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September 16, 1999

BY HAND DELIVERY THIS DATE

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Blanca S. Bayo
Director, Division of Records and Recording
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket #990750-TP; Petition for Arbitration by ITC^DeltaCom Communications

Dear Ms. Bayo:

On behalf of ITC^DeltaCom Communications, Inc., enclosed for filing in the referenced docket are an original and 16 copies of Petitioner's Motion to Compel. Please file stamp the extra enclosed copy and return it to our runner. Thank you for your assistance.

Sincerely,

HUEY, GUILDAY & TUCKER, P.A.

J. Andrew Bertron, Jr.

AFA _____ IAB/
APP _____ Enclosures
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CMU ferros ITC\clerk5.ltr.wpd
CTR _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	
Petition for Arbitration of ITC^DeltaCom)	Docket No.990750-TP
Communications, Inc. with BellSouth)	
Telecommunications, Inc. Pursuant to the)	
Telecommunications Act of 1996)	

PETITIONER ITC^DELTACOM'S MOTION TO COMPEL

Petitioner, ITC^DeltaCom Communications, Inc. (hereinafter "ITC^DeltaCom"), through its undersigned attorneys, pursuant to Rule 1.380(a), Fla. R. Civ. P., and Rule 28-106.206, Florida Administrative Code, moves the Prehearing Officer for entry of an Order compelling BellSouth Telecommunications, Inc. ("BellSouth") to produce certain documents, and in support states as follows:

1. ITC^DeltaCom served its First Request for Production of Documents on counsel for BellSouth on August 11, 1999.

2. On August 23, 1999, BellSouth served its general, non-specific objections to ITC^DeltaCom's document request. On September 10, 1999, BellSouth served its specific Responses and Objections to ITC^DeltaCom's document request.

3. In its response, BellSouth declined to fully produce all documents responsive to ITC^DeltaCom's document request #4. The request and BellSouth's response are as follows:

ITC^DeltaCom Request: BellSouth's recent ADSL FCC tariff filing, Transmittal No. 513, with Exhibits A and B (Proprietary Version) and BellSouth's ADSL tariff filing that was effective September 8, 1998, with Exhibits A and B (Proprietary Version).

BellSouth Response: BellSouth objects to the Request on the grounds that it seeks information concerning BellSouth's retail services, which is not relevant to any issue in this preceding nor is it reasonably calculated to lead to the discovery

DOCUMENT NUMBER-DATE

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of admissible evidence. Although the Commission has been asked to arbitrate rates for a certain limited number of unbundled network elements, the rates that a BellSouth end-user customer pays for a BellSouth retail service is irrelevant to this issue because, as the FCC has repeatedly held, unbundled network elements do not have a retail analogue. *See, In re: Application of BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket 98-121, 13 FCC Rcd 20599 ¶ 87 (Oct. 13, 1998); *See, In re: Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region, InterLATA Services in South Carolina*, CC Docket 97-208 13 FCC Rcd 539 ¶ 98 (Dec. 24, 1997); and *In re: Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended to Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-137, 12 FCC Rcd 20543 ¶ 141 (Aug. 19, 1997).

4. ITC^DeltaCom's request seeks information relevant to one of the issues to be arbitrated by the Commission in this proceeding: the appropriate BellSouth rates and charges for ADSL (asynchronous digital subscriber line). BellSouth provides ADSL through its FCC Tariff No.1 directly to ISPs (internet service providers). Document request #4 seeks proprietary information recently filed by BellSouth with the FCC in connection with this tariff. Some of the costs included in the ADSL FCC tariff filing are the same costs necessary for providing the UNE (unbundled network element) ADSL-compatible loop. Therefore, this information is directly relevant to ITC^DeltaCom's case.

5. Although it objects to ITC^DeltaCom's request on relevance grounds, BellSouth provided ITC^DeltaCom with public copies of its FCC filing "in an effort to be responsive." This information is not responsive, however, in that it omits the proprietary material necessary for ITC^DeltaCom to conduct its analysis. It should be noted that the parties have entered into a Protective Agreement, dated August 13, 1999, under which such proprietary information may be provided.

6. Given the short time frame prior to commencement of the arbitration hearing on October 27, 1999, ITC^DeltaCom respectfully requests that BellSouth be directed to provide the requested information no later than September 30, 1999.

WHEREFORE, ITC^DeltaCom respectfully requests that the Prehearing Officer enter an order compelling BellSouth to fully respond to ITC^DeltaCom's document request #4 and produce all documents requested.



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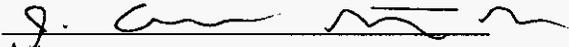
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished this 16 day of September, 1999 to the following:

Diana Caldwell
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