BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by ITC^DeltaCom   )DOCKET NO. 990750-TP
Communications, Inc. d/b/a ITC^DeltaCom)
for arbitration of certain unresolved)
issues in interconnection negotiations)
between ITC^DeltaCom and BellSouth   )
Telecommunications, Inc.   )
_____)
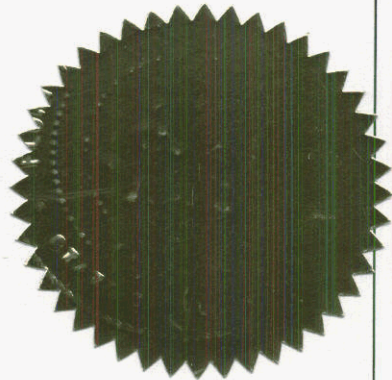
VOLUME 3

Pages 322 through 417

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER SUSAN F. CLARK
                        COMMISSIONER E. LEON JACOBS, JR.

DATE: Wednesday, October 27, 1999

TIME: Commenced at 9:00 a.m.

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

REPORTED BY: NANCY S. METZKE, RPR, CCR

APPEARANCES:

              (As heretofore noted.)

I N D E X

WITNESSES

NAME   PAGE NO.

THOMAS HYDE

EXHIBITS - VOLUME 3

NUMBER		ID.	ADMTD.
#19	Exhibits TAH-1, 2 & 3	330	
#20	Exhibit TAH-4	334	

P R O C E E D I N G S

1   COMMISSIONER CLARK: Let's go back on the
2   record and take up the preliminary matter.
3
4   MR. GOGGIN: Earlier in Mr. -- while
5   Mr. Rozycki was testifying, there was a line of
6   questioning on cross that concerned the makeup of
7   the customer base for ITC^DeltaCom, and an objection
8   was raised by ITC^DeltaCom based on the fact that
9   the question called for the disclosure of
10   information that they had produced in discovery but
11   that for which they've claimed confidential
12   treatment. Subsequently, in response to a question
13   by staff, Mr. Rozycki volunteered information from
14   precisely the same set of confidential information
15   concerning the makeup of the customer base about
16   which he had refused to answer questions when he was
17   being asked on cross. I guess what I --
18   COMMISSIONER CLARK: Forgive me, but I don't
19   remember it that way. I remember it was -- well,
20   and you might need to clarify for me. I thought the
21   reason the questions were not allowed was it went
22   into discovery that they declined to provide, and it
23   wasn't being pursued in your motion to compel.
24   MR. GOGGIN: Perhaps I'm mistaken.
25   COMMISSIONER CLARK: Okay.

1   MR. GOGGIN: And perhaps this situation hasn't

2 come up, but I think that what we're prepared to

3 suggest would be useful in any event, which is that

4 if a question is asked that would call for the

5 disclosure of confidential information and a party

6 objects to disclosure of that information because

7 they've claimed confidential treatment, that they

8 not be permitted later to voluntarily disclose the

9 same information after a party has had a chance to

10 ask questions about it.

11   COMMISSIONER CLARK: I don't -- I think that's

12 fair, but that wasn't how I understood what

13 occurred, and I may be --

14   MR. GOGGIN: I may be incorrect about that as

15 well. I just --

16   COMMISSIONER CLARK: Okay. Okay. With that

17 understanding, we'll go forward.

18   MR. GOGGIN: Thank you.

19

20

21   *   *   *   *

22

23 Whereupon,

24   THOMAS HYDE

25 was called as a witness by ITC^DeltaCom and, after being

1 first duly sworn, was examined and testified as follows:

2

3 DIRECT EXAMINATION

4 BY MS. EDWARDS:

5   Q   Please state your name for the record.

6   A   My name is Thomas Hyde.

7   Q   Okay. Did you cause to be filed in this matter

8 direct testimony?

9   A   Yes, I did.

10   Q   Okay. Pursuant to the Commission's order,

11 turning to Page 18 of your direct testimony.

12   A   Okay.

13   Q   Lines 11 and 12 are to be stricken, which is

14 the question: "How do these reports relate to the need

15 for performance guarantees?" That question is stricken,

16 and on Line 13, the "A" is stricken as well, but that

17 is -- That's all.

18   COMMISSIONER CLARK: Wouldn't it be the whole

19   question and answer should be stricken?

20   MR. ALEXANDER: BellSouth would take that

21   position. The question clearly sets up an answer

22   that relates to performance guarantees. In fact, on

23   line 23 it's specifically mentioned again.

24   MR. ADELMAN: Commissioner Clark, I worked this

25   out with Mr. Goggin. I thought we had an

1 understanding, Mr. Goggin, that the text really went

2 to the more general question from above and that you

3 did not object.

4   MR. GOGGIN: I'm trying to find that right now.

5   MR. ADELMAN: Page 18.

6   MR. GOGGIN: I believe Mr. Adelman is correct,

7 that although the question seems to set up an answer

8 that calls exclusively for information that relates

9 to an issue that has been struck, that there is a

10 portion of the answer that does not directly address

11 the question that's been asked.

12   COMMISSIONER CLARK: All right. So the

13 question will be stricken, and the letter "A" will

14 be stricken on Line 13.

15   MS. EDWARDS: And in addition to that,

16 beginning at Line 23, on the same page, Page 18, it

17 starts out, "Performance guarantees are critical to

18 (1) providing BellSouth with the incentive to

19 reduce," from Line 23, beginning at "Performance

20 guarantees" on Page 18, to Page 19, Line 3, that

21 should be stricken.

22   COMMISSIONER CLARK: Okay.

23   MS. EDWARDS: Turning to Page 20 of the direct

24 testimony, Line 2, beginning, "Thus, BellSouth

25 should waive or refund any applicable nonrecurring

1 charges," that should be stricken, from Line 2 to

2 Line 7.

3   COMMISSIONER CLARK: What is that page again?

4 I'm sorry.

5   MS. EDWARDS: Page 20.

6   Turning to Page 21 of the direct testimony,

7 beginning at Line 11, and going to Page 22, Line 18,

8 that should be stricken.

9   Page 24 --

10   MR. ALEXANDER: May I ask a question?

11   COMMISSIONER CLARK: Yes.

12   MR. ALEXANDER: You were at Page 21 when you

13 started at Line 11?

14   MS. EDWARDS: Yes.

15   MR. ALEXANDER: Is Page 21, Line 6 making a

16 reference to an item that has been closed as well?

17   MS. EDWARDS: Mr. Alexander is correct. That

18 is correct. Let's see.

19   MR. ALEXANDER: I would suggest --

20   MS. EDWARDS: It would actually be all of Page

21 21. He is correct. So it would be Page 21 all the

22 way to Page 22, Line 18.

23   MR. ALEXANDER: Thank you.

24   MS. EDWARDS: Page 24, Line 6, beginning,

25 "BellSouth's proposed security arrangements appear

1   to be far in excess of that required for BellSouth's

2   own employees," strike from Line 7 down to Line 11.

3   Turning to Page 25, beginning at Line 4.

4   MR. ALEXANDER: Let me ask another question.

5   On Page 24, to the issue there on Line 13,

6   references, I believe, Issue 5, which is not in the

7   proceeding as well, and it takes up subjects on Page

8   25, for example, binding forecast and things like

9   that, and I believe that is not in the prehearing

10   order.

11   COMMISSIONER CLARK: Okay.

12   MS. EDWARDS: That is correct as well. So it

13   would be Page 24 beginning at Line 7, going to Page

14   26, ending at Line 7, and that's all for the direct

15   testimony.

16   BY MS. EDWARDS (Continuing):

17   Q   Mr. Hyde, are there three exhibits attached to

18   your direct testimony?

19   A   Yes, there are.

20   Q   Are they noted as TAH-1, 2 and 3?

21   A   That is correct.

22   Q   Turning to your rebuttal testimony --

23   COMMISSIONER CLARK: Ms. Edwards, should we

24   mark TAH-1, 2 and 3 as Exhibit 19?

25   MS. EDWARDS: Yes, Commissioner, thank you.

1   COMMISSIONER CLARK: Okay.

2 BY MS. EDWARDS (Continuing):

3   Q   Turning to rebuttal testimony, beginning at

4 page, I believe Page 13, starting at Line 4, that

5 testimony should be struck all the way to page -- excuse

6 me, Line 17, Page 13.

7   Turning to Page 15, Line 10, that -- the

8 testimony should be stricken to Line 21 of Page 15.

9   Page 17, beginning at Line 4, going to Page 18,

10 ending at Line 3.

11   Page 20, beginning at Line 7, to Page 22, Line

12 16, that as well should be struck.

13   A   You said 22, Line 16?

14   Q   Yes.

15   A   Thank you.

16   On Page 22, beginning at Line 20, Sub Part (b),

17 "If BellSouth delays the schedule cutover date, should

18 BellSouth be required to waive the applicable

19 nonrecurring charge?" That should be struck.

20   COMMISSIONER JACOBS: Again, I'm sorry, what

21   page again?

22   MS. EDWARDS: Page 22, Line 20, beginning at

23   Sub Part (b), "If BellSouth delays the scheduled

24   cutover date, comma, should BellSouth be required to

25   waive the applicable nonrecurring charges?" That

1   should be struck.

2   Page 23 --

3   MR. ALEXANDER: May I ask another question? I

4   may have missed it, but also Line 22 through 23, the

5   Sub Part (c), you did get that struck: "Should

6   BellSouth be required to perform dial tone tests at

7   least 48 hours --" that issue has been resolved.

8   MR. GOGGIN: That hasn't been struck yet.

9   MS. EDWARDS: We did not discuss that.

10   BY MS. EDWARDS (Continuing):

11   Q   Mr. Hyde, to your recollection has that issue

12   been settled?

13   MR. ALEXANDER: It's not in the prehearing

14   order, I can tell you that.

15   WITNESS HYDE: To the best of my recollection,

16   that issue has been closed.

17   MS. EDWARDS: Okay. So we will agree to strike

18   Part (c), "Should BellSouth be required to perform

19   dial tone tests at least 48 hours prior to the

20   scheduled cutover date?" That should be struck.

21   Page 23, beginning at Line 7, "The issue of

22   waiver of nonrecurring charges," that sentence

23   should be struck.

24   Beginning at Line 12 --

25   COMMISSIONER CLARK: So that would be Lines 7

1   and 8 are struck?

2   MS. EDWARDS: Yes, Lines 7 and 8.

3   COMMISSIONER CLARK: Okay.

4   MS. EDWARDS: Same page, Page 23, beginning at

5   Line 12 --

6   MR. ALEXANDER: I apologize, but Lines 9 and 10

7   on Page 23 would be the same, the dial tone test.

8   MS. EDWARDS: Yes, it would. So that would

9   also be from Line 7 to 10.

10   MR. ADELMAN: And, Commissioner, we apologize.

11   I mean, Mr. Alexander, we're trying to go off the

12   list that you submitted, and I know we've all let

13   some things --

14   MR. ALEXANDER: We worked on it last night, and

15   I've tried to read as close as I could.

16   MS. EDWARDS: Beginning at Line 12 on Page 23,

17   all the way to Page 26, Line 16, that should also be

18   struck. And that is the rebuttal testimony.

19 BY MS. EDWARDS (Continuing):

20   Q   Mr. Hyde, did you have an exhibit to your

21 rebuttal testimony?

22   A   No, I don't believe so.

23   Q   Can you check that, Mr. Hyde?

24   A   Let me check and see.

25   COMMISSIONER CLARK: Mr. Hyde, I do have a

1   TAH-4.

2   WITNESS HYDE: Oh, that's right, I did, yes. I

3   did not have it included in here. Yep, here it is.

4   I'm sorry, I didn't tab it. My fault. No tab in

5   there. Yes, there is an exhibit, TAH-4.

6   MS. EDWARDS: Would that be marked as Exhibit

7   20?

8   COMMISSIONER CLARK: Yeah, if it's not --

9   Doesn't it need to be stricken?

10   MS. EDWARDS: No.

11   COMMISSIONER CLARK: All right. That would be

12   marked as Exhibit 20.

13 BY MS. EDWARDS (Continuing):

14   Q In addition to the testimony that has been

15 removed, do you have any corrections or changes to either

16 your direct or rebuttal testimony?

17   A Yes, I have three changes, I believe. Starting

18 with the direct testimony, Page 14, Lines 9 and 10,

19 there's a figure there quoting a BellSouth nonrecurring

20 charge of $100. In both instances, that rate has been

21 lowered to 50, so the 100 needs to be changed to 50. And

22 the same correction, I believe, on Page 11 of the

23 rebuttal testimony, Line 1 --

24   COMMISSIONER CLARK: I'm sorry, let me just

25   make sure. You want the hundred on Page 14, Line 9

1   and 10, both those one hundred figures should be

2   changed to 50?

3   WITNESS HYDE: That is correct.

4   COMMISSIONER CLARK: Okay. Go ahead.

5   WITNESS HYDE: And then the same change on

6   rebuttal testimony, Page 11, Line 1, it also should

7   be a 50-dollar nonrecurring charge. And that's all

8   the changes that I have.

9 BY MS. EDWARDS (Continuing):

10   Q   Did you also -- It occurred to me. Did you

11 also submit supplemental testimony consisting of about

12 three pages?

13   A   Yes, I did.

14   Q   Okay. Do you have any changes to that

15 testimony?

16   A   No, I do not.

17   Q   Okay. If I were to ask you the same questions

18 today as are contained in your prefiled direct, rebuttal

19 and supplemental testimony, would your answers be the

20 same?

21   A   Yes, they would.

22   COMMISSIONER CLARK: Ms. Edwards, let me be

23   clear. Rebuttal testimony, I have a petitioner,

24   ITC^DeltaCom's request for leave to file

25   supplemental rebuttal testimony. Should I be -- Do

1 I need direct testimony? I guess it's rebuttal,

2 right? I have it served on the 22nd day of

3 October. I only have two pages.

4   MS. EDWARDS: Two pages?

5   COMMISSIONER CLARK: Yes.

6   MR. ALEXANDER: That's all we got too.

7   MS. EDWARDS: Okay. I may have been

8 incorrect. Correction, it should be two pages.

9   COMMISSIONER CLARK: All right. Does the court

10 reporter have a copy of it, do you know?

11   THE COURT REPORTER: I don't know.

12   COMMISSIONER CLARK: All right. We'll make

13 sure you get a copy of the right one.

14   All right.

15   MS. EDWARDS: Commissioner, at this time I

16 would ask that his testimony, subject to the

17 Commission's order and the stricken testimony and

18 the corrections, be entered into the record as

19 though read.

