

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY

OF

JERRY WATTS

ON BEHALF OF

ITC^DELTACOM COMMUNICATIONS, INC.

DOCKET NO. 030137-TP

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1 **Q: PLEASE STATE YOUR NAME POSITION AND BUSINESS ADDRESS.**

2 A: My name is Jerry Watts, I am Vice President of Government and Industry
3 Affairs for ITC^DeltaCom, Communications, Inc., ("ITC^DeltaCom" or
4 "ITCD") . My business address is 4092 South Memorial Parkway,
5 Huntsville, Alabama, 35802.

6

7 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **BUSINESS EXPERIENCE.**

9 A: I am a graduate of Auburn University with a B.S. in Accounting. I have
10 over thirty years experience in the telecommunications industry including
11 positions with Southern Bell, South Central Bell, BellSouth, AT&T, and
12 ITC^DeltaCom. Most of my career has been in the area of Government
13 Affairs with responsibility for both regulatory and legislative matters at the
14 state and federal level.

15

16 I have served as an officer or board member for several industry
17 associations including the Alabama Mississippi Telephone Association,
18 The Georgia Telephone Association, The Alabama Inter-Exchange
19 Carriers Association, The Southeastern Competitive Carriers Association
20 and The Georgia Center for Advanced Telecommunications Technology.
21 I currently serve as President of The Competitive Carriers of the South,
22 ("CompSouth"), a non-profit association of sixteen competitive
23 telecommunications companies operating in the southeast.

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I have previously presented testimony in Alabama, Louisiana, Mississippi, North Carolina, Tennessee and Florida.

Q: WHAT ARE YOUR RESPONSIBILITIES AT ITC^DELTACOM?

A: I am responsible for ITC^DeltaCom's relationship with state and federal government entities including state public utility commissions, state legislatures, the FCC and the US Congress. I am also responsible for facilitating the working relationship of ITC^DeltaCom with other telecommunications companies including incumbent local exchange companies, competitive local exchange companies and interexchange carriers.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to provide an overview of our request for arbitration including the operational imperatives that underlie our position on unresolved issues.

Q: WILL YOU ADDRESS ITC^DELTACOM'S POSITION ON ALL UNRESOLVED ISSUES IN YOUR TESTIMONY?

A: No. I will address our position on certain issues and will defer to other witnesses to address the issues within their area of expertise. Those witnesses along with their respective arbitration issues are as follows:

1 Steven Brownworth will discuss the following Issues: 8, 11(b), 13(b), 18,
2 20 (b), 21, 23, 24, 27, 29, 36, 37, 39, 40, 41, 44, 46, 47, and 57.

3

4 Mary Conquest will discuss Issues 2, 6, 9, 25, 64, 65(b), 66, 67, and 69.

5

6 Don Wood will discuss Issues 50, 51, 53, 54, 55, 56, and 70.

7

8 **Q: WHICH ISSUES WILL YOU ADDRESS IN YOUR TESTIMONY?**

9 A: I will address the following issues in my testimony:

10 Issue 1: Term of Agreement

11 Issue 11(a): Access to UNEs

12 Issue 26: Line Cap and Other Restrictions

13 Issue 30: Provision of Combinations.

14 Issue 31: EELs (are EELs subject to local use restrictions)

15

16 Issue 33: Special Access Conversion to EELs (can ITCD provide a
17 blanket certification that refers all three safe harbors for
18 special access conversions?)

19 Issue 34: Audits (should ITCD be required to reimburse BellSouth for
20 the full cost of an audit?)

21 Issue 42: Audits of PIU/PLU (does a party have to pay for the audit if
22 factors are more than 20 % overstated?)

23 Issue 45: Switched Access Charges Applicable to BellSouth

- 1 Issue 58: Unilateral Amendments to the Interconnection Agreement
2 Issue 59: Payment Due Date
3 Issue 60: Deposits
4 Issue 62: Limitation on Back billing
5 Issue 63: Audits (BellSouth's refusal to allow pick and choose from
6 attachment 7)
7

8 **Q: ARE THERE ANY ISSUES INCLUDED IN YOUR PETITION THAT**
9 **HAVE NOW BEEN RESOLVED BETWEEN THE PARTIES?**

10 A: Yes. The following issues have been settled: 3, 4, 5, 7, 10, 11(c), 12,
11 13(a), 14, 16, 17, 19, 20 (first subpart), 22, 28, 32, 35, 38, 43, 48, 49, 52,
12 65(a), 68 and 71.

13
14 **Q: WHY HAS ITC^DELTACOM REQUESTED ARBITRATION OF THE**
15 **ISSUES IN THIS CASE?**

16 A: Following several months of good faith negotiations with BellSouth, we
17 determined that the issues identified in our petition could not be resolved
18 by the parties. Since filing the arbitration petition on February 7, 2003,
19 we have continued settlement discussions and mediation and have
20 reduced the number of pending issues. The remaining issues have a
21 direct impact on ITC^DeltaCom's ongoing ability to serve our customers
22 and to compete with other competitive local exchange companies
23 ("CLECs") and incumbent local exchange companies ("ILECs"). Our

1 position on the issues in this case are supported by our rights under the
2 federal Telecommunications Act of 1996 ("Telecommunications Act" or
3 "Act") and the needs of our business.

4
5 **Q: WHAT ARE THE OPERATIONAL AND BUSINESS IMPERATIVES**
6 **THAT SUPPORT YOUR POSITION?**

7 A: Through this arbitration we seek a mutually beneficial interconnection
8 agreement with BellSouth based on the basic principles of parity, non-
9 discrimination, reciprocity, and continuity. These principles provide the
10 arbitration panel with a framework to decide the contested issues in a
11 way that ensures the protection of the rights of the parties and the best
12 interest of Florida consumers.

13
14 **Q: HOW IS PARITY ADDRESSED BY YOUR PETITION AND WHY IS IT A**
15 **REQUIREMENT OF THE ACT?**

16 A: Parity is required so that ITC^DeltaCom can be assured of a reasonable
17 business relationship with its dominant provider of wholesale services,
18 BellSouth. Without a requirement of parity, BellSouth would be able to
19 discriminate in favor of its own retail interests and/or affiliates and make
20 it virtually impossible for a CLEC like ITC^DeltaCom to compete.
21 Because BellSouth is the dominant provider of wholesale services to
22 CLECs and the dominant retail competitor of CLECs, the parity
23 requirements of the Act must be effectively enforced through appropriate

1 contract language and performance measurement plans and penalties.
2 Moreover, Congress explicitly recognized the vulnerability of competitive
3 carriers and, to help level the field between new entrants and
4 incumbents, required the ILECs to provide access to UNEs on “terms,
5 and conditions that are just, reasonable, and nondiscriminatory.” (47
6 U.S.C. § 251(c)(3)).

