

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by ITC^DeltaCom
Communications, Inc. d/b/a
ITC^DeltaCom for arbitration of
certain unresolved issues in
interconnection negotiations
between ITC^DeltaCom and
BellSouth Telecommunications,
Inc.

DOCKET NO. 990750-TP
ORDER NO. PSC-99-1589-PCO-TP
ISSUED: August 13, 1999

ORDER ESTABLISHING PROCEDURE

On June 11, 1999, ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (ITC^DeltaCom) filed a Petition for Arbitration pursuant to 47 U.S. C 252(b) to arbitrate certain unresolved issues in the interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc. (BellSouth). On July 6, 1999, BellSouth filed its response. This matter is currently set for hearing on October 27-29, 1999.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

DOCUMENT NUMBER-DATE

09626 AUG 13 99

PSC-RECORDS/REPORTING

The hearing in this docket is set for October 27 - 29, 1999. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by October 20, 1999. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 200, and requests for production of documents, including all subparts, shall be limited to 200.

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

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified

on a composite basis, and the witness sponsoring each;

- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held in this docket at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the

matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

Attached to this order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | | |
|----|---|---------------------|
| 1) | Petitioner's and Respondent's direct testimony and exhibits | August 16, 1999 |
| 2) | Rebuttal testimony and exhibits | September 13, 1999 |
| 3) | Prehearing Statements | September 20, 1999 |
| 4) | Prehearing Conference | October 11, 1999 |
| 5) | Briefs | November 19, 1999 |
| 6) | Hearing | October 27-29, 1999 |

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

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

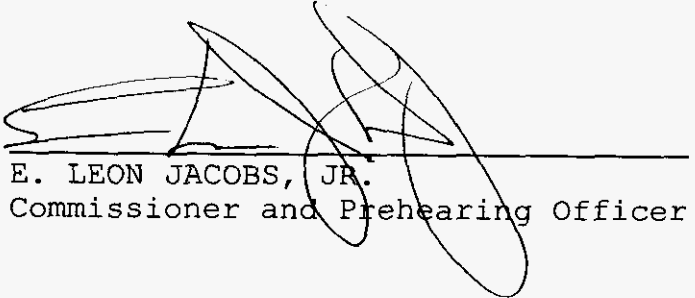
Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

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ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 13th day of August, 1999.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT A

- 1.* Should BellSouth be required to comply with the performance measures and guarantees for pre-ordering/ordering, resale and unbundled network elements (UNEs), provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions and the bona fide request processes as set forth fully in Attachment 10 of Exhibit A to this petition?
- 2.* Should BellSouth be required to waive any nonrecurring charges when it misses a due date?
3. a) What is the definition of parity?
b) Pursuant to this definition, should BellSouth be required to provide the following:
 - 1) Operational Support Systems (OSS),
 - 2) UNEs,
 - 3) White Page Listing, and
 - 4) Access to Numbering Resources
 - 5) An unbundled loop using Integrated Digital Loop Carrier (IDLC) technology;
 - 6) Interconnection;
 - 7) Service intervals on winbacks;
 - 8) Priority guidelines for repair and maintenance and UNE provisioning; and
 - 9) White Page Listings to independent third party publishers?
4. Should BellSouth be required to provide the specifications to enable ITC^DeltaCom to parse the Customer Service Records (CSRs)? If so, how?
5. Should BellSouth be required to provide a download of the Regional Street Address Guide (RSAG)? If so, how?
6. Should BellSouth be required to provide changes to its business rules and guidelines regarding resale and UNEs at least 45 days in advance of such changes being implemented? If so, how?
- 7.* Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue

providing those UNEs and combinations that it is currently providing to ITC^DeltaCom under the interconnection agreement previously approved by this Commission?

- 8.* a)* Should BellSouth be required to provide to ITC^DeltaCom extended loops or the loop/port combination?
b)* If so, what should the rates be?
9. Should BellSouth be required to provide UNE testing results to ITC^DeltaCom? If so, how?
10. Should the parties be required to perform cooperative testing within two hours of a request from the other party?
11. Should BellSouth be required to provide NXX testing functionality to ITC^DeltaCom? If so, how?
12. What should be the installation interval for the following loop cutovers:
 - a) single
 - b) multiple
13. Should SL1 orders without order coordination be specified by BellSouth with an a.m. or p.m. designation?
- 14.* Should the party responsible for delaying a cutover also be responsible for the other party's reasonable labor costs?
15. Should BellSouth be required to designate specific UNE Center personnel for coordinating orders placed by ITC^DeltaCom?
- 16.* Should each party be responsible for the repair charges for troubles caused or originated outside of its network? If so, how should each party reimburse the other for any additional costs incurred for isolating the trouble to the other's network?
17. Should BellSouth be responsible for maintenance to HDSL and ADSL compatible loops provided to ITC^DeltaCom?
18. If a customer orders a loop which requires special construction charges be paid for by ITC^DeltaCom, and BellSouth reuses the same facilities to provide service to the

customer for itself or on behalf of another CLEC, should BellSouth be required to refund ITC^DeltaCom the amount ITC^DeltaCom paid to BellSouth for Special Construction for that customer?

