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RECORDS AND REPORTING

November 13, 2000

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

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

Dear Ms. Bayó:

On April 24, 2000, BellSouth Telecommunications, Inc. filed its Motion for Leave to File Reply Memorandum and proposed Reply Memorandum in Support of its Motion for Reconsideration. It was later discovered that this filing was incomplete because certain pages and the attachment was missing. It is our belief, that the parties were served with a complete copy, but the file copy with the Commission was incomplete. In that regard, for file purposes, I have enclosed an original and fifteen copies of this Pleading, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me.

Sincerely,

Michael P. Goggin

APP ____
CAF ____
CMP ____
COM 1
CTR ____
ECR ____
LEG Caldwell
OPC ____
PAI ____
RGO ____
SEC 1
SER ____
OTH ____

cc: Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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April 24, 2000

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

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

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Leave to File Reply Memorandum and proposed Reply Memorandum in Support of its Motion for Reconsideration, which we ask that you file in the captioned docket.

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

Sincerely,

E. Earl Edenfield, Jr.

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

CERTIFICATE OF SERVICE
Docket No. 990750-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail this 24th day of April, 2000 to the following:

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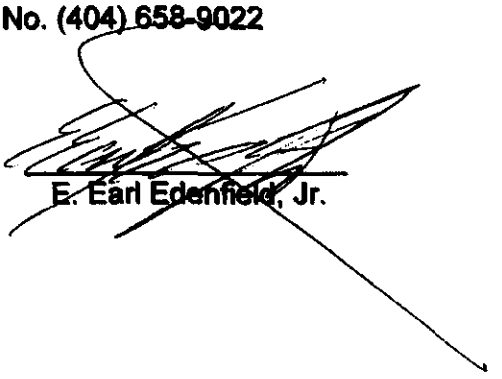

E. Earl Edenfield, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	**Docket No. 990750-TP**
	)	
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.	)	
	)	**Filed: April 24, 2000**

BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR LEAVE TO FILE REPLY MEMORANDUM

BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves the Florida Public Service Commission for leave to file a Reply Memorandum in support of its motion seeking reconsideration of three aspects of Order No. PSC-00-0537-FOF-TP issued by Commission on March 15, 2000 ("March 15 Order"). A copy of BellSouth's proposed Reply Memorandum is attached.

As grounds for this Motion, BellSouth states that the three issues upon which BellSouth has sought reconsideration are of critical importance and could have an impact well beyond the interconnection agreement between ITC^Delta Communications, Inc. ("DeltaCom") and BellSouth. For example, if the Commission adopts a reciprocal compensation rate of $.009 per minute of use for inclusion in the interconnection agreement between DeltaCom and BellSouth, it is likely that every Alternative Local Exchange Carrier ("ALEC") in Florida will seek to adopt that rate because it exceeds the forward-looking economic cost of transporting and terminating local traffic. Before resolving such critical issues that could impact the entire local market in Florida, the Commission should have the benefit all relevant information that bears on such issues, including the information set forth in BellSouth's proposed Reply Memorandum.

For the foregoing reasons, the Commission should grant BellSouth leave to file the proposed Reply Memorandum, which BellSouth submits will assist the Commission in resolving the issues raised in BellSouth's Motion for Reconsideration.

Respectfully submitted this 24th day of April, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	**Docket No. 990750-TP**
	)	
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.	)	
	)	**Filed: April 24, 2000**

REPLY MEMORANDUM IN SUPPORT OF BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Reply Memorandum in support of its motion seeking reconsideration of three aspects of Order No. PSC-00-0537-FOF-TP issued by the Florida Public Service Commission ("Commission") on March 15, 2000 ("March 15 Order"). Notwithstanding the contrary arguments by ITC^DeltaCom Communications, Inc. ("DeltaCom"), BellSouth has met the standards for reconsideration, and the Commission should reconsider its findings concerning: (1) the appropriate reciprocal compensation rate; (2) whether BellSouth is providing unbundled network elements so as to allow DeltaCom "a meaningful opportunity to compete"; and (3) the application fee for cageless physical collocation.