20   COMMISSIONER CLARK: Okay. We probably need to

21 ask him if the testimony, this prefiled testimony is

22 the same testimony you would give on the stand at

23 this time?

24   WITNESS HYDE: Yes, it is.

25   COMMISSIONER CLARK: Okay. With that

1 understanding, we will insert the prefiled direct,

2 rebuttal, and supplemental testimony into the record

3 as though read with the changes previously noted.

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

2   **ADDRESS.**

3 A. My name is Thomas Hyde. I am Senior Manager – Industry Relations

4   for ITC^DeltaCom Communications Inc., ("ITC^DeltaCom"). My

5   business address is 1530 DeltaCom Drive Anniston, Alabama 36202.

6

7 Q. **PLEASE DESCRIBE YOUR BUSINESS EXPERIENCE AND**

8   **BACKGROUND.**

9 A. I have over thirty years of experience in telecommunications

10   including installation, maintenance and design of switched and

11   special toll services with AT&T; pricing, rate and tariff development

12   with South Central Bell and BellSouth Telecommunications "BST"

13   for various services including intrastate and interstate switched and

14   special access; access and technology planning with the National

15   Exchange Carrier Association (NECA); Telecommunications

16   consulting on Unbundled Network Elements, Universal Service and

17   access issues for MCI Telecommunications, Inc. In the 1980's,

18   while responsible for the switched and special access rate and tariff

19   development for BellSouth following the divestiture of the Bell

20   System, I developed rates and support documentation for the

21   implementation of access. As part of that process, I also had the

22   responsibility of assuring the validity of the cost and demand inputs

23   used in developing those rates. At NECA I was responsible for

24   planning and implementation of Local Transport Restructure,

25   Access Reform, ISDN, SONET and various other services. While

26   providing telecommunications consulting services to MCI, I filed

1   unbundled network element non-recurring cost, Universal Service

2   Benchmark and other testimony with numerous state commissions

3   and regulatory authorities. Currently I am Senior Manager –

4   Industry Relations with ITC^DeltaCom.   My job responsibilities

5   required that I master diverse telecommunications disciplines

6   including network design, equipment installation and maintenance,

7   rate and tariff development, project management, and technical

8   aspects of the public switched network.

9

10 **Q.**   **HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS**

11   **COMMISSION?**

12 **A.**   Yes.

13

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

15 **A.**   I will address unresolved issues between BellSouth and

16   ITC^DeltaCom not covered by other ITC^DeltaCom witnesses.

17   Basically, I will address the concept of parity as it involves local

18   competition and the availability and purchase of Unbundled Network

19   Elements "UNE" from BellSouth.

20

21 **Q.**   **HAVE ANY OF THE ISSUES ADDRESSED IN YOUR TESTIMONY**

22   **BEEN RESOLVED?**

23 **A.**   Yes. I believe some of the issues have been resolved. Please refer

24   to Exhibit CJR-1 in Mr. Rozycki's Testimony for a list of the issues that

25   ITC^DeltaCom believes have been resolved. I have included a

1   discussion of these issues in my Testimony because the parties have

2   not formalized the resolution of these issues.

3

4 **Q.   PLEASE DESCRIBE BELLSOUTH'S RESPONSE WITH REGARD**

5 **TO UNE PARITY.**

6 **A.**   During negotiations with BellSouth, ITC^DeltaCom requested that

7   BellSouth agree to provide UNEs at parity with BellSouth's retail

8   services. BellSouth's answer to these requests has been a rather

9   flippant "We don't buy UNEs so you cannot have parity." This cavalier

10   attitude ignores the fact that BellSouth services are made up of

11   combined UNEs. The request for UNE parity with BellSouth's retail

12   services is really less than the CLEC industry should receive.

13

14   As BellSouth's own technical references show, the transmission

15   parameters for end-to-end service is not as stringent as those

16   specified for portions of an end-to-end service.[1]   However, since

17   BellSouth has yet to develop these more stringent requirements, the

18   CLEC industry must rely on the lesser quality requirements for the

19   end-to-end retail service, that ITC^DeltaCom, a purchaser of UNEs,

20   will be competing with. BellSouth's continued refusal to provide any

21   type of parity (other than the vague promise that UNEs furnished to

22   ITC^DeltaCom will be as good, or bad, as the UNEs furnished to any

---

[1] For example, TR_NWT_000335 issued by BellCore/Telecordia Issue 3, May, 1993 referenced in BellSouth's Access and Private Line Tariffs

1   other CLEC) will result in a competitive advantage for BellSouth and

2   stifle the development of competition.

3

4 Q. DOES THAT MEAN THAT BELLSOUTH PROVIDES UNE LOOPS

5   THAT ARE NOT EQUIVALENT TO THE LOOPS THAT THEY

6   PROVIDE THEIR OWN CUSTOMERS?

7 A. Yes. On almost all UNEs that are migrated from BellSouth

8   customers that are served via Integrated Digital Loop carrier "IDLC"

9   or for customers' locations where BellSouth would use IDLC for its

10   own service, BellSouth provides an inferior service to the CLECs.

11   This inferior service results from BellSouth's refusal to provide

12   IDLC equivalent service in most instances. Instead BellSouth uses

13   either excessively long copper loops that result in a substandard

14   loop caused by excessive loss on the loop as well as increasing the

15   likelihood of noise problems or they use the outdated UDLC

16   technology that increases costs and will not always provide the

17   same quality and features of IDLC. In rare instances, BellSouth

18   does provide the "side door" IDLC connectivity, but BellSouth uses

19   a voice grade (DS0) interface for that connection thus degrading

20   the quality of the loop by adding additional voice to digital

21   conversions. It is clear from this provisioning of DS0 IDLC when it

22   suits BellSouth that it would also be feasible for BellSouth to

23   provide IDLC elsewhere.

24

1 **Q.** **PLEASE ILLUSTRATE YOUR POINT WITH AN EXAMPLE.**

2 **A.** As an example of this problem, consider an existing Bellsouth

3 customer that is being served on IDLC facilities today and is using

4 forward disconnect (a type of loop signaling) to let their PBX know

5 that a call has been disconnected. When a CLEC wins that

6 customer and Bellsouth converts the customer from IDLC to UDLC,

7 usually the forward disconnect does not work. The customer

8 naturally becomes upset, the CLEC's reputation is damaged and

9 the customer changes back to BellSouth for the required feature.

10 BellSouth's technical specifications state that forward disconnect,

11 among other things, are not supported on UNE loops (even though

12 they certainly appear to be supported on loops that BellSouth uses

13 for providing service to its own customers). The only way for a

14 CLEC to know whether a feature will work is to convert the

15 customer's service. So, the CLEC industry is faced with making

16 the choice of either forgoing competition in an entire customer

17 segment or trying to provide service without the knowledge of

18 whether or not BellSouth will furnish facilities of sufficient quality

19 that the end users' service will work. Sometimes BellSouth

20 converts the IDLC loops to long copper loops. In this case the

21 forward disconnect works, but the loss on the loop may be so

22 severe that it will detrimentally affect service or the loop may have

23 too much noise for the customer to accept. In any event the quality

24 is less than BellSouth provides to itself.

1

2   Even when the customer does not require an "unsupported

3   feature," problems can and do occur. Excessive loss and noise

4   problems, for example, will affect any customer. In addition, the

5   UDLC methodology adds extra analog to digital conversions

6   resulting in degraded modem performance. It is a common

7   complaint for customers to say "I was able to send data at 33.6k

8   with BellSouth's service, but can only achieve 24.6k with

9   ITC^DeltaCom." When these troubles were referred to BellSouth,

10   the BellSouth response was "We do not guarantee bit rates." Since

11   BellSouth will not attempt to repair the problem, the customer's

12   only option is to "live with" the degraded service or to return to

13   BellSouth for the higher modem speed (and as soon as the

14   customer returns to BellSouth the modems <u>will</u> begin to operate at

15   the higher speed). This lack of parity raises significant barriers to

16   competition in Florida.

17

18 **Q.**   **HOW HAVE REGULATORS RESPONDED TO THE ISSUE?**

19 **A.**   The Tennessee Regulatory Authority "TRA" has recognized the

20   problems associated with the provision of equivalent loops. In the

21   TRA Directors' Conference of June 30, 1998 the TRA decided:

22

23   "[B]ellSouth must, however, supply an unbundled network

24   element loop that provides equivalent performance to the

1   IDLC. Furthermore, the cost of such a loop must be no

2   more than the incumbent company incurs itself when

3   offering such performance to its own customers. Otherwise,

4   I believe the practice to be discriminatory.

5   Still, no one has claimed that the law prevents BellSouth

6   from offering IDLC. Therefore I move that for customers

7   served by IDLC technology, BellSouth must offer an

8   unbundled loop which will allow end users to obtain the

9   same level of performance as that offered by IDLC.

10   Specifically, the unbundled loop should deliver to a CLEC a

11   digital signal that is equivalent to that which enters a switch

12   when IDLC is employed. For example, no additional digital

13   to analog or analog to digital transformation required in

14   excess to that required for BellSouth's retail service.

15   The cost of such an unbundled loop should be established

16   so that it is no more than the equivalent of the loop cost

17   associated with an IDLC connection. This should be

18   computed by calculating the combined cost of a loop

19   connected to a switching port with access to all software

20   features using IDLC technology. The loop cost would be the

21   difference between this combined cost and the cost on an

1   unbundled switching port with access to all software

2   features."[2]

3   In order for competition to be viable, BellSouth must provide UNEs

4   with the same quality and at the same costs as those they provide

5   to their retail customers. This Commission should take the same

6   approach as the TRA.

7

8 Q. **WILL ITC^DELTACOM's ABILITY TO COMPETE BE IMPACTED**

9   **BY THE COMMISSION'S DECISION IN THIS CASE?**

10 A. Yes. By not requiring BellSouth to provide UNEs that are equivalent

11   to those BellSouth provides their own retail customers, customers of

12   CLECs, such as ITC^DeltaCom, are not receiving the same quality of

13   loop that BellSouth provides to its own retail end users. For example,

14   the equivalent of the UNE loop is necessary for the retail service to

15   work. Without the loop BellSouth cannot connect to the end user.

16   Since the same connectivity is required for the retail service,

17   BellSouth should be required to provide parity. If BellSouth cannot

18   establish the more stringent parameters associated with a single

19   component of an end-to-end service, then at an absolute minimum,

20   BellSouth must provide UNEs at parity with the end-to-end service

21   itself.

22

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[2] Minutes of the Directors' conference of Tuesday, June 30, 1998, Volume II Page 28 lines 17-25 and Page 29, lines 1-19

1 Q. **PLEASE DESCRIBE BELLSOUTH'S RESPONSE TO**

2   **ITC^DELTACOM'S REQUEST TO PROVIDE EXTENDED**

3   **LOOPS.**

4 A. Despite the fact that our current interconnection agreement

5   requires that they do so, BellSouth declined to continue to provide

6   the extended loop to ITC^DeltaCom. Put simply, they wanted to

7   discontinue this service offering.

8

9 Q. **PLEASE EXPLAIN THE SIGNIFICANCE OF BELLSOUTH'S**

10   **POSITION ON EXTENDED LOOPS.**

11 A. When an ITC^DeltaCom customer is served out of Central Office A

12   but the ITC^DeltaCom collocation site is in Central Office B,

13   ITC^DeltaCom can, under its current contract, obtain an extended

14   loop from Central Office A to the ITC^DeltaCom collocation site in

15   Central Office B via dedicated transport. By declining to provide

16   the extended loop as a UNE, BellSouth forces ITC^DeltaCom to

17   pay a higher rate for that capability or to pay the extra costs of

18   collocation in marginal offices. ITC^DeltaCom's current agreement

19   provides for the parties to *"attempt in good faith to mutually devise*

20   *and implement a means to extend the unbundled loop sufficient to*

21   *enable DeltaCom to use a collocation arrangement at one*

22   *BellSouth location per LATA..."* The provisions of this paragraph

23   can only be satisfied through extended loops.

24

1   BellSouth did provide such extended loops and there are more

2   than 2,500 such extended loops being provided by BellSouth to

3   ITC^DeltaCom today.

4

5 **Q.** **WHY HAS BELLSOUTH CHANGED ITS POSITION ON**

6   **EXTENDED LOOPS?**

7 **A.** I cannot be sure, but BellSouth apparently had no problem with this

8   arrangement until ITC^DeltaCom requested that BellSouth improve

9   the quality of the extended loop provisioning. BellSouth's response

10   to the request for improved service was to stop offering the service

11   and threaten to take away the existing service. This type of

12   arrangement has been provided by BellSouth under the access

13   tariffs since 1984 with a good service record. There is no reason

14   for BellSouth to refuse to provide it under the interconnection

15   agreement and this Commission should require BellSouth to

16   continue providing extended loops to ITC^DeltaCom. In addition, it

17   has recently come to light that BellSouth may be double billing

18   ITC^DeltaCom for the extended loops. Almost all, if not all, of the

19   extended loops use DS1 transport to connect to ITC^DeltaCom's

20   collocation space. However, it appears that BellSouth may be

21   billing ITC^DeltaCom for DS0 transport as well as DS1 on the

22   same UNE loops.

23

1   **Q.**   **ARE THERE OTHER UNEs THAT BELLSOUTH REFUSES TO**

2   **PROVIDE?**

3   **A.**   Yes. BellSouth has also indicated during negotiations that they are

4   no longer willing to provide Manual Order Coordination for the voice

5   grade service level 1 loop even though it was included in all of the

6   filed UNE cost studies.

7

8   **Q.**   **DOES BELLSOUTH PROVIDE PARITY IN SERVICE**

9   **MAINTENANCE?**

10   **A.**   No. In states other than Florida ITC^DeltaCom currently uses the

11   Voice Grade SL2 UNE in the hope that it will provide better service

12   than the less expensive SL1. In Florida, BellSouth has not yet

13   made the SL1 available, so there is no alternative for voice grade

14   UNE service other than the more expensive designed SL2

15   equivalent. Even though there has been marginal improvement in

16   the general quality of maintenance, there remains a long way to go

17   to achieve parity with the maintenance provided to other BellSouth

18   services. There have even been instances where services were

19   not repaired until the end user returned to BellSouth as a customer.

20   For DS1 services, ITC^DeltaCom uses the access service provided

21   under BellSouth's FCC tariff since it is maintained at a much better

22   level than are the UNEs.

