

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration
of unresolved issues in
negotiation of interconnection
agreement with BellSouth
Telecommunications, Inc. by
ITC^DeltaCom Communications,
Inc. d/b/a ITC^DeltaCom.

DOCKET NO. 030137-TP
ORDER NO. PSC-03-0971-PHO-TP
ISSUED: August 27, 2003

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on Monday, August 18, 2003, in Tallahassee, Florida, before Commissioner Braulio L. Baez, as Prehearing Officer.

APPEARANCES:

FLOYD R. SELF, Esquire, Messer, Caparello & Self, P.A., Post Office Box 1876, Tallahassee, Florida 32302-1876; NANETTE S. EDWARDS, Esquire, ITC^DeltaCom, 4092 South Memorial Parkway, Huntsville, Alabama 35802-4343; and DAVID I. ADELMAN, Esquire, and CHARLES B. JONES, III, Esquire, Sutherland Asbill & Brennan LLP, 999 Peachtree Street, NE, Atlanta, Georgia 30309
On behalf of ITC^DeltaCom ("DeltaCom").

NANCY B. WHITE, Esquire, c/o Nancy H. Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida, 32301
On behalf of BellSouth Telecommunications, Inc. ("BellSouth").

PATRICIA A. CHRISTENSEN, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

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

II. CASE BACKGROUND

On February 7, 2003, ITC^DeltaCom Communications, Inc. (ITC^DeltaCom or DeltaCom) filed its Petition for Arbitration with BellSouth pursuant to the Telecommunications Act of 1996. On March 4, 2003, BellSouth Telecommunications, Inc. filed its response to ITC^DeltaCom's Petition. By Order No. PSC-03-0534-PCO-TP, issued April 23, 2003 (Order Establishing Procedure), the hearing date, prehearing date, and other key activities dates were established.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

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

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

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

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

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be

presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services's confidential files.

IV. POST-HEARING PROCEDURES

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

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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

exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

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

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

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Jerry Watts	DeltaCom	1, 11a, 26, 45, 58, 59, 60, 62, 63
Steve Brownworth	DeltaCom	8a, 11b, 20b, 21, 36, 37, 44, 46, 47, 57
Mary Conquest	DeltaCom	2, 9, 25, 64, 66, 67
Don J. Wood	DeltaCom	56
Kathy K. Blake	BellSouth	26, 36, 37, 57
Ronald M. Pate	BellSouth	9, 66, 67
W. Keith Milner	BellSouth	8a, 21
John A. Ruscilli	BellSouth	1, 2, 11, 25, 44, 46, 47, 56, 58, 59, 60, 62, 63, 64
<u>Rebuttal</u>		
Jerry Watts	DeltaCom	1, 11a, 26, 45, 58, 59, 60, 62, 63

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Steve Brownworth	DeltaCom	8a, 11b, 20b, 21, 36, 37, 44, 46, 47, 57
Mary Conquest	DeltaCom	2, 9, 25, 64, 66, 67
Don J. Wood	DeltaCom	56
Kathy K. Blake	BellSouth	26, 36, 37, 57
Ronald M. Pate	BellSouth	9, 66, 67
W. Keith Milner	BellSouth	8a, 21
John A. Ruscilli	BellSouth	1, 2, 11, 25, 44, 46, 47, 56, 58, 59, 60, 62, 63, 64

VII. BASIC POSITIONS

DeltaCom: ITC^DeltaCom and BellSouth diligently negotiated in good faith for several months, trying to arrive at a new interconnection agreement. Unable to reach resolution on approximately 71 open issues, ITC^DeltaCom filed its Petition for Arbitration with this Commission on February 7, 2003. The parties have continued to negotiate with each other and have narrowed the number of open issues as of the date of this filing to approximately 25. The issues that remain directly impact ITC^DeltaCom's ability to serve its retail customers in Florida and compete with other telecommunications providers.

ITC^DeltaCom finds itself in a situation where it must reach agreement with its largest wholesale supplier regarding the provision of services, where that same wholesale supplier is also ITC^DeltaCom's largest competitor in the retail market. Due to BellSouth's inherent conflict of interest, ITC^DeltaCom has been unable to get BellSouth to agree to provisions of the interconnection

agreement that under normal business circumstances would be non-controversial. As Mr. Watts has testified, ITC^DeltaCom seeks relief with regard to three basic principles.

Parity. ITC^DeltaCom seeks parity in the provision of wholesale services by BellSouth so that it can receive such services on an equivalent basis to that which BellSouth provides itself. This concept of parity is inherent in the Federal Telecommunications Act of 1996 ("Act") and comes from the Act's requirement that incumbent local exchange carriers ("ILECs") provide access to UNES on "terms and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3). The FCC explained in ¶ 315 of the *First Local Competition Order* that this requirement means at a minimum that "whatever those terms and conditions are, they must be offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself." Enforcing a parity standard is a necessary step in ensuring that BellSouth cannot discriminate unfairly against its retail competitors like ITC^DeltaCom.

Non-Discrimination. There are issues for which BellSouth seeks to impose disparate requirements or limitations on ITC^DeltaCom that are not placed on other wholesale customers of BellSouth. The Commission should not allow BellSouth to discriminate among wholesale suppliers.

Reciprocity and Continuity. To establish and maintain a mutually beneficial business relationship, ITC^DeltaCom and BellSouth must operate under an interconnection agreement that creates reciprocal obligations between the two parties where appropriate and where the parties are similarly situated. Deposit policies are but one example of the need for the application of these

principles. ITC^DeltaCom also supports the principle of continuity, contrary to BellSouth's many attempts to change existing terms and conditions from the current interconnection agreement in such a manner that will negatively impact ITC^DeltaCom's ability to compete and provide valuable services to Florida consumers.

