



Public Service Commission

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RECORDS AND REPORTING

DATE: DECEMBER 30, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (FAVORS, AUDU, BARRETT, BROWN, ^{CAF} ^A ^{MB} ^{CR} ⁵⁰ ^{PK}
~~FULWOOD, HINTON, OLLILA~~
DIVISION OF LEGAL SERVICES (CALDWELL) ^{PK}

RE: DOCKET NO. 990750-TP - PETITION BY ITC^DELTACOM COMMUNICATIONS, INC. D/B/A ITC^DELTACOM FOR ARBITRATION OF CERTAIN UNRESOLVED ISSUES IN INTERCONNECTION NEGOTIATIONS BETWEEN ITC^DELTACOM AND BELLSOUTH TELECOMMUNICATIONS, INC.

AGENDA: 01/11/00 - SPECIAL AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: THE PARTIES HAVE AGREED TO NOT BE BOUND BY THE STATUTORY TIME LIMIT IN SECTION 252 (b) (4) (C)

SPECIAL INSTRUCTIONS: NONE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

On June 11, 1999, ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom (ITC^DeltaCom) filed a Petition for Arbitration pursuant to 47 U.S.C. 252(b) seeking arbitration of certain unresolved issues in the interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc. (BellSouth). On July 6, 1999, BellSouth filed its response. The petition enumerated seventy-two issues. At the issue identification meeting, the parties notified Commission staff that twenty-three issues had been resolved. Eight additional issues were removed at the Prehearing Conference.

An administrative hearing was held on October 27-29, 1999, on the remaining issues. Subsequent to the hearing, the parties filed a Joint Motion of the Parties Notifying the Commission of Recently Resolved Issues, by which sixteen additional issues were resolved by the parties through negotiation and thus removed from this arbitration proceeding.

This is staff's recommendation on issues 3(b)(1), 3(b)(2), 3(b)(5), 7, 8(a), 8(b), 23, 24, 36, 38, 39, 40(a), 40(b), 41, 42 and 48. These are the only issues that remain for the Commission to address. In addition, the prehearing officer requested that an additional legal issue be briefed. Staff addresses that issue in issue 51.

ISSUE 3(b): Pursuant to the definition of parity resolved in Issue 3(a), should BellSouth be required to provide the following:

- (1) Operational Support Systems (OSS),

RECOMMENDATION: Yes. According to FCC Order 96-325, ¶523, the Commission should require BellSouth to provide ITC^DeltaCom access to OSS functionalities that is of the same quality, accuracy and timeliness to that which it provides to its retail operations for pre-ordering, ordering, provisioning, repair and maintenance, and billing for both unbundled network elements and resale services.
(AUDU)

POSITIONS OF THE PARTIES:

ITC^DeltaCom:

Yes. Access to OSS must be at parity with BellSouth's access to its own systems. Each carrier should pay its own OSS development costs. If BellSouth's OSS are working correctly, handling all orders electronically, there are no incremental or forward looking costs to justify any charges.

BELLSOUTH:

BellSouth provides all ALECs, including ITC^DeltaCom, with nondiscriminatory access to its OSS through electronic and manual interfaces.

STAFF ANALYSIS

At the crux of this issue is the question: what constitutes parity for access to operational support systems (OSS)? This issue focuses on the OSS interfaces that enable ITC^DeltaCom to access BellSouth's OSS functionalities. To address this issue, one must determine whether BellSouth's OSS interfaces provide ITC^DeltaCom comparable access to BellSouth's OSS and databases. One must also determine whether these interfaces allow ITC^DeltaCom to perform equivalent functions as BellSouth does, be it pre-ordering, ordering, provisioning, repair and maintenance, or billing. This

issue should not be construed to anticipate what OSS systems are on the horizon; instead, this issue addresses the existing systems BellSouth uses for its retail activities and whether these equivalent systems are available to and provide ITC^DeltaCom nondiscriminatory access to BellSouth's OSS or interfaces.

The parties indicated in their briefs that Issue 3(a), which defined parity as it pertains to the parties' interconnection agreement, has been resolved. The record does not contain the definition that the parties have agreed upon; thus, for purposes of Issues 3(b)(1), (2), and (5) staff will use the following definition found in FCC Rules 51.311(a) and (b), and 51.603:

Parity is a three (3) part requirement for non-discrimination for interconnection, unbundled network elements and resale. Parity is nondiscriminatory or equivalent access, meaning that the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC (ILEC) provides to a requesting telecommunications carrier shall at least (at minimum) be equal in quality to that which the ILEC provides to itself. For resale, the ILEC must provide services to requesting telecommunications carriers that are equal in quality, subject to the same conditions, and within the same provisioning intervals that the ILEC provides these services to others, including its end users.

