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September 23, 1999

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 990750-TP (ITC^DeltaCom/BellSouth Arbitration)

Dear Ms. Bayó:

Enclosed is the original and fifteen copies of BellSouth Telecommunications, Inc.'s Pre-Hearing Statement, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Thomas B. Alexander*  
Thomas B. Alexander (TW)

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU 1
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- MAS 2
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- SEC 1
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

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**CERTIFICATE OF SERVICE  
Docket No. 990750-TP**

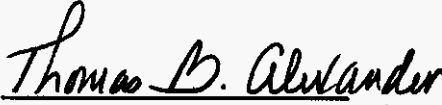
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 23rd day of September, 1999 to the following:

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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
	)	
Petition for Arbitration of ITC^DeltaCom	)	Docket No. 990750-TP
Communications, Inc. with BellSouth	)	
Telecommunications, Inc. pursuant to the	)	
Telecommunications Act of 1996.	)	Filed: September 23, 1999
_____)		

**PRE-HEARING STATEMENT OF  
BELLSOUTH TELECOMMUNICATIONS, INC.**

In accordance with the provisions of the Order Establishing Procedure (Order No. PSC-99-1589-PCO-TP), issued on August 13, 1999, BellSouth Telecommunications, Inc. ("BellSouth") submits its Pre-Hearing Statement.

**WITNESSES**

BellSouth proposes to call the following witnesses to offer testimony on the issues in this docket, as enumerated in Appendix A of the Order Establishing Procedure:

<u>Witness</u>	<u>Issue(s)</u>
1. Alphonso J. Varner (Direct and Rebuttal)	1, 2, 3(a), 3(b)(2), 6, 7, 8(a), 8(b), 13, 14, 16, 20(b), 23, 24, 38-43, 45, 46, and 48-50.
2. D. Daonne Caldwell (Direct and Rebuttal)	38, 39, and 40.
3. W. Keith Milner (Direct and Rebuttal)	3(b)(4), 3(b)(5), 11, 12, 15, 17, 20(a), 21 and 29.
4. Ronald M. Pate (Direct and Rebuttal)	3(b)(1), 3(b)(3), 5, 22, 34, and 38.
5. David P. Scollard (Direct)	44.
6. David Thierry (Direct and Rebuttal)	36.

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- |    |                                  |                |
|----|----------------------------------|----------------|
| 7. | David A. Coon (Rebuttal)         | 1.             |
| 8. | Dr. William E. Taylor (Rebuttal) | 1, 23, and 38. |

BellSouth reserves the right to call additional witnesses, witnesses to respond to Commission inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Pre-Hearing Officer at the pre-hearing conference to be held on October 11, 1999. BellSouth has listed the witnesses for whom BellSouth believes testimony will be filed, but reserves the right to supplement that list if necessary.

### EXHIBITS

Alphonso J. Varner	AJV-1	Florida UNE Rate and Cost Analysis
	AJV-2	ISP Traffic Diagrams (A and B)
	AJV-3	ISP Traffic Diagrams (C and D)
	AJV-4	BellSouth's Inter-Carrier Compensation Proposal at the FCC
	AJV-5	ISP Traffic Diagrams (E and F)
	AJV-6	ISP Traffic Diagram (G)
	AJV-7	Proposed Interim Inter-Carrier Access Service Compensation Plan
	AJV-8	Calculation of Sharing Percentage
D. Daonne Caldwell	DDC-1	Cost Study
	DDC-2	Cost Study
	DDC-3	Cost Study
	DDC-4	Cost Study
	DDC-5	Cost Study
	DDC-6	Pages from BellSouth's FCC Tariff No. 1
W. Keith Milner	WKM-1	Pictures demonstrating loop cut-over process
Ronald M. Pate	RMP-1	Flow-through Report and Flow Chart
	RMP-2	Flow chart
	RMP-3	Flow chart
Dr. William E. Taylor	WET-1	Curriculum Vita for Dr. Taylor
David A. Coon	DAC-1	ITC^DeltaCom's Proposed

DAC-2	Performance measurements BellSouth's Service Quality Measurements ("SQMs")
DAC-3	Measurement by Measurement Comparison

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and Rules of this Commission.

### **STATEMENT OF BASIC POSITION**

Each of the individually numbered issues in this docket represents a specific dispute between BellSouth and ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") as to what should be included in the Interconnection Agreement between the parties. Some of these issues involve matters that are not properly within the scope of the Telecommunications Act of 1996 ("1996 Act") or the jurisdiction of this Commission and should, therefore, not be part of an arbitrated agreement. As to all other issues, BellSouth's positions are consistent with the 1996 Act, the pertinent rulings of the Federal Communications Commission ("FCC"), and the rules of this Commission. The same cannot be said for ITC^DeltaCom's proposals. Therefore, the Commission should sustain each of BellSouth's positions.

