

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 991220-TP
:
PETITION BY GLOBAL NAPS, :
INC. FOR ARBITRATION OF :
INTERCONNECTION RATES, TERMS :
AND CONDITIONS AND RELATED :
RELIEF OF PROPOSED AGREEMENT :
WITH BELLSOUTH :
TELECOMMUNICATIONS, INC. :

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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER E. LEON JACOBS, JR.
Prehearing Officer

DATE: Thursday, May 25, 2000

TIME: Commenced at 9:30 a.m.
Concluded at 10:20 a.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting
(850) 413-6732

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1 APPEARANCES:

2 JON C. MOYLE, JR., and CATHY M. SELLERS,
3 Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan,
4 118 North Gadsden Street, Tallahassee, Florida 32301
5 appearing on behalf of Global NAPS, Inc.

6 PHILLIP CARVER c/o Nancy Sims, 150 South
7 Monroe Street, Room 400, Tallahassee, Florida 32301,
8 appearing on behalf of BellSouth Telecommunications,
9 Inc.

10 BETH KEATING, Florida Public Service
11 Commission, Division of Legal Services, 2540 Shumard
12 Oak Boulevard, appearing on behalf of the FPSC
13 Staff.

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P R O C E E D I N G S

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2 COMMISSIONER JACOBS: We'll call the prehearing
3 to order.

4 Counsel, read the notice.

5 MS. KEATING: By notice issued May 11th, 2000,
6 this time and place have been set for a prehearing
7 conference in Docket 991220. The purpose is as set forth
8 in the notice.

9 COMMISSIONER JACOBS: Okay. Take appearances.

10 MR. CARVER: Good morning, Phillip Carver on
11 behalf of BellSouth, 675 West Peachtree Street, Atlanta,
12 Georgia 30375.

13 MR. MOYLE: John Moyle, Jr., on behalf of Global
14 NAPS, Moyle Flannigan here in Tallahassee.

15 MS. SELLERS: Cathy Sellers on behalf of Global
16 NAPS.

17 MS. KEATING: And Beth Keating appearing for
18 Commission staff.

19 COMMISSIONER JACOBS: Great. Preliminary
20 matters? I understand that there is a motion. And did I
21 hear there may be some developments?

22 MR. CARVER: Yes, sir. I think we have reached
23 an agreement on the motion. Essentially what we have
24 agreed to is that -- it is sort of two parts. The first
25 part is that Global NAPS will withdraw the exhibits to the

1 testimony of their three witnesses that are testimony from
2 the complaint case.

3 COMMISSIONER JACOBS: Okay.

4 MR. CARVER: However, what we will do is we
5 would stipulate and request that the Commission, in
6 essence, be allowed to consider anything in the complaint
7 case. In effect, I guess it would apply to evidence and
8 pleadings. Really everything in the case file. But, in
9 effect, what we would do is stipulate that you could take
10 notice of that and rely on anything in that case to the
11 extent you deem it appropriate to do so.

12 COMMISSIONER JACOBS: Okay. Satisfactory with
13 Global?

14 MR. MOYLE: Yes. I think that what we were
15 trying to do was not be redundant. And I think in
16 discussions prior to this, if we could just read a
17 stipulation into the record and have that approved, then I
18 think we would then be in a position to withdraw those
19 exhibits that we have filed.

20 But the stipulation would be that the parties
21 stipulate, if the prehearing officer approves the
22 stipulation, that the testimony, exhibits, other evidence
23 in any other document introduced in Case Number 991267-TP
24 between BellSouth and Global NAPS can be considered by the
25 Commission as evidence in this proceeding, and the parties

1 are free to refer to, cite, and otherwise rely upon such
2 evidence. So if that stipulation can be approved, then I
3 think it would negate the need to consideration the motion
4 to strike.

5 COMMISSIONER JACOBS: Essentially we are taking
6 official recognition, and you could bring anything in
7 there and introduce it into evidence -- well, not
8 introduce it from the docket, but you can refer to it and
9 it will become evidence by your reference. Is that a fair
10 interpretation of that?

11 MR. CARVER: Yes, sir. Basically, what we
12 contemplate is that the parties would be able to argue in
13 the briefs whatever they wish from that case, and the
14 Commission can rely on that case to the extent it deems it
15 appropriate.

16 COMMISSIONER JACOBS: Well, if that agreement is
17 appropriate to both parties, I will approve it. It sounds
18 reasonable to me.

19 MR. MOYLE: Thank you.

20 COMMISSIONER JACOBS: Great. Then are there any
21 other preliminary matters?

22 MS. KEATING: That is all that staff is aware
23 of.

24 COMMISSIONER JACOBS: Good.

25 MR. CARVER: One thing I will mention, I don't

1 know that it is preliminary, but I will go ahead and tell
2 you about it now. I think we have reached agreement on
3 six of the issues, so that they can be removed. We can
4 either talk about that now, if you would prefer, or we can
5 wait and go through them one-by-one.

6 COMMISSIONER JACOBS: Why don't we -- let's just
7 find out, are there any modifications to Sections I, II,
8 III, IV and V of the prehearing order?

9 MR. MOYLE: The only thing I would note is that
10 Mr. Savage out of Washington, D.C. should be listed on the
11 appearances, also representing Global NAPS.

