Yes. As Mr. Hyde will discuss, BellSouth provides this information for itself. Parity requires it do so for ALECs.

10. Petition Issue 2(b)(iv): Should the parties be required to perform cooperative testing within two hours of a request from the other party?

Yes. Mr. Hyde will discuss this quality of service issue.

11. Petition Issue 2(c)(i): Should BellSouth be required to provide NXX testing functionality to ITC^DeltaCom? If so, how?

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.

12(a) and (b). Petition Issue 2(c)(ii): What should be the installation interval for the following loop cutovers: (a) single and (b) multiple?

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.

13. Petition Issue 2(c)(iii): Should SL1 orders without order coordination be specified by BellSouth with an a.m. or p.m. designation?

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

14. Petition Issue 2(c)(iv): Should the party responsible for delaying a cut over also be responsible for the other party's reasonable labor costs?

Yes. It is not disputed that in most cases when a scheduled cut over is missed, costs are incurred. The most simple example is where one party fails to attend a scheduled meeting at a customer premises. The party that did attend incurred costs associated with the attendance. Costs will vary depending upon the particular circumstances. The interconnection agreement which governed the relationship between ITC^DeltaCom for the past two years was approved by the Commission under Section 252 of the Act included a provision

which required that the party responsible for delaying a cut over should reimburse the other party for reasonable labor costs.

ITC^DeltaCom asks the Commission to continue this policy prospectively. The record clearly establishes that in many cases, BellSouth has missed cut over dates and provided little or no notice to ITC^DeltaCom that such cut over dates would be missed. Witness Hyde will present testimony regarding this issue.

15. Petition Issue 2(c)(v): Should BellSouth be required to designate specific UNE center personnel for coordinating orders placed by 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 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.

16. Petition Issue 2(c)(vi): Should each party be responsible for the repair charges for troubles caused or originated outside of its network? If so, how should each party reimburse the other for any additional costs incurred for isolating the trouble to the other's network?

Yes. Mr. Hyde will discuss how such reimbursement should be made. Cost causers should bear these costs.

17. Petition Issue 2(c)(viii): Should BellSouth be responsible for maintenance to HDSL and ADSL compatible loops provided to ITC^DeltaCom? If so, at what rate?

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) than 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.

18. Petition Issue 2(c)(ix): If a customer orders a loop which requires special construction charges be paid for by ITC^DeltaCom, and BellSouth reuses the same facilities to provide service to the customer for itself or on behalf of another CLEC, should BellSouth be required to refund ITC^DeltaCom the amount ITC^DeltaCom paid to BellSouth for Special Construction for that customer?

Yes. Mr. Hyde will explain the policy in support of avoiding a windfall for BellSouth.

19. Petition Issue 2(c)(x): Under what conditions, if any, should BellSouth be required to reimburse any costs incurred by ITC^DeltaCom to accommodate modifications made by BellSouth to an order after sending a firm order confirmation (FOC)?

20(a). Petition Issue 2(c)(xiv): Should BellSouth be required to coordinate with ITC^DeltaCom 48 hours prior to the due date of a UNE conversion?

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.

20(b). Petition Issue 2(c)(iv): If BellSouth delays the scheduled cut over date, should BellSouth be required to waive the applicable non-recurring charges?

Yes. ITC^DeltaCom submits that it should not be required to pay where BellSouth fails to perform. Of course, without additional guarantees, there is no incentive for BellSouth to not repeatedly miss or delay the same cut over date once the non-recurring charges have been waived. For that reason, the Commission must establish other performance incentives. The guarantees which are set forth in detail in Attachment 10 to the proposed interconnection agreement which was

filed on June 11, 1999 and supported by ITC^DeltaCom's testimony represent the only detailed proposal in the record which can act to prevent repeated cut over delays. Witness Hyde will discuss this issue.

20(c). Petition Issue: Should BellSouth be required to perform dial tone tests at least 48 hours prior to the scheduled cutover date?

Yes. This is a quality of service issue. BellSouth does so for itself. Mr. Hyde addresses this issue.

21. Petition Issue 2(f): Should BellSouth be required to establish LNP cut over procedures under which BellSouth must confirm with ITC^DeltaCom that every port subject to a disconnect order is worked at one time?

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.

22. Petition Issue 2(g): How should "order flow-through" be defined?

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.

23. Petition Issue 3: Should BellSouth be required to pay reciprocal compensation to ITC^DeltaCom for all calls that are properly routed over local trunks, including calls to Internet Service Providers ("ISPs")?

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, Maryland and Florida have all determined that compensation is due when traffic is terminated to an ISP. In all of those cases,

the decisions were made on a prospective basis in the context of arbitrations under Section 252 of the Act. In other words, they were not cases in which existing contracts were being interpreted. Additionally, very recently, the North Carolina Utilities Commission 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.