### **BELLSOUTH'S POSITION ON THE ISSUES OF LAW AND FACT**

**Issue 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?**

**Position:** BellSouth disagrees that the so-called “performance measures” and performance “guarantees” in Attachment 10 to the Petition are appropriate. BellSouth has offered a comprehensive set of performance measurements (Service Quality Measurements or “SQMs”) which ensure that BellSouth provides ITC^DeltaCom and all other alternative local exchange carriers (“ALECs”) with nondiscriminatory access as required by the 1996 Act and applicable rules of the FCC. These measurements were developed as a result of the FCC’s Notice of Proposed Rulemaking in CC Docket No. 98-56, the Georgia Commission’s Performance Measurements Order in Docket No. 7892-U, and the Louisiana Commission’s Performance Measurements Order in Docket No. U-22252, Sub-Docket C. Additionally, a number of ALECs have provided input to these measurements and many ALECs have already agreed to incorporate these measurements into their Interconnection Agreements with BellSouth. It is unreasonable and unnecessary to have BellSouth adhere to individual ALEC performance measures as ITC^DeltaCom proposes. BellSouth’s performance measurements (the “SQMs”) are sufficient for the ALEC industry as a whole and should be sufficient for ITC^DeltaCom. However, BellSouth also is willing to provide ITC^DeltaCom any additional performance measurements that the Commission may order BellSouth to provide to other ALECs in this state.

With respect to performance “guarantees,” BellSouth does not believe that financial incentives, “guarantees,” penalties or liquidated damages are appropriate matters for arbitration under the 1996 Act. None of the requirements of Section 251 of

the 1996 Act involves a duty to agree on a penalty or liquidated damages provision. ITC^DeltaCom's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. ITC^DeltaCom has adequate legal recourse in the event BellSouth fails to comply with or breaches its interconnection agreement. Moreover, this Commission has previously determined in similar arbitration proceedings that the 1996 Act does not require liquidated damages provisions in interconnection agreements and that the Commission lacks the authority to arbitrate issues on damages, including so called performance incentive payments. See Order No. PSC-96-1579-FOF-TP at pp. 74-75 (December 31, 1996); Prehearing Order No. PSC-9-PHO-TP, Docket No. 990149-TP at Issue 13 (July 8, 1999); and Prehearing Order No. PSC-99-01715-PHO (April 15, 1999).

**Issue 2: Should BellSouth be required to waive any nonrecurring charges when it misses a due date?**

**Position:** A mandatory contract requirement obligating BellSouth to waive nonrecurring charges when it misses a due date would constitute a penalty or liquidated damages provision which is inappropriate for arbitration under the 1996 Act. Nothing in Section 251 or 252 requires penalties or liquidated damages to be either agreed upon or arbitrated. See also BellSouth's position on Issue 1 herein. The only remedies that should be included in an interconnection agreement between BellSouth and ITC^DeltaCom are those that are voluntarily and mutually agreed upon by the parties. BellSouth has voluntarily agreed to the waiver of nonrecurring charges when it misses the due date for the conversion (cut-over) of unbundled loops and has proposed contract language to ITC^DeltaCom. Thus, this issue is not appropriate for arbitration.

**Issue 3(a): What is the definition of parity?**

**Position:** BellSouth offers services to ITC^DeltaCom at parity. BellSouth has offered to include language in the parties' interconnection agreement that defines parity as the provision of unbundled network elements ("UNEs") in a manner that gives an efficient ALEC a meaningful opportunity to compete and resold services in substantially the same time and manner as BellSouth does for itself. This definition is consistent with the 1996 Act and the FCC's rules regarding parity of services, 47 C.F.R. §51.311 (UNEs), and 47 C.F.R. §51.603 (Resale). The 1996 Act does not require BellSouth to provide ITC^DeltaCom with service at levels "greater than" that which BellSouth provides to its own end-user customers, as ITC^DeltaCom contends.

**Issue 3(b): Pursuant to this definition, should BellSouth be required to provide the following:**

**(1) Operational Support Systems ("OSS")**

**Position:** BellSouth provides all ALECs, including ITC^DeltaCom, with nondiscriminatory access to its operations support systems ("OSS") through electronic and manual interfaces.

**(2) UNEs**

**Position:** BellSouth provides all ALECs, including ITC^DeltaCom, with nondiscriminatory access to UNEs pursuant to the 1996 Act, 47 U.S.C. §251(c)(3), and the FCC's rules, 47 C.F.R. §51.311. The Commission should reject any attempt to impose any additional requirements on BellSouth that are outside the requirements expressly set out in the 1996 Act or the FCC's rules.



**(3) White Page Listings**

**Position:** This issue is resolved.

**(4) Access to Numbering Resources**

**Position:** BellSouth is fulfilling its duties under 47 U.S.C. § 251(b)(2) and (b)(3) with respect to providing number portability and dialing parity. BellSouth should not be required to provide access to numbering resources since BellSouth has not been the North American Numbering Plan Administrator ("NANPA") since August 14, 1998.