7
8
9 The Federal Communications Commission (“FCC”), in interpreting this
10 statutory language, has explained that this language “means, at a
11 minimum, that whatever those terms and conditions are, they must be
12 offered equally to all requesting carriers, and where applicable, they
13 must be equal to the terms and conditions under which the incumbent
14 LEC provisions such elements to itself.”(See First Local Competition
15 Order, ¶ 315 (internal citations omitted)). Furthermore, the FCC also held
16 that, in order to be consistent with the Act’s goal of promoting
17 competition, the ILEC must be held to a higher standard than just
18 providing all competitors with the same level of service. Rather, the FCC
19 held that the terms of Section 251(c)(3) “require incumbent LECs to
20 provide unbundled elements under terms and conditions that would
21 provide and efficient competitor with a meaningful opportunity to
22 compete.” (Id.)

23

1 In addition, the FCC has held that, in order to provide nondiscriminatory
2 access to UNEs, “incumbent LECs must provide carriers purchasing
3 access to unbundled network elements with the pre-ordering, ordering,
4 provisioning, maintenance and repair, and billing functions of the
5 incumbent LECs operations support systems.” (Id. at ¶ 316 (internal
6 citations omitted). See also, 47 C.F.R. § 51.313(c) (“[a]n incumbent LEC
7 must provide a carrier purchasing access to unbundled network
8 elements with the pre-ordering, ordering, provisioning, maintenance and
9 repair, and billing functions of the incumbent LEC’s operations support
10 systems.”)

11 Consistent with the Act, and the FCC’s orders interpreting the
12 requirements of the Act, ITC^DeltaCom has requested that BellSouth
13 provide Operational Support System (“OSS”) capabilities as well as
14 interconnection and service delivery options that allow ITC^DeltaCom to
15 have the opportunity to deliver competitive products and services to
16 consumers on at least the same terms as BellSouth. Every request has
17 been based on a reasonable expectation that BellSouth can and should
18 provide UNEs on the nondiscriminatory (parity) terms required by the
19 Act. Although performance measure plans are one tool for monitoring
20 parity and enforcing parity, these plans are not adequate to replace the
21 specific contractual obligations requested in our petition.

22

1 **Q: HOW ARE THE ISSUES IN THIS ARBITRATION IMPACTED BY NON-**
2 **DISCRIMINATION AS OPPOSED TO THE REQUIREMENT OF**
3 **“PARITY” WITH BELLSOUTH?**

4 A: Nondiscrimination is required to prohibit those situations where BellSouth
5 seeks to impose disparate requirements or conditions on ITC^DeltaCom
6 as compared to BellSouth’s other wholesale customers. Discrimination
7 among wholesale customers distorts competitive forces and has a net
8 negative impact on consumers.

9
10 **Q: HOW ARE THE ISSUES IN THIS CASE IMPACTED BY RECIPROCITY**
11 **AND CONTINUITY?**

12 A: Reciprocity is a key principle required for a reasonable and mutually
13 beneficial business relationship between ITC^DeltaCom and BellSouth.
14 Reciprocity should be applied to those issues that are related to terms
15 and conditions such as deposit requirements, as well as issues related to
16 the right to bill for like services and processes when they are provided by
17 either party. The principle of equal pay for equal services performed
18 should apply to both parties. However, contrary to BellSouth’s argument,
19 it is not realistic to require a small non-incumbent carrier such as
20 ITC^DeltaCom to adhere to the same performance measures and
21 enforcement mechanisms as those currently required of BellSouth.

22

1 Continuity relates to the continuation of provisions of the prior contract
2 that have had a significant impact on ITC^DeltaCom's operational plans
3 and strategies. Changes to existing contract provisions that have a
4 significant impact should only be made in response to government
5 mandate or mutual agreement. The net result of arbitrary and
6 unnecessary changes is the addition of cost that is ultimately borne by
7 consumers.

8

9 **Issue 1: Term of Agreement**

10 **Q: WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION PANEL**
11 **REGARDING THE TERM OF THE INTERCONNECTION**
12 **AGREEMENT?**

13 **A:** ITC^DeltaCom has requested a contract term of five years. BellSouth
14 will not agree to an agreement longer than three years. Further,
15 BellSouth proposes to convert the arbitrated interconnection agreement
16 to BellSouth's template agreement at the end of three years if a
17 replacement contract has not been approved by the Commission.

18

19 A five year contract will benefit both ITC^DeltaCom and BellSouth as well
20 as the Florida Public Service Commission. The cost of negotiating,
21 mediating and arbitrating an interconnection agreement is substantial for
22 both parties. Moreover, the cost to the Commission that is borne by
23 Florida taxpayers is also substantial. Distributing those costs over five

1 years as compared to three years reduces the per-year cost by 13.3%.
2 These very real costs that ultimately are paid by the consuming public
3 can be easily mitigated by a longer contract period.

4
5 Our experience with the existing interconnection agreements further
6 illustrates the inefficiency of a three-year contract. Due to the timing of
7 regulatory orders and on-going disputes between the parties, the existing
8 three-year interconnection agreements were only approved for
9 approximately an average of fifteen months before their scheduled
10 expiration. Due to the magnitude of the negotiation/arbitration process,
11 the parties agreed to extend the agreements by six months, resulting in
12 an effective contract term of three and one half years or only eighteen
13 months shorter than the five year term being proposed by
14 ITC^DeltaCom.

15
16 A longer contract term also provides continuity in our business
17 relationship with BellSouth and extends the planning horizon for
18 operational and marketing strategies. Regardless of the term, the
19 interconnection agreement is not a static document and both parties are
20 protected under the change of law provisions.

21

1 The shorter three-year agreement proposed by BellSouth imposes
2 additional annual cost on the companies, requires more work and
3 expense by the Commission, and provides no discernable benefits.

4
5 Additionally, BellSouth's proposal to revert to its template agreement at
6 the end of the contract term would result in ITC^DeltaCom being
7 exposed to the requirements of an interconnection agreement that has
8 not been approved by any regulatory body. Currently, our
9 interconnection agreement (as well as many other interconnection
10 agreements on file with the Commission) provide that until the
11 Commission issues a decision in the arbitration, the parties will operate
12 under the existing Commission-approved interconnection agreement.
13 The result of BellSouth's proposal could be a catastrophic impact on
14 consumers that would be beyond the control of the Commission.
15 Importantly, ITC^DeltaCom's interconnection agreements with other
16 ILECs such as SBC, Sprint and Verizon allow ITC^DeltaCom to continue
17 under the same rates, terms and conditions while the Commission
18 deliberates on the arbitration issues.

