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November 23, 1999

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

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

Dear Ms. Bayó:

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

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

Sincerely,

Bennett L. Ross
(tw)

Bennett L. Ross

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cc: All Parties of Record
Marshall M. Criser III
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

Petition for Arbitration of ITC^DeltaCom)
Communications, Inc. with BellSouth)
Telecommunications, Inc.)
Pursuant to the Telecommunications)
Act of 1996.)
_____)

Docket No. 990750-TP

Filed: November 23, 1999

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
BRIEF OF THE EVIDENCE**

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DOCUMENT NUMBER-DATE
14461 NOV 23 89
FPSC-RECORDS/REPORTING

TABLE OF CONTENTS

STATEMENT OF THE CASE.....1

STATEMENT OF BASIC POSITION.....2

STATEMENT OF POSITION ON THE ISSUES3

Issue 3(b): Pursuant to definition of parity agreed to by the parties, should BellSouth be required to provide the following: (1) Operational Support Systems (“OSS”); (2) UNEs; and (5) An unbundled loop using Integrated Digital Loop Carrier (“IDLC”) technology3

Issue 7: Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC^DeltaCom under the interconnection agreement previously approved by this Commission?9

Issue 8(a): Should BellSouth be required to provide to ITC^DeltaCom extended loops or the loop/port combination?12

Issue 8(b): If so, what should the rates be?.....12

Issue 23: Should BellSouth be required to pay reciprocal compensation to ITC^DeltaCom for all calls that are properly routed over local trunks, including calls to Internet Service Providers (“ISPs”)?15

Issue 24: What should be the rate for reciprocal compensation?23

Issue 36: Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed?28

Issue 38: What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth’s OSS?31

<u>Issue 39:</u>	What are the appropriate recurring and non-recurring rates and charges for: (a) two-wire ADSL/HDSL compatible loops; (b) four-wire ADSL/HDSL compatible loops; and (c) two-wire SL1 loops?	33
<u>Issue 40(a):</u>	Should BellSouth be required to provide: (1)two-wire SL2 loops, or (2)two-wire SL2 loop with Order Coordination for Specified Conversion Time	35
<u>Issue 40(b):</u>	If so, what are the appropriate recurring and non-recurring rates and charges?.....	35
<u>Issue 41:</u>	Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?	36
<u>Issue 42:</u>	What should be the appropriate recurring and nonrecurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket No. CC 98-147?.....	38
<u>Issue 48:</u>	Should language covering tax liability be included in the interconnection agreement, and if so, should that language simply state that each Party is responsible for its own tax liability?	40
<u>CONCLUSION</u>.....		40

STATEMENT OF THE CASE

The Telecommunications Act of 1996 (“1996 Act”) requires interconnection negotiations between local exchange companies and alternative local exchange carriers (“ALECs”). If the parties cannot reach a satisfactory resolution of their negotiations, they are entitled to seek arbitration of the unresolved issues by the appropriate state commission. 47 U.S.C. § 252(b)(1).

On July 1, 1997, ITC^DeltaCom Communications, Inc. (“DeltaCom”), and BellSouth Telecommunications, Inc. (“BellSouth”) entered into a two-year (2) interconnection agreement. That agreement expired on June 30, 1999. Although BellSouth and DeltaCom negotiated in good faith toward a new agreement, the parties were not able to agree on some issues. As a result, on June 11, 1999, DeltaCom filed a Petition for Arbitration, seeking the assistance of the Florida Public Service Commission (“Commission”). DeltaCom enumerated seventy-three (73) issues in its Petition for Arbitration. Prior to the Pre-Hearing Conference held on October 11, 1999, the parties were able to resolve a number of issues set forth in the Petition. Those resolved issues were closed for purposes of this Arbitration and were not included in the Pre-Hearing Order. At the Pre-Hearing Conference, upon motion of BellSouth, nine (9) issues were removed from consideration as reflected in the Commission’s October 25, 1999 Pre-Hearing Order.

The Hearing in this matter was held on October 27-29, 1999. At the Hearing, BellSouth submitted the direct and rebuttal testimony of the following witnesses: Alphonso J. Varner; D. Daonne Caldwell; W. Keith Milner; and Ronald M. Pate. BellSouth also presented the direct testimony of David P. Scollard as well as the rebuttal testimony of Dr. William E. Taylor. The Hearing produced a transcript of 1320 pages and 28 exhibits.

This Brief of the Evidence is submitted in accordance with the post-hearing procedures of Rule 28-106.307, Florida Administrative Code and the Order Establishing Procedure issued in

this docket on August 13, 1999. A summary of BellSouth's position on each issue to be resolved in this docket is set forth in the following pages and marked with a double asterisk.¹

STATEMENT OF BASIC POSITION

Each of the individually numbered issues in this docket represent a specific dispute between the parties as to what should be included in the parties' Interconnection Agreement. Some of these issues involve matters not properly within the scope of the 1996 Act and should, therefore, not be part of an arbitrated agreement. Other issues are more appropriately addressed in one of the generic proceedings currently underway in Florida. As to all other issues, BellSouth's positions are more consistent with the 1996 Act, rulings of the Federal Communications Commission ("FCC"), and previous orders of this Commission. Therefore, the Commission should adopt each of BellSouth's positions rather than those espoused by DeltaCom.

The issue of whether Internet Service Provider ("ISP") traffic should be subject to the payment of reciprocal compensation is a critical issue in this arbitration. In *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Feb. 26, 1999) (hereinafter "*ISP Declaratory Ruling*"), the FCC made clear that ISP-bound traffic is non-local interstate traffic. As a result, the Commission should decline to treat such traffic as if it were local for reciprocal compensation purposes and should defer to whatever inter-carrier compensation mechanism the FCC ultimately establishes. If the Commission is inclined to

¹ Since the hearings in this case, the parties have continued to attempt to reach agreement on the disputed issues. These attempts have been largely successful, as the following additional issues have been removed from the arbitration: Issue 3(a) (definition of parity); Issue 3(b) (access to numbering resources); Issue 5 (Regional Street Address Guide download); Issue 6 (advanced notice of business rule changes); Issue 11 (NXX testing); Issue 12 (loop cutover intervals); Issue 13 (order coordination); Issue 15 (designation of personnel); Issue 17 (maintenance of HDSL and ADSL compatible loops); Issue 20(a) (UNE conversion coordination); Issue 21 (local number portability cutover procedures); Issue 22 (definition of "order flow through"); Issue 29 (reconnection); Issue 34 (repair information); Issue 43 (resale conversions); and Issue 44 (meet-point billing arrangements). On November 19, 1999, the parties filed a joint motion notifying the Commission that these issues had been resolved.

adopt an interim compensation mechanism, it should a bill and keep type of arrangement, a revenue sharing arrangement, or a track and true-up arrangement as proposed by BellSouth. In no event should ISP-bound traffic be subject to the payment of reciprocal compensation.

The issue of tandem switching has previously been addressed by the Commission. Consistent with its prior decisions and applicable FCC rules, the Commission should find that DeltaCom is entitled to the tandem switching rate only in those circumstances when DeltaCom's switch performs the same functions and serves the same geographic area as BellSouth's tandem switch. Since DeltaCom has made no showing that it meets either of these criteria, the Commission should reject DeltaCom's attempt to obtain compensation for a tandem switching function it does not perform.

The issue concerning combinations of network elements and enhanced extended loops ("EELs") was largely resolved by the FCC's *Third Report and Order* in CC Docket 96-98 (Nov. 5, 1999). DeltaCom's expansive view of when BellSouth must make combinations of network elements available and its request for the EEL cannot be reconciled with the FCC's *Third Report and Order*, which this Commission is bound to follow. The FCC has initiated a rulemaking related to the arbitrage of special access, during the pendency of which DeltaCom should be prohibited from engaging in such arbitrage.

STATEMENT OF POSITION ON THE ISSUES

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

(1) Operational Support Systems ("OSS")

****Position:** BellSouth provides all ALECs, including DeltaCom, with nondiscriminatory access to its OSS through electronic and manual interfaces.

(2) UNEs

****Position:** BellSouth provides all ALECs, including DeltaCom, with nondiscriminatory access to UNEs as required by the 1996 Act and the FCC's rules.

It is not clear what relief DeltaCom is seeking under this issue that is not already subsumed under other issues. *See generally* Issue 2(b)(ii) (UNEs - elements offered); Issue 2(b)(iii) (combinations of UNEs); Issue 6(a) (rates and charges for OSS). Indeed, DeltaCom devoted little, if any, testimony to Issue 3, other than the definition of "parity" – a definition upon which the parties have now reached agreement. There is no dispute that BellSouth must provide nondiscriminatory access to OSS and unbundled network elements, and the record amply demonstrates that BellSouth is doing so.