In summary, ITC^DeltaCom asks this Commission to apply the principles of parity, non-discrimination, and reciprocity and continuity to resolve the remaining outstanding issues. In doing so, the Commission can ensure that ITC^DeltaCom is fairly treated and that BellSouth is not allowed to use its inherent market power on the wholesale side of the business to frustrate fair competition on the retail side. The result will be a win for Florida consumers.

BellSouth: Each of the individually numbered issues in this docket represent a specific dispute between BellSouth and DeltaCom as to what should be included in the Interconnection Agreement between the parties. Some of these issues involve matters that are not properly within the scope of the Telecommunications Act of 1996 or the jurisdiction of this Commission and should, therefore, not be part of an Arbitrated Agreement. As to all other issues, BellSouth's positions are the more consistent with the 1996 Act, the pertinent rulings of the FCC and the rules of this Commission. Therefore, the Commission should sustain each of BellSouth's positions.

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

VIII. ISSUES AND POSITIONS

ISSUE A: What is the Commission's jurisdiction in this matter?

POSITIONS

DeltaCom: The Commission has jurisdiction pursuant to Section 252 of the Act to resolve the open issues remaining between the parties.

BellSouth: Section 252(b)(1) of the Telecommunications Act of 1996 empowers the Commission to arbitrate open issues in an interconnection agreement upon the filing of a Petition for Arbitration by either party. For purposes of this arbitration, the relevant limitations on the Commission's 252(b)(1) jurisdiction are found in sections 252(b)(4)(A), 252(b)(4)(C), 252(c)(1)-(3), and 252(e).

Under section 252(b)(4)(A), the scope of the Commission's consideration in an arbitration proceeding is limited to the issues set forth in the petition and in the response. The provisions of 252(b)(4)(C) require the Commission to resolve the open issues within nine (9) months of the filing of the Petition for Arbitration. Under sections 252(c)(1)-(3), the Commission is required to ensure that the arbitration decision: (a) meets the requirements of section 251, including FCC regulations prescribed pursuant to section 251; (b) complies with the pricing standards of section 252(d); and (c) provides a schedule for implementation of the agreement. Finally, section 252(e) sets forth the time frames for the Commission to accept or reject negotiated and arbitrated agreements, specifically delineating the circumstances under which the Commission can reject an agreement.

Staff: Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the

telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements. Pursuant to Section 252 of the Act, the Commission has jurisdiction to arbitrate interconnection agreements. The Commission also has jurisdiction pursuant to Chapters 364 and 120, Florida Statutes.

ISSUE 1: Term of the Agreement

a) Should the new interconnection agreement provide that the parties continue to operate under that Agreement or under BellSouth's Standard Interconnection Agreement pending the determination of the Commission's ruling in any future arbitration?

POSITIONS

DeltaCom: Yes, as it is with the current agreement. The parties should continue under the existing agreement pending any arbitration decision. It would be a significant hardship for DeltaCom to default to BellSouth's standard contract and then move back to the new agreement than for BellSouth to simply continue under the existing agreement.

BellSouth: The parties should operate under the provisions of the expired Agreement for no more than 12 months after the expiration date. Combined with the re-negotiation provisions of the expired Agreement, this gives the parties approximately 21 months to enter into a new Agreement, either through negotiation or arbitration. After the 12-month period, the parties should default to BellSouth's Standard Interconnection Agreement. It is unreasonable to require the rates, terms and conditions of the expired Agreement to continue to apply as it stifles BellSouth's ability to implement new processes or forces BellSouth to maintain old processes to be performed manually.

Staff: Staff has no position at this time.

b) What should be the length of the term of the agreement resulting from this arbitration?

POSITIONS

DeltaCom: Five years. Three years is too short. The parties executed the last agreements in early 2002 and turned around a month or two later to start negotiations for a new agreement. A longer contract period will result in cost savings and efficiency for both parties and for the Commission.

BellSouth: The term of the new Agreement should be no more than 3 years. This is consistent with the three year timeframe set by the FCC for review of its rules under Section 251.

Staff: Staff has no position at this time.

ISSUE 2: Directory Listings

a) Should BellSouth provide DeltaCom, for the term of this Agreement, the same directory listing language found in the BellSouth/AT&T Interconnection Agreement?

POSITIONS

DeltaCom: Yes. DeltaCom should have access to its end user customer listings in a reasonable time prior to publication in the BellSouth Directory. BellSouth sends the listings to BAPCO and DeltaCom should be able to verify that they have been accurately submitted.

BellSouth: Pursuant to 47 USC § 252(i), DeltaCom can adopt rates, terms and conditions for any interconnection, service, or network element from an interconnection agreement filed and approved pursuant to 47 USC § 252, under the same terms and conditions as the original Interconnection

Agreement. To the extent DeltaCom adopts rates, terms and conditions for directory listings from an agreement filed and approved by this Commission, such an adoption would be incorporated into DeltaCom's agreement for the original term of the adopted agreement (i.e., for the term of the AT&T agreement). The language included in BellSouth's proposal should replace the adopted language when it expires.

Staff: Staff has no position at this time.

b) Should BellSouth be required to provide an electronic feed of the directory listings of DeltaCom customers?