19
20 ITC^DeltaCom recommends adoption of a five year interconnection
21 agreement and at the end of five years an automatic month to month
22 extension of the agreement until a replacement contract is approved by
23 the Commission.

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Issue 11(a): Access to UNEs

Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING ACCESS TO UNES AND WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION PANEL?

A: The recent FCC decision in its Triennial Review, along with the analysis to be performed by state public utility commissions, will have a significant impact on this and other issues related to the availability of unbundled network elements. ITC^DeltaCom's position in this proceeding will reflect our understanding of current statutory and regulatory requirements and our analysis of the FCC press release regarding the Triennial decision. We reserve the right to amend our position when the Triennial order is released and to the extent state commission impairment cases impact existing rules and requirements.

In conjunction with Issue 11(a), ITC^DeltaCom asserts that the interconnection agreement language should specify that BellSouth's rates, terms, and conditions for network elements and combinations of network elements must be compliant with both state and federal rules and regulations. BellSouth's position is that there should be no reference to state authority because the agreement is only subject to section 251 of the Telecommunications Act.

1 The interconnection agreement clearly must be compliant with both
2 federal and state requirements. The plain language of the Act, in
3 preserving state authority, states that the FCC “shall not preclude the
4 enforcement of any regulation, order, or policy of a State commission” so
5 long as those regulations, orders, or policies pertain to the access and
6 interconnection obligations of local exchange carriers, and are consistent
7 with, and do not frustrate the implementation of, Section 251 of the Act. (
8 47 U.S.C. § 251(d)(3)).

9 Furthermore, Section 261 of the Act specifically provides that

10

11 [n]othing in this part precludes a State from imposing
12 requirements on a telecommunications carrier for intrastate
13 services that are necessary to further competition in the provision
14 of telephone exchange service or exchange access, as long as
15 the State’s requirements are not inconsistent with this part or the
16 Commission’s regulations to implement this part. (47 U.S.C. §
17 261.)
18

19 The Act contains explicit statutory language preserving state authority to
20 enforce state-created interconnection obligations that are not
21 inconsistent with the Act, along with the explicit delegation of authority to
22 the states in their role as arbiters of interconnection obligations “to
23 arbitrate any open issues.” (47 U.S.C. § 252(b)(1)).

24

25 Therefore, the Florida Public Service Commission is well within its
26 authority to require any interconnection agreement that results from this

1 arbitration to comply, and be consistent with, other regulations, orders,
2 and policies of this Commission.

3

4 ITC^DeltaCom recommends that the agreement include specific
5 language requiring compliance with both state and federal requirements
6 for unbundled network element rates terms and conditions. Our
7 proposed language is as follows:

8

9 This Attachment sets forth rates, terms and conditions for Network
10 elements, combinations of Network Elements, Operator Services
11 and Directory Assistance as required by state and federal rules
12 and regulations and pursuant to Section 251(c)(3) of the Act.

13

14 Subpart (b) of Issue 11 will be addressed in the Prefiled Testimony of
15 Mr. Brownworth.

16

17 **Issue 26: Line Cap and Other Restrictions**

18 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING LINE CAP AND**
19 **OTHER RESTRICTIONS AND WHAT IS YOUR RECOMMENDATION**
20 **TO THE ARBITRATION PANEL?**

21

22 **A:** Issue 26 (a) through (c) address the pricing and availability of unbundled
23 local switching. Although it is easiest to address each subpart

1 separately, a general observation would be useful: BellSouth's federal
2 obligations to offer unbundled local switching are being addressed by the
3 FCC's recently announced, but not yet released, decision in the Triennial
4 Review. That decision is expected to provide the Florida Commission
5 guidance as to how it should evaluate whether local switching should be
6 made available, and the results from those Florida specific proceedings
7 will, of course, be important to the final interconnection agreement
8 between ITC^DeltaCom and BellSouth. To some extent, issue 26 is
9 awkwardly situated. In part it addresses a prior federal rule (the "4-line"
10 restriction) that is no longer relevant; and in part, it addresses how
11 "replacement" prices would be established should the Florida
12 Commission determine in the future that switching (or some other
13 network element) should no longer be offered at TELRIC-based rates.
14 Nevertheless, these issues have been raised and, to the extent that the
15 issues can be addressed, my testimony does so.

16
17 **Q: PLEASE EXPLAIN ISSUE 26(A).**

18 **A:** Issue 26(a) addresses whether the line cap on local switching (to
19 the extent that such a federal restriction remains in effect) should
20 be applied. Today, the current contract provides as follows:

21

22 Notwithstanding BellSouth's general duty to unbundle local
23 circuit switching, BellSouth shall not be required to
24 unbundle local circuit switching for ITC^DeltaCom, when
25 ITC^DeltaCom serves a single end users account name at

1 a single physical end user location with four (4) or more two
2 (2) wire voice grade loops equivalents or lines in locations
3 served by BellSouth's local circuit switches, which are in
4 the following MSAs:.....
5
6 BellSouth argues that if an end user that has more than one
7 location the lines should be aggregated. ITC^DeltaCom disagrees
8 with BellSouth's interpretation of the federal rule generally –
9 including whether it is even still in effect. In any event, the
10 language proposed by BellSouth should be rejected pending the
11 final determination of the FCC and the Florida Commission
12 regarding this issue. Additionally, ITC^DeltaCom believes that the
13 Florida Commission addressed this issue in the AT&T /BellSouth
14 arbitration in Docket No. 000731-TP, Order No. PSC-01-1951-
15 FOF-TP issued September 28, 2001 at pages 6-7.

16
17 **Q: PLEASE EXPLAIN ISSUE 26(B).**

18 A: Issue 26(b) addresses the need for contract language that prohibits
19 BellSouth from imposing restrictions on local switching. Although this
20 language is included in the existing interconnection agreement and in the
21 interconnection agreement of other CLECs, BellSouth refuses to include
22 the requested language. ITC^DeltaCom asserts that the language is
23 necessary to ensure that BellSouth does not attempt to impose arbitrary
24 restrictions or limitation, either explicitly or implicitly, that create barriers
25 to ITC^DeltaCom's ability to access UNEs under state and federal rules
26 and regulations.

