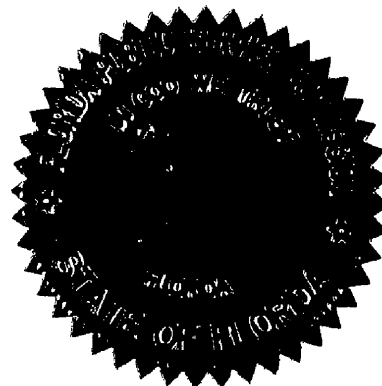


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030137-TP

In the Matter of

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.



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VOLUME 3

PAGES 308 THROUGH 487

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER CHARLES M. DAVIDSON

DATE: Wednesday, September 03, 2003

TIME: Commenced at 9:30 a.m.
Concluded at 5:10 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: TRICIA DeMARTE, RPR
Official FPSC Reporter
(850) 413-6736

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 08978 SEP 19 8

FPSC-COMMISSION CLERK

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(Transcript continues in sequence from Volume 2.)

COMMISSIONER DEASON: Call the hearing to order. I believe that we need to address a preliminary matter before we call the next witness concerning Exhibit 5.

MR. SHORE: Yes, Commissioner Deason. I committed to you and the parties to review Mr. Maziarz' deposition over the lunch break, and I've done that. And we do not have any claims that anything in that deposition is proprietary and would waive any claims that Mr. Maziarz asserted in that deposition. So I think for practical purposes what that means is that we don't need to assign -- or we can -- we don't need to have an exhibit, a separate exhibit for any confidential portions of the deposition.

COMMISSIONER DEASON: Okay. Then would you propose then we could just simply withdraw Exhibit 5?

MR. SHORE: Yes, sir.

COMMISSIONER DEASON: Is that understood?

MR. SELF: Yes, sir. And that would mean, just to be super clear, that Exhibit 4 would then include all of Mr. Maziarz' deposition along with the other two people.

COMMISSIONER DEASON: That's correct. That's my understanding.

Staff, that's your understanding as well?

MS. CHRISTENSEN: That's correct.

1 years. For 30 and a half years I worked for BellSouth
2 predominantly in the area of regional service order support
3 which meant that I worked with the USOC FIDs in the order flow
4 development there. I also worked for them as a consultant in
5 the area of billing in which I helped develop the Single C
6 Order Process and was also part of the J Bill team for the UNE
7 billing. And then, of course, currently I deal predominantly
8 with OSS issues and the flow of information between the ILECs
9 for DeltaCom.

10 Q Thank you, Ms. Conquest. Are you the same Mary
11 Conquest that caused to be prefiled in this docket on May 19th,
12 2003, 13 pages of question and answer direct testimony?

13 A Yes, sir.

14 Q And where there two exhibits attached thereto?

15 A Yes, sir, that's correct.

16 Q Ms. Conquest, are there any corrections or changes
17 you'd like to make to your prefiled direct testimony or the
18 attachments thereto at this time?

19 A No, sir.

20 Q If I asked you the questions contained in your
21 prefiled direct testimony today, would your answers be the same
22 if given from the stand?

23 A Yes, they would.

24 MR. ADELMAN: Mr. Chairman, at this time I'd ask that
25 the attachment to the prefiled direct testimony be marked with

1 the next hearing exhibit number, which I believe is Number 13?

2 COMMISSIONER DEASON: That's correct. Exhibit 13.

3 (Exhibit 13 marked for identification.)

4 BY MR. ADELMAN:

5 Q Ms. Conquest, are you the same Mary Conquest that
6 caused to be prefiled in this docket on June 25th, 2003, 10
7 pages of question and answer prefiled rebuttal testimony?

8 A Yes, sir, I am.

9 Q And where there seven attachments marked MC-1 through
10 7 attached to your prefiled rebuttal testimony?

11 A Actually, there is a correction on the attachments.
12 There was a numbering problem and Attachment 3 was
13 inadvertently omitted. I have a copy of it. It was a carrier
14 notification letter. So if it's appropriate, I need to make a
15 couple of changes, I guess, to get everything in sync. On
16 Page 2, Line 3 where it says, "Attached Exhibit MC-4," that is
17 actually "3," and that was actually missing from the package.

18 Q Let's do this. Are there any other changes to the
19 question and answer testimony? Then we'll deal with the
20 carrier notification letter.

21 A No, just the exhibits.

22 MR. ADELMAN: Mr. Chairman, this is the sixth state
23 in which Ms. Conquest has prefiled testimony, and I believe in
24 all six the same document has been attached to either her
25 testimony or it's been otherwise used in the proceeding. And I

1 suppose I apologize for the copying problem that left the
2 exhibit out. I'd ask to have a moment to show the document to
3 BellSouth and see if we could not simply insert it into the
4 record without objection.

5 COMMISSIONER DEASON: Have you shared that with
6 counsel for BellSouth?

7 MR. ADELMAN: I have not done so yet. Please accept
8 my apology. I'd like to be able to do that right now. I think
9 they'll recognize it.

10 THE WITNESS: David, staff did ask for it and we did
11 provide a copy.

12 MR. SHORE: We don't have any objection to inserting
13 that.

14 COMMISSIONER DEASON: Very well.

15 MR. ADELMAN: Thank you. Thank you, Mr. Chairman.

16 COMMISSIONER DEASON: So then the prefiled exhibits
17 attached to the rebuttal testimony should be MC-3 through 7; is
18 that correct?

19 MR. ADELMAN: With the document inserted, that is
20 correct.

21 COMMISSIONER DEASON: Okay. We will identify that as
22 composite Exhibit 14.

23 MR. ADELMAN: Thank you, Mr. Chairman.

24 (Exhibit 14 marked for identification.)

25 BY MR. ADELMAN:

1 Q Ms. Conquest, other than inserting the carrier
2 notification letter and making the change to Page 2, Line 3,
3 are there any other corrections you'd like to make to your
4 prefiled rebuttal testimony and the attachments thereto?

5 A Yes, sir, the one last correction on the exhibit.
6 Page 6, Line 11, it shows "Exhibit MC-5." That one is actually
7 "4" and that actually corrects and makes the numbering the way
8 it was intended.

9 Q With those two corrections to the question and answer
10 testimony and with the insertion of that page into your
11 attachments, if I asked you the questions contained in your
12 prefiled rebuttal testimony today, would your answers be the
13 same if given from the stand?

14 A Yes, sir, they would.

15 Q Thank you. Ms. Conquest, have you prepared a summary
16 of your prefiled testimony?

17 A Yes, sir, I have.

18 Q Can you provide that summary to the Commission at
19 this time, please?

20 A Certainly. Good afternoon. I want to thank all of
21 you for this opportunity to be heard. We started out with many
22 issues, and fortunately, I feel like we have made a lot of
23 progress. I'm now down to six issues, and I don't always
24 discuss them in order. I've attempted to group them sort of by
25 subject matter, but I'll announce each one so that you'll be

1 able to sort of cross-reference it if you'd like.

2 I'd like to start with a very important consumer
3 issue, which is Issue 2, directory listings. Simply what is
4 being asked here is for an electronic means for ITC^DeltaCom to
5 verify their customers' listings. It's very important in our
6 minds that directories be accurate, and we cite an example
7 where BellSouth themselves had a problem in Atlanta. We also
8 have a newspaper clipping where some other customers have had
9 issues. So we're simply looking for a method that's
10 electronic, that's efficient, and that we can afford to be able
11 to do this validation.

12 I use an example that a directory galley provided is
13 often like a Sears catalog. And when you attempt to go through
14 that listing by listing, page by page, it just isn't as
15 efficient as it is if I can bring them in electronically and
16 compare them with my systems. So basically we're asking for an
17 opportunity to do a good job with the customer directory here
18 in Florida.

19 The next group of issues that I talk about are
20 operational support system issues. Those issues are 9, 66, and
21 67. And I'd like to start with Issue 9. Just as a point of
22 reference, when we talk about the systems, we're talking about
23 LENS, TAG, EDI, and we're talking about a collection of
24 functions. And I think most of you are familiar with those,
25 but in case anyone isn't, we're talking about preordering, the

1 suite of functions that come with preordering, ordering,
2 maintenance, repair, billing, all of those things that take for
3 us to service a customer. And we think these are the lifeline
4 to our business. So I'd like to start with Issue 9.

5 And simply here what we're talking about is some
6 language in our contract. And if I might, I'd like to read you
7 what ITC^DeltaCom is proposing. Let me quote, systems may
8 differ, but all functions will be at parity. What can be wrong
9 with that? It's pretty straightforward. It's clear. It's
10 binding. And we believe that's what it will take for us to do
11 business at parity with BellSouth.

12 What does BellSouth say about this? They say they're
13 willing to give me the information, but they are unwilling to
14 give it to me in an OSS manner. What does that mean to me as a
15 provider? Well, it has several impacts possibly on my
16 business. First of all, I can't provision as quickly. I may
17 encounter more errors and rejects, and basically I'm placed at
18 a disadvantage. So we're simply looking for language that
19 ensures us that we are able to have the information in the same
20 manner in which BellSouth receives the information.

21 Issue 66 is testing. And if you've read all this
22 testimony, I'm sure that you're sort of, to use a coin of
23 phrase, wrapped around the axle with all the change control
24 issues. Certainly Mr. Pate and I agree that we have been
25 issuing CRs for some long period of time and some changes are

1 coming on the horizon possibly. But the bottom line is, is
2 that I don't enjoy the same level of testing that BellSouth
3 enjoys today. BellSouth has an end-to-end testing process. I
4 must use either the Encore or the CAVE facility to do mine. I
5 cannot test with my own operating company numbers, and it's
6 very restrictive for me to even test my own data. There are
7 some things that I could do, such as buying the services,
8 paying for the services, actually provisioning them; if they
9 were live services, paying for them and working through that
10 process. But we feel like that we should be afforded a testing
11 facility that is comparable to that which BellSouth has. So
12 for that reason, I'm asking for a comparable testing facility.

13 One of the things I think that's critical to us that
14 we understand how the systems are engineered and built. We
15 don't want to have to learn to do business on the fly. We want
16 to take advantage of as many tools as are available to us, and
17 we want to use them in an efficient way. So we think testing
18 is critical to the nature of our business.

19 My last OSS issue is talking about, when is it
20 appropriate to take away these tools that are the lifelines to
21 the CLECs? And basically what we're saying, that it is
22 irresponsible to take these tools away Monday through Friday,
23 8:00 to 5:00 p.m. unless a true emergency arises. And what
24 we're saying is that there's some methods that BellSouth could
25 use that would benefit all the CLECs, not only ITC^DeltaCom, in

1 staggering this. You may or may not be aware that maintenance
2 releases are typically worked on for over 60 months. And
3 certainly BellSouth has the ability to do packaging and sizing
4 and can certainly stagger these. And certainly we're all aware
5 of the windows that are available that we can use without
6 impacting business. We're just simply asking that, as a
7 practical matter, BellSouth not take down our OSS interfaces
8 all at one time and during normal business hours.

9 The next issue I'd like to talk about is a billing
10 issue, and I'll use the acronym ADUF. It's called access usage
11 daily file. And what happens here is that CLECs pay for these
12 messages, and currently we're receiving messages on our ADUF
13 file that we're unable to use in our billing process. And
14 there are a number of reasons for these, and we've had a lot of
15 exchange and interaction over these: There's a billing system
16 error at BellSouth, there's the issue of doing the LNP dip
17 lookup, there's issues with carrier codes being zero filled,
18 possibly some wireless issues.

19 What we're proposing here is a self-reporting
20 process. There's some precedents already established for that.
21 And what we're suggesting is that it would be appropriate for
22 us to self-report to BellSouth those messages which we are able
23 to use in our business. We're just like BellSouth in that we
24 have split billing systems. We have a CABS billing package
25 just like BellSouth and we have an equivalent of a CRIS billing

1 package. Actually, we have two of those. So we're just simply
2 asking that we receive clean files that has the appropriate
3 data that we're able to process correctly and properly.

4 The next issue that I would like to talk about, and
5 I'm sure we're going to talk about it a lot today, is the ADSL
6 issue. There are many customer complaints about this issue,
7 and basically what we're saying here is that we believe
8 consumers here in Florida deserve to be able to choose, to
9 choose who provides the long distance service, who provides
10 their voice service, and who provides their Internet service.
11 It's a matter of choice. So basically what we're asking for is
12 that in the UNE-P environment, that consumers be able to
13 choose. And I know that you have a couple of proceedings here,
14 and I'm sure we'll talk about those in my cross-examination,
15 but I'm asking you to consider the consumer and to consider
16 what is best for that consumer.

17 What are we asking? We're asking that the Commission
18 require contract language that will allow ITC^DeltaCom the
19 chance to provide service of a high quality to the Florida
20 consumer at an affordable price. And I thank you for your
21 attentiveness and certainly will be happy to answer your
22 questions.

23 Q Does that conclude your summary, Ms. Conquest?

24 A Yes, sir, it does.

25 Q Thank you.

1 MR. ADELMAN: Mr. Chairman, I first move that the
2 prefiled testimony be admitted into the record.

3 COMMISSIONER DEASON: Without objection, the prefiled
4 direct and rebuttal testimonies shall be inserted in the
5 record.

6 MR. ADELMAN: And at the conclusion of cross, I'll
7 move for the admission of Exhibits 13 and 14. And I tender
8 this witness for cross.

9 COMMISSIONER DEASON: Very well.

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

3 A: My name is Mary Conquest. I am Program Manager for Inter-Company
4 Relations, at ITC^DeltaCom Communications, Inc., ("ITC^DeltaCom").
5 My business address is 4092 S. Memorial Parkway, Huntsville, Alabama
6 35802.

7

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

10 A: I received a Masters Certificate from George Washington University in
11 the area of Project Management. I have been employed in the
12 telecommunications industry for over 35 years. I began my career with
13 Southern Bell, now known as BellSouth Telecommunications, Inc.
14 ("BellSouth"), in 1966. I held various positions within BellSouth over that
15 time. My last position with BellSouth was as a Certified Project Manager
16 in information technology ("IT"). I also have been engaged as a
17 consultant to BellSouth in the area of billing. As part of the billing
18 assignment, I supported BellSouth's development of J Billing ("UNE-P")
19 and Single C Order Process. I retired from BellSouth in December of
20 1996. My consultant assignment for BellSouth was between 1997-1999.
21 As a manager of BellSouth's Regional Service Order Support ("RSOS")
22 staff, I am very familiar with BellSouth's legacy systems. I was an
23 ITC^DeltaCom employee between December 1999 and September

1 2000. In October of 2000, I became an independent consultant to
2 ITC^DeltaCom in the areas of Operational Support Systems ("OSS") –
3 ordering systems and gateway support to incumbent local exchange
4 companies ("ILECs"), including but not limited to BellSouth. Since
5 October 2001, I have again been an employee of ITC^DeltaCom in Inter-
6 Company Program Management.

7

8 **Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

9 A: No. I have been an active participant in the Florida Competitive Issues
10 Forum, the Bearing Point Testing, and the DSL proceeding. I have
11 testified in Alabama, Georgia, and Louisiana regarding OSS and
12 Performance Metric Issues.

13

14 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A: The purpose of my testimony is to address operational issues critical to
16 the success of ITC^DeltaCom and the continued quality of service for our
17 local customer. Specifically, I address service-impacting facets of the
18 business for which contract language must be adopted. I will focus on
19 those issues related to OSS, Directory and Billing.

20

21 **Issue 2: Directory Listings**

22 **Q: WHY IS ITC^DELTACOM REQUESTING DIRECTORY LISTING**
23 **INFORMATION FROM BELLSOUTH?**

1 A: BellSouth has refused to allow ITC^DeltaCom to adopt the AT&T
2 contract language regarding directory listings. Pursuant to 47 C.F.R.
3 51.809, BellSouth is required to make available any individual
4 interconnection, service or network element arrangement contained in
5 any agreement to which it is a party that is approved by a state
6 commission. Additionally, BellSouth is required to provide directory
7 listings pursuant to Section 271 of the Telecommunications Act of 1996
8 ("Telecommunications Act" or "Act") because directory listings are
9 "access or interconnection that is offered by a Bell operating company to
10 other telecommunications carriers." (See Section 271(c) (2) (B) of the
11 Telecommunications Act of 1996.) Directory listings rates, terms and
12 conditions are considered an interconnection service and therefore
13 should be available for adoption pursuant to 47 C.F.R. 51.809.
14
15 ITC^DeltaCom conveys its end user customers' listing to BellSouth for
16 intermingling and inclusion in the local telephone directory. While some
17 orders are defined to "flow through" the systems without intervention and
18 deliver to BAPCO, the publisher selected by BellSouth, others are
19 manually keyed and all iterations are not viewable by ITC^DeltaCom. To
20 ensure accuracy, ITC^DeltaCom has requested an electronic feed for its
21 customers' listings prior to each directory close, or alternatively, a one-
22 time snapshot of the BAPCO database for ITC^DeltaCom's data and a
23 file with changed data prior to the book closing.

1

2

ITC^DeltaCom should have the right to review and edit directory listing

3

information. BellSouth has admitted to dropping some UNE-P

4

subscribers from the directory due to system problems. In fact, the

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Atlanta Journal-Constitution published a story on March 18, 2003

6

indicating that BellSouth had published a phone sex number as its own

7

internet service contact number. All parties need the ability to validate

8

their published data.

9

10

To protect itself from costly adjustments, litigation and customer

11

dissatisfaction, ITC^DeltaCom needs a mechanical method of validation.

12

The BAPCO website allows a person to view one listing at a time for the

13

“top 100” directories, thus requiring extended time and labor charges to

14

be borne by ITC^DeltaCom. ITC^DeltaCom has the ability to individually

15

access the Customer Service Record. However, this does not reflect the

16

yellow page advertisement, or any alterations made by BAPCO.

17

ITC^DeltaCom hopes that in the upcoming Performance Measure

18

Dockets, metrics are established for the directory accuracy. It also

19

should be noted that BellSouth is protected from penalties beyond the

20

billed amount. Business customers frequently seek damages in excess

21

of the tariffed listing rates.

22

23 **Issue 9: OSS Interfaces**

1 Q: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE INTERFACES
2 FOR OPERATIONAL SUPPORT SYSTEMS WHICH HAVE
3 FUNCTIONS EQUAL TO THAT PROVIDED TO THEIR RETAIL
4 DIVISION?

5 A: Yes, it is a requirement of the Telecommunications Act that OSS
6 be nondiscriminatory. BellSouth contends that only the
7 information provided to ITC^DeltaCom must be nondiscriminatory.
8 However, delays due to lack of OSS support make CLECs like
9 ITC^DeltaCom appear inefficient and unreliable to customers.
10 ITC^DeltaCom's center support personnel receive comments from
11 end user consumers who ask why BellSouth can perform certain
12 tasks but ITC^DeltaCom cannot. In summary, Bellsouth should
13 have a contractual commitment to provide to ITC^DeltaCom
14 access to all functions for pre-order which are provided to the
15 BellSouth retail groups. Systems may differ, but all functions will
16 be at parity in all areas, i.e., operational hours, content
17 performance. All mandated functions, i.e. facility checks, should
18 be provided in the same timeframes in the same manner as
19 provided to BellSouth retail centers.

20

21 Issue 25: Provision of ADSL Where ITC^DeltaCom is the UNE-P Local
22 Provider

1 **Q: SHOULD BELLSOUTH BE ALLOWED TO REFUSE TO PROVIDE**
2 **ADSL SERVICE TO ITC^DELTACOM'S UNE-P END USERS?**

3 A: No. BellSouth acknowledges that no technical reason exists for its
4 unwillingness to serve ITC^DeltaCom's UNE-P end users with
5 BellSouth's Fast Access, or ADSL service. We live in the information
6 age where most homes and businesses have computer access. By
7 limiting the service, BellSouth places ITC^DeltaCom at a competitive
8 disadvantage. BellSouth's proposed solution to leave a line as resale is
9 insufficient for several reasons, including the fact that resale and UNE-P
10 lines cannot hunt.

11

12 **Q: SHOULD BELLSOUTH CONTINUE PROVIDING THE END USER**
13 **ADSL SERVICE WHERE ITC^DELTACOM PROVIDES UNE-P LOCAL**
14 **SERVICE TO THAT SAME END USER ON THE SAME LINE?**

15 A: Yes. BellSouth should not be permitted to tie local service to its ADSL
16 service. There are three principal practical anti-competitive effects of this
17 type of "tying" policy. First, tying arrangements force a competitor to
18 enter two markets, thereby raising a competitor's cost of entry. In this
19 instance, a competitor seeking to provide local voice service is forced to
20 also offer DSL service because the customer is precluded from
21 purchasing his or her DSL service from BellSouth. The competitor
22 therefore must incur the entry costs associated with providing DSL
23 service, even if such costs were not part of the competitor's business

1 plan. Alternatively, the competitor may just give up the customer seeking
2 both voice and DSL – an outcome that is clearly at odds with the mission
3 of a for-profit company and the intent of local competition.

4
5 Second, tying arrangements allow a monopoly to “cherry pick” the most
6 attractive customers from the mass market, thereby reducing the
7 profitability of entry into that market by would-be competitors. Inasmuch
8 as there is a positive correlation between DSL purchasers and the most
9 profitable voice service customers (those with high toll and vertical
10 feature usage), BellSouth can use tying arrangements to acquire and
11 “lock up” only the most profitable customers, leaving its non-DSL
12 providing competitors to compete for those relatively less profitable
13 customers. Through its tying arrangements, BellSouth therefore
14 “monopolizes” all the attractive customers so that voice competitors do
15 not have the ability to compete effectively in the local exchange market.

16
17 Third, and most importantly, tying arrangements limit consumer choice.
18 BellSouth’s practice of tying together its voice and DSL FastAccess
19 services effectively prevents consumers from obtaining the voice
20 provider of their own choosing. Customers are often locked into a long-
21 term DSL contract with BellSouth through various marketing
22 mechanisms, such as a rebate on the DSL modem or early termination
23 fees. Faced with the decision to forego the modem or pay the

1 termination fees in order to change to another local voice service
2 provider, DSL customers are likely to stay with BellSouth. Thus, from a
3 practical standpoint, Florida consumers with BellSouth DSL are hindered
4 in their ability to switch to another provider for local voice service. This is
5 wholly contrary to true competitive choice, which enables consumers to
6 choose whatever service they desire from whichever service provider
7 they select. Florida consumers should not be held hostage to
8 BellSouth's tying arrangements.

9

10 **Q: ARE YOU AWARE OF ANY STATE COMMISSIONS THAT HAVE**
11 **ADDRESSED THIS ISSUE?**

12 A: Yes. Both the Louisiana and Kentucky Commissions have issued
13 decisions prohibiting BellSouth from disconnecting DSL service to the
14 consumer where a CLEC provides voice service via UNE-P. (See *In the*
15 *Matter of Petition of Cinergy Communications Company For Arbitration*
16 *of an Interconnection Agreement with BellSouth Telecommunications,*
17 *Inc.*, Kentucky Public Service Commission, Case No. 2001-00432, rel.
18 Feb. 28, 2003 and *In re BellSouth's Provision of ADSL Service to End*
19 *Users Over CLEC Loops*, Docket R-26173, Louisiana Public Service
20 Commission, Order No. 26173 (rel. January 24, 2003) and Clarification
21 Order No. 26173-A (rel. April 4, 2003)).

22

1 These decisions are attached as Exhibit MQ-1. Additionally, there is an
2 open docket in Florida, 020507-TP on this issue.

3

4 **Q: DO YOU HAVE ANY EXAMPLES OF HOW BELLSOUTH'S POLICY**
5 **HAS IMPACTED FLORIDA CONSUMERS AND ITC^DELTACOM**
6 **CUSTOMERS?**

7 A: Yes. Attached as Exhibit MQ-2 is the letter from Greg Follensbee to
8 Tom Mullis wherein BellSouth first announced that it would discontinue
9 any ADSL service to a customer of ITC^DeltaCom that was using UNE-
10 P. Consumers want choice and they want the ability to choose different
11 service providers. BellSouth should not be permitted to deny these
12 customers the ability to choose.

13

14 **Issue 64: ADUF**

15 **Q: WHAT TERMS AND CONDITIONS SHOULD APPLY TO ADUF?**

16 A: ADUF is the Access Daily Usage File, which ITC^DeltaCom purchases
17 from BellSouth. When ITC^DeltaCom purchases unbundled local
18 switching from BellSouth, BellSouth provides ITC^DeltaCom an ADUF
19 record for the billing of the access charges. These ADUF records
20 currently include local calls. ITC^DeltaCom should not be billed for
21 ADUF records associated with local calls.

22

1 **Issue 65: Notification of Changes to OSS; Changes to Business**

2 **Rules/Practices**

3 **Q: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE**
4 **ITC^DELTACOM 60 DAYS ADVANCE NOTICE OF DEPLOYMENT OF**
5 **OSS CHANGES THAT IMPACT CLECS?**

6 **A:** Yes. Like BellSouth, ITC^DeltaCom has vendor relationships within the
7 OSS suite. When purchasing outside IT support, less than 60 days
8 notice could cause ITC^DeltaCom to pay premium charges or to be
9 forced to utilize expensive and inefficient alternatives. ITC^DeltaCom
10 has experienced such disruptions to its operations, such as USOC
11 changes, rate sheets not provided in advance, and delay with loading to
12 our rate file. Rates when not ordered by the Commission, require time
13 for negotiation of the contract amendment and loading to BellSouth's
14 rating systems. In the Florida Collaborative, BellSouth has reported that
15 a vendor is working on mechanization to improve the process. However,
16 ITC^DeltaCom is delayed by BellSouth until the updates are complete.

17

18 **Issue 66: Testing of End User Data**

19 **Q: SHOULD BELLSOUTH PROVIDE ITC^DELTACOM THE ABILITY TO**
20 **TEST ITS DATA TO THE SAME EXTEND BELLSOUTH TESTS ITS**
21 **OWN END USER DATA?**

22 **A:** Yes. CLECs via Change Control have requested BellSouth to enhance
23 its testing tools. Currently, the CAVE test environment only supports the

1 latest version of TAG and the latest EDI map. The test deck is loaded
2 with a catalogue of cases with expected results. BellSouth enjoys the
3 ability to test its data "end to end" using the tools and format that will be
4 in its production systems. BellSouth then captures the "test" accounts
5 and removes after bill verification. To use their Operating Customer
6 Number (OCN), CLECs must order test accounts as real active accounts
7 and pay the associated rates. Once the accounts are established the
8 CLEC can request the BellSouth testing team to create a test plan. All
9 test environments should mirror production systems and be available for
10 all non-retired interfaces. BellSouth did offer the CLECs a work-around
11 solution that if accounts and scenarios were submitted 60 days in
12 advance of testing, BellSouth would determine if they could load. This
13 further illustrates the need for 60 days' advance notification of OSS
14 Changes.