BellSouth currently provides ALECS with nondiscriminatory electronic interfaces to access BellSouth's OSS, including: the Local Exchange Navigation System and the Telecommunications Access Gateway for pre-ordering, ordering, and provisioning; Electronic Data Interexchange for ordering and provisioning; Trouble Analysis and Facilities Interface for maintenance and repair; Electronic Communications Trouble Administration for maintenance and repair; and Optional Daily Usage File, Enhanced Optional Daily Usage File, and Access Optional Daily Usage File for billing. BellSouth also offers ALECs manual interfaces to its OSS. These interfaces allow ALECs to perform pre-ordering, ordering, provisioning, maintenance and repair, and billing functions for resale service in substantially the same time and manner as BellSouth does for itself, and, in the case of unbundled network elements, provide a reasonable competitor with a meaningful opportunity to compete, which is all that is required. *Pate, Tr. at 1074-75.*²

² That ALECs have nondiscriminatory access to BellSouth's OSS is illustrated by TAFI, BellSouth's maintenance and repair interface. The TAFI interface used by ALECs such as DeltaCom is the same maintenance and trouble repair system used by BellSouth's own retail representatives for non-designed services, except that the ALEC TAFI combines functionality for both residential and business services, while BellSouth must use separate TAFI interfaces for its residential and business retail units. *Pate, Tr. at 1096.*

DeltaCom's claim that BellSouth's OSS "does not work," Rozycki, Tr. at 109-111, is belied by the facts. As BellSouth witness Pate explained, BellSouth has continued to enhance its OSS, and ALECs' use of these systems has grown exponentially. Between 1998 and 1999, the number of ALEC orders increased by 23 percent, including an increase of 108 percent in the use of the electronic ordering interface that is used by DeltaCom. The flow through rate for these interfaces has exceeded 90 percent. Pate, Tr. at 1102. The ALEC industry has made good use of BellSouth's OSS, and DeltaCom should be able to do likewise.³

With respect to nondiscriminatory access to UNEs, the only specific issue raised by DeltaCom concerns the unbundling of loops served by Integrated Digital Loop Carrier systems, which is discussed below. Although DeltaCom also offers anecdotal "evidence" about alleged difficulties with unbundled loops provisioned by BellSouth, such evidence does not, by itself, mean that BellSouth has failed to provide nondiscriminatory access to UNEs. *See In re: Application of BellSouth Corp., et al., For Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, ¶ 200 (Oct. 13, 1998). Furthermore, in reviewing this "evidence," it is clear that a number of cases merely involved slight problems in completing the order. For example, in the only Florida order cited by DeltaCom, there was a minor delay while both BellSouth and DeltaCom ran tests to identify a jack problem, although the order was completed on the due date. Milner, Tr. at 1239-40. In other instances, DeltaCom's orders could

³ Although DeltaCom complains that more than 50% of its orders submitted electronically "fall out" for manual handling, Hyde, Tr. at 352, that complaint must be put in proper perspective. First, DeltaCom has had difficulty submitting complete and accurate orders. Recent data reflects that nearly 6% of DeltaCom's orders are rejected due to "fatal errors" on the part of DeltaCom when placing the order, while approximately 40% contain other errors by DeltaCom or require clarification. Pate, Tr. at 1115. Second, DeltaCom markets complex business services to its customers -- orders for which are designed to fall out for manual handling using the same processes that BellSouth uses to handle the same orders for its retail customers. Thus, the fallout rate experienced by DeltaCom is not representative of the ALEC community as a whole. Pate, Tr. at 1116.

not be worked because of a lack of facilities. While these facility delays are regrettable, the lack of facilities impacts all end user customers in the same manner, whether they are end user customers of DeltaCom or BellSouth. Milner, Tr. at 1240. This is the essence of nondiscriminatory treatment.

(5) An unbundled loop using Integrated Digital Loop Carrier (“IDLC”) technology

****Position:** BellSouth provides all ALECs, including DeltaCom, with nondiscriminatory access to unbundled loops, including IDLC-delivered loops. BellSouth uses six technically feasible methods to unbundle IDLC-delivered loops. To the extent DeltaCom desires a loop with unique transmission parameters, it can utilize the Bona Fide Request process.

BellSouth provides access to all of its loops on an unbundled basis, including those loops served by Integrated Digital Loop Carrier (“IDLC”) technology. Currently, 28 percent of the loops in Florida are served utilizing IDLC. Milner, Tr. at 1235.

However, IDLC equipment involves the “integration” of loop facilities with switched facilities by eliminating equipment in the central office. When an ALEC such as DeltaCom wants to serve an end-user customer using its own switch and that end-user customer is currently served by BellSouth over IDLC equipment, the customer’s loop can no longer be “integrated” with the BellSouth switch. Thus, BellSouth must “disintegrate” a loop served by IDLC so that DeltaCom can connect the loop to its switch. Milner, Tr. at 1211-12.

BellSouth utilizes six technically feasible methods to unbundle an IDLC-delivered loop, including the use of: (1) copper facilities; (2) integrated network access systems; (3) “side-door” or hair-pin arrangements; (4) digital “side-door” arrangements; (5) next generation digital loop carrier facilities; and (6) non-intergrated or universal digital loop carrier (“DLC”) system. Milner, Tr. at 1233-34 & 1306. BellSouth utilizes all the technically feasible methods identified

by the FCC to unbundle an IDLC-delivered loop, and BellSouth is willing to consider any other technically feasible method proposed by DeltaCom. Hyde, Tr. at 415; Milner, Tr. at 1233.

DeltaCom insists that in unbundling an IDLC-delivered loop, BellSouth should be required to furnish “IDLC equivalency for all end users that are currently served by IDLC.” Hyde Tr. at 397. DeltaCom does not explain how this is to be done and even acknowledges the difficulty of the task. As DeltaCom witness Hyde explained: “What we want is something equivalent to the IDLC. Unfortunately, I’m not sure there is anything available easily at the moment. But that’s what we’re looking for, is equivalency.” Hyde, Tr. at 414-15.⁴

Most of the unbundling methods utilized by BellSouth apparently are acceptable to DeltaCom, although DeltaCom apparently seeks a prohibition against BellSouth unbundling an IDLC-delivered loop using the universal DLC method. Hyde, Tr. at 415. There is no legal basis for the Commission to grant DeltaCom such relief. First, the FCC identified non-integrated “loop carrier links,” which would include a universal DLC system, as one technically feasible method by which incumbents must unbundle IDLC-delivered loops. *First Report and Order*, Docket 96-38, ¶ 384, n.831 (quoting comments of MCI). Nothing in the FCC’s orders can be read to prohibit BellSouth from utilizing a technically feasible unbundling method.

Second, the Commission should decline DeltaCom’s invitation to micromanage BellSouth’s provisioning of network elements. In any given situation, BellSouth may not have the luxury of choosing between methods of unbundling an IDLC-delivered loop. For example,

⁴ While acknowledging that the IDLC unbundling issue is “very complex,” Hyde, Tr. at 414, Mr. Hyde attempts to gloss over such complexity by relying upon a 1998 verbal decision of the Tennessee Regulatory Authority (“TRA”) in its generic cost proceeding. Hyde, Tr. at 343-44. Mr. Hyde neglects to mention that the TRA subsequently granted reconsideration of this issue on April 20, 1999 and in its written order on reconsideration did not adopt any of the language cited by Mr. Hyde. *In re: Petition to Convene a Contested Case Proceeding to Establish Permanent Prices*, Docket No. 97-01262, at 22 (Nov. 3, 1999).

while DeltaCom espouses the virtues of the “side-door” arrangement and insists that it “should be mandated for more extensive use,” Hyde, Tr. at 381, certain switches in BellSouth’s network “cannot support” such an arrangement. Milner, Tr. at 1301-1302. In other switches, there is insufficient switch capacity to make a “side door” arrangement available, since it “takes away connections that could be used by other customers in that same switch.” Milner, Tr. at 1303.

The difficulties inherent in DeltaCom’s proposal are illustrated by the following example. Assume DeltaCom requests that BellSouth unbundle an IDLC-delivered loop to serve a particular business customer in Miami. Assume further that the only existing facilities available by which BellSouth can remove the loop from its switch and provide it to DeltaCom is through the use of spare capacity on a universal DLC system. Under DeltaCom’s proposal, BellSouth would be unable to unbundle the loop in this manner, but instead presumably would be required to build new facilities or add new equipment in order to accommodate DeltaCom. Requiring BellSouth to do so when an existing universal DLC system is available is unreasonable, unduly burdensome, and inconsistent with BellSouth’s obligations under the 1996 Act. It also would take longer for BellSouth to provision an unbundled loop by building new facilities or adding new equipment, which is ironic given DeltaCom’s complaints about provisioning intervals.

Third, DeltaCom’s claim that customers served by loops using universal DLC somehow receive inferior service is without merit. Thirteen percent of BellSouth’s loops in Florida utilize universal DLC, Milner, Tr. at 1235, and there has been no showing that these customers receive “inferior service.” Mr. Hyde agreed that universal DLC and IDLC are the “functional equivalent” for certain functions. Hyde, Tr. at 495. Mr. Hyde also agreed that BellSouth customers have no guarantees concerning the type of loop that will be used by BellSouth. Hyde, Tr. at 433-34.

While a universal DLC system does involve an additional analog to digital conversion that could potentially affect modem speed, the analog loops at issue in this arbitration are only required to support voice grade service and data at speeds up to 9.6 kbs. Although it may support higher speeds, it is not required to do so. As Mr. Milner explained, if a DeltaCom end-user requires specific transmission parameters that are not associated with a basic unbundled loop, DeltaCom may order a different type of loop that provides those parameters or may submit a bona fide request for a network element with those unique transmission parameters. Milner, Tr. at 1231. Thus, DeltaCom can achieve its desired technical requirements without hamstringing BellSouth in the manner in which it provisions unbundled loops. Accordingly, the Commission should deny DeltaCom's requested relief with respect to this issue.

Issue 7: Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC^DeltaCom under the interconnection agreement previously approved by this Commission?

