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1                 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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3                                        :
    In Re:  Petition by ITC^DeltaCom     :
4   Communications, Inc., d/b/a          :DOCKET NO 99750-TP
    ITC^DeltaCom for arbitration of      :
5   certain unresolved issues in         :
    interconnection negotiations         :
6   between ITC^DeltaCom and             :
    BellSouth Telecommunications,        :
7   Inc.                                 :
                                         :
8   _____:

9                     SECOND DAY -- MORNING SESSION

10                            VOLUME 4

11                      Pages 418 through 588

12  PROCEEDINGS:              ARBITRATION

13  BEFORE:                   COMMISSIONER SUSAN F. CLARK
                              COMMISSIONER E. LEON JACOBS
14
    DATE:                     Thursday, October 28, 1999
15
    TIME:                     Commenced at 9:30 a.m.
16
    PLACE:                    Betty Easley Conference
17                             Center, Room 152
                              4705 Esplanade Way
18
    REPORTED BY:              CATHY H. WEBSTER, RPR
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22        (As heretofore noted.)

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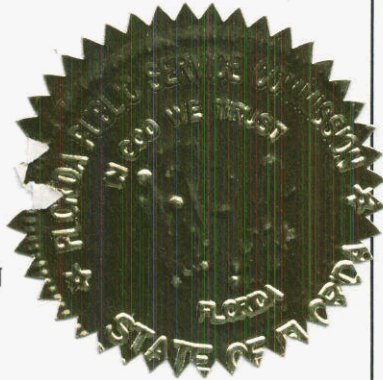
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PROCEEDINGS

1   P R O C E E D I N G S

2   (Hearing reconvened at 9:33 a.m.)

3   (Transcript follows in sequence from Volume 3.)

4   COMMISSIONER CLARK: We'll call the hearing

5   back to order.

6   And, Mr. Alexander, I think you were

7   questioning the witness.

8   MR. ALEXANDER: Yes. Thank you.

9   THOMAS HYDE

10   having been called as a witness on behalf of

11   ITC^DeltaCom, and being duly sworn, continues his

12   testimony as follows:

13   CONTINUED CROSS EXAMINATION

14   BY MR. ALEXANDER:

15   Q   Good morning, Mr. Hyde.

16   A   Good morning, Mr. Alexander.

17   Q   I think when we left off yesterday we were on

18   the subject of IDLC loops. Do you recall that?

19   A   I believe so.

20   Q   Where we were. I think I also recall you're

21   mentioning in your summary -- I'm not sure it was in your

22   testimony -- but I think you talked about a v.90 modem

23   protocol at 56 kilobytes per second?

24   A   Yes, I did. I mentioned it in my summary.

25   Q   And that wasn't in your testimony, though; was

 1   it?

 2   A   I'll have to look and see.

 3   Q   That's all right, Mr. Hyde. I just didn't

 4   recall it being in there.

 5   How long has the v.90 modem protocol been

 6   around?

 7   A   Well over a year. Bear in mind that that

 8   protocol was not agreed to by the industry when it first

 9   came out. It was still in a matter of flux and there

10   were several protocols available for the first few years

11   that the 56k was available.

12   The industry standard v.90 I believe was around

13   a year and a half, two years ago. I'm not positive on

14   that date, though.

15   Q   And copper loops have been around for how long?

16   A   Copper loops? Well over a hundred years.

17   Q   And would you agree that neither of BellSouth

18   basic exchange services, the 1FR and the 1FB, were

19   designed to support a v.90 modem at 56 kilobytes per

20   second?

21   A   If you want to talk about the support of the

22   v.90 -- And let's go back to that old pair, the 100-year

23   old pair. The 100-year old pair will support v.90

24   without any problem. The problem with v.90 is when you

25   get into the new, newer technologies, or medium-age

technologies, where you have analog to digital

conversions. So that in one manner of speaking, the

original loop pair was v.90 capable.

Q Well, just from a general concept, you earlier

agreed that the v.90 protocol for modems to support a

speed of 56 kilobytes per second has only been around for

a little over a year and that those copper loops that's

carrying that have been around for about a 100 years; is

that correct?

A For the copper loops, that's right. Not the

digital loop carrier where we're having the problem; that

has not been around a 100 years.

We don't have any problem with v.90 on copper

pair. The problem with v.90 is where you have excessive

analog to digital conversions.

Now, when you have analog to digital

conversion, now you've got to get into the age where you

started having digital conversions to begin with, which

means the digital network of only a few years ago.

Again, as I tried to emphasize in my

summary -- perhaps I wasn't precise enough -- the problem

that ITC^DeltaCom has with the v.90 is in those

situations where it's working with the BellSouth retail

customer and it ceases to work efficiently, anyway, when

that customer converts to ITC^DeltaCom and a UNE loop.

 1   If it doesn't work before the conversion, we

 2   certainly don't expect it to work after the conversion.

 3   Only when it works before, our expectation is it will

 4   work after. But that expectation is not being proven

 5   true.

 6   Q   Mr. Hyde, are you aware of BellSouth tariffs

 7   and its general subscriber services tariff to GSST, what

 8   data rate it has stated that it will support?

 9   A   Not precisely. I haven't reviewed it for data

10   rate in quite a long time. It was certainly less than

11   56k when I reviewed it the last time.

12   Q   Would you agree, subject to check, that that

13   data rate is at 9.6 kilobytes per second for a 1FR, 1FB?

14   A   Subject to check, and obviously it was 9.6 the

15   last time I checked it, and that was quite a number of

16   years ago. So, obviously, it hasn't been updated.

17   Again, let me stress what ITC^DeltaCom wants is

18   the same byte rate that BellSouth provides its customer.

19   You say you only guarantee 9.6. And I'll accept that

20   because, as I say, that was what it was the last time I

21   checked the tariff years ago. And if that's what

22   BellSouth is providing a particular end user, then

23   ITC^DeltaCom will accept the 9.6. However, if BellSouth

24   is providing 53k, 49.9, 33.6, whatever, we want at least

25   equal to. We want the same byte rate when we take that

customer and put that customer to work on an unbundled

network element. The at least equal functionality does

not always exist when it comes to v.90 technology.

        Q   Mr. Hyde, you've dialed up an internet service

provider from a computer before; haven't you?

        A   Oh, indeed, yes.

        Q   Have you checked your data speed on that when

you have done that?

        A   I do every time.

        Q   And when you check it, does it vary from time

to time when you log on?

        A   Depends on what you mean from time to time.

Very, very rarely, with my own personal computer, does it

vary. There are some occasions. When it does vary, it

steps down about 2.4k. I immediately hang up and redial

again and I get the higher speed.

        Again, I don't think that you would find us

really doing that much complaining if it went from 53,

2.4 down, and still stayed above 50. Again, we're

looking for at least equal to. And what we're getting is

much more reduction to that.

        The problem with it is, and as I've said

elsewhere, the industry standard is one analog to digital

conversion anywhere in the loop. The ISPs on the other

end typically have digital modems anyway. So, there's no

analog at the ISP end. So, we're looking strictly at the

end user end of the dial-up connection.

And with BellSouth's retail service, unless

BellSouth is using UDLC themselves, there's only one

analog to digital conversion.

Q   Mr. Hyde?

A   Yes.

Q   When you dialed up and you had a change in your

data speed rate and you hung up and dialed again and got

a different rate, were you using the same loop?

A   Yes, I was.

Q   So, the variance between those data speed rates

is not due to the loop but due to the modem on the other

end or how it's being transferred over another network?

A   More than likely, in my particular case, I

suspect it was due to an ISP bottleneck at the time. I

have done some analysis into it with my particular ISP.

And there are some bottleneck procedures that occur

there. However, however, there is never more than 2.4k

variation and I would say it occurs perhaps one in --

certainly no more often than one in fifty times. It's

probably more like one in eighty or ninety times that it

comes in with that 2.4 lower speed.

I might add, also, that I'm not using a v.90

modem; that I am using a v.34 in this particular

1 instance.

2 So, what we have here is a rare occurrence for

3 the dial up to be anything different than my standard.

4 And were I to go over to a different local carrier, I

5 would expect that same variation, which is one out of at

6 least fifty or more times that it would be something

7 other than the most efficient use or most efficient byte

8 rate speed.

9 Q Mr. Hyde, when you have that problem with your

10 dial up, do you call your ISP to talk about it?

11 A I have in the past. I don't any more.

12 Q Mr. Hyde, let's go back to the IDLC issue,

13 Issue 3(b)(5) in this case. And we talked about that

14 there are several different technically feasible methods

15 which an IDLC-delivered loop can be unbundled; is that

16 correct?

17 A That's correct.

18 Q Have you read Mr. Milner's rebuttal testimony

19 in which he identifies the six methods by which BellSouth

20 unbundles IDLC-delivered loops?

21 A Yes, I have.

22 Q And all these methods for unbundling

23 IDLC-delivered loops that the FCC has identified are used

24 by BellSouth, at least according to Mr. Milner; is that

25 correct?

1   A   According to Mr. Milner, that's correct.

2   Q   And one of those methods is the so-called

3 side-door technique; is that right?

4   A   That's correct.

5   Q   And you want DeltaCom and you want this

6 Commission to mandate that BellSouth use this technique

7 more extensively in providing IDLC loop to DeltaCom; is

8 that right?

9   A   Again, let me state ITC^DeltaCom's position on

10 the IDLC issue.

11   Q   Well, I was looking at your rebuttal testimony,

12 page 16, is where I got that reference.

13   A   Which lines specifically?

14   Q   Lines 14 and 15.

15   A   Fourteen and fifteen?

16   Q   Yes. Do you see the phrase, "However, if it

17 works for these instances, it will work in other

18 instances and should be mandated for more extensive use"?

19   A   That's correct; I did say that.

20   Q   Okay. Now, it's not technically feasible to

21 use a side-door arrangement in every instance; is it?

22   COMMISSIONER JACOBS: Would you explain for me

23 what a side-door arrangement is?

24   WITNESS HYDE: All right. Basically what you

25 have with IDLC, with the integrated digital loop carrier,

you take and you put a digital loop carrier on the loop itself, on the facilities going out to the -- on the feeder route to the serving area interface. That's the pedestal out on the road where all of the various distribution loops concentrate.

In order to use fewer copper facilities, or fiber in the new world, they concentrate those loops onto a single facility. They mutliplex them. So, they do an analog to digital conversion out at the pedestal. Then they bring it in DS1 or some higher level of digital facility to the BellSouth central office.

From there, with IDLC, that DS1 circuit goes into a DS1 bus actually at the switch itself. In other words, within the central office, between the switch and the outside cable, it doesn't get brought down to voice grade; stays digital. Goes into the BellSouth digital switch, then goes out on digital facilities to -- in the case of ISPs -- to another digital arrangement. So, it's digital 100% after it leaves that pedestal out close to the end user.

The side door, in essence, that's that byte stream, pulls off that one voice grade byte stream, and puts it out to the side to another connection, so that you can go in and say there's that particular voice grade loop or that particular 64k byte stream. I now have

availability in the central office to that individual

byte stream.

And since it comes out the side of the DS1

bus, the nomenclature used is side door. It's just

getting that individual connectivity out.

Back to your question, though, Mr. Alexander,

I'm not --

BY MR. ALEXANDER (Continuing):

Q   Well, doesn't it depend upon --

A   -- I'm not aware of one, but, then again, I am

not a switch expert per se.

Q   Well, I was going to ask you doesn't it also

depend upon the type of switch, the switch capacity

available, and other factors whether or not you can use

this side-door approach?

A   I'm not certain on that answer. There may be

some limitations, but I'm not certain. Again, I am not a

switch expert per se.

But, again, let me state that the reason the

wording in my testimony is this way is that so far

BellSouth has not given us IDLC-equivalent service. And

that's why we're emphasizing, well, give us the side

door, give us IDLC itself.

I don't want to get hung up on the concept that

I -- that ITC^DeltaCom wants the IDLC and nothing else,

1 that that's what we'll be happy with. That's not the

2 case. What we want is at least equal; we want equivalent

3 service. And if there is some other method, we'll be

4 glad to take it.

5   Q   Well, at least to your limited knowledge about

6 the switch, there may be sound engineering reasons not to

7 use a side-door-type arrangement in a particular

8 circumstance; is that right?

9   A   Again, I'm not a switch expert, so I can't

10 really address that.

11   Q   But you still want this Commission, according

12 to your testimony, to mandate its use here in Florida?

13   A   Unless IDLC equivalency can be provided, yes, I

14 do. Again, what we want is something equal. Again,

15 looking at, and use my example at home: If I change

16 providers, local providers, and I'm getting a particular

17 byte rate, then I expect with that change to maintain

18 very close to that byte rate. And whatever it takes to

19 provide the at least equal service is what ITC^DeltaCom

20 wants, whatever methodology it takes to do it, because we

21 want the at least equal.

22   Q   Mr. Hyde, in your direct testimony on page 4,

23 you claim that BellSouth is providing inferior service by

24 refusing to provide IDLC-equivalent service; is that your

25 testimony?

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 1        A    Yes, it is.

 2        Q    Is it your testimony that providing local

 3   service over a copper loop is inferior to providing local

 4   service over an IDLC loop?

 5        A    Not necessarily.  Again -- and I want to stress

 6   it again -- only when BellSouth serves the customer

 7   currently with IDLC does ITC^DeltaCom want the IDLC

 8   equivalency.  When BellSouth serves a retail customer

 9   with copper pair, then we will be very happy with copper

10   pair.  If BellSouth serves the end user with old fashion

11   UDLC -- For instance, if BellSouth still has any analog

12   switches left, then they can't use IDLC themselves.  And

13   there may be some of these antiquated analog switches

14   still left in the network.  I don't know.  But, to that

15   extent, then BellSouth would use UDLC.  If BellSouth

16   uses UDLC to serve that retail, then ITC^DeltaCom will be

17   happy to accept the UDLC.  Again, back to the at least

18   equal.  And we're not getting the at least equal.

19        Q    Are you aware that only about a fourth of the

20   total BellSouth loops in Florida are being served over

21   IDLC technology today?

22        A    I have reviewed Mr. Milner's testimony and I

23   believe that approximately a fourth would meet with what

24   I recall of his testimony.

25             Again, as I say, if all else being equal, if
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1 the distribution of that one-fourth -- or, as I recall, I

2 believe it was 28%, but that's close -- if that

3 one-quarter of all the loops in Florida that are IDLC is

4 equally distributed among all central offices, then I

5 would expect that one-quarter of the time we're going to

6 get less than equal service. And that is my concern.

7   Now, the other three quarters, the IDLC issue

8 won't even apply because, again, we're talking use

9 other -- for retail -- use other than IDLC.

10   And I don't want anyone to misunderstand.

11 We're not questioning that BellSouth go out and put IDLC

12 on a short copper loop. That just isn't economically

13 feasible and the short copper loop will work as well for

14 us as it does for BellSouth. It's that one-fourth of the

15 market that we aren't being given the meaningful

16 opportunity to compete for.

17   Q   And you're just assuming that that one-fourth

18 is distributed evenly between all the switches BellSouth

19 has in Florida; is that right?

20   A   The reason I said that was because, again, I

21 don't know that that one-quarter distribution would apply

22 for the offices that ITC^DeltaCom is currently using.

23 Assuming that it is, then it would be a quarter.

24 Assuming that the offices that we're in are a half IDLC,

25 then it would be a half. If it's something other or

something less than 25%, it would be less than that.

Again, I'm looking at at least equal, a meaningful opportunity to compete for this service. And if a fourth, half, whatever; if a fourth of the time we're not allowed to have at least equal facilities, then that certainly detrimentally impacts us having a meaningful opportunity to compete.

Q   Mr. Hyde, we have already been over this, but you keep mixing the descriptions that the FCC requires for levels of service. The at least equal standard is only applicable, at least under the Act, to the interconnection between two carriers, not to the unbundled access to network elements; is that right? Do you recall that discussion yesterday?

A   Yes, I do, but I also recall that there was some further words within the Act itself that I believe will address that for the loop itself.

Q   Mr. Hyde, you're also aware that BellSouth end users, its own retail customers, are not assured that they will continue to be served over IDLC technology? That is, for sound engineering reasons, BellSouth may reconfigure its network and a customer that may be served by IDLC technology today may wind up with a copper loop tomorrow? Are you aware that that does happen in BellSouth's own network?

A   I'm aware that that caveat is in BellSouth's procedures. It would be interesting to see whether it has ever occurred where an IDLC has been taken out once it's been put in. But to the extent that BellSouth chooses to take IDLC away from its retail customers for a given geographic area, then ITC^DeltaCom would accept the less than IDLC for its customers in that same geographic area.

Q   Well, let's just be real clear what you're asking for here. I thought you earlier said that you wanted -- and I thought I recall it from your summary -- that DeltaCom wanted BellSouth to provide IDLC-equivalent service on every one of the loops it provides to DeltaCom?

A   Oh, absolutely not; no, sir.

Q   That's not what you're asking for?

A   No, sir; it is not. We're asking for equivalency to what BellSouth is providing their end users.

With plain old copper loops, where BellSouth is currently serving their end user with copper today, then the IDLC issue will not come up. If it's copper today, we expect it to be copper after.

If there are situations where it's UDLC to the end user today, then ITC^DeltaCom would expect the UDLC

1   to be what's provided.

2   Q   Mr. Hyde, in your direct testimony at page 6,

3   you make a reference to an agenda session, an agenda

4   conference, with the Tennessee Regulatory Authority; do

5   you see that?

6   A   Page -- Oh, I may be -- Oh, I'm sorry; I'm in

7   rebuttal.

8   Q   In your direct.

9   A   Direct.

10   Q   About a year and a half ago; June 30th, 1998.

11   A   Yes, I did reference it.

12   Q   And you quote from that transcript, from that

13   agenda conference; isn't that right?

14   A   That is correct.

15   Q   On pages 6and 7?

16   A   That is correct.

17   Q   And you are aware that the Tennessee Regulatory

18   Authority has granted reconsideration and has in fact not

19   yet entered a final order on the issue of IDLC

20   technology?

21   A   There has not been a final -- Subsequent to

22   this particular conference that I've referenced, there

23   was a phase 1 order January 25th as well, that

24   reiterated, reaffirmed the IDLC ruling. But, no, there

25   has not been a final order yet setting the rates and

1 setting the procedures.

2   Q   And you are aware that a motion for

3 reconsideration was granted on that issue and a final

4 order has not been entered?

5   A   I do believe there was a motion for

6 reconsideration. I haven't followed that closely on

7 motions, but I believe there was.

8   Q   Let's talk about Issue 7, combinations under

9 existing agreement that we have. First of all, when was

10 the party's original existing agreement executed; do you

11 recall?

12   A   '97 sometime.

13   Q   July 1, 1997, sound right?

14   A   That sounds right.

15   Q   And DeltaCom's position is that BellSouth

16 should be required to provide UNEs and UNE combinations

17 that it's currently providing under the parties' existing

18 agreement; is that right?

19   A   That is correct.

20   Q   Hasn't the law changed concerning network

21 element combinations considerably since July 1, 1997?

22   A   It's swung back and forth.

23   Q   You would agree that the FCC adopted rules

24 concerning network combinations in 1996, and then you had

25 the Eighth Circuit stay and vacate those rules in 1997;

then the U.S. Supreme Court came along and reinstated one

of those rules in 1999. So, a number of changes both to

the FCC and the courts has taken place with respect to

UNE combinations; hasn't it?

A   There have been numerous changes, both in the

federal courts and in the FCC. However, when one looks

at the September 15th FCC news release -- that's

September 15th of '99 -- where they have reaffirmed all

but DA and operator services as UNEs, we don't have the

final order, but the press release I think gives an

indication that all of the UNEs that ITC^DeltaCom

presently orders are going to continue to be UNEs; and

that the combinations, although not in a final specified

order from the FCC, one is inclined to believe that there

will be combinations.

And, again, looking at very specific wording in

that summary, the type of combination that ITC^DeltaCom

has currently obtained from BellSouth was very

specifically listed in that summary, which is the loop

connected to a multiplexer, connected to digital

transport, to haul it off to another central office. And

that was very specifically addressed in the summary of

that FCC press release, to the point that said to the

extent any ILEC wanted an exemption for their circuit

switching in their urban areas, that they would have to

offer what the FCC calls the extended enhanced loop.

Now, does that mean that the FCC ordered that they must do it? No. But did it indicate that it was perfectly permissible to do it? Yes, it did. I mean, it was a provision to get an exemption to what will in my mind end up being loop/port combinations.

So, there is nothing out there that would preclude BellSouth continuing to provide those -- and to use the FCC's terminology -- enhanced extended loops.

Q   Well, the law as it exists today does not require BellSouth to provide combinations unless they currently exist in the network; is that correct?

A   You said law; I'm not a lawyer, so I'm not sure that I can make a calling on the law.

Q   Well, you just quoted extensively from a press release and are making great leaps and logic what's going to take place based on a summary of a press release. Is that what you --

A   That's FCC. That's regulatory; not law.

Q   Well, you are aware that the FCC -- You are aware that the FCC's rules regarding combinations of UNEs has been vacated; are you not?

A   I'm sorry.

Q   You are aware that the FCC's rules regarding combinations of UNEs, except for rule 315 about pre-

1 existing combinations, has been vacated.

2   MS. EDWARDS: At this point I'm going to

3 object. I mean, they have already covered this to some

4 extent. And, in addition to that, I think Mr. Wood more

5 accurately covers these issues in his testimony and in

6 much more detail.

7   MR. ALEXANDER: Mr. Hyde has testified about

8 this. He has it in his testimony. He's asking for these

9 combinations -- and we'll go into it in a minute -- a

10 specific combination extended loop.

11   COMMISSIONER CLARK: Mr. Hyde, you can ask the

12 question -- answer the question, but I would ask that you

13 say yes or no first and give brief answers. Thank you.

14   MR. ALEXANDER: Thank you.

15   WITNESS HYDE: All right. Would you ask your

16 question again to make sure.

17 BY MR. ALEXANDER (Continuing):

18   Q   You just said there is nothing out there today

19 that would prohibit BellSouth from offering these

20 combinations that you've asked for. You just said a loop

21 and port. And I asked you are you aware that there is no

22 legal requirement for BellSouth to provide combinations

23 unless it currently exist in its network? Unless they're

24 currently combined in its network today, BellSouth is not

25 required to do those combinations; is it?

1   MS. EDWARDS: I'm sorry, but I'm going to have
2 to object again. I think that does call for a legal
3 conclusion.
4   MR. ALEXANDER: I'm asking his knowledge.
5   COMMISSIONER CLARK: I think he's answered a lot
6 of questions with his view of what the FCC requires or
7 not. If he doesn't know, he doesn't know; that's fine
8 with me.
9   WITNESS HYDE: Again, let me see if I can state
10 this. No, I'm not aware of any law or rule that
11 prohibits BellSouth from providing combined elements.
12 BY MR. ALEXANDER (Continuing):
13   Q   That wasn't my question, Mr. Hyde.
14   A   Nor do I know of any that requires combined
15 elements.
16   Q   Thank you.
17   A   However, let's look at the fact of UNE loops
18 just a minute. How many UNE loops in the universe in
19 Florida today are combined, loop UNEs? One hundred
20 percent of them. One hundred percent of loops are
21 combined. The reason being it won't work unless you
22 combine it. It's extended; a hundred percent of them are
23 extended. Now, granted they are not extended very far.
24 But a loop by itself won't work. You have to buy the UNE
25 cross connect to extend that loop at least to the

1   collocation space.

2   So, we're looking at a universe here, at a

3   paradigm that says, well, first of all, all loops must be

4   combined with other UNEs, won't work otherwise. All

5   loops must be extended because you have got to get it

6   where it needs to go. And I'm looking at the contract

7   that we have existing that said BellSouth will negotiate

8   in good faith to find a means to extend the loop. Now

9   we're talking about requirements under law.

10   When I see a contract that says that we'll

11   negotiate in good faith to provide it, and then one of

12   the parties goes to the other one and says, here's how I

13   want to do it, issues orders, and 2,500 of them, more

14   than 2,500 are put in, then that seems to me in and of

15   itself, regardless of the FCC's rules, regardless of the

16   courts, unless it is specifically prohibited -- and I'm

17   not aware of any place anywhere by any court or

18   regulatory agency that has prohibited the extended

19   loop -- but yet we have got a contract that says that not

20   only will we negotiate in good faith to provide it, but

21   concentrate all of them in a single collocation per LATA.

22   Now, ITC^DeltaCom has looked at it and said,

23   well, we really don't need single LATA in most, single

24   point in most places because we're going to put

25   collocation spaces in. As a matter of fact, in BellSouth

1 today we've got more than 80 collocations and another

2 some odd 40 pending. So, we're going to have well over a

3 hundred collocated spaces in BellSouth soon.

4 So, we're not asking that we have a single

5 point of contact per LATA, merely that --

6 MR. ALEXANDER: At this point, I'd like to

7 object. I think it's a nonresponsive answer. I'm not

8 even sure where --

9 COMMISSIONER CLARK: I agree, Mr. Hyde; I think

10 you've gone beyond what his question was.