POSITIONS

DeltaCom: Yes. ALECs' listings are commingled with BellSouth listings, but distinguished by the OCN. These should be extracted prior to book print for review. An electronic comparison of what was submitted versus what is being printed is in the best interest of both parties and will reduce customer dissatisfaction and confusion.

BellSouth: Arbitration is not the appropriate forum for the resolution of this issue. The Commission has previously declined to arbitrate issues involving BellSouth Advertising & Publishing Company ("BAPCO"), ruling that the directory listing obligations of the 1996 Act do not extend to directory publishing issues. Alternatively, BellSouth is required to provide access to its directory assistance database and charges fees to do so in both its Agreement and its tariff, but BellSouth is not required to provide an electronic feed of directory listings for DeltaCom customers.

Staff: Staff has no position at this time.

c) Should DeltaCom have the right to review and edit its customers' directory listings?

POSITIONS

DeltaCom: Yes. Since DeltaCom is blind to the actions between BellSouth and BAPCO, and bears the financial responsibility to its end user, DeltaCom must be able to validate the accuracy of the listings.

BellSouth: DeltaCom has the right to review and edit its customer's directory listings through access to their customer service records. BellSouth Telecommunications does not have a database through which review and edits of directory listings may be made. This issue is between DeltaCom and BAPCO, and should not be the subject of a two party arbitration with BellSouth Telecommunications.

Staff: Staff has no position at this time.

ISSUE 9: OSS Interfaces

Should BellSouth be required to provide interfaces for OSS to DeltaCom which have functions equal to that provided by BellSouth to BellSouth's retail division?

POSITIONS

DeltaCom: Yes. It is a requirement of the Telecom Act that OSS be nondiscriminatory. BellSouth should provide all OSS functions in all areas at parity. It should not be allowed to provide more advantageous OSS to its retail centers than provided to ITC^DeltaCom.

BellSouth: The FCC and the nine state regulatory authorities for BellSouth's region have ruled in all of BellSouth's 271 applications that BellSouth provides nondiscriminatory access to its OSS for performing the functions of pre-ordering, ordering,

provisioning, maintenance and repair, and billing. To the extent DeltaCom seeks some modification to BellSouth's regional OSS, the appropriate forum is the CCP - not an individual interconnect agreement arbitration. Further, BellSouth believes that the current language contained in the Interconnection Agreement Sections 1.2 and 3.2 adequately states what BellSouth provides regarding interfaces to OSS.

Staff: Staff has no position at this time.

ISSUE 11: Access to UNEs

a) Should the interconnection agreement specify that the rates, terms and conditions of the network elements and combinations of network elements are compliant with state and federal rules and regulations?

POSITIONS

DeltaCom: Yes. Several states have retained authority to establish UNEs. The interconnection agreement must be approved by state commissions and therefore must be compliant with state orders and regulations. BellSouth again seeks only the minimum obligation.

BellSouth: The interconnection agreement should specify that the rates, terms and conditions of network elements and combinations of network elements should be compliant with federal and state rules pursuant to §251 of the 1996 Act. The Interconnection Agreement is an agreement under §251. If a state commission orders BellSouth to provide access to network elements pursuant to any authority other than §251 (for example under a separate state statutory authority) those elements should not be required to be included in a §251 agreement.

Staff: Staff has no position at this time.

b) Should all network elements be delivered to DeltaCom's collocation arrangement?

POSITIONS

DeltaCom: No. In fact, DeltaCom has network elements today that are not delivered to a collocation site. ALECs should be able to order UNES delivered to other ALECs' collocation spaces, sharing resources to improve efficiency and increased options for consumers. BellSouth's proposal to prohibit this is entirely unjustified.

BellSouth: No. Some UNES, such as subloops, do not terminate to a CLEC's collocation space. BellSouth's proposed language delineates those elements that do not terminate at the collocation space.

Staff: Staff has no position at this time.

ISSUE 21: Dark Fiber Availability

Does BellSouth have to make available to DeltaCom dark fiber loops and transport at any technically feasible point?

POSITIONS

DeltaCom: Yes. BellSouth wants to require DeltaCom to pick up dark fiber loops only at the DeltaCom collocation site. In fact, the parties meet in locations other than a collocation site. It is technically feasible for BellSouth to make dark fiber loops available at other locations.

BellSouth: BellSouth's definitions of dark fiber comport with the definitions of loops and transport under the FCC's rules. BellSouth will make dark fiber loops available at DeltaCom collocations. DeltaCom apparently wishes to access dark fiber at points other than those specified by the FCC's rules. BellSouth believes it has no requirement to do so.

Staff: Staff has no position at this time.

ISSUE 25: Provision of ADSL Where DeltaCom is the UNE-P Local Provider

Should BellSouth continue providing an end-user with ADSL service where DeltaCom provides UNE-P local service to that same end user on the same line?

POSITIONS

DeltaCom: Yes. DeltaCom has received consumer complaints that the consumer can't take DeltaCom voice service because if he or she does, BellSouth disconnects the consumer's ADSL service. This is an anticompetitive tying arrangement. Consumers should be able to select one company for high-speed internet and one for voice service.