II. DISCUSSION

A. BellSouth's Motion Meets The Standard For Reconsideration

BellSouth's Motion for Reconsideration is not asking the Commission "to re-weigh the evidence presented at the hearing." DeltaCom Response at 1. Nor is BellSouth seeking "a second hearing on the same contentions" presented at the arbitration. *Sentinel Star Express Co. v. Florida Public Service Commission,* 322 S.2d 503, *505* (Fla. *1975).* Rather, BellSouth is seeking

reconsideration because this Commission resolved three issues in a manner not advocated by either party to this arbitration and because the Commission overlooked or failed to consider the law and the facts is so doing. Thus, BellSouth's Motion is completely consistent with the purpose behind seeking reconsideration of agency decisions. *See Diamond Cab Co. of Miami v. King*, 146 So.2d 889, 891 (Fla. 1962).

B. The Commission Should Reconsider Its Decision That The Parties Pay Reciprocal Compensation At A Rate of $.009 Per Minute.

In opposing reconsideration of the Commission's decision to require that the parties pay reciprocal compensation at a rate of $.009 per minute of use, DeltaCom relies primarily on the fact that this rate was contained in the parties' voluntarily negotiated interconnection agreement which this Commission approved more than two years ago. Such reliance is seriously flawed. First, while BellSouth agrees that this Commission "does not blindly approve any interconnection agreement," DeltaCom Response at 3, this Commission presumably does not examine an interconnection agreement to determine whether it satisfies legal standards that do not apply. Specifically, because the interconnection agreement between BellSouth and DeltaCom, including all applicable amendments, were voluntarily negotiated, neither the agreement nor the amendments had to satisfy the pricing standards set forth in the Telecommunications Act of 1996 ("1996") and applicable regulations of Federal Communications Commission ("FCC"). *See* 47 U.S.C. § 252(a)(l) (carriers may enter into voluntarily negotiated agreement "without regard to the standards set forth in subsections (b) or (c) of Section 251").

That the Commission had to determine whether the parties' voluntarily negotiated agreement and all applicable amendments were "nondiscriminatory and consistent with the public interest, convenience, and necessity" before approving them does not mean that the

Commission "found" that the $.009 reciprocal compensation rate to which the parties had voluntarily agreed was cost-based. DeltaCom Response at 3. Indeed, both the October 14, 1997 Order approving the parties' interconnection agreement and the January 6, 1998 Order approving the reciprocal compensation amendment to that agreement are silent on this issue. *See Order Approving Resale, Interconnection, and Unbundling Agreement,* Order No. PSC-97-1265-FOF-TP, Docket No. 970804-TP (Oct. 14, 1997); *Order Approving Amended Resale, Interconnection, and Unbundling Agreement,* Order No. PSC-98-0045-FOF-TP, Docket No. 971238-TP (Jan. 6, 1998). Thus, there are no prior "findings" upon which the Commission could rely to support a $.009 reciprocal compensation rate in this arbitration, notwithstanding DeltaCom's suggestion to the contrary. DeltaCom Response at 3.

Second, even assuming in approving the parties' voluntarily negotiated interconnection agreement, including all applicable amendments, the Commission determined that the $.009 reciprocal compensation rate complied with all applicable pricing standards (which is not the case), the FCC's pricing rules were not in effect at the time of such approval. When the Commission approved the interconnection agreement in October 1997 and the reciprocal compensation amendment in January 1998, the FCC's pricing rules were not in effect by virtue of the decision of the United States Court of Appeals for the Eighth Circuit staying and then vacating those rules. However, the FCC's pricing rules have been reinstated and are legally binding upon this Commission in establishing reciprocal compensation rates in an arbitration under Section 252 of the 1996 Act. It is also beyond dispute that a reciprocal compensation rate of $.009 does not comply with these rules, and DeltaCom makes no attempt to argue otherwise.

DeltaCom also attempts to bolster the Commission's decision concerning the applicable reciprocal compensation rate by suggesting that it is "supported" by the testimony of DeltaCom

witness Rozycki. DeltaCom Response at 3. DeltaCom seriously overstates Mr. Rozycki's testimony on this point, which amounts to nothing more than the following:

> Our current Interconnection Agreement requires the parties pay each other .9 cents per minute of use for reciprocal compensation. We will, of course gladly agree to accept that rate in our renewed agreement.
>
> In my testimony, I proposed a rate of .0045 cents per minute of use. This is a *50%* reduction from our current rate of .9 cents. Our proposal of .0045 would act as an interim rate until the Commission, or the FCC, establishes a cost based rate for reciprocal compensation in Florida.

Transcript Vol. I, at 118-119. While it is understandable that DeltaCom "would gladly agree to accept" the $.009 reciprocal compensation rate, Mr. Rozycki's testimony to that effect hardly constitutes credible and substantial evidence that the $.009 rate complies with applicable pricing standards, including the FCC's pricing rules.