15

16 **Issue 67: Availability of OSS Systems**

17 **Q: SHOULD BELLSOUTH BE ALLOWED TO SHUT DOWN OSS**
18 **SYSTEMS DURING NORMAL WORKING HOURS WITHOUT**
19 **CONSENT FROM THE CLECs?**

20 **A:** No. Operational hours and maintenance windows are posted on
21 BellSouth's website. ITC^DeltaCom schedules its Customer Agents
22 accordingly. BellSouth on December 27, 2002, took ALL interfaces

1 down at noon for a system upgrade. A system upgrade is not an
2 emergency situation.

3
4 This occurred on a Friday at the end of the month, a very crucial time for
5 most CLECs. CLECs were closing the month and year, and had orders
6 which needed to be entered into the systems. CLECs had staff on site
7 and no tools with which to work. If BellSouth wants to schedule an OSS
8 outage any time Monday thru Friday, between the hours of 8 A.M. and 5
9 P.M. it should first obtain the CLECs' approval or consent.

10 **Issue 69: Inadvertent Transfer of Customers**

11 **Q: SHOULD BELLSOUTH PROVIDE A PROCESS THAT IS END USER**
12 **FRIENDLY WHEN A MISTAKE HAS OCCURED AND A CUSTOMER**
13 **IS SWITCHED?**

14 **A:** Yes. On rare occasions, a simple typing mistake will cause a customer
15 to be switched. Under the current process, when the error occurs within
16 BellSouth's retail division, BellSouth simply corrects the error. When the
17 error occurs within ITC^DeltaCom, BellSouth requires that both
18 ITC^DeltaCom and the affected consumer have to be on the line in order
19 to correct the mistake. ITC^DeltaCom is requesting BellSouth to
20 reinstate the service to the former state in parity with its own customers.
21 ITC^DeltaCom wishes to handle all the coordination on behalf of the end
22 user, rather than forcing a customer who has no idea of what happened
23 with his/her service to call the retail center and reapply. ITC^DeltaCom

1 fully accepts the charges associated with the change and has offered to
2 compensate BellSouth if service is restored within four hours.

3

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

5 **A: Yes.**

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

3 A: My name is Mary Conquest. I am Program Manager for Inter-
4 Company Relations, at ITC^DeltaCom Communications, Inc.,
5 ("ITC^DeltaCom"). My business address is 4092 S. Memorial
6 Parkway, Huntsville, Alabama 35802.

7

8 **Q: ARE YOU THE SAME MARY CONQUEST WHO PRESENTED**
9 **DIRECT TESTIMONY ON BEHALF OF ITC^DELTACOM IN THIS**
10 **CASE?**

11 A: Yes.

12

13 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A: The purpose of my testimony is to respond to the direct testimony of
15 BellSouth witnesses Ronald M. Pate, and John A. Ruscilli.

16 My testimony rebuts Issues 9, 66, and 67 for Mr. Pate's testimony;
17 Issues 2, 25, and 64, of Mr. Ruscilli's testimony.

18

19 **Issue 2: Directory Listings (Ruscilli Pages 4-6 Begin Line 18)**

20 **Q: WHY IS ITC^DELTACOM REQUESTING DIRECTORY LISTING**
21 **INFORMATION FROM BELLSOUTH?**

22 A: To have parity with BellSouth retail customer directory listings.

23 BellSouth has stated in the UNE-P User Group forum that during

1 conversion "some" listings were "dropped." Also another CLEC has
2 indicated a program error at BAPCO has impacted 30% of its listings.
3 Attached (~~EXHIBIT-MC-4~~^{EXHIBIT-MC-3}) is BellSouth Carrier Notification
4 SN91083548 describing a "workaround" process. The above
5 examples confirm a need to validate the customer listings prior to
6 publication of the directory.
7

8 **Q: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE AN**
9 **ELECTRONIC FEED OF THE DIRECTORY LISTINGS FOR THE**
10 **ITC^DELTACOM CUSTOMERS?**

11 BellSouth in Mr. Ruscilli's testimony is now agreeing to allow
12 ITC^DeltaCom to adopt the AT&T language, however, they are stating
13 they do not have the ability to deliver the listings for ITC's subscribers
14 electronically. While the AT&T language clearly indicates a Directory
15 Listing Database, BellSouth claims it is unable to provide ITC a file of
16 its customer listings. Mr. Ruscilli attempts to cloud the issue by stating
17 that BellSouth is required to provide access to its directory assistance
18 database, rather than the publishing data and charges fees to do so.
19 Discussions regarding Directory Publisher Database Service, a filed
20 offering in Kentucky, Mississippi, Louisiana, and Florida, imply
21 BellSouth is willing to sell the listing information to outside publishers,
22 but not produce for its wholesale customer.

23

1 Q: HOW DOES ITC^DELTACOM RESPOND TO PARAGRAH (c) OF
2 MR. RUSCILLI'S TESTIMONY, WHERE HE STATES, "DeltaCom
3 has the right to review and edit its customers' directory listings
4 through access to DeltaCom's own customer service records" ?

5
6 A: While ITC does have the listing information it requested, it is blind to
7 the BellSouth created omissions, corrections, and the BAPCO activity.
8 Therefore it is not possible to determine the exact listing using the
9 ITC^DeltaCom data.

10

11 Issue 9: OSS Interfaces (Pate Page 7-9)

12 Q: DOES MR. PATE ACCURATELY DESCRIBE OSS PARITY IN HIS
13 TESTIMONY?

14 A: Yes, he sites the orders, but fails to address the issues.
15 ITC^DeltaCom proposed that BellSouth provide access to all functions
16 for pre-order which are provided to the BellSouth retail groups. And I
17 quote, "Systems may differ, but all functions will be at parity in all
18 areas, i.e. operational hours, content, performance. All mandated
19 functions, i.e. facility checks, will be provided in the same timeframes
20 in the same manner as provided to the BellSouth retail centers." Mr.
21 Pate refuses to clearly state what is objectionable about this language.

22

1 Q: MR. PATE ON PAGE 8 LINE 18-19, STATES "DeltaCom includes
2 in its issues matrix the phrase "same time frames and in the
3 same manner as provisioned to BellSouth retail customer"
4 because that is exactly what BellSouth already provides to
5 ALECs." DOES BELLSOUTH PROVIDE PARITY TODAY?

6
7 A: No, in my opinion Mr. Pate is aware of numerous differences. For
8 example BellSouth retail sees pending service order information in
9 detail, however CLECs must call the center to obtain a subset of the
10 data. BellSouth has SOCS updates almost real time, but CLECs must
11 use CSOTS updated nightly. BellSouth clearly does not in every
12 instance provide the information in the same time frames and in the
13 same manner.

14
15 Issue 25: Provision of ADSL Where ITC^DeltaCom is the UNE-P Local
16 Provider (Ruscilli, Pages 9-15)

17
18 Q: ON PAGE 9 OF MR. RUSCILLI'S TESTIMONY HE STATES
19 BELLSOUTH DOES NOT HAVE ACCESS TO THE HIGH
20 FREQUENCY PORTION OF THE LOOP AND LACKS PERMISSION
21 TO PROVISION DSL, WOULD YOU COMMENT?

22 A: Yes. In the past BellSouth has disclosed that it provisioned xDSL on
23 approximately 700 customers on UNE-P lines, a portion of these were

1 ITC^DeltaCom end users. It should be noted that no issues were
2 encountered with the service. In fact ITC^DeltaCom offered to give
3 BellSouth the use of the upper or high frequency portion of the UNE-P
4 line for free. Mr. Ruscilli claims on page 9 that, "many databases
5 would be need to be created to track which ALEC's are allowing
6 BellSouth to use their HFPL." This claim seems questionable since
7 ALEC's today have different relationships with BellSouth and with
8 each other.

9

10 **Q. WHY SHOULD THE FLORIDA COMMISSION BE CONCERNED**
11 **ABOUT BELLSOUTH'S TYING PRACTICES AND REQUEST FOR**
12 **REVERSAL OF THE FDN AND SUPRA RULINGS WITH RESPECT**
13 **TO DSL AND LOCAL VOICE SERVICE?**

14

15 A. This Commission has ruled that the Florida consumer's should have
16 the right to choose their local service provider and DSL service
17 provider. It has further ruled that DSL may be provided via UNE-P and
18 UNE loop. BellSouth is asking for the Commission to reverse its
19 position and agree to BellSouth's tying its arrangements. While I'm
20 not an attorney and do not claim to address the many legal rulings Mr.
21 Ruscilli has noted, I would note that consumers deserve the right to
22 choose, and it is apparent that technical ability is not an issue.

23

1

2

3

4 **Issue 64: ADUF(Ruscilli, Page 44-45)**

5 **Q: MR. RUSCILLI STATES THAT ITC^DELTACOM IS ASKING FOR A**
 6 **CUSTOMIZED REPORT, IS THIS TRUE ?**

7 **A:** No, we are asking that only access charges be passed via ADUF.
 8 Previously Mr. Ruscilli had stated that the only local calls on the ADUF
 9 file that ITC^DeltaCom pays for would be calls dialed as 1010XXX.
 10 Mr. Ruscilli fails to acknowledge that UNE Port/Loop Switched
 11 Combination Billing Arrangements, Call Flow 12 (~~EXHIBIT-MC-5~~ ^{EXHIBIT-MC-4})
 12 states that until BellSouth modifies its billing system to not charge for
 13 Unbundled Local Switching a ADUF record is sent, and the CLEC
 14 pays for this record. BellSouth should only be placing call records and
 15 billing the CLEC the ADUF charges for access. BellSouth is placing
 16 records on the ADUF file inappropriately because of internal issues, of
 17 which the billing system problem is one example.

18

19

20 **Issue 66: Testing of End User Data(Pate, Page 10-16)**

21 **Q: MR. PATE STATES ITC^DELTACOM SHOULD ACCEPT THE TEST**
 22 **FACILITY AS PRESENTED, AND WAIT FOR THE CHANGE**
 23 **CONTROL PROCESS TO WORK. DO YOU AGREE?**

1 A: ITC^DeltaCom has participated in the Change Control groups and
2 testing subcommittee and attempted to establish an effective test
3 methodology. Exhibit MC-5, May 9, 2002 clearly indicates
4 ITC^DeltaCom's request and BellSouth's knowledge of that request.
5 Mr. Pate states, CR 897 has been updated by the CLEC's; however,
6 BellSouth has recently been denying requests due to cost and
7 capacity. Currently, ITC^DeltaCom is not afforded the same testing
8 capabilities that BellSouth enjoys.

9 **Q: CAN YOU BE MORE SPECIFIC ABOUT BELL SOUTH'S TESTING?**

10 A: The BellSouth web site indicates the FID ETET is used for retail
11 testing. It is my understanding that this enables BellSouth to enter
12 their customer data as if a real order had been placed, flowing the test
13 data through the order, provisioning, billing and maintenance systems
14 as if a live request. Then the process removes the order and negates
15 the charges. BellSouth tells the CLEC's they may place real orders
16 and pay the applicable charges to do their testing.

17

18 **Q: WOULD YOU CARE TO RESPOND TO MR. PATE'S COMMENT**
19 **REGARDING ISSUES THAT ITC^DELTACOM HAS CONCERNING**
20 **CAVE TESTING?**

21 A: Yes, Mr. Pate is aware ITC^DeltaCom has spent weeks testing EELs
22 ordering. Test cases prepared by BellSouth SME's are not under the
23 control of CCP, and had to be corrected and resubmitted three times.

1 ITC^DeltaCom was told when it did not receive its acknowledgement
2 that it was because of a "defect," ITC^DeltaCom followed Mr. Pate's
3 suggestion and filed a change request (CR 1170). CCP strongly
4 suggested this be cancelled, while clearly a coding defect existed in
5 the CAVE area. ITC^DeltaCom was told it was inappropriate to post a
6 CR for a CAVE defect, yet no process other than a CR exists. Were
7 ITC^DeltaCom afforded the same testing as BellSouth, the orders
8 would have ITC^DeltaCom's own customer data, and both BellSouth
9 and ITC^DeltaCom could both benefit from the resources used to test
10 data. In fact BellSouth indicates as of April 14,2003, 86% of the
11 coding capacity has been used to correct defects. ITC^DeltaCom also
12 agreed to assist Birch in the beta testing of allowing CLEC's to view
13 each other's Customer Service Record data. After completing the
14 BIRT (BellSouth Interface Registration Tool) requests, exchanging
15 Letters of Authorization, Operating Company Numbers and account
16 data, Birch and ITC^DeltaCom were advised that no test ability was
17 being provided for CR 184/246. (EXHIBIT- MC-6 attached.)

18

19 **Issue 67: Availability of OSS Systems (Pate, Page 16-20)**

20 **Q: DO YOU AGREE WITH MR. PATE THAT NO ALEC VOICED**
21 **OPPOSITION TO THE OUTAGE?**

22 **A:** No. In fact because of my escalation, the CLECs were granted 1-hour
23 additional time. EXHIBIT- MC-7 attached is the correspondence

1 between myself and Jill Williamson, documenting my escalation.
2 ITC^DeltaCom does not believe that BellSouth can work on all of its
3 systems at the same time, and should agree to staggering the outages
4 at least until 5 PM during normal work days. ITC^DeltaCom
5 understands that emergency outages will occur, but planned system
6 upgrades should be outside of normal scheduled work hours. A
7 system upgrade is not an emergency situation.

8 **Q: MR. PATE CLAIMS THAT HIS EMPLOYEES WERE**
9 **INCONVENIENCED BY THE ALECs BECAUSE THEY HAD TO**
10 **WORK DURING THE HOLIDAY, WOULD YOU CARE TO**
11 **COMMENT?**

12 **A:** Yes. This is clearly another example of BellSouth's poor management
13 of the business. It should also be noted that BellSouth refuses to
14 answer if their retail internal systems were down during this period. To
15 have staff available to work on all systems at the same time is
16 inconceivable to a small ALEC. While ITC^DeltaCom did not track
17 prior to 2002 the down time, it would suggest a trend developed in
18 2002. First Carrier Notification SN91082957 extends the downtime by
19 one hour, then in September Carrier notice SN 91083330 extends the
20 EDI down time by five hours, finally in December as indicated in my
21 direct testimony, systems were down during normal business hours.
22 This indicates a possible trend toward extended down times. Also
23 given the number of coding defects, emergency maintenance

1 releases, etc., the potential for further outages during normal working
2 hours should be deemed a valid concern.

3

4 **Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 **A: Yes.**

6

7

8

9

10

11

12

13

1 COMMISSIONER DEASON: BellSouth.

2 MR. SHORE: Thank you, Commissioner Deason.

3 CROSS EXAMINATION

4 BY MR. SHORE:

5 Q Ms. Conquest, I'm Andrew Shore representing
6 BellSouth. You state at the outset of your testimony that the
7 purpose of your testimony is to address operational issues;
8 correct?

9 A That's correct.

10 Q And I take it from your explanation of your I think
11 you said 37-year career -- that's quite impressive -- that your
12 experience during those 37 years lies in the area of
13 operational issues as well; correct?

14 A Yes, sir, it does.

15 Q Okay. What do you mean by "operational issues"?

16 A Moving data back and forth between us, moving it in
17 file formats that are acceptable to the parties, procedures for
18 ordering correctly, correct billing, exchange of information.

19 Q You're not a policy witness, are you?

20 A No, sir, I'm not.

21 Q And likewise, you're not a lawyer, are you?

22 A That's correct, I'm not.

23 Q Okay. Well, I'm not going to ask you anything about
24 your testimony where you allege that BellSouth's DSL policy
25 constitutes an illegal tying arrangement, and I'll move

1 directly to Issue Number 2, directory listings.

2 You want BellSouth to agree in its interconnection
3 agreement with DeltaCom to provide DeltaCom an electric feed so
4 that DeltaCom can review the accuracy of the DeltaCom customer
5 listings in directories that are published by BAPCO; correct?

6 A Well, I think -- yes. But let me explain, if I
7 might. I think we agree that there are six places that errors
8 can be injected into the process. Certainly on my side there
9 are two opportunities, manual and electronic. On your side,
10 there are two opportunities, and on the BAPCO there are two
11 opportunities. So basically we all have the opportunity for
12 errors to be inserted in the process.

13 In one of your responses to me, you tell me that I
14 should use the CSR to do that validation. And I just offer to
15 you that the CSR does not always reflect what the publisher is
16 seeing. So for that reason, yes, we're asking for an
17 electronic feed of that information.

18 Q And you say that you need that in order to ensure
19 that telephone numbers for DeltaCom's customers are published
20 correctly in BAPCO's books; right?

21 A In the telephone directory that BellSouth publishes,
22 yes, sir. I send my listings to you.

23 Q And those books are published by a company known as
24 BAPCO; correct?

25 A That is correct. That is who you have chosen to do

1 your publishing.

2 Q You don't claim anywhere in your testimony that BAPCO
3 has left any DeltaCom customer in Florida out of a directory or
4 incorrectly published that number, do you?

5 A No, sir. I don't have any customer-specific
6 information in my testimony.

7 Q How long has BAPCO been including DeltaCom customer
8 listings in its books in Florida?

9 A I don't know the exact time frame. I'm sorry.

10 Q Do you know the approximate time frame?

11 A I would assume from the UNE-P perspective
12 somewhere -- '99, I would think.

13 Q And in the last four years or so approximately,
14 DeltaCom has not had any litigation with its customers in
15 Florida or elsewhere for that matter arising out of an
16 incorrect listing in a BAPCO book, has it?

17 A Can you ask me the question again, please, sir?

18 Q Have you had any litigation -- has your company had
19 any litigation with a DeltaCom customer in Florida arising out
20 of an incorrect listing in a BAPCO book?

21 A I think I have to say I don't know. I'm saying I
22 believe we've had instances where adjustments were made to
23 customers or customers were displeased with some of the
24 listings that were published. When you use the term
25 "litigation," I'm a little unclear. Did we bring it before

1 this Commission? No, sir, I don't think we've had anything
2 before the Commission.

3 Q In your testimony when you cite that you need an
4 electronic feed to protect yourself -- I'm reading on Page 4 of
5 your direct -- from costly adjustments, litigation, and
6 customer dissatisfaction, you're not referring to any specific
7 litigation, you're just talking about a hypothetical problem
8 that could exist; correct?

9 A Yes, sir. As you're probably aware, business
10 customers are very sensitive of being included in the phone
11 book. Lots of times they seek damages that are above what you
12 are actually billing for a listing. I mean, they typically
13 have a lot of letterhead, advertising, et cetera, and
14 frequently they ask to be compensated for that.

15 Q In your testimony, ma'am, you don't cite even a
16 single example of any customer of yours in Florida having to be
17 compensated for an incorrect listing, do you?

18 A No, sir, I don't --

19 Q In fact --

20 A -- not in my testimony.

21 Q I'm sorry. I didn't mean to interrupt you.

22 In fact, you don't even cite the fact that an
23 incorrect listing occurred in Florida, do you?

24 A No, sir, I don't.

25 Q Now, you're aware -- I think we talked about this in

1 one of the -- maybe more than one of the other states where
2 I've examined you, that BAPCO is a separate company from
3 BellSouth Telecommunications, are you not?

4 A Yes, sir. I believe it's a subsidiary.

5 Q And you also testified and you're aware that DeltaCom
6 has a separate contract with BAPCO that addresses the listing
7 of customer information in books that BAPCO publishes; correct?

8 A Yes, sir. And we've discussed that the BAPCO --
9 actually, we've discussed that we were asked to create a new
10 business request for this particular item, and that has been
11 rejected by both BellSouth and by BAPCO, and that BAPCO has a
12 process that I'm not sure that the Commission is aware of. The
13 process is they have a Web site. They place the top 100
14 directories on the Web site, and you're able to look at the
15 listings one by one, which is a very inefficient process.

16 Q And we've discussed this in other states, that you're
17 aware of the provision in the contract between your company and
18 BAPCO that states that BAPCO shall provide a process whereby
19 DeltaCom is afforded a reasonable opportunity to review and
20 correct its subscriber alphabetical listings in advance of
21 publication. You're familiar with that contractual provision
22 that you have with BAPCO; correct?

23 A That's the process I just described. Yes, sir.

24 Q And BAPCO, in fact, does allow DeltaCom to review
25 listings for DeltaCom customers prior to publication and to

1 offer revisions, does it not?

2 A Yes, sir, but not electronically.

3 Q DeltaCom has never asserted to BAPCO that BAPCO has
4 failed to fulfill its contractual obligation to afford DeltaCom
5 a reasonable opportunity to review and correct subscriber
6 listings in advance of publication, has it?

7 A Could you restate that question? It was rather
8 lengthy.

9 Q Yes, ma'am.

10 DeltaCom has never asserted to BAPCO that BAPCO is in
11 breach of its contractual obligation that we're talking about
12 to provide DeltaCom with a reasonable opportunity to review
13 listings in advance of publication, have you?

14 A No, sir, but we have had dialogue with them on
15 numerous occasions about providing us this function.

16 Q Now, in your summary this morning when you talked
17 about Issue 9 dealing with OSS, you said that DeltaCom -- you
18 said, let me quote what ITC^DeltaCom is proposing, and you
19 quoted a phrase. Do you recall that in your summary?

20 A Yes, sir.

21 Q Okay. That's not the entire language that DeltaCom
22 is proposing with respect to Issue 9, is it?

23 A No, sir.

24 Q Now, the one phrase -- strike that.

25 Okay. We can agree, can we not, that the

1 Telecommunications Act requires BellSouth to provide
2 nondiscriminatory access to its OSS to all ALECs, including
3 DeltaCom?

4 A Yes, we did agree on that.

5 Q And you're aware that --

6 MR. ADELMAN: Mr. Chairman, I just want to object. I
7 think she was about to explain her answer. One of the
8 problems is, I think maybe you might want to bring the
9 microphone a little closer.

10 THE WITNESS: Okay. I guess one of the issues that
11 we have here is that with this --

12 MR. SHORE: Mr. Chairman, if I can just interject. I
13 understand the witness certainly has an opportunity to explain
14 an answer. I just asked her to agree with me if the 1996 Act
15 requires BellSouth to provide nondiscriminatory access. It
16 doesn't strike me as the kind of question that requires an
17 explanation. She said yes. I mean, what kind of explanation
18 could there possibly be that's really responsive to that
19 question?

20 MR. ADELMAN: I'd be glad to respond to that,
21 Mr. Chairman.

22 COMMISSIONER DEASON: No. We'll let the witness
23 respond, but I just -- keep your response brief, please.

24 THE WITNESS: Okay, sir. It's my understanding that
25 we're looking for language that helps us define and interpret

1 that a little bit better. That's a very broad statement. And
2 the language that we have, we believe or at least I believe,
3 clarifies that to a better degree.

4 BY MR. SHORE:

5 Q You testified in arbitrations in other proceedings on
6 this issue that if your contract language is adopted, BellSouth
7 would not have any broader obligation than it currently has
8 pursuant to the 1996 Act, haven't you?

9 A Yes, sir. We believe that you are compliant. We're
10 not accusing you of being uncompliant. We're also pointing out
11 to you, though, that for the terms of this agreement many
12 changes can come in the future, and we certainly want the
13 language to be as clear. I mean, I think I've said this to you
14 before: A contract clearly sets forth your obligation and
15 mine. So we believe this language clarifies that relationship
16 between us.

17 Q When you say we're compliant then what your testimony
18 is that BellSouth is providing you with nondiscriminatory
19 access to its OSS?

20 A I'd like to use an example, if I could.

21 COMMISSIONER DEASON: Could you answer --

22 THE WITNESS: The answer is yes. I'm sorry. If I
23 might use an example. When we began this proceeding, and I
24 have talked about it to this Florida Commission before, we did
25 not have access to pending order information. To me, that was

1 a bit discriminatory.

2 MR. SHORE: Mr. Chairman, if I can -- I apologize,
3 Ms. Conquest, for interrupting.

4 Pending service order was an issue. It was Issue
5 Number 5. It's been resolved by the parties, and I think it's
6 grossly unfair to now interject an issue at this hearing that
7 the parties have resolved. I'm not prepared to cross-examine
8 her on that issue because it's been resolved.

9 MR. ADELMAN: Mr. Chairman, if I could respond to his
10 objection.

11 COMMISSIONER DEASON: Yes.

12 MR. ADELMAN: This is offered as an example. And
13 it's --

14 COMMISSIONER DEASON: I'm going to sustain the
15 objection. The question is quite clear, and if it does -- if
16 the answer delves into matters which have been resolved, I
17 don't think that's appropriate.

18 BY MR. SHORE:

19 Q Now, I think I said there were two issues. One
20 was -- and you answered that -- that it's your opinion today
21 that BellSouth is providing nondiscriminatory access. The
22 second part of my question was that you have testified in other
23 proceedings in other arbitrations, identical arbitration
24 proceedings that if your contract language on this issue was
25 adopted, that BellSouth will not have any additional obligation

1 that it doesn't have today by virtue of the language in the
2 '96 Act that requires BellSouth to provide nondiscriminatory
3 access to its OSS; isn't that true?

4 A Yes, sir. I mean, we certainly aren't going against
5 the Act. We're just adding some additional verbiage that we
6 think clarifies it.

7 Q Let's talk briefly -- I think it's only going to be
8 briefly -- about Issue 64, the ADUF issue. ADUF file is a type
9 of report that ALECs can purchase from BellSouth; correct?

10 A Yes, sir.

11 Q And can we agree that the ADUF records that BellSouth
12 provides to DeltaCom are generated and sent to DeltaCom in the
13 same manner and form as ADUF records that BellSouth sends to
14 other ALECs?

15 A I believe in discovery you indicated there were two
16 companies that get something different, so generally speaking,
17 I think we could.

18 Q Issue 67. In your summary I might have misheard you,
19 Ms. Conquest, so let me just ask you a clarifying question. In
20 your summary when you talked about maintenance releases and you
21 said they're typically worked on, did you say they're typically
22 worked on for 60 months?