ITC^DeltaCom witness Thomas argues that BellSouth is not providing nondiscriminatory access to its OSS and databases as required by the Act, FCC Orders, and state commission Orders. (TR 206) Witness Thomas argues that the Act, FCC Orders, and state commission Orders require BellSouth to provide ordering and provisioning services to ALECs at parity with itself [BellSouth], its subsidiaries and affiliates. Witness Thomas asserts that without nondiscriminatory access and parity of service, ITC^DeltaCom will be severely disadvantaged in competing against BellSouth. (TR 210) He argues that nondiscriminatory access means that ". . .

whatever access BellSouth provides to itself, BellSouth must provide 'equally' to ITC^DeltaCom." (TR 2293) Witness Thomas further testifies that nondiscriminatory OSS interfaces for ITC^DeltaCom mean OSS access in the same time and manner as BellSouth enjoys. (EXH 3, pp. 9-10)

BellSouth witness Pate states that the Act requires ILECs to provide nondiscriminatory access to their OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing for UNEs and resale services. (TR 1125) Witness Pate argues that the FCC's requirement for nondiscriminatory access simply means that the ILECs must provide ALECs access to the required functions and information for resold services in substantially the same time and manner as it provides access for itself. Witness Pate further argues that neither the Act nor the FCC requires that ALECs' access be identical to the ILEC's, but only that such access must be nondiscriminatory. (TR 1125-1126) Witness Pate contends that the FCC applies a standard of substantially the same time and manner for resale services, and access that allows an efficient competitor the ability to compete for UNEs. (TR 1160-1161) He further testifies that "substantially the same time and manner" means that one should expect the actual time to provision a service to be about the same and be performed in a similar manner as BellSouth. Witness Pate states that "[A] process that defines how you order and provision services, for example, would be similar for the retail unit as it would be for the ALEC community." (EXH 9, p.45) Witness Pate contends that this definition is consistent with the FCC's interpretation of parity. (EXH 9, p.46)

ITC^DeltaCom witness Thomas testifies that nondiscriminatory access to pre-ordering information is necessary for submitting accurate orders to BellSouth. (TR 206) He states that ITC^DeltaCom currently uses the Local Exchange Navigation System (LENS) and Electronic Data Interchange (EDI) OSS interfaces for pre-ordering and ordering, respectively. Witness Thomas testifies that ITC^DeltaCom uses LENS to access pre-ordering information; however, LENS does not allow ITC^DeltaCom to integrate this pre-ordering information into EDI to place orders. (TR 206-207, 296) Witness

Thomas argues that since LENS does not parse¹ the customer service record (CSR) in pre-ordering, this renders LENS unintegratable with EDI. (TR 296) Witness Thomas argues that because LENS is not integrated with EDI, ITC^DeltaCom must re-enter the pre-ordering information into the EDI ordering interface. He contends that this is inefficient, prone to human error, and concludes that this is not at parity with BellSouth. (TR 207) Witness Thomas states that without a fully integratable EDI interface, BellSouth cannot provide ITC^DeltaCom nondiscriminatory OSS access. (TR 207)

BellSouth witness Pate testifies that BellSouth provides three electronic OSS interfaces for ALECs' use. He further states that two of these interfaces have real-time access to the same pre-ordering databases used by BellSouth's retail unit. Witness Pate states that all three interfaces provide both pre-ordering and ordering functionalities. Witness Pate further testifies that the Telecommunications Access Gateway (TAG) system and EDI are industry standards-based systems, and that the pre-ordering function of TAG is integratable into the EDI ordering functionality. (TR 1126) Witness Pate contends that while ITC^DeltaCom uses LENS for some orders, more than 80% of ITC^DeltaCom orders are submitted through EDI. (TR 1133) Witness Pate argues that with more electronic flow-through, there is little need for human intervention; however, he observes that with human intervention, there is room for errors, longer processing time, and operational inefficiency. (TR 1145)

ITC^DeltaCom witness Thomas testifies that LENS is an integrated interface that performs both pre-ordering and ordering functions. (TR 252) Witness Thomas testifies that LENS can only process a maximum of six resold lines per order. (EXH 3, p.16; TR 299) Further, he testifies that EDI is a nondiscriminatory ordering interface which does not have pre-ordering capability. (EXH 3, pp.15, 16) Witness Thomas testifies that the TAG interface is supposed to be able to integrate both pre-ordering and ordering functions. (EXH 3, pp.42, 43) However, witness Thomas states that ITC^DeltaCom has learned that TAG does not parse the CSR. (TR 296) Witness Thomas argues that due to limitations in EDI's ability to