23

1   Q.   **WHAT PROBLEMS HAS ITC^DELTACOM ENCOUNTERED WHEN**

2   **PROVIDING SERVICE VIA UNE'S?**

3   A.   In situations where ITC^DeltaCom has physically collocated in

4   BellSouth's central office, the loop from the customer premises to

5   ITC^DeltaCom is leased from BellSouth via UNE loops. However,

6   BellSouth has failed to provide the loop within parameters or

7   tolerances necessary for the provision of quality service, or in other

8   cases, BellSouth has provided such poor quality that that a customer

9   could not use the line for fax or modem. For example, the Bellcore

10   standard is 8db and BellSouth's technical specification call for 10db,

11   but the loop provided by BellSouth can well be in excess of 20db or

12   as low as less than 1db. In addition, in many instances the loop

13   leased from BellSouth is susceptible to noise problems. Frequently

14   the loops provided by BellSouth will not support the same type of

15   signaling that BellSouth was providing the end user on a retail basis

16   and ITC^DeltaCom cannot discover any problems regarding the

17   signaling until after the end user has been converted to

18   ITC^DeltaCom. When problems are encountered at the initiation of

19   ITC^DeltaCom's service to the end user, the end user will often

20   respond "I did not have this problem with Bell" and ITC^DeltaCom's

21   reputation will be damaged even though the problem may solely

22   reside with BellSouth. The Commission should require that BellSouth

23   provide service at least at parity to that provided to its own retail

24   customers.

1

2   Q.   **ARE THERE ANY CONCERNS ABOUT THE NON-RECURRING**

3   **CHARGES?**

4   A.   Yes. Witness Wood will address the non-recurring charges ("NRC")

5   in more detail, however I will discuss some of the problems with the

6   NRCs.

7

8   In BellSouth's cost studies filed in the UNE cost dockets BellSouth

9   had certain worktimes associated with certain functions. One of those

10   worktimes dealt with the coordination of installation by the UNE center

11   (in the actual filed cost study, BellSouth identified the organization as

12   the Access center and later changed the reference to the UNE center

13   without a change in worktimes). If one takes those filed worktimes

14   and develops an average number of loops that a BellSouth technician

15   can coordinate per day, one finds that BellSouth can only coordinate

16   approximately 7 loops per day per person. ITC^DeltaCom is

17   converting many more than 7 loops per day and requests that this

18   Commission direct BellSouth to provide dedicated technicians to

19   ITC^DeltaCom based on the worktime in the filed cost study. One of

20   the other major problems associated with NRCs involves the ADSL

21   and HDSL loops. These loops are simply "plain old copper." The

22   "advanced services" being provided on these loops is solely a function

23   of the central office and customer premises equipment. BellSouth

24   recognized the lack of complex equipment on the loop in the recurring

1   cost for xDSL (the recurring is less than voice grade recurring). The

2   functions listed by BellSouth in the NRC costs simply will not be

3   performed thus resulting in NRCs that are far in excess of BellSouth's

4   costs.

5

6 **Q. DOES BELLSOUTH PROVIDE xDSL OTHER THAN WITH UNEs?**

7 **A.** Yes. BellSouth provides ADSL through its FCC Tariff No. 1 directly

8   to ISPs. It is interesting to note the NRC in the FCC tariff for ADSL.

9   BellSouth will provide ADSL with a NRC of $~~100~~ 50 assuming an existing

10   voice grade local line. That $~~100~~ 50 covers the installation of the Digital

11   Subscriber Line Access Multiplexer ("DSLAM") equipment in the

12   central office in addition to "conditioning" the loop. The majority

13   (perhaps far in excess of 90%) of the charge is for the DSLAM leaving

14   only a few dollars for the "loop conditioning". In fact, the only

15   additional cost above voice grade incurred by BellSouth for providing

16   xDSL is looking at loop records to determine whether or not the loop

17   is "old fashioned copper". BellSouth recognizes this in its FCC tariff

18   with the statement that ADSL "is a non-designed service."

19

20 **Q. WHAT IS ADSL AND HOW IS AN ADSL COMPATIBLE UNE LOOP**

21   **DIFFERENT FROM ADSL SERVICE OR A VOICE GRADE UNE**

22   **LOOP?**

23 **A.** For the loop portion of the service there is no difference other than the

24   huge inconsistency in the respective BellSouth non-recurring charges.

1   ADSL is an overlay service placed on voice grade facilities. That is

2   the case whether BellSouth provides ADSL on an existing exchange

3   service (via an ADSL compatible loop) or a CLEC provides ADSL on

4   an ADSL compatible UNE loop. The advanced service associated

5   with ADSL is a function of the central office and customer premises

6   equipment, not a function of the loop. The loop itself is old copper

7   technology (BellSouth's first copper pair loop installed over one

8   hundred years ago was ADSL compatible). Thus, the appropriate

9   NRC for ADSL is the NRC for an equivalent voice grade loop plus an

10 incremental cost for checking to see if the loop will meet the ADSL

11 criteria. Unfortunately, BellSouth has not produced an equivalent

12 voice grade NRC cost. Until such time as BellSouth files an

13 appropriate cost study, I recommend that this Commission set the

14 NRC for ADSL at a fraction of the voice grade SL2 NRC rate.

15

16 Q.   DOES BELLSOUTH PROVIDE PARITY IN SERVICE ORDER

17   PROCESSING?

18 A.   No. Currently BellSouth cannot process 20% to 25% of

19   ITC^DeltaCom's orders mechanically. That results in far too many

20   orders requiring fax transmission. Moreover, of the 75% to 80% that

21   ITC^DeltaCom can transmit to BellSouth electronically, more than

22   50% require manual intervention by BellSouth due to inadequacies in

23   BellSouth's systems. In addition, the interval for providing UNEs is far

24   in excess of that BellSouth provides its retail customers.

1 ITC^DeltaCom currently gives BellSouth intervals longer than the

2 minimum required by BellSouth but still has problems with BellSouth

3 working the order on the requested due date. The end result is that

4 ITC^DeltaCom's customers, being accustomed to the intervals

5 provided by BellSouth in the retail environment, expect ITC^DeltaCom

6 to provide its service in comparable timeframes. Many of

7 ITC^DeltaCom's orders for UNEs are delayed time and time again by

8 BellSouth resulting in customer dissatisfaction. This Commission

9 should require BellSouth to provide UNEs in a timely manner and

10 establish performance guarantees for its failure to do so. In addition

11 to correction of the problems with timely processing of the service

12 orders, BellSouth should also be required to furnish all customer and

13 facility information necessary to allow ITC^DeltaCom to issue orders

14 on a mechanical basis.

15

16 Q: **HAS ITC^DELTACOM INFORMED BELLSOUTH OF THESE**

17 **PROBLEMS?**

18 A: Yes. ITC^DeltaCom has been providing BellSouth with specific data

19 on performance problems for some time now. In early March of this

20 year, ITC^DeltaCom and BellSouth representatives met to review a

21 series of trouble reports ITC^DeltaCom had earlier provided to

22 BellSouth concerning unbundled loop cutovers. Attached as Exhibit

23 TAH-1 is a summary of these trouble reports ITC^DeltaCom provided

24 to BellSouth. Exhibit TAH-2 is a summary which BellSouth prepared

1   itself based on the information provided by ITC^DeltaCom. The first

2   page of the exhibit summarizes a total of 47 trouble reports. The

3   page is entitled "Summary of Review." The letters to the right of the

4   word "unit" relate to various divisions within BellSouth and to

5   competitive local exchange carrier ("CLEC") as follows:

6   OSPE - BellSouth Outside Plant Engineering

7   AFIG - BellSouth Facility Interface Group

8   UNE - BellSouth Unbundled Network Element Center

9   CLEC - Competitive Local Exchange Carrier

10   CO- BellSouth Central Office

11   LCSC - BellSouth Local Carrier Service Center

12   I&M - BellSouth Installation and Maintenance

13   CPG - BellSouth Circuit Provisioning Group

14   PICS - BellSouth Plug In Control System

15   Except for the code "CLEC," each of these codes relates to a

16   separate division within BellSouth involved in transitioning a customer

17   from BellSouth to ITC^DeltaCom by means of an unbundled local loop

18   cutover.   In other words, BellSouth provisions the loop to

19   ITC^DeltaCom for it to provide facilities-based local exchange service

20   to the customer.

21   The pages behind this summary sheet contain BellSouth's own

22   analysis of the ITC^DeltaCom provided trouble report assigning

23   responsibility for the problem to either ITC^DeltaCom or to one of the

24   BellSouth's divisions mentioned above.

1   **Q.**   **WHAT DOES THE BELLSOUTH REPORT SHOW?**

2   **A.**   The report shows that of 47 unbundled loop orders, 41 experienced

3   significant BellSouth-caused delays or customer service outages.

4

5   **Q.**   **HAS ITC^DELTACOM CONTINUED TO EXPERIENCE PROBLEMS**

6   **OF THIS MAGNITUDE?**

7   **A.**   Yes. I have included as Exhibit TAH-3 a more recent set of

8   ITC^DeltaCom trouble reports of the same type included in the

9   summary prepared by BellSouth.

10

11   ~~Q.~~   ~~HOW DO THESE REPORTS RELATE TO THE NEED FOR~~

12   ~~PERFORMANCE GUARANTEES?~~

13   ~~A.~~   ITC^DeltaCom - and any competing local provider - faces tremendous

14   obstacles in trying to convince a long-standing customer of BellSouth

15   to switch to a new carrier. When the customer experiences problems

16   at the very outset of this new arrangement, it immediately causes a

17   perhaps already tentative customer to become even more anxious

18   about the decision to go with a new carrier. When these problems

19   occur, it is ITC^DeltaCom that is held responsible - not BellSouth.

20   This is so even though the problem with the transition is BellSouth's

21   problem and acknowledged by BellSouth. ITC^DeltaCom often has

22   to go to great lengths to retain a customer under these circumstances

23   for which it is not compensated by BellSouth. ~~Performance~~

24   ~~Guarantees are critical to (1) providing BellSouth with the incentive to~~

1   ~~reduce the~~ incidence of these types of problems ~~and (2) to ensure~~

2   that ITC^DeltaCom ~~and its customer~~ are compensated for service

3   ~~outages~~ and delays caused by BellSouth.

4

5   **Q.**   **HAS ITC^DELTACOM REQUESTED LANGUAGE IN ITS**

6   **INTERCONNECTION AGREEMENT TO PROTECT ITS**

7   **CUSTOMERS?**

8   **A.**   Yes. For example, ITC^DeltaCom's position on Petition Issue 2(c)(ii)

9   is that the customer's service should not be interrupted for longer than

10   15 minutes between the disconnection of the old service and the

11   connection of BellSouth's facilities to ITC^DeltaCom's collocation

12   space. Any problems occurring in ITC^DeltaCom's facilities or

13   equipment would not count as part of the 15 minute interval. If the

14   proper preparation work is completed by BellSouth prior to

15   disconnecting the customer's existing service, this parameter will not

16   be difficult for BellSouth to meet. This language exists in the current

17   interconnection agreement and should be continued to the new

18   agreement.

19

20 **Q.**   **DO YOU HAVE ANY OTHER EXAMPLES?**

21 **A.**   Yes. With respect to Petition Issue 2(c)(xiv), many of the cutover

22   problems could be alleviated if BellSouth coordinated with

23   ITC^DeltaCom 24 to 48 hours prior to the scheduled cutover date and

24   performed any tests ahead of that date to insure that the cutover will

1   work smoothly. If BellSouth delays the cutover date, BellSouth has

2   cost us and our customer time and money. ~~Thus, BellSouth should~~

3   ~~waive~~ or refund any applicable non-recurring charges associated with

4   that cutover. In addition, in our current contract, the Party responsible

5   for the delay should pay for the other Party's reasonable labor costs.

6   This language is in our existing agreement approved by this

7   Commission and is Issue 2 (c)(iv).

8

9   Another request ITC^DeltaCom has made on behalf of its

10   customers and because of its experiences in Florida, is that BellSouth

11   designate personnel for cutovers (Petition Issue 2 (c)(v)). Evidently,

12   there are not enough BellSouth personnel who are available and

13   dedicated to insuring a smooth transition of a customer's service from

14   BellSouth to ITC^DeltaCom. ITC^DeltaCom believes that this may

15   also reduce the number of cutovers that result in service outage to

16   end users.

17

18   Finally, ITC^DeltaCom has requested that certain LNP cutover

19   procedures be implemented as set forth in Exhibit A, Attachment 5 of

20   the arbitration petition, to insure that customers are smoothly

21   transferred from BellSouth to ITC^DeltaCom and vice versus. (Petition

22   Issue 2(f)).

23

1 Q. HAS BELLSOUTH COMMITTED TO PROVIDING THE SAME

2   REPAIR AND MAINTENANCE PRIORITY TO ITC^DELTACOM

3   CUSTOMERS WHO ARE SERVED VIA UNES?

4 A. No. ITC^DeltaCom believes that the same restoration guidelines

5   that currently apply to BellSouth's retail customers should apply to

6   ITC^DeltaCom UNE customers. However, ITC^DeltaCom believes

7   that sufficient guidelines for this restoration do not currently exist.

8   ITC^DeltaCom will gladly negotiate with BellSouth to develop these

9   guidelines.

10

11 Q. WHAT IS ITC^DELTACOM'S POSITION WITH REGARD TO UNE

12   COOPERATIVE TESTING?

13 A. Until such time as BellSouth provides UNEs at parity, ITC^DeltaCom

14   needs these test results in order to ensure the quality of BellSouth's

15   installation. If BellSouth will agree to use its "best efforts" to provide

16   cooperative testing within 2 hours of request, ITC^DeltaCom will

17   consider this part of the issue closed.

18

19 Q. WHAT IS ITC^DELTACOM'S POSITION ON ADDITIONAL COSTS

20   ASSOCIATED WITH TROUBLE ISOLATION TO BELLSOUTH'S

21   NETWORK?

22 A. The only situation where BellSouth should reimburse ITC^DeltaCom

23   is if there is a second referral on the same trouble. In other words,

24   after ITC^DeltaCom correctly isolates the trouble to BellSouth's

1   network but BellSouth fails to repair the trouble and ITC^DeltaCom is

2   required for a second time to isolate the same trouble to BellSouth's

3   facilities. ITC^DeltaCom should not be penalized for BellSouth's

4   inability to repair troubles. In addition, this would be reciprocal with

5   BellSouth's charges to ITC^DeltaCom when ITC^DeltaCom incorrectly

6   isolates the trouble to BellSouth's network.