23 A The large packages, yes, sir.

24 Q Isn't that 60 weeks?

25 A I'm sorry. You're correct, over a year.

1 Q DeltaCom proposes language with respect to Issue 67
2 that says that BellSouth will never shutdown preordering
3 interfaces during normal business hours absent an emergency
4 without DeltaCom's consent. That's your proposal; correct?

5 A Yes, sir, it is.

6 Q And we can agree that it's not BellSouth's general
7 business practice to perform systems upgrades during normal
8 business hours, is it?

9 A I guess we're -- we can agree, yes, but I guess we're
10 seeing some changes in business that cause us to want to be
11 very cautious because these are very critical systems for us.
12 I mean, you've reduced your OSS spending; you're asking for
13 additional maintenance time in your carrier notification
14 letters. So we're just looking to be very clear about when
15 these systems would be taken away. When this occurs, we can't
16 process orders to you; we can't answer certain questions from
17 the consumers. We basically -- our hands are tied.

18 Q In BellSouth's general practice, when it performs
19 upgrades to its systems -- and by the way, those upgrades are
20 meant most times to enhance ALECs' abilities to interface with
21 BellSouth, are they not?

22 A We share that. We are on a 50/50 plan.

23 Q And so those interfaces help you; correct?

24 A Yes, they do.

25 Q And when BellSouth enhances its interfaces to help

1 you, its general practice is to perform that work over the
2 weekend, starting after five o'clock on Friday; correct?

3 A The general practice, yes, sir.

4 Q And you cite one example in your testimony, from
5 December 27th, the Friday last year between Christmas and New
6 Year's where BellSouth shutdown its interfaces at one o'clock
7 on Friday; correct?

8 A That is correct, yes, sir. There are some other
9 things that have happened that perhaps the interfaces weren't
10 removed, an LNP problem with the gateway, other things in which
11 workarounds have been instituted, but specifically this
12 particular outage came at the end of the year when we were
13 having a sales closeout, and we were asking for additional time
14 and you granted us one hour.

15 Q Well, Issue 67 has to do with BellSouth's right or
16 the right DeltaCom wants to sort of vote against or essentially
17 not allow BellSouth to shutdown its interfaces during normal
18 business hours. That's issue 67; correct?

19 A Yes. We think it's irresponsible to do that. We
20 think you have the ability to stagger the outages or to package
21 them in such a manner that it becomes unnecessary for you to do
22 that.

23 Q That one time that you cite in your testimony from
24 December 27th of last year, that Friday at one o'clock, that's
25 the only time that BellSouth has taken down its systems during

1 normal business hours; isn't that true?

2 A To date.

3 Q Yes, ma'am. And we certainly don't know what's going
4 to happen in the future, do we?

5 A No, we certainly don't. And of course --

6 Q We do know what BellSouth's general practice is,
7 correct, and that's to do it over the weekends; right?

8 A We hope that's the case.

9 Q Well, that's how it's been since 1996 except for that
10 one example on the Friday between Christmas and New Year's last
11 year; correct?

12 A Yes, sir. But again, I must point out to you that
13 the defects that you're encountering, the fact that you were
14 paid a penalty of \$2.2 million for this code, there's this
15 precedence that's beginning to occur that would indicate that
16 it's entirely possible in the next three and a half years that
17 this could be an issue again.

18 Q Now, BellSouth explained to you and the ALEC
19 community prior to having the shutdown occur at one o'clock on
20 a Friday between Christmas and New Year's that due to the
21 complexities in that particular release, that it needed extra
22 time, it couldn't get all the work done over the weekend to
23 have the systems tested, et cetera, and I'm not a systems
24 expert like you are, so let's just stick with testing, et
25 cetera, by Sunday evening so they had to start that process

1 early. It explained that to the ALEC community in advance;
2 correct?

3 A They gave us a carrier notification letter. When we
4 challenged it, we were told that BellSouth themselves
5 originally did not plan to take the systems before 5:00, but
6 because of the amount of defects in the code, they determined
7 that they needed extra time. And it was because of all these
8 defects that they chose to take them away. The interesting
9 part was they didn't take away their own systems.

10 Q And BellSouth told you that 35 days in advance of
11 December 27th; correct?

12 A That's correct. And --

13 Q What --

14 A -- we appealed it.

15 MR. ADELMAN: Mr. Chairman, she's trying to explain
16 the answer, and I appreciate Mr. Shore's interest in moving
17 quickly, but the witness, I think, is entitled to an
18 explanation to give some context to her answer.

19 COMMISSIONER DEASON: And I agree. And I don't think
20 that there's any attempt to cut the witness off. I think
21 there's just an attempt to move this cross-examination along
22 rapidly, which is appreciated, but I will instruct to pause for
23 a moment to see if there's any additional explanation coming.

24 MR. ADELMAN: And for the record, Mr. Chairman, no
25 one could appreciate it more than I do.

1 BY MR. SHORE:

2 Q Ms. Conquest, I'd asked you a moment ago whether or
3 not it was true if BellSouth gave the ALEC community, including
4 DeltaCom, 35 days' notice that it was going to have to take
5 down its systems at noon on December 27th, 2002. You said
6 that's correct. Does that answer require any explanation on
7 your part?

8 A I felt like it did because the notice itself was not
9 well received, at least by my company, and we certainly
10 instituted an appeal process. So I felt like the Commission
11 should be aware that it wasn't something that we all had agreed
12 to beforehand.

13 Q And you said that you asked BellSouth -- in response
14 to that notice, you asked BellSouth, hey, can't you just leave
15 them up till three o'clock on Friday? That was your request to
16 BellSouth; correct?

17 A Yes.

18 Q And BellSouth didn't feel that it could meet the
19 three o'clock deadline due to the complexities of the upgrade,
20 but it agreed to extend it to one o'clock; correct?

21 A One hour, yes, noon for me.

22 Q Noon Central Time, but when BellSouth sends its
23 notice, it talks about Eastern Time; correct?

24 A Correct.

25 Q No other ALEC asked BellSouth to extend that

1 deadline, did it?

2 A I'm not aware.

3 Q Now, when you say in your testimony on Page 7 that
4 when BellSouth had this one-time early shutdown on the Friday
5 between Christmas and New Year's last year that CLECs had staff
6 on-site and no tools with which to work, you're not suggesting
7 that BellSouth didn't give you over a month's notice that it
8 was going to have to shutdown these systems early on that
9 Friday afternoon, are you?

10 A No, sir.

11 Q Let's talk about Issue 66, testing. We talked about
12 this one before, and I think we can agree, as we have in the
13 past, that BellSouth offers ALECs two types of testing, what's
14 referred to in BellSouth's documentation as traditional testing
15 and what's referred to as CAVE testing; correct?

16 A Yes, sir.

17 Q CAVE testing, can you help me out on that,
18 Ms. Conquest?

19 A I think we've had this discussion many times.

20 Q Yeah, I know and I always forget to write it down.

21 A Yes. We basically have an opportunity to test the
22 new releases in the CAVE. We also test new APIs there as well.

23 Q I just wanted you to tell us what CAVE testing stood
24 for. If you want to explain further, you certainly can do
25 that. I just think you might have misunderstood my question.

1 A I guess I did. Typically that is where the CLECs do
2 their testing, in that environment, and they're provided a test
3 deck. In that test deck are precontrived test cases with
4 expected results, and those are given to the CLECs along with a
5 window of time that they're assigned, and they go through
6 various phases. And those test deck cases are executed and
7 then returned. And you're either approved to move out into
8 production environment or denied based upon the results of your
9 testing.

10 Q CAVE testing, CLEC application verification
11 environment, I think what it stands for --

12 A Yes, sir.

13 Q -- that's what I intended to ask you originally.

14 A Oh, I'm sorry.

15 Q No, I apologize. My question wasn't clear.

16 That allows ALECs to test the ordering and
17 preordering functions of enhancements to OSS; correct?

18 A Yes, and new updates. For example, when you put in a
19 new map, when you move from LSOG4 to N6, that would be the
20 environment that would be used.

21 Q Now, testing in this manner is something the FCC has
22 addressed extensively in its 271 orders; correct?

23 A Yes, sir.

24 Q And you're familiar with the standard that the FCC
25 has established to determine the adequacy of a BOC testing

1 environment, are you not?

2 A Yes.

3 Q And that standard is -- the FCC has determined the
4 testing environment is adequate if it provides a stable test
5 environment that mirrors production; correct?

6 A Well, it mirrors production, but it's for a contrived
7 set of data. My point to you is that I can't test with my own
8 operating company data. I'm testing, in essence, with your
9 data.

10 Q Let me make my question more clear. The FCC standard
11 is that testing is adequate if it provides a stable test
12 environment that mirrors production. That's the standard the
13 FCC has established to determine whether or not a BOC offers
14 acceptable testing; correct?

15 A Yes.

16 Q And you're aware that this Commission and the FCC
17 have both ruled in connection with BellSouth's application to
18 provide long distance services in Florida that BellSouth does
19 provide testing environments to ALECs in Florida that allow
20 ALECs a stable test environment that mirrors production;
21 correct?

22 A I guess I'm having a little bit of trouble with the
23 "mirrors production." It's true that you move these into
24 production environments. It's also true that CLECs can be on
25 various iterations. For example, and I think we've talked

1 about this, that right now I may be behind a couple of releases
2 simply because my business plan doesn't dictate that I have to
3 upgrade right now or because my vendor hasn't made the
4 necessary changes in my back support systems, but it doesn't
5 stop me from doing production in that two maps are supported by
6 BellSouth. So I'm a little confused by your question.

7 Q Well, I'm a little confused by your answer, so it's
8 my job to try to make it clear. Let me try to do that. I
9 think we've agreed already that you're familiar with the FCC's
10 test that they've set forth to determine whether or not testing
11 passes. And the standard that the FCC has established is that
12 a BOC testing environment is acceptable if it provides a stable
13 test environment that mirrors production; correct?

14 A Correct. Now, the one thing that does not -- is not
15 encompassed in this particular testing environment, and I
16 believe we've had this discussion, is billing. When you're
17 using your end-to-end testing procedures, you're enjoying the
18 output of a bill, and you're actually seeing the charges be
19 reflected. That does not enter into the CLEC testing arena.
20 And I believe that's addressed or will be addressed in the
21 Triennial Order.

22 Q Are you through?

23 A Yes, sir.

24 Q Can we also agree that both this Commission, the
25 Florida PSC, and the FCC have stated that BellSouth meets the

1 test? In other words, that BellSouth does provide a stable
2 test environment that mirrors production?

3 A Certainly. At the point of 271, that was ruled.

4 Q Now, testing -- we talked about this. Testing is
5 addressed as part of the BellSouth change control process or
6 CCP; correct?

7 A Yes.

8 Q And as part of the CCP, ALECs can request
9 enhancements to BellSouth's testing environment; correct?

10 A Yes, we can and do.

11 Q In your summary today and in your testimony, the
12 thing that you complained about was that you're not able to
13 test using -- in CAVE today using your own data; correct?

14 A That is true. I mean, there are other things that I
15 would like to do in the testing arena. We've talked about that
16 you have an end-to-end test process that enables you to flow
17 through all our systems pretty much in a production type
18 environment, and you get billing output, and you get
19 provisioning output, and you're able to follow it through.
20 Whereas, I'm given a set of contrived data that may not exactly
21 look like the data that my vendor is going to be passing. I'm
22 also trying to determine EDI maps and those kinds of things in
23 my test.

24 So, granted, we have worked as a collaborative, the
25 CLECs have, and have asked for some enhancements, and a number

1 of change requests have been submitted. And I think, you know,
2 the Commission is probably aware that a couple of those have
3 been denied based on cost by BellSouth.

4 Q Well, let's talk about the one that you complain
5 about in your testimony, and that has to do with the inability
6 to test your own data.

7 A Right.

8 Q You're familiar with the fact that ALECs made a
9 request through the change control process, where testing is
10 addressed, to be able to enhance CAVE so that ALECs can test in
11 CAVE using their own data? You're familiar with that, are you
12 not?

13 A Yes, I am.

14 Q And you're also familiar with the fact that that
15 change control request was accepted by BellSouth; correct?

16 A It was actually -- we talk about 896, 897, and 1258.
17 Parts of those -- the actual change request had to be split up,
18 and like I answered in my prior answer, part of that is
19 targeted but part of it will not be delivered simply because
20 BellSouth refused based on cost.

21 Q Well, 896, Change Request 896 is the change request
22 where the ALEC community specifically requested to be able to
23 test in CAVE using their own data; correct?

24 A Yes, sir.

25 Q And that was accepted by BellSouth and it was

1 prioritized by the ALEC community as Number 8 out of I think it
2 was 21; correct?

3 A I believe that's correct.

4 Q And BellSouth agreed to enhance CAVE so that ALECs
5 could test using their own data; right?

6 A They have targeted that for release, yes.

7 Q They agreed to make that change; correct?

8 A They have targeted it for release, yes.

9 Q Well, that particular enhancement is due to come out
10 in a release in the spring of next year; correct?

11 A That is the target release, yes.

12 Q BellSouth has agreed to include that enhancement.

13 A Yes.

14 Q Thank you. So when you said today in your summary
15 that the problem that you have is that ALECs can't test using
16 their own data, you will be able to do that when BellSouth
17 issues that release currently due for next spring; correct?

18 A To the extent that it excludes any billing functions.
19 I won't be presented a bill.

20 Q And that change request didn't request -- Change
21 Request 896 didn't address billing, did it?

22 A No, although some minutes that I included in my
23 testimony -- I believe I included them in this state --
24 indicated that we wanted a test environment that mirrors the
25 production environment.

1 Q Now -- I'm sorry. Were you through?

2 A Yes, sir.

3 Q Now, a moment ago you talked about BellSouth denying
4 your request -- you referred to 897 and 1258 -- for cost. Now,
5 you wouldn't dispute the fact that the change request submitted
6 as Change Request 897 would cost \$8 million to implement, would
7 you?

8 A I haven't seen -- I mean, that was what was noted on
9 the request. Whether that's the actual cost, I certainly
10 wouldn't have any idea.

11 Q You don't have any information to dispute that
12 \$8 million was the cost, do you?

13 A No, I don't.

14 Q Now, that request which was denied, AT&T and WorldCom
15 and other ALECs joined in that request, did they not?

16 A Yes. It was a collaborative request.

17 Q Not a single ALEC has escalated the denial of that
18 request, 897, the \$8 million one, through the escalation
19 process set forth in the CCP document, have they?

20 A No, we haven't. But as you know, we've been on the
21 road for several weeks now.

22 Q When was that request denied?

23 A I'd have to look and see.

24 Q Well, when you say you've been on the road for
25 several weeks, AT&T and WorldCom haven't been arbitrating with

1 BellSouth over that time period, have they?

2 A I don't know.

3 Q And they haven't -- to your knowledge, they haven't
4 escalated the denial of that request, have they?

5 A I haven't discussed it with them.

6 Q Well, you participate in the regular CCP meetings, do
7 you not? You personally participate; correct?

8 A Yes, I do, but I'm sure you're aware I missed the
9 last one in Tennessee.

10 Q Okay. After the CCP meetings, there are minutes that
11 are provided, are there not?

12 A Yes, sir.

13 Q You haven't received word from any source or any
14 indication that any ALEC has or is planning -- strike that --
15 has escalated denial of Change Request 897, the \$8 million
16 change request?

17 A Like I said, I haven't had an opportunity to discuss
18 it with them.

19 Q So I take it the answer to my question is, no, you're
20 not aware?

21 A I'm not aware and I haven't had an opportunity to
22 become aware.

23 Q Thank you, Ms. Conquest.

24 MR. SHORE: That's all I have.

25 COMMISSIONER DEASON: Staff.

CROSS EXAMINATION

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BY MS. CHRISTENSEN:

Q Good afternoon, Ms. Conquest. Let me draw your attention back to Issue 2A. With regards to that issue, do you agree that ITC^DeltaCom can adopt the directory listings language from AT&T's interconnection agreement?

A Actually, when we submitted the issue that was our understanding. The AT&T contract had a section that referred to a directory database. As we've gone through a number of discussions with BellSouth, they have pointed out to us that that was a misnomer, that it really isn't a database. We've also learned by virtue of another ILEC that we do business with that the problem, I think, that exists is the fact that the listing are all commingled. They apparently are not distinguished by operating customer number. So for the database to be able to segment out and just give me the DeltaCom listings, that doesn't exist today. And that's really what we're asking for, and this is an electronic feed.

Q Okay. So it's your position that even if you could adopt the AT&T language, that would not accomplish what ITC^DeltaCom is requesting in this arbitration?

A That's our understanding. I have gone to a couple of the AT&T people that participate in change control and asked for their understanding if this database exists. And they indicate they are unaware; they've never used it. And we've

1 also asked BellSouth, and they indicate that's not the case
2 either.

3 Q Okay. Can ITC^DeltaCom purchase in electronic format
4 its directory listings from BellSouth?

5 A We submitted the new business request, and it was
6 denied, so at this time, no, we cannot.

7 Q Can ITC^DeltaCom purchase in electronic format its
8 directory listings from BAPCO?

9 A No. That was also denied. I might also point out
10 that in the tariff here in Florida in Section A38 there is a
11 DPDS service which BellSouth is willing to sell to directory
12 publishers, but we're told that we would be ineligible to buy
13 that because we do not publish a book ourselves.

14 Q Is it your understanding that that service would
15 provide the information that you need?

16 A The appearance in the general subscriber's tariff
17 would make that assumption. Not being able to see the
18 information and since we're not a publisher, being told we
19 would not be eligible to purchase it, I can only assume that it
20 appears on the surface to meet our needs.

21 Q And that was listed as part of BellSouth's general
22 tariff?

23 A Yes, Section A38 in Florida.

24 Q I'm sorry. Can you repeat -- what was that tariff?

25 A A38 in the general subscriber's tariff.

1 Q Would you agree that the issue of verification of
2 directory listings is one of cost and not availability of
3 directory listings in either the electronic or paper format?

4 A Yes, I believe that's true.

5 Q And would you also agree that regardless of the media
6 used to discover errors in directory listings, those errors are
7 to be resolved between ITC^DeltaCom and BAPCO?

8 A No. Actually, like I said, there are six
9 opportunities for these errors to occur. It could be that the
10 BellSouth records are incorrect as well and it would require
11 correcting everyone's records. So it depends on who made the
12 error as to where the correction is most appropriately applied.

13 Q Let me turn your attention to Issue 25 regarding ADSL
14 service. Would you agree that it's BellSouth's position that
15 ADSL can only be provisioned over a second line?

16 A I understand that there were two dockets here in
17 Florida, and yes, that's what they're asking. That or that the
18 FastAccess be provided on a resale line as opposed to a UNE-P
19 line.

20 Q Would you agree that a second line is the only
21 alternative for BellSouth to provide ADSL service?

22 A Actually, I don't. I mean, we know that it's
23 technically feasible. DeltaCom had a number of subscribers who
24 had the service for months and months, and it worked fine
25 without any problems. So certainly based on the complaints

1 that I saw here from -- that came into staff, I believe that
2 the second line becomes a very cumbersome method of providing
3 the service and that the consumer has difficulty in
4 understanding that since they had BellSouth as their voice
5 provider, BellSouth as their DSL provider, and now suddenly the
6 rules have changed.

7 Q Can you describe any other alternatives that DeltaCom
8 would propose for providing that if not over a second line?

9 A Well, our preference is that we give BellSouth the
10 upper spectrum and that we provide the voice, and they continue
11 their relationship with the consumer. Basically it's sort of
12 like pick and choose. We think the consumer should be able to
13 choose BellSouth or MindSpring or whoever they want to for that
14 provision of service.

15 You know, you asked me, is there another alternative?
16 Obviously at some point in the future maybe we will be smart
17 enough to develop a product of our own, but in the interim,
18 certainly we would like to see the customer get the BellSouth
19 product. It's an excellent product and we commend them on
20 that.

21 Q And let me for clarification purposes -- the way this
22 issue is framed, it's larger than just the customer being able
23 to retain the FastAccess service; is that correct?

24 A Yes. A lot of the customers that come to us,
25 particularly in our new residential market -- we have a new

1 residential center called grapevine -- they basically don't
2 understand why they have to give up the DSL access. And then
3 from the business perspective -- and I might just maybe read
4 one of these to you -- I mean, the consumer has difficulty
5 understanding about separating the lines. And typically the
6 DSL is placed on what we refer to as the main BTN which
7 provides sort of like a records nightmare because it's on that
8 primary line, and you get into the situation with hunting. And
9 I'm sure most of the people probably in this room know that if
10 you are a resale customer, you can't hunt to UNE-P and vice
11 versa. And all of those issues come into play as well.

12 Q So let me see if I understand correctly. This is
13 larger than wanting to have BellSouth maintain its FastAccess
14 service. Would it be correct to say that it's ITC^DeltaCom's
15 position that you would want BellSouth to maintain, what, its
16 wholesale ADSL service regardless of who's actually providing
17 the Internet linkup if you are providing the voice service via
18 UNE-P?

19 A I mean, we certainly believe the customer should be
20 afforded the choice, so, yes.

21 Q Let me draw your attention to Issue 66. Would the
22 ability to test end user data on BellSouth's systems apply to
23 all CLECs?

24 A Yes, certainly.

25 Q And if this testing of end user data applies to all

1 CLECs, wouldn't the issue of testing ability be better
2 addressed in the change and control process?

3 A I think we're attempting to do that, but as we
4 discussed earlier, and I'm sure you're probably aware, one of
5 the legitimate reasons for BellSouth refusing to do something
6 is cost, and that is what they have applied here. The thing
7 that's difficult to understand is that they apparently have an
8 end-to-end test process in their own retail centers. Why they
9 wouldn't simply open that up? In discovery, they say they use
10 that to test on behalf of the CLEC. So if it works and they're
11 actually testing on my behalf, then why not let me use it?

12 Q Does BellSouth currently provide CLECs with testing
13 environments?

14 A They provide two. They provide an Encore, which I
15 believe Mr. Shore refers to as the traditional one, and then
16 they provide the CAVE.

17 Q Okay. And are the issues involved with those current
18 CLEC testing environments being addressed in the change and
19 control process?

20 A The issue about enabling us to test with our own
21 operating company number is being targeted for a release in the
22 spring of 2004. And, of course, we've discussed in the past
23 the word "target." What does that really mean? Is that a
24 commitment? Not really. Things could change that would alter
25 the packaging and would cause that not to be delivered,

1 perhaps.

2 Q So is it your position that even though that it has
3 been addressed in the change and control process and is being
4 targeted currently for the spring, that that's not a firm
5 enough commitment to making that change?

6 A Well, actually, the way the process works, I will not
7 actually see the content of that particular release until
8 October the 31st, roughly. So at this point in time you're
9 asking me to say does that meet my needs when I haven't
10 actually seen BellSouth's user requirements, and I'm very
11 uncomfortable in doing that until I do see what they're
12 planning on delivering.

13 Q Given that they are planning on making this change
14 and they've targeted the spring release date, what other --
15 what else would you have the Commission do in this arbitration
16 that's different than already is being addressed through the
17 change and control process?

18 A Well, I believe we should be able to use the
19 end-to-end process just as they do. And like I described
20 earlier, this goes a step further, and then it carries through
21 to the bill. And certainly it carries through the various
22 provisioning processes as well. So it would seem that this
23 would avoid the cost and yet give us a more flexible testing
24 platform.

25 Q At what dollar threshold would you consider a change

1 request proposed by a CLEC to be cost prohibitive?

2 A I honestly don't know.

3 Q Would ITC^DeltaCom be willing to pay a share of the
4 cost for making these changes which would allow the testing of
5 end user data?

6 A We actually do pay BellSouth. We pay the OSS
7 charges, and certainly we, you know, contribute to them having
8 an income to make these charges to pay their vendors. If
9 you're asking me would I have -- could I pay for changing this
10 request, that's one of those hypotheticals that would depend on
11 if it was a reasonable cost. I think if it were a reasonable
12 cost, then they probably wouldn't have denied it at
13 8.8 million. But I don't know that I can answer that without
14 having a more -- you know, I don't know how many CLECs would
15 participate, how the costs would be prorated. All those kind
16 of questions certainly would take some work.

17 Q Okay. To your knowledge, do the FCC address
18 end-to-end testing in its recent Triennial Review Order?

19 A I have just begun reviewing the order, but I
20 understand that they have language about the five OSS arenas.
21 And I believe they have some verbiage in there that would imply
22 that possibly we would be able to test billing as well.

23 MS. CHRISTENSEN: Thank you. Staff has no further
24 questions.

25 COMMISSIONER DEASON: Commissioner.

1 COMMISSIONER DAVIDSON: Thank you, Chairman. I've
2 got a few questions here. Ms. Conquest, I'd like to direct you
3 to your prefiled direct testimony at Pages 6 through 8, the
4 ADSL issue.

5 THE WITNESS: Yes, sir.

6 COMMISSIONER DAVIDSON: At Page 6, Line 15, define
7 the word "tie" for me as you use it in your testimony.

8 THE WITNESS: I'm using it to say that when the
9 consumer wants FastAccess, that Bell uses that to require them
10 to also have voice from BellSouth. I guess that's "tied" in my
11 mind.

12 COMMISSIONER DAVIDSON: Give me another example of
13 tying, if you can think of one, as you use that term. It
14 doesn't have to be within the telecommunications industry.

15 THE WITNESS: I purchased something and I'm required
16 to charge it on a particular charge card.

17 COMMISSIONER DAVIDSON: Anything else?

18 THE WITNESS: Oh, I would have to think a minute.

19 COMMISSIONER DAVIDSON: No, I'm just wondering if you
20 have any other examples of how you understand the word "tie" or
21 the notion of tying to be used.

22 THE WITNESS: It forces me to make a decision about
23 two elements as opposed to one. I can't just singularly go out
24 there and say, gee, I really like that. Those are the best
25 shoes for me, and I want those. In this case it's like, okay,

1 these are the best shoes, but I also have to get them in green.

2 COMMISSIONER DAVIDSON: In your opinion, what is it
3 that customers want with DSL service generally?

4 THE WITNESS: Most of the customers appear to be very
5 familiar with BellSouth FastAccess. They seem to relate to the
6 branding on that. They want the speed. They want the
7 reliability. They basically want it for their convenience on
8 their computer networks. Businesses don't particularly seem to
9 be aware of where in a suite of numbers that the DSL falls.
10 They just know that they have Internet access.