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ITC^DeltaCom recommends the inclusion of the following proposed language:

Except as otherwise provided herein, BellSouth shall not impose any restrictions on ITC^DeltaCom regarding the use of Switching Capabilities purchased from BellSouth provided such use does not result in demonstrable harm to either the BellSouth network or personnel or the use of the BellSouth network by BellSouth or any other telecommunications carrier.

Q: PLEASE EXPLAIN ISSUE 26(C).

A: Issue 26(c) addresses the requirement for BellSouth to obtain Commission approval for a methodology for establishing a replacement rate (sometimes labeled incorrectly as a “market” rate) in those instances where a replacement rate is authorized in lieu of TELRIC pricing. To characterize these rates as “market rates” without a demonstration that a competitive market exist is inappropriate. Clearly, BellSouth’s existing “market rate” for an unbundled port of \$14.00 as compared to the Florida cost based TELRIC rate of \$1.40 indicates the absence of competitive alternatives. Moreover, BellSouth’s so called “market rate” nonrecurring charge of \$90.00 as compared to the Florida Commission approved non-

1 recurring rate of \$3.37 also demonstrates the lack of competition and the
2 arbitrary nature of these rates. ITC^DeltaCom asserts that BellSouth
3 should not be allowed to arbitrarily and unilaterally establish a
4 replacement rate for local switching or any other service without
5 Commission approval of the methodology for establishing the rate and a
6 Commission review of the underlying data.

7
8 ITC^DeltaCom recommends that BellSouth be required to obtain
9 Commission approval of any "replacement rate" that would apply to the
10 sale of any network functionality that is no longer considered, as a result
11 of federal and state decisions, an unbundled network element subject to
12 the TELRIC pricing standard. The Commission should review such
13 proposed rates after it has determined that a network element should no
14 longer be priced at TELRIC.

15

16 **Issue 30: Provision of Combinations**

17 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING PROVISION OF**
18 **COMBINATIONS AND WHAT IS YOUR RECOMMENDATION TO THE**
19 **ARBITRATION PANEL?**

20 **A:** Issue 30 addresses the following issues: Should BellSouth be required
21 to provide combinations if they are technically feasible? Should
22 BellSouth be required to provide ITC^DeltaCom the same conditions for
23 network elements and combinations that BellSouth has provided to other

1 carriers? What terms and conditions should apply to the provision of
2 combinations?

3
4 Assuming that the network combinations are technically feasible—as
5 evidenced by whether such UNEs, or their functional equivalents, are
6 currently combined as a matter of practice in the BellSouth network
7 today—then those network elements must be combined for the
8 requesting carriers. (See generally, 47 C.F.R. § 51.315.)

9
10 In all instances where the individual component UNEs are required to be
11 offered to requesting carriers, BellSouth is likewise required to make
12 these elements available to ITC^DeltaCom on a combination basis, and
13 under the same terms and conditions that BellSouth provides or offers to
14 any other carrier. The legal source for this obligation comes from
15 Section 251(c)(3) of the Act, which provides that UNEs be offered on a
16 “nondiscriminatory” basis. Principles of nondiscrimination require that
17 BellSouth provide UNEs to any requesting carrier, including
18 ITC^DeltaCom, on the same basis as it provides these elements to: (1)
19 any BellSouth retail customer; (2) any affiliate or internal unit of
20 BellSouth; or (3) any other carrier customer. (See, pp. 4-5 of my
21 testimony. See also, 47 C.F.R. §§ 51.311, 313, and 315 (describing
22 principles of nondiscrimination with respect to providing UNEs and UNE
23 combinations)).

1 Therefore, if BellSouth provides service to its retail customers using the
2 functional or constructive equivalent of UNEs, then BellSouth must make
3 the same UNE combinations available to requesting carriers. Clearly, “to
4 the extent technically feasible, the quality of an unbundled network
5 element, as well as the quality of the access to such unbundled network
6 element, that an incumbent LEC provides to a requesting
7 telecommunications carrier shall be at least equal in quality to that which
8 the incumbent LEC provides to itself.” 47 C.F.R. § 51.311(b)).

9
10 Finally, the same performance intervals for service quality must be
11 available to requesting carriers that are available to any other BellSouth
12 customer, retail or wholesale. The only reliably accurate way this
13 Commission can determine and ensure that UNEs and UNE
14 combinations are provided to requesting carriers on a nondiscriminatory
15 basis is to require the measurement and reporting of performance
16 intervals. As the FCC has noted, “[m]andating nondiscriminatory access,
17 however, is not the same thing as achieving it in practice.” (In the Matter
18 of Performance Measurements and Reporting Requirements for
19 Operations Support Systems, Interconnection, and Operator Services
20 and Directory Assistance, CC Docket No. 98-56, Notice of Proposed
21 Rulemaking, Rel. April 17, 1998 at ¶ 13). The FCC further observed,
22 “[p]erformance measurements and reporting requirements should make
23 much more transparent, or observable, the extent to which an incumbent

1 LEC is providing nondiscriminatory access, because such requirements
2 will permit direct comparisons between the incumbent's performance in
3 serving its own retail customers and its performance in providing service
4 to competing carriers." (Id. at ¶ 14).

5 Such performance reports and performance guarantees are an ordinary
6 and accepted commercial practice.

7

8 For example, ITC^DeltaCom, like most competitive carriers, must offer
9 (and deliver) superior performance and performance guarantees to its
10 customers in the form of "service level agreements" or "SLAs." If
11 ITC^DeltaCom fails to deliver on its promised service, or repair,
12 commitment to a customer, we are frequently liable to the customer for
13 substantial service credits. If ITC^DeltaCom's interconnection
14 agreement with its largest single input supplier (and largest single retail
15 competitor) does not have explicit performance requirements, along with
16 outage credits for failed performance, then our largest rival is given an
17 unacceptable level of control over our costs. Such unchecked control
18 over a rival's service quality also provides the input monopolist,
19 BellSouth, with a powerful lever with which it can effectively "discipline"
20 what it deems to be overly aggressive retail price or service competition.

21

22 ITC^DeltaCom recommends the adoption of its proposed language to
23 ensure the non-discriminatory availability of ordinarily combined (within

1 the BellSouth network) UNEs under nondiscriminatory terms and
2 conditions.

3

4 BellSouth shall provide to ITC^DeltaCom for the provision
5 of a telecommunications service, non-discriminatory access
6 to Network Elements at any technically feasible point on
7 terms and conditions that are just, reasonable, and non-
8 discriminatory in accordance with the terms and conditions
9 of the Agreement.