****Position:** Until a new agreement is in effect, BellSouth will continue to comply with the expired interconnection agreement with DeltaCom. However, consistent with the 1996 Act and FCC rules, that expired agreement does not obligate BellSouth to combine network elements for DeltaCom or entitle DeltaCom to purchase combinations at cost-based rates.

Notwithstanding pages of pre-filed testimony and three days of hearings, the relief DeltaCom is seeking with respect to this issue remains unclear. By the plain terms of the parties' expired interconnection agreement, BellSouth and DeltaCom continue to operate under that agreement until a new interconnection agreement is in effect. As a result of this arbitration, the parties will have a new agreement that will reflect the Commission's decisions on all the remaining issues raised by DeltaCom, including those issues relating to unbundled network elements and network combinations. Once the Commission renders its decision on these issues, the question posed by this issue will be rendered moot.

DeltaCom apparently seeks to use this issue to try to persuade the Commission that it is entitled to purchase so-called “extended loops” or “EELs” under the parties’ expired interconnection agreement. Hyde, Tr. at 347. Although DeltaCom has asked this Commission to arbitrate the “extended loop” issue for purposes of DeltaCom’s new interconnection agreement, this arbitration is not the proper forum for DeltaCom to litigate rights under its expired agreement. If DeltaCom is aggrieved by any actions of BellSouth under the expired agreement, DeltaCom’s proper remedy is to file a complaint with the Commission, which DeltaCom has not done.

However, even assuming the interpretation of the expired agreement is properly before the Commission under the guise of an arbitration, which is not the case, DeltaCom’s interpretation is flawed. BellSouth is under *no* obligation, either by contract, the 1996 Act, or the FCC’s Rules, to combine unbundled network elements with BellSouth’s retail services. The question of “extended loops” first arose when DeltaCom ordered channelized special access (a tariffed service), and then ordered unbundled loops to be terminated to the special access facility. BellSouth employees erroneously completed DeltaCom’s orders. By the time BellSouth discovered its mistake, BellSouth had already erroneously combined a number of loops with special access service for DeltaCom. Varner, Tr. at 761-62.⁵

To avoid a complete disruption of DeltaCom’s service (which would potentially affect DeltaCom’s end users), BellSouth reached an oral agreement with DeltaCom in April 1999 by which BellSouth would continue provisioning these “extended loops” to DeltaCom until such time as DeltaCom could establish collocation arrangements in the affected central offices.

⁵ The term “extended loop” or “EEL” is commonly understood to refer to a combination of an unbundled loop and unbundled transport. *See, e.g., Third Report and Order*, CC Docket 96-98, ¶ 474 (Nov. 5, 1999). However, the combination at issue here is a combination of an unbundled loop and a special access service.

Consistent with this agreement, DeltaCom submitted numerous collocation applications in May 1999 across BellSouth's region, and BellSouth is currently in the process of implementing DeltaCom's collocation orders. When these collocation arrangements are completed, BellSouth's provisioning of "extended loops" to DeltaCom will be curtailed, and existing "extended loops" will be converted to unbundled loops and unbundled dedicated transport, which BellSouth will deliver to DeltaCom's collocation space and which DeltaCom can combine in order to provide telecommunications services. Varner, Tr. at 762.

Nothing in DeltaCom's expired interconnection agreement entitles DeltaCom to purchase unbundled loops without collocation, which is the purpose of a so-called "EEL." Indeed, the expired agreement made clear that DeltaCom would access unbundled network elements solely through collocation. For example, Article IV.B.1 plainly states: "Interconnection shall be achieved via collocation arrangements DeltaCom shall maintain at a BellSouth wire center or other BellSouth network point." Furthermore, although DeltaCom had discretion in selecting the type of arrangement, the expired agreement *only obligated BellSouth to deliver an unbundled loop or port element "to the DeltaCom collocation arrangement."* Article IV.B.2 (emphasis added). *See also* Article IV.B.4 ("*DeltaCom shall access BellSouth's unbundled loops via collocation at the BellSouth wire center where those elements exist. Each loop or port shall be delivered to DeltaCom collocation by means of a cross connection.*") (emphasis added). BellSouth agreed to permit DeltaCom to place certain types of equipment in its collocation space for the express purpose of permitting DeltaCom to "interconnect[] to unbundled loop elements." Article IV.B.3 & IV.B.10. All of these provisions would be rendered superfluous if, as DeltaCom claims, it were contractually entitled to purchase unbundled loops without bothering to collocate in those offices.

DeltaCom's claim to "extended loops" hinges solely on Article IV.B.14, which obligated the parties to attempt "in good faith to mutually devise and implement a means to extend the unbundled loop sufficient to enable DeltaCom to use a collocation arrangement at one BellSouth location per LATA (e.g., tandem switch) to obtain access to the unbundled loop(s) at another such BellSouth location over BellSouth facilities." While this language contemplated that the parties would negotiate the terms and conditions of potential "extended loop" arrangements, such negotiations never took place. DeltaCom simply began ordering special access and unbundled loops terminated to the special access facility – orders that BellSouth erroneously completed. It is difficult to conceive how DeltaCom can rely upon this provision under such circumstances.⁶

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

****Position:** DeltaCom should be entitled to purchase extended loops and loop-port combinations to the extent permitted by and consistent with the FCC's *Third Report and Order*, CC Docket 96-98 (Nov. 5, 1999).

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

****Position:** For those combinations of elements that are currently combined in BellSouth's network, DeltaCom should be entitled to purchase such combinations at unbundled network element prices. Those prices should be established by this Commission in its UNE pricing docket (Docket No. 990649-TP) rather than in this arbitration.

The issue concerning extended loops and loop-port combinations was largely resolved as a result of the FCC's *Third Report and Order* in CC Docket 96-98 (Nov. 5, 1999). The FCC confirmed that BellSouth presently has no obligation to combine network elements for ALECs

⁶ DeltaCom has represented that it needs EELs in order to serve rural areas in Florida. Hyde, Tr. at 452. DeltaCom made a similar claim in South Carolina, where DeltaCom has approximately 1,000 EELs in place. However, the South Carolina Commission rejected DeltaCom's claim, finding that "... there is no evidence that ITC^DeltaCom is making any serious attempt to serve rural customers today." Order No. 1999-690, *In re: Petition of ITC^DeltaCom Communications for Arbitration with BellSouth Telecommunications, Inc.*, Docket No. 1999-259-C, at 34 (Oct. 4, 1999) ("*South Carolina Order*").

such as DeltaCom, when those elements are not currently combined in BellSouth's network. The FCC rules, 51.315(c)-(f), that purported to require incumbents to combine unbundled network elements were vacated by the Eighth Circuit Court of Appeals and were not appealed to or reinstated by the Supreme Court. The question of whether those rules should be reinstated is pending before the Eighth Circuit, and the FCC declined to revisit those rules at this time. *Third Report and Order*, ¶ 481.

The FCC also confirmed that when unbundled network elements, as defined by the FCC, are currently combined in BellSouth's network, BellSouth cannot separate those elements except upon request. 47 C.F.R. § 51.315(b). For example, when a loop and a port (at least for certain customers with fewer than four access lines) are currently combined by BellSouth to serve a particular customer, that combination of elements must be made available to ALECs, such as DeltaCom. According to the FCC, requesting carriers are entitled to obtain such combinations "at unbundled network element prices." *Id.* at ¶ 480. This Commission is establishing prices for unbundled network elements in Docket No. 990649-TP. Under the circumstances, it is not clear what additional relief DeltaCom is seeking from this Commission with respect to this issue.⁷

To the extent DeltaCom wants this Commission to adopt an expansive view of "currently combined" so as to obligate BellSouth to combine elements for DeltaCom, the Commission should reject DeltaCom's request. As the FCC made clear in its *Third Report and Order*, Rule 51.315(b) applies to elements that are "in fact" combined. *See id.* ¶ 480 ("To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule

⁷ In response to questions from the Commission Staff, DeltaCom witness Hyde testified that there was really only one combination "in dispute" – the extended loop – and that for purposes of the new interconnection agreement DeltaCom "is more than willing to limit it to the extended loop." Hyde, Tr. at 483. Thus, the combination issue is much narrower than DeltaCom's arbitration petition and prefiled testimony suggests.

51.315(b) require the incumbent to provide such elements to requesting carriers in combined form”). The FCC declined to adopt the definition of “currently combined,” which is espoused by DeltaCom, that would include all elements “ordinarily combined” in the incumbent’s network. *Id.* (declining to “interpret rule 51.315(b) as requiring incumbents to combine unbundled network elements that are ‘ordinarily combined’ ...”). Thus, DeltaCom’s view that BellSouth should be required to provide combinations anywhere, even for customers not currently served by BellSouth, cannot be reconciled with the FCC’s *Third Report and Order*.

Likewise, to the extent DeltaCom wants this Commission to define an EEL as a separate unbundled network element that BellSouth must provide, the Commission should reject this request as well. In its *Third Report and Order*, the FCC expressly declined “to define the EEL as a separate network element in this Order. As discussed above, the Eighth Circuit is currently reviewing whether rules 51.315(c)– (f) should be reinstated. We see no reason to decide now whether the EEL should be a separate network element, in light of the Eighth Circuit’s review of those rules.” *Third Report and Order*, ¶ 478. Accordingly, except to the extent there may be currently combined elements in BellSouth’s network that comprise an EEL, BellSouth currently has no legal obligation to provide DeltaCom with the EEL.