11 WITNESS HYDE: All right.

12 BY MR. ALEXANDER (Continuing):

13 Q Mr. Hyde, just so we're clear on this subject,

14 the FCC's press release, September 15, talking about its

15 decision in the Rule 319 proceeding, is just a press

16 release? We do not have a final written order from the

17 FCC on that; do we?

18 A No, we do not.

19 Q And BellSouth today -- I'm not talking about no

20 prohibition against BellSouth voluntarily doing it. I am

21 talking about BellSouth has no obligation under existing

22 law to combine network elements for DeltaCom that are not

23 currently combined in BellSouth's network; is that your

24 understanding today?

25 A That's my understanding.

        Q   Thank you. And let's talk about the contract,
since you raised that subject. I believe your testimony,
particularly at rebuttal page 3, you talk about
paragraph, I guess, it's section 4. It's B.14 of the
parties' original agreement. You discontend that
BellSouth is obligated to provided extended loops there;
don't you? That's the contract provision you mentioned
earlier?

        A   Yes, it is.

        Q   Okay. If you put aside what that paragraph
says, that contract says nothing about any rates; does
it? Does it in any way obligate BellSouth to provide
these extended loops at a particular cost?

        A   There is no mention of the cost or rates, no.

        Q   Do you have that contract with you, Mr. Hyde?

        A   No, I do not.

        Q   I only have one copy, but the earlier
provision, that whole section B deals with
interconnection with network elements; is that correct?

        A   That's correct.

        Q   And you've looked at this contract before. I
can either show it to you or read it to you and tell me
if you're familiar with the provisions, or maybe your
counsel has a copy. It was attached I believe to your
petition.

1 　　　　MS. EDWARDS: I have the proposed, but I don't

2 have our existing Interconnection Agreement that's on

3 file with this Commission with me.

4 　　　　MR. ALEXANDER: I only have the one copy. Can

5 I stand behind him, let him read it?

6 　　　　COMMISSIONER CLARK: Show it to Ms. Edwards

7 first.

8 　　　　MR. ALEXANDER: I'll be glad to do that.

9 BY MR. ALEXANDER (Continuing):

10 　　　Q　　Mr. Hyde?

11 　　　A　　Yes.

12 　　　Q　　Pardon me standing beside you, but I only have

13 the one copy. You recognize this, and I'll show you the

14 provision B(14) is the one you quote in your testimony?

15 　　　A　　That's correct.

16 　　　Q　　And earlier in that same section B,

17 interconnection with network elements; do you see that?

18 　　　A　　Yes, I do.

19 　　　Q　　Do you see B(1); would you read that please,

20 the purpose of this section?

21 　　　A　　"Interconnection shall be achieved via

22 collocation arrangements DeltaCom shall maintain at a

23 BellSouth wire center or other BellSouth network point."

24 　　　Q　　And also look at section B(4) right under that.

25 　　　A　　Certainly. Section B(4), "DeltaCom shall

access BellSouth unbundled loops via collocation at the
BellSouth wire center where those elements exist. Each
loop or port shall be delivered to DeltaCom's collocation
by means of a cross connect."

Q   Thank you very much.

Mr. Hyde, based on this contract, the current
contract and the provisions of that under section B that
I just asked you to read, would you agree that the
primary means of interconnection is through a collocation
site?

A   Yes, it is. Again, let me emphasize B(14)
paragraph, which states that "The parties shall negotiate
in good faith to devise a means to extend those loops to
a single collocation per LATA."

It merely says that until those negotiations
are done, or when those negotiations are done, they can
supersede the other parts and provide extended loops to
the other collocation sites.

Q   Where in B(14) does it say that that agreement
will supersede the other, the primary agreement, the 13
sections that preceded B(14)?

A   B(14) merely states that the parties will
negotiate in good faith to devise a means to extend the
loops.

Q   Thank you, Mr. Hyde. And, again, there is no

1 rate for that set in the contract; is it?

2   A   No, there is not.

3   Q   Let's talk about those extended loops a little

4 further. That relates to issues 7 and I believe 8(a) in

5 this proceeding.

6   As a general premise, the industry would

7 recognize an extended loop as a UNE loop and

8 UNE-dedicated transport; would it not? Is that what an

9 extended loop traditionally is?

10   A   Ask that again. I'm not sure I heard exactly

11 what you said.

12   Q   I asked you if an extended loop generally

13 speaking is a UNE loop connected with dedicated --

14 UNE-dedicated transport?

15   A   Let me rephrase that slightly. The industry

16 standard, as I am aware of it, is an extended loop is a

17 UNE loop connected to a UNE cross connect and then

18 connected to dedicated transport, without any specifics

19 of whether that transport is UNE or something else.

20   Q   Well, DeltaCom's currently being provided a UNE

21 loop, UNE cross connection, and UNE -- not UNE

22 transport -- but, in fact, special transport, through a

23 tariff; is that right?

24   A   Special access to port; that is correct.

25   Q   Through the tariff?

1   A   Through the tariff.

2   Q   It's buying a tariff service and combining that

3 with unbundled network elements?

4   A   Yes, indeed. Again, looking at the tariff

5 itself, which states that the special access can be used

6 for any lawful purpose. I see no real conflict with

7 connecting that to a UNE loop. That transport has

8 traditionally been used for mixed services in the past

9 anyway.

10   Q   And, again, under existing law, BellSouth does

11 not have to combine a loop with transport for DeltaCom,

12 but it does have to leave those elements connected to the

13 extent they're currently combined in BellSouth's network

14 today; is that right?

15   MS. EDWARDS: Again, I think we've already had

16 the same, exact same question asked and answered.

17   COMMISSIONER CLARK: I'm going to allow the

18 question one more time. And I am going to ask the

19 witness, if you would, confine your answers to what was

20 asked. Okay? I appreciate the fact that you might want

21 to give other explanations, but please leave that to

22 redirect.

23   WITNESS HYDE: All right. Could I ask you to

24 ask the question one more time, make sure I understand

25 it, Mr. Alexander?

BY MR. ALEXANDER (Continuing):

Q   Under existing law today, BellSouth does not have to combine a loop and transport to give this extended loop for DeltaCom, but it does have to leave those elements connected to the extent they're currently combined in BellSouth's network today?

A   As I recall -- Yes, as I recall --

Q   Thank you.

A   The FC- -- I want to change one word, though, in what you said. Not currently combined, but currently combines. My understanding is that BellSouth is required to provide those that it currently combines, not that is currently combined, which indicates a slightly different thing in my mind.

Q   And where is that reference, combines versus combined?

A   I believe in the FCC order. I'd have to pull it to see.

Q   Do you have a cite to a paragraph that says that?

A   Do you have a copy of 235, 96.235?

Q   No, I don't believe I do.

A   I don't have a copy with me that I can cite. I would be happy to try and find that cite and provide it as a late-filed exhibit.

1   Q   That will be fine. Until the FCC actually

2 releases its order in the 319 proceeding, we don't know

3 for certain what that order says; do we? We can't tell

4 what the FCC is going to do on Rule 319 until we actually

5 see that in writing; will we?

6   A   We will not have an official legal document

7 until we get that order out. And we won't know exactly

8 what all of the details are until the order is issued;

9 that is correct.

10   Q   And you went at length about your

11 interpretation of what that summary of the press release

12 indicated. Did that press release not also indicate that

13 through a notice of proposed rulemaking that the FCC

14 intended to study the use of transport UNEs to be able to

15 provide special access services?

16   A   Yes, there was an FNPR, further notice of

17 proposed rulemaking as I understand, having to do with

18 the use of UNE transport as access, I believe.

19   Q   You also are aware that at least through that

20 press release, the FCC's decision to remove the unbundled

21 switching as a network element, that incumbents are

22 required to provide -- they're only relieved of that in

23 the top 50 metropolitan statistical areas, MSAs, and it's

24 only if the incumbent provides extended loops; is that

25 your understanding?

1   A   My understanding of the exemption is that it

2   does only apply, yes, only applies to the top 50 MSAs,

3   and would be an exemption for circuit switching, or port,

4   if you will.

5   Q   Does that suggest to you that BellSouth can

6   voluntarily agree to provide extended loops in order to

7   avail itself of the unbundled port exception, but it's

8   not required to do so?

9   A   That does say to me -- Yes, it says to me that

10   there is not a requirement that the enhanced extended

11   loop be provided -- not an FCC requirement that the

12   enhanced extended loop be provided.

13   Q   Mr. Hyde, did you review the prehearing

14   statement that DeltaCom filed in this proceeding?

15   A   Did I review it? No, I did not review it.

16   Q   Well, you are aware of what it says?

17   A   I wasn't in the room the whole time.

18   Q   Well, I'm talking about what DeltaCom

19   filed, the prehearing statement DeltaCom filed, not the

20   prehearing order that the Commission issued.

21   A   Oh, the prehearing statement. No, I have not

22   reviewed that.

23   Q   Okay. Have you reviewed the prehearing order?

24   A   Yes, I have; I have reviewed the prehearing

25   order.

1   Q   On page 14 of DeltaCom's prehearing

2   statement --

3   MS. EDWARDS: Do you have a copy of that,

4   Mr. Alexander?

5   MR. ALEXANDER: I have a copy, yes. I don't

6   have another one for him. I thought ya'll had a copy of

7   it.

8   MS. EDWARDS: We have the prehearing order.

9   MR. ALEXANDER: You don't have your own

10 prehearing statement?

11   MR. GOGGIN: I can let him borrow mine.

12   MR. ALEXANDER: We'll supply him one.

13   COMMISSIONER CLARK: Mr. Alexander, how much

14 more do you have?

15   MR. ALEXANDER: I'm going to guess 30 minutes.

16   COMMISSIONER CLARK: Mr. Alexander, can you

17 tell him where he needs to be, please? Where do you want

18 him to look in this thing?

19   MR. ALEXANDER: Page 14 of DeltaCom's

20 prehearing statement. But I'm also going to point out

21 that it's -- I believe it's Issue 7 and 8 in the

22 prehearing order.

23   I believe under 8(a) would be more accurate, if

24 you will look to there, if you have a copy of the

25 prehearing order.

BY MR. ALEXANDER (Continuing):

Q   Mr. Hyde, are you on page 14 of DeltaCom's prehearing statement?

A   I'm on page 14 of the prehearing statement, yes.

Q   And that is DeltaCom's?

A   Yes, it is.

Q   You see the reference about extended loops?

A   Yes, I do.

Q   And you talk about that being a combination of an unbundled loop, a cross connection and a special access transport?

A   Yes, I see that.

Q   Do you see, also, that DeltaCom represents that using these three elements, actually two elements and a tariff service, has enabled DeltaCom to provide service to rural areas of Florida for the past two years; do you see that?

A   Yes, I see that.

Q   How many of these extended loops does DeltaCom have in Florida particularly going to rural areas?

A   I'm not aware of any in Florida.

Q   So, that statement is not accurate; is it, Mr. Hyde?

A   Not as it extends to the state of Florida, no.

1   Q   And you also see in here in your prehearing

2   statement at page 14, that over the past two years

3   BellSouth has provisioned approximately 2,500 of these

4   extended loops to DeltaCom?

5   A   Yes, I see that.

6   Q   Are any of those in Florida?

7   A   I'm not aware of any in Florida, no. That is a

8   region-wide number. We have more than 2,500 in service

9   region wide.

10   Q   And when we were in South Carolina, I believe

11   it came out that DeltaCom has over a thousand of these in

12   the state of South Carolina; is that correct?

13   A   That is correct.

14   Q   And are you aware that the South Carolina

15   Commission, in listening to this arbitration, did not

16   find any evidence that with those thousand-plus extended

17   loops that DeltaCom was providing service to rural areas

18   in South Carolina? I have a copy of the order if we need

19   to look at it.

20   A   I am not aware of that. I'll have to look at

21   the order.

22   MR. ALEXANDER: May I show the witness?

23   BY MR. ALEXANDER (Continuing):

24   Q   Mr. Hyde, I'm handing you a copy of what is

25   part of an exhibit in this proceeding as a composite

1 exhibit, I believe Exhibit 1. This page 34, do you

2 recognize this as the South Carolina Commission's Order

3 in the DeltaCom/BellSouth Arbitration, Docket 1999-259-C?

4   A   I don't recognize it because I haven't

5 reviewed the Order, but I will accept that this is the

6 Order.

7   Q   This Order came out on October 4th, at least

8 according to the date?

9   A   That is correct.

10   Q   And you have not reviewed this Order?

11   A   No, I have not.

12   Q   Mr. Hyde, look at page 34, paragraph beginning

13 "With respect to ITC^DeltaCom;" would you read that,

14 please, that sentence?

15   A   "With respect to ITC^DeltaCom's contention that

16 it needs UNE combinations to provide service to rural

17 areas, first, there is no evidence that ITC^DeltaCom is

18 making any serious attempt to serve rural customers

19 today."

20   Q   Thank you, Mr. Hyde.

21   Are you interested in reading this order?

22   A   I have been sent a copy. I haven't had a

23 chance to review it yet.

24   Q   I want to talk to you about the rates for

25 unbundled network elements. I believe it's issues 39 and

1   40(a) in the proceeding.

2   DeltaCom is asking this Commission to establish

3   rates for certain unbundled network elements; is that

4   right?

5   A   That is correct.

6   Q   I don't believe I saw any DeltaCom-specific

7   rate proposals in your testimony; is that correct? The

8   only thing I recall was some information in Exhibit TAH-4

9   about nonrecurring charges; is that right?

10   A   That is correct. The only thing I have

11 addressed is nonrecurring.

12   Q   Do we have any specific rate proposals by

13 DeltaCom in this proceeding?

14   A   For recurring or nonrecurring?

15   Q   For recurring charges.

16   A   For recurring charges, that would be better

17 addressed to Mr. Wood.

18   Q   And you have some information about a

19 nonrecurring charge; is that right?

20   A   That is correct.

21   Q   For which UNEs does that address?

22   A   For the two-wire analog loop service level one,

23 connect and disconnect; two-wire analog voice grade loop

24 service level 2, connect and disconnect; for the

25 ADSL/HDSL, nonrecurring. And those are the only ones

1 I've addressed.

2   Q   And you've made those rate proposals to that

3 exhibit attached to your BellSouth testimony; is that

4 right?

5   A   That is correct.

6   Q   Do you have any cost studies to support those

7 rate proposals?

8   A   Those are based on modifications to BellSouth

9 cost studies.

10   Q   So DeltaCom itself does not have any cost

11 studies to support the rates it's proposing; it's simply

12 making modifications to BellSouth's studies?

13   A   That is correct.

14   Q   Mr. Hyde, you are aware that this Commission

15 has established rates for a number of the elements that

16 DeltaCom is asking for that rates be set?

17   A   That is correct. I am aware of that.

18   Q   For example --

19   A   For example -- Excuse me.

20   Q   -- DeltaCom is asking this Commission to

21 establish a recurring and nonrecurring rate for a

22 two-wire ADSL compatible loop. You are aware the

23 Commission in its April 29th, 1998, Order, I believe it's

24 Docket 960833-TP, has set a rate for that UNE loop?

25   A   Yes, I am aware of that. Again, looking at

what has happened in the world of ADSL/HDSL, especially

with the filing of BellSouth's service for ADSL, I think

enough new information has come to light on just what

ADSL is, that it requires a relook at that particular

type service.

The ADSL studies that were included in that

Florida docket made some assumptions about ADSL that are

no longer supportable.

Q   And you are taking a tariffed service study and

comparing it to an unbundled network element study; is

that right?

A   To a certain extent, yes, I am. Again, looking

at what an ADSL compatible loop really is. It's nothing

more than a voice grade loop with some fancy equipment in

the central office and at the customer premise. It's a

plain old copper loop. You referenced yourself the

100-year-old technology of the plain old copper loop.

That's all an ADSL compatible loop is.

As a matter of fact, the very first loop

BellSouth ever installed in the state of Florida, first

loop pair ever, was ADSL compatible. So, we're not

talking about a lot of design, a lot of work. All you

really have to do is look at it and say is it or isn't

it. Is it plain old copper loop or is it not? Other

than that, it would be similar, but lower cost, than a

1 voice grade.

2   Q   Does DeltaCom want a voice grade loop or does

3 it want an ADSL compatible loop?

4   A   It wants an ADSL compatible loop.

5   Q   And you recognize that BellSouth says it has a

6 lot of work activity associated with making a voice grade

7 loop with ADSL compatible? You may disagree with that,

8 but you recognize BellSouth says there is more work to it

9 than just looking at the records?

10   A   I'm aware that the cost study says that there

11 is more work involved in it than just looking at the

12 record.

13   Q   Well, you are aware that today this Commission

14 has approved a nonrecurring charge for an ADSL

15 compatible -- two-wire ADSL compatible loop of $113.85;

16 is that right?

17   A   I am aware of that, yes.

18   Q   And your rate proposal, if I read your exhibit

19 TAH-4 correctly, would drop that down by more than 50%?

20 It would drop it to $45.27; is that right?

21   A   That is correct.

22   Q   And you're doing that because you're saying

23 that all it takes is a look at records and that's all

24 that's required to make a voice grade loop ADSL

25 compatible; is that your testimony, Mr. Hyde?

1   A   That is correct.

2   Q   Well, first of all, if DeltaCom gets its way in

3   this proceeding and the rate is dropped by -- the math

4   shows that it's $68.58 reduction off currently approved

5   nonrecurring charge, DeltaCom will be having an advantage

6   against other ALECs in Florida, would it not, on paying a

7   lower nonrecurring charge?

8   A   Only to the extent that they couldn't adopt

9   ITC^DeltaCom's contract. One assumes that they would be

10   able to do that. I believe that that's a doable thing in

11   the state of Florida.

12   Q   Am I correct that with regard to all of

13   DeltaCom's rate proposals in this proceeding, that your

14   rates are below those established by this Commission or

15   below those that BellSouth's cost studies that are

16   consistent with the methodologies approved by the

17   Commission indicate?

18   A   Yes, they are lower.

19   Q   So, DeltaCom is not asking for any rates

20   higher; is it?

21   A   On nonrecurring, no. I can't address the

22   recurring. I don't believe so, but that's better

23   addressed to Mr. Wood.

24   Q   Okay. Let's talk about how you got the

25   reduction off the ADSL compatible loops for the

1   nonrecurring charge for a moment.

2   Do you recall being asked -- Do you recall

3   being deposed, giving a deposition in this case?

4   A   Pardon? I didn't hear that.

5   Q   Do you recall giving a deposition in this

6   proceeding?

7   A   Yes.

8   Q   Do you recall staff's counsel, Ms. Caldwell,

9   asking you some questions about these nonrecurring

10 charges for ADSL compatible loops?

11   A   Yes.

12   Q   Again, I only have one copy of the deposition,

13 but if you need to look at it, we may have another copy.

14   Basically, as I recall your testimony at your

15 deposition, you testified that the ADSL compatible loop

16 nonrecurring charge should just be the nonrecurring

17 charge, an equivalent voice grade loop, plus an

18 incremental cost for checking to see if the loop will

19 meet ADSL criteria. Is that an accurate representation?

20   A   That's an accurate representation, yes.

21   Q   Do you recognize that BellSouth provisions

22 these two UNEs, that is, a voice grade loop and an ADSL

23 compatible UNE loop, differently?

24   A   If any provisioning is done differently, it is

25 based on erroneous assumptions by BellSouth as to the

1 necessity of it, and inputs excessive costs into it.

2 We look at, again, what is that ADSL. It

3 doesn't require any kind of provisioning on that loop.

4 As a matter of fact, BellSouth does no conditioning on

5 that loop. Quite frankly, I don't see anything they do

6 on it but check the loop to see if it is or is not

7 compatible.

8 Q And you say that they do that by checking some

9 cable records. And I believe your testimony in your

10 deposition reflected that it's looking at the copper to

11 see if there's any -- copper loop to see if there are any

12 load coils or bridge taps on it. And you

13 testified -- And I'd have to find the page reference. I

14 believe it was around pages 19 and 20 in your deposition,

15 if you have a copy of it.

16 A Nineteen and twenty?

17 Q I believe that's correct. That this is going

18 to take about a minute or a minute and a half, but

19 certainly no more than five minutes; is that --

20 A A very brief amount of time, yes.

21 Q Specifically, though, less than five minutes?

22 A I would expect less than five minutes, yes.

23 Q Do you know -- And this is done through a

24 computer program, I believe you testified as well?

25 A Yes, it is.

Q   Okay. What is that computer program?

A   I'm not sure what the name of it is.

Q   You used to work in the network department; did you not?

A   I did indeed.

Q   Are you familiar with plant location records?

A   Yes, I am.

Q   And to go look at those records, you're saying that you can do that through a computer system?

A   That is what I have been told.

Q   You've been told that?

A   Yes, indeed.

Q   You don't have personal knowledge of that?

A   I have not used the computer system myself. I have made assignments from plant records, but it's considerably older than that technology. It was when the plant records were on paper. And it didn't take me longer than five minutes to pull the paper and look and see what the makeup of the cable was.

Q   Well, let's talk about the distinction. We'll go back to that subject but talk about the distinction between a voice grade loop and ADSL compatible loop.

A   All right.

Q   Do you recognize that when BellSouth provides an ADSL compatible UNE loop, that it guarantees that that

1 loop will work to certain technical standards that will

2 allow ADSL service to go across it?

3   A   There are technical specifications for the ADSL

4 loop, yes.

5   Q   And you recognize that when BellSouth provides

6 an ADSL-capable loop as opposed to an ADSL compatible

7 loop, as opposed to just a voice-carried loop, that it's

8 guaranteeing that compatibility?

9   A   Yes, but that's recurring cost. That doesn't

10 have anything to do with nonrecurring.

11   Q   And to determine whether or not that loop is

12 ADSL compatible, do you recall whether outside plant

13 engineers actually physically go look to see what that

14 loop makeup is by reviewing the plant location records;

15 that's one of the requirements?

16   A   They pull the plant records, the cable pair

17 records, to see what the makeup of the cable pair is.

18   Q   Okay. You also recognize that for providing

19 ADSL compatible loop, that BellSouth asks their plant

20 engineers to create what's known as a design layout

21 record, a DLR?

22   A   The design layout record is produced for any

23 designed circuit. Now, the fact that the ADSL has a

24 design layout record is merely an assumption on

25 BellSouth's part that it would be designed.

There is absolutely nothing prohibiting the provisioning of ADSL on a nondesigned loop. As a matter of fact, it works quite well on a nondesigned loop. ITC^DeltaCom doesn't want it that way. ITC^DeltaCom wants an SL2 equivalent for ADSL because, quite frankly, we want the test points and we're willing to pay for it. But that doesn't preclude some other ALEC ordering a nondesign ADSL, and there is absolutely nothing that would keep it from working.

Q   Mr. Hyde, the guarantee associated with an ADSL compatible loop is not associated with a voice grade, an SL2; is it?

A   It's -- I'm somewhat hesitant to use the term "guarantee." It has a different set of specifications than does a voice grade, but, again, the maintenance of those specifications, we're talking about recurring costs here, not the nonrecurring of turning the circuit up but, rather, one of maintenance.

And the interesting thing is, when you look at it, the maintenance cost is obviously less than voice grade because the recurring cost per BellSouth study is less than voice grade. So, we're looking at a recurring cost that's even less. And one would assume that the maintenance of those specifications are in that cost study.

Q   Mr. Hyde, before turning over the loop to, an ADSL compatible loop to DeltaCom, you recognize that BellSouth outside plant engineers check those plant records to determine whether or not that particular cable and pair assigned to a switch is ADSL compatible?

A   They check the records to see if it's available, yes.

Q   And you will agree that BellSouth also provides a design layout record, a DLR, associated with an ADSL compatible loop today --

A   Only because they made the assumption that it would be designed. There is no -- The fact of ADSL compatibility has absolutely nothing to do with whether it's designed or nondesigned. It's whether it's plain old copper pair that you can tell from looking at the records.

Now, does BellSouth use designed loops for ADSL service? No, they don't. They use nondesign.

So, if BellSouth can provide ADSL on nondesign circuit, obviously it works on nondesign.

ITC^DeltaCom doesn't wasn't it that way. ITC^DeltaCom does want a design circuit. So, we're willing to pay for the DLR cards.

Q   The loops that BellSouth uses to provide ADSL service to customers, wholesale customers, ISPs that buy

1 it, is there a guarantee associated with that?

2   In other words, that loop may not be compatible

3 at a future date because of a change in the network?

4   A   Once it's provided -- Well, let me answer that

5 in two parts: To my understanding of the tariff

6 offering, there is not a guarantee not to take it away

7 and change it. There is, however, if you want to use the

8 term "guarantees," that when it's provided to the ISP or

9 to the end user, whichever, that it will be ADSL

10 compatible on day one. Now, that's a guarantee.

11   So, it's guaranteed to be compatible on day

12 one, but they don't guarantee to keep it compatible

13 forever.

14   Q   Mr. Hyde, you also recognize that BellSouth

15 performs end-to-end testing on each ADSL compatible loop

16 that it guarantees to the ALEC; don't you?

17   A   I'm not sure I follow the question. Ask it one

18 more time, please.

19   Q   Doesn't the BellSouth outside plant engineer or

20 technician perform an end-to-end testing of the ADSL

21 compatible loop, make sure it's ADSL compatible, goes to

22 a test point connection, goes to the customer premises,

23 makes those type tests of that loop?