12 COMMISSIONER JACOBS: Okay. His name again?

13 MR. MOYLE: Christopher Savage, S-A-V-A-G-E.

14 COMMISSIONER JACOBS: And you will get the
15 address and so forth to the court reporter?

16 MR. MOYLE: Yes, you have that. That is
17 available. I can give it to you now, or we can just refer
18 back to it. He filed the initial pleadings in the case.

19 COMMISSIONER JACOBS: You can just give it to
20 the court reporter.

21 MR. CARVER: And, also for BellSouth, I should
22 be listed in addition to the other BellSouth attorneys.

23 COMMISSIONER JACOBS: Ah, they did leave you
24 out, didn't they?

25 MS. KEATING: Do we keep both of the other

1 attorneys, or will it just be --

2 MR. CARVER: I would say keep both of them. I'm
3 not sure which of them will be at the hearing. So for now
4 I'd say keep both, please.

5 COMMISSIONER JACOBS: Okay. And how about
6 exhibits? I'm sorry, order of witnesses.

7 MR. MOYLE: Yes. Global NAPS, I think, would
8 call Mr. Rooney first. He is currently listed as second.
9 So Mr. Rooney would be first, Mr. Goldstein would be
10 second, and Mr. Selwyn would be third.

11 COMMISSIONER JACOBS: Okay.

12 MR. MOYLE: And on the issues, we have already
13 resolved Issue 1. So the issues for which the witnesses
14 should be addressing, Mr. Goldstein will be addressing
15 Issues 2 through 5, rather than 1 through 5. The same
16 change with respect to Mr. Selwyn, and Mr. Rooney will be
17 addressing all issues.

18 COMMISSIONER JACOBS: Okay. And will we have
19 direct and rebuttal, or do you want to wait until the time
20 of trial to decide that? Will the witness do direct and
21 rebuttal at the same time?

22 MR. CARVER: That would be my preference, to
23 have them just take the stand once.

24 COMMISSIONER JACOBS: Okay.

25 MR. MOYLE: Yes, I think that would work.

1 COMMISSIONER JACOBS: Okay. Good. Now, why
2 don't we then -- and if there are no other modifications
3 to the order of witnesses, why don't we list out the
4 issues that you have resolved.

5 MR. MOYLE: One thing, if I could,
6 Mr. Prehearing Officer, before we move on. The sentence
7 that occurs after the order of witnesses where BellSouth
8 reserves the right to call additional witnesses, that
9 whole sentence there, we would just ask that that be
10 reciprocal, that it be a bilateral statement so that
11 BellSouth and G-NAPS reserves that right.

12 And the same thing with the second sentence.
13 BellSouth and G-NAPS has listed the witnesses whom they
14 believe testimony will be filed. We shouldn't be -- and
15 my argument would be we shouldn't in the prehearing order
16 be giving BellSouth a right that G-NAPS doesn't also have.

17 COMMISSIONER JACOBS: Is this normal, that this
18 is included?

19 MS. KEATING: I think that is a typo. I think
20 it was inadvertently left out.

21 MR. MOYLE: Or we can delete the whole thing.
22 It doesn't make that big of a difference to me. I just
23 don't want it to be a unilateral right for BellSouth that
24 Global NAPS doesn't also enjoy.

25 COMMISSIONER JACOBS: Is it necessary to

1 expressly state that?

2 MS. KEATING: It is not necessary. If these are
3 the only witnesses that the parties intend to call,
4 generally the Commission --

5 COMMISSIONER JACOBS: Obviously, I guess,
6 somebody wanted to leave that option open if they wanted
7 that language in there. I don't want to foreclose that,
8 I'm just wondering absent this language, would there be a
9 problem if there were additional witnesses called?

10 I'll tell you, why don't we do this. If we can
11 agree that you would have this right -- but I'm not the
12 presiding officer. In an abundance of caution, let's
13 leave it and just say the parties on it.

14 MR. MOYLE: Just make it bilateral.

15 COMMISSIONER JACOBS: Okay. Oh, we skipped over
16 basic positions. Any modifications to the basic
17 positions?

18 MR. MOYLE: I just want to state for the record
19 that -- and I've talked to Mr. Carver about this, but with
20 respect to all of the subsequent issues, and this is
21 addressed in this basic position, but that Global NAPS
22 takes the position that its existing agreement that it
23 adopted, which was the DeltaCom agreement suffices, and
24 that any changes should be made to that document.

25 COMMISSIONER JACOBS: Uh-huh, okay. All righty.

1 Okay. Then that takes us to issues and positions.

2 MR. CARVER: On the point that Mr. Moyle raised,
3 if I may, I would like to discuss that a little bit.
4 Because when we were talking this morning trying to settle
5 issues, I think we realized that we may have -- there may
6 be a gap in the issues that we have raised, so I just
7 wanted to discuss that.

8 On most of the issues that we have settled,
9 Global NAPS has agreed to accept the language proposed by
10 BellSouth. But the agreement goes to that particular
11 language. And there is a more fundamental question that
12 is still in play here, and that is that on anything that
13 is not specifically raised, in other words, sort of the
14 boilerplate for the contract, Global NAPS wants the
15 DeltaCom agreement that they opted into to be the starting
16 point, and BellSouth wants its standard agreement to be
17 the starting point.