BellSouth: No. BellSouth should not be required to provide DSL services to end users who receive voice services from a UNE-P provider for a number of reasons, including: (1) a UNE-P line is not a BellSouth provided facility (ie the CLEC owns the entire loop); thus, BellSouth does not have access to the high frequency portion of the loop (HFPL) and lacks permission to provision DSL over this portion of the CLEC loop; (2) in order for BellSouth to be able to provide DSL over the CLEC's HFPL, BellSouth would need to negotiate contracts with each individual CLEC by individual state, which would be extremely time consuming and could potentially have severe operational implications as each CLEC may propose different requirements in order for us to use their spectrum. Some may not allow us to use their spectrum at all; (3) many databases would need to be created to track which CLECs are allowing us to use their spectrum, for which states, at what cost, and for which end users, and many system enhancements would need to be done to ensure our current systems would be able to interface with these databases. The procedures

and costs (including who should pay) have not yet been finalized; (4) in order for BellSouth to recover its development costs for DSL over UNE-P, we would either have to charge the CLEC, or the NSP or our shareholders. Either way, this would ultimately result in a higher cost for the end user, and would most likely make DSL less competitive compared to other broadband technologies. Furthermore, this would put the burden of whether CLECs provide their own DSL service on BellSouth; and (5) BellSouth provides wholesale DSL and FastAccess® on BellSouth-provided exchange line facilities. BellSouth's FCC Tariff No. 1, establishes DSL as an overlay service, and requires the existence of an "in-service, Telephone Company [i.e., BellSouth] provided exchange line facility." FCC Tariff No. 1, Section 7.2.17(A). A UNE-P line is not a BellSouth owned facility. Therefore, BellSouth should not be required to provide DSL over UNE-P.

Staff: Staff has no position at this time.

ISSUE 26: Local Switching - Line Cap and Other Restrictions

a) Is the line cap on local switching in certain designated MSAs only for a particular customer at a particular location?

POSITIONS

DeltaCom: The existing contract language states that the four line cap only applies to a single physical end user location with four or more DSO equivalent lines.

BellSouth: When a particular customer has four or more lines within a specific geographic area, even if those lines are spread over multiple locations, BellSouth is not obligated to provide unbundled local circuit switching as long as the other criteria in FCC Rule 51.319(c) (2) are met.

Staff: Staff has no position at this time.

b) Should the Agreement include language that prevents BellSouth from imposing restrictions on DeltaCom's use of local switching?

POSITIONS

DeltaCom: Yes. This language is in other carrier agreements and is in the parties' current interconnection agreement.

BellSouth: The FCC's rules set forth the situations in which DeltaCom is entitled to obtain unbundled local switching from BellSouth at TELRIC rates. In those situations in which the FCC's rules do not entitle DeltaCom to obtain unbundled switching from BellSouth at TELRIC rates, BellSouth is willing to provide unbundled switching to DeltaCom and other CLECs at market rates.

Staff: Staff has no position at this time.

c) Is BellSouth required to provide local switching at market rates where BellSouth is not required to provide local switching as a UNE? Does the Florida Public Service Commission have the authority to set market rates for local switching? If so, what should be the market rate?

POSITIONS

DeltaCom: This issue is subject to the FCC Triennial Review order and the findings of the Commission pursuant to that order. To the extent BellSouth is allowed to price a service at market rates, those rates must be approved by the Commission and supported by relevant market data and analysis.

BellSouth: An arbitration under §251 of the 1996 Act is not the appropriate forum for the setting of market rates.

Staff: Staff has no position at this time.

ISSUE 30: Provision of Combinations

a) What terms and conditions should apply to the provision of UNE combinations? (PARTIES REQUEST DEFERRAL PENDING THE ISSUANCE OF THE FCC'S TRIENNIAL REVIEW ORDER.)

POSITIONS

DeltaCom: Party indicated issue closed.

BellSouth: Party indicated issue closed.

Staff: Staff has no position at this time.

b) Should BellSouth be required to provide DeltaCom the same conditions for network elements and combinations that BellSouth has provided to other carriers? (PARTIES REQUEST DEFERRAL PENDING THE ISSUANCE OF THE FCC'S TRIENNIAL REVIEW ORDER.)

POSITIONS

DeltaCom: Party indicated issue closed.

BellSouth: Party indicated issue closed.

Staff: Staff has no position at this time.

ISSUE 31: EELs

Are new EELs ordered by DeltaCom subject to local use restrictions? (PARTIES REQUEST DEFERRAL PENDING THE ISSUANCE OF THE FCC'S TRIENNIAL REVIEW ORDER.)

POSITIONS

DeltaCom: Party indicated issue closed.

BellSouth: Party indicated issue closed.

Staff: Staff has no position at this time.

ISSUE 33: Special Access Conversions to EELs

Can DeltaCom provide a blanket certification that refers to all three safe harbors for special access conversions? (PARTIES REQUEST DEFERRAL PENDING THE ISSUANCE OF THE FCC'S TRIENNIAL REVIEW ORDER.)

POSITIONS

DeltaCom: Party indicated issue closed.
BellSouth: Party indicated issue closed.
Staff: Staff has no position at this time.

ISSUE 34: Audits

Under what circumstances would DeltaCom be required to reimburse BellSouth for the full cost of an audit? (PARTIES REQUEST DEFERRAL PENDING THE ISSUANCE OF THE FCC'S TRIENNIAL REVIEW ORDER.)

POSITIONS

DeltaCom: Party indicated issue closed.
BellSouth: Party indicated issue closed.
Staff: Staff has no position at this time.

ISSUE 36: UNE/Special Access Combinations

a) Should DeltaCom be able to connect UNE loops to special access transport?

POSITIONS

DeltaCom: Yes. The parties' current interconnection agreement provides for this combination and it is in other interconnection agreements. ITC^DeltaCom should not be forced to make changes to the existing network. There is no technical impediment

to BellSouth providing special access/UNE combinations.