24   A   It may happen if it's a new connect, but not

25 if, for instance -- and let me give you what not only can

1 but is going to happen.

2   Q   Well, I guess my question --

3   A   Excuse me. Let me re-answer that. Not

4 always. Sometimes. Some percentage of the time it would

5 be required for a technician to go out there.

6   Q   My question was are you aware of whether

7 BellSouth performs end-to-end testing whenever it

8 provisions an ADSL compatible loop.

9   A   I am aware that the cost study showed it doing

10 that way, but I do not hold that it is required; no, sir.

11   Q   Okay. You just disagree whether that is

12 necessary or not; is that what you're saying?

13   A   I absolutely disagree that it is necessary a

14 hundred percent of the time. For instance, BellSouth has

15 existing ADSL customers in Florida today. If

16 ITC^DeltaCom goes out and wins one of those customers

17 away from BellSouth, competitive win, there's an ADSL

18 loop setting out there today. All that has to be done to

19 convert that ADSL loop over to BellSouth, from BellSouth

20 over to ITC^DeltaCom, is to do some central office work.

21   You take it off the DSLAM from BellSouth, and

22 in our case, because we want it to have test points, and

23 we want the SL2 design capability on ADSL, you connect in

24 the test points in the central office and then connect it

25 to our collocation. There's absolutely no need for any

1   kind of dispatch in that instance; no need for end-to-end

2   testing. It's merely a competitive win on an existing

3   circumstance, just like all of the other services that

4   have a percentage calculated in on a forward-looking

5   basis to recognize that, yes, there is going to be some

6   competitive wins there.

7   Q   Mr. Hyde?

8   A   Yes.

9   Q   Let's try to bring closure to this, and I'll

10   try to ask you a question that hopefully will elicit a

11   yes or no answer.

12   If BellSouth is doing more for the nonrecurring

13   charges associated with an ADSL loop besides just going

14   to a computer program, which you cannot identify; if it

15   is doing more work than just looking at a cable record,

16   you would agree that you have underestimated the non-

17   recurring charges BellSouth should be able to recover

18   associated with providing an ADSL compatible loop; is

19   that correct or not?

20   A   It is correct only if one assumes that those

21   functions are required and are necessary.

22   Q   Thank you, Mr. Hyde.

23   Let's turn to issues 12(a) and 12(b), your loop

24   cutover. I believe on page 19 of your rebuttal testimony

25   you indicated it may take longer than fifteen minutes to

1 complete the cutover process when multiple loops are

2 involved.

3   A   What page were you on; I'm sorry?

4   Q   I believe it was page 19 of your rebuttal.

5   A   Okay. I'm there. Now, your question.

6   Q   Do you see where you say that? Is that

7 accurate, that it may take -- first sentence -- "It may

8 take longer than 15 minutes, depending on, among other

9 things, the number of loops involved"?

10   A   Yes, I did.

11   Q   Okay. But the contract language that DeltaCom

12 is proposing for this agreement does not make a

13 distinction between a cutover from one loop or one

14 hundred loops; does it?

15   A   No, it does not.

16   Q   Okay. You also say on page 19 that it's

17 DeltaCom's position that the customer service should not

18 be interrupted longer than 15 minutes between

19 disconnection and reconnection; is that correct?

20   A   That is correct.

21   Q   But, again, you do not distinguish between

22 whether it's one loop or one hundred loops involved, even

23 though you've already acknowledged that multiple loops

24 may take longer?

25   A   That is correct.

1   Q   You do agree that BellSouth proposal for the

2 interval, the time interval for loop cut-overs, does make

3 a distinction between one loop and multiple loops; does

4 it not?

5   A   It does, indeed.

6   COMMISSIONER CLARK: Mr. Hyde, I had a

7 question on that. What is the -- When you say it should

8 be -- it should be 15 minutes between disconnect and

9 connect, but not necessarily between complete cutover.

10 What's -- in addition to -- What other activities, could

11 take place, or what is the difference between those two

12 concepts? I guess that's the best way to ask it.

13   WITNESS HYDE: For instance, if during the

14 cutover, let's say a customer has -- and this would be an

15 extremely high level for voice grade cut-overs -- but

16 let's say the customer has 20 loops. If all 20 are cut

17 at the same time and something goes wrong, then the

18 customer is completely out of service.

19   However, if you cut, let's say, ten of them,

20 leaving ten of them up and running, the customer would

21 still be able to have service, more limited, not all the

22 lines, but the service would not be -- the customer would

23 not be isolated during the entire cut, so that they could

24 be sequenced, as it were, and some of the services

25 restored and up and cut over before the rest are cut.

We're looking at not having a customer out of service for
an excessive amount of time.

Now, from a realistic standpoint, with
ITC^DeltaCom, it would be extremely unusual for us to
have a 20-loop cut because we're going to do our absolute
best to digitize with digital facilities any customer
with more than about a dozen loops. So, someone that has
a hundred loops with BellSouth, we would do our best to
convert to five loops, five DS1 loops.

COMMISSIONER CLARK: Let me just ask it a
different way.

WITNESS HYDE: All right.

COMMISSIONER CLARK: What I hear you saying is
that there should be a 15-minute limitation between when
he's disconnected from one service and at least connected
to one line so that he has communication for another
service?

WITNESS HYDE: That is the number one priority
to ITC^DeltaCom is that our customer not be interrupted
in service for longer than 15 minutes, as far as
isolation from the world.

COMMISSIONER CLARK: Do you think you could
agree on that then? You seem to acknowledge the fact
that a complete cutover may take longer than 15 minutes.
What is your dispute then with BellSouth and what they've

1 suggested.

2   Well, let me ask it this way. Mr. Alexander,

3 can BellSouth agree to at least, that they will not be

4 disconnected for more than 15 minutes? They'll at least

5 have the ability to reach the outside world?

6   MR. ALEXANDER: Well, I think Mr. Milner will

7 be best able to answer that question. But we have made a

8 very specific proposal that recognizes the difference

9 between a single loop cutover and multiple loop

10 cut-overs. And I think we're in agreement on the 15

11 minute for the single. The problem is they want that

12 regardless of whether it's one or five hundred, the

13 fifteen minutes is applicable.

14   We have offered a proposal. The South Carolina

15 Commission adopted that proposal for having a different

16 variance. I could read to you the specifics of that.

17 There is a proposal.

18   COMMISSIONER CLARK: Maybe with Mr. Milner.

19   Thanks.

20 BY MR. ALEXANDER (Continuing):

21   Q   Mr. Hyde, let me ask you, getting to that

22 question, more specifically to a particular type of loop

23 cutover, talking about local number portability, can you

24 look at -- Do you have the prehearing order with you?

25   A   Yes.

1   Q   Do you have DeltaCom's prehearing statement as

2   well?

3   A   Yes.

4   Q   I believe it's page 25 of the prehearing order.

5   A   Twenty-five?

6   Q   Yes.   Under Issue 21.

7   A   Twenty-one?

8   Q   Yes.

9   A   Page 26 then? All right. Issue 21.

10   Q   Page 25, Issue 21.   Maybe my pagination is

11   different than yours.

12   A   Apparently, it must be. Mine is on page 26 for

13   Issue 21.

14   Q   Okay. Do you see the issue about LNP cutover

15   procedures?

16   A   Yes, I do.

17   Q   And you see DeltaCom's position listed there?

18   A   Yes, I do.

19   Q   You state, DeltaCom states, that this

20   requirement, that is, having a -- so the customer, that

21   the disconnect order is completed so that customers can

22   receive calls without impairment of service quality and

23   this requirement is established in the FCC's LNP, local

24   number portability order. And then the position states,

25   "The minimum impairment of quality standard imposed by

the FCC requires that a disconnect order will be worked

in no less than two hours." Do you see that, Mr. Hyde?

        A   I see that.

        Q   And it says that you're the witness on this

issue?

        A   Yes, it does.

        Q   Can you tell me what LNP order of the FCC says

that there is a two-hour time period imposed, that a

disconnect order will be worked in no less than two

hours?

        A   I would have to provide that as a late

exhibit. I can not cite to it right now.

        Q   You don't have a cite to an order or a

paragraph?

        A   No, I do not.

        Q   You are aware that there are a number of

telephone number portability orders issued by the FCC?

        A   Yes, there are.

        Q   I have looked at all of them I could look at

and I have found no reference to that position. I would

appreciate your providing that in a late-filed exhibit.

                Is it possible that's just DeltaCom's

interpretation of that minimum impairment standard?

        A   It is possible. I do not recall a specific

two-hour statement anywhere in there. I will have to

1 research that to see if there is.

2   MR. ALEXANDER: Thank you, Mr. Hyde.

3   COMMISSIONER CLARK: Mr. Alexander, you've

4 asked for two late-filed exhibits that I have noted, one

5 on a cite for the word "combines" as opposed to

6 "combined," and another one on a cite to an FCC order on

7 LNP. At the close of cross examination by you of

8 Mr. Hyde, we'll identify the exhibits and agree on when

9 it's due.

10   MR. ALEXANDER: Well, thank you. I only asked

11 for one, but he offered an earlier one and I accepted.

12 BY MR. ALEXANDER (Continuing):

13   Q   Mr. Hyde, let me do this: Commissioner

14 Clark's question about the cutover process, will DeltaCom

15 agree to an arrangement where BellSouth guarantees at

16 least one line will be cut over in less than 15 minutes,

17 so the end user is never completely without service?

18   A   I believe there is a possibility we can

19 negotiate something on that, Mr. Alexander. One of the

20 reasons that we wanted the 15-minute interval, it's in

21 today's current agreement, and we wanted to continue that

22 forward. And, quite frankly, with the way that

23 ITC^DeltaCom does business, if proper pretesting is done,

24 there's not going to be many instances where the

25 15-minute could not be met anywhere for all loops cut

1 over.

2   Q   But to get to Commissioner Clark's question,

3 DeltaCom would agree that if BellSouth can cut over at

4 least the first loop within the 15 minutes, so that the

5 customer is not without service at all, that might

6 resolve this issue?

7   A   I think I'd have to go just a step further than

8 that and say that no individual loop would be out longer

9 than fifteen minutes.

10   Q   So, we may not have agreement?

11   A   I would think that it would be more appropriate

12 to sequence those cuts through rather than -- rather than

13 just saying a single, single loop. I would like some

14 confidence that the rest would sequence through as well.

15 It's possible we could reach settlement on it, though.

16   Q   Let me ask you about another issue, and that is

17 the meet-point billing arrangement. Are you familiar

18 with that, Mr. Hyde?

19   A   Yes, I am.

20   Q   Florida tariffs, specifically it's access

21 tariff E.2.4.8, addresses meet-point billing, and

22 requires that NECA billing arrangements be used?

23   A   I'm trying to remember that particular section

24 and the applicability. I have read that section of the

25 tariff.

Q   I have the document.

A   But I can't recall the exact wording.

Q   Mr. Hyde, have I handed you a copy of the access tariff E.2.4.8?

A   Indeed, you have.

Q   Could you turn to Section E.2.4.8(c)?

A   C, as in Charlie?

Q   Yes.

A   Yes.

Q   And I believe at the top it will say "First revised page 30."

A   Oh, I wasn't far enough. First revised page 30. Yes, I'm on that.

Q   About the third page on the document I've just handed you.

A   Okay.

Q   And do you see the E.2.4.8, "billing of access service provided on multiple companies" at the top?

A   Oh, okay. The continued part billing of access service provided by multiple companies, yes.

Q   And just take a minute to look at that, but generally would you agree that, particularly if you look at C.3(a)1, says the total mileage for the service is computed using the VNH coordinate method set forth in the National Exchange Carrier Association Tariff, FCC No. 4,

1 NECA No. 4; do you see that?

2   A   Yes, indeed.

3   Q   Would you agree that in Florida, for purposes

4 of multiple company billing, BellSouth is using the NECA

5 billing arrangements?

6   A   For purposes of multi-company access billing,

7 you are using the National Exchange Carrier Tariff No.

8 4; yes.

9   Q   Thank you. Is it your understanding that

10 BellSouth cannot file it's meet-point billing

11 arrangements with DeltaCom at NECA unless DeltaCom

12 concurs and also files with NECA?

13   A   Not exactly.

14   Q   That's not your understanding?

15   A   You can't file billing percentages with a third

16 party company with NECA unless the other company concurs;

17 yes, I agree with that.

18   Q   So, in order for BellSouth to perform meet-

19 point billing pursuant to the NECA arrangements, it needs

20 DeltaCom's concurrence; is that correct?

21   A   If there is a billing percentage involved in

22 the access billing other than a hundred percent DeltaCom

23 or a hundred percent BellSouth, then we would need a

24 concurrence, but that does not mean that it would be

25 necessary for both DeltaCom and BellSouth to file.

As a matter of fact, if you look at the many hundreds of CLECs, ALECs, that are out there today -- and I think I recall BellSouth saying they had 800 interconnection agreements with various companies -- we've got to look at how many companies actually file with NECA today, how many ALECs. Well, there's approximately a hundred. And that's out of the many, many hundreds that are out there.

And of those hundred, they file for central office capability, not meet point. Of the one hundred, yes, there are about fifty that have meet-point percentages in NECA tariffs.

Well, then it's obviously clear that for the other several hundred, that things are working just fine without having NECA filing. There is no FCC requirement, there's no NECA requirement that ITC^DeltaCom files.

If there is a billing percentage filed by BellSouth, then that other carrier must concur in that billing percentage.

Q   And BellSouth desires to do that with DeltaCom, so that billing records when multiple parties are involved, and other carries will know what traffic they're being billed for; in this proceeding, BellSouth would like to use the NECA billing procedure; is that correct?

1   A   That's my understanding, yes.

2   Q   And at this point, DeltaCom will not concur so

3   that it can be filed in NECA?

4   A   Oh, I didn't say we wouldn't concur in the

5   billing percentage so you could file it. We can

6   certainly negotiate billing percentages, but I don't see

7   any of them that, since we're going to be in an access

8   environment, 100 percent tandem switch, I don't see any

9   usage out there that would require any billing percentage

10   from an access standpoint.

11   Q   If DeltaCom were to file meet-point billing

12   arrangements with NECA, do you know what it would cost to

13   do that?

14   A   Two or three thousand a year, probably.

15   Q   Would you accept there's a one-time charge of

16    $495 and an annual charge of $110, and an annual charge

17   of $15 per switch that you're filing for?

18   A   Per CLLI code, not per switch.

19   Q   I'll accept that; per CLLI code.

20   A   Per CLLI code. Yes, I would. And we have --

21   Q   Do those numbers sound right?

22   A   -- hundreds of CLLI codes. So, we're looking

23   at that $15 charge being multiple thousands.

24   Q   Is this something that BellSouth and DeltaCom

25   can work out, Mr. Hyde?

1   I'm just trying to get down what issue is left

2   here for the parties? If BellSouth says it needs to do

3   this, it has tariffs in the state of Florida, has

4   arrangements with other independent telcos?

5   A   It's possible we could reach an agreement on

6   this. This is not -- This is not something that -- It's

7   going to cost ITC^DeltaCom money to do it, in order to

8   benefit BellSouth, but this is something that I have not

9   closed out negotiations on.

10   Q   Do you see benefit for DeltaCom having clear

11 billing arrangements between itself and BellSouth when it

12 carries a call involving other carriers?

13   A   The only benefit that I see accruing to

14 ITC^DeltaCom for filing with NECA would have the office

15 capabilities, though like the hundred ALECs that are in

16 there today do. I don't see any possibility of billing

17 percentages being used at present because, again, we're a

18 hundred percent tandem switched.

19   However, that, again, does not preclude the

20 possibility that we could not reach an agreement on this.

21   Q   I want to also ask you about Issue 17. Should

22 BellSouth be responsible for maintenance to HDSL and ADSL

23 compatible loops provided to DeltaCom; are you familiar

24 with that issue?

25   A   Yes, I am.

1   Q   Mr. Hyde, is there any points of contention

2 between the parties today on that issue?

3   A   That issue I believe to be very close to

4 settlement.

5   Q   What issue -- What matters remain in order for

6 us to reach a resolution of this issue?

7   A   To my understanding, wording that we can both

8 agree on. I don't see any substantive issues remaining

9 on the ADSL/HDSL maintenance.

10   Q   So, actually the substance has been handled;

11 it's just a matter of putting it on a contract language?

12   A   Exactly.

13   Q   And DeltaCom is willing to negotiate that with

14 BellSouth?

15   A   Absolutely.

16   MR. ALEXANDER: No further questions.

17   Thank you, Mr. Hyde.

18   COMMISSIONER CLARK: Staff.

19   CROSS EXAMINATION

20 BY MS. CALDWELL:

21   Q   Good morning, Mr. Hyde.

22   A   Good morning.

23   Q   Are there only two element combinations in

24 dispute for the new Interconnection Agreement, that being

25 the extended loop and the loop/port combination?

A   To be quite honest, I feel there's only really

one truly in dispute, and that's the extended loop. The

loop/port combination, we're quite willing to wait until

some final order from the FCC and the courts say yes or

no.

So, for the purposes of this contract,

ITC^DeltaCom is more than willing to limit it to the

extended loop.

Q   All right. Thank you. Does BellSouth have to

combine the loop and the dedicated transport that

comprise the extended loop?

A   Yes, they do.

Q   I'd like to refer to your direct testimony on

page 4, where you've discussed the side-door connectivity

for IDLC.

A   I have a problem. I'm missing page 4 on my

copy here of the direct.

I have it now.

Q   All right. Thank you. Have you -- You've

earlier explained or discussed some side-door

connectivity for IDLC.

A   Yes.

Q   Does side-door connectivity present any

hardware or equipment problems for ITC switch facilities?

A   Side door can. It depends on how it's

1 provided.

2   I might mention here that BellSouth is

3 currently providing some instances of side-door

4 connectivity today. The problem with the methodology

5 that they're using today is they take that digital output

6 from the side door and run it into an analog to digital

7 converter in order to change it to voice grade.

8   So, there are some add-on problems as it were,

9 but if that were in digital interface, there would be no

10 problem from ITC^DeltaCom's standpoint.

11   Q   So, it would be the digital interface --

12 Because there is not a digital interface, is that why you

13 would state that side door is not equal to IDLC?

14   A   That's correct.

15   Q   Let's turn now to your rebuttal testimony on

16 page 18.

17   A   Eighteen, and hopefully my Xerox machine won't

18 have messed this one up.

19   I have 18.

20   Q   All right. And there you're addressing NXX

21 testing?

22   A   Yes.

23   Q   Would you elaborate on your claim that four out

24 of the five, last five NXXs implemented by ITC^DeltaCom

25 in Florida failed?

1   A   The report that I received from the Florida

2 network services, ITC^DeltaCom network services, was that

3 they encountered problems dialing on the last, four of

4 the last five NXXs from Bell locations to our end user.

5 That was reported, again, to me by our network services

6 procedures, that when we dispatched out and made test

7 calls from BellSouth telephones, that there were failures

8 and completions.

9   Q   So, this was during a testing period or during

10 a test?

11   A   It was during testing that was done by

12 ITC^DeltaCom personnel, yes.

13   Q   And could you be more specific as far as you

14 just said problems dialing?

15   A   Noncompletion, could not get through.

16   Q   Would you discuss ITC's role in this process

17 with the NXX activation or implementation?

18   A   When you implement or activate an NXX,

19 basically what we're doing is prior to the NXX going

20 on-line, we input all the information necessary into the

21 local exchange routing guide, the LERG, I think has been

22 mentioned already. Then that's done I believe about 90

23 days before the on-line or live time for the NXX. We

24 then turn that switch up in -- or turn that NXX up in our

25 switch and try to do testing on it.

1   Usually, in ITC^DeltaCom's case, it runs more

2   than 90 days, but it's minimum 90.

3   Q   And does ITC^DeltaCom put the information in

4   for the LERG, they do all the loading?

5   A   We have an outside firm that actually inputs

6   into the LERG itself. But we give the information to

7   that firm and they actually input it into the LERG

8   database.

9   Q   Would you discuss what ITC^DeltaCom learned

10   from the experience that you gained from the testing

11   where you had the four out of five failures on the NXX

12   implementation? Did you gain any experience from that?

13   A   Not that I'm aware of. I can go back and find

14   out if subsequent to the time that I talked to the

15   outside network installation people if indeed something

16   has been gained from that.

17   Q   I think you still have a copy of your

18   prehearing statement.

19   A   Yes.

20   Q   I don't know that you necessarily need it, but

21   in your prehearing statement, in ITC's prehearing

22   statement, ITC stated that BellSouth has not demonstrated

23   any need for meet-point billing procedures as disputed in

24   Issue 44?

25   A   That's correct.

Q   What is the purpose of meet-point billing
procedures?

A   The purpose of meet-point billing is where you
have shared transport, as it were, on an access call.
And I'll give you the classic example is the independent
telephone company interconnecting with BellSouth where a
portion of the transport facility is owned by one
telephone company, another percentage of it is owned by
BellSouth. So that you could would say, all right, for
the route from Jacksonville to this nearby town,
BellSouth owns 80% of the facility. They have a mid-span
meet, cable connection, whatever. And that 20% is owned
by the other company. So that that billing percentage is
necessary to enable the two companies to properly bill
for transport access. But it's only on transport.

In the case, though, that we have, all of our
functionality goes through the BellSouth tandem. So,
it's going to be tandem-routed access, which means that
we have the facilities, either we own them ourselves, or
have leased the facilities, so that there's no mid span
or midpoint meet, that it would be 100% ITC^DeltaCom as
far as any meet point.

Q   Do you know whether BellSouth and ITC presently
operate under any meet-point billing arrangements?

A   No, we do not, not to the best of my knowledge.

1   Q   So, would you say that there is no need for

2 meet-point billing procedures in the ITC/BellSouth

3 agreement now being arbitrated?

4   A   I see no need for them; no, I do not.

5   Q   Does BellSouth need ITC to concur in order to

6 file with NECA?

7   A   I don't believe that -- In this particular

8 case, I don't really believe that it's necessary that

9 BellSouth actually file because, again, we're looking at

10 a billing percentage of 100%. Now, if BellSouth wants to

11 file 100% in NECA tariff, we'd be glad to concur.

12   Q   Regarding Issue 20(a), which is should

13 BellSouth be required to coordinate with ITC 48 hours

14 prior to the due date of UNE conversion, Mr. Milner had

15 stated in his direct testimony that the language proposed

16 by ITC in regards to this issue was too broad.

17   Was it ITC's intention that all UNE conversions

18 be subject to prior coordination for this issue?

19   A   Yes, it really was. We need some coordination

20 prior to the actual cutover date. There's been far too

21 many instances of our technicians arriving at the

22 customer premises only to find out that BellSouth won't

23 be ready to cut. So, yes, there needs to be prior

24 coordination sometime before, at the very minimum the day

25 before the due date.

Q   And so it would be your position that there needs to be some type of coordination on every single UNE conversion?

A   Prior to the due date. If nothing else, it may only be a minimum of, yes, we will cut it tomorrow, or day after tomorrow, a confirmation, if you will, that BellSouth is ready.

Q   Would it be your position that such coordination or specifications for the coordination be within the agreement itself?

A   I believe some mention, some provision for that needs to be in the agreement, yes. I believe this issue needs to be specified.

Q   In your depositions, you testified that ITC asked for parity with BellSouth's retail services; is that correct?

A   I'm sorry; I'm having a little problem hearing today.

Q   In your deposition you had testified that ITC asked for parity with BellSouth's retail services; is that correct?

A   That is correct.

Q   Is it your opinion that BellSouth has retail analogs for UNEs?

A   Not precisely, no. The retail analog is a sub

1 set. What we have is -- And, again, this goes back to

2 the end link, end-to-end-type specifications and

3 parameters. The analog for a UNE loop, for instance, is

4 the loop that would be a piece part of a retail service.

5 So that if you look at BellSouth's specifications for end

6 link, they're much more stringent than end to end.

7   So, from a truly rational standpoint, one

8 should expect that you would have those end-link

9 parameters as the analog for UNE.

10   However, ITC^DeltaCom does not need that

11 stringent of parity requirement in order to have our

12 opportunity to compete. So, we're willing to take the

13 lesser, although there is not a true analog, we're

14 willing to take the lesser parity with retail itself.

15   Q   What would be included in a retail service?

16 Does it include a UNE or UNE?

17   A   It includes the same functionality. A service

18 to an end user just isn't going to work unless you've got

19 the loop. And a loop for a retail service and a UNE loop

20 is equivalent functionality.

21   Q   Is there a cross-industry understanding of the

22 retail service?

23   A   I'm not sure.

24   Q   I'm sorry. The retail analogs for UNEs, is

25 there some kind of cross-industry understanding of what

that entails?

A   No, there is not, unfortunately.

Q   Now I'd like to kind of switch gears again and go into the IDLC. Mr. Varner has testified in his depositions that IDLC is an integrated technology that integrates the loop into the switch. Would you agree with that characterization?

A   Yes, it is. That is -- It is -- As I mentioned earlier today, it takes the DS1 facility and connects it to the DS1 bus in the switch.

Q   All right. When ITC orders IDLC from BellSouth, is it the digital loop or is it the integrating technology that ITC is seeking?