**(5) An unbundled loop using Integrated Digital Loop Carrier ("IDLC") technology**

**Position:** BellSouth provides all ALECs, including ITC^DeltaCom, with nondiscriminatory access to unbundled loops, including IDLC-delivered loops. When technically feasible, BellSouth will unbundle and provide loops using IDLC technology. When it is not technically feasible for BellSouth to do so, BellSouth will provide ITC^DeltaCom with loops that meet ITC^DeltaCom's specific transmission requirements. Additionally, ITC^DeltaCom may utilize the Bona Fide Request ("BFR") process to submit a request for a UNE with unique transmission parameters that ITC^DeltaCom may desire. (See BellSouth's position on Issue 6(b) for discussion of rates).

**(6) Interconnection**

**Position:** This issue is resolved.

**(7) Service Intervals and Winbacks**

**Position:** This issue is resolved.

**(8) Priority guidelines for repair and maintenance and UNE provisioning**

**Position:** This issue is resolved.

**(9) White Page Listings to independent third party publishers**

**Position:** This issue is resolved.

**Issue 4:** Should BellSouth be required to provide the specifications to enable ITC^DeltaCom to parse the Customer Service Records (CSRs)? If so, how?

**Position:** This issue is resolved.

**Issue 5:** Should BellSouth be required to provide a download of the Regional Street Address Guide (RSAG)? If so, how?

**Position:** BellSouth currently makes the Regional Street Address Guide ("RSAG") database available on a real-time basis electronically through the Local Exchange Navigation System ("LENS") and the Telecommunications Access Gateway ("TAG") pre-ordering interfaces. This access includes updates to the RSAG database. Thus, BellSouth is providing nondiscriminatory access to its OSS in a manner that allows ITC^DeltaCom and other ALECs to access the RSAG database, even though ITC^DeltaCom may prefer a different method of access. To the extent ITC^DeltaCom wants an initial and subsequent downloads of the RSAG database, ITC^DeltaCom should be required to bear the costs of such downloads.

**Issue 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?

**Position:** BellSouth posts changes to its business rules and guidelines on the BellSouth Interconnection Web Page which provides fair and reasonable notice to all ALECs, including ITC^DeltaCom. BellSouth makes its best effort to provide thirty (30)

days advance notice of any such changes, which strikes a reasonable balance between BellSouth's need for flexibility to modify its processes and the ALECs' need to have advance notice of such modifications. Individual notices to ITC^DeltaCom or other ALECs (whether by e-mail, facsimile transmission or U.S. Mail) would involve additional administrative expense and could potentially cause discriminatory treatment if some, but not all, ALECs received such individual notice or if receipt of the notice varied in time between ALECs.

**Issue 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?**

**Position:**     BellSouth will continue to comply with its obligations under the 1996 Act and applicable FCC rules. BellSouth also will continue to provide any individual UNE currently offered until the FCC completes its Rule 51.319 proceedings consistent with the U.S. Supreme Court's decision in the *Iowa Utilities Board* case. Although the FCC issued a press release on September 15, 1999 regarding its rule 319 proceeding, there is no written order yet, and it appears that the FCC intends to conduct further proceedings. The 1996 Act does not require BellSouth to combine network elements for ALECs, and the FCC's rules (47 C.F.R. §§51.315(c) – (f)) which purported to impose such an obligation on incumbent LECs such as BellSouth were vacated and remain so today. Thus, this issue is not appropriate for arbitration. BellSouth is, however, willing to negotiate a voluntary commercial agreement with ITC^DeltaCom (and other ALECs) to perform certain services or functions that are not subject to the requirements of the 1996 Act.

**Issue 8(a): Should BellSouth be required to provide to ITC^DeltaCom extended loops or the loop/port combination?**

**Position:** No. Although the FCC recently issued a press release regarding its Rule 319 proceeding, there is no written order yet, and it appears that the FCC intends to conduct further proceedings. Second, even after the FCC issues its order, BellSouth is only obligated to provide combinations of those elements where they are currently combined in BellSouth's network. BellSouth is not obligated under the 1996 Act or the FCC's rules to combine network elements on behalf of ALECs such as ITC^DeltaCom, including "extended loops" (e.g., UNE loop and UNE dedicated transport) or a "loop/port" (e.g., UNE loop and UNE switch port) combinations. Further, there is no requirement for BellSouth to combine UNEs with tariffed services such as a loop combined with BellSouth's tariffed special access transport service. With respect to any previously provided combinations of loops and special access services, BellSouth was not required to do so under the prior agreement and does not agree to do so under the parties' new agreement.