BellSouth: No. The FCC Rules regarding combinations (47 C.F.R. 51.315) relate to combinations of UNEs. It contains no requirements for an ILEC to combine UNEs with tariffed services. Further, paragraph 28 of the June 2, 2000 Supplemental Order Clarification addressed this issue in rejecting MCI's request to eliminate the *prohibition on co-mingling*.

Staff: Staff has no position at this time.

b) Does BellSouth combine special access services with UNEs for other CLECs?

POSITIONS

DeltaCom: Yes. Again, the parties' current interconnection agreement provides for this combination and it is in other interconnection agreements. In various circumstances, DeltaCom has had special access services in combination with UNE services.

BellSouth: No.

Staff: Staff has no position at this time.

ISSUE 37: Conversion of a Special Access Loop to a UNE Loop that Terminates to DeltaCom's Collocation

Where DeltaCom has a special access loop that goes to DeltaCom's collocation space, can that special access loop be converted to a UNE loop?

POSITIONS

DeltaCom: DeltaCom has some Special Access loops that go to DeltaCom's collocation. This is not a combination. The AT&T/BellSouth agreement provides that in such instances the special access loop can be converted

to a UNE loop. DeltaCom merely seeks the same treatment. This is an administrative change only for BellSouth.

BellSouth: BellSouth is not obligated to "convert" a special access loop to a UNE loop. CLECs may order stand-alone UNEs in accordance with their interconnection agreements and may chose to roll traffic currently routed over an existing special access circuit to those UNEs. The "conversion" requirements specified by the FCC in the Supplemental Order Clarification apply only to conversions of special access circuits to loop and transport (EEL) UNE combinations. Neither the FCC Rules regarding combinations nor any FCC Order addresses, either directly or indirectly, conversions of stand-alone elements, which are, by definition, not combinations, but individual elements that terminate in a collocation arrangement.

Staff: Staff has no position at this time.

ISSUE 44: Establishment of Trunk Groups for Operator Services, Emergency Services, and Intercept

Should the interconnection agreement set forth the rates, terms and conditions for the establishment of trunk groups for operator services, emergency services, and intercept?

POSITIONS

DeltaCom: Yes. DeltaCom has its own operator/DA center and must be able to interconnect its TOPS platform with BellSouth's. DeltaCom is connected today and this mutually benefits BellSouth's operator services center as well as DeltaCom. This interconnection helps protect consumers' safety.

BellSouth: No. These services are no longer UNEs and are therefore provided under the access tariff, not the Agreement.

Staff: Staff has no position at this time.

ISSUE 46: BLV/BLVI

Does BellSouth have to provide BLV/BLVI to DeltaCom? If so, what should be the rates, terms and conditions?

POSITIONS

DeltaCom: DeltaCom has proposed language that is in the parties' current interconnection agreement. Unlike other CLECs, DeltaCom has its own operator/DA center and must be able to interconnect with BellSouth. BellSouth provides BLV/BLVI when its customers call other BellSouth customers - just not when BellSouth customers call DeltaCom customers.

BellSouth: BellSouth will provide BLV/BLVI in a nondiscriminatory manner and at parity with how it provides such functionality to its retail customers. BLV/BLVI are tariffed services, not UNEs, and are, therefore, not appropriate issues of a §251 arbitration. Should DeltaCom wish to avail itself of this offering, it can obtain BLV and BLVI pursuant to the rates, terms and conditions in BellSouth's applicable tariff.

Staff: Staff has no position at this time.

ISSUE 47: Compensation for the Use of DeltaCom's Collocation Space ("Reverse Collocation")

Should BellSouth be required to compensate DeltaCom when BellSouth collocates in DeltaCom's collocation space? If so, should the same rates, terms and conditions apply to BellSouth that BellSouth applies to DeltaCom?

POSITIONS

DeltaCom: Yes. This is contained in existing agreement language. The rates, terms and conditions BellSouth applies to DeltaCom in this situation

should be applied to BellSouth when it collocates in DeltaCom's collocation space. BellSouth uses DeltaCom's space to serve DeltaCom's competitors - all DeltaCom asks is to be compensated for this use.

BellSouth:

The 1996 Act does not include a requirement that DeltaCom permit collocation of BellSouth's equipment in DeltaCom's central offices; consequently, the rates terms and conditions under which BellSouth elects to collocate in DeltaCom's central offices should not be the subject of a \$252 arbitration. Additionally, any such rates, terms and conditions should not be included in an interconnection agreement between the parties, and made a public record, just as DeltaCom is not required to publicly file any other agreement that it has permitting collocation by another carrier.

For sites established after the effective date of the new collocation agreement ("future sites"), BellSouth will agree to pay mutually negotiated collocation charges for BellSouth equipment located, and used, solely for purposes of delivery of BellSouth's originated traffic, if and only if BellSouth voluntarily chooses to place a POI for BellSouth's originated Local Interconnection traffic in DeltaCom's office. Situations where DeltaCom has chosen the DeltaCom office as the POI for DeltaCom's originated traffic, and where BellSouth has to place equipment in order to receive such traffic, will NOT be deemed to be locations where BellSouth has voluntarily chosen to place a POI for BellSouth originated Local Interconnection traffic. Further, if DeltaCom has the right under the Interconnection Agreement to choose the POI for both Parties' originated traffic, and DeltaCom chooses to have a POI for BellSouth originated traffic at a DeltaCom office, such locations will NOT be deemed to be locations where BellSouth has voluntarily chosen to place a POI for BellSouth originated Local Interconnection

traffic. The provisions of BellSouth's tariffs will control in the event BellSouth locates equipment in DeltaCom's premises pursuant to such tariffs.