18 And what we did in framing the issues was we
19 tried to take any area where we thought there was a
20 significant difference between the two, and to raise that
21 as an issue for the proceeding. But even after an order
22 is entered, there is still going to be -- or I should say
23 after decisions are made, there is still going to be a
24 question as to sort of which agreement do you look to to
25 do the sort of miscellaneous provisions that are minor

1 provisions.

2 And we did not -- neither party raised a
3 specific issue to deal with that. I don't know at this
4 point if we need to have that as an issue so that the
5 parties can brief it, or if it would be sufficient for us
6 to address that in our basic positions when we draft our
7 briefs and then put it before the Commission that way.

8 MS. KEATING: If that is really still an issue
9 after Issue 1 has already been resolved, which I'm not
10 quite sure I understand why it is still an issue, but I
11 think that it needs to be framed for clarity for the
12 Commissioners.

13 MR. CARVER: And my position -- well, I don't
14 think it should be an issue given the resolution of Issue
15 1, but I understand that that is the position Global NAPS
16 takes, so I would just want there to be some way to
17 address that.

18 MR. MOYLE: And I would argue that we have
19 raised it as an issue in that with our basic position we
20 have said the existing agreement between Global NAPS and
21 BellSouth, which was the agreement we adopted, the
22 DeltaCom agreement should be the basis for changes.

23 I mean, we have operated under that agreement.
24 Most of the time in the course of commercial conduct
25 parties have an agreement and they say, "Well, let's re-up

1 the agreement." You take the existing agreement and
2 change the few terms that you need to change. You don't
3 come in with a 5-inch thick new document and go, "Here,
4 here is the new agreement," and have to wade through 400
5 pages.

6 MS. KEATING: Commissioner, if it helps, let me
7 just refresh your memory that this is the case in which
8 the Commission has addressed a preliminary issue that the
9 ITC DeltaCom agreement that Global NAPS had adopted
10 terminated in July of '99.

11 COMMISSIONER JACOBS: Right. And if it had
12 terminated, if I recall, we said that you couldn't, in
13 essence, bring it back to life, is that correct?

14 MS. KEATING: Essentially, that is it. That it
15 terminated in July, and therefore that they did need to go
16 through an arbitration proceeding. If Global NAPS feels
17 compelled to argue that in some way they still need to be
18 relying on the terms in the DeltaCom agreement versus
19 negotiating new terms or arbitrating new terms, I really
20 think you need to frame an issue. Because I don't think
21 that is clearly an issue that is addressed within the
22 context of any of these issues that we have got right now.

23 COMMISSIONER JACOBS: Let me digress for a
24 moment. Your argument, I take it, is that you wish to
25 adopt that agreement as agreed to by BellSouth with ITC

1 DeltaCom, and then only look at modification to the
2 agreement as that agreement for this docket.

3 MR. MOYLE: What we are saying is that we have
4 operated under an agreement. We have a business
5 relationship with BellSouth. We are operating under an
6 agreement that we adopted pursuant to the federal law.
7 Now we are coming back in and renegotiating that and
8 making some changes to that.

9 It is our position that the proper place to
10 start is the document that governed the parties'
11 relationship and discuss changes from that document, not
12 to take a brand new document that BellSouth has created
13 that, you know, there is a change in Paragraph 42, that
14 there is a new line inserted, and you can't see where that
15 new line is inserted, you know, and use that document as
16 the basis for the starting point.

17 What we have done is we have identified some
18 issues, we have agreed on some issues, and those changes,
19 in our opinion, ought to be made to the parties' agreement
20 that they have been operating under to date.

21 COMMISSIONER JACOBS: The term of the agreement
22 -- the agreement in which Global NAPS initially adopted,
23 the ITC DeltaCom agreement, the term of that agreement, is
24 it still effective, or has it lapsed?

25 MR. CARVER: No, sir, it has expired. The

1 DeltaCom agreement at this point no longer exists. It's
2 over.

3 COMMISSIONER JACOBS: I understand that. But if
4 I'm not mistaken, at the time that Global NAPS adopted it,
5 it was in effect, is that correct?

6 MR. CARVER: Yes, it was in effect.

7 COMMISSIONER JACOBS: And then you entered into
8 an agreement with Global NAPS essentially adopting that.
9 It is that agreement that I'm asking about. Has the term
10 of that agreement expired?

11 MR. CARVER: Yes, sir. It expired in July of, I
12 believe, last year.

13 COMMISSIONER JACOBS: Okay. So now you are here
14 to essentially re-up, to reestablish your interconnection
15 agreement under a new life term regardless of the
16 expressed conditions of your agreement with BellSouth.
17 And what I am hearing you say is now for the new term of
18 your agreement you want to simply adopt, again, the prior
19 agreement?

20 MR. MOYLE: It is kind of a philosophy of if it
21 ain't broke, don't fix it. If you have all these terms
22 that no one has a problem with, why don't you use those
23 terms that were part of the first agreement rather than
24 having BellSouth put on, you know, all of these other
25 provisions that were not part of that agreement.