7

8   **Q.**   **DOES BELLSOUTH EVER MODIFY ITC^DELTACOM'S ORDER**

9   **AFTER ISSUING AN FOC?**

10   **A.**   Yes. In fact, BellSouth modifies the due date after the FOC on a

11   frequent basis. Often BellSouth modifies the FOC due date on the

12   due date itself after ITC^DeltaCom has dispatched its central office

13   and customer premises technicians to work the order (as well as

14   arranging for third party venders to be dispatched to the customer

15   premises). These types of incurred costs must be reimbursed by

16   BellSouth just as BellSouth is requesting ITC^DeltaCom to pay for the

17   costs incurred by BellSouth to accommodate ITC^DeltaCom

18   modifications.

19

20   **Q.**   **WHY ARE COLLOCATION ISSUES A SUBJECT OF THIS**

21   **ARBITRATION?**

22   **A.**   Collocation is an integral part of interconnection between carriers.

23   As has been apparent since the Telecommunications Act of 1996

24   ("1996 Act") was enacted, the promise of competition would be

1   severely curtailed without the collocation of CLEC equipment in

2   BellSouth's central offices on efficient and non-restrictive terms.

3   Today, collocation is essential to the development and deployment

4   of innovative new technologies necessary to meet the ever-

5   increasing demand for high-speed, high-capacity advanced

6   services.

7

8   The collocation issues before this Commission concern whether or

9   not BellSouth is providing collocation to ITC^DeltaCom with rates,

10   terms, and conditions that are consistent with the Communications

11   Act of 1934, as amended by the 1996 Act (together "the Act").

12   Section 251(c)(6) of the Act requires incumbent LECs to "provide,

13   on rates terms and conditions that are just, reasonable, and

14   nondiscriminatory, for physical collocation of equipment necessary

15   for interconnection or access to unbundled network elements at the

16   premises of the local exchange carrier..."[3]

17

18   Changes made to the collocation agreement must also be reflected

19   in the "reverse" collocation agreement. That agreement covers the

20   collocation of BellSouth equipment in ITC^DeltaCom's space.

21

22   Q.   **WHAT POSITIONS DID THE PARTIES TAKE DURING THE**

23   **NEGOTIATIONS WITH RESPECT TO COLLOCATION ISSUES?**

---

[3]   47 U.S.C. Section 251(c)(6).

1   **A.**   ITC^DeltaCom's position in the negotiations was, and continues to

2   be, that BellSouth must comply with the collocation policies and

3   rules set forth in the Federal Communications Commission's "FCC"

4   recent <u>Advanced Wireline Service Order</u>, released on March 31,

5   1999. Although BellSouth indicated that it would likely follow the

6   FCC's order, BellSouth's new collocation language conflicts with

7   the FCC's recent order. ~~BellSouth's proposed security~~

8   ~~arrangements~~ appear to be far in excess of that required for

9   BellSouth's own employees. The Commission should require

10   BellSouth to set the CLEC security arrangements to be equivalent

11   with that required for BellSouth's own employees.

12

13   **Q.**   **HAS BELLSOUTH ADDRESSED ALL ISSUES CONCERNED WITH**

14   **ATTACHMENT 3 AND LISTED AS UNRESOLVED IN EXHIBIT B?**

15   **A.**   No. At the time of the filing of this petition, BellSouth was reviewing

16   ITC^DeltaCom's proposed language. Thus, in order to preserve

17   these issues, ITC^DeltaCom generically requested the same

18   interconnection language that is in our current agreement as part of

19   issue 5. ITC^DeltaCom then listed each section of the proposed

20   language it provided BellSouth that it understood as open and under

21   review as an unresolved issue in Exhibit B. The parties are currently

22   negotiating Attachment 3. Rather than address all issues in Exhibit

23   B that are still undecided, I request that I be able to update and

1   supplement my testimony to the extent necessary to adequately

2   address any unresolved issues.

3

4 Q. **WHAT ARE ITC^DELTACOM'S FORECASTING NEEDS?**

5 A. As ITC^DeltaCom expands its services, there may be instances

6   where ITC^DeltaCom is willing to commit to a binding forecast to

7   insure that BellSouth's network can support ITC^DeltaCom's traffic

8   requirements. This may be particularly true in congested wire

9   centers and tandem offices. Like many other carriers,

10   ITC^DeltaCom's traffic has grown significantly over the past several

11   years. ITC^DeltaCom expects that its traffic requirements will

12   continue to expand in the immediate future. To guarantee that

13   ITC^DeltaCom will have the requisite capacity on BellSouth's

14   networks, ITC^DeltaCom believes that it is necessary to enter into

15   a binding forecast with BellSouth as part of the interconnection

16   agreement between the parties.

17

18 Q. **HOW WOULD BELLSOUTH BENEFIT FROM A BINDING**

19   **FORECAST ARRANGEMENT?**

20 A. Pursuant to a binding forecast, ITC^DeltaCom will pay BellSouth

21   for making the increased capacity available in stages, whether or

22   not ITC^DeltaCom actually fills that capacity. The benefit for

23   BellSouth is that it can build out its network without fearing that it

24   will not be able to recoup its investments if the forecasts in the

1   ~~interconnection agreement are inaccurate. ITC^DeltaCom would~~

2   ~~cover BellSouth's costs in the event ITC^DeltaCom fell short of the~~

3   ~~binding forecast. I urge the Commission to direct BellSouth to~~

4   ~~enter into a binding forecast with ITC^DeltaCom within the~~

5   ~~interconnection agreement between the parties and require~~

6   ~~penalties should the requirements of the binding forecast not be~~

7   ~~met.~~

8

9   **Q.   WHAT IS ITC^DELTACOM'S POSITION ON NXX TESTING?**

10   **A.**   Due to errors and omissions in BellSouth translations of

11   ITC^DeltaCom NXX codes, ITC^DeltaCom has found it necessary to

12   dispatch technicians to remote locations so that they could place test

13   calls through local service provided by BellSouth to insure that the

14   translations have been correctly installed by BellSouth. A request

15   was made in late 1997 for BellSouth to assist in the testing of

16   translations.   BellSouth responded by recommending that

17   ITC^DeltaCom place orders for FX lines or Centrex service to every

18   BellSouth end office if we wanted to gain access to the BellSouth

19   switches to test our NXX codes.

20   Establishing FX or Centrex service to the hundreds of BellSouth end

21   offices is not cost effective for ITC^DeltaCom and would not be cost

22   effective for BellSouth if they were placed in a similar position.

23   ITC^DeltaCom recommends that BellSouth provide access to the

24   BellSouth FX test network that BellSouth uses today for responses to

1   trouble tickets. At a minimum, ITC^DeltaCom should have automated

2   tests of the NXX codes in all end offices with correction of any errors

3   or omissions found during those tests.   This level of testing is

4   necessary to assure that the quality of the network is maintained at

5   high levels.

6

7 Q.   **PLEASE EXPLAIN THE PRINCIPLE THAT ITC^DELTACOM's**

8   **REPUTATION COULD BE HARMED BY BELLSOUTH'S**

9   **FAILURE TO PROVIDE PARITY SUCH THAT ITS ABILITY TO**

10   **ATTRACT FUTURE CUSTOMERS WOULD BE DIMINISHED.**

11 A.   ITC^DeltaCom as a competitor in the local telecommunications

12   market must overcome two enormous hurdles (over and above

13   facing an established competitor who serves nearly 100% of the

14   customers) in order to succeed.

15

16   First, the local telecommunications marketplace is a marketplace

17   defined by quality. Customers, especially customers who feel they

18   are "taking a chance" with a new carrier, require that their

19   telecommunications service work well and without delay. For many

20   businesses, a single minute without telephone service can severely

21   harm their business; hence, a new carrier may only get one chance

22   to prove that it can provide the required services at the required

23   level of quality. Likewise, one failure to do so can easily brand a

1 carrier as a "non-performer," even if the actual failure was on the

2 part of the carrier's wholesale provider (*e.g.*, BellSouth).

3

4 Second, new carriers by definition don't have a long tenure in the

5 marketplaces in which they can attempt to attract customers;

6 therefore, one "bad" incident involving the quality of their service

7 may be the only circumstance on which their entire reputation is

8 based. Incumbent LECs such as BellSouth, on the other hand,

9 have years of service behind them such that one bad incident can

10 be seen as a single, isolated occurrence to be overlooked. The

11 importance of a CLEC's reputation, and the need for specific

12 performance standards to which the ILEC must be held in order to

13 protect the CLEC's reputation, cannot be emphasized enough.

14

15 Q. **DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A. Yes. However, I reserve the right to address any issues raised by

17 BellSouth and to supplement my testimony as necessary upon

18 production of any discovery requests.

19

20

21

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

2   **ADDRESS.**

3   A.   My name is Thomas Hyde. I am Senior Manager – Industry Relations

4   for ITC^DeltaCom Communications Inc., ("ITC^DeltaCom"). My

5   business address is 1530 DeltaCom Drive Anniston, Alabama 36202.

6

7   Q.   **ARE YOU THE SAME THOMAS HYDE THAT FILED DIRECT**

8   **TESTIMONY IN THIS PROCEEDING?**

9   A.   Yes.

10

11   Q.   **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12   A.   I will rebut certain testimony filed by BellSouth in this docket.

13

14   Issue 7: [ITC^DeltaCom Issue 2(b)(ii)] – Until the Commission makes a

15   decision regarding UNEs and UNE combinations, should BellSouth be

16   required to continue providing those UNEs and combinations that it is

17   currently providing to ITC^DeltaCom under the interconnection

18   agreement previously approved by this Commission?

19

20   Q: **WITNESS VARNER STATES THAT BELLSOUTH SHOULD BE ABLE**

21   **TO DECIDE WHICH COMBINATIONS IT WILL OFFER IN SEPARATE**

22   **COMMERCIAL AGREEMENTS UNTIL THE FCC ISSUES ITS NEW**

23   **ORDER ON UNES. DO YOU AGREE WITH HIS POSITION?**

1   **A:**   No. First, I believe that this Commission has all necessary authority to

2   require the Parties to maintain the status quo until the FCC's final

3   decision on UNEs is issued. Again, ITC^DeltaCom simply wants to

4   maintain the status quo until the FCC order on UNEs and any UNE

5   combinations is issued.

6

7   **Q.**   **WHAT IS ITC^DELTACOM'S POSITION ON BELLSOUTH'S OFFER**

8   **TO PROVIDE CERTAIN UNE COMBINATIONS?**

9   **A.**   The list of UNEs that BellSouth has "volunteered" to combine involve

10   only those that BellSouth has refused to allow ALECs to directly

11   connect to. A UNE will not work by itself – it must be connected to

12   something to work. If BellSouth refuses to allow an ALEC to directly

13   connect to any UNE, BellSouth *must* provide that UNE combined to

14   another UNE that an ALEC may connect to. In other words, if

15   BellSouth had not "volunteered" to combine those UNEs the

16   appropriate regulatory authorities would certainly have ordered

17   BellSouth to either combine them or else allow direct connection to

18   those UNEs.

19

20   Issue 8(a): [ITC^DeltaCom Issue 2(b)(iii)] – Should BellSouth be

21   required to provide ITC^DeltaCom extended loops or the loop/port

22   combination?

23

1 Q. **WITNESS VARNER STATED THAT BELLSOUTH IS WILLING TO**

2   **PROVIDE COMBINATIONS IN A "SIDEBAR" AGREEMENT. HAS**

3   **BELLSOUTH MADE SUCH A PROPOSAL TO ITC^DELTACOM?**

4 A. Yes. However, the "sidebar" agreement that BellSouth presented to

5   ITC^DeltaCom did not address ITC^DeltaCom's extended loops.

6   ITC^DeltaCom requested that BellSouth offer ITC^DeltaCom a solution

7   that would address our extended loops. BellSouth has failed to do so.

8

9 Q. **WITNESS VARNER HAS STATED THAT BELLSOUTH HAS NO**

10   **OBLIGATION TO PROVIDE EXTENDED LOOPS. DO YOU AGREE?**

11 A. No. The current interconnection agreement, paragraph IV B14 states:

12   "The parties shall attempt in good faith to mutually devise and

13   implement a means to extend the unbundled loop sufficient to

14   enable DeltaCom to use a collocation arrangement at one

15   BellSouth location per LATA (e.g., tandem switch) to obtain

16   access to unbundled loop(s) at another such BellSouth location

17   over BellSouth facilities."

18   There is no way to comply with the provisions of VI B14 except to

19   provide extended loops. I do not understand how BellSouth can

20   reconcile the good faith provisions of the existing Commission approved

21   interconnection agreement and still claim that they have no obligation to

22   continue to provide the service.

1   BellSouth has provided ITC^DeltaCom more than two thousand five

2   hundred extended loops. It is difficult to comprehend how a company

3   such as BellSouth could provide ITC^DeltaCom more than 2500

4   extended loops under the provisions of paragraph IV B14 and still claim

5   that it was under no obligation to continue to do so. In order to maintain

6   the status quo, it is necessary for BellSouth to continue to provide

7   extended loops to ITC^DeltaCom. Even more disturbing is Mr. Varner's

8   statement in his testimony in other jurisdictions[1] that "BellSouth never

9   intended to provide ITC^DeltaCom with extended loops." If we are to

10   believe that the provision of more than 2500 extended loops by

11   BellSouth was "just a mistake", it would now appear that BellSouth

12   never intended to honor the good faith negotiation provision of

13   paragraph IV B14 of the existing agreement.

14

15   **Q.**   **HOW DID ITC^DELTACOM START THE EXTENDED LOOP**

16   **PROCESS WITH BELLSOUTH?**

17   **A.**   Shortly after the interconnection agreement was signed, ITC^DeltaCom

18   went to BellSouth with our proposed extended loop arrangement.

19   BellSouth accepted that arrangement and began installing service.

20   BellSouth continued to accept orders for extended loops until March of

21   1999 when ITC^DeltaCom complained about the quality of service

22   being provided.

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[1] See, for example, Page 30 Line 20 of the Direct Testimony of Alphonso J. Varner before the Public Service Commission of South Carolina, Docket 1999-259-C filed August 25, 1999.