19. Under what conditions, if any, should BellSouth be required to reimburse any costs incurred by ITC^DeltaCom to accommodate modifications made by BellSouth to an order after sending a firm order confirmation (FOC)?
- 20.*
 - a) Should BellSouth be required to coordinate with ITC^DeltaCom 48 hours prior to the due date of a UNE conversion?
 - b)* If BellSouth delays the scheduled cutover date, should BellSouth be required to waive the applicable non-recurring charges?
 - c) Should BellSouth be required to perform dial tone tests at least 48 hours prior to the scheduled cutover date?
21. Should BellSouth be required to establish Local Number Portability (LNP) cutover procedures under which BellSouth must confirm with ITC^DeltaCom that every port subject to a disconnect order is worked at one time?
22. How should "order flow-through" be defined?
23. Should BellSouth be required to pay reciprocal compensation to ITC^DeltaCom for all calls that are properly routed over local trunks, including calls to Internet Service Providers (ISPs)?
24. What should be the rate for reciprocal compensation?
25. Should ITC^DeltaCom and BellSouth be required to follow the ATIS/OBF business rules?
26. Should BellSouth be required to provide ITC^DeltaCom access to Universal Service Order Codes (USOCs), Field Identifiers (FIDs) and other information necessary to process orders in a downloadable format?
27. Should BellSouth be required to maintain both the current and the next previous version of an electronic interface?

28. Should ITC^DeltaCom have at least 90 days advance notice prior to BellSouth discontinuing an interface?
 29. If ITC^DeltaCom needs to reconnect service following an order for a disconnect, should BellSouth be required to reconnect service within 48 hours?
 30. Should BellSouth be required to maintain UNE/LCSC hours from 6 a.m. to 9 p.m.?
 31. Should BellSouth be required to provide a toll free number to ITC^DeltaCom to answer questions concerning BellSouth's OSS proprietary interfaces from 8 a.m. to 8 p.m.?
 32. What information should be included in the Firm Order Confirmation (FOC)?
 33. Should the Parties establish escalation procedures for ordering/provisioning problems?
 34. What type of repair information should BellSouth be required to provide to ITC^DeltaCom such that ITC^DeltaCom can keep the customer informed?
 35. Should both parties be required to train their technicians on the procedures contained in the interconnection agreement which sets forth the manner in which each party must treat the other's customers?
 36. Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed?
 37. Should ITC^DeltaCom and its agents be subject to stricter security requirements than those applied to BellSouth's agents and third party outside contractors?
 38. What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?
 39. What are the appropriate recurring and non-recurring rates and charges for:
 - a) two-wire ADSL/HDSL compatible loops,
 - b) four wire ADSL/HDSL compatible loops, or
 - c) two-wire SL1 loops.
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40. a) Should BellSouth be required to provide:
- 1) two-wireSL2 loops or
 - 2) two-wireSL2 loop Order Coordination for Specified Conversion Time?
- b) If so, what are the appropriate recurring and non-recurring rates and charges?
- 41.* Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?
42. What should be the appropriate recurring and non-recurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket No. CC 98-147?
43. Should BellSouth be permitted to charge for ITC^DeltaCom for conversions of customers from resale to unbundled network elements? If so, what is the appropriate charge?
44. What procedures should ITC^DeltaCom and BellSouth adopt for meet-point billing?
45. Which party should be required to pay for the Percent Local Usage (PLU) and Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?
- 46.* Should the losing party to an enforcement proceeding or proceeding for breach of the interconnection agreement be required to pay the costs of such litigation?
- 47.* What should be the appropriate standard for limitation of liability under the interconnection agreement?
- 48.* Should language covering tax liability be included in the interconnection agreement, and if so, whether that language should simply state that each Party is responsible for its tax liability?
- 49.* Should BellSouth be required to compensate ITC^DeltaCom for breach of material terms of the contract?
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50.** Should the Parties continue operating under existing local interconnection arrangements?

* Denotes issues currently in dispute between the Parties.

** ITC^DeltaCom requests that this issue be stated as follows. BellSouth disagrees.

- (a) Should the current interconnection agreement language continue regarding cross-connect fees, reconfiguration charges or network redesigns, and NXX translations?
- (b) What should be the definition of the terms local traffic, and trunking options?
- (c) What parameters should be established to govern routing ITC^DeltaCom's originating traffic and each party's exchange of transit traffic?
- (d) Should the parties implement a procedure for binding forecasts?