10

11 BellSouth will permit ITC^DeltaCom to interconnect
12 ITC^DeltaCom's facilities or facilities provided to
13 ITC^DeltaCom by an ILEC or by third parties with each of
14 BellSouth's Network Elements at any point designated by
15 ITC^DeltaCom that is technically feasible. Any request by
16 ITC^DeltaCom to interconnect at a point not previously
17 established (i) in accordance with the terms of the
18 Agreement or (ii) under any arrangement BellSouth may
19 have with another telecommunications carrier, shall be
20 subject to the process set forth in Attachment 9 of this
21 Agreement, incorporated herein by this reference.

22

23 ITC^DeltaCom may use one or more Network Elements
24 and Combinations to provide to itself, its affiliates and to
25 ITC^DeltaCom end users any feature, function, capability
26 or service option that such Network Elements and
27 Combinations are technically capable of providing or any
28 feature, function, capability or service option that is
29 described in the Telcordia and other industry standard
30 technical references.

31

32 In addition to Combinations furnished by BellSouth to
33 ITC^DeltaCom hereunder, BellSouth shall permit
34 ITC^DeltaCom to combine any Network Element or
35 Network Elements provided by BellSouth with another
36 Network Element, other Network Elements or Access
37 Services obtained from BellSouth or with compatible
38 network components provided by ITC^DeltaCom or
39 provided by third parties to ITC^DeltaCom to provide

1 telecommunications services to ITC^DeltaCom, its affiliates
2 and to ITC^DeltaCom end users.
3

4 **Issue 31: Are New EELs Subject to Local Use Restrictions**

5 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING WHETHER**
6 **NEW EELs ARE SUBJECT TO LOCAL USE RESTRICTIONS**

7 A: ITC^DeltaCom asserts that “new” EELs as opposed to converted EELs
8 are not subject to local use restrictions. The FCC’s Supplemental Order
9 Clarification and ITC^DeltaCom’s current contract clearly provide that
10 only special access conversions to EELs are subject to the “safe harbor”
11 requirements and the audit provisions described in the Supplemental
12 Order Clarification. The FCC’s sole claimed purpose in adopting these
13 “temporary” restrictions on EEL conversions was a concern that the
14 ILECs’ embedded base of special access circuits would quickly and
15 entirely be converted to UNE combinations. This Commission should be
16 mindful also that the “embedded base” of ILEC special access circuits
17 the Commission sought to preserve—pending further analysis of other
18 factors such as the effects of conversions on universal service—was the
19 special access circuit base as of three years ago. Since that time,
20 BellSouth’s special access revenues have only grown, and have not
21 receded. For example, BellSouth’s Interstate Access Revenues grew
22 from approximately \$3.9 billion in 1999 to \$4.3 billion in 2001. (FCC’s
23 ARMIS Report 43-01.) In this respect, the pernicious effect of the local
24 use restrictions on local service competition has only spread. There is

1 certainly no public interest reason for this Commission to extend these
2 anticompetitive restrictions—which artificially inflate the costs of
3 BellSouth’s local and long distance competitors, and the prices paid by
4 Florida consumers.

5

6 In fact, there is good reason for this Commission to eliminate these ill-
7 advised restrictions on the use of EEL combinations given the FCC’s
8 recent Triennial Review decision. In the press release and attachment
9 released on February 20, 2003, the FCC indicates that it has decided to
10 eliminate its local usage-based restrictions in favor of “eligibility criteria”
11 that are architecturally-based and designed to ensure that carriers
12 providing local service are not denied access to the EEL combination.
13 (See FCC’s February 20, 2003 Attachment to Press Release at 3). The
14 new “eligibility criteria” will not be limited to “new” EEL combinations
15 either, but will also apply to conversions of existing special access
16 conversions.

17

18 ITC^DeltaCom recommends that the most prudent course for the
19 Commission, pending release of the FCC’s written order, is to reject
20 BellSouth’s plea to extend the application of the existing, and recently
21 repudiated, anticompetitive local use restrictions to new service
22 arrangements.

23

1 **Issue 33: Special Access Conversion to EELs**

2 **Q: WHAT IS ITC^DELTA COM'S POSITION REGARDING SPECIAL**
3 **ACCESS CONVERSION TO EELs – SHOULD A BLANKET**
4 **CERTIFICATION UNDER ALL THREE SAFE HARBORS BE**
5 **AVAILABLE?**

6 A: In some cases the conversion from special access to UNE combination
7 can fall under more than one safe harbor. ITC^DeltaCom should be able
8 to use each and every safe harbor, if applicable. Furthermore, there is
9 nothing in the FCC's Supplemental Clarification Order that suggested,
10 recommended, or required competitive carriers to certify with specificity
11 for each special access circuit, in advance, under which safe harbor they
12 were seeking to convert the circuit. The Commission only required that
13 the requesting carrier had to certify that the circuit in question met one of
14 the safe harbors. The FCC also, however, stated that, upon certification
15 by the requesting carrier, the ILEC was required to convert the circuit.
16 The FCC specifically prohibited ILECs from engaging in "pre-conversion"
17 audits of the requesting carriers' certifications.

18
19 A requirement such as the one BellSouth suggests—that a requesting
20 carrier certify with specificity for each circuit being converted—serves no
21 useful purpose and is conceptually antithetical to the FCC's admonition
22 against "pre-provisioning" audits. In addition, requiring certification with
23 specificity for each circuit allows BellSouth to receive an unnecessary

1 and improper amount of information about its competitors' business
2 activities and retail service arrangements. Precisely how much of a retail
3 customer's local traffic a competitive carrier is providing is of no import to
4 the only legal requirement a requesting carrier must satisfy: that it certify
5 it is providing a "significant" amount of local service to an end-user and
6 that they qualify under one of the enumerated safe harbors. Finally,
7 while BellSouth's request would have been appropriately rejected by the
8 Commission even if the local use restrictions were to remain in place,
9 given the FCC's own repudiation of these restrictions, it would be a
10 frivolous waste of the Commission's resources to consider the merits of
11 imposing another layer of restrictions on top of restrictions the FCC has
12 already deemed to be inappropriate.