24. Petition Issue 3: What should be the rate for reciprocal compensation?

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 think conclude the underlying costs associated with transport and termination have changed.

25. Should ITC^DeltaCom and BellSouth be required to follow the ATIS/OBF business rules?

This issue has been resolved.

26. Should BellSouth be required to provide ITC^DeltaCom access to Universal Service Order Codes ("USOCs"), Field Identifiers ("FIDs")

and other information necessary to process orders in a downloadable format?

This issue has been closed.

27. Should BellSouth be required to maintain both the current and the next previous version of an electronic interface?

This issue has been closed.

28. Should ITC^DeltaCom have at least 90 days advance notice prior to BellSouth discontinuing an interface?

This issue has been closed.

29. Petition Issue 3(h): If ITC^DeltaCom needs to reconnect service following an order for a disconnect, should BellSouth be required to reconnect service within 48 hours?

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.

30. Should BellSouth be required to maintain UNE/LCSC hours from 6 a.m. to 9 p.m.?’

It appears this issue is resolved. The key to this issue is that BellSouth personnel remain present to work ITC^DeltaCom orders to completion.

31. Should BellSouth be required to provide a toll free number to ITC^DeltaCom to answer questions concerning BellSouth's OSS proprietary interfaces from 8 a.m. to 8 p.m.?

It appears this issue is resolved.

32. Petition Issue 3(k): What information should be included in the Firm Order Confirmation ("FOC")?

The same information that is available to BellSouth. Witness Thomas addresses this issue.

33. Petition Issue 3(l): Should the Parties establish escalation procedures for ordering/provisioning problems?

Yes. Witness Hyde discusses the need for an orderly and defined process.

34. Petition Issue 3(m): What type of repair information should BellSouth be required to provide to ITC^DeltaCom such that ITC^DeltaCom can keep the customer informed?

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.

35. Petition Issue 3(o): Should both parties be required to train their technicians on the procedures contained in the interconnection agreement which sets forth the manner in which each party must treat the other's customers?

Yes. All personnel involved must understand the obligations of the parties. Mr. Rozycki and Mr. Hyde will address this issue.

36. Petition Issue 4(a): Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed?

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.

37. Petition Issue 4(c): Should ITC^DeltaCom and its agents be subject to stricter security requirements than those applied to BellSouth's agents and third party outside contractors?

No. Witness Hyde addresses this parity issue.

38. Petition Issue 6(a): What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?

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. ALEC are required to bear their own costs. BellSouth and other ILECs should similarly bear the transition costs imposed by Congress. Development of OSS is a classic transition cost. The development of OSS will track the transition to competition. With regard to development, BellSouth argues that ITC^DeltaCom should have

to pay for OSS development because ITC^DeltaCom and other CLEFS 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.

39. Petition Issue 6(b): What are the appropriate recurring and non-recurring rates and charges for:

- (a) two-wire ADSL/HDSL compatible loops,
- (b) four-wire ADSL/HDSL compatible loops,
- (c) two-wire SL1 loops,

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.

40(a). Petition Issue 6(b): Should BellSouth be required to provide:

(1) two-wire SL2 loops,

(2) two wire SL2 loop Order Coordination for Specified
Conversion Time,

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

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

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

41. Petition Issue 6(c): Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?

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.

42. Petition Issue 6(d): What should be the appropriate recurring and nonrecurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket No. CC 98-147?

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.

43. Petition Issue 6(e): 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?

The U.S. Supreme Court's decision in the *Iowa Utilities Bd.* case greatly altered the landscape regarding USE pricing and USE 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.

44. Petition Issue 7(b) (ii): What procedures should ITC^DeltaCom and BellSouth be adopting for meet point billing?

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

45. Petition Issue 7(b) (iv)- 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 neither party was found to have overstated the PLU or PIU by 20 percentage points or more?

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 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.

46. Petition Issue 8(b): Should the losing party to an enforcement proceeding or proceeding for breach of the interconnection agreement be required to pay the costs of such litigation?

ITC^DeltaCom favors settlement of disputes wherever possible. Similarly, parties should be deterred from bringing frivolous claims before the Commission or the courts. ITC^DeltaCom has proposed a

simple mechanism which will act as a deterrent to frivolous lawsuits and may encourage settlement of disputes outside of the Commission and courts. The concept of a "loser pays" provision in a contract is nothing new and it generally regarded as a mechanism to discourage frivolous litigation. Witness Rozycki discusses this issue.

47. Petition Issue 8(c): What should be the appropriate standard for limitation of liability under the interconnection agreement?

The parties should not be required to limit their liability for acts of gross negligence or willful misconduct.

48. Petition Issue 8(e): Whether language covering tax liability should be included in the interconnection agreement, and if so, whether that language should simply state that each Party is responsible for its tax liability?