BellSouth is not advocating that this Commission "adopt a new [reciprocal compensation] rate without sufficient evidence." DeltaCom Response at 4. Rather, BellSouth is advocating that the Commission adopt the cost-based reciprocal compensation rates adopted by the Commission in Order No. PSC-96-1 579-505-TP, in which the Commission concluded that the forward-looking economic cost of transporting and terminating local traffic is considerably less than $.009 per minute. The reciprocal compensation rates adopted by the Commission in Order No. PSC-96-1579-505-TP should apply to DeltaCom just as they apply to AT&T, MCI, and almost every other Alternative Local Exchange Carrier ("ALEC") in Florida.

DeltaCom's suggestion that BellSouth should be indifferent to the $.009 reciprocal compensation rate because "ALECs will have to pay BellSouth at the same rate" is laughable. DeltaCom Response at 4, n.3. Because many ALECs like DeltaCom are "cherry picking" business customers, particularly Internet Service Providers ("ISPs"), and are largely 'ignoring the residential market, there is considerably more traffic on a per-minute-of-use basis from

BellSouth customers to customers served by the ALEC industry rather than visa versa. Thus, while the $.009 rate would be "reciprocal" in the sense that it would be paid both by BellSouth and ALECs, the amount of traffic against which the rate is to be applied is not.[1]

DeltaCom's reference to the recent D.C. Circuit decision in *Bell Atlantic Telephone Companies v. FCC*, 2000 WL 273383 (D.C. Cir., March 24, 2000), is curious, since this case has absolutely nothing to do with the issues presently before the Commission. DeltaCom Response at 4. In that case, the D.C. Circuit vacated and remanded the FCC's Declaratory Ruling in CC Docket 96-98 and Notice of Proposed Rulemaking in CC Docket 99-68, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 14 FCC Rcd 3698 (1999), because, according to the Court, the FCC had not adequately explained its conclusion that calls to an ISP do not terminate at the ISP's local point of presence but instead at a distant website. However, the D.C. Circuit's opinion in no way alters the Commission's legal obligation in this arbitration to adopt reciprocal compensation rates that are cost-based in accordance with the 1996 Act and the FCC's pricing rules. Thus, the D.C. Circuit's recent decision is hardly "supportive" of the Commission's decision to adopt a reciprocal compensation rate that does not comply with these legal standards.

As an alternative to adopting existing Commission-approved reciprocal compensation rates, BellSouth has proposed that the $.009 rate be an interim rate subject to true-up once the Commission establishes new rates in Docket No. 990649-TP. DeltaCom objects to the Commission's doing so because, according to DeltaCom, it is not clear what reciprocal

[1] BellSouth does not agree that reciprocal compensation should be paid for traffic to ISPs. However, this Commission has concluded otherwise in a series of decisions interpreting BellSouth's interconnection agreements with various ALECs. These decisions, coupled with recent arbitration decisions in which the Commission has directed the parties to continue operating under the reciprocal compensation provisions of their existing agreements on an interim basis, have the practical effect of obligating BellSouth to pay reciprocal compensation for ISP traffic in Florida for the foreseeable future.

compensation rates will be established in Docket 990649-TP and because the parties "need certainty going forward regarding the rate for inter-carrier compensation." DeltaCom Response at 5.

Such objections are unpersuasive, particularly since DeltaCom previously argued in this proceeding that the Commission should establish loop rates "subject to a true-up pending final determination of rates in light of the FCC rules ...." March 15 Order at 69. It is not clear why DeltaCom was willing to live with the "uncertainty" of a true-up of loop rates, but cannot live with the "uncertainty" of a true-up of reciprocal compensation rates. Importantly, the Commission rejected DeltaCom's proposal for a true-up of loop rates "because there is insufficient evidence in the record to conclude that the [loop] rates ordered in this proceeding will be out of compliance with the current state of the law and the FCC's rules." *Id.* Here, by contrast, the record is clear that a reciprocal compensation rate of $.009 would be "out of compliance with the current state of the law and the FCC's rules," which at the very least supports use of a true-up mechanism here.

DeltaCom's proposal that it be permitted to receive reciprocal compensation at a rate of $.009 per minute until "the Commission changes the rate for inter-carrier compensation at some future time" will only result in DeltaCom and every other ALEC in the state of Florida receiving a windfall at the expense of BellSouth. The Commission should not and cannot tolerate such a result and accordingly should grant BellSouth's Motion for Reconsideration on this issue.