13

14 **Issue 34: Audits – Reimbursement Issues**

15 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING WHETHER**
16 **ITC^DELTACOM SHOULD BE REQUIRED TO REIMBURSE**
17 **BELLSOUTH FOR THE FULL COST OF AN AUDIT AND WHAT IS**
18 **YOUR RECOMMENDATION TO THE ARBITRATION PANEL?**

19 **A:** ITC^DeltaCom's position is that under no circumstances should
20 BellSouth be allowed to recover more than 50% of the cost of an audit
21 and that no cost recovery would be triggered unless the audit results
22 indicate greater than 25% of non-compliance on substantive issues. To
23 recover audit expenses, BellSouth would have to petition the

1 Commission for approval based on the greater than 25% standard. This
2 process will allow the Commission to review the audit findings as well as
3 input from ITC^DeltaCom to determine if expense recovery is appropriate
4 and at what level. Allowing BellSouth to recover audit expense based on
5 insignificant non-compliance would result in unnecessary audits and
6 related costs that would ultimately be borne by consumers.

7
8 ITC^DeltaCom recommends the adoption of the 25% non-compliance
9 standard with a 50% cap on expense recovery and an appropriate
10 Commission review process.

11

12

13 **Issue 42: Audits of PIU/PLU**

14 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING AUDITS OF**
15 **PIU/PLU – SPECIFICALLY, SHOULD ITC^DELTACOM HAVE TO PAY**
16 **FOR THE AUDIT IF FACTORS ARE MORE THAN 20%**
17 **OVERSTATED?**

18 **A:** No. ITC^DeltaCom rejects BellSouth's position that ITC^DeltaCom must
19 pay for the full costs of a PIU/PLU audit if the factors are more than 20%
20 overstated. ITC^DeltaCom's position with regard to this issue is the
21 same as with regard to Issue No. 34, and my testimony regarding that
22 issues is incorporated here by reference.

23

1 **Issue 45: Switched Access Charges Applicable to BellSouth**

2 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING SWITCHED**
3 **ACCESS CHARGES APPLICABLE TO BELLSOUTH?**

4 A: ITC^DeltaCom's position is that any language in the agreement that
5 requires ITC^DeltaCom to pay access charges, or access charge rates
6 by reference to BellSouth access tariffs, should be reciprocal and that
7 ITC^DeltaCom should be able to charge BellSouth pursuant to
8 ITC^DeltaCom's access tariffs under like circumstances.

9
10 ITC^DeltaCom recommends the adoption of language that ensures the
11 reciprocity of billing for services performed.

12

13 **Issue 58: Unilateral Amendments to the Interconnection Agreement**

14 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING UNILATERAL**
15 **AMENDMENTS TO THE INTERCONNECTION AGREEMENT?**

16 A: BellSouth desires to incorporate their Guides, documents written by
17 BellSouth without any regulatory oversight or input from the industry, into
18 the interconnection agreement. BellSouth would be able to modify these
19 "Guides" at any time without approval or input from ITC^DeltaCom, any
20 other carrier, or this Commission and then apply them to ITC^DeltaCom.

21

22 One party to a contract cannot unilaterally make changes that affect the
23 other party. ITC^DeltaCom's position is that any reference to a

1 document or source must be clearly defined at a date certain or the
2 document must be included as an attachment to the agreement. Any
3 changes to that document that would have a material impact on
4 ITC^DeltaCom or cause ITC^DeltaCom to incur additional expense must
5 be mutually agreed to by the parties. BellSouth would prefer to be in the
6 position of being able to arbitrarily alter the terms of the contract without
7 ITC^DeltaCom's knowledge and or approval. ITC^DeltaCom
8 recommends that BellSouth be prohibited from referencing incorporating
9 documents or sources or making changes to those documents except as
10 agreed to by ITC^DeltaCom.

11

12 **Issue 59: Payment Due Date**

13 **Q: WHAT IS YOUR POSITION REGARDING PAYMENT DUE DATES**
14 **AND WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION**
15 **PANEL?**

16 **A:** ITC^DeltaCom's position is that the payment due date for BellSouth
17 invoices be no sooner than 30 days from ITC^DeltaCom's receipt of the
18 invoice. Given the availability and use of electronic invoicing, this is a
19 reasonable due date based on the general commercial practice of 30-
20 day due dates. Utilizing the received date as the starting point for the 30
21 days is critical because BellSouth has an extensive record of late or
22 delayed billing. Although BellSouth has continued to work on correcting
23 billing problems including late billing, ITC^DeltaCom should not be

1 required to compensate for deficiencies in BellSouth's billing systems.
2 Moreover, ITC^DeltaCom's record of prompt payment should not be
3 unfairly impacted by unrealistic due dates on late-delivered invoices.

4
5 ITC^DeltaCom recommends adoption of a billing due date standard of 30
6 days from receipt of the invoice.

7
8 **Issue 60: Deposits**

9 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING DEPOSITS,**
10 **AND WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION**
11 **PANEL?**

12 **A:** The deposit language should be reciprocal because BellSouth does pay
13 for certain services performed by ITC^DeltaCom and furthermore should
14 pay for work performed by ITC^DeltaCom on BellSouth's behalf. If a
15 party has a good payment history, no deposit should be required.
16 Therefore, BellSouth's resistance to accept the terms it wishes to impose
17 on ITC^DeltaCom is truly puzzling, as it seems solely calculated to
18 enable BellSouth to employ, with no consequences attached, a strategy
19 of bad-faith non-payment as a supplement to its already-formidable
20 market power. As I stated previously, ITC^DeltaCom is willing to
21 acknowledge that a failure to pay undisputed bills in a timely manner can
22 form the reasonable basis for additional assurance of payment to the
23 billing party. It is disappointing that BellSouth refuses to commit to a

1 reasonable, reciprocal commercial relationship, and has thereby chosen
2 to waste this Commission's resources on a request that has no legitimate
3 basis.

4
5 What is equally unreasonable is BellSouth's insistence that
6 ITC^DeltaCom, after years of timely payment to BellSouth for wholesale
7 services, should be required to provide even greater payment assurance
8 to BellSouth at ITC^DeltaCom's expense.

9
10 To justify increasing the burden on ITC^DeltaCom, for BellSouth's
11 benefit, BellSouth claims that the telecommunications market has
12 become more "risky" and that BellSouth's obligation to provide wholesale
13 services to requesting carriers exposes it to even more risk. While this
14 argument may attract some interest, when coupled with BellSouth's
15 casual empiricisms regarding the overall state of the industry, its premise
16 fails to withstand scrutiny. For this reason, the FCC recently, and
17 correctly, rejected the requests of BellSouth and other ILECs to demand
18 increased deposit requirements under their interstate services tariffs.
19 (*See, In the Matter of Verizon Petition for Emergency Declaratory and*
20 *Other Relief*, WC Docket No. 02-202, *Policy Statement*, Rel. December
21 23, 2002 ["Policy Statement"]).