A   Let me clarify here. We don't really order IDLC from BellSouth. We order -- and let's take the instance where we have an existing IDLC BellSouth customer who converts to us. We don't specifically order IDLC. We order a UNE loop for that customer and the conversion of that customer. But what we are seeking when we do that is the equivalency of whatever is being currently provided. And in the case of IDLC, it's the digital that we're looking for rather than the IDLC.

COMMISSIONER JACOBS: Those are switch electronics? That part of the equation is a part of the switch; is that correct?

                    WITNESS HYDE: It actually -- The DS1 bus

actually comes up and is adjacent to that switch

functionality, but it really doesn't go into the switch

at that bus point.

                    COMMISSIONER JACOBS: Okay.

BY MS. CALDWELL (Continuing):

        Q   In Mr. Rozycki's deposition, Mr. Rozycki

testified that in provisioning IDLC, it appeared that

BellSouth takes apart the arrangement and then

reassembles it back in a substandard way. Mr. Rozycki

testified that in some instances UDLC was used.

                    What kind of connectivity is needed in order to

provision IDLC as a UNE? Would that be the digital?

        A   A digital interface, yes.

                    COMMISSIONER JACOBS: And UNEs only have

analog interfaces now?

                    WITNESS HYDE: A loop UNE by itself is not

available with a digital interface

BY MS. CALDWELL (Continuing):

        Q   When ITC orders for an IDLC UNE from BellSouth,

is it technically feasible for BellSouth to provision

IDLC as a UNE?

        A   Ask that one again. I'm not sure I understood

the question.

        Q   I think I'm just asking is it technically

feasible for BellSouth to provision an IDLC as a UNE?

A   The loop itself, an IDLC loop as the loop UNE?

Q   Right.

A   Yes, they have provided IDLC loops to us in a number of locations. So, yes, it is technically feasible.

Q   And it's technically feasible for them to do it with the digital interface?

A   Oh, yes. Although, they haven't done so, it is technically feasible for the digital interface.

COMMISSIONER JACOBS: Is that the arrangement where in that instance you have to do the two conversions?

WITNESS HYDE: That's the instance where you have multiple conversions as opposed to one. And what happens when an ALEC uses a digital switch like we do, that means it's got to come back to digital. So, it has a conversion on the loop and then has a conversion in the central office to hand it back to us analog. Well, to go into our digital switch, we've got to put the third conversion on it. So, it adds two to it.

COMMISSIONER JACOBS: In other words, you couldn't buy from them, for lack of a better term, some kind of a digital patch so you eliminate that middle conversion?

1   WITNESS HYDE: That's what we'd love to do.

2   COMMISSIONER JACOBS: That's what you're

3 asking?

4   WITNESS HYDE: That's what we'd love to do.

5   COMMISSIONER JACOBS: Now what is it that I

6 understood was the resolution? Is that BellSouth said it

7 couldn't separate that piece out and give you -- or

8 you're not willing to pay what they're willing to charge

9 for it? Which was it? I'm sorry.

10   WITNESS HYDE: I'm not really sure myself on

11 the answer to that. We have not been provided any of the

12 digital interfaces. In other words, it's still the

13 analog.

14   COMMISSIONER JACOBS: We'll talk to one of the

15 BellSouth witnesses about that.

16 BY MS. CALDWELL (Continuing):

17   Q   Mr. Varner has testified in his deposition

18 regarding the conversion of IDLC versus UDLC and stated

19 that the most important point is does that unbundled loop

20 meet the technical provisions for unbundled loop. I

21 guess the question is the most important point is does

22 that unbundled loop meet the technical specifications for

23 an unbundled loop. And the answer to that is, yes, it

24 does; would you agree with this?

25   A   I'm not sure exactly what the statement was

1   that he made so that I could say whether I agree or not.

2   Q   Let me try and ask just a different question.

3   Based on technical specifications, would you say that

4   UDLC is a functional equivalent or substitute for IDLC?

5   A   For certain functions, it is an equivalent.

6   The problem with UDLC is that it does not do everything

7   that IDLC does. So, there are occasions where, yes, it

8   is a functional equivalent. But if one is to use the

9   v.90 modems, no, it isn't. If one is trying to use

10   forward disconnect functionality, then it may not be.

11   So, sometimes it is, sometimes it isn't,

12   depending on the functionality that the loop is going to

13   be used for.

14   Q   I'd like to turn to Issue 13, which is should

15   SL1 orders without order coordination be specified by

16   BellSouth with an a.m. or p.m. designation. Could you

17   just briefly explain SL1 orders without coordination?

18   What is that?

19   A   The SL1 orders -- and, again, these are the

20   nondesign orders, where there's no specified conversion

21   time per se. In other words, the order has been issued

22   and it doesn't, say, makes us cut over at 3:00 p.m. on

23   the 30th. It carries a 30th due date.

24   And we believe that there could be a commitment

25   from BellSouth to either say we'll be there in the

1   morning or we'll be there in the afternoon.

2   Q   Does it require a specific, a technician to go

3   out and actually make the cut over?

4   A   May or may not. It depends on what's being

5   done, whether it's an existing loop or not. It may not

6   require an actual dispatch to the customer premise. May

7   be central office only.

8   Q   All right. And, just to be clear, your a.m. or

9   p.m. designation is not time specific, but it's, you

10   know, in the morning or in the afternoon?

11   A   Exactly. In other words, it's to keep us from

12   having a technician of ours go out to the customer that

13   morning at 8:00 o'clock and set there until 3:00 in the

14   afternoon when someone shows up or someone calls him from

15   the central office, either way, to do testing. It's an

16   attempt to get more efficient use of personnel.

17   Q   In that instance, though, if you have an a.m.

18   destination, you still send your technician over at 8:00

19   o'clock in the morning, you're still not going to get

20   much more efficient by having it cut over at 11:00; is

21   that correct?

22   A   That's correct. It's trying to get some

23   efficiency, but, you're right, it's not absolute.

24   Q   I'd like to move on to Issue 6, which is the

25   providing changes to the business rules and guidelines

1   regarding resale, regarding resale and UNEs, which I

2   think ITC is asking for 45 days advance notice of those

3   changes.

4   Is there a difference really between the

5   guidelines and business rules? Does a distinction need

6   to be made between those as far as the 45-day notice.

7   MS. EDWARDS: I'm sorry, the 45-day advance

8   notice of business rule change, I think that's

9   Mr. Thomas's issue.

10   WITNESS HYDE: It really is. I was struggling

11   to come up with an answer, but I really am not the one

12   for that.

13   MS. CALDWELL: We'll save that for Mr. Thomas.

14   It's okay. We're all right.

15   That's all I have. Thank you.

16   COMMISSIONER CLARK: Commissioner Jacobs.

17   COMMISSIONER JACOBS: No questions.

18   COMMISSIONER CLARK: Redirect.

19   MS. EDWARDS: Thank you.

20   REDIRECT EXAMINATION

21   BY MS. EDWARDS:

22   Q   Mr. Hyde, I believe Mr. Alexander -- No, excuse

23   me; it wasn't Mr. Alexander; it was Ms. Caldwell -- who

24   asked you some questions about NXX testing?

25   A   That's correct.

Q   Has BellSouth made any attempt to resolve this issue?

A   They have offered to provide us at the tariffed rate an FX network to be do testing with, cost prohibitive, but they've made that offer.

There is a reasonable way on NXX testing of solving this whole thing. That reasonable way is for a TELRIC based remote call forwarding solution where we can remote access the remote call forwarding and make the dial-through test ourselves at a reasonable cost for DeltaCom and at a cost covering rate for BellSouth.

If that's not a possible thing, then I believe that BellSouth should make their own internal FX network available to us to use for testing. We'd be glad to do the testing ourself so that it wouldn't require any time for the BellSouth people to do it.

Q   You mentioned, I think I understood, that BellSouth has made an offer. How old is that offer?

A   I'm trying to remember. We made our first request for the test capability -- oh, goodness -- back in '97, early '97, I guess, where we started requesting this type of capability.

I'm sorry; I can't remember exactly when they offered the FX network. It hasn't been all that long, though.

Q   Was it this year or was it last year?

A   For the FX network?

     I'm sorry; I don't remember exactly when. But, again, it's a matter that I didn't spend a whole lot of time on because, again, it's cost prohibitive, when you take and put FX networks in that include contribution for lost toll, have an extremely high profitability standard for BellSouth, it just becomes cost prohibitive, putting in 1,600 FX lines.

Q   I believe you mentioned this, but has DeltaCom made an offer?

A   Yes, we have. We've -- We have actually requested the remote call forwarding arrangement.

Q   When did DeltaCom first approach BellSouth with this remote call forward solution?

A   Again, I'd have to review to see how long. It's been awhile, but I don't recall exact time frames; I'm sorry.

Q   Was it before we began these arbitrations?

A   Yes.

Q   Has DeltaCom received a response?

     COMMISSIONER JACOBS: Excuse me. The FX lines, is that the extended loop?

     WITNESS HYDE: No. This is a totally different thing other than -- In one way it kind of looks like an

1 extended loop, yeah. But this is giving dial tone

2 connectivity to all of BellSouth's switches to enable us

3 to dial through and test.

4 COMMISSIONER JACOBS: I had a question about

5 extended loops that I forgot, but I'll wait until you're

6 done.

7 BY MS. EDWARDS (Continuing):

8 Q Has BellSouth responded to DeltaCom's offer?

9 A Not that I'm aware of.

10 Q Prior to the remote call forward solution that

11 DeltaCom made, did DeltaCom approach BellSouth with other

12 offers?

13 A We have made several offers and several

14 requests with different methodologies for this particular

15 capability. It's a capability that we've wanted for a

16 long time. We want to be able to test our own services

17 out without having to rely on or burden BellSouth with

18 doing those tests.

19 Q BellSouth -- Has BellSouth declined each of

20 those other proposed solutions?

21 A They have indeed. They have declined

22 everything we have offered so far. Everything they've

23 responded to has been declined.

24 Q To your knowledge has BellSouth made its

25 responses to those other solutions in writing or just

1   orally?

2   A   Some were in writing. I'm trying to recall.

3   There may have been an oral response on one of them.

4   Q   Mr. Hyde, please explain in layman's terms why

5   NXX testing is important.

6   A   Again, looking at the very reason that we want

7   to do it, is to make sure that any customer at BellSouth,

8   any of BellSouth's customers, can pick up the phone and

9   call any of ITC^DeltaCom's customers. That's it, pure

10   and simple.

11   Q   Does ITC^DeltaCom provide service via extended

12   loops in other states?

13   A   Yes, we do.

14   Q   Can you name some of those states?

15   A   We have extended loops in place and in service

16   at least in Alabama, South Carolina and North Carolina,

17   that I am aware of, personally aware of.

18   Q   Have those extended loops been in service

19   longer than a year in some cases?

20   A   In some cases longer than a year, yes.

21   MR. ALEXANDER: Commissioner Clark, I'm going

22   to object to the continual leading of the witness.

23   MS. EDWARDS: I'll try and rephrase.

24   COMMISSIONER CLARK: That's fine.

25   BY MS. EDWARDS (Continuing):

1   Q   To your knowledge what if any states have

2   ordered extended loops?

3   A   There has been some ordering of extended

4   loops. My understanding is that it has been ordered in

5   Texas, as far as Southwestern Bell is concerned and there

6   are a couple of others, but, I'm sorry, I just don't

7   recall at the moment what they are.

8   Q   You referenced Texas. Does ITC^DeltaCom have

9   an agreement -- excuse me -- an Interconnection Agreement

10   with any other ILEC for extended loops?

11   A   We have an Interconnection Agreement with

12   Southwestern Bell and it does provide for extended

13   loops. We're moving into the Southwestern Bell territory

14   and there was no problem with including that in the

15   contract.

16   Q   Mr. Alexander came up to you with the South

17   Carolina order. And he pointed out that the South

18   Carolina Commission stated that DeltaCom does not provide

19   extended loops in rural areas in South Carolina. Do you

20   agree with that finding?

21   A   No, I don't really. I'm looking at -- Let's

22   see. Where is one of them? Mount Pleasant. I don't see

23   Mount Pleasant as an urban area, to say the least. So, I

24   suppose it depended on the Commission's definition of

25   rural, but my definition of it says that we provide in a

1 nonurban area in a number of locations.

2   COMMISSIONER CLARK: Where is Mount Pleasant?

3 Is it near Greenville?

4   WITNESS HYDE: It's near Greenville, yes;

5 outside of Greenville.

6   COMMISSIONER CLARK: How far outside of

7 Greenville?

8   WITNESS HYDE: Thirty miles. I'm not positive

9 on that.

10 BY MS. EDWARDS (Continuing):

11   Q   Do you know if -- Of course, there was a

12 medical emergency, so I understand you personally --

13 Well, let me rephrase it this way: Mr. Hyde, did you

14 testify in the South Carolina proceeding?

15   A   No, I did not. I had filed, but I was unable

16 to attend.

17   Q   Do you know who took your place?

18   A   Mr. Steve Moses appeared in my place.

19   Q   Do you know -- and you may not. So, do you

20 know if other areas in South Carolina were mentioned in

21 that hearing?

22   A   My understanding is, yes, there were several

23 locations brought out by Mr. Moses. I don't recall which

24 ones they were, though.

25   Q   Have you followed the ICG arbitrations?

        A   Peripherally, not real close, but I have some

of them, yes.

        Q   And ICG is another -- Is ICG another CLEC or

ALEC?

        A   Yes, they are.

        Q   Has the state of Alabama taken a position on

extended loops? What if any position has Alabama taken

on extended loops to your knowledge?

        A   I don't recall.

        Q   Mr. Alexander -- and I'm afraid I don't have my

copy of our existing Interconnection Agreement, but he

showed you a couple of pages out of our existing

Interconnection Agreement.

        A   Yes, he did.

        Q   My question is, though, is Section B-14 --

Well, strike that. Are there other sections of the

existing Interconnection Agreement that were left open to

be implemented?

        A   Yes, there were. There were several that in

order to get a signed agreement, they were left pending,

as it were, just like the extended loop was left pending.

        Q   In other words --

        MR. ALEXANDER: I'm going to object. Just the

way she's already starting, it's going to be a leading

question.

1 BY MS. EDWARDS (Continuing):

2   Q   Can you give an example?

3   A   I'd much rather have the existing contract. I

4 can find an example in there, but I would rather not

5 quote it without getting it in hand.

6   COMMISSIONER CLARK: Ms. Edwards, can you

7 find -- Does somebody have an existing agreement?

8   MS. EDWARDS: BellSouth has a few pages.

9   MR. ALEXANDER: I'll share those pages with

10 you.

11   COMMISSIONER CLARK: Why don't you go on with

12 your questioning and maybe someone, see if they could

13 locate an existing agreement.

14   WITNESS HYDE: And if I could make a request

15 for a brief health recess, it would be most appreciated.

16   COMMISSIONER CLARK: Absolutely; I was just

17 hoping we could get through your redirect testimony. It

18 will give you an opportunity maybe to find a copy.

19   We'll come back at quarter 'til.

20   (Recess.)

21   COMMISSIONER CLARK: We'll call the hearing

22 back to order.

23   Go ahead, Ms. Edwards.

24   MS. EDWARDS: Commissioner, I'll just withdraw

25 the question. And I have no other questions.

COMMISSIONER CLARK: Okay. Thank you.

COMMISSIONER JACOBS: I have one real quick question.

COMMISSIONER CLARK: Okay.

COMMISSIONER JACOBS: If I understood it, on the issue of extended loops, you do not have any yet in Florida?

WITNESS HYDE: Not that I am aware of, no.

COMMISSIONER JACOBS: And the strategy that would cause you to implement those is the idea of trying to develop which of your -- which of your central offices you want to collocate in; is that correct?

WITNESS HYDE: Yes. It is a way of getting in and serving an area without the extremely high cost of collocation, where we could serve either remote locations or to test the viability of a given area, so that we could look forward as it grew to changing it to an actual collo. But it could enable us to serve marginal areas that we would not otherwise serve.

So, if there is a central office where we would say there's never going to be enough demand there to spend the thousands or hundreds of thousands necessary for a collocation space, well, rather than precluding the end users in that central office from ever seeing competition, the extended loop would enable us to go in

1 on a long-term basis to these small offices or short term

2 to determine whether or not it's feasible to even go in

3 at all.

4   COMMISSIONER JACOBS: Thank you.

5   COMMISSIONER CLARK: Exhibits.

6   Let me -- Let me first indicate that I heard

7 Mr. Hyde offer a late-filed exhibit to indicate in an FCC

8 order where it used the word "combines" as opposed to

9 "combined." And then I heard a request for a late-filed

10 exhibit for a cite to an FCC order on the LNP, LNP.

11   MS. EDWARDS: Yes, ma'am; I have that.

12   COMMISSIONER CLARK: All right. I'm going to

13 make that Late-Filed Exhibit --

14   MR. ALEXANDER: Commissioner Clark, I withdraw

15 the request for it. I don't need the one --

16   COMMISSIONER CLARK: You don't need either of

17 those?

18   MR. ALEXANDER: I don't need either of those,

19 just to make it easier.

20   COMMISSIONER CLARK: All right. Exhibit TAH-1,

21 -2, and -3, which is Exhibit 19.

22   MS. EDWARDS: Yes, ma'am; at this time --

23   COMMISSIONER CLARK: You move for admission of

24 that in the record?

25   MS. EDWARDS: Yes.

COMMISSIONER CLARK: Okay. Any objection?

MR. ALEXANDER: No.

COMMISSIONER CLARK: All right.

(Exhibit 19 received into evidence.)

COMMISSIONER CLARK: TAH-4, Exhibit 20, attached to his rebuttal testimony, I think.

MS. EDWARDS: Correct.

COMMISSIONER CLARK: That will be admitted in the record without objection.

(Exhibit 20 received into evidence.)

COMMISSIONER CLARK: Let me ask you, Mr. Alexander, what is it you want us to do with this tariff?

MR. ALEXANDER: Take administrative notice of it. That's on file with this Commission. I had the witness look at that tariff and make references to it and I don't know that it needs to be an exhibit unless you'd prefer it. It's on file here.

COMMISSIONER CLARK: I'm not going to take administrative notice of it because although it may fall within that category, I'm not sure that does, but I will make it an exhibit.

MR. ALEXANDER: That will be fine, if that's the case.

COMMISSIONER CLARK: All right. It will be

1 Exhibit 21 and it is access service tariff.

2   MR. ALEXANDER: Thank you.

3   COMMISSIONER CLARK: And without objection,

4 that is admitted in the record.

5   (Exhibit 21 received into evidence.)

6   COMMISSIONER CLARK: Okay. Thank you very

7 much, Mr. Hyde.

8   WITNESS HYDE: Thank you.

9   COMMISSIONER CLARK: Mr. Wood.

10   MS. EDWARDS: I believe Mr. Wood has to be

11 sworn in.

12   COMMISSIONER CLARK: We are going to go for

13 about an hour. We will take a break then. I'm proposing

14 only to take half-an-hour break because I still am wildly

15 optimist we may finish this today.

16   MR. ALEXANDER: We support you.

17   COMMISSIONER CLARK: But the fact that we are

18 taking half an hour for lunch, please feel free to bring

19 something back in. There may be some things you need to

20 do and then you can bring whatever you need to eat back

21 in here. We do that from time to time. We may have to

22 do it tonight as well.

23   Mr. Wood, would you stand and raise your right

24 hand.

25 WHEREUPON,

```
 1                    DON J. WOOD

 2   was called as a witness on behalf of ITC^DeltaCom and,

 3        having been duly sworn, testified as follows:

 4               COMMISSIONER CLARK:  Thank you; you may be

 5   seated.

 6               MR. JONES:  Commissioners, Clay Jones on behalf

 7   of ITC^DeltaCom; I'll be handling Mr. Wood today.

 8                    DIRECT EXAMINATION

 9   BY MR. JONES:

10        Q    Mr. Wood, would you please state your name for

11   the record?

12        A    Yes.  My name is Don J. Wood.

13        Q    And how are you employed, sir?

14        A    I'm a Regional Director in the firm of Klick,

15   Kent, and Allen.

16        Q    And are you the same Don Wood who caused to be

17   prefiled direct testimony with one 13-page exhibit in

18   this proceeding?

19        A    Yes, I am.

20               MR. JONES:  Commissioners, at this time I

21   believe there is one portion of Mr. Wood's testimony that

22   pursuant to the Commission's order is to be stricken that

23   BellSouth provided to us.  We don't object to it.  And

24   I'd just read that into the record now.  And I'll ask

25   Mr. Wood to follow along.
```

1   Page 27, beginning at page 27, line 17, of his

2   direct testimony, continuing all the way through page 28,

3   and on to page 29 at line 10. That section is to be

4   stricken from his testimony.

5   or be struck, I guess.

6   COMMISSIONER CLARK: Okay.

7   BY MR. JONES (Continuing):

8   Q   Mr. Wood, do you have any other changes that

9   you need to make to your prefiled direct testimony at

10 this time?

11   A   I do not.

12   Q   And given the correction that we've made, if I

13 asked you the same questions that are in your prefiled

14 direct testimony, would your answers be the same?

15   A   They would.

16   MR. JONES: And at this time I'd like to have

17 his direct testimony copied into the record as if read

18 from the stand.

19   COMMISSIONER CLARK: It will be inserted in the

20 record as though read.

21   MR. JONES: Thank you.

22

23

24

25

000512

1 **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A.   My name is Don J. Wood. I am employed as a Regional Director of Klick,

3   Kent & Allen, Inc. ("KKA"), an economic and financial consulting firm. My

4   business address is 914 Stream Valley Trail, Alpharetta, Georgia, 30022. I

5   provide economic and regulatory analysis of the telecommunications, cable,

6   and related "convergence" industries, with an emphasis on economic policy,

7   development of competitive markets, and cost of service issues.

8

9 **Q.   PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.**

10 A.   I received a B.B.A. in Finance with distinction from Emory University and

11   an M.B.A. with concentrations in Finance and Microeconomics from the

12   College of William and Mary. My telecommunications experience includes

13   employment at both a Regional Bell Operating Company ("RBOC") and an

14   Interexchange Carrier ("IXC").

15

16   I was employed in the local exchange industry by BellSouth Services, Inc. in

17   its Pricing and Economics, Service Cost Division. My responsibilities

18   included performing cost analyses of new and existing services, preparing

19   documentation for filings with state regulatory commissions and the Federal

20   Communications Commission ("FCC"), developing methodology and

21   computer models for use by other analysts, and performing special assembly

22   cost studies. I was also employed in the interexchange industry by MCI

23   Telecommunications Corporation, as Manager of Regulatory Analysis for the

24   Southern Division. In this capacity I was responsible for the development

1

1   and implementation of regulatory policy for operations in the southern U. S.

2   I then served as a Manager in the Economic Analysis and Regulatory Affairs

3   Organization, where I participated in the development of regulatory policy

4   for national issues.

5

6   **Q.**   **HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE**

7   **STATE REGULATORY COMMISSIONS?**

8   **A.**   Yes. I have testified on telecommunications issues before the regulatory

9   commissions of twenty-five states, Puerto Rico, and the District of Columbia.

10   I also have presented testimony regarding cost of service and competitive

11   market issues in both state and federal court and have presented comments

12   to the FCC. I have presented testimony on telecommunications issues to this

13   Commission on a number of occasions. A listing of my previous testimony

14   is attached as Exhibit DJW-1.

15

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

17   **A.**   I have been asked by ITC^DeltaCom ("ITC^D") to address several issues

18   relating to the Interconnection Agreement that ITC^D is attempting to

19   negotiate with BellSouth. In particular, I have been asked to address

20   economic and policy issues associated with Operational Support Systems

21   ("OSS"), collocation, rates for certain Unbundled Network Elements

22   ("UNEs"), and a number of miscellaneous issues.

1   This proceeding deals with many of the "nuts and bolts" that must be in place

2   to encourage – and ultimately to make possible -- competitive entry into the

3   basic local exchange markets in Florida. Section I of my testimony provides

4   the conceptual framework for developing and implementing these essential

5   "nuts and bolts". I discuss the fundamental economic principles that provide

6   a guide to the Commission when evaluating the numerous issues that are

7   being presented to it in this proceeding. Section II addresses OSS issues in

8   light of these principles. Section III discusses certain collocation issues

9   related to both rates and terms and conditions. Section IV addresses the rates

10   for certain UNEs. Section V covers a series of miscellaneous, but important,

11   issues.

12

13

14   **SECTION I: FUNDAMENTAL ECONOMIC PRINCIPLES THAT THE**

15   **COMMISSION SHOULD APPLY WHEN EVALUATING THE PARTIES'**

16   **POSITIONS IN THIS PROCEEDING**

17

18   **Q.**   **PLEASE DESCRIBE THE ECONOMIC CONTEXT IN WHICH**

19   **THIS PROCEEDING IS BEING UNDERTAKEN.**

20   A.   The Federal Telecommunications Act of 1996 ("1996 Act") holds out the

21   promise of fundamentally changing the way in which telecommunications

22   services are provided to consumers – particularly the creation of full-

23   service providers that can offer local and long-distance services in

24   combination. In order for this to happen, customers must perceive – and

1   perceive correctly -- that it is as easy to change local carriers as it has

2   become for them to change long distance carriers.