Furthermore, even if there are circumstances where DeltaCom has purchased currently combined elements that may comprise the EEL, it is unclear whether DeltaCom can convert the special access to unbundled elements prior to completion of the FCC’s Further Notice of Proposed Rulemaking. The FCC noted the possibility of arbitrage in allowing an ALEC to convert special access to UNEs. *Third Report and Order*, ¶ 489. Accordingly, the FCC issued a notice of proposed rulemaking to The rulemaking will address the concern “that allowing requesting carriers to obtain combinations of loop and transport unbundled network elements

based on forward-looking cost would provide opportunities for arbitrage of special access services.” *Third Report and Order*, ¶ 494. In the interim, this Commission should prohibit DeltaCom from engaging in such arbitrage.

Issue 23: Should BellSouth be required to pay reciprocal compensation to ITC^DeltaCom for all calls that are properly routed over local trunks, including calls to Internet Service Providers (“ISPs”)?

****Position:** Because ISP-bound traffic is interstate traffic, the Commission should defer to the inter-carrier compensation mechanism established by the FCC for such traffic. While BellSouth has proposed several interim compensation mechanisms that the Commission could adopt, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.

No serious dispute exists that ISP-bound traffic is “non-local interstate traffic.” *Declaratory Ruling*, ¶ 26, n.87. This Commission should decline to require the payment of reciprocal compensation for ISP-bound traffic, since “reciprocal compensation obligations should apply only to traffic that originates and terminates within a local calling area” *First Report and Order*, CC Docket 96-98, ¶¶ 1034-35 (Aug. 8, 1996). This is result reached by the South Carolina Public Service Commission, which recently held in an arbitration involving DeltaCom that reciprocal compensation is not an appropriate compensation mechanism for ISP-bound traffic. *South Carolina Order*, at 64 (“Further, since Section 251 of the 1996 Act requires that reciprocal compensation be paid for local traffic, the Commission further finds that the 1996 Act imposes no obligation on parties to pay reciprocal compensation for ISP-bound traffic”).

Indeed, because the FCC intends to establish an inter-carrier compensation mechanism for ISP-bound traffic, there is no requirement that this Commission establish an interim compensation arrangement at this time. However, to the extent the Commission decides to do so, the Commission should select one of the interim mechanisms proposed by BellSouth. These include: (1) bill and keep; (2) tracking and holding any compensation in abeyance pending the

establishment of an inter-carrier compensation mechanism by the FCC; or (3) the establishment of a compensation arrangement similar to that which exists for other access traffic. Any of these three interim inter-carrier compensation mechanisms would be consistent with the 1996 Act and applicable FCC rules. The same cannot be said about DeltaCom's proposal that reciprocal compensation be paid for ISP-bound traffic.⁸

1. Reciprocal Compensation Is Not An Appropriate Cost Recovery Mechanism for ISP-Bound Traffic.

Although both parties agree that there are costs associated with calls by BellSouth end users to ISPs served by DeltaCom, the question before this Commission is what is the appropriate mechanism to allow DeltaCom to recover such costs. Rozycki, Tr. at 79; Varner, Tr. at 727. Notwithstanding DeltaCom's claims to the contrary, reciprocal compensation is not an appropriate cost recovery mechanism, interim or otherwise.

By its very nature, reciprocal compensation is a *cost-based mechanism* designed to provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination" of local traffic. 47 U.S.C. § 251(b)(5). Reciprocal compensation rates should compensate a carrier for the forward-looking costs it incurs. Even DeltaCom recognizes that reciprocal compensation, as provided for in Sections 251(b)(5) and 252(d)(2) of the 1996 Act, is a cost recovery mechanism. Rozycki, Tr. at 147.

Nevertheless, while insisting that reciprocal compensation will allow it to recover its cost of handling ISP-bound traffic, DeltaCom has never determined what its costs are. Rozycki, Tr. at

⁸ Because ISP-bound traffic is "non-local interstate traffic" not governed by the reciprocal compensation requirements of Section 251(b)(5) of the 1996 Act or the FCC's rules, *Declaratory Ruling*, ¶ 26, n.87, BellSouth submits that the establishment of an inter-carrier compensation mechanism for ISP-bound traffic is not properly the subject of arbitration under the 1996 Act. Although the FCC purported to empower state commissions to regulate ISP-bound traffic in the context of Section 252 arbitration, the FCC's authority to do so is being challenged in court. *See Bell Atlantic Telephone Companies, et al. v. FCC*, Action No. 99-1094 (D.C. Cir. March 8, 1999).

147 & 171.⁹ Without cost studies or some determination of DeltaCom's costs in handling ISP-bound traffic, it is entirely possible that the payment of reciprocal compensation for ISP-bound traffic would result in a windfall to DeltaCom, as Mr. Rozycki was forced to admit. Rozycki, Tr. at 148-150. The potential for a windfall from the payment of reciprocal compensation is very real, which explains why ALECs "have established arrangements that are designed for nothing more than to generate reciprocal compensation revenues." Varner, Tr. at 846.

DeltaCom tries to overcome its failure to prove that it would only recover its costs if reciprocal compensation were paid for ISP-bound traffic by contending that DeltaCom can rely upon BellSouth's costs without developing a cost study of its own. Rozycki, Tr. at 148. This argument fails for two reasons. First, BellSouth has not studied the costs associated with ISP-bound traffic. BellSouth's cost studies, which were used by this Commission to establish reciprocal compensation rates, examined the costs of transporting and terminating voice traffic, not the costs of handling ISP-bound traffic. The distinction is important because ISP-bound traffic has, on average, significantly longer hold times than traditional voice traffic. *Report of the NARUC Internet Working Group, Pricing and Policies for Internet Traffic on the Public Switched Network*, at 2 (March 1998); Atai and Gordon, *Impacts of Internet Traffic on LEC Networks and Switching Systems*, at 3-4 (Bellcore 1996). These longer hold times make ISP-bound traffic a different animal in terms of cost than traditional local voice traffic, and the reciprocal compensation rates currently in place do not account for those cost differences.

Because of the longer hold times for ISP calls, the payment of reciprocal compensation for ISP-traffic based upon rates for transporting and terminating local voice traffic will result in an

⁹ On cross-examination, DeltaCom witness Rozycki was specifically asked the following: "Do you know what DeltaCom's costs are for handling ISP-bound calls to its network?" Mr. Rozycki's responded: "We have *not* done a cost study so we do not know the precise costs." Rozycki, Tr. at 147 (emphasis added).

over-recovery of call set up costs. Taylor, Tr. 924, 930-32. In its *Declaratory Ruling*, the FCC recognized that “efficient rates for inter-carrier compensation for ISP-bound traffic are not likely to be based entirely on minute-of-use pricing structures.” *Declaratory Ruling* ¶ 29. The FCC expressed concern that “pure minute-of-use pricing structures are not likely to reflect accurately how costs are incurred for delivering ISP-bound traffic.” *Id.* DeltaCom’s reciprocal compensation proposal cannot be reconciled with the FCC’s concerns.

Second, DeltaCom’s argument that FCC rules permit DeltaCom to use BellSouth’s costs as a proxy is a red herring. The rule upon DeltaCom relies -- 47 C.F.R. § 51.711 -- governs symmetrical reciprocal compensation rates for local traffic, not ISP-bound traffic. The FCC has made clear that these rules do not govern ISP-bound traffic, as Mr. Rozycki acknowledged. Rozycki, Tr. at 148-149; *see also Declaratory Ruling*, ¶ 26 n.87. As a result, the FCC’s rules do not and cannot excuse DeltaCom for failing to come forward with any evidence that reciprocal compensation for ISP-bound traffic would only allow DeltaCom to recover its costs rather than generating a windfall for DeltaCom at the expense of BellSouth customers.¹⁰

2. Reciprocal Compensation For ISP-Bound Traffic Is Bad Public Policy.

DeltaCom wants this Commission to focus solely on the effect on ISPs of a decision not to require the payment of reciprocal compensation for ISP-bound traffic. Rozycki, Tr. at 77-78. However, when considering the establishment of an interim inter-carrier compensation mechanism for ISP-bound traffic, the Commission should focus on the effect that mechanism

¹⁰ Although this Commission previously has ordered the payment of reciprocal compensation for ISP-bound traffic, it has done so in interpreting the terms of existing interconnection agreements. Here, the Commission is arbitrating a new interconnection agreement, and thus the Commission’s prior decisions interpreting existing agreements are inapplicable. The only arbitration involving BellSouth to date in which the Commission has addressed the reciprocal compensation issue was Docket 990149-TP. There, with the consent of the parties, the Commission directed MediaOne and BellSouth to treat ISP-bound traffic in the same manner as they had under their expired interconnection. There is no such consent in this case.

would have on the *overall* development of competition in Florida, rather than on only *one* segment of the market. DeltaCom and other ALECs should be encouraged to serve all markets segments, which does not occur when reciprocal compensation is paid for ISP-bound traffic.

A number of adverse consequences to competition will result from the payment of reciprocal compensation for ISP-bound traffic. Specifically, such payment harms competition by: (1) reducing ALECs' incentive to service residence and business end user customers; (2) further subsidizing ISPs; (3) encouraging uneconomic preferences for ALECs to serve ISPs due to the fact that ALECs can choose the customers they want to serve and ALECs could offer lower prices to ISPs without reducing the ALECs' net margin; (4) establishing unreasonable discrimination among providers (interexchange carriers versus ISPs); and (5) creating incentives to arbitrage the system, such as schemes designed solely to generate reciprocal compensation. Taylor, Tr. at 933-35; Varner, Tr. at 727-29. None of these results is desirable in Florida or anywhere else.