BellSouth will agree to have such collocation rates, terms, and conditions mirror the applicable rates, terms and conditions that BellSouth offers to DeltaCom.

Staff: Staff has no position at this time.

ISSUE 56: Cancellation Charges

a) May BellSouth charge a cancellation charge which has not been approved by the Commission?

POSITIONS

DeltaCom: No. Cancellation charges have not been approved by the Commission.

BellSouth: The rates applicable when a CLEC cancels an LSR are based on Commission-approved rates. When a CLEC cancels an LSR, cancellation charges apply on a prorated basis and are based upon the point within the provisioning process that the CLEC cancels the LSR. Any costs incurred by BellSouth in conjunction with the provisioning of that request will be recovered in accordance with BellSouth's Private Line Tariff or BellSouth's FCC No. 1 Tariff. The cancellation charge equals a percentage of the applicable installation nonrecurring charge. Since the Commission has approved the nonrecurring rates BellSouth charges for UNE installation and provisioning, BellSouth's recovery of its cost incurred prior to the cancellation of the LSR is appropriate and cost-based.

Staff: Staff has no position at this time.

b) Are these cancellation costs already captured in the existing UNE approved rates?

POSITIONS

DeltaCom: The basis for a separate cost-based cancellation charge has not been established by BellSouth.

BellSouth: These costs are not already recovered in the existing UNE approved rates.

Staff: Staff has no position at this time.

ISSUE 57: Rates and Charges for Conversion of Customers from Special Access to UNE-based Service

a) Should BellSouth be permitted to charge for DeltaCom for converting customers from a special access loop to a UNE loop?

POSITIONS

DeltaCom: No. This is an administrative change only. The BellSouth and AT&T interconnection agreement permits AT&T to send a spreadsheet with a list of those Special Access circuits to be converted to a UNE loop that goes to a collocation. There is no technical impediment to such conversions.

BellSouth: Yes. BellSouth is not obligated to "convert" special access circuits to stand-alone UNE loops. As such, it is appropriate for BellSouth to charge DeltaCom for installation and provisioning of the stand-alone UNEs ordered by DeltaCom to replace existing special access circuits.

Staff: Staff has no position at this time.

b) Should the Agreement address the manner in which the conversion will take place? If so, must the conversion be completed such that there is no disconnect and reconnect (i.e, no outage to the customer)?

POSITIONS

DeltaCom: Yes. BellSouth has agreed to this process with AT&T. DeltaCom should be afforded the same or similar opportunities.

BellSouth: No. BellSouth is not obligated to "convert" special access circuits to stand-alone UNE loops, and BellSouth has no process to "convert" stand-alone special access services to stand-alone UNEs. The project management process BellSouth offered in response to a New Business Request to convert special access services to stand-alone UNEs is complex.

Staff: Staff has no position at this time.

ISSUE 58: Unilateral Amendments to the Interconnection Agreement

a) Should the Interconnection Agreement refer to BellSouth's website address to Guides such as the Jurisdictional Factor Guide?

POSITIONS

DeltaCom: No. BellSouth should not be allowed to unilaterally modify the contract in a manner that could financially or operationally impair DeltaCom and its customers.

BellSouth: Yes. Certain provisions of the Agreement should incorporate by reference various BellSouth documents and publications. This permits BellSouth to, from time to time during the term hereof, change or alter such documents and publications as necessary, for example, to reflect operational changes which do not materially impact the terms of the interconnection agreement.

Staff: Staff has no position at this time.

b) Should BellSouth be required to post rates that impact UNE services on its website?

POSITIONS

DeltaCom: Yes. DeltaCom had a service-impacting situation where BellSouth modified certain USOCs and it was not clearly communicated that a contract revision was necessary in order to avoid the disruption.

BellSouth: No. The rates are provided to individual CLECs upon amendment, and BellSouth has agreed to provide DeltaCom with an amendment within 30 days of receipt of such a request.

Staff: Staff has no position at this time.

ISSUE 59: Payment Due Date

Should the payment due date begin when BellSouth issues the bill or when DeltaCom receives the bill? How many days should DeltaCom have to pay the bill?

POSITIONS

DeltaCom: DeltaCom needs 30 days to pay from the date a bill is received from BellSouth. DeltaCom receives thousands of BellSouth invoices monthly, often several days after the invoice date. DeltaCom has to review each bill for errors. BellSouth sends approximately 95% of bills electronically. The received date is easily known.

BellSouth: No. Payment should be due by the next bill date. BellSouth invoices DeltaCom every 30 days. To the extent DeltaCom has questions about its bills, BellSouth cooperates with DeltaCom to provide responses in a prompt manner and resolve any issue. It is reasonable for payment to be due before the next bill date.

Staff: Staff has no position at this time.

ISSUE 60: Deposits

a) Should the deposit language be reciprocal?

POSITIONS

DeltaCom: Yes. DeltaCom proposes language that is consistent with FCC policy on deposits. The parties disagree regarding whether a deposit should be assessed at all. BellSouth seeks more stringent deposit requirements than exist in the current agreement. DeltaCom's language more accurately reflects DeltaCom's years of timely payments to BellSouth.