22

1 In its Policy Statement, the FCC concluded that “the risk posed by
2 uncollectibles may not be as great as alleged by certain carriers.” (Policy
3 Statement, ¶ 14.)

4 While certain factors may reasonably precipitate accelerated billing and
5 collection cycles, the FCC nonetheless maintained the status quo with
6 respect to deposit requirements, explaining, “[w]e do not believe,
7 however, that additional deposit requirements are warranted at this time.”
8 (Id.)

9
10 In justifying its decision not to require additional deposit requirements,
11 the FCC noted that “incumbent LECs operating under price caps
12 normally are considered subject to both the benefits and burdens of
13 unconstrained earnings.” (Id. at ¶ 18).

14 For example, the FCC contrasted the extraordinary returns earned by
15 incumbents in the “crisis” year 2001--which for BellSouth was 19%--with
16 their more “ordinary” (although still high) returns in 1990—in which
17 BellSouth earned a 13% rate of return on interstate services. (Policy
18 Statement at ¶ 18 (internal citations omitted)). The FCC’s ARMIS data is
19 required to be reported by April 1 of the following year, so as of the time
20 this testimony was written, 2001 was the last year for which data were
21 available.

22

1 To further test the premise that BellSouth has exaggerated its exposure
2 from its obligation to wholesale services as a common carrier,
3 ITC^DeltaCom looked at the ARMIS data reported by BellSouth on report
4 43-04, which is BellSouth's interstate access data, net of all non-
5 regulated revenues and associated uncollectibles. The data is
6 disaggregated into total interstate network access revenue and
7 uncollectibles (column d, rows 4014 and 4040) and total special access
8 revenue and associated uncollectibles (column o, rows 4014 and 4040).

9
10 According to the FCC's ARMIS data, in 2001 BellSouth had uncollectible
11 revenues of approximately \$68 million on total access service revenues
12 of approximately \$4.5 billion, for an uncollectible revenue percentage of
13 around 1.5% of revenues. While this rate is approximately double the
14 year 2000 rate of .76%, the overall uncollectible rate is still extremely
15 low. If we consider special access in isolation, because this is the
16 primary access service that ITC^DeltaCom uses, the numbers get even
17 lower still. For 2000, BellSouth had uncollectible revenues for special
18 access of \$1.5 million over total special access revenues of \$1.2 billion,
19 leaving an uncollectible revenues rate of .13%. In 2001, that number did
20 increase substantially, in percentage terms, to uncollectible revenues of
21 \$11.4 million on total special access revenues of \$1.8 billion, or .62% of
22 total special access revenues.

23

1 In other words, 62 cents out of every \$100 billed was uncollectible. This
2 figure, low as it is, should not, in any event, be considered a “loss” for
3 BLS. Because BLS is in no way capacity-constrained, it is not as if these
4 \$11.4 million in sales represented sales to non-paying customers that
5 could have been made to more credit-worthy customers. The “risk” that
6 BellSouth faces as a wholesale carrier, however, is better appreciated
7 when compared to unregulated wholesale telecommunications service
8 providers.

9
10 To get a better sense, in relative terms, for the “risk” faced by BellSouth
11 versus competitive carriers, we have to use a slightly “rougher” data set
12 than that available on ARMIS, but we can still get a relative idea from
13 publicly filed data by comparing a “snapshot” of various carriers at the
14 end of their fiscal years. By comparing accounts receivable allowances
15 for doubtful accounts to overall accounts receivable, we can get a sense
16 of each carrier’s bad debt exposure at the point when the balance sheet
17 data were collected. These data are not an accurate depiction of the
18 true scope of uncollectible revenues for any one firm, because, as noted
19 above, uncollectible revenue is normally an expense item that is part of
20 the “Sales, General, & Administrative” expense line on an income
21 statement. So, while this data is only a snapshot of each firm’s
22 estimated allowance for uncollectible accounts out of total current
23 accounts receivable, it is still clear that BellSouth faces lower business

1 risks than most competitive carriers who have a similarly high degree of
 2 exposure to carrier customers. For comparison purposes,
 3 ITC^DeltaCom chose to compare Level 3 Communications ("LVLT"), a
 4 long-haul wholesale transport provider, NEON Communications
 5 ("NOPT"), a local metro wholesale carrier, Time Warner
 6 Telecommunications ("TWTC"), a metro wholesale and large enterprise
 7 retail competitor, WorldCom ("WCOM"), a local, long distance, voice and
 8 data integrated carrier, which provides both local and long-haul
 9 wholesale and retail services, and XO Communications ("XOXO"), a
 10 local and long-haul broadband provider, serving both enterprise and
 11 wholesale customers. These numbers are taken from the carriers "10-K"
 12 Annual Reports filed with the SEC.

14	2001	2000	
15	Company	A/R Allowance/ Net A/R	A/R Allowance/ Net A/R
17	BLS	9.1%	7.3%
18	LVLT	20.6%	6%
19	NOPT	16.2%	13.6%
20	TWTC	38%	21.5%
21	WCOM	20.4%	22.5%
22	XOXO	15%	11.6%

23

1 BellSouth cannot reasonably or rationally justify requiring greater deposit
2 requirements from ITC^DeltaCom. ITC^DeltaCom's long-term payment
3 history with BellSouth is excellent. Additionally, BellSouth faces very low
4 aggregate financial risk from its obligation to provide wholesale
5 services—especially when compared with telecommunications service
6 providers with less market power. Finally, it is compelling that the FCC
7 considered and rejected similar requests from BellSouth only five months
8 ago.

9
10 ITC^DeltaCom's proposed deposit parameters provide a reasonable
11 balance between each company's need to mitigate risk of non-payment
12 and protection from demands for unnecessary and financially
13 burdensome deposits. ITC^DeltaCom recommends the adoption of the
14 following proposed deposit parameters that are reciprocal and consistent
15 with the FCC policy on deposits:

16

17 **Existing Customer Definition:**

18

19 Any customer with an existing business relationship with
20 BellSouth.

21

22 **New Customer Definition:**

23

24

25

26

27

An entity that has had no prior business relationship with
BellSouth including the past relationship of a prior entity
that makes up at least 30% of the equity of the successor
enterprise.

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Bill Due Date, Notice and Cure Intervals:

The Due Date for payment is thirty (30) days from receipt of the invoice. Late payment charges accrue after the Due Date. Notice of delinquency will be provided ten (10) days after Due Date, and the billed party will have fifteen (15) days from such notice to cure.