The market distortion caused by reciprocal compensation for ISP-bound traffic has been recognized by several State commissions. Most notably, the Commonwealth of Massachusetts Department of Telecommunications and Energy made the following findings of relevance here:

The unqualified payment of reciprocal compensation for ISP-bound traffic, implicit in our October Order's construing of the 1996 Act, does not promote real competition in telecommunications. Rather, it enriches competitive local exchange carriers, Internet service providers, and Internet users at the expense of telephone customers or shareholders. This is done under the guise of what purports to be competition, but is really just an unintended arbitrage opportunity derived from regulations that were designed to promote real competition.

Order, D.T.E. 97-116-C, p. 32 (May 19, 1999). The Massachusetts Commission saw through the veneer of the reciprocal compensation argument advanced by DeltaCom, and this Commission should do likewise.

3. Consistent With Cost Causation Principles, DeltaCom Should Recover The Costs Associated With ISP-Bound Traffic From ISPs, Not BellSouth.

In seeking reciprocal compensation for ISP-bound traffic, DeltaCom wants BellSouth to pay the cost of calls to the Internet rather than the ISPs whose customers generate such calls. DeltaCom's position violates basic principles of cost-causation, which dictate that the cost of ISP-bound traffic should be recovered from the ISPs DeltaCom serves, not BellSouth.

BellSouth and DeltaCom do not dispute the notion that costs should be borne by the cost causer. Rozycki, Tr. at 75; Taylor, Tr. at 925. The question becomes who is the cost causer when a call is placed to the Internet through an ISP. The logical answer to this question is that when an end user places a call to an ISP, that end user is acting as a customer of the *ISP*, much as when that end user places a long distance call as a customer of the interexchange carrier. Taylor, Tr. at 918-919. As Dr. Taylor noted, "the same subscriber that acts in the capacity of a customer of the originating ILEC when making a local voice call is seen to act in the capacity of a customer of the ISP when making an Internet call." Taylor, Tr. at 919-20. According to Dr. Taylor, "The economic principle here is straightforward. [T]he carrier whose customer originates the call, prices the service, and receives the money, ought to charge the full cost of that call to the customer...[A]nd...[it]ought to compensate out of the money that its got all carriers that have combined to incur costs to complete the call." Taylor, Tr. at 960. Thus, according to Dr. Taylor, the price the ISP charges ought to cover the full cost that the end user causes. *Id.*

Instead of attempting to rebut Dr. Taylor's opinions, DeltaCom merely laments its alleged inability to compete in the marketplace if it is required to recover the cost of ISP-bound traffic from its ISP customers. Rozycki, Tr. at 75-79 & 102-104. This claim ignores that the prices BellSouth charges its ISP customers do not reflect receipt of any reciprocal compensation, and it

is those prices against which DeltaCom is competing. Varner, Tr. at 898-899. Thus, DeltaCom should be able to charge its ISP customers for the costs associated with ISP-traffic, as BellSouth attempts to do, and still compete successfully for ISP customers.

A decision by this Commission not to award DeltaCom reciprocal compensation would *not* mean that DeltaCom would have uncompensated costs. Rather, the crucial point that DeltaCom attempts to gloss over is that “[t]he ALECs’ ISP customers compensate the ALECs for services that are provided just like an ILEC’s ISP customer compensates the ILEC.” Varner, Tr. at 728 (emphasis added). If DeltaCom does not recover its costs from the ISP it services, it is likely charging the ISP rates that are below cost. Furthermore, according to Mr. Varner, “paying DeltaCom reciprocal compensation for ISP-bound traffic would result in BellSouth’s end user customers subsidizing DeltaCom’s operations.” Varner, Tr. at 715-716. The subsidy stems from the fact that DeltaCom is the only party compensated in the two-carrier arrangement because DeltaCom receives revenue from its ISP customer, while BellSouth receives no compensation.

Consistent with principles of cost causation, BellSouth has proposed that the Commission direct the parties to implement a bill and keep mechanism for ISP-bound traffic pending the establishment of an inter-carrier compensation mechanism by the FCC. Under a bill-and-keep arrangement, neither of the two interconnecting carriers would charge the other for ISP-bound traffic that originates on the other carrier’s network. Varner, Tr. at 845-846. Instead, it would ensure that the parties recover their costs from the cost causer, namely the ISP.

4. Any Interim Inter-Carrier Compensation Mechanism Should Recognize That ISP-Bound Traffic Is Interstate In Nature And Will Be Regulated As Such By The FCC.

In its *Declaratory Ruling*, the FCC confirmed that ISP-bound traffic is not local, and ISP-bound traffic does not terminate at the ISP’s local server, but continues over the Internet to host

computers that may be located in another state or another nation. *Declaratory Ruling* ¶ 12. The FCC also made clear that ISPs are users of exchange access service. *Id.* ¶ 5. Rather than paying local carriers for their use of such exchange access service through the payment of access charges, as do interexchange carriers, however, ISPs pay for exchange access that is equal to the rate for local exchange service. *Id.* The FCC made clear that its decision to exempt ISPs from the payment of access charges does not change the nature of the service ISPs receive – it is exchange access service for which ISPs pay local exchange rates. *Id.* at ¶ 16.

Because ISPs use exchange access service, BellSouth also has proposed an interim inter-carrier compensation mechanism premised upon the revenue sharing arrangement that exists in the access world. The fact that the FCC has exempted enhanced service providers, including ISPs, from paying access charges and instead allowed them to purchase service out of the business exchange tariff is precisely the reason that a separate sharing plan is necessary. Unlike other access services, which are billed on a usage-sensitive basis, ISPs purchase flat rate basic business local exchange services. Only one carrier can bill the ISP, and the business exchange rate billed to the ISP is the only source of revenue to cover any of the costs incurred in provisioning access service to the ISP. *Varner, Tr.* at 718-19. Thus, a plan to share the access revenue paid by the ISP among all the carriers involved in handling the traffic is appropriate.

Because of the FCC's plans to establish an inter-carrier compensation mechanism of its own, the Commission may decline to establish the sharing plan proposed by BellSouth, particularly since it is likely to be preempted once the FCC rules. Under the circumstances, this Commission may decide simply to require that the parties track ISP-bound traffic originating on each parties' network on a going-forward basis. Once there is an effective order from the FCC establishing an inter-carrier compensation mechanism for ISP-bound traffic, the parties will "true-

up” any payments retroactively from the effective date of the interconnection agreement. Varner, Tr. at 784. See Order, *In re: Petition of Birch Telecom of Missouri, Inc.*, Case No. TD-98-278 (Mo. Pub. Service Comm’n April 16, 1999) (no reciprocal compensation for ISP-bound traffic, but requiring parties to track ISP traffic and “true up” once FCC rules).¹¹

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

****Position:** The appropriate reciprocal compensation rates are the rates for end office switching, tandem switching and common transport established in the Commission’s Order No. PSC-98-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP. If DeltaCom’s switch does not perform a tandem switching function, it should not be compensated as if it had.

This issue involves two questions: first, whether the Commission should adopt the reciprocal compensation rate proposed by DeltaCom, even though it does not comply with the pricing standards of the 1996 Act; and, second, whether the Commission should allow DeltaCom to recover reciprocal compensation for functions DeltaCom does not perform. BellSouth submits the answer to both questions is “no.”

In resolving the issues in this arbitration, the Commission must adhere to the standards set forth in the 1996 Act. Specifically, the 1996 Act requires that a state commission establish “just and reasonable” terms for reciprocal compensation, which means that rates must “provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination” of local traffic and that such rates be determined “on the basis of a reasonable approximation of the additional cost of terminating such calls.” 47 U.S.C. § 252(d)(2)(A).

The reciprocal compensation rate proposed by DeltaCom does not satisfy these standards. First, DeltaCom has made no showing that its proposed reciprocal compensation rate of \$.0045

¹¹ At least one state commission in BellSouth’s region has adopted a variation of this proposal. In *In re: Petition by ICG Telecom Group, Inc. for Arbitration*, Docket No. 27069 (Nov. 10, 1999), the Alabama Public Service Commission required BellSouth and ICG to pay reciprocal compensation for ISP-bound traffic pending a

per minute is “just and reasonable.” Indeed, DeltaCom arrived at this rate simply by taking the reciprocal compensation rate in its expired interconnection agreement (\$.009 per minute) and cutting it in half. Rozycki, Tr. at 92. DeltaCom can take no comfort in the fact that its expired interconnection agreement was approved by this Commission because the Commission did not, as DeltaCom alleges, determine that a reciprocal compensation rate of \$.009 per minute was “compliant with Sections 251 and 252 of the Act.” *Id.* Rather, because DeltaCom's prior interconnection agreement was a negotiated agreement, the Commission could approve the agreement so long as it was nondiscriminatory and not inconsistent “with the public interest, convenience, and necessity.” 47 U.S.C. § 252(e)(2)(A). The Commission was not required to, nor did it, determine whether the rates in the *voluntarily negotiated agreement* complied with the pricing standards of the 1996 Act; such a determination is only required in approving an *arbitrated agreement*. See 47 U.S.C. § 252(e)(2)(B).