C. The Commission Should Reconsider Its Findings That DeltaCom Has Been Denied "A Meaningful Opportunity To Compete."

DeltaCom opposes reconsideration of the Commission's finding that "the quality of the access to the UNEs or the UNEs that BellSouth has provisioned in this proceeding do not provide ITC^DeltaCom with a meaningful opportunity to compete," because, according to

DeltaCom, "that finding has not aggrieved BellSouth in any way." DeltaCom Response at 5. BellSouth agrees that it is not "aggrieved" by the Commission's findings in the sense that these findings will be incorporated into the parties' new interconnection agreement, which is not the case. However, that is precisely the reason the Commission should grant reconsideration on this issue. The Commission's duty in this arbitration is to resolve issues upon which BellSouth and DeltaCom cannot agree concerning the terms of a new interconnection agreement -- nothing more, nothing less. Here, the Commission's findings concerning whether BellSouth has provided DeltaCom with a meaningful opportunity to compete have nothing to do with the terms of a new interconnection agreement, as DeltaCom readily acknowledges. In short, the Commission has made findings about an issue that it was even not asked to decide, which compels that BellSouth's Motion for Reconsideration be granted.[2]

DeltaCom's claim that the Commission's findings that DeltaCom has been denied a "meaningful opportunity to compete" are "supported by competent evidence" is without merit. DeltaCom Response at 6. First, there is no evidence in this record that BellSouth has failed to provide DeltaCom with access to unbundled network elements "at parity," and the Commission s March 15 Order cites to no such evidence. While the Commission's March 15 Order references the testimony of DeltaCom witness Hyde about migrating BellSouth customers served with Integrated Digital Loop Carrier ("IDLC") technology, the record is devoid of any evidence comparing BellSouth's service to DeltaCom with BellSouth's performance for its retail

[2] BellSouth is "aggrieved" by the Commission's findings to the extent they erroneously suggest that BellSouth has violated the 1996 Act in its dealings with DeltaCom, which BellSouth denies. Such findings, if left undisturbed, could be used by DeltaCom or other ALECs against BellSouth in any number of future proceedings, not the least of which are those proceedings involving BellSouth's efforts to obtain inter-LATA authority in Florida and elsewhere.

operations. Under the Commission's analysis, such evidence would be essential to determining whether DeltaCom has in fact received "parity."

Second, DeltaCom's reliance upon Mr. Hyde's testimony about IDLC is misplaced, given that the Commission necessarily rejected such testimony in finding that BellSouth had provided DeltaCom with nondiscriminatory access to unbundled loops. March 15 Order at 24. It is hard to image how the Commission could have found Mr. Hyde's testimony "persuasive" on the issue of whether BellSouth has provided DeltaCom with nondiscriminatory access to unbundled network elements generally while finding the same testimony to be unpersuasive on the issue of whether BellSouth has provided DeltaCom with nondiscriminatory access to unbundled loops. DeltaCom makes no attempt to explain this obvious inconsistency.

D. The Commission Should Reconsider Its Decision Concerning The Application Fee For Cageless Collocation.

DeltaCom's attempt to buttress the Commission's decision to establish a $1,279 application fee for cageless collocation by citing to the testimony of DeltaCom witness Wood is unconvincing. DeltaCom Response at 6-7. The Commission derived this application fee by assuming that it would take 20 hours to process an application for cageless collocation. March 15 Order at 77-78. This assumption and the component work times upon which it was based are not contained in Mr. Wood's testimony (or anywhere else in the record for that matter). In fact, Mr. Wood's prefiled testimony makes no mention of any work times associated with cageless collocation, and Mr. Wood never even proposed a specific cageless collocation application fee.

Furthermore, Mr. Wood's testimony about the "costing perspective" of cageless collocation was premised upon his view that cageless collocation "mirrors the characteristics of a virtual collocation arrangement" because "[l]ike virtual collocation, cageless collocation involves a collocator's equipment placed within the ILEC equipment lineups without using a segregated

area of the central office." Tr. Vol. 4 at 572-573. However, the FCC rules upon Mr. Wood's testimony was premised have since been vacated. *See GTE Services Corp. v. FCC*, 2000 U.S. App. LEXIS 4111 (D.C. Cir. March 17, 2000). Thus, there is no legal, let alone factual basis for the Commission's decision to establish a cageless collocation application fee of $1,279, which requires that this decision be reconsidered.

III. CONCLUSION

For the foregoing reasons, the Commission should grant BellSouth's Motion for Reconsideration.

Respectfully submitted this 24th day of April, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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