BellSouth: The deposit language should not be reciprocal. BellSouth is not similarly situated with a CLEC provider and, therefore should not be subject to the same creditworthiness and deposit requirements/standards. If BellSouth is buying services from a CLEC provider's tariff, the terms and conditions of such tariff will govern whether BellSouth must pay a deposit. Thus, the interconnection agreement is not an appropriate location for a deposit requirement to be placed upon BellSouth.

Staff: Staff has no position at this time.

b) Must a party return a deposit after generating a good payment history?

POSITIONS

DeltaCom: See (a) above and language proposed by ITC^DeltaCom in Mr. Watts' testimony.

BellSouth: BellSouth should not be required to return a deposit after a CLEC generates a good payment

history. Payment history alone is not a measure of credit risk.

Staff: Staff has no position at this time.

ISSUE 62: Limitation on Back Billing

Should there be a limit on the parties' ability to back-bill for undercharges? If so, what should be the time limit?

POSITIONS

DeltaCom: Yes. The limit should be no longer than 90 days. Backbilling charges longer than 90 days is inappropriate and puts ITC^DeltaCom in an untenable position with its retail customers. Laws and rules regarding retail billing are not the appropriate analogy, and in fact support DeltaCom's position in this case.

BellSouth: BellSouth's limitations for back billing are pursuant to the applicable state's statute of limitation.

Staff: Staff has no position at this time.

ISSUE 63: Audits

Should the Agreement include language for audits of the parties' billing for services under the interconnection agreement? If so, what should be the terms and conditions?

POSITIONS

DeltaCom: Yes. DeltaCom offered the language from AT&T's Interconnection Agreement. BellSouth should provide the same treatment to DeltaCom it is willing to provide to AT&T.

BellSouth: Audits of BellSouth's billing for services under the interconnection agreement are not necessary. Performance measurements addressing the accuracy

and timeliness of BellSouth's billing provide sufficient mechanisms for monitoring BellSouth's billing. Inclusion of audit language for billing in the agreement would be duplicative and an unnecessary use of resources. In response to DeltaCom's request to adopt AT&T's language on this issue, adoptions pursuant to 47 USC § 252(i) are limited to network elements, services, and interconnection rates, terms and conditions and do not apply to other aspects of the Interconnection Agreement that are not required pursuant to §251. 47 USC § 252(i) only requires an ILEC to make available "any interconnection, service, or network element" under the same terms and conditions as the original Interconnection Agreement.

Staff: Staff has no position at this time.

ISSUE 64: ADUF

What terms and conditions should apply to the provision of ADUF records?

POSITIONS

DeltaCom: ADUF is the Access Daily Usage File. When DeltaCom buys unbundled local switching, BellSouth provides DeltaCom an ADUF record for the billing of the access charges. DeltaCom should not be billed for ADUF records associated with local calls.

BellSouth: DeltaCom is asking BellSouth to isolate and provide to them only certain ADUF records. BellSouth is not required to do this. Consistent with the FCC's 271 Orders in BellSouth's states, BellSouth provides competing carriers with complete, accurate, and timely reports on the service usage of their customers in substantially the same manner that BellSouth provides such information to itself. If DeltaCom wants a customized report, it should file a New Business Request.

Staff: Staff has no position at this time.

ISSUE 66: Testing of End-User Data

Should BellSouth provide testing of DeltaCom end-user data? If so, what are the rates, terms, and conditions for such testing?

POSITIONS

DeltaCom: Yes. A set of test cases with controlled data is required. BellSouth's retail operation can test code prior to deployment and see results in ordering, provisioning, maintenance and billing venues. DeltaCom cannot test in more than one system when migrating to a new code version. DeltaCom should have parity.

BellSouth: Arbitration is not the appropriate forum for the resolution of this issue. This issue involves process and systems changes that affect all CLECs on a regional basis and should be addressed in the CCP. In addition, BellSouth provides CLECs with access to the two testing environments: the traditional testing environment (used where a CLEC is shifting from manual to an electronic environment, or upgrading its electronic interface to a new industry standard) and the CLEC Application Verification Environment ("CAVE"), which allows CLECs to perform optional, functional, and pre-release testing for EDI, TAG, and LENS. These test environments are governed under CCP and were found compliant by the each of the state regulatory authorities in BellSouth's nine-state region as well as the FCC for BellSouth's 271 applications with regard to providing CLECS with a stable test environment.

Staff: Staff has no position at this time.

ISSUE 67: Availability of OSS Systems

Should BellSouth be allowed to shut down OSS systems during normal working hours (8 a.m. to 5 p.m.) without notice or consent from DeltaCom?

POSITIONS

DeltaCom: Absent an emergency, BellSouth should not shut down DeltaCom's access to all OSS during normal working hours without consent of DeltaCom. DeltaCom schedules staff based on published support hours. When BellSouth takes down all systems during normal business hours, DeltaCom pays employees with no tools to conduct customer transactions.

BellSouth: Arbitration is not the appropriate forum for the resolution of this issue. This issue involves process and systems changes that affect all CLECs on a regional basis and should be addressed in the CCP. In addition, BellSouth provides DeltaCom and all CLECs with OSS system availability times. At certain times these systems are not available due to scheduled maintenance or upgrades. These are normally performed during off peak hours. CLECs are given notice as governed under CCP when OSS systems will not be available during normal availability hours.