1 COMMISSIONER JACOBS: My draft doesn't have
2 Issue 1. What was Issue 1?

3 MS. KEATING: Issue 1 was the issue that was
4 decided preliminarily.

5 MR. MOYLE: No. Issue 1 was the expiration of
6 the agreement, not which agreement you should use with
7 respect to --

8 MS. KEATING: It was the preliminary issue that
9 the Commission decided back, I believe, in March, which
10 was has the agreement that G-NAPS adopted terminated.

11 COMMISSIONER JACOBS: Okay. And you have agreed
12 that -- your resolution to Issue 1 is that the ITC
13 DeltaCom agreement has terminated, is that correct?

14 MR. MOYLE: That was what the Commission
15 concluded.

16 COMMISSIONER JACOBS: No, no, I want to stay in
17 this docket. Your resolution of Issue 1 in this docket
18 was that the initial ITC DeltaCom agreement has come to an
19 end, has expired?

20 MR. CARVER: That is what the Commission ruled.
21 I mean, the case was bifurcated, and the Commission ruled
22 on that Issue 1, and that is the Commission ruling.

23 MS. KEATING: That is correct, Commissioner, it
24 was this docket.

25 MR. CARVER: Yes.

1 COMMISSIONER JACOBS: All right. Now, and then
2 proceeding forward in this docket, there is a legal
3 question as to how to interpret our decision back in
4 March, or whenever, I guess.

5 MS. KEATING: Well, that wasn't a question until
6 today.

7 COMMISSIONER JACOBS: Okay.

8 MR. CARVER: If I may speak to that, it is not
9 exactly a legal question. The negotiation between the
10 parties, there is some dispute as to how it occurred, but
11 let me tell you what I think happened, and how we got
12 here.

13 We went to Global NAPS about a year ago and
14 basically said, "We need to negotiate an agreement. Here
15 is our standard agreement. Tell us if it is okay or not."
16 And what typically happens with new entrants is that they
17 look at our agreement, and they red line it, they tell us
18 what is okay, what is not okay. We come up with agreed
19 provisions that we file. And whatever we can't agree to
20 is arbitrated. So that at the end of the process there is
21 a complete agreement.

22 What happened here, though, is that we went to
23 Global NAPS and said, "Here is our agreement, take a look
24 at it." And their response was, "No, we are not going to.
25 One, because we believe that DeltaCom is still in effect;

1 and, two, even if DeltaCom is not in effect, we want to
2 work from the DeltaCom agreement. We refuse to work from
3 your standard agreement."

4 So when Global NAPS then filed their arbitration
5 petition, they only raised issues that had to do with ISP
6 traffic, and how it was dealt with.

7 COMMISSIONER JACOBS: Under the assumption that
8 all other agreements were as resolved in the ITC DeltaCom.

9 MR. CARVER: I think under the assumption that
10 the DeltaCom agreement should be adopted by the Commission
11 as the agreement between the parties. So we have this
12 fundamental issue where we believe that the standard
13 agreement, you know, should be accepted except when there
14 is some issue that has been raised for arbitration.

15 And I didn't really realize this until this
16 morning, but I guess the position they are taking is that
17 the DeltaCom agreement should be adopted, even though it
18 has expired, for any issue that has not specifically been
19 raised.

20 COMMISSIONER JACOBS: Okay. Global NAPS.

21 MR. MOYLE: Well, you know, not to get -- we are
22 in the weeds on this one already, but I think it is
23 unreasonable for BellSouth to send an agreement that is,
24 you know, five inches thick, whatever it is, and say,
25 "Here, here is the new agreement," when you have been

1 operating under one that has worked well, and you just
2 don't address changes to the one that has worked well.

3 And then if you say, "Well, show us the changes
4 in your new standard operating agreement that differ from
5 the agreement we have been working under," you know, they
6 don't do that, you don't get a red line version or
7 whatnot. I think that, you know, it is unreasonable to
8 require the parties when they have been using an existing
9 document and it has been working well, to all of a sudden
10 come up with something brand new.

11 I think we ought to take the DeltaCom agreement,
12 make a few changes to it, and go on.

13 COMMISSIONER JACOBS: Let me ask staff this,
14 what is in your experience the practice generally when the
15 parties come to an end of an interconnection agreement and
16 they must negotiate a new one?

17 MS. KEATING: Well, let me change that around a
18 little bit and see if this still answers your question.
19 When a party petitions for arbitration, the issues that
20 the Commission address are the issues presented in the
21 petition and in the response. This, as I recall, was not
22 an issue presented in either. Therefore, we would have
23 assumed that this was not an issue, that the parties had
24 worked out anything else beyond the issues that they have
25 presented.

1 You know, as far as what goes on, you know, the
2 only thing that staff really knows about are the things
3 that actually are brought to the Commission. In some
4 situations it may go one way, and in some situations it
5 may go the other way. But, frankly, we wouldn't know
6 about it.

7 COMMISSIONER JACOBS: Okay.

8 MR. MOYLE: But I would just point out that it
9 is the first sentence in the basic position that we have
10 brought to you.