1 Q. **WHAT IS ITC^DELTACOM'S POSITION ON BELLSOUTH'S CLAIM**

2 **ON PAGE 24 OF WITNESS VARNER'S TESTIMONY THAT**

3 **EXTENDED LOOPS REPLICATE OTHER TARIFFED SERVICES**

4 **AND THEREFORE PROVIDING EXTENDED LOOPS WOULD**

5 **LOWER THE REVENUE RECEIVED FOR THOSE ALTERNATE**

6 **SERVICES.**

7 A. Both aspects of Mr. Varner's assumption are incorrect. First, the

8 access service that Mr. Varner claims is replicated by extended loops is

9 voice grade special access. Specifically the end-link available from the

10 BellSouth Florida access "E" tariff and the BellSouth FCC Tariff No. 1

11 that combines dedicated transport with a local channel to the end-user's

12 premises. The BellSouth access tariffs offer voice grade service in

13 several different technical specification packages. Not a single one of

14 those packages is available for UNEs. Instead, the technical

15 specifications for UNEs are limited by BellSouth to those in the

16 BellSouth developed UNE technical specifications. Those UNE

17 specifications are inferior to the specifications provided for any one of

18 the special access packages. In addition, the special access trouble

19 restoration target is two hours. The UNE trouble restoration target is

20 twenty-four hours.

21

22 BellSouth would have this Commission believe that the UNEs provided

23 by BellSouth with an inferior grade of technical parameters and with

1   trouble restoration that is *twelve* times longer than access are equal.

2   Combinations of UNEs no more replicate tariffed services than a

3   Chevrolet replicates a Rolls Royce. Certainly both are cars, but there is

4   a tremendous amount of difference between them and those

5   differences are reflected in their prices.   There is just as much

6   difference between combinations of UNEs and tariffed services. It is

7   interesting to note that on page 5 of Witness Milner's testimony that

8   BellSouth recognizes that if a ALEC needs the technical specifications

9   of a tariffed private line or access service, the ALEC may request,

10   through a Bona Fide Request (BFR), and at an additional cost, those

11   additional transmission parameters that would make a UNE equal to a

12   tariffed service. Until such time as BellSouth provides combinations of

13   UNEs with the same quality of service and the same trouble restoration

14   parameters as access, BellSouth will have no justification to their claim

15   that combinations of UNEs replicates access service (or any other

16   tariffed service). Second, the UNE loops provided by BellSouth are of

17   course priced at the UNE rates. However, BellSouth is not foregoing

18   any access revenue on the transport provided as part of the extended

19   loops.

20

21 **Q.**   **HAS BELLSOUTH THREATENED TO DISCONNECT**

22   **ITC^DELTACOM's EXISTING CUSTOMERS SERVED VIA**

23   **EXTENDED LOOPS?**

1   A.   Yes. As I stated above, after ITC^DeltaCom complained about the

2   service quality of the extended loops, BellSouth started rejecting orders

3   for extended loops. BellSouth then threatened to disconnect all existing

4   extended loops. With the threat of loss of service to more than 2500

5   loops – some of which had been in service more than one year,

6   ITC^DeltaCom had no choice but to file collocation applications for

7   more than 50 BellSouth central offices to prevent disruption of service

8   to ITC^DeltaCom's customers. ITC^DeltaCom was never given any

9   reassurance that BellSouth would leave the existing extended loops in

10   service even long enough to convert to non-extended loops.

11   ITC^DeltaCom respectfully requests this Commission to maintain the

12   status quo and require the provision of extended loops in Florida

13   pending the final decision of the FCC in the UNE proceeding.

14

15   Issue 39 and Issue 40: [ITC^DeltaCom Issue 6(b)]

16   39. What are the appropriate recurring and non-recurring rates and

17   charges for: (a) two-wire ADSL/HDSL compatible loops, (b) four wire

18   ADSL/HDSL compatible loops, or (c) two-wire SL1 loops.

19   40. Should BellSouth be required to provide: (a)(1) two-wire SL2 loops

20   or (a)(2) two-wire SL2 loop Order Coordination for Specified Conversion

21   Time? (b) If so, what are the appropriate recurring and non-recurring

22   rates and charges?

1 Q. **BELLSOUTH'S POSITION ON ADSL RATES IS THAT THE RATES**

2   **CONTAINED IN THE APRIL 29, 1998 ORDER SHOULD APPLY. DO**

3   **YOU AGREE?**

4 A. No. The non-recurring charge (NRC) for ADSL should be the NRC for

5   an equivalent voice grade loop plus an incremental cost for checking to

6   see if the loop will meet the ADSL criteria. BellSouth does not provide

7   any conditioning, or additional work of any type beyond that necessary

8   for an equivalent voice grade UNE loop, on the ADSL loop as part of

9   the basic ADSL loop NRC. Any conditioning performed by BellSouth to

10   make a loop ADSL compatible is charged separately under special

11   construction charges. These special construction charges are usually

12   for removing any load coils and bridge taps from the loop.

13

14 Q. **HOW IS AN ADSL COMPATIBLE UNE LOOP DIFFERENT FROM**

15   **ADSL SERVICE OR A VOICE GRADE UNE LOOP?**

16 A. ADSL is an overlay service placed on voice grade facilities. That is

17   correct whether BellSouth provides ADSL on an existing exchange

18   service (via an ADSL compatible loop) or a ALEC provides ADSL on an

19   ADSL compatible UNE loop. The advanced service associated with

20   ADSL is a function of the central office and customer premises

21   equipment, not a function of the loop. The loop itself is old copper

22   technology (BellSouth's first copper pair loop installed over one

23   hundred years ago was ADSL compatible). Since ADSL is only an

1   overlay on voice grade loops, BellSouth's claim that ADSL is always a

2   designed service is based on BellSouth's faulty assumptions. ADSL

3   may be an overlay to an undesigned SL1 loop (as BellSouth chooses to

4   provide for itself) or it may be an overlay to a designed SL2 (as

5   ITC^DeltaCom intends to order). Thus, the appropriate NRC for ADSL

6   is the NRC for an equivalent voice grade loop plus an incremental cost

7   for checking to see if the loop will meet the ADSL criteria.

8

9   Q. **BELLSOUTH COST STUDIES FOR ADSL ASSUMES THAT A**

10   **DISPATCH IS ALWAYS REQUIRED ON ADSL UNE LOOPS AND**

11   **THAT ADSL LOOPS ARE ALWAYS DESIGNED. DO YOU AGREE?**

12 A. No. It is important to note that the dispatch assumed by BellSouth is

13   the same dispatch that is necessary for the installation of a loop

14   regardless of whether or not that loop is the BellSouth retail exchange

15   service loop or a UNE loop. Dispatch of a technician to the customer

16   premises for ADSL alone is more a function of non-regulated customer

17   premises equipment than of the loop itself. If an end user is served by

18   an existing non-loaded copper facility (plain old copper wire), no

19   dispatch is required to convert that end user to ADSL UNE loops. If

20   that end user is _not_ served by an existing non-loaded copper facility,

21   then ITC^DeltaCom will be required to pay special construction charges

22   that will cover any dispatch required to "condition" the loop.

1   This claim by BellSouth that dispatch is required 100% of the time on

2   ADSL compatible UNE loops also illustrates the lack of a forward-

3   looking cost study. BellSouth assumed in their cost study that there

4   would not be any BellSouth ADSL service that could be lost to

5   competition. At the time the cost study was filed, that may have

6   represented the existing, historical condition. However, today there are

7   BellSouth ADSL customers in Florida and a forward-looking study

8   would have allowed for competitive losses to those existing BellSouth

9   ADSL customers. Conversion of an existing BellSouth ADSL service to

10   ADSL UNE loop would not require a dispatch since the loop is already

11   ADSL compatible. Work would only be required in the central office.

12   BellSouth also failed to take into account those existing BellSouth

13   exchange service customers served by an ADSL compatible (plain old

14   copper) loop that would convert to an ALEC service and add the ADSL

15   capability. These situations would also not require dispatch. In

16   addition, there will be some quantity of idle ADSL compatible spare

17   loops already connected to NIDs that will not require dispatch. The end

18   result of the position taken by BellSouth is the raising of artificial, anti-

19   competitive barriers to ALEC entry into the ADSL market.

20

21   Q.   WHY DID YOU REFERENCE THE NRC ASSOCIATED WITH

22   BELLSOUTH'S ADSL SERVICE IN THEIR FCC TARIFF NO. 1?

1   **A.**   The $~~$100~~ 50̸ NRC for ADSL service in BellSouth's FCC Tariff No. 1

2   contains costs for at least two functions. The majority of the costs are

3   associated with installation of the central office ADSL equipment and

4   connection of that equipment with transport Permanent Virtual Circuits

5   (PVCs). A very small portion of the costs are to verify through loop

6   records that the loop is "plain old copper" without such equipment as

7   load coils and bridge taps. That very small percentage of the ADSL

8   service NRC costs would also apply to ADSL UNE loop NRC costs.

9   BellSouth has not yet furnished those cost studies so I cannot

10   determine the exact amount of the additive, but it could be as low as $1

11   or $2. This cost should then be added to the appropriate voice grade

12   UNE loop NRC cost.

13

14   **Q.**   **HAS BELLSOUTH PRODUCED AN APPROPRIATE VOICE GRADE**

15   **UNE LOOP NRC COST TO APPLY TO ADSL?**

16   **A.**   No. In their recurring ADSL cost study BellSouth has recognized that

17   the extra costs associated with digital loop carrier are not appropriate to

18   ADSL since ADSL will not work with digital loop carrier and also that the

19   ADSL loops are shorter and thus less costly. Those costs are reflected

20   in ADSL recurring rates that are less than voice grade rates. There are

21   extra NRC costs associated with digital loop carriers that must also be

22   removed from any costs associated with ADSL NRCs.

23

1 **Q.** **ARE YOU RECOMMENDING ANY NON-RECURRING CHARGES TO**

2 **THE FLORIDA COMMISSION?**

3 **A.** Yes. Attached as Rebuttal Exhibit TAH-4 are Non-Recurring Charges

4 (NRC) for 2-Wire Voice Grade SL1, 2-Wire Voice Grade SL2 and

5 ADSL/HDSL Compatible loops. These costs were developed using

6 BellSouth's cost calculator with modified inputs. The inputs were

7 modified are as follows:

8 • Additional loop work times were adjusted to reflect efficiencies of

9 multiple loops on a single order (Typically by reducing the additional

10 worktime by 50% until BellSouth can file cost studies reflecting

11 those efficiencies)

12 • The ADSL modifications used the Voice Grade SL2 costs and

13 added time for verifying the facilities for ADSL compatibility (This

14 does not mean that ADSL requires an SL2, only that ITC^DeltaCom

15 plans to use the SL2 for the ADSL overlay. As mentioned above,

16 this methodology results in an overstatement of ADSL costs

17 because the SL2 NRC includes incremental costs associated with

18 subscriber line carrier that will not be included on any ADSL loop.)

19 The ADSL/HDSL disconnect costs would be the same as Voice

20 Grade loops.

21 The NRCs on Rebuttal Exhibit TAH-4 represent a first step toward

22 actual forward-looking costs, but still contain some unnecessary costs

1   which cannot be identified until BellSouth files a cost study that

2   complies with the FCC's reinstated rules.

3

4   Issue 1: [ITC^DeltaCom Issue 1(a)] Should BellSouth be required to

5   comply with the performance measures and guarantees for pre-

6   ordering/ordering, resale, and unbundled network elements ("UNEs"),

7   provisioning, maintenance, interim number portability and local number

8   portability, collocation, coordinated conversions and the bona fide

9   request processes as set forth fully in Attachment 10 of Exhibit A to this

10   Petition?

11

12   **Q: WHY ARE PERFORMANCE GUARANTEES NEEDED?**

13   **A:**   Performance guarantees are not a new concept as BellSouth provides

14   such guarantees in its tariffs today. ITC^DeltaCom believes that it is

15   critical for local competition and for the purposes of executing this

16   interconnection agreement that performance measures and guarantees

17   are included and filed and approved by this Commission.

18

19   Issue 3(b)(2): [ITC^DeltaCom Issue 2] Pursuant to the definition of

20   parity, should BellSouth be required to provide UNEs?

21

22   **Q.   ON PAGE 19 WITNESS VARNER CLAIMS THAT PARITY WITH**

23   **RETAIL IS NOT POSSIBLE BECAUSE BELLSOUTH DOES NOT**

13

1   **PROVIDE ITSELF UNES. IS THIS A VALID OBJECTION?**

2 **A.**   No. As I am sure this Commission is aware, a similar situation occurred

3   with intraLATA toll. Access rates were imputed to the toll rates because

4   the ILECs did not bill themselves access. Access functions are, of

5   course, required for toll to interconnect with the public switched

6   network. The situation is the same with local service. Even though

7   BellSouth does not bill itself UNE rates for the local service they

8   provide, the loop and switch UNE functions are required for any

9   BellSouth retail local service to function. BellSouth realizes that local

10   service is made up of combinations of UNE equivalents since they have

11   gone to great lengths to try to substantiate their claims that a

12   combination of loop and port UNEs is the same as local retail service.

13   There are other BellSouth retail services that require the transport

14   function in addition to the loop and switch function. Therefore, even if

15   BellSouth does not "provide UNEs to themselves", they provide

16   functionally identical facilities and equipment. Claims to the contrary

17   would amount to using semantics to play games with reality.

18   The maintenance parameters for UNEs, just as it is with access, should

19   be set at a more stringent level than the end-to-end retail service in

20   order to have equal treatment. ITC^DeltaCom has not requested the

21   maintenance parameters to be set at the more appropriate end link

22   levels, but has held that ITC^DeltaCom could compete effectively with

23   only retail parity.

1   At this time ITC^DeltaCom is not requesting this Commission to

2   immediately impute UNE rates to local service due to the significant

3   levels of retail rate shock that would occur. However, unless BellSouth

4   demonstrates willingness to provide UNEs at parity with its retail

5   services and at rates that allow meaningful competition to develop,

6   ITC^DeltaCom recommends that this Commission establish a generic

7   docket to consider phasing in the imputation of UNE rates to local

8   services.

9

10   Issue 2: [ITC^DeltaCom Issue1(b)] Should BellSouth be required to

11   waive any nonrecurring charges when it misses a due date?

12

13 Q. BELLSOUTH OBJECTS TO WAIVER OF NON-RECURRING

14   CHARGES WHEN BELLSOUTH MISSES A DUE DATE. HOW DID

15   ITC^DELTACOM DEVELOP THIS CONCEPT?

16 A. ITC^DeltaCom did not develop the concept of non-recurring charge

17   waiver. BellSouth currently has performance guarantees in its tariffs.

18   · See Rebuttal Exhibit CJR-4 for copies of those tariffs. As part of those

19   performance guarantees, BellSouth agrees to waive the non-recurring

20   charges when a due date is missed. ITC^DeltaCom recommends that

21   those same performance guarantees be extended to include UNEs.