Staff: Staff has no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Watts	DeltaCom	_____	Correspondence, re: DUF (CONFIDENTIAL)
		(JW - 1)	

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Brownworth	DeltaCom	(SB - 1)	Current Agreement, re: Local Calling Area
		(SB - 2)	NewSouth/BellSouth Agreement, re: Local Traffic
		(SB - 3)	First Agreement, re: Local Traffic
		(SB - 4)	AT&T/BellSouth Agreement, re: Operator Services
		(SB - 5)	BellSouth Response to Alabama Interrogatory 73
		(SB - 6)	BellSouth Witness Thierry Testimony in Alabama
Conquest	DeltaCom	(MC - 1)	State Commission Decisions, re: DSL Issue
		(MC - 2)	BellSouth Letter to DeltaCom, re: DSL Issue
		(MC - 3)	(inadvertantly skipped)
Wood	DeltaCom	(DJW - 1)	Vita of Don J. Wood
		(DJW - 2)	AT&T Contract Language
		(DJW-3)	Cost Summary (CONFIDENTIAL)

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Pate	BellSouth	_____	Change Control
		(RMP - 1)	Process Document Version 3.6 - April 17, 2003
		_____	Change Request
		(RMP - 2)	CR0896 - Modify CAVE to Allow CLECs to Test Using Own Company-Specific Data
		_____	Change Request
		(RMP - 3)	CR0897 - Expand CAVE to Support Increased CLEC Testing
Milner	BellSouth	_____	Meeting minutes of
		(RMP - 4)	Release 11.0 CLEC / B e l l S o u t h Conference Call November 4, 2002
		_____	Carrier Notification
		(RMP - 5)	S N 9 1 0 8 3 4 8 3 (Original, w/o Tables) Release 11.0 System Downtime
		_____	Carrier Notification
		(RMP - 6)	SN91083503 and Carrier Notification SN91083483 (Revised)
		_____	IDLC White Paper
		(WKM-1)	
<u>Rebuttal</u>			
Watts	DeltaCom	_____	BellSouth Carrier
		(JW - 2)	Notice Letter

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		(JW - 3)	B a c k b i l l i n g S p r e a d s h e e t (CONFIDENTIAL)
		(JW - 4)	McEachern Affidavit, E-mail
Brownworth	DeltaCom	(SB - 7)	E-mail to Van Cooper of BellSouth
		(SB - 8)	A T & T / B e l l S o u t h Agreement, re: SPOI
		(SB - 9)	C b e y o n d / B S T Agreement, re: UNE/Special Access
		(SB - 10)	A T & T / B S T A g r e e m e n t , re: Conversions
		(SB - 11)	B e l l S o u t h R e s p o n s e t o A l a b a m a Interrogatory 73
		(SB - 12)	B e l l S o u t h E - m a i l , re: Reverse Collocation
		(SB - 13)	B e l l S o u t h L e t t e r , re: Special Access Conversions
Conquest	DeltaCom	(MC - 4)	B S T C a r r i e r Notification, re: Directory Listing
		(MC - 5)	B e l l S o u t h T e s t i n g Meeting Minutes, 5/9/02
		(MC - 6)	B e l l S o u t h Notification, re: Test Ability

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(MC - 7)</u>	B e l l S o u t h Notification, re: 12/27/02 Extension
Blake	BellSouth	<u>(KKB - 1)</u>	B e l l S o u t h ' s correspondence to AT&T regarding AT&T's NBR

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

X. PROPOSED STIPULATIONS

1) The parties have agreed that the following issues as identified in the Order Establishing Procedure have been resolved and are closed, and thus are withdrawn from this arbitration. These following issues have not been included in the Prehearing Order:

a) These issues were identified as closed in the Order Establishing Procedure and are as follows: Issues 4, 7, 11(c), 12, 13(a), 14, 16, 19, 20(a), 22, 35, 38, 43, 48, 49, 65(a), 68.

b) In addition to the issues which were previously closed, the following issues have been resolved: Issues 2(d), 3, 5, 6, 8(a), 8(b), 10, 13(b), 15, 17, 18, 23, 24, 27, 28, 29, 32, 39, 40, 41, 42, 45, 50, 51, 52, 53, 54, 55, 61, 65(b), 69, 70, 71.

2) Furthermore, the parties agreed to request deferral of Issues 30, 31, 33, and 34 pending the release of the FCC's Triennial Review Order.

3) The parties waive opening statements.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

1. On May 19, 2003, ITC^DeltaCom filed a claim of confidentiality for DN 04481-03, Jerry Watts' direct testimony Exhibit JW-1 and Don J. Wood's direct testimony Exhibit No. DJW-3.

2. On June 25, 2003, ITC^DeltaCom filed a claim of confidentiality for DN 05688-03, Jerry Watts' rebuttal testimony Exhibit JW-3.

3. On July 28, 2003, BellSouth filed its notice of intent to request specified confidential classification of DN 06803-03, Responses to staff's First Request for Production of Documents No. 4.

XIII. DECISIONS THAT MAY IMPACT COMMISSION'S RESOLUTION OF ISSUES

Parties have stated in their prehearing statements that the following decisions have a potential impact on our decision in this proceeding:

None.

XIV. RULINGS

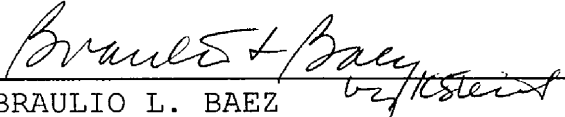
Direct and Rebuttal testimony shall be taken together.

It is therefore,

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

ORDER NO. PSC-03-0971-PHO-TP
DOCKET NO. 030137-TP
PAGE 39

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 27th Day of August, 2003.


BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

PAC/AJT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme

ORDER NO. PSC-03-0971-PHO-TP
DOCKET NO. 030137-TP
PAGE 40

Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.