11 COMMISSIONER JACOBS: Okay. It sounds like
12 where we are is basically you have given them your first
13 position, and your first position is that we want to stick
14 with what we have. There does not sound as if you guys
15 have come to any kind of agreement or meeting of the minds
16 as to where there are conflicts on those two positions.
17 You have expected them to give you modifications back to
18 your original draft, and you expected them to give you
19 modifications back to the ITC DeltaCom agreement, and that
20 hasn't happened. Is that a fair description of --

21 MR. CARVER: That is true. And, again, I'm sure
22 we have differing views of why that occurred, but we have
23 had some difficulty getting Global NAPS to sit down and
24 talk to us. And in the absence of having a discussion as
25 we normally would, what we tried to do was to raise in our

1 answer what we thought were all of the important
2 distinctions between the DeltaCom agreement and the
3 standard agreement with BellSouth. So as DeltaCom raised
4 three or four issues in their original position, we raised
5 about eight more, because we were trying to cover all the
6 important areas so that when the Commission ruled on each
7 of these areas there would be an agreement.

8 But I think what has happened -- and, again, I
9 didn't really realize this until this morning, but
10 apparently what has happened is DeltaCom is taking the
11 position on anything that was not specifically raised by
12 BellSouth, sort of the unimportant issues by definition,
13 they want the boilerplate from the three-year-old expired
14 DeltaCom agreement as opposed to the boilerplate that
15 BellSouth typically proposes now.

16 And, again, we just have never had that
17 experience where we say to a party, "Here is a lot of
18 boilerplate that we have used 70 or 80 times with other
19 parties," and they say, "We are not even going to look at
20 it."

21 And, again, I assumed that based on the
22 resolution of Issue 1 that that was no longer an issue,
23 but I guess it is. So we are just trying to figure out if
24 there is some way to address it.

25 COMMISSIONER JACOBS: I'm sorry, go ahead.

1 MR. MOYLE: Well, I think we have reached
2 agreement on some of these issues today. I think the
3 question remains is, like he indicated, which is the
4 agreement that you work off of. And, you know --

5 COMMISSIONER JACOBS: Let's proceed this way.
6 Why don't -- let's keep it on as much of a harmonious note
7 as we can, and go through the ones that you have resolved.
8 It sounds like then where we are is that there are some
9 issues that BellSouth would allege are in dispute with
10 regard to what Global NAPS has proposed and which we will
11 call the ITC prior agreement, that BellSouth is not -- I'm
12 hearing you say, is not prepared to agree to and that are,
13 in essence, in dispute in the arbitration. Is that a fair
14 statement?

15 MR. CARVER: Yes. And our position is that that
16 agreement has expired, so --

17 COMMISSIONER JACOBS: I accept that. But what I
18 am saying is while it has expired and technically we are
19 not giving you any kind of formal legal opinion here,
20 technically your position will be that they can't adopt
21 that agreement as an agreed-to provision.

22 MR. CARVER: That is correct.

23 COMMISSIONER JACOBS: They can present the
24 content of that document as their initial position for
25 negotiation.

1 MR. CARVER: Correct, yes.

2 COMMISSIONER JACOBS: And you can disagree that
3 you want to have that in your -- the new arbitrated Global
4 NAPS agreement.

5 MR. CARVER: Right. And if I may, essentially
6 what happened was that in this instance we began the
7 negotiations by sending them a letter and saying, "Here is
8 the standard agreement that is current. This is what we
9 use now. Is it okay with you?" And their response was,
10 "No, we are not even going to even look at it, because we
11 want the old DeltaCom agreement." So the typical process
12 of working out the things that aren't in dispute never
13 happened. I don't know why. It doesn't look like if they
14 are not in dispute it should be a big deal, but it didn't
15 happen.

16 So we had -- the issues that have been raised
17 are what we consider to be the important issues, the
18 important differences between with the two. But there is
19 still kind of a general question of, you know, which
20 boilerplate language do we use.

21 COMMISSIONER JACOBS: I got you.

22 MR. MOYLE: And we have been operating under the
23 assumption that we are using the DeltaCom agreement. I
24 guess they have been operating under the assumption that
25 they are using their new standard --

1 COMMISSIONER JACOBS: Here is what I would like
2 to do. I don't know if we can do this today, though.

3 MS. KEATING: Frankly, Commissioner, it doesn't
4 sound the parties have really had that much discussion on
5 this. You know, if it is just a matter of taking a look
6 at one set of language and comparing it to another set
7 language and seeing just really how different they are, it
8 doesn't sound to me like that has been done.

9 COMMISSIONER JACOBS: Well, we may be able to do
10 something today. Maybe we can go ahead and resolve the
11 issue list that we have here. If there are additional
12 issues, that -- it sounds like there may be prehearing
13 statements and the whole nine yards that we may be looking
14 at where parties may want to review their prehearing
15 statements and so forth. I think we need to be clear on
16 that. So I would rather that we take the time to do that
17 now rather than getting to when we have witnesses sitting
18 in a room trying to figure out how to do that.

19 MS. KEATING: And, frankly, Commissioner, this
20 is more of -- it sounds to me like a legal issue. If you
21 would like, you could defer this to the hearing.

22 COMMISSIONER JACOBS: Well, I thought of that,
23 and my concern is that if we treat it as a legal issue and
24 defer it for resolution, it sounds like there are some
25 substantive factual issues here, or at least what I hear

1 to be some boilerplate language that need to be resolved.