22

1 | Issue 3(b)(5): [ITC^DeltaCom Issue 2(a)(iv)] – Pursuant to the definition
2 | of parity, should BellSouth be required to provide an unbundled loop
3 | using Integrated Digital Loop Carrier (IDLC) technology?

4

5 **Q. BELLSOUTH WITNESSES VARNER AND MILNER STATE THAT**

6 **LOOP UNES CANNOT BE PROVIDED VIA IDLC. IS THIS**

7 **CORRECT?**

8 A. No. BellSouth is currently providing ITC^DeltaCom loop UNEs via the

9 "side door" IDLC methodology that splits the loop off the switch. The

10 quantities are small but are proof that the methodology is valid.

11 BellSouth installed these IDLC UNE loops at their own discretion and

12 ITC^DeltaCom was not informed. ITC^DeltaCom only found out about

13 the IDLC provisioning during tests for service turn-up. However, if it

14 works for these instances, it will work in other instances and should be

15 mandated for more extensive use. BellSouth's claims that the non-

16 IDLC loops that it provides "meets the technical criteria for that loop" is

17 disingenuous since the technical criteria used is BellSouth's criteria and

18 does not provide the required parity for full competition.

19 In addition, BellSouth claims that " When BellSouth's retail customers

20 are served via Integrated Digital Loop Carrier ("IDLC"), BellSouth

21 should and does make those loops available to CLPs..." In reality,

22 BellSouth does not make those loops available but instead provides the

23 UNE loop on different (non-IDLC) facilities that are frequently of a lower

1   quality. This Commission should require BellSouth to provide IDLC

2   loops with digital connectivity.

3

4   Issue 8: [ITC^DeltaCom Issue 2(b)(i)] Pursuant to the definition of parity, should BellSouth be required to provide priority guidelines for repair and maintenance and UNE provisioning?

7

8 Q: DOES BELLSOUTH STATE THAT IT CAN PROVIDE THE SAME

9   PRIORITY TO ITC^DELTACOM CUSTOMERS SERVED VIA UNES?

10 A: ITC^DeltaCom is pleased to learn that BellSouth will provide the same

11   restoration as provided to BellSouth's retail customers. ITC^DeltaCom

12   believes that sufficient guidelines for this restoration do not currently

13   exist. ITC^DeltaCom will gladly negotiate with BellSouth to develop

14   these guidelines.

15

16   Issues 9 and 10: [ITC^DeltaCom Issue 2(b)(iv)] 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?

20

21 Q: WHAT IS ITC^DELTACOM'S POSITION ON THESE ISSUES?

1 **A:** It is my understanding that these issues has been resolved by the

2 parties; however, ITC^DeltaCom reserves the right to file supplemental

3 testimony on these issues, should they be further disputed.

4

5 Issue 11: [ITC^DeltaCom Issue 2(c)(I)] Should BellSouth be required to

6 provide NXX testing functionality to ITC^DeltaCom? If so, how?

7

8 **Q.** **WHAT IS ITC^DELTACOM'S POSITION ON NXX TESTING?**

9 **A.** Due to errors and omissions in BellSouth translations of ITC^DeltaCom

10 NXX codes, ITC^DeltaCom has found it necessary to dispatch

11 technicians to remote locations so that they could place test calls

12 through local service provided by BellSouth to insure that the

13 translations have been correctly installed by BellSouth. In fact, in four

14 out of the last five NXXs implemented by ITC^DeltaCom in Florida

15 BellSouth has failed to implement the proper translations in their offices.

16 These BellSouth errors were not discovered until ITC^DeltaCom began

17 to install service to end-users. A request was made in late 1997 for

18 BellSouth to assist in the testing of translations. BellSouth responded

19 by recommending that ITC^DeltaCom place orders for FX lines or

20 Centrex service to every BellSouth end office if we wanted to gain

21 access to the BellSouth switches to test our NXX codes.

22 Establishing FX or Centrex service to the hundreds of BellSouth end

23 offices is not cost effective for ITC^DeltaCom and would not be cost

1   effective for BellSouth if they were placed in a similar position.

2   ITC^DeltaCom recommends that BellSouth provide access to the

3   BellSouth FX test network that BellSouth uses today for responses to

4   trouble tickets. At a minimum, ITC^DeltaCom should have automated

5   tests of the NXX codes in all end offices with correction of any errors or

6   omissions found during those tests. This level of testing is necessary to

7   assure that the quality of the network is maintained at high levels.

8   ITC^DeltaCom has recommended a solution to this problem to

9   BellSouth using a Remote Call Forwarding methodology and is waiting

10 on a response from BellSouth.

11

12 Issue 12: [ITC^DeltaCom Issue 2(c)(ii)] – What should the installation

13 interval for the following loop cutovers: (a) single; (b) multiple?

14

15 **Q.   HAS BELLSOUTH CORRECTLY STATED ITC^DELTACOM'S**

16 **POSITION ON THE ISSUE OF 15 MINUTE CUTOVERS?**

17 **A.**   No. ITC^DeltaCom agrees that the complete cutover may take longer

18 that 15 minutes depending on, among other things, the number of loops

19 involved.   ITC^DeltaCom's position is that the customer's service

20 should not be interrupted longer that 15 minutes between the

21 disconnection of the old service and the connection of BellSouth's

22 facilities to ITC^DeltaCom's collocation space. Any problems occurring

23 in ITC^DeltaCom's facilities or equipment would not count as part of the

1   15 minute interval. If the proper preparation work is completed prior to

2   disconnecting the customer's existing service, this parameter will not be

3   difficult for BellSouth to meet. This language exists in the current

4   interconnection agreement and should be continued to the new

5   agreement.

6

7   Issue 14: [ITC^DeltaCom Issue 2(c)(iv)] Should the party responsible

8   for delaying a cutover also be responsible for the other party's

9   reasonable labor costs?

10

11   **Q: DO THE PARTIES OPERATE UNDER THIS PROCEDURE TODAY?**

12   **A:**   Yes. Although Mr. Varner states that this provision should not be

13   included in the interconnection agreement, what he does not mention is

14   that the parties have operated with this provision in the existing

15   interconnection agreement for the past two years. ITC^DeltaCom

16   recommends that this Commission order the continuation of the existing

17   procedures.

18

19   Issue 16: [ITC^DeltaCom Issue 2(c)(vi)] – Should each party be

20   responsible for the repair charges for troubles caused or originated

21   outside of its network? If so, how should each party reimburse the

22   other for any additional costs incurred for isolating the trouble to the

23   other's network?

1   Q.   DOES ITC^DELTACOM AGREE TO BEAR THE COST OF TROUBLE

2   ISOLATION TO A THIRD PARTY'S NETWORK

3   A.   The Parties have resolved this issue.

4

5   Q.   HAS BELLSOUTH CORRECTLY STATED ITC^DELTACOM'S

6   POSITION ON ADDITIONAL COSTS ASSOCIATED WITH TROUBLE

7   ISOLATION TO BELLSOUTH'S NETWORK?

8   A.   No. BellSouth should reimburse ITC^DeltaCom is if there is a second

9   referral on the same trouble. In other words, after ITC^DeltaCom

10   correctly isolates the trouble to BellSouth's network but BellSouth fails

11   to repair the trouble and ITC^DeltaCom is required for a second time to

12   isolate the same trouble to BellSouth's facilities. ITC^DeltaCom should

13   not be penalized for BellSouth's inability to repair troubles. In addition,

14   this would be reciprocal with BellSouth's charges to ITC^DeltaCom

15   when ITC^DeltaCom incorrectly isolates the trouble to BellSouth's

16   network.

17   Issue 18: [ITC^DeltaCom Issue 2(c)(ix)] If a customer orders a loop

18   which requires special construction charges be paid for by

19   ITC^DeltaCom, and BellSouth reuses the same facilities to provide

20   service to the customer for itself or on behalf of another ALEC, should

21   BellSouth be required to refund ITC^DeltaCom the amount

22   ITC^DeltaCom paid to BellSouth for Special Construction charges for

23   that customer?

1   **Q:**   **WHAT IS ITC^DELTACOM'S POSITION ON THIS ISSUE?**

2   **A:**   ITC^DeltaCom has agreed to remove this issue from arbitration as a

3   result of further negotiations with BellSouth.

4

5   Issue19: [ITC^DeltaCom Issue 2(c)(x)] Under what conditions, if any,

6   should BellSouth be required to reimburse any costs incurred by

7   ITC^DeltaCom to accommodate modifications made by BellSouth to an

8   order after sending a firm order confirmation ("FOC")?

9

10 **Q:**   **DOES BELLSOUTH EVER MODIFY ITC^DELTACOM'S ORDER**

11   **AFTER ISSUING AN FOC?**

12 **A:**   Yes. Often BellSouth modifies the due date on the FOC due date itself

13   after ITC^DeltaCom has dispatched its central office and customer

14   premises technicians to work the order (as well as arranging for third

15   party vendors to be dispatched to the customer premises). However,

16   the Parties have resolved this issue.

17

18   Issue20: [ITC^DeltaCom Issue 2(c)(xiv)] (a) Should BellSouth be

19   required to coordinate with ITC^DeltaCom 48 hours prior to the due

20   date of a UNE conversion? (b) If BellSouth delays the scheduled

21   cutover date, should BellSouth be required to waive the applicable non-

22   recurring charges? (c) Should BellSouth be required to perform dial

23   tone tests at least 48 hours prior to the scheduled cutover date?

1 Q: **WHAT IS ITC^DELTACOM'S POSITION ON THESE ISSUES?**

2 A: Until BellSouth is able to meet scheduled due dates on a consistent

3 basis, coordination prior to the due date is necessary. By requiring

4 BellSouth to coordinate with ITC^DeltaCom prior to the due date,

5 ITC^DeltaCom will no longer be required to dispatch technicians only to

6 find out that BellSouth is not ready to work the order.

7 The issue of waiver of NRCs was addressed in my response to Issue 2

8 [ITC^DeltaCom Issue 1(b)] above.

9 ITC^DeltaCom will continue to negotiate the issue of dial tone tests with

10 BellSouth.

11

12 Issue 33: [ITC^DeltaCom Issue 3(l)] Should the Parties establish

13 escalation procedures for ordering/provisioning problems?

14

15 Q: **PLEASE STATE ITC^DELTACOM'S POSITION.**

16 A: ITC^DeltaCom is willing to close this issue subject to the revision that

17 BellSouth will use best efforts to provide notice of modification within

18 ten days.

19

20 Issue 37: [ITC^DeltaCom Issue 4(c)] Should ITC^DeltaCom and its

21 agents be subject to stricter security requirements than those applied to

22 BellSouth's agents and third party outside contractors?

23

1 Q. **BELLSOUTH STATES THAT THE SECURITY REQUIREMENTS IMPOSED ON ITC^DELTACOM ARE AT PARITY TO THAT WHICH BELLSOUTH IMPOSES ON ITSELF AND OTHERS. DO YOU AGREE WITH THIS ASSESSMENT?**

2

3

4

5 A. It is my understanding that this issue has been resolved by the parties;

6 however, ITC^DeltaCom reserves the right to file supplemental

7 testimony on this issue, should it be further disputed.

8

9 Issue 50: [ITC^DeltaCom Issue 5] Should the parties continue operating

10 under existing local interconnection arrangements? (a) Should the

11 current interconnection agreement language continue regarding cross-

12 connect fees, reconfiguration charges or network redesigns, and NXX

13 translations? (b) What should be the definition of the terms local traffic,

14 and trunking options? (c) What parameters should be established to

15 govern routing ITC^DeltaCom's originating traffic and each party's

16 exchange of transit traffic? (d) Should the parties implement a

17 procedure for binding forecasts?

18

19 Q. **HAS BELLSOUTH ADDRESSED ALL ISSUES CONCERNED WITH ATTACHMENT 3 AND LISTED AS UNRESOLVED IN EXHIBIT B?**

20

21 A. No. At the time of the filing of this petition, BellSouth was reviewing

22 ITC^DeltaCom's proposed language. Thus, in order to preserve these

23 issues, ITC^DeltaCom generally requested the same interconnection

24

1   language that is in our current agreement as part of issue 5.

2   ITC^DeltaCom then listed each section of the proposed language it

3   provided BellSouth that it understood as open and under review as an

4   unresolved issue in Exhibit B.

5

6   The parties are currently negotiating Attachment 3. Rather than

7   address all issues in Exhibit B that are still undecided, I request that I

8   be able to update and supplement my testimony to the extent

9   necessary to adequately address any unresolved issues.

10

11 **Q. WHAT IS ITC^DELTACOM'S POSITION ON THE EXISTING**

12 **AGREEMENT?**

13 **A.** At the commencement of negotiations for the new agreement BellSouth

14   scrapped the existing agreement in its entirety. The current agreement

15   was a functional agreement. It did have areas that needed changes.

16   However BellSouth is attempting, through the new "template" to take

17   away numerous provisions that are in the existing agreement and that

18   were the result of the original negotiations. The proper starting point for

19   a new agreement is the existing agreement.

20

21 **Q. WHAT IS ITC^DELTACOM'S POSITION ON BINDING FORECOSTS?**

22 **A.** BellSouth should be required to accept binding forecasts. In Florida,

23   BellSouth refused to accept ITC^DeltaCom's forecast until

1   ITC^DeltaCom provided proprietary customer information. In other

2   instances BellSouth has refused to provide sufficient trunks to cover the

3   ITC^DeltaCom forecast. BellSouth's reason was stated to be that since

4   ITC^DeltaCom's existing trunks were at capacity, ITC^DeltaCom could

5   not have any more trunks. ITC^DeltaCom's forecast was based on

6   information about customers with whom ITC^DeltaCom already had

7   contracts. ITC^DeltaCom delayed providing service to those customers

8   to keep from overloading the network. Without binding forecasts

9   BellSouth's position on installing trunks for ALECs becomes a "self-

10   fulfilling prophecy" - unless the ALEC is willing to continue adding

11   usage until the network is overloaded and poor service is provided due

12   to blocked calls. In other words, unless the ALEC's service is poor

13   because of the blocking of traffic, BellSouth will not honor forecasts.

14   ITC^DeltaCom will not add new customers if it will cause degradation of

15   the network. The mandating of binding forecasts by this Commission

16   will stop BellSouth from limiting the growth of competition.

17

18   Issue 44: [ITC^DeltaCom Issue 7(b)(ii)] What procedures should

19   ITC^DeltaCom and BellSouth adopt for meet-point billing?

20

21

22 **Q.**   **PLEASE STATE ITC^DELTACOM'S POSITION.**

1 A.   ITC^DeltaCom has agreed to delete sections 9.10 and 9.17 in recent

2   negotiations with BellSouth. With certain modifications as discussed by

3   the parties on July 14, 1999, ITC^DeltaCom believes that section 9.9

4   may be closed.