3

4 Q. **HOW DOES THIS MARKET REALITY AFFECT THE ISSUES**

5   **BEFORE THE COMMISSION IN THIS PROCEEDING?**

6 A. Given the strong customer focus on convenience, reliability, and cost,

7   there are a number of ways in which incumbent local exchange carriers

8   ("ILECs"), such as BellSouth, can create entry barriers. These barriers can

9   delay and ultimately prevent the development of a competitive local

10   exchange market in Florida. In my view, there are five areas that are

11   critical to creation of an opportunity for widespread meaningful local

12   competition to develop:

13   •   Carriers must easily and reliably be able to order network

14   elements, and combinations of those elements, including those that

15   involve the local switching UNE. The local switching network

16   element is critical to fostering local competition because it is where

17   services are defined, minutes are recorded, and customer requests

18   are filled electronically.

19

20   •   Network element prices must accurately track the manner in which

21   an efficient ILEC – using equipment, facilities, and capabilities

22   that are currently available – would incur its costs. Prices based on

23   these costs, which are often referred to as Total Element Long Run

1   Incremental Costs ("TELRIC") are consistent with prices one

2   observes, over the long run, in competitive markets.

3

4   •   In order to develop appropriate prices for UNEs, it is critical that

5   the cost studies being relied upon by BellSouth to justify both

6   recurring and non-recurring charges be fully-available to the

7   Commission staff and to the parties, in electronic (functioning)

8   format, for full review. Furthermore, these studies, and the

9   underlying input data, should be provided with sufficient time to

10   permit the parties to understand the network architecture, unit cost,

11   and operating assumptions being employed, in order to ensure that

12   they properly reflect forward-looking principles and are fully

13   compliant with the applicable legal standards.

14

15   •   Overstated non-recurring charges ("NRCs") create substantial

16   barriers to local competition by making it more expensive and/or

17   less convenient for end users to choose a Competitive Local

18   Exchange Carrier ("CLEC") as his or her local service provider.

19   The competitive effect of NRCs as a barrier to entry makes it

20   critical that the Commission and the parties have the opportunity to

21   carefully scrutinize any claimed cost justification for such charges.

22   As in the case of recurring charges, cost studies supporting NRCs

23   should be based on a forward-looking environment in which

24   electronic operational support systems are assumed to be available

1	and operating effectively (with minimal "fall-out" rates). This will
2	result in costs for provisioning and maintaining the network
3	elements that are consistent with a competitive market model.
4	
5	• One-time costs that BellSouth may incur to implement the required
6	OSS should not be included in the recurring or non-recurring costs
7	of individual UNEs for two reasons. First, every carrier, whether
8	ILEC or CLEC, will incur costs to transition to the industry
9	structure contemplated by the Act. As a result, there is no rationale
10	for permitting BellSouth, alone, to impose *its* "transition" costs on
11	its potential competitors. Second, BellSouth will enter the long
12	distance market using OSS that long distance carriers already have
13	paid to implement. Thus, any decision that permits BellSouth to
14	shift its costs to CLECs will provide it with a significant
15	competitive advantage, and destroy the competitive balance
16	envisioned by the 1996 Act.
17	
18	
19	Achieving the conditions for widespread entry into local exchange markets
20	– *i.e.*, an environment in which customers can easily, reliably, and
21	inexpensively change local service providers – is a prerequisite to
22	achieving the local competition envisioned by the 1996 Act.[1] To move its

---

[1] Public policy favors widespread entry. The 1996 Act is intended to bring the potential benefits of competition to as many customers as possible. While targeted local market entry is the most viable short-term entry strategy, local competition will never be robust while large numbers of

1   local customers to its long-distance services, once it is authorized to

2   provide inter-exchange services, BellSouth will rely upon highly efficient,

3   software-defined, electronic flow-through processes.

4

5 **Q.**   **WHAT IS THE COMMISSION'S ROLE IN THIS PROCESS?**

6 A.   The Commission's scrutiny in this proceeding is required to provide

7   CLECs, such as ITC^D, with comparable capabilities, *i.e.*, to offer local

8   exchange services rapidly, reliably, and over a wide service area. These

9   capabilities are essential to creating a realistic opportunity for the

10   development of competitive telecommunications markets. The

11   Commission must ensure that the recurring and non-recurring rates that it

12   sets *and the terms and conditions that it requires,* satisfy these standards.

13   The costs of manual systems, excessive errors (and the costs of correcting

14   them), and collocation arrangements that fail to satisfy these goals are

15   *irrelevant* to determining the prices and terms and conditions that

16   BellSouth should be permitted to seek. It will not be possible to change a

17   customer's choice of local provider with sufficient speed and accuracy, at

18   a reasonable price, unless that choice can be automated. Furthermore, in

19   order to meet the non-discrimination requirements of the 1996 Act, these

20   choices must be met at a rate no slower than, and with an accuracy equal

21   to, the rate at which BellSouth will be able to move customers to its long

22   distance services. If OSS favor BellSouth as the full-service provider –

23   *i.e.*, if customers can quickly, inexpensively, and reliably select BellSouth

---

customers remain effectively captive to the ILECs.

1   to provide both local and long distance, but cannot select a competing

2   carrier such as ITC^D just as quickly, inexpensively, and reliably, then

3   meaningful competition simply cannot develop. Put simply, if OSS favor

4   BellSouth the Florida consumers of these services will be the losers.

5

6 Q. PLEASE SUMMARIZE YOUR OPINION OF WHAT IS NECESSARY

7   FOR COMPETITION TO DEVELOP.

8

9 A. The evolution of broad-based local competition will depend on (1) the

10   CLECs' abilities to quickly and reliably order UNEs to serve customers,

11   with the change in the customer's local carrier accomplished through

12   electronic, flow-through OSS that recognize a new carrier of record, and

13   (2) this Commission's efforts to ensure that prices and terms and

14   conditions reflect the appropriate fundamental economic principles and

15   applicable legal standards.

16

17   **SECTION II: THE IMPORTANCE OF EFFECTIVE AND EFFICIENT**

18   **OPERATIONAL SUPPORT SYSTEMS AND THE APPROPRIATE**

19   **MEANS OF COST RECOVERY**

20

21 Q. **WHAT ARE THE OSS ISSUES THAT YOU ARE ADDRESSING IN**

22   **THIS PROCEEDING?**

23 A. I am addressing OSS issues raised in Sections GTC, ¶3.2; Attachment 1,

24   ¶¶6.1 and 6.2; and Attachment 6, ¶ 1.1. As a general proposition, ITC^D's

1   concerns with the negotiation of OSS charges center around the lack of

2   justification for BellSouth's proposed OSS-related NRCs, and the fact that

3   the existing OSS employed by BellSouth is not workable.

4

5 Q. **WHAT ARE THE CRITERIA THAT THE COMMISSION**

6   **SHOULD CONSIDER WHEN EVALUATING THE PARTIES'**

7   **POSITIONS ON THIS ISSUE?**

8 A. Nonrecurring costs for OSS are based on two different categories of

9   activities. The first category includes expenses associated with *using* OSS

10   to execute an order for a network element or for interconnection. Proper

11   estimation of the relevant, i.e. forward-looking costs of these ongoing

12   transactions (which, while ongoing, are nonrecurring for any given order)

13   is critical. The second (although as I will describe below, inappropriate)

14   category of NRCs associated with OSS are the one-time costs required to

15   *establish*, initially, the systems that permit automated ordering,

16   provisioning, and maintenance of UNEs and interconnection required by

17   the 1996 Act. The conceptual issues presented by these two categories of

18   NRCs are substantially different.

19

20 Q. **WHAT ARE THE ECONOMIC ISSUES ASSOCIATED WITH THE**

21   **ONGOING COSTS OF OSS?**

22 A. With respect to the NRCs associated with the ongoing use of OSS systems

23   to obtain (or modify) UNEs and interconnection, two observations are

24   critical. First, NRCs must be calculated on the basis of the forward-

9

1   looking costs associated with fully implemented, electronic flow-through

2   systems, *that are functioning properly.* The costs associated with interim,

3   manual systems – or with electronic systems that are not working properly

4   or not providing the full functionality required to provide service to the

5   end-use customer that is comparable to the service it receives from

6   BellSouth – are not relevant.

7

8   Second, it is important for the Commission to remain mindful that

9   excessive or unnecessary NRCs inherently constitute barriers to

10   competition. They come into play at a critical competitive decision point,

11   i.e., when a customer first investigates the possibility of switching local

12   carriers or otherwise modifying existing services. Because NRCs can

13   work against the otherwise free exercise of consumer choice, it is critical

14   that they fully reflect efficient costs and be developed and applied in a

15   non-discriminatory manner.

16

17   In evaluating BellSouth's proposals, the Commission should ensure that

18   its NRCs for OSS are based upon the same TELRIC principles that have

19   been adopted by the FCC for UNE prices. The consumer benefits of

20   establishing TELRIC-based recurring costs for UNEs and for

21   interconnection will be significantly diminished – if not eliminated -- if

22   the NRCs that must be paid to obtain them are not also grounded in these

23   fundamental cost principles. Specifically,

24

1   •   Cost-based rates for NRCs should comply with the FCC's Orders

2   requiring electronic interfaces to the OSS for ordering, billing,

3   provisioning and maintenance (such systems were to be made

4   available by January 1, 1997).

5

6   •   NRC studies should be based on the cost to provide network

7   elements using the most efficient technology currently available.

8

9   •   NRCs should reflect systems that are consistent with the Total

10   Network Management ("TNM") guidelines that have been issued

11   by Bellcore.

12

13

14   The principle flaw in most ILEC NRC studies is that these studies reflect

15   existing OSS that were designed in a monopoly market. Costs associated

16   with BellSouth's *existing* systems, however, are not relevant to

17   determining the cost to provision network elements in the environment

18   envisioned by the 1996 Act. If BellSouth – or any ILEC – is to be fully

19   compensated for *any* cost it incurs, regardless of how inefficiently such a

20   cost is incurred or how much of a disadvantage it creates for a competitor,

21   then there is no incentive created for BellSouth to provide the OSS

22   capabilities efficiently and in a non-discriminatory manner. In a

23   competitive market, providers are forced by the marketplace to be efficient

1   and to provide superior service. If they do not, consumers will choose to

2   receive service from a competitor.

3

4 Q. **WHY SHOULD THE COMMISSION IMPOSE THIS STANDARD**

5   **ON NRC DEVELOPMENT?**

6 A. By imposing this competitive standard on BellSouth's development of

7   NRCs, the Commission creates incentives consistent with those that would

8   be experienced by BellSouth if the market were competitive. In its *First*

9   *Report and Order*, the FCC correctly concluded that prompt

10   implementation of efficient and inexpensive order processing and interface

11   systems is essential to the creation of a competitive local exchange market.

12   For this reason, the FCC set a specific deadline for achieving full

13   mechanization:

14   In all cases, however, we conclude that in order to comply

15   fully with Section 251(c)(3) an incumbent LEC must provide,

16   upon request, nondiscriminatory access to operations support

17   systems functions for pre-ordering, ordering, provisioning,

18   maintenance and repair, and billing of unbundled network

19   elements under section 251(c)(3) and resold services under

20   section 251(c)(4). Incumbent LECs that currently do not

21   comply with this requirement of section 251(c)(3) must do so

22   as expeditiously as possible, but in any event no later than

23   January 1, 1997.[2]

---

[2] *First Report and Order*, CC Docket 96-98, ¶525.

12

1

2   BellSouth has not yet satisfied the FCC Order requiring automated OSS –

3   a fact which is discussed in detail by ITC^D witness Thomas Hyde.

4   Nevertheless, the NRCs that the Commission authorizes in this proceeding

5   must reflect the costs of efficient, functioning electronic flow-through

6   processes, *even if they have not been fully implemented*. ILECs such as

7   BellSouth have tremendous incentives to delay the implementation of such

8   systems and to overstate their costs in order to raise the costs of potential

9   competitors.[3] By establishing prices in this manner, the Commission will

10   provide the required motivation for BellSouth to implement these essential

11   OSS that are fully functional and which operate efficiently.

12

13   The fundamental intent of the 1996 Act is to *eliminate* barriers to entry in

14   the local market, while the inescapable effect of excessive or unnecessary

15   NRCs is to *create* such barriers. Because NRCs are imposed when change

16   occurs – when a network element is initially obtained, reconfigured, or

17   modified to permit the CLEC to offer an innovative service – they

18   fundamentally act to protect the status quo. Because virtually all local

19   customers currently are served by ILECs, any charge tied to a decision to

20   change constitutes a barrier to the exercise of that choice. This in turn

21   shields the ILEC from the competitive pressures that serve as the

---

[3] This in turn causes CLEC costs to rise even further by preventing CLECs from achieving the economies of scope and scale enjoyed today by the ILECs.

1   cornerstone of a market economy, and that the 1996 Act relies upon to

2   create incentives for carriers to reduce rates and to innovate.

3

4   Q. **WHY SHOULD THE COST TO DEVELOP THE NECESSARY OSS**

5   **(WHAT YOU REFERRED TO EARLIER AS "TRANSITION**

6   **COSTS") NOT BE INCLUDED IN NRCS ASSOCIATED WITH**

7   **OSS?**

8   A. While the costs to *use* OSS may be legitimate non-recurring charges, the

9   costs to *establish* those systems are not. Every carrier must incur costs to

10   allow the changes envisioned by the 1996 Act to become a reality. The

11   fact that BellSouth's network monopoly provides it the opportunity to

12   impose its costs on CLECs does not mean that it should be entitled to do

13   so. There are a number of reasons why this should not be permitted.

14

15   Q. **PLEASE EXPLAIN YOUR RATIONALE FOR THE DISTINCTION**

16   **BETWEEN OSS DEVELOPMENT AND OSS USE.**

17

18   A. First, electronic gateways and the downstream OSS that allow competing

19   carriers to have real-time electronic access is a requirement of the 1996

20   Act, reflecting the public telecommunications policy adopted by Congress.

21   These transition costs are not attributable to a particular carrier's

22   competitive entry into the local exchange market. Instead, they derive

23   from the 1996 Act's requirement that local exchange markets should be

24   open to competition. Congress frequently enacts laws that increase costs

14

1   for market participants affected by those laws. Thus, there is nothing

2   particularly unusual about the OSS requirements imposed by the 1996 Act

3   – it is only the monopoly position enjoyed by BellSouth and other ILECs

4   that creates the possibility that it could impose its costs of compliance on

5   its competitors (in addition to their own compliance costs).

6

7   Second, the new OSS implemented by BellSouth will benefit its own retail

8   customers. When it provides retail services, BellSouth is essentially a

9   "purchaser" of UNEs – in fact, it is the largest single purchaser of UNEs

10   within its existing service territory. Upgrading its OSS will improve the

11   efficiency of its own operations and extend the benefits of competition to

12   all consumers, including existing and future BellSouth customers.

13

14   Finally, BellSouth does not uniquely or disproportionately incur OSS

15   costs required to achieve the pro-competitive environment envisioned by

16   the 1996 Act. For every operating system that BellSouth installs to

17   support local competition, each CLEC must develop and install a

18   corresponding system on its side of the gateway interface. There is no

19   reason to expect that BellSouth's costs would be significantly higher than

20   CLEC participants in the market, particularly when one takes into account

21   the economies of scale that ILECs are able to achieve.

22

23   The equitable solution to the recovery of these transition costs is clear –

24   each carrier, including both ILECs and CLECs, must develop an effective

1   and efficient OSS. Each carrier should bear its costs of developing and

2   implementing such a system. No carrier should be permitted to use

3   existing market power to impose its costs on another carrier or carriers.

4

5 Q. **DOES THE FACT THAT ILECS ARE REQUIRED BY THE 1996**

6   **ACT TO INCUR THESE TRANSITION COSTS, WHILE CLECS**

7   **HAVE NO SUCH LEGAL REQUIREMENT, AFFECT YOUR**

8   **OBSERVATIONS?**

9 A. No. While CLECs may not have a legal requirement, as a practical matter

10   they must possess these systems. An argument in support of the recovery

11   of BellSouth's OSS development costs from competing carriers ignores

12   structural changes that are likely to result as the competitive environment

13   contemplated by the 1996 Act becomes a reality; a reality which will

14   create significant opportunities for the emergence of full-service providers,

15   particularly ILECs.[4] By including the conditional promise of interLATA

16   authority, the 1996 Act places significant pressure on long distance

17   carriers, and other CLECs, to enter the local market so that they are

18   positioned to respond with full-service packages of their own.[5] It is also

19   important, as I noted above, to keep in mind that, when this happens,

20   ILECs will be entering a long distance market characterized by mature,

---

[4] Of course, if BellSouth or other ILECs are permitted to enjoy the substantial competitive advantage that would be created by managing to force CLECs to pay *both* its own OSS development and deployment costs *and* those incurred by the ILECs, the likelihood of any such competition emerging is diminished significantly.

[5] Thus, the 1996 Act provides a compensating incentive for BellSouth to open its markets to competition, *i.e.*, in-region, inter-LATA entry.

16

1   state-of-the-art OSS. This will substantially facilitate inexpensive entry

2   using systems that the long distance industry has paid for and

3   implemented.[6]

4

5 **Q.**   **IF THE COMMISSION SHOULD CONCLUDE, DESPITE YOUR**

6   **RECOMMENDATION, THAT BELLSOUTH SHOULD BE**

7   **PERMITTED TO RECOVER SOME PORTION OF TRANSITION**

8   **COSTS FROM CLECS, ARE THERE PRINCIPLES THAT**

9   **SHOULD GUIDE ITS DELIBERATIONS ON THIS ISSUE?**

10 **A.**   As stated above, I believe there are compelling reasons not to permit

11   BellSouth (or other ILECS) to recover their transition costs as part of

12   NRCs associated with OSS. However, if the Commission concludes that

13   BellSouth should be permitted to recover some of these costs from

14   Florida's ratepayers, it should follow these principles in doing so:

15

16   •   Whatever portion of these transition costs BellSouth is permitted to

17   impose should be recovered in a competitively-neutral and non-

18   discriminatory manner, which recognizes that BellSouth's

19   customers also benefit from the local competition and should,

20   therefore, defray a *pro rata* share.

---

[6] At the time of divestiture, the nation's telecommunications infrastructure was not designed to support competitive long distance carriers. The necessary systems to provide "seamless" competition to consumers – including state-of-the-art OSS systems – have been designed and fully implemented. In short, the operational barriers to long distance competition are gone. These systems are available for use by BellSouth, and other ILECs, once they meet the requirements for receipt of authority to enter the interLATA market. Permitting ILECs to benefit from these systems, without paying for "transition costs," while forcing CLECs to pay ILECs' transition costs in the local exchange arena would place CLECs at a tremendous competitive disadvantage.

1

2   •   CLECs should not pay BellSouth for upgrading systems which

3   would benefit its retail services.

4

5   •   These costs should not be assessed as NRCs, but should be

6   amortized over the expected economic life of the OSS.

7

8

9   Q.   **WHAT EFFECT DOES THE REQUIREMENT FOR NON-**

10   **DISCRIMINATORY ACCESS TO OSS HAVE ON YOUR**

11   **RECOMMENDATIONS?**

12   A.   Both the 1996 Act and the FCC's regulations require that access to OSS be

13   provided on a non-discriminatory basis. In this context, *non-*

14   *discriminatory* means that access to these systems by CLECs is

15   indistinguishable, both technically and economically, from the way ILECs

16   use these systems. The most straight-forward way to ensure this is to

17   develop the costs associated with this transition of OSS systems in a

18   competitively neutral manner – ensuring that each customer pays some

19   share of the costs, regardless of which company provides its local service.

20   The only truly competitively neutral mechanism, of course, is for each

21   carrier to be fully responsible for its own OSS. If the Commission

22   concludes that some portion of BellSouth's OSS transition costs are to be

23   paid for by CLECs, the most competitively neutral mechanism would be a

24   per customer charge that includes *all* retail customers in the denominator

18

1   of the calculation and which amortizes the costs over the appropriate

2   economic life of the assets.

3

4   **SECTION III: COLLOCATION RATES, TERMS, AND CONDITIONS**

5   **SHOULD REFLECT THE FORM OF COLLOCATION BEING**

6   **UTILIZED AND NOT CREATE ADDITIONAL BARRIERS TO ENTRY**

7

8   Q.   **IN ITS ORDER IN DOCKET NOS. 960757-TP, 960833-TP, and**

9   **960846-TP, THE COMMISSION HAS ADDRESSED THE ISSUE**

10   **OF THE APPLICABLE RATES FOR PHYSICAL COLLOCATION.**

11   **IS ITC^D ASKING TO COMMISSION TO RECONSIDER ITS**

12   **DECISION IN THAT PROCEEDING?**

13   A.   No. In the generic cost proceeding, the Commission was presented with

14   cost information related to the construction of walled enclosures for

15   collocation. Pursuant to the FCC's Advanced Wireline Services Order,

16   ITC^D will be utilizing "cageless collocation" in BellSouth central offices

17   in order to offer its services. As a result, it will be necessary to establish

18   an additional set of rates that will apply to this new arrangement.

19

20   Q.   **WHAT IS "CAGELESS COLLOCATION"?**

21   A.   A cageless collocation arrangement permits a CLEC, such as ITC^D, to

22   place certain equipment in the BellSouth central office for the purpose of

23   interconnecting with the BellSouth network. ITC^D owns the equipment

24   and retains all responsibility for its care and maintenance. In contrast to

1   "caged" or "walled" collocation, however, this equipment is not

2   physically separated from BellSouth's network equipment by the erection

3   of physical barriers or the deployment of separate supporting facilities

4   (such as HVAC).

5

6   Q.   **HAS BELLSOUTH PRODUCED COST STUDY RESULTS UPON**

7   **WHICH COST BASED RATES FOR CAGELESS COLLOCATION**

8   **CAN BE ESTABLISHED?**

9   A.   No.

10   Q.   **IN THE ABSENCE OF SUCH A COST STUDY, HOW CAN**

11   **APPROPRIATE RATES FOR CAGELESS COLLOCATION BE**

12   **DETERMINED?**

13   A.   BellSouth's tariffed rates for virtual collocation (FCC Tariff No. 1, section

14   20), with appropriate adjustment, should be adopted as interim rates

15   subject to true-up. When BellSouth produces the results of a cost study

16   for cageless collocation the Commission can adopt these results and set

17   permanent rates.

18

19   The existing rates for virtual collocation can serve as a reasonable proxy

20   for physical cageless collocation rates because of the similarities between

21   the two arrangements. In a virtual collocation arrangement, the CLEC

22   purchases the necessary equipment from a vendor and sells it to the ILEC

23   for a nominal price (usually $1). The ILEC then places the equipment into

24   service in its central office, providing interconnection between the two

1   networks. The "virtually collocated" equipment is not physically

2   separated by either cages or walls in a defined space, and does not require

3   separate support services (such as HVAC). Similarly, in a physical

4   cageless collocation arrangement BellSouth will place ITC^D's equipment

5   into service within its central office, again not physically separate by cages

6   or walls and without the requirement of separate support systems. As a

7   result, the costs imposed on BellSouth for the space occupied by the

8   ITC^D equipment are directly comparable.

9   Q.   **YOU STATED THAT IT IS NECESSARY TO ADJUST THE**

10   **EXISTING VIRTUAL COLLOCATION RATES IN ORDER TO**

11   **DEVELOP THE APPROPRIATE INTERIM RATES FOR**

12   **PHYSICAL CAGELESS COLLOCATION. WHY IS SUCH AN**

13   **ADJUSTMENT NECESSARY?**

14   A.   The difference in the ownership of the equipment – and the associated

15   maintenance responsibilities – directly affects the cost to BellSouth and

16   creates the need for an adjustment to the rates. In a virtual collocation

17   arrangement, BellSouth owns the equipment and incurs the expense of

18   maintaining it. In contrast, in a physical cageless collocation arrangement

19   ITC^D will own and maintain the equipment. As a result, BellSouth will

20   experience a cost savings equal to the maintenance expense.

21

22   The appropriate amount of the required adjustment can be ascertained

23   directly from cost information developed by BellSouth in the ordinary

24   course of business. When conducting its cost studies, BellSouth converts

1　　investments to annual cost through the application of Annual Cost Factors

2　　("ACFs"). A discrete and separately identified portion of these ACFs

3　　represents the maintenance costs in question, specific to each class of

4　　equipment (identified by separate USOA account codes). By zeroing out

5　　this maintenance component in the applicable ACFs used in its virtual

6　　collocation cost study, BellSouth can easily recalculate the relevant costs –

7　　and therefore interim rates – for physical cageless collocation.

8

9　Q.　**ARE THERE ISSUES RELATED TO COLLOCATION TERMS**

10　　　**AND CONDITIONS THAT YOU WISH TO ADDRESS?**

11　A.　Yes. The first relates to the provisioning interval for physical cageless

12　　collocation that is raised in Attachment 4 addressing Physical Collocation

13　　at ¶6.3.4. ITC^D has requested that BellSouth commit to a 30-day

14　　turnaround time for such a collocation arrangement. While such a

15　　provisioning interval is significantly shorter than for walled or caged

16　　collocation, it is reasonable. In a cageless arrangement, BellSouth will not

17　　need to determine if room exists within its central office for the

18　　construction of a physically separated space, design the enclosure, or have

19　　it constructed. The provisioning interval for cageless collocation should

20　　also be shorter than that for virtual collocation, because of the lack of the

21　　administrative tasks associated with the exchange of ownership of the

22　　equipment.