2 In other words, if the legal conclusion is that
3 your position prevails, then BellSouth has some problems,
4 and vice versa. I don't know what those are. That is my
5 problem right now, I don't know what those would be,
6 whether that was just boilerplate or some other factual
7 issues that might boil up.

8 But what I want to do is to explore a method by
9 which we can come to clarity on that. And right now I
10 don't know that we can do it today. But in hopes of doing
11 as much as we can today, let's go ahead and figure out the
12 list that we have before us now, and then figure out, you
13 know, how we might want to proceed to do that, okay.

14 MR. MOYLE: That's fine.

15 COMMISSIONER JACOBS: Okay. Is there a list of
16 issues here now that you have resolved that we can go
17 through?

18 MR. CARVER: Yes, sir. We have got six issues
19 altogether. Five of those six, and I will go ahead and
20 give you those numbers. It's 8, 10, 11, 12, and 14. For
21 each of these, Global NAPS has agreed to accept the
22 standard language, the standard BellSouth language. That
23 is the language in the --

24 COMMISSIONER JACOBS: I'm sorry, I missed one.
25 What was the first one?

1 MR. CARVER: Okay. It's 8, 10, 11, 12 and 14.
2 So for these five, Global NAPS has agreed to accept the
3 language in the standard agreement, that is the agreement
4 attached to Mr. Varner's testimony, I believe it's AJV-1.
5 So we would basically stipulate to remove those from the
6 case.

7 The other issue, the sixth is Number 9. And
8 Global NAPS has informed us that they don't need language
9 covering conversion. Well, the particular area covered
10 there is conversion of local service to UNEs, and they
11 have told us they do not need language on that. So we
12 have agreed that the new contract will not have any
13 language at all on that.

14 COMMISSIONER JACOBS: So we can agree that Issue
15 9 is withdrawn?

16 MR. CARVER: Yes, sir.

17 MR. MOYLE: Correct.

18 MS. KEATING: Can I ask a clarification
19 question?

20 COMMISSIONER JACOBS: Sure.

21 MS. KEATING: Are those the numbers as numbered
22 in the draft prehearing order?

23 MR. MOYLE: Yes. I think what we intend to do
24 is he has stated that, we are going to follow up after the
25 prehearing and have an exchange of letters which, in

1 effect, reference and memorialize this. But as indicated
2 in the draft prehearing, he is correct, 8, 10, 11, 12 and
3 14 are the ones that we have reached agreement on. And 9
4 is the one we have agreed to delete.

5 MS. KEATING: Okay. Thank you.

6 COMMISSIONER JACOBS: Great. So, then, let's go
7 through the remaining issues and ensure that we have
8 everyone's final statement on those. Issue 2, dial-up for
9 ISP, any modifications to the positions there?

10 MR. MOYLE: None for Global NAPS.

11 COMMISSIONER JACOBS: Okay.

12 MR. CARVER: None for BellSouth.

13 COMMISSIONER JACOBS: Issue 3.

14 MR. MOYLE: No.

15 MR. CARVER: None for BellSouth.

16 COMMISSIONER JACOBS: Issue 4.

17 MR. MOYLE: None for Global NAPS.

18 MR. CARVER: No, none for BellSouth.

19 COMMISSIONER JACOBS: Issue 5.

20 MR. MOYLE: Global NAPS has some additional
21 language to clarify its position on Issue Number 5.

22 COMMISSIONER JACOBS: Do you want to offer it
23 now or just give --

24 MR. MOYLE: I will go ahead and offer it
25 briefly, if I could. I have already given it to counsel.

1 But where it says, "Any call that is originated on one
2 party's network, dialed by that party's customer as a
3 local call," the following should be inserted, "handed off
4 to the other party, and delivered to the other party's
5 customer," and then continue on, "shall be treated as a
6 local call between the parties for purposes of reciprocal
7 compensation."

8 COMMISSIONER JACOBS: Any other modifications?

9 MR. CARVER: No.

10 COMMISSIONER JACOBS: That is Issue 5.

11 Issue 6?

12 MR. CARVER: I was just going to mention, on
13 Issue 6 and 7 we have had some negotiations this morning,
14 and I anticipate that we will be able to settle that also,
15 but it is not quite done yet. So on both 6 and 7, I think
16 that will be removed, also.

17 COMMISSIONER JACOBS: Now, Issue 6 --

18 MR. MOYLE: Yes, we had one technical change.

19 COMMISSIONER JACOBS: Actually, my concern
20 doesn't really relate to your positions. But in the past,
21 if I'm not mistaken, we have said that we were going to
22 defer ruling on this issue in a particular negotiation and
23 defer that to the generic docket, is that true?

24 MS. KEATING: That has been the position the
25 Commission has taken in a couple of cases thus far.

1 COMMISSIONER JACOBS: Okay. We don't want to
2 prejudge the issue, but I think it is worthy to note that
3 here, that in other cases that has been the determination
4 that has been made by the Commission.

5 MR. CARVER: Again, I think we have that one
6 settled. But if we don't settle it, then BellSouth would
7 have no objection to deferring it.

8 COMMISSIONER JACOBS: Okay.

9 MR. MOYLE: I think we will get it worked out.
10 The only change I wanted to note is that in the fifth line
11 from the bottom of Global NAPS' position we refer to the
12 language in the DeltaCom/BellSouth interconnection
13 agreement, and it should have been the BellSouth standard
14 agreement. But I'm hopeful that we will be able to
15 resolve this and take this off the table.