11 COMMISSIONER DAVIDSON: Is it fair to state that
12 generally customers of DSL want that high-speed data
13 connectivity?

14 THE WITNESS: Yes, normally that is a true statement.
15 It depends on the nature of who's doing what, but most
16 customers do want the high-speed.

17 COMMISSIONER DAVIDSON: At Lines 18 to 21, you state,
18 "In this instance, a competitor seeking to provide local voice
19 service is forced to also offer DSL service because the
20 customer is precluded from purchasing his or her DSL service
21 from BellSouth."

22 THE WITNESS: Yes, sir.

23 COMMISSIONER DAVIDSON: Isn't it true that a customer
24 in such a situation is not precluded from purchasing cable
25 modem service or perhaps DSL service from an ISP provider,

1 assuming those platforms are available to this customer?

2 THE WITNESS: Assuming the availability and assuming
3 the cost and other variables, assuming -- you know, part of the
4 decision is the loop itself and what's available in the
5 particular area in which you live.

6 COMMISSIONER DAVIDSON: Turning to Page 7,
7 Lines 5 through 15, define "attractive customers" for me as you
8 use that term.

9 THE WITNESS: Well, obviously all customers are
10 attractive, so perhaps that was a bad choice of words. I think
11 we all agree that there are a class of customers who tend to
12 take more features, more items, more enhanced, and "enhanced"
13 is a bad choice of word too, but more items that would be used.
14 An example, a multiline customer will probably take several
15 features, MemoryCall calling plans, custom calling features,
16 those kinds of things.

17 COMMISSIONER DAVIDSON: What is the basis for your
18 statement that there is a positive correlation between DSL
19 purchasers and the most profitable voice service customers,
20 those with high toll and vertical feature usage? What's your
21 basis for that?

22 THE WITNESS: My sales force basically. My sales
23 force, when they serve these customers, they typically see
24 more, I guess, willingness in those areas until they get down
25 to the question or the statement that you can no longer have

1 your DSL service. These customers also have established
2 probably with their suppliers e-mail addresses that have to be
3 altered and changed, business cards with their e-mail address,
4 those kinds of things as well, and their willingness to make
5 that change just doesn't seem to be there.

6 COMMISSIONER DAVIDSON: Define, if you would, please,
7 the term "mass market" as you use that term in Line 6 on
8 Page 7.

9 THE WITNESS: A mass market to me is a consumer
10 market, a large market, a small business market, perhaps, where
11 there's a high concentration.

12 COMMISSIONER DAVIDSON: Of?

13 THE WITNESS: Of customers.

14 COMMISSIONER DAVIDSON: So it refers -- does mass
15 market, as you use the term, refer to a customer base or to a
16 market of product and service offerings?

17 THE WITNESS: Let me see how I used it in this
18 particular context.

19 COMMISSIONER DAVIDSON: Thank you. Please.

20 THE WITNESS: It could be either way.

21 And help me out. Where exactly are you?

22 COMMISSIONER DAVIDSON: I'm at Page 7 of your direct
23 testimony, Line 6.

24 THE WITNESS: Okay. Thank you. In this case it's
25 like a customer base.

1 COMMISSIONER DAVIDSON: I have a hypothetical for
2 you. If a facilities-based CLEC provides both voice service
3 and data service to a customer in a bundled offering and that
4 customer subsequently decides to switch from the CLEC to
5 ITC^DeltaCom for voice service, would the CLEC be free, in your
6 opinion, to discontinue data service to the customer?

7 THE WITNESS: I don't think so. I was trying to draw
8 myself a little picture over here.

9 COMMISSIONER DAVIDSON: Why not? Help me understand
10 your answer.

11 THE WITNESS: Well, I've already made the investment
12 in the facility and certainly I should be getting revenue on
13 that facility. I guess logically speaking, I'm trying to
14 understand why if I had the service sold and I'm gaining
15 revenue, why would I want to discontinue serving that
16 subscriber?

17 COMMISSIONER DAVIDSON: Well, that's a bit of a
18 different answer. That goes to perhaps the business reason.
19 Why would a company want to do that? But let's assume that the
20 CLEC chooses to do that. It opts to discontinue service to the
21 customer that has switched to ITC^DeltaCom for whatever reason.
22 Perhaps it saw value in a bundled strategy and doesn't see
23 value in a stand-alone. Would that CLEC be legally free, in
24 your opinion, to discontinue data service to the customer?

25 THE WITNESS: Yes. As I understand the ruling, it is

1 a choice. I mean, you're not mandated to provide it, but
2 you're not prohibited in providing it either.

3 COMMISSIONER DAVIDSON: I've got a second
4 hypothetical. If a wireless provider of broadband and an ILEC
5 partner up to provide voice service via the ILEC and wireless
6 data service via the wireless provider to a customer who has
7 accepted the bundled offering -- that's the premise -- if that
8 customer subsequently decides to switch from the ILEC to
9 ITC^DeltaCom for voice, would the wireless data provider be
10 free, in your opinion, to discontinue data service to the
11 customer?

12 THE WITNESS: I have -- I would be not the person to
13 answer. The wireless rules, I have really no experience in the
14 wireless environment. I don't know.

15 COMMISSIONER DAVIDSON: Well, assuming that there is
16 no affirmative obligation of wireless to provide data, which I
17 think is a fair statement, given that lack of obligation, in
18 your opinion, would that wireless provider, assuming no
19 affirmative legal obligation to provide wireless broadband, be
20 free to discontinue the service based on the fact the voice
21 customer switched to another provider?

22 THE WITNESS: I believe the wireless customer -- I
23 mean, the wireless provider could do that. I don't know why
24 they would want to do that.

25 COMMISSIONER DAVIDSON: Let me direct you now to

1 Page 7, Lines 20 -- Page 7, Line 23 to Page 8, Line 2.

2 MR. ADELMAN: Commissioner, are we still in the
3 direct, or are we in the rebuttal?

4 COMMISSIONER DAVIDSON: Direct.

5 MR. ADELMAN: Thank you.

6 COMMISSIONER DAVIDSON: Page 7, Line 23 to Page 8,
7 Line 2 of the direct you state, "Faced with the decision to
8 forego the modem or pay the termination fees in order to change
9 to another local service provider, DSL customers are likely to
10 stay with BellSouth."

11 THE WITNESS: Yes, sir.

12 COMMISSIONER DAVIDSON: If the hypothetical customer
13 in that scenario could in fact choose an alternate broadband
14 provider, for example, via ISP-provided broadband service or
15 via cable modem, and if that customer would not face
16 termination fees, then would you agree that BellSouth could
17 discontinue DSL service to a customer who switched to
18 ITC^DeltaCom for the provision of voice?

19 THE WITNESS: Give me just a second to think about
20 all the things that you just said. You were waiving the
21 termination fees.

22 COMMISSIONER DAVIDSON: I'll repeat the hypothetical.
23 If the hypothetical customer could choose an alternate
24 broadband provider, for example, via ISP-provided broadband or
25 via cable modem, assuming those are available and if that

1 customer would not face the termination fees referenced in that
2 statement, then would you agree that BellSouth could
3 discontinue DSL service to a customer who switched to
4 ITC^DeltaCom for the provision of voice?

5 THE WITNESS: I think I disagree. I think the whole
6 premise or the whole argument should be that a customer should
7 be able to choose. I mean, if I as a consumer chose to use the
8 cable provider or another ISP, as an example, I think that's
9 something that should be open to me as a consumer to do. So if
10 I understand you, you're saying BellSouth in this scenario
11 would have forced that consumer to seek another provider simply
12 because they no longer had the voice, and we're saying that
13 here in Florida that really shouldn't occur. If I'm an
14 existing FastAccess customer, I should be allowed to keep it.

15 Did I follow your example?

16 COMMISSIONER DAVIDSON: You did and you answered it.

17 Thank you.

18 THE WITNESS: Thank you.

19 COMMISSIONER DEASON: Redirect.

20 MR. ADELMAN: Yes. Thank you, Mr. Chairman.

21 Briefly.

22 REDIRECT EXAMINATION

23 BY MR. ADELMAN:

24 Q Ms. Conquest, you were asked questions by counsel for
25 BellSouth and staff counsel regarding Issue 2, directory

1 listings. Do you recall those questions?

2 A Yes, sir.

3 Q And there was a discussion with regard to BAPCO
4 versus BellSouth Telecommunications, and in some instances you
5 just answered BellSouth, so I just want to clarify a few
6 things. When ITC^DeltaCom submits its directory listing
7 information for ITC^DeltaCom's Florida local voice customers,
8 who do we submit that information to?

9 A We submit that information to BellSouth. And I
10 apologize for not making that clear.

11 Q Is that BellSouth Telecommunications?

12 A Yes, it is. And then they in turn -- and this was, I
13 guess, what I attempted to bring out. While currently BAPCO is
14 their provider, their publisher, somewhere down in the future,
15 they may not have any plans today, but they could maybe choose
16 another provider at some point in time. So the point being is
17 that I have an opportunity to do something to the customers
18 listing improperly manually or electronically while the request
19 is in my shop. That same opportunity occurs while BellSouth's
20 center has it. Not all orders flow through mechanically. Some
21 of them fall out and are actually retyped and rekeyed. And
22 then another opportunity for those errors to occur occurs once
23 it gets to the publisher in this scenario, which is BAPCO. So
24 my order goes to BellSouth, and then BellSouth has the burden
25 of getting that order to their publisher who in this scenario

1 is BAPCO.

2 Q So in your response when you say "BellSouth," you're
3 talking about BellSouth Telecommunications, not BellSouth
4 Advertising and Publishing; correct?

5 A Yes, sir, that is correct.

6 Q Thank you. And, in your opinion, is it technically
7 feasible for BellSouth Telecommunications to provide the
8 listings to ITC^DeltaCom electronically?

9 A Yes, sir. I've used in another state a real live
10 example where I receive those today. And I'm able to make
11 those corrections electronically today with that particular
12 ILEC.

13 Q When you say "in another state a real live example,"
14 what are you talking about? Are you talking about with another
15 ILEC?

16 A In Alabama, CenturyTel is a trading partner with me,
17 and their publisher is a company called L. M. Berry. And
18 currently they provide me electronic feeds with my directory
19 information. The distinction that I need to clarify for
20 everyone to not be misleading is that I get everybody's
21 listing, and basically what I do is I enter into an agreement
22 that these listings are contained in a manner that they are not
23 given to anyone who has any sales or marketing opportunities.
24 The people that work on the listings are dedicated to doing
25 directory listings; therefore, there's no risk of me seeing

1 another CLECs or another ILEC's listings.

2 Q Thank you. Ms. Conquest, with regard to Issue 67,
3 which I believe is the OSS testing issue, do you remember the
4 questions again from counsel for BellSouth and counsel for the
5 staff? You refer to three interfaces in your responses. Can
6 you, just so the record is clear, identify those three
7 interfaces, please?

8 A Yes. Typically we all use LENS, TAG, EDI, and then,
9 of course, the fourth one which I don't really talk about is
10 manual, which would be through a fax server process.

11 Q And with regard to the three electronic interfaces,
12 does BellSouth take all three of those interfaces down at the
13 same time to do maintenance?

14 A Yes. One of the things that I think I might need to
15 point out here for clarity is that when we have outages, all
16 three don't go down at the same time. So it's a decision that
17 they do that. I mean, EDI can work independently of TAG.

18 Q So would ITC^DeltaCom be satisfied if the systems
19 were not all taken down at the same time? In other words, are
20 we able to move between systems fairly easily?

21 A Yes, we do have that ability. And yes, we would be
22 very pleased with that.

23 Q With regard to the day on which the systems did go
24 down last year, the closeout date for ITC^DeltaCom, you recall
25 the questions from BellSouth counsel about what time all three

1 systems went down?

2 A Yes, sir.

3 Q And that was during regular business hours; correct?

4 A Yes, sir, it was.

5 Q When did the systems go back up?

6 A To the best of my remembrance, they came back up on

7 Sunday around 3:00 p.m.

8 MR. ADELMAN: Thank you. I have no further
9 questions, Mr. Chairman.

10 COMMISSIONER DEASON: Exhibits.

11 MR. ADELMAN: We move for the admission of Exhibits
12 13 and 14.

13 COMMISSIONER DEASON: Without objection, show that
14 Exhibits 13 and 14 are admitted.

15 (Exhibit 13 and 14 admitted into the record.)

16 COMMISSIONER DEASON: Thank you, Ms. Conquest. You
17 may be excused.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 COMMISSIONER DEASON: I believe that concludes
21 DeltaCom's case, and before we proceed with BellSouth's case,
22 we'll take a recess of 15 minutes.

23 (Brief recess.)

24 COMMISSIONER DEASON: Call the hearing back to order.
25 BellSouth.

1 MR. SHORE: BellSouth calls Kathy Blake.

2 KATHY BLAKE

3 was called as a witness on behalf of BellSouth
4 Telecommunications, Inc. and, having been duly sworn, testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. SHORE:

8 Q Ms. Blake, have you been sworn?

9 A Yes, I have.

10 Q Great. Can you state your full name for the record,
11 please.

12 A Kathy Blake.

13 Q And are you employed by BellSouth?

14 A Yes, I am.

15 Q And in what capacity?

16 A I'm a director in our regulatory policy
17 implementation.

18 Q And did you cause to be prefiled in this docket
19 direct testimony consisting of 20 (sic) pages?

20 A Yes, I did.

21 Q And do you have any corrections or revisions to your
22 testimony?

23 A No, I do not.

24 Q If I were to ask you the same questions that appear
25 in your prefiled direct testimony today from the stand, would

1 your answers be the same?

2 A Yes, they would.

3 Q You also caused to be prefiled eight pages of
4 rebuttal testimony?

5 A Yes.

6 Q Is there one exhibit attached to that rebuttal
7 testimony?

8 A Yes.

9 MR. SHORE: Mr. Chairman, we'd ask that Ms. Blake's
10 exhibit to her rebuttal testimony be identified as the next
11 numbered exhibit.

12 COMMISSIONER DEASON: Yes. That will be Exhibit 15.

13 (Exhibit 15 marked for identification.)

14 BY MR. SHORE:

15 Q Ms. Blake, do you have any corrections or revisions
16 to make to your rebuttal testimony?

17 A No, I do not.

18 Q So if I were to ask you the questions that appear in
19 that prefiled testimony today, would your answers be the same?

20 A Yes, they would.

21 MR. SHORE: Mr. Chairman, we'd move for the admission
22 of Ms. Blake's prefiled testimony.

23 COMMISSIONER DEASON: Without objection, that
24 testimony will be inserted in the record.

25

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF KATHY K. BLAKE
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 030137-TP
5 MAY 19, 2003
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.
10

11 A. My name is Kathy K. Blake. I am employed by BellSouth as Manager –
12 Policy Implementation for the nine-state BellSouth region. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.
14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.
17

18 A. I graduated from Florida State University in 1981 with a Bachelor of Science
19 degree in Business Management. After graduation I began employment with
20 Southern Bell as a Supervisor in the Customer Services Organization in
21 Miami, Florida. In 1982, I moved to Atlanta where I held various positions
22 involving Staff Support, Product Management, Negotiations, and Market
23 Management within the BellSouth Customer Services and Interconnection
24 Services Organizations. In 1997, I moved into the State Regulatory
25

1 Organization with various responsibilities for testimony preparation, witness
2 support and issues management.

3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5

6 A. The purpose of my testimony is to present BellSouth's position on several
7 unresolved policy issues included in the arbitration between BellSouth and
8 ITC^DeltaCom ("DeltaCom") that will likely be impacted by the Federal
9 Communications Commission's ("FCC's") Triennial Review decision. My
10 testimony specifically addresses Issues 26, 28, 30-34, 36-37, and 57.

11

12 Q. HOW DOES BELLSOUTH PROPOSE THE FLORIDA PUBLIC SERVICE
13 COMMISSION ("COMMISSION") PROCEED IN ADDRESSING THOSE
14 ISSUES THAT ARE LIKELY TO BE IMPACTED BY THE FCC'S
15 TRIENNIAL REVIEW DECISION?

16

17 A. Several of the unresolved issues being addressed in this arbitration proceeding
18 likely will be impacted by the FCC's impending written decision in the
19 Triennial Review. BellSouth's position is that the Commission should
20 consider the evidence put forth in this proceeding and render its determination
21 of the issues based on the **current** statutory and regulatory requirements, and
22 not by any party's speculation of what the FCC may ultimately reflect in its
23 written Triennial Review Order. In fact, it is unclear which issues will be
24 addressed and resolved solely by the FCC and which issues will be relegated or
25 delegated to state commissions to resolve. At the time the ruling body's (FCC

1 or state commission) order becomes effective, the change of law provisions in
2 the interconnection agreement will allow the interconnection agreement to be
3 revised accordingly.

4

5 **Issue 26: Local Switching – Line Cap and Other Restrictions**

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

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

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

14

15 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

16

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

21

22 (b) BellSouth is only required to provide local switching as set forth in the
23 FCC's rules. These rules set forth any restrictions on DeltaCom's use of local
24 switching.

25

1 (c) BellSouth will provide local switching at market-based rates where
2 BellSouth is not required to unbundle local switching. The appropriateness
3 of BellSouth's rates for providing local switching where it is not required by
4 the Telecommunications Act of 1996 ("the Act") or the FCC's Rules
5 implementing the Act are not governed by § 251 of the Act and, accordingly, it
6 is not appropriate to resolve this matter in an arbitration proceeding. The
7 Commission therefore does not have the authority to set market rates where
8 BellSouth is not required to provide local switching as a unbundled network
9 element ("UNE").

10

11 Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THE
12 APPLICATION OF THE LINE CAP ON LOCAL SWITCHING?

13

14 A. Yes. In Order No. PSC-01-1951-FOF-TP in Docket No. 000731-TP (AT&T
15 Arbitration) dated September 28, 2001, the Commission clarified its previous
16 ruling in Order No. PSC-01-1402-FOF-TP dated June 28, 2001 regarding the
17 application of the line cap. The Commission clarified that the concluding
18 paragraph of the June 28, 2001 order should actually have read: "Therefore,
19 we find that BellSouth will not be allowed to aggregate lines provided to
20 multiple locations of a single customer, within the same MSA, to restrict
21 AT&T's ability to purchase local circuit switching at UNE rates to serve any of
22 the lines of that customer." Order at page 7. Since DeltaCom's request
23 appears to be the same as AT&T's, BellSouth is willing to incorporate
24 language into the parties' interconnection agreement that reflects the

25

1 Commission's previous ruling regarding the application of the line cap
2 restriction.

3

4 ***Issue 28: Local Switching***

5 ***What local switching provisions should be in the interconnection agreement?***

6

7 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

8

9 A. It is BellSouth's understanding that this issue has been resolved. However,
10 should that not be the case, BellSouth reserves its right to file supplemental
11 testimony.

12

13 ***Issue 30: Provision of Combinations***

14 ***(a) What terms and conditions should apply to the provision of UNE***
15 ***combinations?***

16 ***(b) Should BellSouth be required to provide DeltaCom the same conditions for***
17 ***network elements and combinations that BellSouth has provided to other***
18 ***carriers?***

19

20 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

21

22 A. (a) BellSouth offers combinations consistent with state and federal rules and
23 regulations. At DeltaCom's request and subject to the terms and conditions set
24 forth below, BellSouth provides access to Currently Combined and Ordinarily
25 Combined combinations of port and loop UNEs and loop and transport UNEs

1 (hereinafter referred to as Enhanced Extended Links or "EELs"). BellSouth
2 also provides access to Not Typically Combined combinations. Currently
3 Combined, Ordinarily Combined, and Not Typically Combined have the
4 meaning set forth below:

- 5 • Currently Combined network element combinations means that such
6 UNEs are in fact already combined by BellSouth in the BellSouth
7 network to provide telecommunications service to a particular location.
- 8 • Ordinarily Combined network element combinations means that such
9 UNEs are combined by BellSouth in the BellSouth network in the
10 manner in which they are typically combined even if the particular
11 elements being ordered are not actually physically connected at the
12 time the order is placed.
- 13 • Not Typically Combined network element combinations means that
14 such UNEs are neither Currently Combined nor Ordinarily Combined
15 as these terms are defined above. In compliance with FCC Rule
16 51.315(d), requests for combinations of Not Typically Combined UNEs
17 are available through the bona fide request process.

18 BellSouth's proposed language incorporates the FCC's and the Supreme
19 Court's rulings with respect to what combinations BellSouth is required to
20 offer to DeltaCom.

21
22 (b) Pursuant to 47 USC § 252(i), DeltaCom can adopt rates, terms and
23 conditions for network elements, services, and interconnection from any
24 interconnection agreement filed and approved pursuant to 47 USC § 252,
25 under the same terms and conditions as the original Interconnection

1 Agreement. To the extent DeltaCom requests to adopt rates, terms and
2 conditions for UNE Combinations from an agreement filed and approved by
3 this Commission, such an adoption would be incorporated into DeltaCom's
4 agreement for the original term of the adopted agreement (i.e., for the term of
5 the AT&T agreement). Section 252(i) clearly requires such an adoption to be
6 "upon the same terms and conditions as those provided in the [approved]
7 agreement". In such case, BellSouth proposes that the language included in its
8 proposal replace the adopted language when it expires.

9

10 ***Issue 31: EELS***

11 ***Are new EELs ordered by DeltaCom subject to local use restrictions?***

12

13 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

14

15 A. BellSouth's position is that the local use restrictions set forth by the FCC in its
16 Supplemental Order Clarification¹ are applicable to all UNE loop-transport
17 combinations (EELs). The Supplemental Order Clarification is not limited in
18 its applicability to only existing EELs. The policy behind these restrictions
19 was to avoid the supplanting of special access by EELs, which is equally
20 applicable to newly requested EELs.

21

22

23

24

25 ¹ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183, 15 FCC Rcd 9587 (rel. June 2, 2000) ("Supplemental Order Clarification")

1 ***Issue 32: Availability of EELs***

2 ***Should BellSouth be required to make EELs available everywhere?***

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. It is BellSouth's understanding that this issue has been resolved. However,
7 should that not be the case, BellSouth reserves its right to file supplemental
8 testimony.

9

10 ***Issue 33: Special Access Conversions to EELs***

11 ***Can DeltaCom provide a blanket certification that refers to all three safe harbors***
12 ***for special access conversions?***

13

14 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

15

16 A. Current FCC rules allow Alternative Local Exchange Carriers ("ALECs") to
17 self-certify that they are providing a significant amount of local exchange
18 service over combinations of UNEs. The Supplemental Order Clarification
19 requires that a requesting carrier provide certification of which circumstance it
20 meets to provide local exchange service to a particular end user. Paragraph 29
21 of the Supplemental Order Clarification clearly states: "the letter should
22 indicate under *what local usage option* the requesting carrier seeks to qualify".
23 (Emphasis added.) This language obviously demonstrates that the FCC
24 intended for the ALEC to advise the incumbent local exchange carrier

25

1 (“ILEC”) which one of the three local use options the ALEC was relying upon
 2 in each instance in which it certifies the use of facilities.

3

4 ***Issue 34: Audits***

5 ***Under what circumstances should DeltaCom be required to reimburse BellSouth for***
 6 ***the full cost of an audit?***

7

8 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

9

10 A. The audits in question are audits that BellSouth may request if BellSouth has a
 11 concern that DeltaCom has not met the criteria for providing a significant
 12 amount of local exchange service required in order for DeltaCom to obtain
 13 unbundled loop-transport combinations. Paragraph 31 of the Supplemental
 14 Order Clarification provides that: “the competitive LEC should reimburse the
 15 incumbent if the audit uncovers non-compliance with the local usage options.”
 16 The Commission should find consistent with the FCC that DeltaCom is
 17 responsible for the costs of the audit if it is in non-compliance with the current
 18 rules.

19

20 ***Issue 36: UNE/Special Access Combinations***

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

22 ***(b) Does BellSouth combine special access services with UNEs for other***
 23 ***ALECs?***

24

25

1 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

2

3 A. (a) Nothing in the Act or the FCC rules requires BellSouth to provide
4 combinations of UNEs and tariffed services. The FCC Rules regarding
5 combinations (47 C.F.R. 51.315) relate to combinations of UNEs. It contains
6 no requirements for an ILEC to combine UNEs with tariffed services. Further,
7 paragraph 28 of the June 2, 2000 Supplemental Order Clarification addressed
8 this issue in rejecting MCI's request to eliminate the prohibition on co-
9 mingling. The FCC is addressing this issue in its Triennial Review
10 proceeding.

11

12 (b) BellSouth has no agreements with other ALECs that require UNE/special
13 access services combinations.

14

15 *Issue 37: Conversion of a Special Access Loop to a UNE Loop that Terminates to*

16 *DeltaCom's Collocation*

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

19

20 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

21

22 A. BellSouth's position is that ALECs may order standalone UNEs in accordance
23 with their interconnection agreements and may chose to roll traffic currently
24 routed over an existing special access circuit to those UNEs. The conversion
25 requirements specified by the FCC in the Supplemental Order Clarification

1 apply only to conversions of special access circuits to loop and transport (EEL)
2 UNE combinations. Neither the FCC's Rules regarding combinations or any
3 FCC order addresses, either directly or indirectly, conversions of stand-alone
4 elements, which are, by definition, not combinations, but individual elements
5 that terminate in a collocation arrangement. BellSouth is not obligated under
6 current FCC rules to convert a special access service to a standalone UNE.

7

8 Q. PLEASE EXPLAIN HOW DELTACOM CAN REPLACE SPECIAL
9 ACCESS CIRCUITS WITH STAND-ALONE UNES.

10

11 A. The process for DeltaCom, or any ALEC, to use to replace existing special
12 access circuits with stand-alone UNES is for DeltaCom to order the UNE loops
13 pursuant to its Interconnection Agreement. When the UNE loops are
14 provisioned, the end users' service will be rolled to the new UNE circuits and
15 the special access circuits can be disconnected.

16

17 ***Issue 57: Rates and Charges for Conversion of Customers from Special Access to***
18 ***UNE-based Service***

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

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

24

25

1 Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

2

3 A. (a) As I discussed above in regards to Issue 37, BellSouth is not obligated to
4 "convert" special access circuits to stand-alone UNEs. As such, it is
5 appropriate for BellSouth to charge DeltaCom for installation and provisioning
6 of the stand-alone UNEs ordered by DeltaCom to replace existing special
7 access circuits. The rates BellSouth proposes to charge DeltaCom are the
8 Commission-approved nonrecurring rates for the stand-alone UNEs.