23

1   The second issue, raised in Attachment 4 at ¶11, relates to security

2   provisions that BellSouth is insisting be applied. Certainly, BellSouth has

3   legitimate concerns regarding the identity of those persons that will be

4   working within its central office, whether those persons be its own

5   employees or those of ITC^D. ITC^D does not object to a security

6   screening process. The requirements imposed should create an equitable

7   burden for each company to screen its employees, however: a requirement

8   for extra and superfluous screening for ITC^D employees simply allows

9   BellSouth to increase the costs of its competitor, creating an artificial

10   barrier to entry. ITC^D has agreed to apply the same security measures to

11   its employees that BellSouth applies to its own employees. If the security

12   measures currently in place at BellSouth are adequate, then they will be

13   adequate for ITC^D employees as well.

14

15 Q. ITC^D HAS A NUMBER OF COLLOCATION ARRANGEMENTS

16   ALREADY IN PLACE IN BELLSOUTH CENTRAL OFFICES

17   WHICH INCLUDE A WALL ENCLOSURE. IS THERE AN

18   OUTSTANDING ISSUE RELATED TO THESE SPACES?

19 A. Potentially yes, although it is my understanding that verbal agreement has

20   been reached on this issue.

21

22   If the issue is not fully resolved prior to hearing, however, it will be

23   necessary for the Commission to have a factual record upon which to

24   make a decision. In these locations ITC^D has already paid for the design

1   and construction of a walled enclosure and pays BellSouth a monthly fee

2   for use of this physical collocation space. Equity demands that ITC^D be

3   able to control the use of the space for which it has paid -- and continues to

4   pay. As proposed in Attachment 4 at ¶1.2.1, BellSouth should not be able

5   to "repossess" this area for its own use, or for the use of another CLEC. If

6   space is available within its enclosed space, ITC^D should have the ability

7   to use or lease the available space. The ability of BellSouth to control the

8   use of floor space for which ITC^D is paying rent, enclosed by a walled

9   structure that ITC^D has paid for, would amount to a confiscation of

10   ITC^D's property.

11

SECTION IV: COST BASED RATES FOR UNES MUST BE
ESTABLISHED PURSUANT TO THE APPLICABLE LEGAL
REQUIREMENTS

16   Q.   **WHAT RATES REMAIN AT ISSUE IN THIS ARBITRATION?**

17   A.   To date, BellSouth and ITC^D have failed to reach agreement on the rates

18   including, but not limited to, the following network elements: Unbundled

19   loop, 2 wire and 4 wire, Service Level 2 (Nonrecurring and Recurring

20   Rates); HDSL loop, 2 wire and 4 wire (Nonrecurring Rates); ADSL loop,

21   2 wire (Nonrecurring Rates).

22

23   Q.   **WHY DO THESE RATES CONTINUE TO BE AT ISSUE INTHIS**

24   **ARBITRATION, IN LIGHT OF THE COMMISSION'S DECISION**

25   **IN DOCKET NOS. 960757-TP, 960833-YP, AND 960846-TP?**

1   A.   In its recent decision, the United States Supreme Court ended the Eighth

2   Circuit Court's stay of the FCC's pricing rules as adopted in its August 8,

3   1996 Order in CC Docket No. 96-98. These rules implement the so-called

4   TELRIC standard.

5

6   Because of the way that it is designed (the relevant characteristics of

7   which are fixed and cannot be changed by altering inputs), BellSouth's

8   cost model used to develop recurring loop rates cannot be used to produce

9   results that comply with the FCC's TELRIC standard. I am attempting to

10   determine whether BellSouth's model used to develop nonrecurring costs

11   can be used to develop costs consistent with this standard. ITC^D has

12   requested copies of the relevant studies, and I will supplement my

13   testimony when I have had the opportunity to complete my analysis.

14

15   **SECTION V: OTHER ISSUES**

16

17

18   Q.   **EARLIER IN YOUR TESTIMONY YOU REFERRED TO A**

19   **NUMBER OF ADDITIONAL IMPORTANT ISSUES THAT YOU**

20   **HAVE BEEN ASKED TO ADDRESS. WHAT ARE THOSE**

21   **ISSUES?**

22

23   A.   These issues relate to (1) disconnect charges, (2) resolving reported line

24   trouble on unbundled loops, (3) transmission and routing of exchange

1   access traffic, and (4) access to the Regional Street Address Guide

2   ("RSAG").

3

4 Q. **BELLSOUTH SEEKS TO ELIMINATE LANGUAGE**

5   **IDENTIFYING CIRCUMSTANCES IN WHICH ITC^D WOULD**

6   **NOT BE RESPONSIBLE FOR DISCONNECT CHARGES. WHAT**

7   **IS THE ISSUE IN DISPUTE?**

8 A. BellSouth seeks to assess ITC^D disconnect charges any time ITC^D

9   loses a customer – even if no physical disconnection takes place. There

10   are two issues here: A question of timing, and a question of double

11   counting of costs. I will discuss each issue in turn.

12

13   First, when dealing with retail customers it is standard practice for a LEC

14   to charge for service disconnection at the time service is installed because

15   of concern that the customer would disappear without paying the

16   disconnect charge. Wholesale customers such as CLECs, however, have

17   an ongoing relationship with BellSouth and as a result this concern does

18   not exist. It is clear, therefore, that -- at a minimum -- disconnect charges

19   should not be assessed to CLECs until the customer actually leaves the

20   system.

21

22   Second, disconnect charges should not be assessed if a disconnect does not

23   actually occur. In many cases, a line is not disconnected even when a

24   customer leaves the premises. Instead, the line is maintained in "soft dial

1   tone" mode pending the occupation of the premises by another customer

2   seeking telephone service. It is clearly not appropriate to assess a

3   nonrecurring charge, whose calculation is based on work times for a

4   physical disconnection, when no such physical disconnection takes place.

5

6   Even when a disconnect *does* take place, the nonrecurring charge for

7   disconnection may still not be applicable.[7] If the disconnect is the result of

8   a customer's decision to select *another* local service provider – either the

9   ILEC or another CLEC – the disconnect from the initial local service

10   provider and the connect to the new local service provider are a single

11   activity. Under such a circumstance, it would be an overcharge to assess

12   *both* a connect charge and a disconnect charge, because both would

13   represent the same work activity. The language ITC^D seeks to

14   incorporate in Attachment 2, ¶ 1.1 properly seeks to avoid this double-

15   counting of BellSouth's costs.

16

17   Q.   WHAT ARE THE DISAGREEMENTS CONCERNING REPORTED

18   LINE TROUBLES ON UNBUNDLED LOOPS?

19   A.   In both paragraphs 2.2.7 and 2.2.8 (concerning reported line troubles on

20   Level 1 and Level 2 loops, respectively), the draft agreement provides

21   that:

---

[7] Only in unlikely combinations of circumstances would BellSouth face a situation in which a physical disconnect would not be associated with a reconnection of the circuit. As a result, incremental work activities for a disconnect – and the resulting costs – should prove to be rare.

[i]f ITC/DeltaCom reports a trouble on SL1 [SL2] loops and no trouble actually exists, BellSouth will charge ITC/DeltaCom for any dispatching and testing (both inside and outside the CO) required by BellSouth in order to confirm the loop's working status. The application rate is in FCC No.1, Section 13. If a No Trouble Found status is later proven to be a BellSouth trouble . . . BellSouth will waive any assessed testing and dispatch charges.

ITC^D seeks to add the following language, to which BellSouth objects:

BellSouth shall reimburse ITC^DeltaCom for any additional costs associated with isolating the trouble to BellSouth's facilities and/or equipment.

Clearly, the required language is necessary to put CLECs such as ITC^D

on equal footing with BellSouth. Under the language to which the parties

agree, BellSouth is compensated for its costs of establishing that the line

trouble is on the CLEC's system. All ITC^D seeks to achieve is parity –

to be compensated for expenses it incurs to establish that the trouble is on

BellSouth's system.

It makes no sense *not* to impose parity on the parties. The language in the

first two sentences of these paragraphs obviously is designed to encourage

ITC^D to test its own system before reporting a line trouble to BellSouth.

If ITC^D erroneously reports the trouble to BellSouth for correction, these

sentences require ITC^D to compensate BellSouth for having to conduct

such tests in vain. By the same token, however, if BellSouth fails to

conduct its tests and erroneously reports the trouble to ITC^D for

correction, or conducts its tests, initially concludes that the problem lies on

ITC^D's end of the operation, but it is ultimately determined that

28

1   ~~BellSouth's initial conclusion is in error – BellSouth should compensate~~

2   ~~ITC^D for *its* costs of isolating the problem to BellSouth's system.~~

3   ~~Merely agreeing not to charge ITC^D for what turn out to be inaccurate~~

4   ~~tests does not put ITC^D on the same footing as BellSouth. The third~~

5   ~~sentence is required to create this parity. Failure to insist on mirror-image~~

6   ~~payments for testing that is ultimately unwarranted would create~~

7   ~~incentives for BellSouth to artificially inflate CLEC costs by forcing them~~

8   ~~to test each trouble twice – once initially, before reporting it to BellSouth,~~

9   ~~and again after BellSouth advises that it could not locate the trouble on its~~

10 ~~system.~~

11

12 Q.   **DOES ITC^D PROPOSE THAT BELLSOUTH BE REQUIRED TO**

13   **PROVIDE IT WITH A DOWNLOAD OF THE REGIONAL**

14   **STREET ADDRESS GUIDE (RSAG)?**

15 A.   In ¶¶4.9.4.3/4.9.4.4, Attachment 6, ITC^D proposes that BellSouth will

16   transmit a subset of the RSAG to ITC^D on a daily basis at no charge,

17   which includes street addresses and the associated serving switches,

18   enabling ITC^D to map a customer address to a specific serving switch.

19

20 Q.   **DOES THIS CONCLUDE YOUR PREFILED TESTIMONY?**

21 A.   Yes. Of course, I will address any additional issues raised in BellSouth's

22   supplemental or responsive testimony as allowed by the Commission. I

23   also intend to supplement my testimony as appropriate upon receipt and

24   review of BellSouth's cost studies.

BY MR. JONES (Continuing):

Q   Mr. Wood, are you also the same Don Wood who caused to be prefiled 34 pages of rebuttal testimony in this proceeding?

A   Yes.

MR. JONES: And, Commissioners, there are no changes pursuant to the Commission's order in his rebuttal testimony.

BY MR. JONES (Continuing):

Q   Mr. Wood, do you have any corrections to make to your rebuttal testimony?

A   No, I do not.

Q   And if I asked you the same questions that are in your rebuttal testimony, would your answers be the same?

A   They would.

MR. JONES: At this time I would like to have his rebuttal testimony similarly copied into the record.

COMMISSIONER CLARK: It will be inserted in the record as though read.

And I just want to make it clear that you are also affirming the footnotes. They are to be considered as part of your sworn testimony?

WITNESS WOOD: Yes, ma'am; they are.

COMMISSIONER CLARK: Okay. It just confuses me

1 when I see them and I want to make sure that that was

2 your intent.

3   WITNESS WOOD: Yes, ma'am. I had not intended

4 to include those given your formatting requirements, but

5 somehow they got in here. But, yes, I do intend them to

6 be part of the testimony, if that's appropriate.

7   COMMISSIONER CLARK: Okay.

8   MR. JONES: And, Commissioner, I don't know if

9 we need to mark his one exhibit from his prefiled?

10   COMMISSIONER CLARK: We do. What is it titled?

11 Is it DW-something, D-something-W?

12   MR. JONES: DJW-1.

13   COMMISSIONER CLARK: That will be marked as

14 Exhibit 22.

15   MR. JONES: Thank you.

16   (Exhibit 22 marked for identification.)

17

18

19

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25

1   Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2   A.   My name is Don J. Wood, and my business address is 914 Stream Valley

3   Trail, Alpharetta, Georgia 30022.

4

5   Q.   ARE YOU THE SAME DON J. WOOD WHO PRESENTED DIRECT

6   TESTIMONY ON BEHALF OF ITC^DELTACOM IN THIS

7   PROCEEDING?

8   A.   Yes.

9

10 Q.   WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

11 A.   The purpose of my testimony is to respond to BellSouth's position on issues

12   6(a) through 6(e), and by extension issues 2(c)(ii) and 2(c)(iii). In doing so, I

13   will respond to arguments made by BellSouth witnesses Varner, Taylor, and --

14   to the limited degree necessary -- Thierry.

15

16 Q.   MR. VARNER ARGUES THAT RECENT DECISIONS BY THE UNITED

17   STATES SUPREME COURT AND THE UNITED STATES COURT OF

18   APPEALS FOR THE EIGHTH CIRCUIT IMPACT THE STANDARDS TO

19   BE APPLIED BY THIS COMMISSION WHEN RESOLVING THE ISSUES

20   IN THIS PROCEEDING. DO YOU AGREE?

21 A.   Yes. Since the Commission heard evidence and issued its order in Docket

22   Nos. 960757-TP, 960833-TP, and 960846-TP, the Supreme Court issued an

23   opinion on a number of issues that were outstanding at these dockets were

1

1   heard. As a result of this decision, the Eighth Circuit Court reinstated a

2   number of FCC rules that it had previously vacated. The Commission's

3   decision in this proceeding should, and must, take into consideration these

4   reinstated rules. As a result, the Commission's previous conclusions in

5   Docket Nos. 960757-TP, 960833-TP, and 960846-TP must be evaluated in

6   light of the new legal standards that are to be applied.

7   I strenuously disagree, however, with Mr. Varner's assertions that the

8   Commission should not, and need not, apply the law as it currently stands in

9   this proceeding because the applicable law may change in the future.

10 BellSouth should not be able to avoid providing UNEs that it is currently

11 legally obligated to provide, at the rates at which it is currently legally

12 obligated to provide them, merely because Mr. Varner is predicting -- with no

13 basis whatsoever for such a prediction -- that those requirements will change

14 in the future. Mr. Varner would have the Commission act on speculation. I

15 urge the Commission to base its decision on the pronouncements of the

16 Supreme Court.

17

18 Q.   IN ITS ISSUES MATRIX, BELLSOUTH REFERS TO ANY ATTEMPT TO

19   MODIFY THE COMMISSION'S CONCLUSIONS IN DOCKET NOS.

20   960757-TP, 960833-TP, AND 960846-TP AS A "COLLATERAL ATTACK"

21   ON THE COMMISSION'S ORDER. IS SUCH A CHARACTERIZATION

22   ACCURATE?

23 A.   No. Mr. Varner's assertion in his testimony that the Commission is bound in

2

1   this proceeding by its conclusions in Docket Nos. 960757-TP, 960833-TP,

2   and 960846-TP is both factually incorrect and clearly inconsistent with the

3   language of the order that the Commission was making certain decisions

4   based on the status of the law at that time. For these same reasons,

5   BellSouth's inflammatory language that characterizes ITC^DeltaCom's request

6   for a limited number of such updates to now be made as a "collateral attack"

7   on the Commission's order does nothing to assist the Commission with the

8   resolution of the disputed issues in this proceeding. Far from being an

9   "attack" on the Commission's order, ITC^DeltaCom's requests are fully

10 consistent with the language of the order in which the Commission stated that

11 its decisions were based on the Eighth Circuit's stay of certain FCC

12 requirements. It is reasonable for the Commission's conclusions to now be

13 updated as necessary to comply with the decisions of the courts.

14   Mr. Varner and BellSouth would have the Commission believe that the

15 fundamental issue to be addressed in this proceeding is *"based on the legal*

16 *requirements in effect in 1998*, what UNEs and related capabilities must be

17 offered and what rates should apply?" I would submit that the fundamental

18 issue is the following : *"Based on the legal requirements in effect today*, what

19 UNEs and related capabilities must be offered and what rates should apply?"

20 As the Commission correctly made clear in its order, these are two distinct

21 questions.

22

23

3

1 Q. DOES THE PROCESS OF UPDATING CERTAIN OF THE

2 COMMISSION'S CONCLUSIONS REACHED IN DOCKET NOS. 960757-

3 TP, 960833-TP, AND 960846-TP MEAN THAT EACH OF THE

4 COMMISSION'S CONCLUSIONS IN THAT PROCEEDING MUST BE

5 RELITIGATED AT THIS TIME?

6 A. No, and ITC^DeltaCom is not proposing to do so. The conclusions reached

7 by the Commission in Docket Nos. 960757-TP, 960833-TP, and 960846-TP

8 can be used as a starting point to resolve the issues in dispute in this

9 proceeding. Changes in the legal and regulatory environment dictate the

10 following, however:

11 (1) The Commission's conclusions must be updated to reflect the resolution of
12 the outstanding disputes by the federal courts,
13
14 (2) For those issues for which the Commission elected not to reach a decision
15 pending the resolution of the outstanding disputes by the federal courts, a
16 conclusion consistent with the decisions of the courts should now be made,
17 and
18
19 (3) Updates should be made, as necessary, to ensure ongoing compliance with
20 the current requirements.

21 To be clear, while it is essential that each of these three categories of

22 updates be made, it is not necessary to relitigate the entire Docket Nos.

23 960757-TP, 960833-TP, and 960846-TP proceeding at this time. Consistent

24 with this approach, ITC^DeltaCom is recommending only specific, targeted

25 updates in this proceeding. Of course, for those UNEs for which no rates were

26 set in the previous proceeding, it will be necessary for the Commission to

27 establish rates as part of the resolution of this arbitration.

4

1

2   Q.   MR. VARNER ARGUES THAT BECAUSE OF ISSUES CURRENTLY

3   PENDING BEFORE THE FCC AND EIGHTH CIRCUIT COURT, "THE

4   MOST REASONABLE COURSE" IS FOR THE COMMISSION TO

5   CONTINUE TO APPLY ITS CONCLUSIONS FROM DOCKET NOS.

6   960757-TP, 960833-TP, AND 960846-TP DO YOU AGREE?

7   A.   No. As described above, the most reasonable course is for the Commission to

8   resolve the issues in dispute in this arbitration based on the existing legal

9   requirements, including those articulated by the Supreme Court. Mr. Varner

10   is advocating that the Commission resolve these issues by applying the legal

11   standards that were in effect in 1997 and 1998 which have been superseded by

12   decisions of the federal courts. In the alternative, Mr. Varner is inviting the

13   Commission to join him in idle speculation regarding the likely outcome of

14   the proceedings pending before the Eighth Circuit Court and FCC. The

15   Commission should decline Mr. Varner's invitation, and simply apply the law.

16   Mr. Varner is correct that the conclusion of the Eighth Circuit Court's

17   investigation into the FCC's pricing rules, and the FCC's investigation into the

18   UNEs that must be provided, may impact the legal and regulatory

19   environment here in Florida and in other states.[1] His suggestion that there is

---

[1] Of course, it is also possible that the conclusion of these investigations will have no impact at all. If the Eighth Circuit Court upholds the FCC pricing rules and the FCC concludes that its previous determination regarding the list of UNEs that must be provided was correct, the current legal requirements would be unaffected.

1   something unique about the current situation -- one in which certain legal

2   requirements apply which may be changed in the future -- is unfounded,

3   however. At the time the Commission addressed the issues in Docket Nos.

4   960757-TP, 960833-TP, and 960846-TP, even greater uncertainty regarding

5   future legal requirements existed: key issues were before the Supreme Court.

6   When reaching its conclusions in that proceeding, however, the Commission

7   applied the legal standards that were in place at the time. It did not rely on the

8   legal standards that had been in place eighteen months previously, and it did

9   not engage in speculation regarding possible future standards (in fact it

10   explicitly declined to do so but instead recognized that updates to its

11   conclusions might be necessary when those future standards took effect).

12   ITC^DeltaCom is now asking that the Commission take exactly the same

13   approach in this proceeding; specifically to resolve the issues in dispute by

14   applying the legal standards that currently exist, recognizing that updates to its

15   conclusions may prove necessary if those legal standards change in the future.

16   In a changing legal and regulatory environment, this is the only reasonable

17   course of action.

18

19 Q. WHAT LEGAL REQUIREMENTS HAVE CHANGED SINCE THE

20   COMMISSION ISSUED ITS ORDER IN DOCKET NOS. 960757-TP,

21   960833-TP, AND 960846-TP THAT NEED TO BE CONSIDERED IN THIS

22   PROCEEDING?

23 A. Two key elements of the Supreme Court decision need to be considered by

1   the Commission in this proceeding. First, the FCC's pricing rules have been

2   reinstated. As a result, rates for UNEs must comply with the requirements of

3   the FCC's August 8, 1996 Interconnection Order and associated rules. The

4   fact that the Eighth Circuit Court is currently investigating the merits of

5   various challenges to these rules in no way changes the fact that these rules are

6   in effect today. Again, the Commission should apply the requirements that

7   are in place today, and decline Mr. Varner's invitation to speculate on whether

8   any aspect of these rules may change in the future.

9   Second, the FCC rule that prevents incumbent local exchange

10   companies, such as BellSouth, from physically separating UNEs (and thereby

11   imposing "wasteful interconnection costs on new entrants") was upheld. As a

12   result, the Commission can now conclude that collocation, while one possible

13   means for competing local exchange carriers to obtain multiple UNEs, is not

14   the only means for them to do so. Pursuant to the Supreme Court decision,

15   BellSouth must now provide combinations of UNEs without first physically

16   separating them. This requirement has implications for both the cost and

17   availability of certain UNEs.

18   Mr. Varner's observation that "a final determination of which UNEs

19   must remain connected and functional, as well as the prices for those

20   combinations, will depend upon the outcome of further proceedings before the

21   FCC and Courts" is simply irrelevant. Existing legal requirements allow this

22   Commission to determine that any combinations of UNEs being sought should

23   be provided by BellSouth, and mandate that the rates be based on the FCC's

1   pricing rules. As it did in Docket Nos. 960757-TP, 960833-TP, and 960846-

2   TP the Commission should apply law as it currently exists; not as it previously

3   existed and not as BellSouth hopes and speculates it might exist in the future.

4

5 Q. WHAT IS THE IMPACT OF THE REINSTATEMENT OF THE FCC'S

6   RULES?

7 A. As a result of the reinstatement of the FCC's rules, certain inputs,

8   assumptions, and methodologies inherent in the BellSouth cost studies do not

9   comply with the current law. As I stated previously in my testimony,

10   ITC^DeltaCom is not seeking to relitigate the issues from Docket Nos.

11   960757-TP, 960833-TP, and 960846-TP in this proceeding. Instead,

12   ITC^DeltaCom has identified specific inputs, assumptions, or methodologies

13   in the BellSouth cost studies that must be updated in order to comply with the

14   FCC rules now in effect. Of course, these inputs and assumptions should, to

15   the extent possible in the BellSouth cost studies filed in this proceeding, be

16   appropriately revised in order to generate compliant rates for the UNEs at

17   issue in this arbitration.

18

19 Q. PLEASE DESCRIBE SOME EXAMPLES OF ASSUMPTIONS IN THE

20   BELLSOUTH COST STUDIES THAT MUST BE MODIFIED IN ORDER

21   TO COMPLY WITH THE CURRENT LEGAL REQUIREMENTS,

22   INCLUDING THE FCC'S PRICING RULES.

23 A. First, I would like to re-iterate, as I did in my testimony in Docket Nos.

8

1   960757-TP, 960833-TP, and 960846-TP that BellSouth's cost models are built

2   upon the fundamental assumption that the existing network configuration will

3   be used. Because the construction of these models make it impossible to

4   change this fundamental assumption, they will ultimately prove to be

5   inadequate when the Commission attempts to establish UNE rates that are

6   fully compliant with the FCC pricing rules.[2]

7   In the interim, however, it is possible to change certain inputs and

8   assumptions so that the results produced (and the resulting UNE prices

9   adopted) will more closely approximate what the law requires. For example,

10   the fill factors utilized by BellSouth in its cost studies are based, according to

11   its engineering witness, on historic experience. An additional assumption

12   relates to the use of the forward-looking technology for digital loop carrier

13   systems. The use of integrated DLC ("IDLC") is now appropriate for two

14   reasons. First, the FCC rule has been reinstated requiring BellSouth to

15   provide the loop and port without physical separation. Second, BellSouth's

16   previous testimony to the contrary, since the hearing in Docket Nos. 960757-

17   TP, 960833-TP, and 960846-TP BellSouth has demonstrated that it is possible

18   to provide a local loop UNE that is physically separate from the switch port

19   utilizing IDLC technology. It is my understanding that BellSouth has

---

[2] BellSouth loop cost model fails for an additional reason. Pursuant to the Supreme Court ruling, the Eighth Circuit Court has reinstated the FCC rule requiring that UNE prices reflect geographic variations in cost. The BellSouth loop model, because of the limitations of its construction, can only produce a statewide average cost. As a result, the BellSouth loop cost model cannot produce results that comply with the law.