**Issue 8(b): If so, what should the rates be?**

**Position:** Because BellSouth is not required to combine network elements for ALECs under the 1996 Act, the issue of applicable rates for such network combinations is not properly the subject of arbitration. To the extent the Commission concludes otherwise or determines to establish rates for network elements that are currently combined in BellSouth's network, the Commission should do so in the context of its current UNE pricing docket (Docket No. 990649-TP) rather than through an arbitration involving one ALEC. Thus, this issue is not appropriate for arbitration.

**Issue 9:** Should BellSouth be required to provide UNE testing results to ITC^DeltaCom? If so, how?

**Position:** This issue is resolved.

**Issue 10:** Should the parties be required to perform cooperative testing within two hours of a request from the other party?

**Position:** This issue is resolved.

**Issue 11:** Should BellSouth be required to provide NXX testing functionality to ITC^DeltaCom? If so, how?

**Position:** BellSouth is not required to provide NXX testing functionality to ITC^DeltaCom. Nonetheless, BellSouth has offered to provide an NXX testing option to ITC^DeltaCom that is equivalent to the means by which BellSouth carries out NXX testing for itself, which involves the use of a foreign exchange ("FX") line. ITC^DeltaCom is simply unwilling to pay for the FX line to accomplish its testing.

**Issue 12:** What should be the installation interval for the following loop cutovers:

**(a) Single**

**Position:** BellSouth has proposed a loop cutover installation interval time of fifteen (15) minutes for a single circuit loop conversion.

**(b) Multiple**

**Position:** With respect to multiple loop cutovers or circuit conversions, BellSouth has proposed to use fifteen (15) minutes as the maximum interval time for one loop with multiple loop cutovers being accomplished in increments of time per loop or circuit conversion of less than fifteen (15) minutes. The loop cutover process is a multiple step process that requires a great deal of mutual cooperation and coordination between BellSouth and the ALEC. Thus, it is appropriate for different installation

intervals to be established based upon the number of loops to be cutover to the ALEC (i.e. ITC^DeltaCom).

**Issue 13: Should SL1 orders without order coordination be specified by BellSouth with an a.m. or p.m. designation?**

**Position:** BellSouth will agree to accept a customer's request for an A.M. or P.M. designation when access to the customer's premises is required. In those instances where access to the customer's premises is not required, or if access is required but the customer is indifferent as to the time of day, BellSouth should not be required to designate A.M. or P.M. installation. This process is comparable to the scheduling BellSouth offers to its retail customers, which places ITC^DeltaCom at parity with BellSouth.

**Issue 14: Should the party responsible for delaying a cutover also be responsible for the other party's reasonable labor costs?**

**Position:** ITC^DeltaCom's proposal is nothing more than a penalty, liquidated damages or financial "guarantee" provision which is not appropriate for arbitration. The Commission has previously determined that it lacks the authority to arbitrate damages issues. (See BellSouth's position on Issues 1 and 2 herein). In the event ITC^DeltaCom experiences problems as a result of loop cutover delays, ITC^DeltaCom has adequate remedies under the law and Commission rules. Moreover, to track costs and assess blame for each instance of delay would be unduly burdensome and expensive, particularly when it is unclear which party is at fault.

**Issue 15: Should BellSouth be required to designate specific UNE center personnel for coordinating orders placed by ITC^DeltaCom?**

**Position:** BellSouth should not be required to specifically dedicate its personnel to serve only ITC^DeltaCom or any other individual ALEC. BellSouth incurs significant costs in connection with providing personnel to handle all ALEC orders for services and UNEs. BellSouth reviews anticipated and historical staffing requirements and appropriately assigns work activity in the most efficient manner possible in order to complete all necessary work functions for all ALECs.

**Issue 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?**

**Position:** The party responsible for the repairs should bear the costs associated with those repairs. (See FCC First Report and Order at ¶258, CC Docket 96-98 (August 8, 1996)). BellSouth has agreed to be responsible for such costs that are incurred due to BellSouth's network. However, BellSouth should not be responsible for costs due to ITC^DeltaCom's or a third party's network. BellSouth and ITC^DeltaCom should each be responsible for its own costs incurred in determining the cause of any trouble. Thus, this issue is not appropriate for arbitration.

**Issue 17: Should BellSouth be responsible for maintenance to HDSL and ADSL compatible loops provided to ITC^DeltaCom? If so, at what rate?**

**Position:** BellSouth will provide maintenance and repair for HDSL and ADSL compatible loops as the parties may agree. However, the loop modifications requested by ITC^DeltaCom are not a UNE offering. Thus, if BellSouth is providing a loop that has been modified from its original technical standards at the request of ITC^DeltaCom, such

as HDSL or ADSL compatibility, then BellSouth cannot guarantee that the modified loop will meet the technical standards of a non-modified loop.

**Issue 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 ALEC, should BellSouth be required to refund ITC^DeltaCom the amount ITC^DeltaCom paid to BellSouth for Special Construction for that customer?