5   The issue of filing meet point percentages in the NECA tariff raised by

6   BellSouth is irrelevant. ALECs are not required to file in the NECA

7   tariff. BellSouth is free to do so if they desire. However, any "assumed

8   percentage" or "default percentage" should be set at 100% for

9   ITC^DeltaCom and 0% for BellSouth since ITC^DeltaCom either

10   provides those facilities into BellSouth's tandem offices itself or leases

11   the facilities from BellSouth.

12

13 Q.   **DOES THIS CONCLUDE YOUR TESTIMONY?**

14 A.   Yes. However, I reserve the right to address any issues raised by

15   BellSouth and to supplement my testimony and rebuttal testimony as

16   necessary upon production of any discovery requests.

1 **Q. HAVE YOU REVIEWED THE BELLSOUTH ADSL COST STUDIES**

2 **FILED WITH THE FCC?**

3 **A.** Yes. As I discussed in my rebuttal testimony, there is not a one-for-

4 one comparison available for ADSL "service" costs and UNE costs.

5 The best comparison is to compare costs for a retail exchange line

6 plus the portion of the ADSL costs attributable to the service inquiry

7 for determining if the loop is ADSL compatible with the UNE loop

8 costs. This comparison will overstate the retail costs as there are

9 functions included in the retail plus ADSL (port, DSLAM, PVC and

10 ATM switch) that are not included in the UNE costs.

11 I will address two aspects of BellSouth's "low speed" ADSL NRC cost

12 study. First, the "low speed" ADSL cost study has worktimes for only

13 two functions. Those functions are service order and connect and

14 test. Worktimes for processing an inquiry to determine if the loop is

15 ADSL compatible are not shown in the study. Therefore, the

16 comparison between ADSL service cost and UNE cost cannot be

17 correctly made as this leads me to believe that BellSouth does not

18 charge for this function in their ADSL service and yet includes these

19 costs in their UNE costs. Second, the current NRC rate in BellSouth's

20 FCC tariff for "low speed" ADSL is significantly <u>below</u> their filed costs.

21 This below cost NRC rate (below cost even with some of the costs

22 omitted from the study) when compared with the UNE NRC rates

23 which contain not only the missing costs for service inquiry but also

EXHIBIT A

1   include functions that are not required for ADSL (BellSouth has also

2   admitted that ADSL is only an overlay to voice grade facilities) raise a

3   barrier to competitive entry and establish a "price squeeze" between

4   ADSL "service" rates and ADSL UNE rates with benefits accruing only

5   to BellSouth.

6   BellSouth also filed a "high speed" ADSL service. There are no

7   differences between the "low speed" ADSL and "high speed" ADSL

8   loops. Both services use the same loop. The difference is in the

9   DSLAM, PVC and ATM capabilities. A "low speed" can be changed to

10   a "high speed" without any work on the loop. Although the "high

11   speed" ADSL NRC rate is above the filed cost, the cost includes

12   functions that are in conflict with BellSouth's responses to

13   ITC^DeltaCom's First Data Requests, Items 21 and 33 in which

14   BellSouth claims that it is inappropriate to average the loop

15   conditioning and that BellSouth does not include loop conditioning in

16   its tariffed rates. BellSouth's cost study and FCC "high speed" ADSL

17   tariff rate does include averaged loop conditioning. I recommend that

18   this Commission direct BellSouth to offer the same loop conditioning

19   that is included in BellSouth's "high speed" ADSL service.

20

21

1 BY MS. EDWARDS (Continuing):

2   Q   Mr. Hyde, have you prepared a summary of your

3 testimony today?

4   A   Yes, I have.

5   Q   Can you please proceed?

6   A   Good afternoon. There are several issues that

7 I would like to summarize today. Those issues are,

8 first, parity. Even though BellSouth does not bill

9 itself the UNE rates for the local service they provide,

10 the loop and switch UNE functions are required for any

11 BellSouth retail service to be able to work. Therefore,

12 even if BellSouth does not provide UNEs to themselves,

13 they provide functionally identical facilities and

14 equipment.

15   The maintenance parameters for UNEs, just as it

16 is with access, should be set at a more stringent level

17 than the end-to-end retail service in order to have equal

18 treatment. ITC^DeltaCom has not requested the

19 maintenance parameters to be set at the more appropriate

20 end-link levels but has held that ITC^DeltaCom could

21 compete effectively with only retail parity.

22 ITC^DeltaCom recommends that this Commission require

23 BellSouth to provide UNEs at least in parity with

24 BellSouth's own service.

25   Second, NXX testing. Due to errors and

1 omissions in BellSouth's translations of ITC^DeltaCom's

2 telephone numbers, ITC^DeltaCom has found it necessary to

3 dispatch technicians to remote locations so they could

4 place test calls through local service provided by

5 BellSouth to ensure that those translations had been

6 correctly installed by BellSouth. ITC^DeltaCom

7 recommends that BellSouth either provide access to the

8 existing BellSouth FX network or to provide a remote

9 access, remote call forwarding at TELRIC prices. This

10 level of testing is necessary to ensure that the quality

11 of the network is maintained at high levels.

12   Third issue, cutover times. Language exists in

13 the current agreement that cutovers will be completed

14 within 15 minutes. With proper pre-testing, that

15 interval will not be difficult to make. I recommend that

16 this Commission adopt the language in the current

17 agreement.

18   Fourth issue, cutover coordination. Until

19 BellSouth is able to meet scheduled due dates on a

20 consistent basis, coordination prior to the due date is

21 necessary. By requiring BellSouth to coordinate with

22 ITC^DeltaCom prior to the due date, ITC^DeltaCom will no

23 longer be required to dispatch technicians only to find

24 out that BellSouth is not ready to work the order.

25   Fifth issue, IDLC equivalency. Although

1 ITC^DeltaCom is not asking for IDLC itself, we are asking

2 for the equivalent functionality, equivalent interfaces.

3 In today's increasing use of modems, IDLC equivalency

4 must be mandated. The new generation of analog modems,

5 the V.90, will not work correctly if there's more than

6 one analog to digital conversion.

7   Converting the customer from IDLC to UDLC adds

8 two additional analog to digital conversions in the CLEC

9 or ALEC's pathway. That degrades modem use on the UNE.

10 In addition, there can also be loss of feature capability

11 on the loop caused by the change from IDLC to UDLC. As

12 an example, if 35 to 40% of BellSouth's end users are

13 served by IDLC, then there may not be meaningful

14 competition for 35 to 40% of customers due to the lack of

15 IDLE quality. I recommend that this Commission require

16 BellSouth to furnish UNE IDLC equivalency for all end

17 users that are currently served by IDLC.

18   Sixth issue, ADSL, asymmetrical digital

19 subscriber loop. This is nothing more than an overlay to

20 a voice grade circuit. Granted not all voice grade loops

21 are ADSL compatible. For example, a loop that has got a

22 digital loop carrier already in it is not ADSL

23 compatible; it has got to be plain old copper wire. But

24 all ADSL compatible loops are voice grade, plain old

25 copper wire voice grade. ADSL is added with this

1 overlay. What's the overlay? It's advanced equipment in

2 the central office, advanced equipment at the customer

3 premise to use unused spectrum on that copper wire.

4   Now does it have anything to do with the loop?

5 No. This is central office and customer premise advanced

6 telecommunications equipment on very, very old

7 technology, copper loop. Therefore, the NRC, or

8 nonrecurring charge for ADSL, should be equivalent to

9 voice grade NRC. And the word "equivalent" doesn't mean

10 equal in this instance. It actually should be somewhat

11 less than the existing SL-2 voice grade rate because that

12 has a mix of digital loop carrier built into it.

13 Especially they should be equivalent with BellSouth

14 providing their own ADSL service at nonrecurring rates

15 that are below cost. Excessive NRCs can erect barriers

16 to competitive entry and should not be allowed.

17   Much has been said about a meaningful

18 opportunity to compete. If a customer has to give up

19 features, such as forward disconnect that works on

20 BellSouth IDLC and not on UDLC UNEs, or suffer modem

21 degradation on changing from that same IDLC, then the

22 ALEC is being denied a meaningful opportunity to compete.

23 If nonrecurring charges for UNEs are set too high, such

24 as the ADSL, then a barrier to meaningful competition is

25 raised. If UNEs are not maintained as well as retail,

1 then meaningful competition is not possible.

2   Seventh issue, extended loops. In the original

3 agreement, BellSouth agreed to negotiate in good faith to

4 provide a means to extend loops. Subsequent to signing

5 that agreement, BellSouth provided more than 25 hundred

6 of these extended loops region wide to ITC^DeltaCom. We

7 have set our business plan up to use these systems in

8 that manner; and, quite frankly, if this Commission wants

9 to see competition in the nonurban -- in the rural areas,

10 then extended loop is the only efficient manner in which

11 that competition can be extended. Therefore, I recommend

12 that this Commission require BellSouth to continue

13 providing ITC^DeltaCom extended loops since they are the

14 most efficient method to serve customers in the nonurban

15 and rural areas.

16   And, Commissioner Jacobs, I would like to take

17 this opportunity to respond to a question that you had

18 posed earlier to Mr. Rozycki on just what is the

19 difference between a UNE loop and an extended loop. A

20 UNE loop is nothing more than a pathway from Bell central

21 office to the end-user premise. Frequently, according to

22 some figures I'm seeing now, more than half the time it's

23 just copper wires from Bell central office to the

24 customer premise.

25   An extended loop is nothing more than taking

1 that loop and tying it off to an interoffice carrier to

2 make it a very long loop, so that we take -- and instead

3 of having to install a collocation space dedicated to us

4 in BellSouth's -- each and every BellSouth central

5 office, we can buy a DS1 to voice grade multiplexer from

6 BellSouth, lease it from them, lease DS-1 facilities,

7 interoffice, and then just tie that copper loop to the

8 interoffice facility. It's a way of extending it and

9 making it longer. That way we have the efficiency of

10 putting collocation spaces in those offices where there's

11 enough demand for it and still allow us to use that space

12 to serve a remotely located customer.

13 Now I mentioned that it would be the most

14 efficient way of serving rural and nonurban and it is.

15 It's also a very efficient way of market entry into given

16 areas in that you can go in and see is the market there.

17 When it grows enough, change it to physical collocation.

18 And as I said earlier, we already have more than 25

19 hundred of these, even though BellSouth has threatened to

20 take them away; and we have placed orders for collocation

21 spaces in the existing offices where we have extended

22 loops because of the threat to disconnect the service.

23 That concludes my summary.

24 MS. EDWARDS: The witness is available for

25 cross examination.

1   COMMISSIONER CLARK: Mr. Alexander.

2   MR. ALEXANDER: Thank you, Commissioner Clark.

3   CROSS EXAMINATION

4 BY MR. ALEXANDER:

5   Q   Good afternoon, Mr. Hyde.

6   A   Good afternoon, Mr. Alexander. How are you

7 today?

8   Q   Well, I'm still recovering from my cold from

9 North Carolina, but I'm doing well. Thank you.

10   A   I think I caught it from you, sir.

11   Q   You're the second person to blame me for that.

12   In your testimony, and I'm referring to Issues

13 3(a) and 3(b)(1), the definition of parity and OSS

14 parity. In your testimony you discuss the concept of

15 parity with respect to fundamental network elements; is

16 that correct, UNEs, parity in UNEs?

17   A   That's correct.

18   Q   That may actually be Issue 3(b)(2) instead of

19 (1), I believe 3(b)(2) in the prehearing order; is that

20 correct, parity with UNEs?

21   A   I believe that's it.

22   Q   Okay. Now, Mr. Hyde, you're not an attorney,

23 are you?

24   A   No, sir, I'm not.

25   Q   Okay. Just from a layman's perspective, to

1 your knowledge, does the Telecommunications Act of 1996

2 use the term "parity?"

3   A   Yes, it does.

4   Q   Okay. Can you tell me where in the Act --

5   A   No, sir, I cannot.

6   Q   -- it uses parity? But you believe it does?

7   A   I believe that it does. I know that the FCC

8 orders do reference parity.

9   Q   All right. My question was does the 1996 Act

10 itself use the term parity?

11   A   I cannot cite an instance where it does.

12   Q   Okay. Have you reviewed Section 251 or 252 of

13 the Act? Have you had an occasion to review that?

14   A   I have read them, but as I say, I'm not an

15 attorney, so I don't believe I should be issuing opinions

16 on it.

17   Q   Well, as a general premise, since you're

18 discussing the issue of parity with respect to UNEs,

19 would you agree that Section 251(c)(3) requires that

20 incumbent local exchange companies like BellSouth provide

21 nondiscriminatory access to network elements on an

22 unbundled basis, that's the general standard.

23   MS. EDWARDS: At this time, Commissioner, if

24   opposing counsel doesn't have a copy, an extra copy

25   of the Act, I'd like to make sure Mr. Hyde, in

1   answering that question, has a copy.

2   MR. ALEXANDER: That's fine. I don't have an

3   extra copy. Just as a general concept is all I was

4   looking for anyway.

5   WITNESS HYDE: And what was that cite again,

6   Mr. Alexander?

7 BY MR. ALEXANDER (Continuing):

8   Q   Section 251(b)(3).

9   A   Section 251(b)(3)?

10   Q   Yes, sir.

11   A   Excuse me, while I find it.

12   Q   I'm sorry, I said the wrong one, it's (c). I

13 get my little numbers correct, 251(c)(3) was where I was

14 referencing.

15   A   All right, 251(c)(3). All right.

16   Q   Do you see that styled, "Unbundled Access?"

17   A   Yes, I do.

18   Q   And take a moment to look at it, but generally,

19 does it state in that first sentence that the duty is to

20 provide nondiscriminatory access to network elements on

21 an unbundled basis at any technically feasible point,

22 rates and terms and conditions, et cetera?

23   A   Yes, I do.

24   Q   So the duty under the Act is not, quote,

25 parity, but it's actually nondiscriminatory access on an

1   unbundled basis with respect to UNEs?

2   A   Absolutely. And this is part of the

3   justification that I see for actually having a higher

4   grade of service for the UNE than you have for retail

5   service because this says nondiscriminatory access to

6   network elements on an unbundled basis. My view of that

7   is that, in order to have a nondiscriminatory access,

8   you've got to have something defined as that particular

9   piece part of the network.