9

10 (b) BellSouth has no process to "convert" stand-alone special access services
11 to stand-alone UNEs. Replacing special access services with stand-alone
12 UNEs requires two separate orders involving two different basic classes of
13 services. Any request from DeltaCom for BellSouth to develop a process to
14 assist DeltaCom with the replacement of special access services to stand-alone
15 UNEs should be made pursuant to the New Business Request ("NBR")
16 process. If DeltaCom is not willing to pursue a NBR and pay BellSouth for
17 the process, DeltaCom has other options to minimize service outage for the end
18 user. It may order a new UNE circuit, roll the traffic and then disconnect the
19 special access service. Alternatively, DeltaCom may chose to issue the
20 disconnect ("D") and new connect ("N") orders itself and attempt to time the
21 orders to minimize downtime.

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A. Yes.

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF KATHY K. BLAKE
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 030137-TP
5 JUNE 25, 2003
6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.
10
11 A. My name is Kathy K. Blake. I am employed by BellSouth as Manager –
12 Policy Implementation for the nine-state BellSouth region. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.
14
15 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?
16
17 A. Yes, I filed direct testimony in this proceeding on May 19, 2003.
18
19 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?
20
21 A. The purpose of my testimony is to rebut, in part, the testimony of
22 ITC^DeltaCom ("DeltaCom") witnesses Jerry Watts and Steve Brownworth.
23 Additionally, BellSouth understands that the parties have resolved issues 30,
24 31, 33, and 34. As such, I am not providing rebuttal testimony on these issues.
25 However, should that not be the case, BellSouth reserves its right to file

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1 supplemental testimony.

2

3 *Issue 26: Local Switching – Line Cap and Other Restrictions (Attachment 2 –*
4 *Sections 10.1.3.2 and 10.1.2):*

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

7 *(b) Should the Agreement include language that prevents BellSouth from*
8 *imposing restrictions on DeltaCom’s use of local switching?*

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

13

14 Q. IN ADDRESSING ISSUE 26(b), DELTACOM PROPOSES LANGUAGE
15 THAT DELTACOM ASSERTS “IS NECESSARY TO ENSURE THAT
16 BELLSOUTH DOES NOT ATTEMPT TO IMPOSE ARBITRARY
17 RESTRICTIONS OR LIMITATION, EITHER EXPLICITLY OR
18 IMPLICITLY, THAT CREATE BARRIERS TO ITC^DELTACOM’S
19 ABILITY TO ACCESS UNEs UNDER STATE AND FEDERAL RULES
20 AND REGULATIONS.” (WATTS, PAGE 16) WHY IS BELLSOUTH
21 OPPOSED TO INCLUDING DELTACOM’S PROPOSED LANGUAGE?

22

23 A. DeltaCom’s proposed language is neither necessary nor appropriate. Language
24 set forth in section 10.1.1 of Attachment 2, to which both DeltaCom and
25 BellSouth have agreed, obligates BellSouth to “provide non-discriminatory

1 access to local circuit switching capability, and local tandem switching
2 capability, on an unbundled basis, except as set forth below in Section 10.1.3
3 below to ITC^DeltaCom for the provision of a telecommunications service.”
4 The exception reference in Section 10.1.3 specifically addresses the definition
5 of Local Circuit Switching Capability and sets forth the 4-line exception.
6

7 Additionally, the undisputed language in the Interconnection Agreement
8 allows DeltaCom to obtain unbundled switching except in those limited
9 situations in which the FCC has expressly stated that DeltaCom is not entitled
10 to obtain unbundled switching. No additional language is necessary or
11 appropriate.
12

13 Q. ON PAGE 17, MR. WATTS CONTENDS THAT BELLSOUTH SHOULD
14 BE REQUIRED TO OBTAIN COMMISSION APPROVAL FOR A
15 METHODOLOGY FOR ESTABLISHING MARKET RATES FOR LOCAL
16 CIRCUIT SWITCHING. HOW DO YOU RESPOND?
17

18 A. Mr. Watts appears to be confused. In order for BellSouth to be relieved of its
19 obligation to offer unbundled network elements (“UNEs”) at rates based on
20 total element long run incremental cost (“TELRIC”), either this Commission or
21 the FCC would have had to make a determination that Competitive Local
22 Exchange Carriers (“CLECs”) are not impaired without the UNE. One of the
23 factors in determining whether CLECs are impaired is the existence of
24 alternative providers for the capability. In taking issue with the use of the term
25 “market rates”, Mr. Watts compares BellSouth’s market rate for a port with the

1 Florida TELRIC rate and inappropriately asserts that there has not been a
2 demonstration that a competitive market exists. If that were the case (which it
3 is not), BellSouth would still be obligated to ubiquitously offer unbundled
4 local switching at TELRIC rates and would not have the ability to put forth a
5 market rate for those exempted situations. Market rates are by definition set
6 by the market; they are not set by methodologies such as TELRIC, as
7 DeltaCom seems to suggest.

8
9 Furthermore, being relieved of its obligation to provide local switching at
10 artificially-low TELRIC prices does not mean that BellSouth no longer
11 provides local switching to CLECs like DeltaCom. Instead, what that will
12 mean is that in recognition of the fact that CLECs are not impaired in their
13 ability to either provide their own local switching or to obtain local switching
14 from other sources, the prices BellSouth may charge for local switching will no
15 longer be limited by the artificial, hypothetical, and forward-looking TELRIC
16 methodology. Instead, the market will set those prices. In other words, if
17 BellSouth's price for local switching is too high, one of the many other carriers
18 with switching capacity will offer lower prices to DeltaCom and other CLECs.
19 That is the way competition works. Mr. Watts' suggestion that the
20 Commission should continue to monitor BellSouth's prices after a
21 determination has been made that CLECs are not impaired in their ability to
22 obtain local switching has no merit whatsoever.

23

24 *Issue 36: UNE/Special Access Combinations (Attachment 2 – Sections 10.7 and*
25 *10.9.1):*

1 (a) *Should DeltaCom be able to connect UNE loops to special access*
2 *transport?*

3 (b) *Does BellSouth combine special access services with UNEs for other*
4 *ALECs?*

5
6 Q. ALTHOUGH MR. BROWNORTH ACKNOWLEDGES THAT
7 DELTA COM BELIEVES THE FCC WILL ADDRESS THIS ISSUE IN ITS
8 TRIENNIAL REVIEW ORDER, HE PROPOSES ON PAGE 29 OF HIS
9 PREFILED TESTIMONY THAT THE COMMISSION SHOULD REQUIRE
10 BELLSOUTH TO PROVIDE UNE/SPECIAL ACCESS SERVICES
11 COMBINATIONS FOR THE FULL TERM OF THE INTERCONNECTION
12 AGREEMENT. HOW DO YOU RESPOND?

13
14 A. As I discussed in my direct testimony, the existing FCC rules do not obligate
15 BellSouth to provide combinations of UNEs and tariffed services. While it is
16 likely that the FCC will address its current prohibition against “co-mingling”
17 in its Triennial Review, the final outcome of the FCC’s impending ruling is
18 unclear. Until the FCC’s written order becomes effective, any action contrary
19 to the current rules, which is based solely on DeltaCom’s speculation of what
20 the FCC might decide, is premature and inappropriate.

21
22 *Issue 37: Conversion of a Special Access Loop to a UNE Loop that Terminates to*
23 *DeltaCom’s Collocation (Attachment 2): Where DeltaCom has a special*
24 *access loop that goes to DeltaCom’s collocation space, can that special*
25 *access loop be converted to a UNE loop?*

1

2 Q. PLEASE ADDRESS MR. BROWNORTH'S STATEMENT ON PAGE 29
3 THAT "BELLSOUTH HAS AGREED TO LANGUAGE WITH AT&T
4 WHEREBY BELLSOUTH HAS AGREED TO CONVERT A SPECIAL
5 ACCESS LOOP TO A UNE LOOP THAT GOES TO A COLLOCATION
6 SITE WITHOUT ANY DISCONNECTION TO THE CUSTOMER."

7

8 A. Mr. Brownworth's statement is totally incorrect. BellSouth has not agreed to
9 any such language with AT&T; however, any ALEC, including DeltaCom, has
10 the ability to make such a request through the New Business Request ("NBR")
11 process.

12

13 *Issue 57: Rates and Charges for Conversion of Customers from Special Access to*
14 *UNE-based Service (Attachment 2 – Section 2.3.1.6):*

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

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

20

21 Q. ON PAGE 45, MR. BROWNORTH SUGGESTS THAT DELTACOM
22 SHOULD BE ALLOWED TO UTILIZE A SPREADSHEET PROCESS TO
23 FACILITATE THE "CONVERSION" OF MULTIPLE SPECIAL ACCESS
24 CUSTOMERS TO STAND-ALONE UNES. PLEASE RESPOND.

25

1 A. Contrary to Mr. Brownworth's contentions, the BellSouth and AT&T current
2 Interconnection Agreement does not permit "AT&T to send a spreadsheet with
3 a list of special access circuits to be converted to a UNE loop." To the extent
4 DeltaCom desires BellSouth to consider a new business request for a service or
5 capability that BellSouth is not obligated to provide, DeltaCom may avail itself
6 of the NBR process. In fact, AT&T has submitted such a request, and in
7 response, BellSouth proposed a project-managed process to facilitate the
8 replacement of existing special access services with stand-alone UNEs in such
9 a way as to minimize disruption of service to end users. The conversion
10 process is a complex process and is not a simple billing change as described by
11 AT&T (and DeltaCom). A copy of BellSouth's correspondence to AT&T
12 regarding AT&T's NBR is attached as Rebuttal Exhibit KKB-1 to my rebuttal
13 testimony.

14

15 Q. ON PAGE 45, MR. BROWNORTH STATES THAT "ITC^DELTACOM
16 DOES NOT WANT TO PAY FOR THE FULL INSTALLATION CHARGES
17 OF THE FCC CIRCUIT AND THEN TURN AROUND AND INCUR THE
18 FULL INSTALLATION CHARGES OF A UNE CIRCUIT WHEN THERE
19 IS NO DISCONNECT OR RECONNECT." PLEASE DESCRIBE THE
20 CHARGES THAT ARE APPLICABLE WHEN DELTACOM REQUESTS
21 STAND-ALONE UNEs TO REPLACE SPECIAL ACCESS SERVICES.

22

23 A. DeltaCom can avoid paying the "full installation charges of the FCC circuit"
24 by initially choosing to order stand-alone UNEs instead of special access
25 circuits. The applicable and appropriate charges for the installation and

1 provisioning of stand-alone UNEs are the non-recurring rates approved by this
2 Commission in its Orders in Docket No. 990649A-TP. Should DeltaCom
3 choose to order special access circuits, instead of stand-alone UNEs, it should
4 be charged for those circuits in accordance with the applicable BellSouth
5 special access services tariff.

6

7 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

8

9 A. Yes.

10

11 # 493890

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1 BY MR. SHORE:

2 Q Have you prepare a summary of your testimony,
3 Ms. Blake?

4 A Yes, I have.

5 Q Would you give that to the Commissioners, please?
6 A Sure. Good afternoon. I'm here today to present

7 BellSouth's position on three important issues in this
8 arbitration proceeding. While these issues appear to be
9 impacted by the FCC's recently released Triennial Review Order,
10 the fact is that the order has not yet become effective and as
11 such the Commission should consider the evidence in this
12 proceeding and render a decision based on the current
13 regulatory rules and requirements.

14 DeltaCom's position on these issues are based upon
15 what they think the FCC's Triennial Review Order might require
16 when it becomes effective. Current laws and rules do not
17 support DeltaCom's positions. The Commission should reject
18 DeltaCom's efforts to place obligations on BellSouth that are
19 contrary to current rules and requirements. The change of law
20 provisions of the interconnection agreement are in place
21 precisely to address amending the agreement if and when future
22 orders change the current rules.

23 The issues I addressed in my testimony pertain to
24 local switching, which is Issue 26, combining UNEs with tariff
25 special access services, which is Issue 36, and conversions of



1 special access services to stand-alone UNEs, which is
2 encompassed in Issues 37 and 57. Regarding Issue 26, DeltaCom
3 is asking the Commission to ignore the FCC's current rules
4 regarding BellSouth's obligations to provide unbundled local
5 switching. The language BellSouth proposes to include in the
6 parties' interconnection agreement fully obligates BellSouth to
7 provide unbundled local switching in accordance with existing
8 FCC rules.

9 The FCC has found that CLECs are not impaired in
10 their ability to either provide their own local switching or to
11 obtain local switching from other sources in certain geographic
12 areas, which in Florida are the Miami, Fort Lauderdale and
13 Orlando MSAs, which is metropolitan statistical areas. Within
14 these areas, BellSouth is not require to unbundle local
15 switching at prices based on the hypothetical TELRIC
16 methodology or by any other mandated regulatory pricing
17 methodology.

18 Issue 36, DeltaCom is requesting that a requirement
19 be placed upon BellSouth to provide DeltaCom with combinations
20 of UNEs and tariff services, sometimes referred to as
21 commingling. Current FCC rules require -- excuse me, contain
22 no requirement for an ILEC such as BellSouth to combine UNEs
23 with tariff services. In fact, currently the FCC has a
24 prohibition against commingling. The Commission should reject
25 DeltaCom's attempt to place a new additional requirement upon

1 BellSouth to combine UNEs and tariff services for DeltaCom.

2 Issues 37 and 57, these issues involve DeltaCom's
3 attempt to avoid paying BellSouth for work BellSouth must
4 perform when it provisions stand-alone UNEs so that DeltaCom
5 can replace its existing special access circuits with
6 stand-alone UNEs. DeltaCom's contention that this activity is
7 simply a billing change is wrong. BellSouth incurs
8 installation and provisioning costs and should be compensated
9 according to the rates set by the Commission in its UNE cost
10 docket.

11 In conclusion, the Commission should reject
12 DeltaCom's attempts to bypass, seek special treatment from, or
13 otherwise ignore existing rules and requirements that govern
14 these issues. Thank you. That concludes my summary.

15 MR. SHORE: (Inaudible. Microphone off.)

16 COMMISSIONER DEASON: You may proceed.

17 MR. ADELMAN: Thank you, Mr. Chairman.

18 CROSS EXAMINATION

19 BY MR. ADELMAN:

20 Q Good afternoon, Ms. Blake. I'm David Adelman; I
21 represent ITC^DeltaCom.

22 A Good afternoon.

23 Q Ms. Blake, BellSouth would not suggest that the
24 Florida Public Service Commission approve any rate that is
25 unjust or unreasonable, would it?

1 A I don't believe BellSouth is asking the Commission to
2 approve a rate that not just or unreasonable.

3 Q And you agree that BellSouth is required pursuant to
4 the Telecommunications Act to offer unbundled local switching
5 to CLECs such as ITC^DeltaCom?

6 A Yes, I would agree. And BellSouth is offering to
7 provide unbundled local switching to DeltaCom pursuant to a
8 checklist item, yes.

9 Q And you would agree that the Telecommunications Act
10 requires that the rate for any unbundled network element,
11 including unbundled local switching, be just and reasonable?

12 A I believe that's what was discussed earlier today,
13 and I agree with that. As part of a checklist item, I believe
14 the FCC in its UNE Remand Order had said it needed to be just
15 and reasonable, compliant with Section 201 and 202 of the Act.

16 Q So at Section 201 and 202 as well as the FCC orders
17 that require that the rate be just and reasonable; correct?

18 A Well, the UNE Remand Order that referenced Section
19 201 and 202 when it spoke about providing unbundled switching
20 or switching as part of a checklist item when it is no longer
21 obligated to be provided at TELRIC rates.

22 Q And you are the only BellSouth witness in this case
23 who will testify as to the justness and reasonableness of the
24 \$14 unbundled local switching rate that BellSouth proposes in
25 this case; correct?

1 A Yes. I'm the BellSouth witness that sponsored this
2 testimony, yes.

3 Q And you understand that ITC^DeltaCom propounded
4 certain interrogatories on BellSouth in the Florida case in an
5 attempt to understand how the \$14 rate was derived?

6 A Yes, I'm familiar with those.

7 Q And you understand that BellSouth objected and did
8 not answer those interrogatories?

9 A Well, I guess let me back up. The interrogatories I
10 was familiar with is when you were seeking cost analysis of how
11 the rate was initially developed three years ago. I don't know
12 if you're talking about another set of discovery.

13 Q And I appreciate that. Do you have a copy of the
14 interrogatories before you? It's been collectively marked as
15 Exhibit 1 in this case.

16 A I don't think I do have those. I'll look real quick,
17 but I know I had some of them up here.

18 MR. ADELMAN: I've got a copy, Mr. Chairman, and I
19 don't know if you object to me --

20 MR. SHORE: Go right ahead.

21 MR. ADELMAN: It's been marked as Exhibit 1, ITC Stip
22 3.

23 BY MR. ADELMAN:

24 Q Ms. Blake, I've handed you what has been marked and
25 admitted as Exhibit 1 in this proceeding, and I'm going to ask

1 you to turn to ITC^DeltaCom Interrogatories 47 and 48. It's a
2 very thick document. I think if you go past where the
3 butterfly clip is --

4 A Oh, yes. Okay.

5 Q Are you looking at --

6 A 47.

7 Q -- Question 47?

8 A Yes.

9 Q Can you read the question and the response? It's
10 just three lines. Read it into the record, please.

11 A The request, "Describe the process used by BellSouth
12 to arrive at the 'market rate' of \$14 (the recurring charge for
13 the port labeled as 'market rate')."

14 Q And what is BellSouth's response?

15 A Response, "See BellSouth's objections to
16 ITC^DeltaCom's first interrogatories filed July 7, 2003."

17 Q And can I just get you to turn the page once to Item
18 Number 48, the next question?

19 A Yes.

20 Q Can you just confirm that BellSouth similarly
21 objected and did not respond to that question?

22 A Yes, they did.

23 Q But you did respond in other states to exactly those
24 same questions; correct?

25 A Yes, I believe we did.

1 Q And you're the person that would have drafted those
2 responses?

3 A Yes, I was involved in that process. Yes.

4 MR. ADELMAN: Mr. Chairman, if I could approach.

5 COMMISSIONER DEASON: Yes.

6 BY MR. ADELMAN:

7 Q Ms. Blake, you've just been handed a copy of a
8 question and response from the North Carolina proceeding in
9 this series of arbitrations to Question Number 47. Do you see
10 that?

11 A Yes, I do.

12 Q You prepared this response; correct?

13 A Yes, I did.

14 Q And in that question, you are asked to describe the
15 process used by BellSouth to arrive at the \$14 rate; correct?

16 A Yes.

17 Q And you were unable to describe the process; correct?

18 A We were unable to describe the process that was used
19 at the time the \$14 market rate was developed, yes. That
20 was --

21 Q I understand. And you were unable to do that
22 because, as you say in this response, the individuals have left
23 the company; correct?

24 A Yes.

25 Q As a matter of fact, there's no one with any

1 knowledge or information of the process left at the company;
2 correct?

3 A We have not been able to locate anyone. The
4 individuals that had the position before Mr. Maziarz, who is
5 the current product manager, are no longer with the company.
6 Again, it's BellSouth's position that the market rate is set by
7 the market. I know there's been a lot of discussion earlier
8 this morning with other witnesses regarding the \$14 rate, and
9 the fact that no other carrier offers their unbundled local
10 switching to me says that obviously \$14 is the market rate. I
11 mean, there's --

12 Q And, Ms. Blake, I want to get your full answer in the
13 record, but I'd like to go a little bit more slowly.

14 A Okay.

15 MR. ADELMAN: Mr. Chairman, I'd like to mark the
16 document that's just been distributed with the next hearing
17 exhibit number, please.

18 COMMISSIONER DEASON: Exhibit 16.

19 (Exhibit 16 marked for identification.)

20 BY MR. ADELMAN:

21 Q Ms. Blake, I'm going to hand you another document
22 that I hope you'll also be familiar with, and ask that it be
23 marked Exhibit 17.

24 COMMISSIONER DEASON: It will be so marked.

25 (Exhibit 17 marked for identification.)

1 BY MR. ADELMAN:

2 Q This is a copy of Question Number 48 from the
3 Tennessee proceeding in this series of arbitrations. If you
4 could just confirm that that is the same question you were
5 asked in this Florida case?

6 A I believe it's similar.

7 Q And you prepared this response as well; correct?

8 A Yes, I did.

9 Q And that's where we're asking BellSouth to provide
10 any analysis or business analysis or cost studies undertaken to
11 develop the \$14 rate; correct?

12 A Yes, that's what the request was.

13 Q And you say that BellSouth is unable to locate any
14 work papers or documents that may have existed or been used by
15 the individuals in support of the \$14 rate; correct?

16 A That's correct.

17 Q And you still have not -- I mean, is this an ongoing
18 search for the people or the studies, or have you pretty much
19 concluded that you're not going to find them?

20 A We pretty much concluded any opportunity to -- or
21 ability to find any information regarding what was done three
22 years ago when this rate was introduced, and again, it's been
23 discussed before, there are CLECs throughout the region that
24 have this \$14 rate in their agreement. We feel it is a just
25 and reasonable rate. Again, CLECs can self-provision their own

1 switch, possibly provide -- purchase it from another switch
2 provider. So there are alternatives. And again, the FCC did
3 say CLECs were not impaired without obtaining switching at
4 TELRIC rates.

5 Q And you mentioned Mr. Maziarz two answers ago. Do
6 you remember that?

7 A Yes. He was --

8 Q And you identified him as the project manager for
9 unbundled switching; correct?

10 A It's the product manager.

11 Q Excuse me. Product manager for unbundled switching.
12 What does the product manager for unbundled switching -- what
13 are his responsibilities? Do you know?

14 A I was a product manager at one time. Pretty much
15 just managing the product, which is kind of inherent in the
16 name, but understanding the product, what the needs of the
17 customer are, how to develop the product, how to order -- you
18 know, get the operational aspects of it underway so it can be
19 ordered and billed, and just working with the project team to
20 make sure it is operationalized and is available for purchase.

21 Q So it includes -- you've said in your answer it
22 includes understanding and development of the product; correct?

23 A Just understanding what the product is, yes.

24 Q Sure.

25 MR. ADELMAN: And, Mr. Chairman, I'd like to mark --

1 BY MR. ADELMAN:

2 Q Well, actually, Ms. Blake, what I'd like to do is
3 hand you copies of a few pages from Mr. Maziarz' deposition,
4 which has previously been marked and admitted as Exhibit 4 in
5 this proceeding. And you've reviewed Mr. Maziarz' deposition;
6 correct?

7 A Yes, I have.

8 Q And in particular, we're handing to you Pages
9 56 through 58 of Mr. Maziarz' deposition testimony. And while
10 it's three pages, it's double-spaced, so I encourage you to
11 read all three pages.

12 A Okay. I've read it.

13 Q And do you agree with me that Mr. Maziarz admitted in
14 his deposition that he did not compare the \$14 rate or study,
15 any offers made by any companies other than BellSouth as part
16 of his understanding of unbundled local switching as the
17 product manager for unbundled local switching?

18 A I agree with that's what he said. Again, you're
19 talking about a market rate that is available in those
20 situations. And again, it's a limited situation here in
21 Florida when BellSouth avails itself of the switching
22 exemption. And again the, you know, CLECs are not impaired
23 without access to BellSouth's TELRIC-priced unbundled local
24 switching, and they have other alternatives.

25 As far as a -- he does go on to talk about a

1 comparison to other alternatives that CLECs have, like
2 reselling some of our existing retail services as a comparison,
3 and I've looked actually at the Florida numbers. I had
4 included this in my Tennessee case, but in looking at the
5 Florida numbers, comparing TELRIC-based UNE-P and a
6 market-based UNE-P and comparing that to what a CLEC could
7 resell our Complete Choice for business customers, the margins
8 are there. So it is a comparable -- or, to me, a comparable
9 offering.

10 Q Well, Ms. Blake, let's talk first about your prefiled
11 testimony.

12 A Sure.

13 Q Nowhere in your prefiled testimony do you provide any
14 comparison of the \$14 rate to any product, whether it be a
15 product offered by BellSouth or a product offered by any other
16 telecommunications company, do you?

17 A No, we don't. And again, I don't think that's
18 necessary as part of this arbitration proceeding. Local
19 switching pursuant to 271 is what we offer. It's not an
20 obligation under 251. It's not obligated to be priced under
21 the 252 pricing standards and as such it's a market rate set by
22 the market.

23 Q I understand. And in supporting what you're calling
24 this market rate that has to be just and reasonable, you do not
25 provide any information in your prefiled testimony about the

1 market, do you?

2 A No, we do not, but the market has already been
3 determined that there are competitive alternatives. The FCC
4 concluded that in the UNE Remand Order.

5 Q And I appreciate that. I'm asking you about your
6 prefiled testimony. You do not describe any market
7 alternatives in your prefiled testimony, do you?

8 A I believe I do talk about the FCC Remand Order in
9 that the -- it has been deemed that there are other
10 alternatives. They can self-supply switching.

11 Q Ms. Blake, would you agree that there is no business
12 analysis, cost analysis, or any comparison provided in your
13 prefiled testimony that would support the \$14 rate as just and
14 reasonable other than your citation to the FCC order?

15 A I would agree, I do not provide any analysis.
16 However, by virtue of the fact that CLECs are purchasing the
17 market rate -- it's been in their agreements for three years --
18 I think that speaks for a lot. Mr. Watts was up here talking
19 about they have their own switches, but they have chosen not to
20 use them. They're continuing to buy our port at a market rate
21 or at a TELRIC rate.

22 Q So I want to understand then, are you telling the
23 Commission that the rate, in your opinion, is just and
24 reasonable because it is in existing contracts? Is that your
25 testimony?

1 A That's one criteria. And again, I know the Triennial
2 Review Order is new. And I've reviewed certain paragraphs
3 relative to this issue, and it seems to be that's a good
4 indication that a rate is just and reasonable if it's
5 arm's-length agreements and CLECs are purchasing it. And
6 that's exactly what the situation is here.

7 Q Okay. Now, aside from the fact that it's in existing
8 agreements and that you've cited to the FCC order, if the
9 Florida Commission wanted to examine alternatives provided by
10 companies other than BellSouth, it could not find any of those
11 alternatives in the record in this case. Would you agree with
12 that?