Second, the Commission has already established “just and reasonable” reciprocal compensation rates. In its April 29, 1998 Order in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, the Commission established rates for the transport and termination of local traffic by BellSouth and certain other ALECs in Florida. DeltaCom has not explained any reason why those rates should not apply to it as well, particularly when DeltaCom has not presented a cost study or any other empirical basis to find that DeltaCom's costs of transporting and terminating local traffic are different than the costs determined in Docket Nos. 960757-TP, 960833-TP, and 960846-TP.

decision from the FCC. However, such payments are to be retroactively ‘trued-up’ to the level of inter-carrier compensation ultimately adopted by the FCC.” Order at 19.

The other aspect of this issue upon which the parties disagree is how the reciprocal compensation rate should be applied. DeltaCom is asking the Commission to compensate it for the cost of equipment it does not own and for tandem switching functions it does not perform. The Commission should reject this “money for nothing” proposal. Consistent with its prior rulings and applicable FCC rules, the Commission should determine that DeltaCom does not qualify for tandem switching and common transport because its network design does not perform these functions.

This Commission has addressed the tandem switching issue on at least two previous occasions and in both instances rejected the precise argument DeltaCom is asserting here. In the MCI arbitration, the Commission held: “We find that the Act does not intend for carriers such as MCI to be compensated for a function they do not perform. Even though MCI argues that its network performs ‘equivalent functionalities’ as Sprint in terminating a call, MCI has not proven that it actually deploys both tandem and end office switches in its network. If these functions are not actually performed, then there cannot be a cost and a charge associated with them. Upon consideration, we therefore conclude that MCI is not entitled to compensation for transport and tandem switching unless it actually performs each function.” Order No. PSC-97-0297-FOF-TP, Docket 962120-TP, at 10-11 (March 14, 1997). Likewise, in the MFS arbitration, the Commission noted that “[t]he evidence in the record does not support MFS’ position that its switch provides the transport element; and the Act does not contemplate that the compensation for transporting and terminating local traffic should be symmetrical when one party does not actually use the network facility for which it seeks compensation.” Order No. PSC-96-1532-FOF-TP, Docket No. 960838-TP, at 4 (Dec. 16, 1996).

The correctness of the Commission's reasoning is unaffected by reinstatement of FCC Rule 51.711(a)(3). That rule states: "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the LEC carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 CFR § 51.711(a)(3). However, tandem switching compensation requires not only that the ALEC switch serve the same geographic area, but also that the ALEC network "perform functions similar to those performed by an ILEC's tandem switch *First Report and Order*, CC Docket 96-98, ¶ 1090 (Aug. 6, 1996). As the FCC noted in adopting Rule 51.711:

We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (e.g., fiber ring or wireless networks) *perform functions similar to those performed by an incumbent LEC's tandem switch* and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch.

Id. Thus, DeltaCom must meet two requirements in order to be compensated at the tandem interconnection rate: (1) DeltaCom's network must perform functions similar to those performed by BellSouth's tandem switch; and (2) DeltaCom's switch must serve a geographic area comparable to BellSouth's. DeltaCom cannot meet either of these requirements.

First, DeltaCom's network does not perform functions similar to those performed by BellSouth's tandem switch. The FCC has defined "local tandem switching capability" as:

- (A) Trunk-connect facilities, which include, but are not limited to, the connection between trunk termination at a cross connect panel and switch trunk card;
- (B) The basic switch trunk function of connecting trunks to trunks; and
- (c) The functions that are centralized in tandem switches (as distinguished from separate end office switches), including but not limited, to call recording, the routing of calls to operator services, and signaling conversion features.

Third Report and Order, proposed Section 51.319(c)(2). While DeltaCom's switch may be *capable* of performing tandem switching functions when connected to end office switches, DeltaCom has presented no evidence that its switches actually perform such functions. For example, there is no evidence in this record that: (1) DeltaCom interconnects end offices or performs trunk-to-trunk switching; (2) DeltaCom switches BellSouth's traffic to another DeltaCom switch; or (3) DeltaCom's switch provides other centralization functions, namely call recording, routing of calls to operator services and signaling conversion for other switches, as BellSouth's tandems do and as required by the FCC's rules.

Second, even assuming DeltaCom's switch performed the same functions as BellSouth's tandem switch (which is not the case), there is no evidence in the record that DeltaCom's switch serves a geographic area comparable to BellSouth's. DeltaCom did not identify where the customers it serves in Florida are located – information that would be essential to support a finding that DeltaCom's switch serves a comparable geographic area. For example, assume DeltaCom serves fifty business customers in Miami, Florida, all of which are located in a single office complex located next door to DeltaCom's switch. Under no set of circumstances could DeltaCom seriously argue in such a case that its switch serves a comparable geographic area to BellSouth. See Decision 99-09-069, *In re: Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom*, Application 99-03-047, at 15-16 (Sept. 16, 1999) (finding “unpersuasive” MFS's showing that its switch served a comparable geographic area when many of MFS's ISP customers were actually collocated with MFS's switch).

To the extent DeltaCom seeks to be compensated at the tandem interconnection rate, it was incumbent upon DeltaCom to show that its network performs functions similar to those performed by BellSouth's tandem switch and that its switch serves a geographic area comparable

to BellSouth's. DeltaCom failed to make this showing, and the Commission should deny DeltaCom's request for relief on this issue.

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

****Position:** BellSouth is not required by the 1996 Act or FCC's rules to provide cageless collocation within 30 days. Because cageless collocation is a form of physical collocation, the maximum physical collocation intervals should apply; while there may be no enclosure construction, space preparation and network infrastructure work still may be necessary.

The parties do not disagree that a timeframe should be established for the provisioning of cageless collocation. The disagreement is whether the Commission should adopt BellSouth's intervals that are based on historical experience with provisioning other types of physical collocation consistent with prior orders of this Commission or whether it should adopt the arbitrary timeframes proposed by DeltaCom.

Consistent with FCC rules, BellSouth's physical collocation offering includes the option of cageless collocation. Milner, Tr. at 1243-46. However, while ordering incumbents to make cageless collocation available, the FCC declined to "adopt specific provisioning intervals at this time." *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket 98-147 ¶ 54 (March 31, 1999) ("*Advanced Services Order*"). As the FCC explained, "we have adopted several new collocation rules in this Order, and we do not yet have sufficient experience with the implementation of these new collocation arrangements to suggest timeframes for provisioning." *Id.* The FCC previously has cautioned that any performance standards, which would include collocation provisioning intervals, "should be grounded in historical experience to ensure that such standards are fair and reasonable." *In re: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, ¶ 125 (April 17, 1998).

The 30-day interval DeltaCom proposes for cageless collocation does not come close to meeting this requirement. DeltaCom has not submitted any data, study, or analysis concerning actual provisioning intervals that would allow this Commission to determine whether 30 days is a “fair and reasonable” amount of time for BellSouth to provision a cageless collocation. Wood, Tr. at 642. Indeed, DeltaCom did not even explain how its proposed timeframe was developed. Nor does DeltaCom explain how its proposed timeframe can be reconciled with the interim 60-day interval previously established by this Commission for provisioning virtual collocation. *See* Order No. PSC-99-0060-FOF-TP, issued January 6, 1999, in Docket No. 980800-TP.

The fact that BellSouth does not have to construct an enclosure does not affect the other work involved in establishing cageless collocation. For example, in order to provision the arrangement, BellSouth may have to complete space conditioning, add to or upgrade the heating, ventilation, and air conditioning system for the area, add to or upgrade the power plant capacity and power distribution mechanism, or build out network infrastructure components such as the number of cross connects requested. This collocation area and network infrastructure work must take place regardless of the type of physical collocation arrangement selected. Accordingly, BellSouth's provisioning interval of 90 calendar days in Florida is appropriately applied to either enclosed (caged) or unenclosed (cageless) physical collocation. Milner, Tr. at 1245-46.

While opining that thirty days “is actually very, very generous” and that the work involved in provisioning cageless collocation actually takes about “30 minutes,” DeltaCom witness Wood's opinions on this point are not credible. Wood, Tr. at 642 & 650. Mr. Wood acknowledged that he is not a network engineer and has never worked in or managed a central office. While Mr. Wood may be qualified to offer testimony as a “cost analyst,” and has done so 167 times, he is hardly qualified to opine about network provisioning issues. Woods, Tr. at 595 & 641.

Furthermore, Mr. Wood's testimony is premised upon the mistaken belief that BellSouth must "take proactive steps" to identify available space for cageless collocation. Wood, Tr. at 574. Although Mr. Wood gleans such a requirement from the FCC's *Advanced Services Order*, that is not what the order says. Rather, the FCC's *Advanced Services Order* requires BellSouth "to make each of the new arrangements outlined below available to competitors as soon as possible, without waiting until a competing carrier requests a particular arrangement, so that competitors will have a variety of collocation options from which to chose." *Advanced Services Order*, ¶ 40. BellSouth has complied with this requirement by making cageless collocation available as an option for ALECs without waiting for a specific request. However, nothing in the FCC's *Advanced Services Order* can reasonably be read to obligate BellSouth "know what they can make available if and when it's asked for," which is Mr. Woods' position. Wood, Tr. at 650.

