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ORIGINAL

December 28, 1999

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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. 991946-TP (ITC^DeltaCom Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to the Motion of ITC^DeltaCom Communications, Inc. to Consolidate Global NAPS and ITC^DeltaCom Complaints, which we ask that you file in the captioned docket.

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,

Michael P. Goggin (1K)  
Michael P. Goggin

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

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMJ \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- MAS 5 \_\_\_\_\_
- OPC \_\_\_\_\_
- RFR \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

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**CERTIFICATE OF SERVICE**  
**Docket No. 991946-TP**

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

U.S. Mail this 28th day of December, 1999 to the following:

Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6199

Nanette Edwards  
Senior Manager, Regulatory Attorney  
ITC^DeltaCom  
700 Boulevard South, Suite 101  
Huntsville, AL 35802  
Tel. No. (256) 650-3856  
Fax No. (256) 650-3936

  
Michael P. Goggin (KR)  
Michael P. Goggin

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: ) Docket No. 991946-TP  
)  
Complaint of ITC^DeltaCom Communications, )  
Inc. Against BellSouth Telecommunications, Inc. )  
For Breach of Interconnection Terms, and )  
Request for Immediate Relief )  
\_\_\_\_\_ ) Filed: December 28, 1999

ORIGINAL

**RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC TO  
MOTION OF ITC^DELTACOM COMMUNICATIONS, INC.  
TO CONSOLIDATE GLOBAL NAPs AND  
ITC^DELTACOM COMPLAINTS**

BellSouth Telecommunications, Inc. ("BellSouth") hereby opposes the motion of ITC^DeltaCom Communications, Inc. ("DeltaCom") to consolidate its newly-filed complaint demanding reciprocal compensation for non-local, ISP-bound traffic with a similar complaint filed last August by Global NAPs. DeltaCom's motion should be denied because the relevant facts to be decided in the DeltaCom case are different than those in the Global NAPs case and because it would be inefficient to delay the Global NAPs hearing to accommodate DeltaCom.

1. On December 17, 1999, DeltaCom filed a complaint alleging that under its agreement with BellSouth, the parties are obligated to pay reciprocal compensation not only for local traffic, but also for non-local ISP-bound traffic. ("DeltaCom Complaint"). DeltaCom's alleges that its interconnection agreement was entered into on March 12, 1997, and that, despite the plain language of the agreement, BellSouth and DeltaCom agreed to treat non-local ISP-bound traffic as local at the time they entered into the agreement. DeltaCom Complaint at 1,5.

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2. In August, 1999, Global NAPs filed a similar complaint, alleging that BellSouth and Global NAPs agreed to treat non-local ISP bound traffic as local for purposes of reciprocal compensation, despite the contrary, plain language of the agreement. See Dkt. No. 991267-TP. In the Global NAPs matter, each side has submitted direct and rebuttal testimony and prehearing statements. The hearing is scheduled for January 25, 2000, less than one month from now.

3. In this motion, DeltaCom asserts that its complaint should be consolidated with the Global NAPs complaint because the operative language in each agreement is the same. While it is true that the language concerning reciprocal compensation is the same in the DeltaCom agreement as the language in the Global NAPs agreement, according to DeltaCom, the plain language of the agreement is not dispositive. DeltaCom alleges that, in 1997 when it entered into an interconnection agreement with DeltaCom, BellSouth agreed, notwithstanding the language of the reciprocal compensation provision, to include non-local ISP-bound traffic in the definition of "local traffic" for purposes of reciprocal compensation. Complaint at 5, Paragraph 13.

4. In order to determine whether DeltaCom's allegations of what BellSouth and DeltaCom intended with respect to non-local ISP-bound traffic are true, the Commission will have to investigate and determine facts that go beyond the plain language of the BellSouth/DeltaCom agreement and that are not relevant to the Global NAPs proceeding. Although Global NAPs adopted the terms of the DeltaCom agreement when it entered into its own interconnection agreement with BellSouth in 1999, Global NAPs can only adopt the language of

another agreement. Global NAPs cannot adopt subjective intentions that DeltaCom alleges that BellSouth had in 1997 and that are not reflected in the plain language of the DeltaCom agreement.

5. In addition to injecting irrelevant issues, allowing DeltaCom to consolidate its complaint would be inefficient. Global NAPs filed its complaint in August of 1999. Now, some four months later, after all of the testimony has been filed and the case is less than a month from a hearing, DeltaCom wants to consolidate an entirely new complaint concerning an agreement to which Global NAPs is not a party, and alleging facts that do not need to be decided in the Global NAPs case. DeltaCom suggests that direct testimony should be filed by December 27, 1999, only 5 days after BellSouth was served with the complaint, and before a response to DeltaCom's complaint (or its motion to consolidate) would be due.<sup>1</sup>

6. It would simply be impossible to consolidate these cases and allow sufficient time for the parties to adequately respond to the allegations, conduct discovery, prepare and file testimony, and prepare for a hearing in one month. Thus, even if it made logical sense to consolidate these matters (and it does not), consolidation would result in unfairness. If the hearing were not delayed by a few months, BellSouth would be prejudiced by not having time to prepare its defense properly. On the other hand, if the hearing were delayed in order to permit the parties to prepare the DeltaCom matter for hearing, Global NAPs and BellSouth would be prejudiced by having the resolution of their dispute put off for months.

For all of the foregoing reasons, DeltaCom's motion to consolidate should be denied.

Respectfully submitted this 28th day of December, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White (KR)

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<sup>1</sup> Although DeltaCom filed this motion and its Complaint on December 17, 1999, it did not serve copies on BellSouth until December 21, 1999. A complete copy of the Complaint still has not been served on BellSouth.