16 COMMISSIONER JACOBS: That will be good. The
17 same status for Issue 7, I understand?

18 MR. MOYLE: Yes, we are trying to work that out.

19 COMMISSIONER JACOBS: Issue 8 is withdrawn, as I
20 understand, as is Issue 9, 10, and 11, and 12.

21 Issue 13, any modifications?

22 MR. MOYLE: None for Global NAPS.

23 MR. CARVER: None for BellSouth.

24 COMMISSIONER JACOBS: Issue 14 is withdrawn.

25 And that is that.

1 Any modification to the exhibit list in Section
2 9?

3 MR. CARVER: In light of our agreement on the
4 motion to strike, the exhibits for the three witnesses for
5 Global NAPS should be, I suppose, withdrawn or deleted at
6 least.

7 MR. MOYLE: Yes, I think that is fine so long as
8 we are clear in the prehearing that we have entered that
9 stipulation and we have the right to use that completely
10 in this proceeding.

11 COMMISSIONER JACOBS: All right. So WJR-1,
12 LLS-1, FG-1 all withdrawn. Okay. And if there are no
13 other modifications there, the stipulations -- we would
14 list the stipulation here today in this section, and then
15 show that the pending motion in Section XI is withdrawn,
16 is that correct, in light of the stipulation? I'm sorry,
17 BellSouth, that is your motion, isn't it?

18 MR. CARVER: That is agreeable to us.

19 COMMISSIONER JACOBS: Very good. Any other
20 modifications to the draft prehearing order?

21 MR. MOYLE: We had one other thing and wanted to
22 raise it with you. We wanted to reserve the right to make
23 a brief opening statement. I have talked with counsel for
24 BellSouth, they have no objection to doing that, and we
25 have agreed it shouldn't be any more than ten minutes per

1 side.

2 COMMISSIONER JACOBS: Very good. That is fine
3 with me. Now, it sounds like we are down the road as I am
4 thinking -- we're maybe halfway down the rode from where
5 we need to be. It sounds like BellSouth has at least gone
6 through the content of the ITC DeltaCom agreement and
7 determined what issues it has with those provisions.

8 Did I hear you say that, Mr. Carver?

9 MR. CARVER: Yes. What we tried to do is
10 identify the major areas where the DeltaCom agreement is
11 no longer consistent with the law or our practices. In
12 other words, the things that are problems.

13 COMMISSIONER JACOBS: So, in other words, what
14 you have presented they have gone through and made a
15 determination of what is objectionable. And now it sounds
16 like you guys ought to get together and agree whether or
17 not -- either you can resolve those, or whether or not
18 there needs to be issues raised here to resolve those.
19 Does that sound like a fair description of where we are?

20 MR. CARVER: I think so, yes, sir.

21 COMMISSIONER JACOBS: Okay.

22 MR. MOYLE: I would just make the point, I mean,
23 if they have gone through and taken the DeltaCom agreement
24 and looked at it and said, "Here are the issues that we
25 have that have been identified in it," it follows from my

1 perspective we ought to work off the DeltaCom agreement.

2 We have not done that with the new --

3 COMMISSIONER JACOBS: That is logistically about
4 how you guys do it. Where we are now is how do we get
5 resolved your differences between the two. Which one you
6 work off of, I'm hoping that you guys can come to some
7 kind of reasonable conclusion about that. But it sounds
8 like where we are now is that, unless I'm hearing
9 something different, that we have a fairly substantial bit
10 of agreement already. And I would hope that we wouldn't
11 get caught in that kind of a twist. It sounds like if we
12 can focus on just, you know, what has been raised as
13 issues and the content, again, understanding that I think
14 it -- while not prejudging the issues, I think -- let me
15 address that. The Commission's prior decision, and it is
16 specifically relating to the ITC DeltaCom agreement that
17 is at issue here, right?

18 MS. KEATING: That was brought by Global NAPS,
19 that's correct.

20 COMMISSIONER JACOBS: So then it can stand as
21 precedent in this docket, is that correct, because it is
22 relating to the same agreement?

23 MS. KEATING: The decision was made in this
24 docket.

25 COMMISSIONER JACOBS: In this docket. So then

1 it absolutely is precedent. I knew that. And our
2 determination is that you cannot adopt that agreement. So
3 now the position that we are in is you are taking the
4 subject matter of that document and asking that it be
5 considered for arbitration here. So the only thing we
6 have to move forward on is what issues there are with that
7 content and how they are resolved. So I am clear on that.
8 I think that that should be a fairly straight road to
9 navigate. Hopefully so.

10 MR. CARVER: And I hope so, also. But, I mean,
11 the problem that we have had is that -- basically we
12 negotiate and arbitrate agreements with a lot of parties.
13 I mean, we have done hundreds of agreements throughout the
14 region. And our standard agreement is changed as
15 appropriate to take into consideration Commission
16 decisions, FCC decisions, operational differences, system
17 updates.