Mr. Wood's view that BellSouth has all of the records at its disposal so it knows at any given time the location of every inch of unused space in every single one of its central offices in the State of Florida is pure fantasy. Wood, Tr. at 648-49. While BellSouth is conducting an inventory of available space that it intends to post on its web site, space available today in a BellSouth central office may be gone tomorrow in order to accommodate an ALEC's collocation request. As Mr. Milner explained, "floor plans are out of date the moment they're produced generally." Milner, Tr. at 1293-94.

DeltaCom seems to have lost sight of the fact that BellSouth has committed to using its best efforts to provision each and every physical collocation arrangement, including cageless collocation, *as soon as possible* within the three month interval prescribed by this Commission in

Order No. PSC-99-1744-PAA-TP.¹² Milner, Tr. at 1245. BellSouth's proposed provisioning intervals represent the maximum amount of time that should be required to provision a cageless collocation arrangement. In any given case where the work associated with most physical collocation arrangements is not actually required, such as preparing the space and adding to the existing power systems, the actual provisioning interval would be shorter. However, BellSouth's proposed provisioning intervals for cageless collocation are based upon historical experience in provisioning actual physical collocation, which cannot be said for DeltaCom's proposed interval.

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

****Position:** BellSouth is entitled to recover the reasonable costs it incurs in developing, providing, and maintaining the electronic interfaces by which ALECs access BellSouth's OSS. BellSouth has calculated these costs using the methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP.

DeltaCom insists that it should not have to pay for any cost associated with the electronic interfaces that BellSouth has developed to permit ALECs to have nondiscriminatory access to BellSouth's OSS. DeltaCom seeks to be excused from paying such costs because, according to DeltaCom, it did not cause these costs to be incurred. *See generally* Rozycki, Tr. at 62-63; Wood, Tr. at 525-28. DeltaCom's theory of OSS cost causation is misguided.

The conclusion that ALECs should bear the cost of OSS development was recently confirmed in *AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc.*, 20 F. Supp. 2d 1097 (E.D. Ky. 1998). In that case, AT&T challenged

¹² On September 7, 1999, the Commission issued its Notice of Proposed Agency Action in Docket Nos. 981834-TP and 990321-TP, which, among other things, established 60 and 90 days for provisioning virtual and physical collocation arrangements, respectively. While BellSouth generally supports the Commission's guidelines, BellSouth filed a protect/request for clarification to the extent these intervals are intended to include the time spent obtaining any needed permits or to extraordinary situations or conditions.

the decision of the Kentucky Public Service Commission that required ALECs, but not BellSouth, to pay the cost of the electronic interfaces. In rejecting AT&T's challenge, the district court held:

The FCC regulations only state that ILECs must cooperate with competitors and make available access to the OSS, but FCC regulations do not state that access to an ILEC's OSS must be subsidized by the ILEC. ... Because the electronic interfaces will only benefit the CLECs, the ILECs, like BellSouth, should not have to subsidize them. BellSouth has satisfied the nondiscrimination prong by providing access to network elements that is substantially equivalent to the access provided for itself. AT&T is the cost causer, and it should be the one bearing all the cost; and there is absolutely nothing discriminatory about this concept.

Id. at 1104 (emphasis added). The Court's reasoning is equally applicable here.

Mr. Wood's argument that reinstatement of the FCC's pricing rules require that the costs of OSS be borne by "all users, not just CLEC users" is flawed. Wood, Tr. at 563. As Mr. Wood acknowledged, there is no FCC rule that expressly mandates such a result. Wood, Tr. at 603.

Furthermore, Mr. Wood's proposal that OSS costs be shared by BellSouth and ALECs alike is equivalent to imposing a competitive neutrality requirement, which is not required under Section 252(d)(1). The pricing standards for unbundled network elements in Section 252(d)(1), which include OSS, do not mandate competitive neutrality. That is different from the pricing standard in Section 251(e)(2), which requires that the cost of number portability "be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. § 251(e)(2). The FCC has interpreted this language to mean "that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace." First Report and Order, CC Docket No. 95-116 ¶ 131 (July 2, 1996). However, as the FCC noted:

Ordinarily the Commission follows cost causation principles, under which the purchaser of a service would be required to pay at least the incremental cost incurred in providing that service. With respect to number portability, Congress has directed that we depart from cost causation principles if necessary in order to adopt a 'competitively neutral' standard, because number portability is a network

function that is required for a carrier to compete with the carrier that is already serving a customer. Depending on the technology used, to price number portability on a cost causative basis could defeat the purpose for which it was mandated. *We emphasize, however, that this statutory mandate constitute a rare exception to the general principle, long recognized by the Commission, that the cost-causer should pay for the cost that he or she incurs.*

Id. (emphasis added).

In this case, there is no “statutory mandate” that would create an exception to the principle that the cost causer should pay for the costs that he or she incurs. For the electronic interfaces developed solely for use by the ALECs, the ALECs caused those costs to be incurred. Accordingly, consistent with general principles of cost causation, ALECs, including DeltaCom, should pay these OSS costs. BellSouth has submitted studies documenting those OSS costs consistent with the cost methodology previously adopted by this Commission. Caldwell, Tr. at 986-98. The Commission should establish rates that allow BellSouth to recover these costs.¹³

Issue 39: What are the appropriate recurring and nonrecurring rates and charges for: (a) two-wire ADSL/HDSL compatible loops; (b) four-wire ADSL/HDSL compatible loops; and (c) two-wire SL1 loops,

****Position:** For two-wire ADSL and HDSL compatible loops and four-wire HDSL compatible loops, the appropriate rates are set forth in the Commission’s Order No. PSC-98-0604-FOF-TP. ADSL functionality is not applicable to four-wire loops. For two-wire SL1 loops, the Commission should establish rates based on BellSouth’s cost studies submitted in this proceeding.

This Commission approved cost-based rates for two-wire ADSL and HDSL compatible loops and four-wire HDSL compatible loops in Order No. PSC-98-0604-FOF-TP, Docket Nos. 960757-TP, 960833-TP, and 960846-TP. These recurring and nonrecurring rates, which comply

¹³ This Commission most recently considered the issue of OSS cost recovery in *In re: Petition by Telephone Company of Central Florida, Inc.*, Docket No. 981052-TP. In Order No. PSC-99-1013-FOF-TP entered in that case on May 20, 1999, the Commission reiterated its conclusion that “OSS costs, manual and electronic, may be recoverable costs incurred by BellSouth.” *Id.* at 6 (quoting Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, in Docket Nos. 960757-TP, 960833-TP, and 960846-TP). However, the Commission concluded that OSS cost recovery should be addressed in a generic proceeding rather than an individual arbitration. In the event the Commission reaches the same conclusion here, the Commission should require DeltaCom to pay whatever rates for OSS cost recovery the Commission may establish in its generic proceeding.

with Section 252(d) and applicable FCC rules, should apply to DeltaCom. Any other outcome would result in DeltaCom obtaining a competitive advantage over other ALECs in Florida.

BellSouth also has proposed recurring and nonrecurring rates for two-wire SL1 loops, which is a nondesigned circuit that would equate to “POTS like” service. Caldwell, Tr. at 989. BellSouth’s proposed rates are supported by cost studies developed by BellSouth consistent with the Commission’s methodology in Docket Nos. 960757-TP, 960833-TP, and 960846-TP and should be adopted by the Commission. Caldwell, Tr. at 990-997.

While BellSouth’s proposed recurring and nonrecurring rates are just and reasonable as required by the 1996 Act and applicable FCC rules and are fully supported by the evidence in the record, the same cannot be said about DeltaCom’s “proposed rates.” First, with respect to recurring rates, DeltaCom has not made any specific proposals whatsoever for two-wire ADSL and HDSL compatible loops and four-wire HDSL compatible loops. Although DeltaCom’s prehearing statement suggested that DeltaCom witness Wood would “cover this issue,” Prehearing Statement at 48, his testimony is devoid of any specific rates or suggested adjustments to BellSouth's recurring cost studies. While DeltaCom did make a proposal for SL1 loop recurring rates, DeltaCom’s proposal would result in rates “that are higher than what BellSouth is proposing.” Wood Depo. at 29-30.¹⁴

Second, with respect to nonrecurring rates for two-wire ADSL and HDSL compatible loops, four-wire HDSL compatible loops, and SL1 loops, DeltaCom witness Hyde proposed several adjustments to BellSouth's nonrecurring cost studies. Hyde, Tr. at 377. However, Mr.

¹⁴ When asked to explain this discrepancy at his deposition, Mr. Wood was unable to do so, except to “blame the lawyers.” Wood Depo. at 31. Mr. Wood attempted to correct this problem by submitting as a late-filed exhibit a new proposed recurring rate for an SL1 loop, although the exhibit does not explain how this rate was developed either.

Hyde's proposed adjustments are arbitrary and not supported by any empirical data or analysis. For example, Mr. Hyde proposes a 50% adjustment in additional work times to allegedly "reflect efficiencies of multiple loops on a single order." *Id.* However, BellSouth's cost studies already recognize such efficiencies and include the Commission-ordered adjustments to the work times in provisioning unbundled network elements. Caldwell, Tr. at 997. Mr. Hyde does not offer any justification for further reductions.