**Position:** This issue is resolved.

**Issue 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)?

**Position:** This issue is resolved.

**Issue 20(a):** Should BellSouth be required to coordinate with ITC^DeltaCom 48 hours prior to the due date of a UNE conversion?

**Position:** No. BellSouth does not agree that coordination 48 hours prior to the due date is necessary on every type of UNE conversion. However, with respect to SL2 type loops only, BellSouth will agree to use its best efforts to schedule a conversion date and time 24 to 48 hours prior to the conversion.

**Issue 20(b):** If BellSouth delays the scheduled cutover date, should BellSouth be required to waive the applicable non-recurring charges?

**Position:** No. BellSouth does not agree to waive the applicable nonrecurring charges whenever a cutover is delayed, particularly when any number of variables and circumstances may cause a delay in the schedule. A mandatory contract requirement obligating BellSouth to waive certain nonrecurring charges is tantamount to a penalty or liquidated damages provision. The Commission has previously determined that it does



not have the authority to arbitrate damages issues. Thus, this issue is not appropriate for arbitration. (See BellSouth's position on Issues 1 and 2 herein).

**Issue 20(c): Should BellSouth be required to perform dial tone tests at least 48 hours prior to the scheduled cutover date?**

**Position:** This issue is resolved.

**Issue 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?**

**Position:** Although BellSouth cannot agree with the timeframes proposed by ITC^DeltaCom (which were not raised directly in the Petition), BellSouth agrees that coordination between itself and ITC^DeltaCom is important for Local Number Portability ("LNP") order cutovers. Additionally, BellSouth already has LNP cutover procedures in place and will agree to language to ensure that the disconnect order is completed for all ported numbers once the Number Portability Administration Center ("NPAC") notification of ITC^DeltaCom's Activate Subscription Version for those numbers has been received by BellSouth. The issue to which BellSouth cannot agree is the timeframes proposed by ITC^DeltaCom. The proposed timeframes are not reasonable and should not be adopted by the Commission.

**Issue 22: How should "order flow-through" be defined?**

**Position:** BellSouth does not agree with ITC^DeltaCom's proposed definition of "flow-through" nor does BellSouth believe that it is necessary for the interconnection agreement to contain a definition of "flow-through." However, to the extent such a definition is necessary, the Commission should adopt a definition that is consistent with the FCC's use of the term. See FCC Second Louisiana Order, at ¶107, CC Docket 98-

121 (August 13, 1998). Based upon the FCC's definition, an order "flows through" an ordering system only when a ALEC or BellSouth representative takes information directly from an end user customer, inputs it directly into an electronic order interface without making any changes or manipulating the customer's information, and sends the complete and correct order downstream for mechanized order generation.

**Issue 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")?**

**Position:** Under the 1996 Act (47 U.S.C. § 251 (b)(5)) and the FCC's rules (47 C.F.R. § 51.701), it is clear that reciprocal compensation is applicable only to local traffic, not to all traffic that may be routed over "local" trunks. "Local" trunks may actually carry access, or toll, traffic in addition to local traffic. ISP-bound traffic, even if routed over local interconnection trunks, is not subject to the 1996 Act's requirement of reciprocal compensation. The FCC's recent Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released on February 26, 1999, confirmed unequivocally that ISP-bound traffic is interstate in nature, not local. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.

The FCC is developing an inter-carrier compensation mechanism for ISP-bound traffic outside the scope of the requirements of Section 251(b)(5) of the 1996 Act. (See FCC's Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released February 26, 1999, at FN 87). Although BellSouth does not believe that compensation for ISP-bound traffic is subject to a Section 252 arbitration since ISP traffic is interstate, BellSouth has

proposed an interim inter-carrier compensation mechanism for ISP-bound traffic until such time as the FCC issues a final order in its pending inter-carrier compensation docket.

**Issue 24: What should be the rate for reciprocal compensation?**

**Position:** The appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching and common transport that are used to transport and terminate local traffic and were established in the Commission's Order No. PSC-98-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, dated April 29, 1998. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function.

**Issue 25: Should ITC^DeltaCom and BellSouth be required to follow the ATIS/OBF business rules?**

**Position:** This issue is resolved.

**Issue 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?**

**Position:** This issue is resolved.

**Issue 27: Should BellSouth be required to maintain both the current and the next previous version of an electronic interface?**

**Position:** This issue is resolved.

**Issue 28: Should ITC^DeltaCom have at least 90 days advance notice prior to BellSouth discontinuing an interface?**

**Position:** This issue is resolved.

**Issue 29:** If ITC^DeltaCom needs to reconnect service following an order for a disconnect, should BellSouth be required to reconnect service within 48 hours?

**Position:** No. BellSouth cannot reserve facilities for 48 hours following an order for a disconnect, as ITC^DeltaCom contends. As a practical matter, once a UNE facility has been disconnected for any reason, that facility is subject to immediate reuse, whether by other ALECs or BellSouth's end-users. BellSouth should not be required to maintain facilities for any set period of time once service has been disconnected. Nonetheless, BellSouth will agree to use its best efforts to reconnect service as expeditiously as possible.