10   If you want to draw an analogy here, you look

11   at special access where it has piece-part specifications

12   and parameters, one set for the loop, one set for

13   transport, one set for end to end, or retail, if you

14   will, for private line. This to me justifies having

15   end-link parameters for unbundled network elements;

16   however, ITC^DeltaCom doesn't need that high a grade of

17   service. We can -- we believe that parity with retail

18   will provide for ITC^DeltaCom nondiscriminatory access.

19   Q   Mr. Hyde, you mentioned earlier -- I think

20   we've just agreed that the Act refers to

21   nondiscriminatory access, but you think the FCC order --

22   the FCC has ordered that interpreting the Act that it set

23   forth standards that determine whether an incumbent LEC

24   is providing nondiscriminatory access to UNEs? Would you

25   agree that the FCC has made orders that indicate that as

1 a requirement, the standards?

2   A   I believe so.

3   Q   Okay. And you also would agree that BellSouth

4 is required to comply with those standards set forth by

5 the FCC?

6   A   Oh, indeed, yes.

7   Q   And the parties' interconnection agreement

8 should be consistent with the FCC standards for ensuring

9 nondiscriminatory access, would you agree with that,

10 Mr. Hyde?

11   A   Oh, I certainly do, including the "at least

12 equal in quality." And therein lies the rub. At least

13 equal in quality means that it can be better and still

14 meet the FCC requirements and the Act. The definitional

15 problem is: What is at least equal? Again, you look at

16 the Act itself, and "at least equal" can be defined as

17 end-link parameters which we're not getting. But

18 ITC^DeltaCom is not requesting that stringent an

19 interpretation but rather one that says, if you give us

20 parity with retail, that would be acceptable to us as

21 nondiscriminatory access.

22   Q   Well, Mr. Hyde, would you agree that the FCC

23 standard for ensuring the nondiscriminatory access to

24 unbundled network elements, as set forth in the Act, is

25 that the incumbent LEC must provide UNEs in a manner that

1 offers an efficient carrier a meaningful opportunity to

2 compete?

3   A   Yes, I'm familiar with that particular phrase.

4   Q   Okay. And DeltaCom is asking this Commission

5 to impose obligations upon BellSouth to go beyond the

6 FCC's requirements; is that correct?

7   A   No, sir, I don't agree with that statement.

8   Q   Well, for example, the definition of parity

9 that DeltaCom has proposed to be incorporated into the

10 interconnection agreement goes beyond the FCC's

11 meaningful opportunity to compete standard, doesn't it?

12   A   I don't agree with that, no, sir.

13   Q   Have you --

14   A   I think that what we're asking for is nothing

15 more than a meaningful opportunity to compete, what we

16 see as what does it take for a meaningful opportunity to

17 compete, and looking at the at-least-equal-to standards

18 that are in there.

19   Q   Well, are you familiar with the proposed

20 interconnection agreement that was attached to the

21 petition for arbitration in this case?

22   A   I'm sorry, I couldn't --

23   Q   Are you familiar with the proposed

24 interconnection agreement that DeltaCom has attached to

25 its petition for arbitration in this case?

1   A   Yes, I am.

2   Q   Specifically at Section 3.2 of Part A under the

3   general terms and conditions --

4   MS. EDWARDS: May I approach with our --

5   WITNESS HYDE: If I could see a copy.

6   (DOCUMENT TENDERED TO THE WITNESS)

7   MS. EDWARDS: I'm just handing him a copy of

8   the petition.

9   MR. ALEXANDER: Okay.

10   MS. EDWARDS: Do you need to see it?

11   MR. ALEXANDER: I can refer you specifically.

12   It's under the section, General Terms and

13   Conditions, Part A.   It's Section 3.2 under the

14   GTC.

15   WITNESS HYDE: 3.2, I'm there.

16   BY MR. ALEXANDER (Continuing):

17   Q   Do you see the section styled three dot and it

18   says "Parity?"

19   A   Absolutely.

20   Q   Okay.   And this is DeltaCom's proposed

21   interconnection agreement that it's asking the Commission

22   to adopt here?

23   A   Yes.

24   Q   Okay.   And at Section 3.2, do you see the --

25   what's shaded that BellSouth will provide ITC^DeltaCom

1   with preordering, ordering, maintenance, trouble

2   reporting, daily usage functionality equal to or greater

3   than that which BellSouth provides to its own end users?

4   Is that in your proposed interconnection agreement?

5   A   Absolutely it is, and --

6   Q   Mr. --

7   A   Let's look at it mathematically. I think that

8   would probably be the easiest analogy to use.

9   Mathematically, "at least equal" means equal to or

10   greater. I've used -- we've used the words "equal to or

11   greater." Does that mean the exact same thing as "at

12   least equal to?" Yes, it does. There's absolutely no

13   conflict between these words and the at-least-equal

14   concept that's in there.

15   Q   Would you agree -- I'm sorry, I thought you

16   were through.

17   A   And ITC^DeltaCom would gladly, cheerfully,

18   accept one hundred percent of our UNEs exactly equal.

19   Q   Would you agree that there is no greater than

20   requirement under the FCC's current rules?

21   A   I thought the "at least equal" was in there.

22   Q   My question was: Would you agree that there is

23   no greater-than requirement under the FCC's current

24   rules?

25   A   No, sir, I would not. Again, mathematically

1 speaking, "at least equal" is the same thing as "equal to

2 or greater." So when you say "at least equal," again, we

3 will be cheerful -- we'll cheerfully accept a hundred

4 percent exactly equal, but --

5 Q Mr. Hyde, you've asked for, in addition to

6 functionality equal to, you've also asked for or greater

7 than that which BellSouth provides to its own end users;

8 is that not what's in your proposed agreement?

9 A I'm sorry. I'm having a little problem hearing

10 you, Mr. Alexander.

11 Q I'm sorry. That's usually not a problem.

12 A Nor with me, but your voice is a bit lower than

13 usual today. I'm sorry.

14 Q I do apologize.

15 Your proposed interconnection agreement

16 contains language that says that you're looking for

17 access to BellSouth's UNEs that's the functionality

18 that's equal to or greater than that which BellSouth

19 provides to its own end users; is that not correct?

20 A That's the language that is in there; but,

21 again, as I say, I see no conflict between "at least

22 equal" and the statement "equal to or greater." They are

23 one and the same statement. You can reduce it to

24 mathematical terms, and they come out exactly equal.

25 Q Would DeltaCom, in lieu of that provision

1 that's obviously in dispute because it's shaded -- Is

2 that what the shaded means, to your knowledge?

3   A   I don't know what the shading is for. It may

4 be for disputed wording.

5   Q   Would DeltaCom agree to use the language that

6 the FCC has used; that is, that an incumbent LEC must

7 provide UNEs in a manner that offers an efficient carrier

8 a meaningful opportunity to compete rather than have

9 greater than language in the proposed interconnection

10 agreement?

11   A   I would not object to "at least equal." I

12 would recommend that. If BellSouth wants to see that

13 particular wording negotiated from "equal to or greater"

14 to the words "at least equal," then I would recommend it

15 to ITC^DeltaCom regulatory that we make that adjustment.

16   Q   Would you be willing to adopt the definition

17 that the FCC has used?

18   A   I don't really think that it is precise enough

19 for the contract. I prefer the words that I believe was

20 in the (c)(3) section of the Act which is, "at least

21 equal." Again, to me they're one and the same thing. So

22 if you want to use "at least equal," I'm willing to

23 recommend to the regulatory group at ITC^DeltaCom that we

24 change "equal to or greater" to "at least equal," and

25 then it would exactly agree with the Act itself.

1   Q   Mr. Hyde, on page -- I believe it's Pages 13

2 and 14 of your rebuttal testimony, you have a discussion

3 about this same issue, the Issue 3(b)(2), the parity for

4 UNEs. Would you care to look at those pages?

5   A   Rebuttal testimony, did you say?

6   Q   Yes, sir.

7   A   Page?

8   Q   I believe it's 13 and 14.

9   A   I'm sorry if I question you again,

10 Mr. Alexander, but I am not hearing well today.

11   Q   I can't get really much closer to the mike, but

12 I'll try.

13   A   I understand, and it's my fault because my ears

14 are not working too well. What line on Page 13?

15   Q   I believe the issue begins on Line 19 of Page

16 13 on your rebuttal. Do you see that issue, 3(b)(2),

17 parity for UNEs?

18   A   Yes.

19   Q   Okay. And you have a discussion beginning at

20 the top of Page 14, based on the question that started at

21 the bottom of 13 and top of 14 about -- you talk about

22 BellSouth. You acknowledge first that BellSouth does not

23 provide UNEs to themselves. Do you see that?

24   A   I acknowledge that BellSouth claims they do

25 not.

1   Q   Well, also on Page 14 you have a discussion

2   about the imputation of access rates to toll rates, and

3   then you note, I believe it begins at Lines 3 through 6

4   on Page 14, that the situation is the same with local

5   service. Do you see that?

6   A   Let's see.

7   MS. EDWARDS: I'm sorry, Mr. Alexander, I'm not

8   following that.

9   MR. ALEXANDER: Page 14, at Lines 3 through 6,

10   he has a discussion about access rates were imputed

11   to toll rates.

12   WITNESS HYDE: Yes, I'm there.

13   BY MR. ALEXANDER (Continuing):

14   Q   And you also, specifically at Line 6, Page 14,

15   you say, "The situation is the same with local service."

16   Do you see that, Mr. Hyde?

17   A   Yes, I do.

18   Q   Are you proposing that the Florida Commission

19   should impute UNE rates to the tariff local service

20   rates, Mr. Hyde?

21   A   Only as an absolute last-ditch attempt to have

22   at least equal parity for the UNE elements for

23   ITC^DeltaCom. This is not something that ITC^DeltaCom

24   really wants to see happen. I am afraid, however, that

25   unless we can come to some resolution that we may have to

1 come up with something like this. I personally think

2 that the best solution is to -- is for BellSouth to

3 provide at least equal UNEs to ITC^DeltaCom and not go

4 with imputation documents or imputation hearings and

5 proceedings; however, if such is not forthcoming, then as

6 a last-step alternative, yes, I would recommend

7 imputation.

8   Q   Let's turn to another subject. You mentioned

9 in your summary about integrated digital loop carrier

10 technology?

11   A   Yes.

12   Q   And this would be Issue 3(b)(5) also under

13 parity; is that correct, Mr. Hyde?

14   A   Let's see, I believe. 3(b)(5), yes.

15   Q   Okay. And when we're talking about IDLC, we're

16 talking about a loop being integrated directly into a

17 switch; is that correct?

18   A   That is correct.

19   Q   Okay. Would you assume with me for a minute

20 that BellSouth has a customer that's currently served by

21 IDLC that wants to change service to DeltaCom. Are you

22 with me?

23   A   I'm with you so far.

24   Q   And also assume that DeltaCom has its own

25 switch, which I believe you have a switch here in

1   Florida, right?

2   A   We have multiple switches, yes.

3   Q   Here in Florida?

4   A   We have switches in Florida, yes.

5   Q   So DeltaCom, since it has its own switch, is

6   not buying a UNE switching from BellSouth under my

7   hypothetical, okay?

8   A   Okay.

9   Q   The issue is how should BellSouth unbundle that

10   IDLC delivered loop that the customer is currently

11   provided by BellSouth so that DeltaCom can provide

12   service to the end user; is that correct? Is that a fair

13   statement of this issue?

14   A   I thought I heard a "how" in there rather than

15   a statement, but I will go --

16   Q   I did say how. The issue is how should

17   BellSouth unbundle that IDLC delivered loop so that

18   DeltaCom can provide service to the end user?

19   A   That's part of the issue, yes. In my summary,

20   and I've tried to be precise on a very complex issue

21   which is difficult, but are we asking that BellSouth

22   provide ITC^DeltaCom with the IDLC in all of these

23   instances? Technically, no. What we want is something

24   equivalent to the IDLC. Unfortunately, I'm not sure

25   there is anything available easily at the moment. But

1 that's what we're looking for, is equivalency. Now as

2 far as disaggregating, there's some methods for providing

3 that IDLC itself directly as a UNE.

4   Q   Mr. Hyde, the FCC has identified several

5 technically feasible methods by which an IDLC delivered

6 loop can be unbundled; is that correct?

7   A   That is my understanding.

8   Q   Is it your testimony that BellSouth is failing

9 to use a specific method to unbundle IDLC delivered loop

10 which the FCC has said is technically feasible?

11   A   No, it is not. It is my testimony that we are

12 being provided degraded service when a customer converts

13 from IDLC service with Bell to non-IDLC UNEs for

14 ITC^DeltaCom to provide them service. And, again, I

15 don't -- we don't really care. ITC^DeltaCom doesn't care

16 to if it's IDLC or X, Y, Z technology. What we want is

17 equivalency.

18   If, for instance, there's only one analog to

19 digital conversion existing in the retail, then -- and

20 that customer is using a modem, then we want only one in

21 the UNE loop. Unfortunately, that's not what's

22 happening. And again, I don't want to lead anyone to

23 believe that we're actually just drawing a line and

24 saying we must have IDLC, rather IDLC equivalent. We

25 want something equal to, and we go back to the actual

1 words, "at least equal."

2   Q   Mr. Hyde, we keep saying that. I want to ask

3 you: Do you still have a copy of the Act with you?

4   A   I certainly do.

5   Q   Under Section 251(c)(2), it deals with the duty

6 of the incumbent local exchange carrier to provide

7 interconnection. Would you agree with that?

8   A   Yes.

9   Q   And under 251(c)(3), which we earlier talked

10 about, it deals with the duty of the incumbent LEC to

11 provide unbundled access to network elements, UNEs?

12   A   Yes.

13   Q   Would you agree that that, "at least equal in

14 quality standard" is in the Act under interconnection but

15 is not in the Act under unbundled access to UNEs?

16   A   The actual words "at least" are not in that

17 particular section. However, it ends up with: "Provide

18 such unbundled network elements in a manner that allows

19 requesting carriers to combine such elements in order to

20 provide such telecommunications service."

21   I hold, sir, that if we have to give a customer

22 degraded service, then we're not able to combine it in

23 such a manner to provide that telecommunication service.

24   COMMISSIONER CLARK: Mr. Alexander, are you at

25   a convenient breaking point?

1   MR. ALEXANDER: Yes, I am.

2   COMMISSIONER CLARK: All right. We are going

3 to finish up for today. We will start again in this

4 room tomorrow at 9:30.

5   MR. ALEXANDER: Thank you.

6   (WHEREUPON, THE HEARING WAS ADJOURNED FOR THE

7 EVENING)

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