Similarly, Mr. Hyde advocates the removal of the dispatch time associated with BellSouth's ADSL and HDSL-compatible loops, contending that a dispatch is "unnecessary." Hyde, Tr. at 377. However, Mr. Hyde ignores that when DeltaCom purchases an ADSL or HDSL-compatible loop, BellSouth guarantees that the loop will support the service. In order to make such a guarantee, a dispatch is required so that BellSouth can test the loop to ensure that DeltaCom is "getting what it's paying for; and that is, a loop that meets the technical specifications for [xDSL] service." Milner, Tr. at 1269-1274. Mr. Hyde's attempt to eliminate work activities that are integral to the offering should be rejected.¹⁵

Issue 40(a): Should BellSouth be required to provide: (1) two-wire SL2 loops, or (2) two-wire SL2 loop with Order Coordination for Specified Conversion Time?

****Position:** BellSouth is willing to provide two-wire SL2 loops and a two-wire SL2 loop with Order Coordination for Specified Conversion Time to DeltaCom and other ALECs in Florida.

Issue 40(b): If so, what are the appropriate recurring and non-recurring rates and charges?

****Position:** Since it not previously established rates for these elements, the Commission should establish rates for two-wire SL2 loops and for a two-wire SL2 loop with Order Coordination for Specified Conversion Time based on BellSouth's cost studies submitted in this proceeding.

¹⁵ Although DeltaCom has asked this Commission to establish rates for a "four-wire ADSL compatible loop," there is no such thing. As BellSouth witness Varner explained, "ADSL functionality is not applicable to four-wire loops," and DeltaCom presented no evidence to the contrary. Varner, Tr. at 733.

BellSouth has agreed to provide DeltaCom with two-wire SL2 loops with or without Order Coordination for Specified Conversion Time. The SL2 facility is provided as a designed circuit and includes a test access point and is comparable to the unbundled loop currently offered to ALECs in Florida. Caldwell, Tr. at 989. The “order coordination for specified conversion time” allows DeltaCom to request a specific conversion time that BellSouth will make every effort to meet. Varner, Tr. at 735-36.

BellSouth has proposed rates for two-wire SL2 loops that are supported by cost studies developed by BellSouth consistent with the Commission’s methodology in Docket Nos. 960757-TP, 960833-TP, and 960846-TP. Caldwell, Tr. at 990-997. These rates should be adopted.

While BellSouth’s proposed recurring and nonrecurring rates for two-wire SL2 loops are just and reasonable as required by the 1996 Act and applicable FCC rules and are fully supported by the evidence in the record, the same cannot be said about DeltaCom’s proposed rates. DeltaCom did not submit proposed rates with its prefiled testimony and has yet to offer any explanation or justification for its newly discovered rate proposals that were included in a late-filed exhibit to Mr. Wood’s deposition. With respect to nonrecurring rates for SL2 loops, DeltaCom’s proposed adjustments are arbitrary, not supported by any empirical data or analysis, and ignore the work required in provisioning SL2 loops. The Commission should decline to adopt DeltaCom’s proposed adjustments to BellSouth’s costs studies without some evidence that these adjustments are appropriate – evidence that it totally lacking in this record.

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

****Position:** In those instances when BellSouth does not incur disconnection costs because there has been no disconnection, BellSouth will not charge DeltaCom. However, BellSouth is entitled to recover its costs incurred to disconnect services for DeltaCom and other ALECs.

DeltaCom complains about alleged “double counting of costs,” claiming that BellSouth does not incur disconnect costs when the circuit is not physically disconnected. Wood, Tr. at 537. While this may be partially true when BellSouth is the end-to-end provider of service, it is not true when an ALEC utilizes unbundled network elements to provide service. Even if no physical disconnection takes place, record changes would still need to be processed, for which there are costs. Furthermore, when an ALEC no longer wants to purchase an unbundled element from BellSouth, BellSouth must physically perform certain tasks, such as physically removing the unbundled loop from the cross-connects. These work activities are appropriately reflected in the disconnect costs calculated by BellSouth. Caldwell, Tr. at 1007.

DeltaCom’s claim that if an end user decides to change service providers, the connect and disconnect activities are “a single activity” is simply wrong. Wood, Tr. at 537-38. While the activities may take place at the same time, different transactions performed by different work groups are involved in connecting and disconnecting network elements. For example, assume the end user is a DeltaCom customer served by unbundled network elements purchased from BellSouth, including a loop and cross-connects. If this customer decides to return to BellSouth and DeltaCom relinquishes the facilities, then record changes would need to be made and cross-connects to DeltaCom’s collocation space would be removed. These activities are reflected in the disconnect cost DeltaCom would pay. Additional activities, the cost of which would be charged to the end user, would then need to be done to re-establish service, such as connecting the customer to BellSouth’s switch, testing and translations. Caldwell, Tr. at 1007-1008.

In short, disconnect charges would only apply if DeltaCom requests that BellSouth no longer provide a particular unbundled network element. If DeltaCom wants, for whatever reason, to retain an element purchased from BellSouth, no disconnect charges would be assessed

(although DeltaCom would still be responsible for the recurring charges associated with that unbundled element). A disconnect request causes BellSouth to incur costs due to the physical activities associated with disconnection, and BellSouth should be entitled to recover those costs.

Issue 42: What should be the appropriate recurring and nonrecurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket No. CC 98-147?

****Position:** The appropriate recurring and nonrecurring rates for the applicable elements of cageless and shared collocation are set forth in the Commission's Order No. PSC-98-0604-FOF-TP. The Commission also should adopt as an interim rate for card key security access to collocation space the rate in the Commission's Order No. PSC-98-0604-TP.

This Commission established rates for physical collocation in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, including rates for a collocation application, floor space, power, and cross-connects. Whether an ALEC wants caged collocation, cageless collocation, or shared collocation, an application is necessary, and a certain amount of square footage in the central office, a certain amount of power, and certain cross connects would be required. Commission-approved rates already exist for these services, and nothing in the FCC's *Advanced Services Order* requires that these rates be revisited. Varner, Tr. at 738. Obviously, to the extent an ALEC requests a cageless collocation arrangement that does not require space preparation and does not entail the construction of an enclosure, BellSouth would not charge the ALEC for these services.

DeltaCom insists that the physical collocation rates previously established by this Commission do not apply because, according to DeltaCom, "cageless collocation mirrors the characteristics of a virtual collocation arrangement." Wood, Tr. at 572. As a result, DeltaCom proposes that the Commission adopt cageless collocation rates based upon BellSouth's tariffed rates for virtual collocation with some unspecified adjustments. Wood, Tr. at 531. DeltaCom's proposal is misguided and its reliance upon virtual collocation rates is misplaced.

Notwithstanding DeltaCom witness Wood's testimony to the contrary, the FCC does not consider cageless collocation as an "alternative" to physical collocation. Wood, Tr. at 571. To the contrary, the FCC's rules define cageless collocation as a type of physical collocation. See 47 C.F.R. § 51.323(k) ("An incumbent LEC's physical collocation offering must include the following: ... (2) Cageless collocation ..."). Since cageless collocation is a type of physical collocation, it makes no sense to use virtual collocation rates as a proxy for cageless collocation.

Furthermore, Mr. Wood is simply wrong when he contends that, in a virtual collocation arrangement, "BellSouth owns the equipment and incurs the expense of maintaining it," while in a physical collocation arrangement DeltaCom "will own and maintain the equipment." Wood, Tr. at 532. As is evident from even a cursory review of Section 20 of BellSouth's FCC Tariff No. 1, the carrier purchasing virtual collocation "owns" the equipment, not BellSouth (although the carrier leases it to BellSouth "for the nominal sum of one dollar"). Exhibit 26. Likewise, the carrier purchasing virtual collocation incurs the expense of maintaining the equipment, not BellSouth. *Id.* Thus, virtual collocation rates are not a "proxy" for cageless physical collocation.

BellSouth also has proposed an interim rate for a keyless Security Access System in order to comply with the FCC's Advanced Services Order. This interim rate is based upon a rate approved by this Commission, and BellSouth proposes that this rate apply to DeltaCom as well until a Commission-compliant cost study can be completed. Varner, Tr. at 738. DeltaCom has not raised any objection to this interim rate or to the Commission establishing an interim rate for a keyless Security Access System.

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

****Position:** Because tax issues are not a topic that the parties are required to negotiate under Sections 251 or 252 of the 1996 Act, this issue is not appropriate for arbitration. In the event the Commission addresses the issue, the Commission should adopt BellSouth's language, which is fair and reasonable.

Sections 251 and 252 of the 1996 Act, which set forth the obligations of the parties in negotiating an interconnection agreement, do not obligate the parties to negotiate a tax liability provision. Thus, this issue is not properly the subject of arbitration under the 1996 Act.

Even if the Commission were inclined to consider this issue, DeltaCom's view that there is no need for language governing the parties respective tax liability under the interconnection agreement ignores that such language appears in numerous interconnection agreements approved by this Commission. A variety of taxes are imposed upon telecommunications carriers, both directly and indirectly. As would be expected, problems and disputes over the application and validity of these taxes will and do occur. The interconnection agreement should clearly define the respective rights and duties for each party in the handling of such tax issues so that they can be resolved fairly and quickly. BellSouth has proposed language for the interconnection agreement based upon BellSouth's experiences with tax matters and liability issues in connection with the parties' obligations under interconnection agreements. Varner, Tr. at 741. This language should be included in BellSouth's interconnection agreement with DeltaCom.

CONCLUSION

The Commission should adopt BellSouth's position on the remaining issues in dispute in this arbitration. BellSouth's position on these issues is reasonable and consistent with the 1996 Act, which cannot be said about the positions advocated by DeltaCom.

Respectfully submitted this 23rd day of November, 1999.

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

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