**Issue 30:** Should BellSouth be required to maintain UNE/LCSC hours from 6 a.m. to 9 p.m.?

**Position:** This issue is resolved.

**Issue 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.?

**Position:** This issue is resolved.

**Issue 32:** What information should be included in the Firm Order Confirmation (FOC)?

**Position:** This issue is resolved.

**Issue 33:** Should the parties establish escalation procedures for ordering/provisioning problems?

**Position:** This issue is resolved.

**Issue 34:** What type of repair information should BellSouth be required to provide to ITC^DeltaCom such that ITC^DeltaCom can keep the customer informed?

**Position:** BellSouth provides ITC^DeltaCom with nondiscriminatory access to BellSouth's maintenance and repair OSS today by providing electronic interfaces such as the Trouble Analysis and Facilities Interface ("TAFI") and the Electronic Communications Trouble Administration ("ECTA") Gateway as well as manual interfaces. Among other things, these interfaces allow ITC^DeltaCom to enter customer trouble tickets into the BellSouth system, retrieve and track current status on all ITC^DeltaCom trouble and repair tickets, and receive an estimated time to repair on a real-time basis. ITC^DeltaCom is at parity with BellSouth since ITC^DeltaCom and BellSouth both can use TAFI to check the status of repair tickets and to view end user customer's maintenance histories. BellSouth is willing to negotiate mutually acceptable language on this issue for inclusion in the agreement, although BellSouth does not agree that it is necessary or appropriate to include a list of the information that ITC^DeltaCom seeks to be included in the interconnection agreement. Additionally, TAFI does not provide itemized time and material charges for BellSouth's own retail units, and thus, BellSouth is not required to provide them for ITC^DeltaCom or any other ALEC.

**Issue 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?**

**Position:** This issue is resolved.

**Issue 36:** **Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed?**

**Position:** No. BellSouth is not required by the 1996 Act or the FCC's rules to provide cageless collocation within 30 days after a firm order has been placed. The FCC recently stated that it was not adopting specific provisioning intervals at this time. (See

First Report and Order and Further Notice of Proposed Rulemaking, Docket No. CC 98-147, at ¶ 54). In addition, given the numerous factors and activities required to fulfill a collocation request, it is neither practical nor feasible to require BellSouth to complete the collocation request within 30 days. The absence of enclosure construction has little, if any, bearing on the overall provisioning interval for collocation since permitting, space preparation and network infrastructure work, among others, must still be completed regardless of the type of arrangement selected.

**Issue 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?**

**Position:**    This issue is resolved.

**Issue 38:**    **What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?**

**Position:**    BellSouth is entitled under the 1996 Act and the FCC's orders and rules to recover the reasonable charges it incurs in developing, providing, and maintaining the interfaces that make BellSouth's OSS accessible to competitors such as ITC^DeltaCom. (See *AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc. et al.*, slip Op. No. 97-79 (E. D. Ky., September 9, 1998)) ("Because the electronic interfaces will only benefit the ALECs, the ILECs, like BellSouth, should not have to subsidize them ... there is absolutely nothing discriminatory about this concept."). BellSouth is submitting the cost study results for the development and implementation of the OSS Electronic Interfaces which were previously filed on December 3, 1998 in Docket No. 981052-TP. The OSS Electronic Interfaces are the systems that BellSouth developed specifically to provide ALECs with the ability to

transmit a local service request ("LSR") electronically. Both resale and UNE LSRs can be transmitted via these interfaces. The cost studies reflect both recurring and nonrecurring costs and the studies are based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, dated April 29, 1998.

**Issue 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,
- (c) two-wire SL1 loops,

**Position:** With respect to two-wire ADSL compatible loops, two-wire HDSL compatible loops, and four-wire HDSL compatible loops this issue is not appropriate for arbitration since the Commission has previously determined in its Order No. PSC-98-0604-FOF-TP the appropriate rates for these individual UNEs that ITC^DeltaCom is seeking in this arbitration. These UNE rates approved by the Commission should simply be incorporated into the parties' interconnection agreement. (See Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP dated April 29, 1998). ITC^DeltaCom's request for a "four-wire ADSL compatible loop" is also not appropriate for arbitration since ADSL functionality is not applicable to four-wire loops. The rates for the requested UNEs are set forth in Exhibit AJV-1, attached to the testimony of BellSouth witness, Mr. Varner. Finally, with respect to the issue of two-wire SL1 loops, since the Commission has not previously established a rate for this UNE, BellSouth is presenting a cost study for the two-wire SL1 loop. This cost study is based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-

FOF-TP dated April 29, 1998. The Commission should approve BellSouth's cost study and set the rate for this UNE accordingly.