13 A I did not offer any alternatives as far as other
14 CLECs that might be willing to offer their switch or ports on
15 their switch, but again, self-supplied switch is an
16 alternative.

17 Q Issues 37 and 57 are about the conversion of special
18 access services to UNEs; correct?

19 A Yes, that's correct.

20 Q It's fair to talk about those together?

21 A Yes. One is, do we have an obligation to provide it,
22 and 57 is, if we do, what rate is appropriate to be charged in
23 processing such orders.

24 Q And BellSouth currently converts special access
25 services to EELs; correct?

1 A Yes. That's an obligation BellSouth has pursuant to
2 the supplemental order clarification.

3 Q And in doing so -- well, what's an EEL?

4 A An EEL is an enhanced extended link. It's basically
5 a loop and transport combination.

6 Q It's a combination of unbundled network elements?

7 A Yes.

8 Q So you're converting a tariffed service to a certain
9 combination of unbundled network elements called an EEL;
10 correct?

11 A Yes, that's correct.

12 Q And that requires certain processes; correct?

13 A Yes. BellSouth has developed processes in response
14 to its obligation to handle such conversions at the request of
15 the CLECs, and we develop those processes.

16 Q Ordering systems --

17 A Yes.

18 Q -- would be one of the process requirements; correct?

19 A Pretty much whatever it takes to convert that service
20 to the UNE combination.

21 Q Well, I understand, but I want to slow down because
22 whatever it takes --

23 A Okay.

24 Q -- I don't know enough about it to accept that
25 answer. It's ordering systems, billing systems?

1 A You're talking about the conversion to EELs?

2 Q Conversion of special access services to EELs. I
3 want to know about the systems that BellSouth has developed so
4 that BellSouth can fulfill its legal obligation to make that
5 conversion.

6 A Well, it's not really a system we developed. It's a
7 process we've developed to handle those requests.

8 Q Okay. Let's talk about the process.

9 A Okay.

10 Q What are the components of the process?

11 A The process would include identifying the circuits or
12 the services that need to be converted. A couple of things
13 would -- determining initially whether the safe harbors that
14 are currently in place have been satisfied, that they're going
15 to be using the EEL for a significant amount of local traffic.
16 And once all those parameters have been established, then a
17 process would involve coordinating the orders -- issuing the
18 orders, coordinating them, working with the different work
19 groups that touch the order to make sure it does convert
20 without any disconnection of the end user, and facilitating the
21 orders to be completed so that the billing gets effectuated so
22 that the lower UNE rates are billed to the CLEC as opposed to
23 the special access tariffed rates.

24 Q So the first thing you do is you make certain that
25 the special access circuit is eligible to be converted to an

1 EEL; correct?

2 A Yes. That's one of the current obligations is that
3 one of the safe harbors, the CLEC has to indicate which safe
4 harbor they qualified the service under, that it provides a
5 significant amount of local traffic over that service.

6 Q Because BellSouth wouldn't want to do anything it's
7 not required to do; correct? That's the purpose of that
8 first test?

9 A Well, the purpose of that first test is to be
10 compliant with the FCC's current rules that require a CLEC to
11 certify that they're going to be using that service for a
12 significant amount of local traffic, so they're just not
13 bypassing special access services.

14 Q Okay. But what I want to focus on really, Ms. Blake,
15 is I want to focus on the work that's actually performed once
16 you determine that it's appropriate to convert a special access
17 circuit to an EEL. Do you follow me?

18 A Okay. We can talk about that. That's really not the
19 issue in this proceeding. It's the stand-alone UNE conversion
20 that is the issue in this proceeding.

21 Q Well, I understand that, but I'm sure you understand
22 that we think it's a very similar process.

23 A Okay.

24 Q You understand that, don't you?

25 A Sure.

1 Q You have people who will take the order for a
2 conversion; correct?

3 A Yes. There's a work group that's involved in
4 qualifying the service and making sure it can be converted,
5 yes.

6 Q And then you have a work group that actually does the
7 conversion. It's done electronically; correct?

8 A I'm not that familiar with all the ins and outs of
9 it, but the service orders have to be issues. There's multiple
10 service orders that have to be coordinated to make sure they
11 all work in sync and that the service is converted over to the
12 UNE billing.

13 Q So there's order coordination; correct?

14 A Yes.

15 Q And the order coordination for purposes of converting
16 special access circuits to EELs ensures that the customer does
17 not lose service during the conversion; correct?

18 A Yes. That's one of the objectives, yes.

19 Q Because you would agree with me that in converting
20 special access services to EELs, you're really just -- you're
21 using the same circuit; correct?

22 A Pretty much. It could be the same circuit or a local
23 channel, depending on whatever the special access service is.
24 Again, there is a bit of difference. With a special access
25 service to an EEL, you've got make sure it is terminated to a

1 collocation arrangement.

2 Q Okay. And CLECs pay you to perform that conversion;
3 correct?

4 A Yes, I believe they do.

5 Q Okay. Now, let's talk about -- in this case we're
6 talking about a conversion from a special access circuit to
7 stand-alone UNEs; correct?

8 A Correct, that's the issue.

9 Q And this could be the UNEs that are included -- that
10 comprise an EEL or other UNEs; correct?

11 A Predominantly it would be a loop or some type of
12 transport type of service.

13 Q So what we're talking about is taking a special
14 access circuit and converting it to a loop; correct?

15 A To the comparable UNE.

16 Q A UNE loop in most cases; correct?

17 A That could be an example, yes.

18 Q And currently BellSouth won't do that; correct?

19 A We'll be glad to do that. We've offered to do that
20 through a new business request, as I stated in my testimony.
21 And we also have already entered into certain agreements or
22 settlement agreements with several CLECs to perform that
23 function for them. So BellSouth is not saying we're not going
24 to do that. We just believe it's a process that is outside the
25 scope of our obligation. Again, the CLECs can order that

1 service as a UNE to begin with and avoid having to convert it
2 at all. They could put in the UNE loop or the UNE local
3 channel or the transport initially and not have a need to
4 convert that service from tariffed services to UNE.

5 Q And I apologize. My question was imprecise. What I
6 want to ask you and did not ask you is, currently BellSouth
7 refuses to include contract language in its interconnection
8 agreement with ITC^DeltaCom that would require BellSouth to
9 convert special access circuits to UNEs; correct?

10 A Yes, that is true. It's BellSouth's position that
11 it's not an obligation under 251 to perform that function. And
12 we'll be glad to do it, again, outside the scope of a 251
13 arbitration and perform it pursuant to a new business request,
14 which we have done for several CLECs.

15 Q By the way, conversion of special access circuits to
16 EELs costs a CLEC about \$9, \$8.98, in Florida. Do you accept
17 that, subject to check?

18 A Subject to check. I'm not familiar with what the
19 rate is in Florida.

20 Q And you understand that ITC^DeltaCom is glad to pay
21 BellSouth for converting special access circuits to stand-alone
22 UNEs. This is not a fight about price. You understand that;
23 correct?

24 A Can you say that again?

25 Q Sure. And I'll try to rephrase my question, make it

1 a little more simple. The issue between ITC^DeltaCom and
2 BellSouth is not one of cost or price. It is one of including
3 in the interconnection agreement a requirement that BellSouth
4 convert special access services to UNEs; correct?

5 A I actually think it's both of those is the issue. We
6 believe it's not necessary to have the language in the
7 agreement because it's not an obligation pursuant to 251. And
8 as far as, you know, the price, again, if it is outside the
9 scope, that would be pursuant to the new -- I mean, excuse me,
10 outside the agreement would be pursuant to the new business
11 request. So that's kind of difference, I would say.

12 Q But you understand that ITC^DeltaCom does not want
13 you to convert special access services to stand-alone UNEs
14 without ITC^DeltaCom having to compensate BellSouth for the
15 conversion; correct?

16 A Can you say that one -- I missed a word in there.
17 I'm sorry.

18 Q Sure. I may have left a word out. ITC^DeltaCom is
19 not asking you to do this for free, are we?

20 A I don't believe you've indicated that.

21 Q Okay. The Triennial Review Order speaks to this
22 issue, doesn't it?

23 A Yes, it does.

24 Q And I know it's voluminous and it's only been a week
25 or 10 days since it came out, but you would agree that the FCC

1 has provided that companies such as BellSouth should for CLECs
2 convert special access services to stand-alone UNEs?

3 A I'll agree that the Triennial Review speaks to that.
4 In my initial review of the TRO, it does indicate that there is
5 requirements where the language does discuss conversions to not
6 just EELs but also stand-alone UNEs. However, there's other
7 aspects that have to be determined, such as the eligibility
8 requirements similar to what I talked about, the safe harbors,
9 previously. And then we've got to understand what UNE it's
10 going to be converted to. Again, there's an impairment
11 analysis that has to be conducted, it's my understanding. So
12 until we know what all the UNEs are, it's difficult to sit here
13 to say that every special access service circuit could be
14 converted to a UNE because there may not be a UNE that exists
15 for that special access circuit.

16 Q Okay. Well, other than cases where there is not a
17 UNE that exists for the special access circuit, would you agree
18 that it's technically feasible for BellSouth to convert special
19 access circuits to stand-alone UNEs?

20 A I think it's technically feasible for BellSouth to
21 develop a process to handle that conversion to a UNE, yes.

22 Q And based on your reading of the Triennial Review
23 Order, there's no legal prohibition on BellSouth providing that
24 service pursuant to an interconnection agreement; correct?

25 A Well, I'm not an attorney, and my understanding is

1 the order, TRO, is not effective yet, and again, I believe it
2 has been appealed. So until all that works its way through
3 whatever, I can't say that there is a legal or there's not a
4 legal. I mean, our current understanding is there's no current
5 obligation for BellSouth based on the current rules.

6 Q And that's fair enough. And you're saying that
7 because the Triennial Review Order has not gone into effect.
8 It's not because of something you've read in the Triennial
9 Review Order; correct?

10 A No, it's not. It's based on it's not in effect, and
11 then whatever the appeal process -- you know, the outcome of
12 the appeal process or whatever other legal wranglings that go
13 on and whatever comes out of this Commission again will need to
14 be determined based on the impairment analysis and, you know,
15 what is actually a UNE. Until that all is determined, it's not
16 known yet the implications of the TRO.

17 Q Now, you're in the regulatory department. You report
18 to Mr. Ruscilli; correct?

19 A Yes, I do.

20 Q And we've gone through these questions before, but
21 just for the record in Florida, one of the things that you and
22 Mr. Ruscilli do is you review regulatory decisions and staff
23 recommendations and comments, and you try to anticipate what
24 the requirements might be on BellSouth and what other changes
25 of law there might be in the telecommunications industry;

1 correct?

2 A We try.

3 Q And you would agree that it would be reasonable for
4 the Florida Public Service Commission similarly to review
5 orders and recommendations and try to anticipate what changes
6 in policy or laws there might be; correct?

7 A I won't speak to what the Florida Commission will do
8 or not do, but I would think that would be a consideration they
9 would make.

10 Q Well, I'm asking if it would be -- if, in your
11 opinion, it would be reasonable for regulators, including the
12 Florida Public Service Commission, to anticipate orders such as
13 the Triennial Review Order going into effect?

14 A It might be reasonable to understand possibly what's
15 coming out, but as far as, you know, how far to go with that
16 anticipation, again the press release that came out is
17 February 20th. There are some things that are different in the
18 written order that didn't possibly pan out the same way the
19 press release indicated. So again, you can anticipate all you
20 want, but until the actual order is effective and it's been
21 interpreted and implemented, it's all speculation.

22 Q But based on your reading of the Triennial Review
23 Order, which I stipulate is not in effect yet, there is no
24 prohibition in that order on state commissions from requiring
25 companies like BellSouth to provide conversion of special

1 access services or circuits to stand-alone unbundled network
2 elements; correct?

3 A I can't agree with that or disagree with that. Like
4 I said, I've read certain paragraphs of the Triennial Review
5 Order that appear to be touching on the issues that I'm
6 involved in with this proceeding. And until you look at the
7 whole order in the context and understand what comes out of it
8 and the whole company's -- I mean, again, it's been out a
9 couple of weeks, and we haven't finished analyzing it from that
10 standpoint. And again, with appeal it's, to me, unknown
11 exactly -- I can't say that there's nothing in the order that
12 prohibits that. There could be another whole section relative
13 to areas I'm not familiar with.

14 Q Fair enough. Issue 36 is what people generally refer
15 to as the commingling issue; correct?

16 A Correct.

17 Q This is the combination of tariffed services with
18 unbundled network elements; correct?

19 A Yes, that's correct.

20 Q And this is another one of those issues that is dealt
21 with quite directly by the Triennial Review Order; correct?

22 A It appears to be, yes.

23 Q And when you say, "it appears to be," would you agree
24 with me that it appears that the FCC has lifted any prohibition
25 on commingling?

1 A I would agree with that based on my initial reading
2 of the paragraphs relative to that issue, yes.

3 Q So you would agree with me that there's no
4 prohibition -- you can't cite to a prohibition in the law today
5 nor do you anticipate there being a prohibition in the law on
6 combining unbundled network elements with tariffed services?

7 A No, I --

8 MR. SHORE: I want to object to that -- pardon me,
9 Ms. Blake -- as asking for a legal conclusion. Mr. Adelman
10 himself has pointed out that the Triennial Review is not
11 effective, so that is not the law today. So I want to object
12 to the question on that basis as well as to the extent it calls
13 for a legal conclusion from this witness.

14 MR. ADELMAN: Mr. Chairman, I'll make it easy. I'll
15 withdraw the question. That's a point easily briefed.

16 COMMISSIONER DEASON: Very well.

17 BY MR. ADELMAN:

18 Q Now, what you're asking the Florida Commission to do
19 with regard to commingling is to pretend like the Triennial
20 Review Order has not addressed that issue. In effect, that's
21 what you're asking the Florida Commission to do today, aren't
22 you?

23 A No, I wouldn't agree with that. Our position is to
24 include language that is consistent with the current law. And
25 our understanding of the supplemental order of clarification is

1 that there is a prohibition against commingling.

2 Q Do you have a copy of the FCC press release with you
3 today, Ms. Blake?

4 A Is that the one you gave me in Tennessee?

5 Q I'll tell you what. We're going to mark this as an
6 exhibit, so I'll go ahead and hand you another one.

7 MR. ADELMAN: Mr. Chairman, I'd ask that the next
8 document be marked the next hearing exhibit number, which I
9 believe is Number 18.

10 COMMISSIONER DEASON: And that is correct, Exhibit
11 18.

12 (Exhibit 18 marked for identification.)

13 BY MR. ADELMAN:

14 Q Ms. Edwards has just handed you a copy of the FCC's
15 news release dated February 20th, 2003. Have you seen that
16 document before?

17 A Yes, I have.

18 Q And this was issued long before your prefiled
19 testimony was filed in this case; correct?

20 A Yes, it was. It's from February.

21 Q So you had considered this press release and allowed
22 it to inform the drafting of your prefiled testimony; correct?

23 A I was aware of the press release, and again, I was
24 also aware of the current rules, the FCC rules regarding the
25 prohibition against commingling.

1 Q Can I get you to turn to what is numbered as
2 Page 3 of hearing Exhibit 18? It's not actually the third
3 sheet of paper, but it's Page 3.

4 A I got it.

5 Q Do you see that?

6 A Yes.

7 Q Do you see in the middle the bullet point
8 "commingling"?

9 A Yes, I do.

10 Q Can you just read that sentence into the record,
11 please?

12 A "Commingling. Competitive LECs are permitted to
13 commingle UNEs and UNE combinations with other wholesale
14 services, such as tariffed interstate special access services."

15 Q And based on what you've read in the Triennial Review
16 Order, the order has done just that. It's lifted any
17 prohibition on commingling; correct?

18 A Based on the paragraphs that I've read it appears to
19 say that; however, there still needs to be a determination of
20 what the UNEs are, what are you going to combine the special
21 access tariff with, what UNE. So that determination has to be
22 made under the context of implementing the Triennial Review
23 Order.

24 Q And, Ms. Blake, I just want to understand what you're
25 suggesting. You're suggesting that the Florida Commission put

1 aside the press release and put aside the Triennial Review
2 Order and issue an order directing these parties to enter into
3 a contract that does not permit commingling of tariffed
4 services and unbundled network elements. Is that at the end of
5 day what you're asking on this issue?

6 A Based on current law as it exists -- as I understand
7 it exists today, there is a prohibition against commingling.
8 Again, the change of law provisions of the agreement will
9 prevail and once the law is in effect or any changes are made
10 that cause the language to need to be changed. So that's the
11 way it needs to be handled.

12 Q Even the -- strike that.

13 MR. ADELMAN: I have no further questions,
14 Mr. Chairman. At the appropriate time, I'll move for the
15 admission of Exhibits 16 through 18.

16 COMMISSIONER DEASON: Very well. Staff.

17 CROSS EXAMINATION

18 BY MR. TEITZMAN:

19 Q I'd like to start off with drawing your attention to
20 Issue 26C. For clarification purposes, could you define
21 "market rate" for us today?

22 A My definition of a market rate would be a rate that
23 is established by the market. I know you're not supposed to
24 define a term with a term, but it is basically what the market
25 will bear.

1 Q Well, could you provide an example and explain how
2 that example is calculated?

3 A I'm not sure I really understand your question.

4 Q Well, can you provide an example of a market rate and
5 how that rate is calculated?

6 A I mean, in the telecom industry or just in general or
7 relative to the port market rate?

8 Q Well, we could start with the telecom industry.

9 A To me, I guess wireless service could be a market
10 rate, I mean, depending on -- it's not a regulated service.
11 The market dictates what an end user is willing to pay for the
12 wireless depending on the package, the minutes and the package
13 and whatever bells and whistles the wireless provider would
14 offer the service at would be an example.

15 Q Next, I'd like to address Issue 36A. Does the
16 current interconnection agreement between ITC^DeltaCom and
17 BellSouth allow for the connection of special access services
18 with UNEs?

19 A Yes, it does. And I'd just like to note that that
20 agreement had -- the expired agreement or the one that we're
21 renegotiating for was negotiated back in the 2000-2001 time
22 frame. Again, that was prior to the explicit prohibition that
23 we understand is currently in place relative to commingling.

24 Q Before I go on, there was one thing I wanted to ask
25 you. Do you know the effective date of the Triennial Review

1 Order?

2 A I thought I heard that it was just published
3 yesterday, so 30 days from yesterday. October 2nd would be my
4 understanding.

5 Q Let's move on to Issue 36B. Is it BellSouth's
6 position that it does not combine special access services with
7 UNEs for other CLECs?

8 A There may be some old agreements that have that
9 language in there. I'm not familiar with the practice of doing
10 it, that language. Either whether it was adopted from the
11 DeltaCom agreement or entered into back in the 2000 time frame
12 could provide for us doing that. I'm not real sure if there's
13 any out there that we've done it for. I know there were some
14 situations where we agreed to do it because of a lack of
15 collocation arrangements just for an interim period until
16 collocation space was available. So there would be those type
17 of limited circumstances that it could be in existence, but our
18 effort would be to migrate those off of that arrangement.

19 Q With that being -- so let me ask you this then. If
20 BellSouth has an interconnection agreement with another CLEC
21 which allowed for the combination of special access services
22 with UNEs, would ITC^DeltaCom be allowed to opt into that
23 provision of the agreement?

24 A I'm not a lawyer, but I believe they might be able
25 to. I'm not sure, but my understanding is since the agreement

1 is negotiated after 2000, we have no longer included that
2 language in there. And I believe any agreement in the 2000
3 time frame would be about to expire, and most agreements or
4 sections of agreements are not allowed to be adopted within six
5 months of their expiration date.

6 Q Now, I'll move on to Issue 37. In responding to
7 Staff Interrogatory Number 47, BellSouth provided us with a
8 copy of an amendment to an interconnection agreement it has
9 with Network Plus which allows for the replacement of special
10 access services with UNEs. Would ITC^DeltaCom be permitted to
11 negotiate a similar agreement for the loops it wants
12 transferred from special access loops to UNE loops?

13 A I believe that was negotiated pursuant to the new
14 business request, and that's what we've offered to DeltaCom
15 to -- to them as well.

16 Q In the conversion of special access circuits to UNE
17 loops, does the customer have to be physically disconnected and
18 then reconnected?

19 A Not necessarily. I think it depends on how the
20 conversion is effectuated. If DeltaCom wants to not handle it
21 through a new business request where we would project manage it
22 and coordinate the orders and ensure that there is no --
23 attempt to ensure that there is no disconnection, they could
24 issue the new connect of the UNE loop and then roll their
25 traffic to that new UNE loop and then disconnect the special

1 access circuit. That's one way to avoid any disconnection.
2 Again, they could have ordered the UNE loop as a -- or the
3 circuit as a UNE to begin with and avoid the transition
4 altogether.

5 Q Is converting a special access circuit to a UNE loop
6 similar to converting a special access circuit to a UNE loop
7 and transport in that only billing and administrative
8 information actually change?

9 A I'm not sure I can speak to that. I'm not that
10 familiar with the special access service to EEL conversion, the
11 process that we developed. They are different in that -- just
12 inherent in that we have developed a process to handle numerous
13 requests or the volume of requests for special access services
14 to EELs. Again, the other special access circuit to a
15 stand-alone UNE has not been, I guess, formalized as much as
16 the EEL conversions, but -- so I'm not sure I can speak to the
17 inherent differences.

18 Q This next question is regarding the Triennial Review
19 Order. Did the FCC remove the safe harbor provision that
20 required a significant amount of local traffic on the line?

21 A I'm not familiar enough with that part of the TRO to
22 address that.

23 Q I'd like to finish up with Issue 66 -- oh, sorry.

24 MR. TEITZMAN: No further questions.

25 COMMISSIONER DEASON: Commissioners?

1 COMMISSIONER DAVIDSON: Yes, Chairman. Ms. Blake,
2 assuming that the TRO takes effect October 2nd and assuming
3 that this Commission issues -- this panel issues an order after
4 October 2nd, which I would like to note is highly unlikely
5 given the efficiency with which the Chairman conducts these
6 proceedings, we may have something else soon, but in such an
7 event would the new provision on commingling, providing that
8 competitive LECs are permitted to commingle UNEs and UNE
9 combinations with other wholesale services such as tariffed
10 interstate special access services, be effective? If our order
11 came out after the effective date, would we base our order on
12 this new language?

13 THE WITNESS: I'm not sure. I mean, I'll answer
14 that, I guess, as a layman. I'm not sure off all that, but my
15 understanding -- we would be compliant with the law. And if
16 the law is the Triennial Review Order, we would comply with the
17 law. If the new law goes into effect October 2nd, then that's
18 the law of the land, and I would suspect that your order
19 relative to this proceeding would be compliant with the FCC's
20 rules.

21 COMMISSIONER DAVIDSON: Does BellSouth have any data
22 regarding the recurring charge for a port charged by ILECs in
23 other parts of the country?

24 THE WITNESS: Are you talking the market rate of
25 other ILECs?

1 COMMISSIONER DAVIDSON: Yes.

2 THE WITNESS: I'm not aware of any. I do not have
3 any information relative to that.

4 COMMISSIONER DAVIDSON: Assuming that the Florida
5 Commission had jurisdiction to consider the market rate, is
6 there anything other than the FCC's determination in the Remand
7 Order that a market exists and other than the fact that market
8 rates have been set forth in numerous agreements with CLECs, is
9 there anything other than that that the Commission should
10 employ to determine what is just and reasonable?

11 THE WITNESS: I would say another piece of
12 information inquiry could be, you know, how many other CLECs
13 have switches in those MSAs, whether they're willing to offer
14 on a wholesale basis access to their switch, you know, is a
15 business decision they're going to need to make. I don't know
16 if an inquiry into those CLECs that do have switches, say, in
17 the Miami, Fort Lauderdale, and Orlando MSAs would reveal any
18 information as to what their business plans are. Again, they
19 may see they can't compete against our TELRIC rate and maybe
20 they can't -- if the \$14 is a sufficient rate and they can't
21 offer their port cheaper than that, I don't know. I mean, that
22 would be a piece of information maybe worthy of gathering.

23 COMMISSIONER DAVIDSON: I have no further questions.
24 Thank you, Chair.

25 COMMISSIONER DEASON: Redirect.

1 MR. SHORE: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. SHORE:

4 Q Ms. Blake, in follow up to questions you received
5 from DeltaCom's lawyer as well as staff counsel and
6 Commissioner Davidson on this market rate, you testified and
7 you recall questions about the fact that that \$14 market rate
8 is in interconnection agreements with other ALECs; is that a
9 fact?

10 A Yes, that is true.

11 Q Are other ALECs paying that \$14 rate for unbundled
12 switching today in Florida?

13 A I believe they are. We've -- like was discussed this
14 morning, there was an issue with us being able to initially
15 bill the market rate, and we began truing-up that rate and
16 actually submitting bills to the CLECs in Florida for that
17 market rate. And my understanding is, you know, it's being
18 billed, and I believe some of them are paying that rate.

19 Q Are you aware of any ALEC complaining to the Florida
20 Commission or other regulator that the \$14 rate is not just --
21 that they are paying is not just and reasonable?

22 A I'm not aware of any. In fact, I had done some
23 research that I gathered. There's over 44,000 market rate
24 priced ports in Florida as we speak, so -- or as of July,
25 actually.

1 Q Do you think the fact that there are numerous ALECs
2 buying unbundled switching from BellSouth for \$14 and not
3 complaining about it is a fact that this Commission should
4 consider if it has to determine whether or not that rate is
5 just and reasonable in this proceeding?

6 MR. ADELMAN: Mr. Chairman, I want to object. These
7 are leading questions on cross-examination. It's a question
8 that suggests the answer in the question.

9 COMMISSIONER DEASON: I was thinking the same thing.
10 I was waiting for the objection. That is a leading question.
11 You need to rephrase your question.

12 MR. SHORE: Sure.

13 BY MR. SHORE:

14 Q Ms. Blake, do you think it would be reasonable for
15 this Commission to consider the fact that other CLECs are
16 paying \$14 for unbundled switching if it has to determine in
17 this case that such a rate is just and reasonable?

18 MR. ADELMAN: Mr. Chairman, it is the same objection.

19 MR. SHORE: I'll withdraw the question.

20 MR. ADELMAN: He's already given her the answer.

21 MR. SHORE: I'll withdraw the question.

22 COMMISSIONER DEASON: Very well.

23 MR. SHORE: Nothing further.

24 COMMISSIONER DEASON: Okay. Exhibits.

25 MR. SHORE: I believe I need to move for the

1 introduction of Exhibit 15.