Late Payment Definition:

Payments are considered late if not postmarked or wire transferred on or before the Due Date.

Poor Payment History Definition:

If greater than 10%, net legitimate disputes, of the average of the last twelve months invoiced charges is outstanding 30 days after Due Date, the Billing Party may utilize the remedies listed below assuming the notice was provided and Billed party failed to cure.

Liquidity Standard:

EBITDA positive 12-month LTM basis excluding any nonrecurring charges or special restructuring charges. "EBITDA" means, for any period, the sum, determined on a Consolidated basis, of (a) net income (or net loss) after eliminating extraordinary and/or non recurring items to the extent included in net income (except as provided in this definition), (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, (f) the aggregate of all non-cash charges deducted in arriving at net income in clause (a) above, including, but not limited to, asset impairment charges, (g) any restructuring charges (h) all restructuring charges incurred under or in connection with the Plan of Reorganization, in each case of the Parent and its Subsidiaries, determined in accordance with GAAP for such period (including, without limitation, Emerging Issues Task Force Issue 94-3 and Statement of Financial Accounting Standards No. 146).

Bond Rating is triple C or worse.
Upon notice of a material default of a bank (or other loan provider's) debt covenant and upon the Billed Party's failure to either cure or obtain a waiver from such default within 20 days of such notice, the Billing Party may utilize

1 the remedies listed below unless the Billed Party has ample
2 liquidity to fund the accelerated obligation.

3
4 **Remedies if fail Late Payment or Liquidity Standards:**

5
6 *Accelerated Payment Schedule*

7 Billed Party is required to pay half within 15 days and other
8 half within 30 days. Billing Party may designate up to 5
9 cycles. Billed Party has (5) business days to cure if missed
10 an accelerated payment.

11
12 If Billed Party has not cured within 5 Business Days then:

13
14 *Partial Deposit*

15 Billing Party may require a 1/2 month deposit for services
16 billed in arrears on a normal billing cycle and 1/4 month
17 deposit for services billed in advance subject to the 90%
18 standard described and upon making the deposit, the
19 normal payment schedule applies.

20
21 *Full Deposit*

22 If fail to provide deposit and after 15 day notice, then a 2
23 month deposit for services billed in arrears and a one
24 month deposit on services billed in advance is due within
25 thirty days.

26
27 **Deposit Refund:**

28 A deposit shall be refunded with accrued interest following
29 a period of six months prompt payment. In the case of a
30 cash deposit, for the period the deposit is held, the
31 customer shall receive simple interest at the rate of one
32 percent per month (.000329 per day) or 12 percent
33 annually.

34
35 **Issue 62: Limitations on Back Billing**

36 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING LIMITATIONS**
37 **ON BACK BILLING, AND WHAT IS YOUR RECOMMENDATION TO**
38 **THE ARBITRATION PANEL?**

1 A: ITC^DeltaCom's position is that back billing should be limited to 90 days
2 between carriers. Currently, the Commission does not have a rule or
3 regulation regarding backbilling between carriers. Ninety days provides
4 ample time for the rendering of correct invoices and is being proposed as
5 a reciprocal requirement. Back billing for extended periods of time
6 exposes both companies to the problem of not being able to establish
7 accurate cost structures for the pricing of retail services. Moreover, back
8 billing based on revisions in policy and or changes in the interpretation of
9 rules or regulation make it difficult for the billed party to challenge the
10 new or increased charges. Data that is readily available during a 90 day
11 period may no longer be available over extended back billing periods.
12 Although longer back billing periods may be reasonable for retail
13 services, the retail standard should not be used for wholesale invoices.

14
15 As one example, ITC^DeltaCom received notice from BellSouth on
16 March 21, 2003 regarding backbilling for daily usage file ("DUF") records
17 provided in February of 2000. See confidential correspondence attached
18 as Exhibit JW-1.

19
20 As it stands, ITC^DeltaCom has received or expects to receive
21 backbilled invoices for services provided in February 2000. Obviously,
22 ITC^DeltaCom's ability to operate as a competitor against BellSouth in
23 the local market is in severe jeopardy when BellSouth sends notification

1 that it will be sending billing for approximately \$550,000 for ODUF/ADUF
2 records provided from February of 2000 to November of 2001.

3 Certainly, ITC^DeltaCom cannot now go back to its retail customer base
4 in Florida and assess charges that are more than 12 months old.

5

6 ITC^DeltaCom requests a reciprocal back billing period not to exceed 90
7 days.

8

9 **Issue 63: Audits – Pick and Choose**

10 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING BELLSOUTH'S**
11 **REFUSAL TO ALLOW ITC^DELTACOM TO PICK AND CHOOSE**
12 **BILLING AUDIT LANGUAGE FROM ATTACHMENT 7 AND WHAT IS**
13 **YOUR RECOMMENDATION TO THE ARBITRATION PANEL?**

14 **A:** BellSouth has recently adopted a position that pick and choose rules do
15 not apply to billing language by asserting that billing is not a service
16 under section 251. ITC^DeltaCom's position is that the pick and choose
17 rule applies to all contract provisions and specifically in the case of billing
18 language. Billing has long been considered a service as normal practice
19 in the industry and we believe BellSouth's position is without merit.

20

21 Furthermore, as I noted in my overview of the Act's nondiscrimination
22 requirements, the FCC has consistently held that access to OSS
23 functionalities (of which, billing is one) are a critical element of providing

1 nondiscriminatory access to UNEs under Section 251(c)(3). This has
2 been a general requirement applicable to all ILECs under the Act. With
3 respect to the RBOCs, like BellSouth, the FCC has further, and
4 consistently, held “[d]eploying the necessary OSS functions that allow
5 competing carriers to order network elements and combinations of
6 network elements and *receive the associated billing information* is critical
7 to provisioning those network elements.” (Ameritech Michigan 271 Order
8 ¶ 160 (emphasis added). See also, Verizon Pennsylvania 271 Order ¶
9 15 (“[c]onsistent with prior section 271 orders, a BOC must demonstrate
10 that it provides competing carriers with wholesale bills in a manner that
11 gives competing carriers a meaningful opportunity to compete.” (internal
12 citations omitted)).

13
14 Thus, consistent with settled principles of nondiscriminatory access to
15 UNEs as well as BellSouth’s continuing Section 271 obligations in this
16 state, ITC^DeltaCom recommends that BellSouth’s prohibition on pick
17 and choose—with respect to carrier billing services—be denied.

18

19 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

20 **A:** Yes.

EXHIBIT JW-1

IS

PROPRIETARY