**Issue 40:** Should BellSouth be required to provide:

- (a) two-wire SL2 loops, or
- (b) two-wire SL2 loop with Order Coordination for Specified Conversion Time?

**Position:** With respect to the issues of two-wire SL2 loops and two-wire SL2 loop with Order Coordination for Specified Conversion Time, BellSouth is willing to provide these UNEs to ITC^DeltaCom and other ALECs in Florida. Since the Commission had not previously established rates for these items, BellSouth is presenting cost studies for two-wire SL2 loops and for Order Coordination for Specified Conversion Time. These cost studies are based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP and 960846-TP, dated April 29, 1998.

**Issue 41:** Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?

**Position:** BellSouth disagrees with the underlying assumption of this issue since BellSouth does incur costs in disconnecting service. If there are any instances when BellSouth does not incur any costs associated with a disconnection, BellSouth agrees that it should not charge ITC^DeltaCom. However, BellSouth is entitled to recover its costs incurred to disconnect services for ITC^DeltaCom and other ALECs.

**Issue 42:** What should be the appropriate recurring and nonrecurring 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?



**Position:** Rates for many of the collocation elements were previously approved by this Commission in its Order No. PSC-98-0604-TP in Docket Nos. 960752-TP, 960833-TP, and 960846, dated April 29, 1998. (Cost Reference Nos. H.1.1-H.1.19). To order cageless and shared collocation, ITC^DeltaCom would simply order the amount of floor space necessary for their collocation arrangement. The floor space rate has already been approved by this Commission and is still appropriate for caged, cageless or shared collocation. Thus, with respect to these previously determined rates, there is no need for further review through this arbitration. Finally, BellSouth is also proposing a single interim rate for card key security access to collocation space, until such time as permanent rates can be established. The interim rate is from the Commission's Order No. PSC-98-0604-TP dated April 29, 1998 ("Physical Collocation – Security Access System – New Access Card Activation, per request – 5 cards"). BellSouth will file with the Commission a complete cost study, using the previously accepted cost study methodology and inputs specified by the Commission, in order to establish permanent rates for Security Access Systems.

**Issue 43:** **Should BellSouth be permitted to charge ITC^DeltaCom for conversions of customers from resale to unbundled network elements? If so, what is the appropriate charge?**

**Position:** There is no requirement in the 1996 Act or in the FCC's rules that obligates BellSouth to convert a ALEC's customer from resale to UNEs at no cost. BellSouth is entitled to recover its reasonable costs if it performs this function. Moreover, ITC^DeltaCom and other ALECs cannot convert resale service to unbundled elements since such conversion would require BellSouth to provide a combination of UNEs.

BellSouth is not obligated to combine UNEs, and the UNEs that an incumbent must provide on an individual, let alone combined basis, will not be defined until the FCC completes its Rule 319 proceedings. (See BellSouth's position on Issues 7 and 8(a) herein).

**Issue 44: What procedures should ITC^DeltaCom and BellSouth adopt for meet-point billing?**

**Position:** BellSouth's position regarding Meet Point Billing ("MPB") arrangements is to utilize, to the extent possible, the standard industry procedures that have been in place for ILECs and the Interexchange Carriers ("IXCs") since 1986. These procedures are documented in the Multiple Exchange Carrier Access Billing ("MECAB") and Multiple Exchange Carrier Ordering Document ("MECOD") documents which were developed by the Ordering and Billing Forum ("OBF") and are contained in the OBF Guidelines.

Alternatively, BellSouth proposes that default parameters be used in lieu of the National Exchange Carriers Association ("NECA") FCC Tariff No. 4 which is the foundation for the MECAB and MECOD methods. Under this proposal, all meet point arrangements will be billed on a multi-tariff, multi-bill method with the border interconnection percentage ("BIP") fixed at 95% BellSouth and 5% ITC^DeltaCom. This interim method would be discontinued once ITC^DeltaCom becomes a member of NECA and begins to use the NECA infrastructure (e.g. MECAB and MECOD methods) or when the industry develops an alternative solution.

**Issue 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?**

**Position:** BellSouth agrees that the party requesting an audit should be responsible for the costs of the audit, if no substantial irregularities are identified. In the event the audit reveals that either party is found to have overstated the percent local usage ("PLU") or percent interstate usage ("PIU") by 20 percentage points or more, then the responsible party should be required to reimburse the other party for the costs of the audit. This is a fair and reasonable provision for the protection of both parties and is based upon BellSouth's standard agreement and industry practice and custom. Contrary to ITC^DeltaCom's position, such a contract provision is not a "penalty" provision since the costs are those actually incurred in performing the audit.