2 COMMISSIONER DEASON: Yes. Without objection, show
3 that Exhibit 15 is admitted.

4 (Exhibit 15 admitted into the record.)

5 MR. ADELMAN: We move for the admission of 16, 17,
6 and 18, Mr. Chairman.

7 COMMISSIONER DEASON: Without objection and hearing
8 no objection, show that Exhibits 16, 17, and 18 are admitted.

9 (Exhibits 16, 17, and 18 admitted into the record.)

10 COMMISSIONER DEASON: Thank you, Ms. Blake. You may
11 be excused.

12 (Witness excused.)

13 COMMISSIONER DEASON: You may call your next witness.

14 MR. SHORE: BellSouth calls Ron Pate.

15 RONALD M. PATE

16 was called as a witness on behalf of BellSouth
17 Telecommunications, Inc. and, having been duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. SHORE:

21 Q Mr. Pate, were you sworn earlier today?

22 A Yes, I was.

23 Q Can you state your name for the record, please, sir.

24 A My name is Ronald M. Pate.

25 Q Are you employed by BellSouth Telecommunications?

1 A That's correct.

2 Q In what capacity?

3 A I'm a director in interconnection services.

4 Q And, Mr. Pate, did you cause to be prefiled in this
5 docket direct testimony consisting of 20 pages and 6 exhibits?

6 A That's correct.

7 MR. SHORE: Mr. Chairman, I'd ask that Mr. Pate's
8 exhibits to his direct testimony be identified as the next
9 exhibit number. Is it 19?

10 COMMISSIONER DEASON: That's correct. Exhibit 19.

11 (Exhibit 19 marked for identification.)

12 BY MR. SHORE:

13 Q Mr. Pate, do you have any corrections or revisions to
14 make to your direct testimony?

15 A No, I do not.

16 Q So if I were to ask you the questions today from the
17 stand that appear in your direct testimony, would your answers
18 be the same?

19 A Yes, they would.

20 MR. SHORE: We'd move for the admission of Mr. Pate's
21 direct testimony.

22 COMMISSIONER DEASON: Without objection?

23 MS. EDWARDS: No objection.

24 COMMISSIONER DEASON: Show it inserted in the record.

25 BY MR. SHORE:

1 Q Mr. Pate, did you also cause to be prefiled in this
2 docket rebuttal testimony consisting of six pages?

3 A Yes, I did.

4 Q Do you have any corrections to make to that
5 testimony?

6 A No, I do not.

7 MR. SHORE: We'd ask for the admission of Mr. Pate's
8 rebuttal testimony.

9 COMMISSIONER DEASON: Without objection, show that
10 testimony inserted in the record.

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1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF RONALD M. PATE
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 030137-TP
5 MAY 19, 2003
6
7

8 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
9 TELECOMMUNICATIONS, INC. AND YOUR BUSINESS ADDRESS.

10
11 A. My name is Ronald M. Pate. I am employed by BellSouth Telecommunications,
12 Inc. ("BellSouth") as a Director – Interconnection Services. In this position, I
13 handle certain issues related to local interconnection matters, primarily operations
14 support systems ("OSS"). My business address is 675 West Peachtree Street,
15 Atlanta, Georgia 30375.
16

17 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.
18

19 A. I graduated from the Georgia Institute of Technology in 1973, with a Bachelor of
20 Science degree. In 1984, I received a Masters of Business Administration degree
21 from Georgia State University. My professional career spans over 30 years of
22 general management experience in operations, logistics management, human
23 resources, sales and marketing. I joined BellSouth in 1987, and have held various
24 positions of increasing responsibility since that time.
25

1 Q. HAVE YOU TESTIFIED PREVIOUSLY?

2

3 A. Yes. I have testified before the Public Service Commissions in Alabama, Florida,
4 Georgia, Louisiana, South Carolina and Kentucky, the Tennessee Regulatory
5 Authority, and the North Carolina Utilities Commission.

6

7 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

8

9 A. My testimony will provide BellSouth's position on OSS-related interconnection
10 agreement negotiation issues in which BellSouth and ITC^DeltaCom
11 Communications, Inc. ("DeltaCom") are at an impasse. The issues in question are
12 Issue 9 related to nondiscriminatory access to OSS, and Issues 66 and 67 related
13 to change management matters. Further, I will show the Florida Public Service
14 Commission ("Commission") why BellSouth's position on each of these issues is
15 the more appropriate and logical resolution.

16

17 Q. DO YOU HAVE ANY OPENING COMMENTS FOR THE COMMISSION?

18

19 A. Yes. BellSouth believes that the OSS issues at impasse have been included
20 inappropriately in this arbitration. DeltaCom, as an Alternative Local Exchange
21 Carrier ("ALEC"), is an involved member of the BellSouth Change Control
22 Process ("CCP"), but it has inexplicably and inappropriately brought CCP
23 operational issues to this Commission in this Section 252¹ arbitration as an end-
24 run to the CCP's existing escalation and dispute resolution process. It is

¹ This arbitration is being conducted under Section 252 of the Telecommunications Act of 1996.

1 particularly exasperating that DeltaCom chooses to bring to this arbitration these
2 issues *that have been or are currently being addressed* in the CCP. This
3 proceeding is supposed to be an arbitration relative to the issues and language of
4 an interconnection agreement, not a forum for resolving operational issues being
5 handled more appropriately in industry forums, or rehashing previously resolved
6 regulatory issues.

7
8 BellSouth's CCP is a *regional* process that affects *all* ALECs, and has been
9 developed collaboratively over the course of an exhaustive six-year process with
10 an inordinate amount of ALEC input and agreement, as well as state regulatory
11 oversight. The CCP guidelines currently in place are those that the ALEC
12 community have demanded and approved as being the best set of rules for an
13 efficient change management process. BellSouth believes, as nine state
14 regulatory bodies and the FCC have already confirmed, that ALEC and BellSouth
15 change requests that affect *all* ALECs are best handled within the operating
16 parameters of the CCP, and not in a Section 252 arbitration between BellSouth
17 and a *single* ALEC.

18
19 Moreover, the specific OSS issues that DeltaCom has brought before this
20 Commission have been previously addressed in 271 hearings by the nine state
21 regulatory bodies in BellSouth's region, as well as by the FCC in three separate
22 BellSouth applications for 271 relief. BellSouth proved in numerous proceedings,
23 and the findings by the state regulatory bodies ² (including those of the Florida

² *Alabama Public Service Commission Order* in Docket 25835, May 30, 2002, at page 166; *Florida Public Service Commission Opinion No. PSC-02-1305-FOF-TL* in Docket 960786B-TL, September 25, 2002, at page 84; *Georgia Public Service Commission Order* in Dockets 6863-U, 7253-U and 8354-U, October 23, 2001, at page 2; *Kentucky Public Service Commission Order* in Case 2001-00105, April 26, 2002, at pages 15-30; *Louisiana Public Service Commission Order* in Docket U-22252-E, September 21, 2001, at page 5;

1 Public Service Commission³) and the FCC⁴ clearly demonstrate, that BellSouth's
 2 OSS provide nondiscriminatory access to ALECs. In so doing, BellSouth met the
 3 requirements of Checklist Item 2, and thereby renders moot DeltaCom's concerns
 4 expressed in Issue 9 – Nondiscriminatory Access to OSS. BellSouth asks this
 5 Commission to confirm that Issue 9 is satisfied, and there is no need to include
 6 any language in an interconnection agreement other than a simple statement that
 7 BellSouth provides nondiscriminatory access to its OSS and commits to continue
 8 to do so.

9
 10 The same regulatory orders referenced above⁵ reflect that BellSouth's change
 11 management process also meets the FCC's requirements of Checklist Item 2.
 12 BellSouth contends, as it has in past arbitrations and 271 proceedings, that
 13 BellSouth's CCP is the proper venue in which to address issues such as those
 14 brought by DeltaCom to this arbitration in Issues 66 and 67. BellSouth asks this
 15 Commission to confirm that.

Mississippi Public Service Commission Order in Docket 97-AD-321, October 4, 2001, at pages 37, 39-40; *North Carolina Utilities Commission Order* in Docket P-55, Sub 1022, July 9, 2002, at pages 164-165; *Public Service Commission of South Carolina Order* in Docket 2001-209-C, February 14, 2002, at pages 47-48, 50; and by virtue of the *Tennessee Regulatory Authority Settlement Agreement* in OSS Docket 01-00362, September 18, 2002.

³ Further, in the cover letter to its *Comments* to the FCC in support of BellSouth's Florida/Tennessee 271 Application (to which was attached the aforementioned FPSC *Opinion* cited in footnote 2 above), the Florida Public Service Commission stated, "...we believe that the independent third-party testing for BellSouth's OSS has provided us with the necessary tools to ensure BellSouth's compliance and our future ability to monitor BellSouth's compliance."

⁴ *Georgia/Louisiana 271 FCC Order 02-147* (WC Docket No. 02-35), May 15, 2002, at ¶101; *Multistate 271 FCC Order 02-260* (WC Docket No. 02-150), September 18, 2002, at ¶128; and *Florida/Tennessee 271 FCC Order 02-331* (WC Docket No. 02-307), December 19, 2002, at ¶67.

⁵ *Id.*, *APSC Order*, at page 169; *FPSC Opinion*, at page 85; *GPSC Order*, at page 2; *KPSC Order*, at page 29; *LPSC Order*, at page 5; *MPSC Order*, at page 61; *NCUC Order*, at pages 158-159; *PSCSC Order*, at page 75; by virtue of the *TRA Settlement Agreement* in OSS docket; *FCC Georgia/Louisiana Order*, at ¶¶179-197; *FCC Multistate Order*, at ¶¶178-179; and, *FCC Florida/Tennessee Order*, at ¶¶108-110.

1 Q. DO ALECS HAVE AVAILABLE TO THEM OTHER OPTIONS FOR AIRING
2 GRIEVANCES REGARDING CCP ACTIVITIES?

3

4 A. Absolutely. The Change Control Process Document Version 3.6 (effective April
5 17, 2003, and attached as Exhibit RMP-1), in Section 8.0 – Escalation Process
6 (page 77), clearly allows an ALEC, upon receipt of an unfavorable (to that
7 ALEC) decision, to:

- 8 - escalate up through management levels within BellSouth at the ALEC's
9 discretion, and based on the severity of the missed or unaccepted
10 response/resolution;
- 11 - escalate on issues relating to the Process itself, and;
- 12 - escalate only after normal Change Control procedures have occurred per
13 the Change Control agreement.

14

15 Further, the CCP allows steps beyond escalation for seeking appropriate relief in
16 the event that either party (ALEC or BellSouth) is unsatisfied with the outcome of
17 an escalation. In the CCP document under Section 8.0 – Escalation Process (page
18 81), either party may:

- 19 - request mediation through the appropriate state regulatory agency, if
20 available, and/or;
- 21 - without necessity for prior mediation, file a formal complaint with the
22 appropriate agency requesting resolution of the issue.

23

1 DeltaCom has chosen not to take advantage of the CCP provisions for escalation
2 and dispute resolution as outlined above, but to bring the issues to this
3 arbitration.⁶

4
5 Q. IS FURTHER COMMISSION INVOLVEMENT IN THE CCP NECESSARY?

6
7 A. No. Several state regulatory bodies (specifically Florida, Georgia and Kentucky)
8 and the FCC, in the course of reviewing BellSouth's 271 applications, have
9 committed to monitoring the CCP to ensure compliance. Further, CCP Service
10 Quality Measurements ("SQMs") are in effect in all states to support regulatory
11 monitoring.

12
13 DeltaCom's efforts constitute a fishing expedition, with hopes that at least one
14 state regulatory body will take the bait and render a "DeltaCom" change control
15 decision – effectively bypassing the established regional CCP and contravening
16 earlier rulings by the various regulatory bodies that BellSouth's CCP meets the
17 FCC requirements for change management. It should not be permissible for an
18 individual ALEC to use the regulatory process – specifically, a Section 252
19 arbitration – for CCP issues in a manner other than that prescribed in Section 8.0
20 of the approved CCP guidelines. BellSouth asks this Commission to confirm that
21 BellSouth's CCP meets the FCC requirements for a change management process,

⁶ In its *Opinion No. PSC-02-1305-FOF-TL* in Docket No. 960786B-TL, attached to its *Comments* to the FCC in support of BellSouth's Florida/Tennessee 271 Application, this Commission stated, at page 85, "We also note that venues such as the Change Control Process, the FPSC Competitive Topics Forum, and the formal complaint process also provide options for addressing OSS problems encountered by ALECs." Thus, this Commission has confirmed what BellSouth claims in this proceeding regarding the appropriateness of the CCP as a venue for resolving these issues, and, further, adds yet another option (the Competitive Topics Forum for issues that are not within the scope of CCP) that is also a more appropriate venue for OSS issues than is this Section 252 arbitration.

1 and that the resolution of Issues 66 and 67 belongs within the operating guidelines
2 of the CCP, where those issues have been or currently are being addressed.

3
4 Notwithstanding BellSouth's general position that these three issues should not be
5 considered in a Section 252 arbitration proceeding, I will nonetheless address
6 each of them for this Commission. I will show that BellSouth provides
7 nondiscriminatory access to its OSS (Issue 9), and that not only is the CCP the
8 proper venue for the other two issues, but, in fact, the CCP is currently dealing, or
9 has dealt, with both of them.

10
11
12 **Issue 9: OSS Interfaces**

13
14 Q. GIVEN THAT BELLSOUTH HAS RECEIVED LONG DISTANCE RELIEF IN
15 ALL STATES WITHIN ITS REGION, HOW SHOULD THIS COMMISSION
16 VIEW THE IMPLICATIONS BROUGHT BY DELTACOM IN ITS ISSUES
17 MATRIX REGARDING BELLSOUTH'S PROVISION OF
18 NONDISCRIMINATORY ACCESS?

19
20 A. This issue is nothing more than a rehashing of a previously determined outcome.
21 As I indicated in my opening remarks, truly the most important aspect of any
22 discussion about BellSouth's nondiscriminatory access to OSS is what the FCC
23 and nine state regulatory bodies in BellSouth's region have contended –
24 specifically, that BellSouth provides nondiscriminatory access to its OSS as
25 prescribed by the FCC, and, thus, satisfies the requirements of Checklist Item 2.

1 DeltaCom's implications otherwise are irrelevant, yet despite BellSouth's repeated
 2 attempts to help DeltaCom understand that this issue already has been decided by
 3 the FCC, it inexplicably chose to include this issue in this arbitration.

4
 5 As long ago as 1997, in BellSouth's first state application for 271 relief,⁷
 6 BellSouth steadfastly maintained its compliance for the requirements as outlined
 7 in the Telecommunications Act of 1996 ("Act") and the FCC's interpretation of
 8 the Act,⁸ as BellSouth continues to do. Both the states and the FCC agree with
 9 BellSouth's interpretation of these requirements for nondiscriminatory access to
 10 both systems *and* information necessary to perform the requisite functions, and
 11 these bodies have found repeatedly that BellSouth is compliant in providing such.

12
 13 Q. THE WORD "PARITY" APPEARS IN DELTACOM'S PRE-FILED ISSUES
 14 MATRIX. IS THERE A PARITY ISSUE WITH BELLSOUTH'S OSS?

15
 16 A. Clearly, there is not such an issue – except in the collective DeltaCom mind.
 17 Parity is at the very heart of the FCC's test for nondiscriminatory access. It is *not*
 18 clear to BellSouth why DeltaCom includes in its issues matrix the phrase "same
 19 time frames and in the same manner as provisioned to BellSouth retail customers"

⁷ FCC Docket CCC 97-208, *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for the Provision of In-Region, InterLATA Services in South Carolina*, Affidavit of William N. Stacy, at paragraph 3, BellSouth stated the "electronic interfaces BellSouth offers to CLECs [ALECs] allow CLECs [ALECs] to access the information and functions in BellSouth's operations support systems in substantially the same time and manner as BellSouth's access for its own retail operations. These interfaces thus provide access to operations support systems, 'under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete.' FCC order, paragraph 315."

⁸ FCC *First Report and Order, CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, and subsequent reports.

1 because that is exactly what BellSouth already provides to ALECs.⁹ If there was
2 any evidence to the contrary, the FCC and nine state regulatory bodies would not
3 have ruled as they all did.

4
5 Further evidence of the impropriety of introducing this issue in an arbitration of
6 this nature is the fact that parity has also been previously addressed in a number
7 of performance measurements dockets in the states, and also validated by the FCC
8 in three BellSouth applications for the provision of long distance service. While
9 performance measurements should not be at issue in this arbitration, I am aware
10 (surely as is DeltaCom) that there are numerous metrics and associated penalties
11 in place to ensure that BellSouth complies with the requirements for
12 nondiscriminatory access to OSS.

13
14 Q. WHAT SHOULD THIS COMMISSION DO REGARDING THIS ISSUE?

15
16 A. If this Commission must address the issue at all, it should confirm its previous
17 validation of BellSouth's compliance with the requirements of nondiscriminatory
18 access to OSS. The Commission should accept BellSouth's proposed language
19 for the agreement that states BellSouth's commitment to comply with the
20 requirements of nondiscriminatory access, as all commissions have previously
21 confirmed BellSouth does.

22
23
24

⁹ BellSouth prefers the more correct FCC test that provides for "*substantially* the same time and manner" in that Commission's interpretation of the Act regarding nondiscriminatory access. (See Footnote 7 above)

1 **Issue 66: Testing of End User Data**

2

3 Q. DELTACOM SAYS IN ITS PRE-FILED ISSUES MATRIX THAT
4 BELLSOUTH SHOULD PROVIDE DELTACOM THE ABILITY TO TEST ITS
5 "END USER DATA TO THE SAME EXTENT AS DOES BELLSOUTH FOR
6 SUCH TESTING OF ITS OWN END USER DATA." PLEASE RESPOND.

7

8 A. Once again, this issue currently is being handled in the CCP, and BellSouth stands
9 by its response as indicated by DeltaCom in the issues matrix ("Change Request
10 is pending"). Change Request CR0896 (attached as Exhibit RMP-2) and parts of
11 CR0897 (attached as Exhibit RMP-3) will provide the enhanced functionality that
12 will satisfy DeltaCom's needs as DeltaCom has expressed to BellSouth in prior
13 discussions. CR0896 is slotted for Release 16.0 scheduled for implementation in
14 May 2004. Part of CR0897 has been implemented, and the remaining part will be
15 implemented in the ELMS6 industry Release 14.0 scheduled for November 2003.

16

17 Q. PLEASE PROVIDE THE DETAILS OF THESE TWO CHANGE REQUESTS
18 AS THEY RELATE TO DELTACOM'S NEEDS.

19

20 A. CR0896 for additional functionality was originally drafted by a group of CCP
21 member ALECs to "modify CAVE (CLEC [ALEC] Application Verification
22 Environment) to allow ALECs to test using their own company-specific data with
23 live ALEC-owned accounts and BellSouth test accounts without impacting
24 account status." (Quoted from Exhibit RMP-2) The ALECs submitted the change
25 request on August 1, 2002. After a review, BellSouth notified the ALECs, as

1 prescribed by the CCP, that BellSouth could not support the entire request due to
2 the development cost estimated at \$5.5M.¹⁰ At the same time, BellSouth said it
3 would be willing to support the first part of the request related to development of
4 the ability for ALECs to use their own accounts in CAVE, at an estimated cost of
5 \$1.2M for coding and the installation of software 'filters' in the production
6 environment.¹¹ BellSouth asked the ALECs if they were willing to consider that
7 portion of the request as a separate item. The ALECs agreed to that proposal.

8
9 The second part of CR0896, at an estimated cost of \$4.35M, required the
10 establishment of a new test site and billing system in order to provide an
11 environment whereby ALEC test orders could be processed through the
12 provisioning and billing steps. In working with the ALECs to find a solution to
13 this otherwise cost-prohibitive request, BellSouth made a proposal that involved
14 the individual ALECs taking the responsibility of establishing and paying for
15 lines that could be provisioned with whatever specifications the ALECs wanted.
16 These lines could be tested in the CAVE environment through whatever step the
17 ALEC desired, and then be reused in future testing scenarios.

18
19 The benefits to the ALEC were multiple: the ALEC would have control over how
20 and when those accounts were configured, installed, billed, etc., without the need
21 for any involvement by BellSouth or a 60-day advance notice to BellSouth.

22 Actual billing to the ALECs would also be generated, since these lines would bill

¹⁰ According to the CCP guidelines (see Exhibit RMP-1, page 54, item 3), BellSouth may reject an ALEC change request for cost, industry direction or lack of technical feasibility.

¹¹ The 'production' environment is defined as the versions of system or interface programs that are in current use by the ALECs for 'live' pre-ordering and ordering functions. On the other hand, the 'test' environment is where ALECs can test ordering and pre-ordering scenarios on current versions or, in a pre-release mode, the capabilities of an upcoming software release.

1 real charges to the ALECs just as any of their end user live accounts would. The
2 ALECs agreed to this modification of the original proposal.

3
4 The capabilities provided by the two parts of CR0896 give ALECs the “end-to-
5 end” testing scenario that DeltaCom has said it requires. The ALEC community
6 is satisfied by this change request, and DeltaCom never voiced dissent after the
7 agreement was made to proceed with this plan.¹² If there are functionality needs
8 for this type of CAVE testing that have not previously been expressed by
9 DeltaCom, I would expect that DeltaCom would submit a change request.

10
11 CR0897 for additional functionality was also originally drafted by a group of CCP
12 member ALECs, asking BellSouth to “expand CAVE to support increased CLEC
13 [ALEC] testing through multiple simultaneous versions of TAG API (pre-order
14 and order), and EDI/LSOG (i.e., LSOG2 & LSOG4) versions as well as Encore
15 Releases (i.e., Encore Release 10.4 as well as Release 10.5).” (Quoted from
16 Exhibit RMP-3) The ALECs submitted the change request on August 1, 2002,
17 and, after a review, BellSouth notified the ALECs that BellSouth could not
18 support the entire request due to the development cost estimated conservatively at
19 \$8.0M for a second, separate test environment necessary to meet the full request.
20 As with CR0896, BellSouth asked the ALECs to allow the change request to be
21 separated into two parts – one for the support of multiple versions of TAG API¹³
22 and EDI in CAVE, and one for support of multiple Encore releases.¹⁴

¹² The full chronology of the development of CR0896 is found in Exhibit RMP-2.

¹³ When XML replaces TAG API (phasing in between September 2003 and March 2004), CAVE will be equipped to provide equivalent capabilities for testing in XML that ALECs currently have for TAG API.

¹⁴ This description of the various versions of system and interface software programming is somewhat complex. While it provides the technical aspects of CR0897, it really says, in layman’s terms, that the ALECs as a group use multiple interfaces, and even those using the same interfaces may be using different

1 BellSouth offered to support the first part of the request. In fact, BellSouth has
2 already made available the ability for CAVE to support all TAG APIs currently in
3 production. While BellSouth continues to support two versions of EDI in
4 production, the capability to support two versions in CAVE will not be available
5 until November 2003.¹⁵

6
7 Due to cost estimates as stated above, BellSouth simply cannot support the second
8 part of CR0897. For each Encore release to be supported in CAVE, a separate
9 CAVE environment is required.¹⁶ To mitigate some of the perceived problems,
10 the Encore releases have a “backward compatibility” capability that allows ALEC
11 regression testing in CAVE at any time during the 45-day testing window. For
12 example, if Release 12.0 is in production, and Release 13.0 is in CAVE, the
13 functionality for 12.0 is wholly contained in the 13.0, with the exception of
14 changes to BellSouth's business rules (BBRs). If changes in the BBRs require
15 any coding changes to be made by the ALECs, those changes will place
16 limitations on the backward-compatibility of the releases.

17
18 This change request should satisfy the needs expressed by DeltaCom for testing
19 multiple versions of EDI. If there are functionality needs for this type of CAVE
20 testing that have not previously been expressed by DeltaCom, I would expect that
21 DeltaCom would submit a change request.

versions of that interface's software. BellSouth's CAVE takes that reality into consideration, without punishing the ALECs for using multiple interfaces and software versions.

¹⁵ BellSouth normally maintains two versions of EDI in production – as long as there are any ALECs that are using either of the versions. All EDI ALECs currently are using Issue 9, and the previous version – Issue 7 – has been removed from production to allow BellSouth to begin preparation for the next EDI version – ELMS6 – that will be implemented in industry Release 14.0 in November 2003. At that point, two versions of EDI will again be in production, and both will be available to test within CAVE.

¹⁶ The full chronology of the development of CR0897 is found in Exhibit RMP-3.

1 Q. ARE YOU AWARE OF ANY OTHER ISSUES THAT DELTACOM HAS
2 CONCERNING TESTING?

3
4 A. Yes. DeltaCom apparently feels that May 2004 is too long to wait for the
5 implementation of CR0896, and DeltaCom has no confidence that BellSouth will
6 deliver the functionality as BellSouth has said it would because DeltaCom will
7 not be able to see the requirements until 34 weeks prior to implementation of the
8 functionality. On both points, BellSouth is following the guidelines of the CCP.

9
10 The approved process provides the opportunity for the ALECs to prioritize, by
11 ALEC vote alone, the candidate change requests, and that vote, along with
12 available capacity, helps determine into which release a particular change request
13 will be slotted.¹⁷ Although the timeframe for implementation does not meet that
14 desired by DeltaCom, the FCC spoke on this issue as recently as December
15 2002¹⁸ by concluding “that BellSouth implements competitive LECs’ change
16 requests in a timely manner.” Further, the FCC stated, “as we have previously
17 recognized, OSS changes such as these are difficult to implement.” (Footnotes
18 omitted).¹⁹

19
20 DeltaCom’s concerns as to whether BellSouth will deliver the feature as it has
21 promised have no basis. As is the norm in release management within the CCP
22 (please see page 48 of Exhibit RMP-1), the *draft* user requirements for each
23 release (including those of each feature within the release) are not due to the

¹⁷ At the quarterly prioritization meeting on December 12, 2002, CR0896 was ranked #8 out of 21 change requests that were prioritized.

¹⁸ FCC Order 02-331, *BellSouth Florida/Tennessee Order*, WC Docket No. 02-307, at para. 116.