1   provided a number of such arrangements to ITC^Deltacom. For each of these

2   reasons, it is appropriate to replace BellSouth's assumption of obsolete

3   universal DLC technology with the "efficient, forward-looking" IDLC

4   technology.

5   The version of its cost models presented by BellSouth in Docket Nos.

6   960757-TP, 960833-TP, and 960846-TP are "hardwired" in such a way that

7   IDLC assumptions cannot be introduced. BellSouth presented a version of its

8   models in a recent Georgia proceeding,[3] however, that does permit the user to

9   assume that IDLC facilities will be utilized. Based on my analysis conducted

10   in that proceeding, changing this assumption causes the reported local loop

11   cost to decrease by just over 10%.[4]

12   By changing only these two assumptions, it is possible to calculate a

13   more appropriate rate for a 2-wire analog loop (this same loop that would be

14   utilized as part of an extended loop arrangement). As I stated above, these

15   adjustment to inputs are not sufficient to develop costs (and therefore rates)

16   that comply with the FCC pricing rules. A change to these inputs can be used

---

[3]

Georgia Public Service Commission Docket No. 10692-U, BellSouth Unbundled Network Element Combinations Cost Studies, dated 6/11/99 and updated 6/28/99.

[4]

This result can be obtained by varying the inputs to the BellSouth Loop Cost Model and TELRIC Calculator, and without making any alterations to the way in which these models function. Other information regarding the materials costs associated with IDLC systems and the economies that can be achieved by using those systems indicates that the actual cost reduction is probably higher than that calculated by the BellSouth models. Until a more complete investigation is possible, the Commission should treat the 10% reduction as conservatively low (and the resulting costs as conservatively high).

1   to produce interim rates that move in the direction of compliance, however,

2   and should be subject to a true-up when the Commission has had the

3   opportunity to conduct a more complete investigation.

4

5   Q.   YOU STATED THAT UPDATES TO THE CONCLUSIONS IN DOCKET

6   NOS. 960757-TP, 960833-TP, AND 960846-TP MAY BE NECESSARY IN

7   ORDER TO "ENSURE ONGOING COMPLIANCE" WITH THE

8   CURRENT LEGAL REQUIREMENTS. DO YOU HAVE AN EXAMPLE

9   OF SUCH AN UPDATE?

10   A.   Yes. Clearly, "forward-looking" costs developed pursuant to the requirements

11   of the FCC Interconnection Order and related rules must reflect current

12   estimates of forward-looking network design and operations, both of which

13   directly impact cost. BellSouth's nonrecurring rate for an ADSL compatible

14   loop illustrates the need for current information. Since the Commission's

15   order in Docket Nos. 960757-TP, 960833-TP, and 960846-TP was issued,

16   BellSouth has updated its FCC Tariff No. 1 for ADSL service in a way that

17   suggests a much lower cost has been calculated (one fourth to one fifth the

18   level of the previous calculation). As ITC^DeltaCom witness Mr. Hyde

19   describes in his testimony, BellSouth's nonrecurring cost and rate for its

20   ADSL service can be made directly comparable to its nonrecurring cost and

21   rate for its ADSL-compatible UNE loop. When this new information is

22   considered, it becomes clear, as Mr. Hyde points out, that a cost-based

23   nonrecurring rate for an ADSL-compatible loop is significantly less than the

1   amount previously calculated by BellSouth.

2

3   Q.   IN YOUR DIRECT TESTIMONY REGRADING ISSUE 6a, YOU ARGUED

4   THAT EACH CARRIER, INCLUDING BELLSOUTH AND

5   ITC^DELTACOM, SHOULD BE RESPONSIBLE FOR THE

6   DEVELOPMENT OF ITS OWN OPERATIONAL SUPPORT SYSTEMS

7   ("OSS"), AND THAT EACH CARRIER SHOULD BEAR ITS OWN COSTS

8   OF DOING SO. HAS THE BELLSOUTH TESTIMONY ON THIS ISSUE

9   CHANGED YOUR OPINION?

10   A.   Not at all. When several misstatements of fact in the testimony of BellSouth

11   witnesses Varner and Taylor are corrected, it becomes clear that the

12   application of the FCC's pricing rules preclude BellSouth from recovering the

13   OSS costs that it seeks to recover. Because the FCC's pricing rules had been

14   vacated by the Eighth Circuit Court and Commission was not required to

15   apply them when reaching its conclusions in previous proceedings, the

16   Commission never reached the question in that proceeding of how much -- if

17   any -- of the OSS development costs that BellSouth sought to recover would

18   be permitted if the FCC pricing rules were applied. With the FCC rules now

19   reinstated, it is necessary for the Commission to examine these costs in that

20   light in order to update its previous conclusions to comply with these recent

21   federal court decisions.

22

23

1   Q.   BELLSOUTH WITNESS VARNER ARGUES THAT THIS ISSUE IS NOT

2   BEFORE THE COMMISSION IN THIS PROCEEDING, BECAUSE THE

3   COMMISSION HAS PREVIOUSLY AUTHORIZED BELLSOUTH TO

4   RECOVER THE COSTS THAT IT IS SEEKING TO RECOVER. IS HE

5   CORRECT?

6   A.   No. Contrary to Mr. Varner's assertions, at no time did the Commission

7   conclude that the amount of OSS development costs calculated by BellSouth

8   was consistent with the level of cost that would be calculated if the FCC's

9   pricing rules, including its version of the TELRIC methodology, had been

10   used. In fact, the Commission did not conclude that the application of the

11   FCC's methodology -- now the legal requirement -- would result in *any* OSS

12   development costs being calculated.

13   Because of the Supreme Court decision (and subsequent Eighth Circuit

14   Court action) reinstating the FCC's pricing rules, it is now necessary for the

15   Commission to reach a conclusion regarding the level of OSS development

16   costs -- if any -- that would result from the application of the FCC's definition

17   of TELRIC. The results of doing so can be understood by a review of the

18   arguments presented by BellSouth witnesses in this proceeding, especially

19   those of Dr. Taylor.

20

21   Q.   DR. TAYLOR ALSO DISCUSSES OSS ISSUES. WHAT IS YOUR

22   OVERALL REACTION TO DR. TAYLOR'S TESTIMONY IN THIS

23   AREA?

1   A.   While Dr. Taylor pays lip service to the FCC's requirements regarding OSS

2   costs, the positions he takes in his testimony are inconsistent with the FCC's

3   rulings in a number of significant respects. In the end, Dr. Taylor's position

4   seems to be that BellSouth is entitled to recover the OSS costs BellSouth says

5   it has incurred, regardless of how inefficient they may be and no matter how

6   distant they are from the FCC's TELRIC principles for pricing UNEs that Dr.

7   Taylor agrees -- as he must -- are the appropriate and legally mandated

8   standard.

9

10   Q.   DR. TAYLOR'S TESTIMONY DISCUSSES WHAT HE CALLS A

11   "TRADE-OFF" BETWEEN OSS DEVELOPMENT COSTS AND OSS

12   USAGE COSTS. WHAT IS YOUR REACTION TO THIS DISCUSSION?

13   A.   The discussion seems to be designed to confuse the entire OSS issue by

14   inviting the reader to infer that there may be *many* combinations of up-front

15   and on-going costs that could be deemed by the Commission to be "efficient."

16   Dr. Taylor's bottom line is set forth in the statement that "whatever type of

17   OSS emerges, it is certainly the case that – for a given level of quality – the

18   technology platform should minimize the present value of the *combined* OSS

19   development and OSS use costs associated with it. This minimization would

20   take into account the economic trade-off between OSS development and OSS

21   use costs discussed above."

22   In competitive markets, the technology employed to provide particular

23   goods or services is not necessarily the lowest cost technology – it is the

1 lowest cost technology capable of providing goods or services *of the quality*

2 *demanded by the market.* For example, when Sprint began advertising an all-

3 fiber long-distance backbone with its "pin drop" commercials, AT&T was

4 forced to convert its copper and microwave network to fiber at a substantial

5 expense, even though continued use of its existing network to provide long-

6 distance service would have been the lower-cost solution. At the same time

7 AT&T was making this investment, long-distance rates continued to decline.

8 I can agree with the above-quoted statement by Dr. Taylor *only* because he

9 recognizes that the *quality* of service demanded by the market can impose

10 requirements that do not necessarily "minimize the present value of the

11 combined OSS development and OSS use costs." The problem with the

12 balance of Dr. Taylor's testimony on OSS is that it completely ignores the

13 implications of this constraint.

14 Because incumbent local exchange companies ("ILECs"), including

15 BellSouth, do not provide UNEs (including OSS) in a competitive

16 environment, purchasers of UNEs have no ability, through marketplace

17 interaction, to impose a quality requirement on BellSouth, *particularly* in the

18 OSS arena. The poor quality of BellSouth's OSS performance was discussed

19 in the direct testimony of ITC^DeltaCom's witnesses. Recognizing this, the

20 FCC *imposed* an OSS standard on the ILECs by requiring that they provide

21 OSS capable of full electronic flow-through, which will minimize the time

22 and cost required to provision UNEs and provide these services on a non-

23 discriminatory basis to all users of the ILECs' OSS. The mere fact that

15

1   BellSouth has failed, so far, to meet this requirement should not mean – as Dr.

2   Taylor argues – that it gets to price its OSS services on the basis of existing,

3   inefficient legacy systems or that it should be entitled to assess the costs of

4   upgrading these systems to its customers. Contrary to Dr. Taylor's suggestion

5   otherwise, *neither* of these actions could be sustained in a competitive

6   environment. Because regulation should seek to mimic the behavior of

7   competitive markets, this Commission should reject BellSouth's efforts to

8   take advantage of its market power in Florida to impose inefficient prices for

9   OSS on ITC^DeltaCom (and other CLECs).

10

11 Q.   DR. TAYLOR OBSERVES THAT THE 1996 ACT MAKES NO MENTION

12   OF OSS. HE ASSERTS, THEREFORE, THAT THE FCC HAS NEVER

13   SPECIFICALLY LIMITED RECOVERY TO SOME, BUT NOT ALL, OSS-

14   RELATED COSTS, AND CONCLUDES THAT "THE FCC HAS

15   INTENDED ALL ALONG THAT THE PROVIDER OF OSS SHOULD BE

16   ABLE TO RECOVER *ALL* COSTS RELATED TO THE DEVELOPMENT

17   AND USE OF OSS." IS HIS ASSERTION CORRECT?

18 A.   No. This is an excellent example of the sort of sleight of hand that permeates

19   Dr. Taylor's testimony. The fact that the 1996 Act makes no specific mention

20   of OSS certainly does not mean that any cost (of any magnitude) that

21   BellSouth chooses to label as "OSS" is somehow legitimized. Nowhere does

22   the issue of efficiency enter into Dr. Taylor's discussion, and in fact if his

23   logic is applied BellSouth would be able to recover *any* "incremental" OSS

1   cost, regardless of how inefficiently it is incurred by BellSouth.

2   Such a result runs counter to the clear language of the FCC in its *First*

3   *Report and Order*. For example, ¶690 requires that TELRIC not only be

4   forward-looking, as Dr. Taylor concedes, but that it be based on the "most

5   efficient technology available" -- a requirement that Dr. Taylor ignores. In

6   fact, the last sentence of ¶685 (a paragraph quoted by Dr. Taylor, but not in its

7   entirety) states "[w]e, therefore, conclude that the forward-looking pricing

8   methodology for interconnection and unbundled network elements should be

9   based on costs that assume that wire centers will be placed at the incumbent

10   LEC's current wire center locations, but that the *reconstructed* local network

11   will employ *the most efficient technology* for reasonably foreseeable capacity

12   requirements." Thus, the FCC *explicitly* rejects the notion that prices for

13   UNEs (and OSS) can be based on the technology deployed in the existing

14   network, and specifically envisions prices based on *reconstruction* of the

15   network using *the most efficient technology*.

16   This requirement of the FCC pricing rules is directly at odds with the

17   assumption in the BellSouth cost studies (and noted by the Commission) that

18   "existing network configurations and engineering practices" will be used. For

19   this reason, BellSouth's version of TELRIC is inconsistent with the FCC's

20   version which now -- pursuant to the decision of the Supreme Court -- must be

21   applied.

22

23

17

1 Q. DR. TAYLOR ARGUES THAT THE OPERATIVE ECONOMIC

2   PRINCIPLE IS COST CAUSATION, AND IMPLIES THAT

3   ITC^DELTACOM'S WITNESSES HAVE IGNORED THIS PRINCIPLE. IS

4   HE CORRECT?

5 A. No. While I agree that the principle of cost causation is important, I disagree

6   that this principle has been ignored by ITC^DeltaCom witnesses when

7   reaching their conclusions.

8   It is important to note that Dr. Taylor defines the issue of cost

9   causation in terms of the particular *user* of a network element. But the FCC's

10   *First Report and Order* defines cost causation in terms of the element itself,

11   not in terms of who is using the element (as I discuss below, the FCC's

12   approach to cost causation is consistent with its other requirements for

13   TELRIC, while Dr. Taylor's approach is inconsistent with TELRIC). For

14   example, ¶691 reads:

15   Any function necessary to produce a network element must
16   have an associated cost. The study must explain with
17   specificity why and how specific functions are necessary to
18   provide network elements and how the associated costs were
19   developed. Only those costs that are incurred in the provision
20   of the network elements *in the long run* shall be directly
21   attributable to those elements. Costs must be attributed on a
22   cost-causative basis. Costs are causally-related to the network
23   element being provided if the costs are incurred *as a direct*
24   *result of providing the network elements, or can be avoided, in*
25   *the long-run, when the company ceases to provide them*
26   (emphasis added).
27
28   The reason Dr. Taylor adopts a perspective on cost causation that is

29   inconsistent with the FCC's is clear -- by doing so he supports BellSouth's

1   efforts to require that CLECs, such as ITC^DeltaCom, be responsible for the

2   costs that each will incur to develop its own OSS *and* BellSouth's

3   "incremental" costs associated with providing OSS that meets the FCC's

4   technical requirements. Dr. Taylor's theory (like BellSouth's objectives) is in

5   direct conflict with other FCC requirements, however. ¶690, for example,

6   requires that "[t]he increment that forms the basis for a TELRIC study shall be

7   *the entire quantity of the network element provided.*" As a result, even if the

8   Commission were to find that ITC^DeltaCom should pay some portion of

9   BellSouth's OSS costs as well as its own, the FCC's TELRIC standard

10   requires that these costs be calculated by placing *all* forward-looking, most-

11   efficient OSS costs in the numerator, and dividing by *all* users of OSS --

12   including BellSouth (and its retail customers) -- in the denominator.[5]

13

14 Q.   DR. TAYLOR ARGUES THAT THE FCC'S APPROACH WOULD CAUSE

15   INEFFICIENT ENTRY. DO YOU AGREE?

16 A.   No. Dr. Taylor argues that "[w]here social policy mistakenly attempts to

17   ensure the entry and survival of suppliers that are less efficient than

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[5] As I argued in my direct testimony, the most straight-forward way to address this issue would be for the Commission to require that each telecommunications carrier be responsible for development and deployment of its own OSS – ITC^DeltaCom to serve its retail (and, potentially, wholesale) customers, and BellSouth to comply with the FCC's order (which will serve both its retail and wholesale customers). If the Commission were to ignore the "total element" requirement of TELRIC and, instead, adopt an incremental approach, the economically correct way to implement this approach on the forward-looking basis advocated by Dr. Taylor would be (1) to calculate the forward-looking economic cost of installing the state-of-the-art OSS system, required by the FCC, for BellSouth customers, only, (2) to calculate the forward-looking economic cost of installing the state-of-the-art OSS system, required by the FCC, for *both* BellSouth customers and new entrants, and (3) subtracting (1) from (2). I believe the resulting incremental costs would be very near zero.

19

1   incumbents, consumers typically end up paying for those protections in the

2   form of higher prices or poorer service." There are two problems with Dr.

3   Taylor's statement. First, it would be equally accurate to say that where social

4   policy mistakenly attempts to ensure the survival of *incumbents* that are less

5   efficient than other suppliers, consumers typically end up paying for those

6   protections in the form of higher prices and poorer service. This, however, is

7   the result that Dr. Taylor seeks to achieve.

8   Second, the FCC has already considered and rejected Dr.

9   Taylor's arguments. At ¶679, the FCC described TELRIC as follows:

10   Adopting a pricing methodology based on forward-looking
11   costs, economic costs best replicates, to the extent possible, the
12   conditions of a competitive market. In addition, a forward-
13   looking cost methodology reduces the ability of the incumbent
14   LEC to engage in anti-competitive behavior. Congress
15   recognized in the 1996 Act that access to the incumbent LEC's
16   bottleneck facilities is critical to making meaningful
17   competition possible. As a result of the availability to
18   competitors of the incumbent LEC's unbundled elements at
19   their economic cost, consumers will be able to *reap the benefits*
20   *of the incumbent LEC's economies of scale and scope, as well*
21   *as the benefits of competition.* Because a pricing methodology
22   based on forward-looking costs simulates the conditions in a
23   competitive marketplace, it allows the requesting carrier to
24   produce efficiently and to compete effectively, which should
25   drive retail prices to their competitive levels. We believe that
26   our adoption of a forward-looking cost-based pricing
27   methodology should facilitate competition on a reasonable and
28   efficient basis by all firms in the industry by establishing prices
29   for interconnection and unbundled elements based on costs
30   similar to those incurred by the incumbents, which may be
31   expected to reduce the regulatory burdens and economic impact
32   of our decision for any parties, including both small entities
33   seeking to enter the local exchange markets and small
34   incumbent LECs (emphasis added).
35

1   Dr. Taylor's attempt to reargue these issues adds nothing but empty

2   words to this proceeding; even if his arguments had merit (and they do not),

3   the FCC's pricing rules are the applicable legal standard.

4

5   Q.   DR. TAYLOR ARGUES THAT YOUR SUGGESTION THAT ALL

6   RATEPAYERS SHOULD HELP TO DEFRAY THE COSTS OF OSS IS

7   WRONG BECAUSE "MR. WOOD IGNORES THE FACT THAT THE OSS

8   DEVELOPMENT COSTS PERTAIN *SOLELY* TO THE INTERFACES

9   AND SYSTEMS BELLSOUTH HAS DEVELOPED TO SERVE CLECS

10   LIKE ITC^DELTACOM." IS HE RIGHT?

11   A.   No, for all the reasons described above.[6] The FCC's TELRIC principles

12   require that OSS prices to be paid by CLEC entrants like ITC^DeltaCom be

13   based on the *total* quantity of the element produced – that is, on the basis of

14   OSS provided to *all* users, not just CLEC users. Thus, if Dr. Taylor's and Mr.

15   Varner's characterization of what BellSouth produced as OSS costs is previous

16   proceedings before this Commission is accurate, it was the wrong analysis for

17   setting TELRIC-based prices for OSS consistent with the FCC's definition.

18   Of course, the resolution of the OSS cost recovery issue in this proceeding

19   requires that the FCC's definition of TELRIC be applied.

20

21   Q.   DR. TAYLOR IS CRITICAL OF BASING COSTS ON WHAT HE TERMS

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[6]Mr. Varner makes a similar argument in his testimony that is invalid for the same
reasons.

1   A "HYPOTHETICAL" NETWORK, AND ARGUES THAT THE FCC

2   REJECTED THIS STANDARD. IS HE CORRECT?

3 A. No. Much of the discussion in ¶¶683 through 685 of the *First Report and*

4   *Order* focused on the difference between a "scorched earth" approach to cost

5   development – which would have developed costs without regard to *existing*

6   wire center locations – and a "scorched node" approach – which requires

7   forward-looking, most efficient technology be deployed under the assumption

8   that wire centers will continue at existing locations. The FCC determined that

9   scorched node was the proper approach. As noted earlier, however, ¶685 of

10   the *First Report and Order* specifically contemplates a "reconstructed"

11   network that would employ "the most efficient technology." In the OSS

12   context, it seems clear that this would require calculation of costs on the basis

13   of the electronic, full flow-through basis required by the FCC. As I said in my

14   direct testimony, failure to adopt this standard would provide a disincentive

15   for BellSouth to migrate quickly and efficiently to these systems.

16

17 Q. DR. TAYLOR ARGUES THAT BELLSOUTH HAS NO INCENTIVE TO

18   USE EXCESSIVE RATES FOR OSS TO RAISE BARRIERS TO ENTRY,

19   BECAUSE BELLSOUTH "HAS A KEEN ECONOMIC INTEREST IN

20   BEING ABLE TO PARTICIPATE IN THE INTERLATA LONG

21   DISTANCE MARKET." WHAT IS YOUR REACTION TO THIS

22   STATEMENT?

23 A. Certainly Congress and the FCC have established the statutory and regulatory

22

1   requirements in a manner designed to use entry into the long-distance market

2   as an incentive for ILECs such as BellSouth to do what is required in order to

3   achieve authorization to enter the long-distance market. This, however, does

4   not prevent BellSouth from seeking to interpret these requirements in a

5   manner that is inaccurate and self-serving in an effort to raise the costs of

6   competitive entry or to prevent it altogether. As I have demonstrated in

7   several contexts above, Dr. Taylor repeatedly ignores or misstates the current

8   requirements in an effort to persuade this Commission that BellSouth should

9   be entitled to pass through whatever it asserts are its incremental OSS costs,

10   with patent disregard for the extensive determinations by the FCC regarding

11   how these costs should be developed. While the application of these FCC

12   determinations was optional in previous proceedings, it is now required.

13

14   Q.   YOU PREVIOUSLY CITED TO A NUMBER OF PARAGRAPHS FROM

15   THE FCC'S *FIRST REPORT AND ORDER* WHICH DESCRIBE THE FCC

16   PRICING RULES FOR UNES. DOES THE APPLICATION OF THE FCC'S

17   TELRIC METHODOLOGY WHEN RESOLVING ISSUE 6b REQUIRE

18   UPDATES TO OTHER COMMISSION CONCLUSIONS FROM DOCKET

19   NOS. 960757-TP, 960833-TP, AND 960846-TP?

20   A.   Yes. When applying any forward-looking costing methodology, including the

21   FCC's TELRIC, it is necessary to ensure that the inputs and assumptions to

22   the cost study reflect forward-looking efficient values. If significant changes

23   occur in the values of these inputs and assumptions it is necessary to reflect

23

1   those values in the cost studies.

2   BellSouth's calculation of nonrecurring costs for UNEs illustrate this

3   point. BellSouth's assumptions regarding both the work tasks that must be

4   performed and time necessary to perform each task are a function, in part, of

5   its overall cost study assumption that existing network configurations,

6   engineering practices, and operational practices can be used to conduct a

7   forward looking cost study. Application of the FCC's TELRIC methodology

8   requires that these assumptions now be examined in the light of a different

9   standard. Work tasks that BellSouth may perform pursuant to its existing

10   engineering or operational practices cannot be included in its cost study if it

11   fails to demonstrate that such tasks would be undertaken by an efficient carrier

12   on a forward looking basis, if such a carrier were unconstrained by BellSouth's

13   past and current operations. Similarly, the time assumed for the completion of

14   such tasks must reflect the time required by an efficient carrier on a forward

15   looking basis, again unconstrained by BellSouth's past and current methods of

16   operation. In short, the reinstatement of the FCC's pricing rules based on its

17   TELRIC principles requires the Commission to ignore how BellSouth has

18   incurred these nonrecurring costs, and instead determine how BellSouth -- if

19   operating efficiently -- ought to incur these costs.

20

21 Q. IN YOUR DIRECT TESTIMONY, YOU STATED THAT CLECS MUST

22   BE ABLE TO EASILY AND RELIABLY ORDER UNES AND

23   COMBINATIONS OF THOSE UNES, INCLUDING THOSE THAT

24

1   INCLUDE LOCAL SWITCHING. MR. VARNER HAS RESPONDED

2   THAT BELLSOUTH HAS NO OBLIGATION TO PROVIDE UNES THAT

3   INCLUDE LOCAL SWITCHING. IS HE RIGHT?

4   A.   No. Mr. Varner's claim is apparently based on his *prediction* that when its

5   Rule 319 proceeding is complete, the FCC will have concluded that local

6   switching need not be offered as a UNE. Mr. Varner offers no basis for his

7   prediction, other than his observation that this is the position taken by

8   BellSouth in its Comments before the FCC. Fortunately, Mr. Varner's

9   predictions regarding the future outcome of FCC proceedings does not create

10   a binding requirement on this Commission (nor does it eliminate one). I could

11   personally predict that the FCC will find that all technically feasible UNEs

12   meet the requirements of the 1996 Act, but my doing so would not -- as Mr.

13   Varner's idle musings do not -- affect the task before the Commission in this

14   proceeding.

15   Mr. Varner goes on to make similar claims about BellSouth's

16   obligation to provide combinations of UNEs (FCC Rule 315(b)). In doing so,

17   Mr. Varner ignores the fact that the Supreme Court found that "in the absence

18   of Rule 315(b), however, incumbents could impose wasteful costs on even

19   those carriers who requested less than the whole network. It is well within the

20   bounds of the reasonable for the Commission to opt in favor of ensuring

21   against an anticompetitive practice," and that the Eighth Circuit court

22   reinstated this rule.