**Issue 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?**

**Position:** BellSouth believes that the inclusion of a "loser pays" provision would have a chilling effect on both parties to the extent that even meritorious claims may not be filed. The 1996 Act is not yet four years old and clearly represents an evolving area of rule and regulation that will require interpretation and guidance from state commissions and the courts for some time. In times of such uncertainty, there may be no clear "winner" or "loser," which further complicates the use of a "loser pays" clause. The Act does not require any such attorneys fee provision. Thus, this issue is not appropriate for arbitration. BellSouth, however, will agree to appropriate language regarding jurisdictional issues that would allow the parties to seek damages under the Agreement from the courts since that would be a matter outside of the Commission's jurisdiction.

**Issue 47: What should be the appropriate standard for limitation of liability under the interconnection agreement?**

**Position:** This issue is resolved.

**Issue 48: Should language covering tax liability be included in the interconnection agreement, and if so, should that language simply state that each Party is responsible for its own tax liability?**

**Position:** Tax issues are not addressed in Sections 251 or 252 of the 1996 Act. Thus, this issue is not appropriate for arbitration under Section 252 of the 1996 Act. If the Commission chooses to address this issue, the Commission should simply order the parties to include language in the agreement that clearly defines the respective duties of each party in the handling of tax issues. BellSouth has proposed fair and reasonable language.

**Issue 49: Should BellSouth be required to compensate ITC^DeltaCom for breach of material terms of the contract?**

**Position:** The issue of compensation for breach of contract, penalties or liquidated damages are not appropriate matters for arbitration under the 1996 Act. Moreover, the Florida Commission has previously determined that it lacks the statutory authority to award or order monetary damages or to impose penalties or fines” in the context of a similar arbitration proceedings. Even if a penalty or liquidated damages award could be arbitrated, it is completely unnecessary. ITC^DeltaCom has adequate legal recourse under Florida law and Federal and State Commission procedures in the event BellSouth breaches its interconnection agreement. (See BellSouth’s position on Issues 1 and 2 herein).

**Issue 50: Should the parties continue operating under existing local interconnection arrangements?**

**Position:** No. Negotiations take place to incorporate new language, terms, and obligations into an interconnection agreement in recognition of new technologies, changed circumstances, and changes in applicable law. The fact that ITC^DeltaCom has filed for arbitration with BellSouth and listed some seventy-three (73) issues, many of which contain multiple questions, belies ITC^DeltaCom's request to maintain its existing arrangements with BellSouth. Additionally, ITC^DeltaCom proposed new local interconnection arrangements attached as Exhibit "A" to the Petition rather than relying upon the existing arrangements. BellSouth has negotiated with ITC^DeltaCom in good faith and will continue to do so in an effort to reach a new agreement regarding local interconnection. In order to ensure that ITC^DeltaCom and BellSouth have the most beneficial agreement for both parties, a new agreement needs to be approved.

Finally, with respect to ITC^DeltaCom's improper attempt to introduce new issues into this arbitration proceeding under this issue, BellSouth strenuously objects. ITC^DeltaCom is attempting to convert Issue No. 50 (which is Issue No. 5 in the Petition for Arbitration) from the single issue stated above from the Petition into four (4) new separate issues. The subject of the so-called "binding forecasts" for example, was not a part of the parties' prior interconnection agreement and is a new issue. ITC^DeltaCom should have expressly raised this issue and the other three (3) in its Arbitration Petition. This is not a simple rewording effort for clarification purposes; it is clearly an improper attempt to expand the disputed issues in this proceeding. Section 252(b)(2)(A)(i)-(iii) expressly sets forth the duties of the petitioner (i.e. ITC^DeltaCom) when filing for

arbitration. Under the 1996 Act, ITC^DeltaCom is required to state the “unresolved issues” in the Petition. Issues and positions from a draft agreement or issues matrix contained in exhibits attached to the Petition do not comply with the requirements of the 1996 Act. See *MCI Telecomm. Corp. v. Pacific Bell*, Case No. C97-0670, slip op. At 35 (N.D. Cal., September 29, 1998) (“[s]imply listing an issue in an appendix to a petition does not sufficiently ‘set forth’ the issues for arbitration, and accordingly the issue is not properly before the Court”). Further, under Section 252(b)(4)(A) of the 1996 Act, the Commission is required to “limit its consideration of any petition . . . to the issues set forth in the Petition and in the response, if any ....” (emphasis added).

#### **STIPULATIONS**

Upon agreement of the parties, the following issues, as delineated in Appendix A of the Order Establishing Procedure, are resolved: 3(b)(3), 3(b)(6), 3(b)(7), 3(b)(8), 3b(9), 4, 9, 10, 18, 19, 20(c), 25, 26, 27, 28, 30, 31, 32, 33, 35, 37, and 47.

#### **PENDING MOTIONS**

ITC^DeltaCom’s Request for Confidential Classification, filed September 2, 1999.

ITC^DeltaCom’s Motion to Compel, filed September 16, 1999.

BellSouth’s Motion to Strike and Exclude (to be filed).

#### **OTHER REQUIREMENTS**

None.

Respectfully submitted this 23rd day of September 1999.

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