18 And the current contract looks a lot different
19 than a contract from two or three years ago. Because a
20 lot has happened since the Act was passed in '96, and it
21 should be different. And, candidly, we have never had
22 this experience before where we took the current standard
23 agreement, gave it to a party and said, "This is what we
24 propose. Is it okay?" And their response was, "We're
25 not even going to look at it."

1 So in trying to frame the issues for this
2 arbitration, we went through and picked the major issues.
3 But what we did not do was go through and take the
4 DeltaCom agreement and put it next to the BellSouth one
5 and red line it and show every single difference.

6 You know, again, we tried to do the best we
7 could to raise the issues, but in light of DeltaCom's
8 refusal to even consider the agreement that is new and
9 that is current and that we believe appropriate, we have
10 just kind of come to loggerheads. And there is absolutely
11 no reason why the parties should have a log jam over this,
12 but we do.

13 MR. MOYLE: And I obviously would not
14 necessarily take the representation that we refused to
15 consider. I mean, what we refused to do was to take this
16 big document when we have had an agreement that has been
17 in place that has worked well from our perspective and
18 completely substitute it with this new one.

19 I mean, it reminds me of, say, a contract you
20 have with a lobbying client, and you have had it for years
21 and year and years. And every year you would get it and
22 you would change the date, and you change the amount, and
23 everything else stays the same. And what they are
24 proposing is to take something that doesn't look like
25 anything like the agreement we have been operating under.

1 MS. KEATING: Can I just add in my two cents?

2 COMMISSIONER JACOBS: Sure.

3 MS. KEATING: I just really want to emphasize
4 that if the parties are looking at having the Commission
5 arbitrate any additional boilerplate terms and conditions,
6 it is really too late in this proceeding for any factual
7 evidence to be submitted with regard to that. The hearing
8 is in two weeks. And essentially you would have to have
9 another round of testimony to really seriously address
10 that as arbitration issues.

11 Now, if you wanted to add an issue on your own
12 motion asking them to brief whether or not the terminated
13 DeltaCom agreement should serve as the basis for going
14 forward and establishing an arbitrated agreement, you
15 know, that is something that you could do. But it would
16 be really impossible to actually arbitrate any new terms
17 and conditions beyond those that have been already set
18 forth as issues.

19 COMMISSIONER JACOBS: The problem we face is
20 that we are looking at going forward in an administrative
21 hearing to solve a dispute that is not fully engaged. And
22 we have to figure out -- well, no, actually you guys have
23 to figure out whether or not you have want to pursue that
24 route, because we can only give the decision that the
25 record before us warrants.

1 MR. CARVER: I think there is another way to
2 approach this, and the more I think about it maybe this is
3 the appropriate way. The Commission could just rule on
4 what it has ruled on. It would then be -- or I should say
5 rule on what has been raised. It would then be incumbent
6 upon the parties to take that ruling and come up with an
7 arbitrated agreement, because the Commission's order will
8 require us to do that. At that point, if we can't work
9 out what the boilerplate should be, then we will have to
10 come back to you and tee that issue up again.

11 In effect, we would take this whole dispute and
12 -- we really should be able to work this out. But if we
13 can't, we would raise it at a subsequent time.

14 MS. KEATING: I agree with that, I'm just
15 wanting to emphasize, you really couldn't do any specific
16 determinations here in this -- through this hearing.

17 COMMISSIONER JACOBS: A question. Our final
18 order in this docket, isn't it of the final arbitrated
19 agreement? Isn't it approving, I'm sorry, the final
20 arbitrated agreement?

21 MS. KEATING: Once the Commission makes its
22 decision on the issues, the parties are required to go
23 back, develop an agreement that incorporates the
24 Commission's decision. They then bring that agreement
25 back for approval. And you review it to determine whether

1 or not it complies with your arbitration order.

2 MR. MOYLE: I don't think it is an unreasonable
3 suggestion that maybe you could handle it that way where
4 you would in the order direct us to go back, and if there
5 were other issues, then bring them back.

6 COMMISSIONER JACOBS: I think that is a
7 reasonable way of approaching it. Does that sound fair?
8 Okay.

9 MR. MOYLE: Mr. Carver and I haven't worked
10 closely together, and whatnot. But we were having a cup
11 of coffee this morning, and I said, "We are working off
12 the DeltaCom agreement," and he kind of said, "No, we are
13 working off the BellSouth agreement," and that is when we
14 kind of realized we would have this. I'm sorry that we
15 have had to burden the record and you all with this
16 discussion. But I thought it was better to raise it now
17 than to raise it two weeks from now.

18 COMMISSIONER JACOBS: Yes. Well, that being the
19 case, that will be how we will proceed. Everybody is
20 clear on that, because I couldn't repeat it if I had to.

21 Very well. Any other matters to come before us
22 today?

23 MS. KEATING: None that we are aware of.

24 COMMISSIONER JACOBS: Great. The prehearing is
25 adjourned.

(The hearing concluded at 10:20 a.m.

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STATE OF FLORIDA)

CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting Official Commission Reporter, do hereby certify that the Prehearing Conference in Docket No. 991220-TP was heard by the Prehearing Officer at the time and place herein stated.

It is further certified that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript, consisting of 37 pages, constitutes a true transcription of my notes of said proceedings..

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 31ST DAY OF MAY, 2000.



JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting
(850) 413-6732