23   In order to provide some measure of support for these wholly

1   insupportable claims, Mr. Varner engages in what can only be characterized as

2   an attempt to mislead this Commission regarding the decision of the Supreme

3   Court. At page 30, he provides a quote which he says comes from the

4   "Supreme Court's January 25, 1999 decision." A careful review of that

5   opinion, however, reveals that the quote provided by Mr. Varner does not

6   appear in the Supreme Court's decision. Justice Scalia delivered the Opinion

7   of the Court, but Mr. Varner's quote actually comes from the opinion of

8   Justice Breyer, *concurring in part and dissenting in part* with the Court's

9   opinion. I would like to be clear that I, like Mr. Varner, am not an attorney. It

10   is my understanding, however, that the law of the land is the Opinion of the

11   Court, not a concurrence and certainly not a dissent. In other words, it is the

12   Opinion of the Court, in this case written by Justice Scalia, that is binding.

13

14   Q.   MR. VARNER GOES ON TO ARGUE THAT BELLSOUTH IS NOT

15   OBLIGATED TO PROVIDE EXTENDED LOOPS TO ITC^DELTACOM.

16   DO HIS ARGUMENTS HAVE MERIT?

17   A.   No. BellSouth's position on this issue is simply an attempt to impose higher

18   costs on ITC^DeltaCom. As Mr. Hyde points out in his rebuttal testimony,

19   the use of extended loops allows ITC^DeltaCom to offer service without

20   establishing expensive collocation space in each BellSouth central office. If

21   BellSouth can somehow prevent ITC^DeltaCom from utilizing this more

22   efficient arrangement, it can create a barrier to entry: in order to provide

23   service to the customers served by a given BellSouth central office,

1   ITC^DeltaCom would be required to incur the expense of establishing a

2   collocation arrangement in that office. With extended loops, however,

3   ITC^DeltaCom could serve those same customers in a more timely and less

4   expensive way by utilizing a previously established collocation space.

5   BellSouth's arguments in support of its refusal to provide extended

6   loops are paper thin. First, it is not clear that BellSouth can refuse to provide

7   these facilities. An extended loop consists of an unbundled loop from the

8   retail customer to the serving central office, and a transport facility from the

9   serving central office to the central office in which ITC^DeltaCom has a

10   collocation space. If an extended loop is viewed as a UNE loop and UNE

11   transport, then the extended loops currently in use by ITC^DeltaCom are

12   without question "currently combined" and therefore -- pursuant to the

13   decision of the Supreme Court -- BellSouth must provide them in order to

14   comply with applicable law. If an extended loop is viewed as a UNE loop and

15   interoffice transport purchased from the access tariff, then BellSouth again has

16   no basis to refuse to provide this capability. ITC^DeltaCom has the right to

17   purchase both an unbundled loop and access transport from the applicable

18   BellSouth tariffs, pay BellSouth the tariffed rates, and utilize those capabilities

19   to provide service to a retail customer.

20   Second, Mr. Varner's claim that BellSouth never intended to provide

21   ITC^DeltaCom with extended loops appear disingenuous at best. As Mr.

22   Hyde points out, paragraph IV B14 of the existing interconnection agreement

23   between BellSouth and ITC^DeltaCom explicitly refers to an agreement for

27

1   good faith efforts by the parties to "mutually devise and implement" these

2   facilities. It is inescapable, therefore, that either (1) Mr. Varner's testimony

3   that BellSouth never intended to provide extended loops is inaccurate, or (2)

4   BellSouth never intended to comply with the provisions of its interconnection

5   agreement with ITC^DeltaCom.

6   Third, it is difficult to understand how BellSouth could have

7   "accidentally" provided ITC^DeltaCom with an extended loop. It is simply

8   beyond credibility, however, to believe that it then repeated this mistake 2500

9   times. A much more likely scenario is that BellSouth provided extended

10   loops to ITC^DeltaCom pursuant to the terms of the existing interconnection

11   agreement, but at some point realized that ITC^DeltaCom was effectively (and

12   reasonable efficiently) utilizing these facilities to provide service to retail

13   customers. In order to create an effective barrier to entry (and ultimately to

14   keep competitive entry a manageable levels), BellSouth decided to violate the

15   existing agreement and discontinue offering extended loops.

16   Fourth, Mr. Varner's claim that BellSouth "never intended" to provide

17   extended loops is inconsistent with BellSouth's recent actions in other states.

18   As recently as June 28, 1999, BellSouth produced a cost study showing the

19   cost for nine different kinds of extended loops.[7] Clearly, while BellSouth may

20   not favor the provision of extended loops because they permit CLECs to offer

---

[7] Georgia Public Service Commission Docket No. 10692-U, BellSouth Unbundled Network Element Combinations Cost Studies, dated 6/11/99 and updated 6/28/99.

1   service to customers in a reasonably efficient way, it nevertheless expects to

2   do so and has gone to the efforts to conduct a cost study of nine different

3   kinds of extended loops.

4

5   Q.   IN YOUR DIRECT TESTIMONY ADDRESSING ISSUE 6d, YOU

6   STATED THAT BELLSOUTH'S RATES FOR VIRTUAL COLLOCATION

7   (ADJUSTED TO REMOVE CERTAIN COSTS) SHOULD BE USED AS

8   INTERIM RATES FOR CAGELESS COLLOCATION UNTIL

9   BELLSOUTH PERFORMS A COST STUDY FOR CAGELESS

10   COLLOCATION THAT COMPLIES WITH THE APPLICABLE FCC

11   TELRIC COSTING PRINCIPLES. MR. VARNER ARGUES THAT

12   BELLSOUTH'S *PHYSICAL* COLLOCATION RATES SHOULD APPLY

13   TO A CAGELESS COLLOCATION ARRANGEMENT. IS HE RIGHT?

14   A.   No. There is apparently a fundamental misunderstanding by Mr. Varner

15   regarding the nature of a cageless collocation arrangement.

16

17   Q.   PLEASE DESCRIBE THE CHARACTERISTICS OF A CAGELESS

18   COLLOCATION ARRANGEMENT.

19   A.   The FCC describes cageless collocation in the Advanced Services Order as an

20   alternative collocation arrangement to physical collocation because it does not

21   require the use of a cage. This is not, however the only distinction the FCC

22   makes. As noted in the Advanced Services Order at ¶42, "caged collocation

23   space results in the inefficient use of the limited space in a LEC premises, and

1   we consider the efficient use of collocation space to be crucial to the

2   continued development of the competitive telecommunication market."" The

3   FCC proceeded to state that the "incumbent LECs must allow competitors to

4   collocate in any unused space in the incumbent LEC's premises, without

5   requiring the construction of a room, cage, or similar structure, and without

6   the creation of a separate entrance to the competitor's space." The FCC

7   further noted that "incumbent LEC's must permit competitors to have direct

8   access to their equipment." They also required at ¶43 that incumbent LECs

9   "make collocation space available in single-bay increments" to ensure that

10   competitors only have to purchase space sufficient for their needs.

11

12 Q. WHAT FORM OF COLLOCATION DOES A CAGELESS

13   ARRANGEMENT MOST CLOSELY RESEMBLE?

14 A. The FCC's description of cageless collocation mirrors the characteristics of a

15   virtual collocation arrangement. The exception is that under a virtual

16   collocation arrangement, the competing provider does not have physical

17   access to the incumbent LEC's premises and their equipment is under the

18   physical control of the incumbent LEC (including installation, maintenance

19   and repair responsibilities). From a costing perspective, however, the

20   characteristics of a virtual collocation arrangement are more applicable to a

21   cageless arrangement than are those of a physical collocation arrangement.

22   Like virtual collocation, cageless collocation involves a collocator's

23   equipment placed within the ILEC equipment lineups without using a

1   segregated area of the central office. In cageless collocation, however, the

2   collocator retains ownership of the collocated equipment. As a result, training

3   charges are unnecessary and maintenance costs are not incurred by BellSouth..

4   The only major difference between the costs associated with a virtual

5   arrangement and a cageless arrangement are those associated with installation,

6   maintenance and repair of the collocating carrier's equipment.

7   Until BellSouth produces, and the Commission adopts, the results of a

8   cost study for cageless collocation consistent with FCC's TELRIC pricing

9   rules, interim rates should be based on BellSouth's rates for virtual collocation

10   with appropriate adjustments to remove costs associated with installation,

11   maintenance and repair of ITC^DeltaCom's equipment.

12

13   Q.   MR. THIERRY ARGUES THAT THE FCC'S ADVANCED SERVICES

14   ORDER DOES NOT ADOPT SPECIFIC PROVISIONING INTERVALS

15   FOR THE NEW COLLOCATION ARRANGEMENTS. DOES THE FCC

16   IMPOSE ANY REQUIREMENTS ON INCUMBENT LECS THAT WOULD

17   ACCELERATE PROVISIONING OF THE NEW COLLOCATION

18   ARRANGEMENTS?

19   A.   Yes. The FCC at ¶40 of the Advanced Services Order requires "incumbent

20   LECs to make each of the new arrangements outlined below available to

21   competitors as soon as possible, *without* waiting until a competing carrier

22   requests a particular arrangement, so that competitors will have a variety of

23   collocation options from which to choose" (emphasis added). The FCC went

31

1   on to say that the parties can agree to different terms and conditions than

2   required in the Order through voluntary negotiation. Given the requirement

3   by the FCC that BellSouth take a proactive approach to making these new

4   forms of collocation available to competitors, the time frame required to

5   provision a new arrangement once requested *must* be less than would

6   otherwise be required. ITC^DeltaCom requests that the interval for

7   provisioning a cageless arrangement from the time of request be 30 days.

8   BellSouth's proposal that the interval be a maximum of 90 business

9   days under normal conditions and 130 business days under extraordinary

10   conditions is simply unreasonable for at least two reasons. First, it completely

11   fails to consider the FCC's requirement in the Advance Services Order that

12   BellSouth take proactive efforts to identify such space so that no provisioning

13   delay will be necessary when a CLEC such as ITC^DeltaCom makes a request

14   for cageless collocation. Second, BellSouth's proposed provisioning interval

15   fails to reflect the fact that the interval that should be significantly shorter for

16   cageless collocation than for walled or caged collocation. In a cageless

17   arrangement, BellSouth will not need to determine if room exists within its

18   central office for the construction of a physically separated space, design the

19   enclosure, or have it constructed. Since competitors will occupy space in

20   existing climate-controlled areas in existing equipment line-ups, the total

21   provisioning time should be much shorter than for a traditional physical caged

22   arrangement.

23

1   Q.   IN YOUR DIRECT TESTIMONY ADDRESSING ISSUE 6c, YOU

2   STATED THAT BELLSOUTH SHOULD NOT BE PERMITTED TO

3   IMPOSE DISCONNECT COSTS ON ITC^DELTACOM THAT WILL

4   PERMIT IT TO RECOVER COSTS NOT ACTUALLY INCURRED OR TO

5   DOUBLE RECOVER ITS COSTS. HAS BELLSOUTH EFFECTIVELY

6   ADDRESSED THIS ISSUE IN ITS TESTIMONY?

7   A.   No. Mr. Varner merely asserts that "BellSouth incurs costs to disconnect

8   services" to CLECs such as ITC^DeltaCom. The issue in dispute between the

9   parties to the arbitration is not simply a question of whether such costs might

10   exist, but rather a question of in what circumstances (if any) are such costs

11   incurred, and will BellSouth's proposal for disconnection charges permit it to

12   double recover these costs? As I described in my direct testimony, it is not

13   appropriate for BellSouth to assess a disconnect charge if no physical

14   disconnect actually occurs, and BellSouth should not be permitted to recover

15   the same costs in both the connection and disconnection rates. BellSouth has

16   chosen not to address these issues.

17

18   Q.   ISSUE 6e RELATES TO THE IMPOSITION OF CHARGES BY

19   BELLSOUTH WHEN CONVERTING FROM A RESALE TO A UNE

20   PROVISIONING SCENARIO. HAS BELLSOUTH EFFECTIVELY

21   ADDRESSED THIS ISSUE IN ITS TESTIMONY?

22   A.   No. Mr. Varner argues that it is not necessary for the Commission to address

23   this issue in this proceeding because BellSouth has no statutory obligation to

33

1   provide combinations of UNEs. As described previously in my testimony,

2   Mr. Varner is wrong. The Supreme Court upheld the FCC rule requiring that

3   BellSouth provide such combinations of UNEs, and the Eighth Circuit court

4   subsequently reinstated the FCC rule. Resolution of this issue is certainly

5   timely given BellSouth's existing legal obligations.

6   The fact remains that when Mr. Varner's inaccurate characterizations

7   of the Supreme Court decision are set aside, BellSouth has not provided any

8   cost data to support its claim that such costs exist. Clearly, the imposition of

9   unnecessary charges for the conversion of a customer from resale-based to

10   UNE-based service will create an artificial barrier to the development of

11   facilities-based competition in Florida.

12

13   Q.   DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

14   A.   Yes, at this time.

1 BY MR. JONES (Continuing):

2   Q   Mr. Wood, have you prepared a summary of your

3 testimonies?

4   A   I have.

5   Q   Would you please provide that?

6   A   Yes, I will.

7   Good afternoon. I'm here to talk about several

8 issues that are extremely important to the ability of an

9 ALEC, in this case specifically ITC^DeltaCom, to offer

10 services throughout Florida to its target small business

11 and residence customers. And the first one I want to

12 talk about is what's referred to as cageless collocation,

13 sometime called physical cageless collocation.

14   One of the objectives of the 1996 Act was to

15 allow competitors to come into an area and provide

16 service without duplicating the incumbent LEC's

17 ubiquitous network. That's why we have provisions in the

18 Act for interconnection for UNEs.

19   One of the elements of those existing networks

20 that's probably going to remain for awhile is the

21 location, geographic location, of the central offices.

22 It's where the switching occurs. It's where lines are

23 aggregated.

24   Now, to keep the CLECs or the ALECs from having

25 to come in and put their own central office facilities

1 next door or adjacent to where the incumbents like

2 BellSouth are, the Act requires and the FCC has required

3 the capability for collocation. And that simply allows

4 an ALEC to put its facilities in the incumbent LEC's

5 central office.

6   And until recently we had two types of

7 collocation to deal with. The first is physical,

8 where -- and really physical enclosed collocation, for

9 clarity -- where BellSouth would have to go into a

10 central office. They'd have to identify some available

11 floor space, generally in a hundred or fifty-foot

12 increments. They would have to design an enclosure for

13 that space. They'd have to build or have someone build

14 the enclosure for that space. They'd have to take power

15 cables to that space. They'd have to take heating,

16 ventilating and air conditioning capability to that

17 space. It was a lot of work with an enclosed collocation

18 space.

19   The other kind that was available is what's

20 called virtual collocation. And that doesn't require any

21 of that buildout. It simply is the placement of an

22 ALEC's equipment, like DeltaCom, into the existing

23 equipment bays that are currently in the BellSouth

24 central office. You don't have to identify floor space.

25 You don't have to design closures; you don't have to

1 build; you don't have to bring in power and air

2 conditioning. You don't have to do any of those things.

3   Now, we've got a third option that the FCC

4 created earlier this year. And it's the one that's

5 referred to as cageless collocation. It allows an ALEC,

6 like DeltaCom, to come into a BellSouth central office

7 and place its own equipment in space that's available in

8 BellSouth equipment racks. In other words, it looks

9 functionally exactly like virtual collocation.

10   Now, there is a difference. And that is with

11 virtual collocation, the equipment is operated in

12 BellSouth network and it has maintenance responsibility

13 for that equipment. Under this cageless collocation

14 arrangement, DeltaCom would place the equipment in the

15 same arrangement as virtual, but it would retain the

16 maintenance responsibility for its own equipment. So,

17 BellSouth would avoid a little bit of cost there.

18   Now, what ITC^DeltaCom is asking for in this

19 arbitration is, first of all, we need cost based rates

20 for cageless collocation. BellSouth hasn't done a cost

21 study for cageless collocation.

22   What they're suggesting is that, well, you take

23 the rates from physical collocation. After all, cageless

24 collocation is sometimes called physical cageless

25 collocation. It just means DeltaCom owns the equipment.

1　　　　　That's really taking the label for this thing

2　and raising it to a level above the substance. The

3　substance of the arrangement is that it's virtually

4　identical from a cost standpoint to existing virtual

5　collocation. The only difference is the responsibility

6　for the maintenance of the equipment.

7　　　　　So, what we're asking you to do on an interim

8　basis, until such time as BellSouth provides an

9　appropriate cost study for cageless collocation, is to

10　take the virtual collocation rates as they exist and

11　adjust them for the maintenance expense, because under

12　virtual BellSouth incurred those expenses and charged for

13　them. Under cageless, they would not be responsible for

14　them, so we need to take that piece out.

15　　　　　But with only that change, we can carry forward

16　the virtual collocation rates on an interim basis until

17　we see a cost study.

18　　　　　Now, the second issue with regard to the

19　collocation is the provisioning interval, how long after

20　DeltaCom comes to BellSouth and asks for collocation does

21　BellSouth have to make that collocation space available.

22　BellSouth has said, well, our physical collocation time

23　is usually 90 to 130 days, so we'll just make it the same

24　for cageless.

25　　　　　Well, that 90 to 130 days involve space

1 identification, build-outs of enclosures, power, HVAC,

2 all those things that aren't necessary in a cageless

3 environment. All they need to do in this case is

4 identify the space in the existing equipment bays to make

5 the arrangement available. And the FCC order actually

6 requires them to do them proactively. They should not

7 wait for DeltaCom to come and ask -- or any other ALEC --

8 to come and ask about a given central office and whether

9 there is space available. BellSouth has the burden,

10 pursuant to FCC order, to assess what space is available

11 in its offices, so that when someone like DeltaCom comes

12 and asks for space, they'll know at that time if it's

13 available and can make it available to them without a

14 delay. And that's what we're asking for here.

15   The second broad category of issues relates to

16 UNE rates. I think there is general agreement that we've

17 got some existing rates that were based on the fact that

18 the FCC rules had been stayed at the time. I know

19 they're geographic deaveraging issues, UNE combination

20 costing issues, and that you're resolving a lot of those

21 or addressing a lot of those in a separate generic docket

22 and I don't want to reargue that here because you've

23 already got the appropriate forum to do that.

24   There are a couple of things that DeltaCom is

25 asking for. Since there is not currently an unbundled

loop UNE rate, BellSouth has provided a cost study. We are suggesting that on an interim basis, the results of that study be adopted with a couple of specific changes, because it's clear with the reinstatement of the FCC rules that some of those assumptions are certainly going to have to be changed. And we've only looked at a couple of those and made some slight changes to the inputs within their study.

All we're asking is that you adopt the rates with those changes on an interim basis until an analysis can be performed more broadly, more generically, of BellSouth cost study for unbundled loops.

I don't think these changes will get you all the way to compliance, full compliance, with FCC rules, but they are a clear and necessary step in the right direction. And if you set an interim rate on this basis, you'll have a rate that's much closer to the requirements than if you set an interim rate without making these two small adjustments that I'm proposing.

The next important issue that you've already heard some about is with regard to extended loops. In other words, it is the ability of an ALEC to come in and purchase local loop facilities and dedicated transport facilities in combination.

To clear up a misconception that came up

1 earlier today, you don't need to go to the FCC orders to

2 find the currently combines language. It's actually in

3 the rule. Rule 315(b), that there is agreement among the

4 parties that's in effect today, requires that BellSouth

5 provide those elements in combination when it currently

6 combines those elements in its network.

7   Well, there is certainly no doubt that

8 BellSouth currently combines local loops and transport

9 facilities in its network today to provide service to its

10 retail customers. It has tariffed today services called

11 private line, special access.

12   In order to provide those services, it

13 currently combines loop facilities and transport

14 facilities. There is absolutely no dispute about that.

15 They are required to provide those.

16   The ability for DeltaCom to receive those, as

17 you heard Mr. Hyde tell you, will allow DeltaCom to serve

18 much broader geographic areas than it would otherwise be

19 able to do and will allow it to go into areas that it

20 couldn't economically serve if it had to go collocate in

21 each of those end offices.

22   But I want to stress to you the importance from

23 a competitive standpoint of the extended loops. And I

24 hope you will agree with me on that, but what we're

25 actually asking you for is to require BellSouth to do

what they are legally required to do. And that is
provide those functionalities in combination because
BellSouth currently combines those functionalities in its
network; no dispute about that.

Final area is operation support systems, so
called OSS, order processing systems that BellSouth uses
to process orders, whether it be a retail customer or a
wholesale customer, in this case ITC^DeltaCom.

Obviously, if there is an up-front cost that is
higher than it should be, that's going to stifle
competition. Any time a new entrant tries to come into
an area and they've got to pay an up-front charge and
it's too high, that's going to affect their ability to
offer service.

The existing requirement pursuant to the FCC is
to treat OSS like any other unbundled network element.
They said that in the First Report and Order. They
affirmed that at least in the press release to the 319
Order that's forthcoming I guess any day now.

But OSS is to be treated as a UNE for costing
and pricing purposes. Same standard. And I think
Dr. Taylor agrees with me in his testimony that it's the
same standard to be applied.

What we're talking about is the cost of a
forward-looking order processing system that's operating

efficiently. We're not talking about incremental changes

to an imbedded system. In the same sense that if you're

going to cost UNE loops, you go out and you look at the

environment of loops to be costed. You don't try to

identify some small number of loops that might be

provided as UNEs and how they might be added to the

network. It's not how you do the loop study correctly

and it's not how you do an OSS study correctly.

There are a couple of elements of OSS costs and

rates. One is the use of the systems and one is the

development of the systems.

With regard to use, there's really an

incremental cost only if the order falls out of the

system and requires manual processing. What we're asking

you to do is to step away from the debate on fallout and

simply treat these two things differently. If an order

processes through the system, there's not an incremental

cost to BellSouth and there shouldn't be an incremental

rate.

If an order falls out, there's a manual

processing cost and there ought to be a manual processing

charge, but rather than take that manual processing

charge and spread it over all orders based on some

assumption, which is always hotly disputed about how

often the order falls out, just set up a rate structure

1 that says that if the order goes through, there is not an

2 incremental charge. If it falls out and if it's the

3 fault of the person submitting the order that it falls

4 out, BellSouth incurs more cost, and they ought to,

5 should be able to recover those costs, and you charge for

6 the manual processing, but you don't charge the manual

7 processing on orders, some portion of it on orders that

8 didn't fall out.

9 Really, the broader issue is with the

10 development of the systems. All local exchange companies

11 need fully functional OSS systems. In order for DeltaCom

12 to compete with BellSouth, it needs for BellSouth

13 to have fully functional OSS. In order for BellSouth to

14 compete with DeltaCom, it needs DeltaCom to have fully

15 functional OSS.

16 There has been some suggestion that these costs

17 are being caused by new entrants. And I think you get

18 that perception because we're starting today with an

19 incumbent LEC like BellSouth, with 100% percent of the

20 market and new entrants with essentially zero. If we had

21 started with two competitors that had roughly 50/50

22 market share and said, okay, now compete with each other,

23 it would be absolutely clear that each carrier needed

24 systems being provided by the other in order to obtain a

25 customer that's currently being served by the other

1 carrier. And it would be very clear that this is a

2 mutual benefit and a cost that each carrier should bear.

3 And that's ultimately what you ought to do.

4 Each carrier ought to have to develop its own OSS that

5 interconnects with other carriers and they ought to have

6 to pay for their own OSS.

7 Absent that, what the FCC rules absolutely

8 require you to do is to treat and cost OSS like any other

9 UNE. And BellSouth has provided in Ms. Caldwell's

10 testimony an OSS cost study, but it's done based on a

11 fundamentally different methodology than all their other

12 UNE studies. And when she did change the methodology,

13 she violates rules 51.505 and 51.511. It's completely

14 different methodology; it's completely in violation of

15 the rules.

16 If you're going to charge an explicit charge on

17 OSS development, the rules require that you treat OSS

18 like any other UNE. And that is that you consider total

19 capacity. And if BellSouth were to cost an OSS system

20 for retail and wholesale purposes to serve the total

21 quantity demanded, which is what's required by the FCC

22 rules, and to express that on a per unit basis based on

23 the total units for retail and wholesale, which is what

24 the rules require, then you would have an acceptable

25 costing and pricing process. You would have costs of an

1 efficient forward-looking integrated system spread over

2 all users of that system. That's a second best but

3 acceptable alternative.

4 But what explicitly cannot be done pursuant to

5 these rules, and shouldn't be done as a matter of policy,

6 is to allow BellSouth to come in and create this

7 stand-alone system and to charge it exclusively to CLECs

8 or to ALECs. That's purely an ability of current market

9 power.

10 BellSouth is in a market position because

11 DeltaCom needs that system to be able to impose its cost

12 on DeltaCom, but it doesn't work the other way around.

13 DeltaCom out to incur and recover its own costs.

14 BellSouth shouldn't be imposing its costs on DeltaCom; it

15 ought to be recovering it's own costs as well.

16 And that concludes my summary. Thank you.

17 MR. JONES: The witness is available for cross

18 examination.

19 COMMISSIONER CLARK: Mr. Goggin.

20 (Whereupon, the transcript is continued in

21 Volume 5 without omissions.)

22

23

24

25

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