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.

49. Petition Issue 8(f): Should BellSouth be required to compensate ITC^DeltaCom for breach of material terms of the contract?

ITC^DeltaCom has asked for inclusion in the contract of a simple provision that recognizes a material breach of the interconnection agreement will give rise to liability. BellSouth will in no way be prejudiced by the inclusion of such a provision. Indeed, in light of BellSouth's argument that redress for any breach must be sought through litigation before the Commission and courts, it appears that such a provision is consistent with BellSouth's approach. The provision proposed by ITC^DeltaCom is simple and straightforward and should be included in the interconnection agreement. Witness Rozycki discusses this issue.

50. Petition Issue 5: Should the Parties continue operating under the existing local interconnection arrangements?

This issue is broken into subtopics in ITC^DeltaCom's prefiled testimony to more clearly identify the issues that remained open at the time of the hearings before the Commission. For purposes of clarity, the Commission utilizes the more detailed subtopics identified in ITC^DeltaCom's testimony and the Exhibit B matrix which was incorporated into the Petition. The specific subtopics are

discussed below. Each of these subtopics was expressly included in ITC^DeltaCom's June 11, 1999 filing.

The existing interconnection agreement has language on each of the subtopics with the exception of binding forecasts. The parties have been able to negotiate all the other provisions concerning local interconnection. As the parties have not been able to come to agreement on these issues, ITC^DeltaCom recommends that the existing language should remain in place. BellSouth agreed to the language that is in the existing agreement and this Commission approved that agreement as compliant with the Act. Witness Hyde addresses this issue.

50(a). Should the current interconnection agreement language continue regarding cross-connect fees, reconfiguration charges, or network redesigns and NXX translations?

The interconnection agreement that was previously approved by this Commission as compliant with Section 252 of the Act covers the issue of cross-connect fees, reconfiguration charges, or network redesigns and NXX translations. BellSouth has not provided any evidence which compels the Commission to conclude these requirements are no longer appropriate for the interconnection agreement between the parties and the parties have been unable to negotiate any alternative arrangements. The terms and conditions in the previously approved interconnection agreement have enabled ITC^DeltaCom to enter

the Florida local exchange markets and has encouraged ITC^DeltaCom to make significant investments in facilities in Florida. Those terms should continue. The language contained in the existing interconnection agreement covering this issues should be renewed and incorporated in the interconnection agreement resulting from this proceeding..

50(b). What should be the definition of the terms "local traffic" and "trunking options"?

The terms local traffic and trunking options are defined in the interconnection agreement that has governed the relationship between the parties for the past two years. ITC^DeltaCom submits that those definitions should be incorporated into the renewed interconnection agreement which will result from this docket. BellSouth submits that the definition should be revised to state that ISP-bound traffic is not included in the definition of local traffic. Witness Hyde addresses this issue.

50(c). What parameters should be established to govern routing ITC^DeltaCom's originating traffic and each party's exchange of transit traffic?

Similar to the subtopics of Issue 5 discussed above, with regard to the parameters that govern routing of ITC^DeltaCom originating traffic and each parties exchange of transit traffic, ITC^DeltaCom submits that the language contained in the existing interconnection

agreement, which was found to be compliant with Section 252 of the Act in 1997 should be renewed for an additional two years. BellSouth has not provided any evidence - or even any credible argument - that these parameters should not be continued.

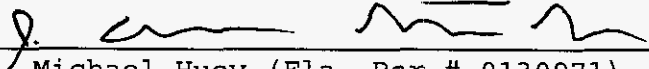
50(d). Should the Parties implement a procedure for binding forecasts?

ITC^DeltaCom and BellSouth have been negotiating the issue of binding forecasts for more than eight months. ITC^DeltaCom believed BellSouth had agreed to voluntarily include a provision covering binding forecasts in the interconnection agreement. Indeed, ITC^DeltaCom was approached by the BellSouth account team to implement binding forecasts on the assumption by at least some at BellSouth that binding forecasts had been agreed to and were needed to efficiently govern the relationship between the companies.

ITC^DeltaCom has clearly stated its willingness to live by binding forecasts. In other words, ITC^DeltaCom is willing to pay for any trunks that are underutilized as a result of an over forecast on the part of ITC^DeltaCom. In other words, BellSouth would be made whole in every instance. That is the very nature of a *binding* forecast. Witness Hyde discusses this issue.

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Dated this 23 day of September, 1999.



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

David I. Adelman, Esq.
Sutherland, Asbill & Brennan, LLP
999 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 853-8206

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

Attorneys for ITC^DeltaCom

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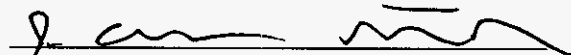
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished this 23 day of September, 1999 to the following:

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

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

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



Attorney