¹⁹ *Id.*

1 ALECs until a minimum of 34 weeks prior to the release implementation, and the
 2 *final* requirements are not due until 15 weeks prior to implementation. There is
 3 no evidence showing that BellSouth is predisposed to routinely or arbitrarily
 4 changing feature requirements.

5
 6 Q. HAS THE FCC FOUND BELLSOUTH'S TESTING ENVIRONMENT TO BE
 7 SATISFACTORY?

8
 9 A. The FCC has given multiple positive endorsements to BellSouth's testing
 10 environments.²⁰ An adequate testing environment is one of the requirements for
 11 meeting Checklist Item 2, and I have already established that BellSouth is
 12 compliant in that regard. In the *BellSouth Multistate Order*,²¹ in paragraph 187,
 13 the FCC found "that BellSouth's testing environments allow competing carriers
 14 the means to successfully adapt their systems to changes in BellSouth's OSS...no
 15 party raises an issue in this proceeding that causes us to change this
 16 determination...We are thus able to conclude, as we did in the *BellSouth*
 17 *Georgia/Louisiana Order*, that BellSouth's testing processes are adequate."
 18 (Footnotes omitted).

19
 20 Moreover, in its more recent *BellSouth Florida/Tennessee Order*,²² in paragraph
 21 125 and footnote 424, the FCC further notes BellSouth's expansion and
 22 improvement of the CAVE test bed "to ensure that the CAVE environment
 23 mirrored the internal test environment and the production environment." In that

²⁰ In its *Opinion* in Docket No. 960786B-TL, attached to its *Comments* to the FCC in support of BellSouth's Florida/Tennessee 271 Application, this Commission stated, at page 57, "We also note the positive steps BellSouth has taken to improve the functionality and availability of CAVE."

²¹ FCC Order No. 02-260, WC Docket No. 02-150, September 18, 2002.

²² FCC Order No. 02-331, WC Docket No. 02-307, December 19, 2002.

1 Order, the FCC addressed no specific ALEC complaints of a deficient CAVE
2 testing environment, as there were none in that proceeding.

3

4 Q. HOW SHOULD THIS COMMISSION VIEW DELTACOM'S COMPLAINT
5 ON THIS ISSUE?

6

7 A. Any attempt by DeltaCom to convince this Commission that the CCP's
8 prioritization process for this change request, or that the timeframe for
9 implementation of these change requests for enhanced functionality, is not in
10 accordance with the CCP should be discounted. Likewise, this Commission
11 should recognize that the submission of this issue for arbitration in this
12 proceeding is inappropriate and rule that any inclusion of language related to this
13 issue in the agreement is unnecessary.

14

15

16 **Issue 67: Availability of OSS**

17

18 Q. DOES BELLSOUTH ADHERE TO ITS POLICY OF MAKING OSS
19 INTERFACES AND SYSTEMS AVAILABLE TO ALECS ACCORDING TO
20 THE POSTINGS ON THE INTERCONNECTION WEBSITE?

21

22 A. It is BellSouth's policy to adhere to the operational hours and maintenance
23 windows posted for its OSS a year in advance on our website, and, barring
24 unforeseen events, we do so. There is no evidence to show that BellSouth is
25 predisposed to routinely or arbitrarily shut down the ALECs' – or, specifically

1 DeltaCom's – access to BellSouth's OSS, either during working hours or
2 otherwise. BellSouth is aware of a single event in December 2002 that concerned
3 DeltaCom, but even that single event does nothing to support a claim to the
4 contrary. The concern aroused by that event simply reflects DeltaCom's inability
5 to schedule its workforce when provided appropriate advance notification of
6 justifiable changes to BellSouth's schedule, in accordance with the CCP process.

7
8 As this Commission can easily appreciate, BellSouth's wholesale support
9 environment is heavily computer/software based, and it is not unusual for
10 circumstances to arise that require deviations from that posted schedule. Most
11 times, those circumstances are controllable. When a deviation becomes
12 necessary, BellSouth provides notification – in advance – to the ALECs, advising
13 them of the date, time, expected duration and reason for the change in schedule.

14
15 Unfortunately, systems also go down unexpectedly, and resulting downtime
16 cannot be anticipated. The language proposed by DeltaCom is onerous and
17 unrealistic, and simply does not allow BellSouth the flexibility to deal with
18 unexpected situations, or make prudent business decisions that are in the best
19 interest of both the ALEC community as a whole, and BellSouth. DeltaCom's
20 proposed language reflects a knee-jerk reaction to that single event that was, in
21 fact, no violation of BellSouth's obligation to provide nondiscriminatory access to
22 its OSS, nor of its adherence to the posted system downtimes. BellSouth's
23 proposed language allows flexibility for realistic operations, and protects the
24 ALECs at the same time because it is a commitment to do what BellSouth already
25 does.

1 While a release implementation is certainly not an emergency, neither did the
2 revised schedule for system downtime for this event fall into the 'unforeseen
3 events' category, as DeltaCom would have this Commission believe. This is
4 simply a case of BellSouth following the wishes of the ALEC community as a
5 whole – within the guidelines of the CCP – and being attacked for it.

6
7 Q. DID BELLSOUTH SHUT DOWN ITS OSS DURING NORMAL WORKING
8 HOURS WITHOUT CONSENT FROM THE ALECS, AS DELTACOM HAS
9 EXPRESSED DURING PAST DISCUSSIONS?

10
11 A. BellSouth absolutely did not shut down its OSS without the knowledge of, or the
12 proper notification to, the ALECs. In fact, the reason that BellSouth shut down
13 the OSS at noon on December 27, 2002 was due to a decision made by the ALEC
14 community on a CCP conference call on November 4, 2002.

15
16 Because of concerns for the complexity of Release 11.0, BellSouth and the
17 ALECs discussed the merits of delaying the Release 11.0 from the original
18 December 7, 2002 implementation date, and whether Release 11.0 should be
19 implemented during the weekend of December 28, 2002 (Option 1) or the
20 weekend of January 19, 2003 (Option 2). Following that conference call, an
21 ALEC vote favoring Option 1 determined that the implementation should occur
22 during the weekend of December 28, 2002 – a weekend between the Christmas
23 and New Year's holidays. The minutes of the November 4, 2002 meeting,
24 confirming the ALECs' selection of Option 1 and DeltaCom's participation on
25 that call, are attached as Exhibit RMP-4.

1 On November 22, 2002, with more than the 30-day advance notification required
2 by the CCP,²³ BellSouth issued Carrier Notification SN91083483 to confirm the
3 new dates of the implementation of Release 11.0 and to notify the ALECs of the
4 associated downtime of all electronic interfaces, beginning at **12:00 Noon EST**
5 **on Friday, December 27, 2002**. Further, on December 6, 2002, that Carrier
6 Notification was revised to add information about the downtime of the LCSC fax
7 servers and telephone lines, and to change the start of the systems downtime to
8 1:00 p.m. on the 27th. Both Carrier Notifications are attached as Exhibits RMP-5
9 and RMP-6. Both notifications were sent well enough in advance to allow
10 ALECs to plan properly for the downtime, and no ALEC – including DeltaCom –
11 voiced any opposition at that time.

12
13 The final result was a successful implementation of Release 11.0. It should also
14 be noted that one additional aspect of the decision for the ALECs was the
15 anticipated light ALEC activity during the holiday season. If anything, it was
16 BellSouth's employees who were inconvenienced with the selection of that date
17 by the ALECs because they had to work during the holiday season.

18
19 Q. HOW SHOULD THIS COMMISSION ACT UPON THIS ISSUE?

20
21 A. This Commission should not address this issue in this arbitration, nor require
22 BellSouth to amend or in any way change the CCP guidelines regarding the
23 scheduling and posting of interface and system downtime. If this Commission is

²³ According to the CCP guidelines (see Exhibit RMP-1, page 47, Step 10, item 3), "Software Release Notifications will be provided 30 calendar days or more in advance of the implementation date." If that release requires changes to system availability (as this release did), such information will also be provided in that notification (as it was for this release).

1 determined to address this issue in a Section 252 arbitration, then this
2 Commission should adopt BellSouth's language that reflects an effective process
3 that currently exists, is approved, and, most importantly, works.
4
5

6 Q. DO YOU HAVE ANY CONCLUDING COMMENTS?
7

8 A. Yes. As my testimony clearly reflects, it is BellSouth's position that none of the
9 OSS issues brought to this arbitration by DeltaCom belong here. The issues have
10 all been addressed previously by the FCC and the state regulatory authorities in
11 271 hearings and orders, and/or currently by the CCP's approved and compliant
12 regional process. This Commission should not be persuaded to allow DeltaCom
13 to use this arbitration to seek remedy for issues that are misplaced in a Section
14 252 negotiation. This concludes my testimony.

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF RONALD M. PATE
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 030137-TP
JUNE 25, 2003

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. AND YOUR BUSINESS ADDRESS.

A. My name is Ronald M. Pate. I am employed by BellSouth Telecommunications, Inc. ("BellSouth") as a Director, Interconnection Operations. In this position, I handle certain issues related to local interconnection matters, primarily operations support systems ("OSS"). My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony – with exhibits – on May 19, 2003.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to address various concerns and issues raised in the direct testimony filed by ITC^DeltaCom Communications, Inc. ("DeltaCom") – specifically that of DeltaCom's witness, Mary Conquest – in

1 areas related to OSS. I will respond to Ms. Conquest's allegations made against
2 BellSouth in the following:

3 Issue 9 – Nondiscriminatory Access to OSS Interfaces

4 Issue 66 – Testing of End User Data

5 Issue 67 – Availability of OSS Systems

6

7 This rebuttal testimony should be read in conjunction with my direct testimony.

8

9 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS FOR THE
10 COMMISSION?

11

12 A. Yes. Ms. Conquest's testimony provides very little, if any, additional support for
13 what DeltaCom filed in its issues matrix. As such, I rely on my direct testimony
14 for response to the bulk of her testimony. I reiterate that the impasse between the
15 two companies remains primarily due to DeltaCom's continued insistence upon
16 adding the superfluous interconnection agreement language that I discussed in my
17 direct testimony. Moreover, and as I stressed in my direct testimony, these issues
18 have been or are currently being addressed in the proper forums and have no place
19 in a Section 252 arbitration.

20

21

22 **Issue 9: OSS Interfaces**

23

1 Q. DOES BELLSOUTH PROVIDE INTERFACES TO OPERATIONAL
2 SUPPORT SYSTEMS (OSS) THAT HAVE FUNCTIONS EQUAL TO THAT
3 PROVIDED TO ITS RETAIL DIVISION?
4

5 A. Yes. Ms. Conquest's statements at page 5, lines 5-19 concerning parity are
6 misguided. As I indicated in my direct testimony at page 8, line 13, parity is at
7 the heart of the unanimous state and federal commission rulings that BellSouth
8 provides nondiscriminatory access to its OSS. There have been no contrary
9 rulings since those state commissions and the FCC supported BellSouth's 271
10 applications and granted long-distance relief.
11

12 As all parties are aware, and as I stated in my direct testimony at page 9, lines 9-
13 12, there are numerous metrics and associated remedies already in place in the
14 Commission-approved SQM and SEEMs plans to ensure BellSouth's ongoing
15 compliance with regard to nondiscriminatory access. BellSouth remains
16 committed to providing nondiscriminatory access to its OSS, and no additional
17 contractual language is necessary beyond what is already contained in the
18 interconnection agreement.
19

20 Q. AT PAGE 5, LINE 17 OF HER TESTIMONY, MS. CONQUEST SAYS THAT
21 "ALL MANDATED FUNCTIONS, I.E., FACILITY CHECKS, SHOULD BE
22 PROVIDED IN THE SAME TIMEFRAMES IN THE SAME MANNER AS
23 PROVIDED IN BELLSOUTH'S RETAIL CENTERS." PLEASE RESPOND.
24

1 A. I am surprised that Ms. Conquest chose to use the facility check example in
2 Florida. BellSouth already provides facility checks for ALECs in Florida, and
3 offers to the ALECs better functionality in that regard than it does to its own retail
4 units (BellSouth *does not* provide this functionality to its retail units). From a
5 higher level perspective, it all gets back to whether BellSouth provides
6 nondiscriminatory access to its OSS, which it does, and that includes access to
7 functionality in parity or, in this specific example, better than parity, with what
8 BellSouth provides to itself, in *substantially* the same time and manner.

9

10

11 **Issue 66: Testing of End User Data**

12

13 Q. PLEASE RESPOND TO MS. CONQUEST'S CLAIM AT PAGE 11, LINE 2 OF
14 HER TESTIMONY THAT "BELLSOUTH ENJOYS THE ABILITY TO TEST
15 ITS DATA 'END TO END' USING THE TOOLS AND FORMAT THAT WILL
16 BE IN ITS PRODUCTION SYSTEMS.

17

18 A. BellSouth has built into the CLEC [ALEC] Application Verification Environment
19 ("CAVE") test bed the ability for ALECs to test data, or types of service requests,
20 up to a point that mirrors production, or a 'live' environment. Beyond that, the
21 production systems for provisioning and billing are the same systems that
22 BellSouth uses in its own 'live' environment, and those systems and functions
23 have already been tested (on behalf of the ALECs and BellSouth) to ensure
24 service order flow, completion and billing. In that regard, the ALECs *do* have the
25 same 'end-to-end' testing capability, as does BellSouth. CAVE is an appropriate

1 and robust testing environment for CLECs, and issues with CAVE should be
2 addressed in the CCP.

3

4 Even though BellSouth will implement the CCP change requests that I discussed
5 in my direct testimony at pages 10-13 that will enhance the functionality of
6 CAVE, testing parity should not be an issue. I reiterate from pages 15-16 of that
7 testimony that the state commissions and the FCC have ruled that BellSouth's
8 testing environment meets established criteria. Requests for additional testing
9 functionality correctly belong in the CCP, and inclusion of any contractual
10 language in an interconnection agreement is both inappropriate and unnecessary.

11

12

13 **Issue 67: Availability of OSS Systems**

14

15 Q. IN HER TESTIMONY AT PAGE 12, LINE 7, MS. CONQUEST SAYS THAT
16 BELL SOUTH "SHOULD FIRST OBTAIN THE CLECS' [ALECS']
17 APPROVAL OR CONSENT" IF IT WANTS TO SCHEDULE A SYSTEM
18 OUTAGE DURING NORMAL BUSINESS HOURS. PLEASE RESPOND.

19

20 A. I agree, and, in the rare situations in which a shutdown during regular business is
21 required, BellSouth does obtain the ALECs' approval or consent, as was the case
22 in the event cited by both Ms. Conquest (at page 11, line 21) and me (at page 18,
23 line 11) in our direct testimonies. As I previously explained, the ALECs were
24 part of the decision-making process in the rescheduling of the release in question,
25 ALECs were given proper notification to the altering of the posted schedule

1 according to the CCP guidelines, and no ALEC – including DeltaCom – voiced
2 any opposition at that time.

3
4 As with the other issues I have addressed in both my direct and rebuttal
5 testimonies, additional language suggested by DeltaCom on this topic is, at best,
6 unnecessary, and, at worst, onerous. On this issue, BellSouth would lose the
7 flexibility to deal with unexpected situations, and would not be able to make
8 prudent business decisions that are in the best interest of the ALEC community as
9 a whole if BellSouth is required to include DeltaCom's restrictive language. The
10 current language in the interconnection agreement is reasonable and sufficient,
11 and DeltaCom has not demonstrated otherwise.

12

13 This concludes my rebuttal testimony.

1 BY MR. SHORE:

2 Q Mr. Pate, have you prepared a summary of your
3 testimony?

4 A Yes, I have.

5 Q Would you give that now, please?

6 A Certainly. Good afternoon. My testimony covers
7 Issues 9, 66, and 67. While providing an overview of
8 BellSouth's position on each in a moment, I'd like first to
9 address why BellSouth believes none of these issues should be
10 resolved in a manner proposed by DeltaCom. Issue 9 involves
11 nondiscriminatory access to operation support systems, commonly
12 referred to as OSS. Issues 66 and 67 collectively relate to
13 operational issues more appropriately handled within the
14 BellSouth's change control process or CCP. Although the
15 Commission has determined that it will hear these issues in
16 this proceeding, BellSouth previously addressed
17 nondiscriminatory access and the change control process in the
18 context of its application for long distance relief in the
19 Florida Public Service Commission's Docket Number 960786-TL,
20 specifically under the requirements of Checklist Item Number 2.

21 In issuing its September 25th, 2002 opinion in
22 BellSouth's 271 case, the Commission state on Page 84 that, and
23 I quote, we believe BellSouth provides ALECs nondiscriminatory
24 access to its OSS. As a result, it is our opinion that
25 BellSouth has satisfied the OSS requirements of Section 271 of

1 the 1996 Telecommunications Act, end quote. That point was
2 reiterated in this Commission's comments to the FCC in support
3 of BellSouth's Florida/Tennessee application for long distance
4 relief.

5 The FCC agreed with the findings of the Commission
6 and stated in Paragraph 67 of its Florida/Tennessee 271 order,
7 and I quote, we find that the evidence presented in this record
8 shows that BellSouth provides nondiscriminatory access to its
9 OSS functions for preordering, ordering, provisioning,
10 maintenance and repair and billing. We base this determination
11 on BellSouth's actual performance in Florida and Tennessee, end
12 quote.

13 In Florida's 271 docket, the Commission carefully
14 reviewed BellSouth's change control process to determine if
15 BellSouth demonstrated it has a change management process that
16 affords an efficient competitor a meaningful opportunity to
17 compete. According to the FCC standard, a Bell operating
18 company must show first that information relating to change
19 management process is clearly organized and readily accessible
20 to competing carriers; second, that competing carriers had
21 substantial input in the design and ongoing operation of the
22 process; third, that the process defines a procedure for
23 resolution of change management disputes; fourth, the
24 availability of a stable testing environment that mirrors
25 production; and fifth, the adequacy of documentation that

1 allows a competitor to build an electronic gateway.

2 The FCC noted in Paragraph 108 of its
3 Florida/Tennessee 271 order that it had reached the same
4 conclusions, and I quote, as did the state commissions that
5 BellSouth meets the requirements of Checklist Item 2 with
6 regard to change management in Florida and Tennessee. The
7 record in this proceeding shows that BellSouth's change control
8 process and its performance under this process is comparable
9 to, if not better than, BellSouth's performance in BellSouth's
10 Georgia/Louisiana order and the BellSouth multistate order, end
11 quote.

12 Any changes to OSS systems or the change control
13 process will impact the CLECs and BellSouth on a region-wide
14 basis. Disputed issues for which decisions are made that
15 affect all CLECs in the region should be addressed in a
16 separate proceeding before a state regulatory authority per the
17 dispute resolution process of the change control process, not
18 in a Section 252 interconnection agreement arbitration between
19 only two parties. DeltaCom admittedly has not availed itself
20 such a remedy and seeks to circumvent that part of the process
21 by raising the CCP issues here. BellSouth also contends that
22 it is inappropriate to include in an interconnection agreement
23 any language that addresses specific operational issues that
24 are part of the CCP.

25 Issues 66 and 67 are operational issues being

1 addressed within the CCP. DeltaCom's surprising decision to
2 raise the issues in the context of a Section 252 arbitration is
3 an attempt at an end-run to the process established to address
4 requests made by CLECs for enhanced OSS functionality as well
5 as those requests initiated by BellSouth or arising from
6 industry changes in our regulatory mandates. A ruling for
7 DeltaCom in either of these CCP issues puts the interest of a
8 single CLEC ahead of those of the CLEC community as a whole and
9 violates the very basis of a collaborative CCP.

10 Now to briefly address each issue. Issue 9,
11 nondiscriminatory access to operation support systems.
12 BellSouth understands and is fully committed to its obligations
13 to provide nondiscriminatory access to OSS and all that that
14 entails in the eyes of the state commissions and the FCC.
15 Although DeltaCom would have this Commission believe, BellSouth
16 feels it must provide only information. Furthermore, BellSouth
17 is willing to continue to include in Section 1.1 of Attachment
18 6 in the interconnection agreement contractual language that is
19 straight out of the federal act, and it states that BellSouth
20 will provide nondiscriminatory access.

21 DeltaCom wants additional and unessential language on
22 an already established point. A ruling in favor of DeltaCom
23 will require contractual language that it seeks the language
24 defining nondiscriminatory access and BellSouth's obligations
25 as prescribed in prior rulings by this Commission as well as

1 that of the other state authorities and the FCC.

2 Although DeltaCom will try to convince the Commission
3 that the 271 rulings are in the past, that it needs protection
4 for the future, performance measure dockets are still open in
5 the states and the FCC has an enforcement bureau. All of which
6 will serve to help ensure that BellSouth continues to meet its
7 nondiscriminatory obligations going forward. This Commission
8 itself noted in its 271 opinion, also on Page 84, that it
9 believes that sufficient options are available for dealing with
10 potential future deterioration in OSS service quality and that
11 the SEEM plan provides a strong and valuable tool to remedy
12 such. Additional language in the interconnection agreement
13 such as that proposed by DeltaCom is simply unnecessary and may
14 cause confusion and conflict.

15 Issue 66 relates to testing. Again, this deals with
16 the issue where DeltaCom's refusal to follow the CCP where the
17 issue currently is being handled. I discussed in my prefiled
18 testimony two CCP change requests that had been or will be
19 implemented that will satisfy, at least to the best of
20 BellSouth's knowledge and understanding, DeltaCom's testing
21 needs.

22 Ms. Conquest now suggests to this Commission that it
23 give a ruling forcing BellSouth to implement a change request
24 that was appropriately rejected due to the millions of dollars
25 of cost. The Commission and the FCC found that BellSouth

1 provides a stable testing environment and processes that allow
2 CLECs the means to successfully adapt their system to changes
3 in BellSouth's operation support systems. Contrary to
4 Ms. Conquest's opinion and as I quoted from the FCC in my
5 testimony, the CAVE testing environment mirrors the production
6 environment, and BellSouth's CAVE testing scenarios are
7 substantially similar to actual production orders.

8 Ms. Conquest also attempts to make a case that
9 BellSouth's retail units are able to perform end-to-end testing
10 in a manner exceeding what DeltaCom can do, but she is wrong.
11 Despite her unsubstantiated claims and as I described in my
12 discovery responses to this Commission, BellSouth's retail
13 units do not perform end-to-end testing, nor is the testing
14 environment out of parity as she would suggest.

15 CLECs and BellSouth retail units both test their
16 abilities to deliver a correct order to BellSouth's service
17 order communications systems, SOCS, S-O-C-S. Neither CLECs nor
18 BellSouth's retail units test through completion and billing
19 because BellSouth has already performed that testing as a
20 portion of the order flow on behalf of both CLECs and
21 BellSouth's retail units before products and services are made
22 available for ordering. It is unclear to me why DeltaCom
23 doesn't understand that or why it feels it is entitled to more.
24 The current testing environment with the addition of the change
25 request scheduled for implementation should meet DeltaCom's

1 needs. If for some reason these approved change requests don't
2 meet its needs or in the case it has concerns over the rejected
3 change requests, DeltaCom should follow the prescribed steps in
4 the change control process and either submit a change request
5 for additional functionality or escalate the rejection decision
6 appropriately.

7 The final issue is 67 regarding the availability of
8 BellSouth's operation support systems. DeltaCom complaints
9 about a one-time event when BellSouth shutdown its operation
10 support systems on a Friday afternoon of the weekend between
11 last Christmas and New Year's. DeltaCom fails to mention that
12 CLECs voted to have BellSouth implement a high-risk complex
13 release that weekend which altered a posted system downtime
14 schedule and required more time than is usually necessary for a
15 standard release or that BellSouth followed the change control
16 process by providing a proper 30-day advance notification for
17 this anomaly occurrence. DeltaCom know wants special language
18 in its interconnection agreement that effectively says that
19 BellSouth cannot abide by the wishes of the change control
20 process but must instead follow the opinion of one CLEC, in
21 this case, DeltaCom. And DeltaCom makes its unilateral demand
22 despite its lack of any evidence that this is a common
23 occurrence that requires the language DeltaCom seeks.

24 Isolated incidents, particularly those that are not
25 proven to be noncompliant, are not sufficient to overcome

1 performance that demonstrates that BellSouth satisfies the
2 statutory nondiscrimination requirement. So, in summary, as
3 cited in my prefiled testimony, eight other state regulatory
4 authorities in BellSouth's region and the FCC in all three of
5 BellSouth's long distance applications found, as did this
6 Commission, that BellSouth provides nondiscriminatory access to
7 operation support systems which includes its compliant change
8 management and testing processes. The record is clear and
9 BellSouth simply asks this Commission to confirm BellSouth's
10 compliance with the FCC standard.

11 Further, when all the testimony is heard regarding
12 the operational issues, this Commission should agree with
13 BellSouth that the change control process is the more
14 appropriate forum in which to address them.

15 And finally, if any interconnection agreement
16 language is required for any of these issues, this Commission
17 should accept BellSouth's proposed language as that which is
18 more appropriate for an agreement between two carriers. Thank
19 you for your time. That concludes my summary.

20 MR. SHORE: Mr. Pate is available for cross.

21 COMMISSIONER DEASON: Okay. Before we begin, just
22 let me indicate, it's my desire that we recess for the evening
23 at this point with the understanding that we can conclude this
24 hearing tomorrow. Is that a fair assessment?

25 MS. EDWARDS: Yes.

1 MR. SHORE: I think based on the way this has gone in
2 other states we'll be done by lunch -- I'd be surprised if
3 we're not done by lunch tomorrow, quite frankly, unless
4 DeltaCom does something drastically different on cross.

5 MS. EDWARDS: Well, I can't comment on that and I
6 won't. So I'm not going to commit to noon.

7 COMMISSIONER DEASON: I'm not expecting you to. So
8 what we're going to do, we're going to recess for the evening,
9 but we're going to begin tomorrow at 9:00 a.m., not 9:30; 9:00
10 a.m., and maybe we will be finished by lunch. So with that, we
11 will adjourn for the evening. See you tomorrow.

12 (Hearing adjourned at 5:10 p.m.)

13 (Transcript continues in sequence with Volume 4.)

14 - - - - -

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, TRICIA DeMARTE, RPR, Official Commission Reporter, do
6 hereby certify that the foregoing proceeding was heard at the
7 time and place herein stated.

8

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14

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

20

21 DATED THIS 15th DAY OF SEPTEMBER, 2003.

22

23

Tricia DeMarte

24

TRICIA DeMARTE, RPR
FPSC Official Commission Reporter
(850) 413-6736

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