¹ Parsing is simply the ability to break the customer service record (CSR) information into simple valuable pieces of information for further use, e.g., in the ordering function. (Thomas TR 247, 305)

handle certain types of orders and number of lines, on occasion, ITC^DeltaCom has had to submit orders manually. Witness Thomas further testifies that it cannot use EDI to place orders with a hubbing arrangement² and orders with more than six lines, because BellSouth's OSS will not accept such orders from EDI. (EXH 3, p.12; TR 299) Witness Thomas contends that certain complex orders, e.g., hunting and hubbing with intercept message, cannot be processed with LENS. (EXH 3, pp.14-15)

BellSouth witness Pate argues that LENS was designed for the most basic, easiest transactions, such as conversions of accounts from BellSouth to the ALEC. He testifies that LENS supports pre-ordering and ordering for resale services and is specifically geared towards the smaller ALECs that do not want to develop their own internal OSS. (TR 1151) Witness Pate asserts that since EDI is a standards-based system, it has multiple users. (TR 1194) Although EDI supports both ordering and provisioning functions for simple resale services, witness Pate conceded that EDI can only process seven kinds of unbundled network elements. (TR 1152, 1194) Witness Pate asserts that the TAG interface supports pre-ordering, ordering, and provisioning functions for simple resale services and seven UNEs. He argues that TAG is capable of performing the "up-front" edits that mirror those in BellSouth's systems. (TR 1152, 1194) On order fall-out³, witness Pate argues that certain types of orders were designed to fall out in downstream electronic processes. He testifies that complex orders, e.g., hunting, synchronet, and PBX trunks, are designed to fall out because the functionality is not there for the Local Exchange Service Order Generator (LESOG) to translate such orders into the service orders necessary for downstream electronic processing. (TR 1136-1138) Witness Pate argues that ALECs enter their orders using the Local Service Request (LSR) format; however, for these complex orders to continue downstream electronically into the Direct Order Entry system (DOE), these

² A hubbing arrangement is the situation where ITC^DeltaCom virtually collocates by leasing equipment in the Bell central office. (EXH 3, p.13)

³ Order fall-out refers to ALECs' orders that do not electronically flow through the downstream systems in BellSouth's OSS either because of an error or because the network is not designed to process the order downstream. (Pate TR 1143-1144)

orders must be submitted in a Sales Service Order format. (TR 1141-1142) For an order that falls out, witness Pate explains that a BellSouth Local Carrier Service Center (LCSC) representative resubmits this order using the same system that BellSouth's retail operation uses, the DOE system. (TR 1139)

ITC^DeltaCom witness Thomas contends that his company is not receiving nondiscriminatory access to BellSouth's pre-ordering capability, because ITC^DeltaCom cannot access pre-ordering information and then parse it into ITC^DeltaCom's ordering system. (EXH 3, p.14) Witness Thomas testifies that although ITC^DeltaCom can validate addresses using LENS, it cannot integrate this information into EDI. (EXH 3, p.14) Witness Thomas argues that his company does not have validation checks because the two interfaces (LENS and EDI) are not integratable. (EXH 3, p.42) Witness Thomas further argues that BellSouth has the capability to conduct validation checks, which allows BellSouth to detect errors in its orders before they are submitted. Witness Thomas testifies that ITC^DeltaCom is not aware of any errors until the order is returned by BellSouth, and he attributes this problem to the fact that ITC^DeltaCom's two interfaces are not integrated and to the absence of validation checks. (EXH 3, p.42) Witness Thomas testifies that BellSouth uses the Service Order Language Analysis Routine (SOLAR) and the FID and USOC Edit Library (FUEL) databases for validation checks, which allow BellSouth to discover possible errors in pre-ordering before submitting an order. ITC^DeltaCom witness Thomas asserts that his company does not have access to these databases and indicates that ITC^DeltaCom needs access to this functionality. (EXH 3, pp.50-51) He argues that the ability to perform error checks will prevent order rejection downstream and shorten provisioning intervals for ITC^DeltaCom's customers. (TR 265)

BellSouth witness Pate argues that the problem of address validation is not unique to ITC^DeltaCom, but is a common problem in the ALEC community. (TR 1195) Witness Pate argues that since EDI has no pre-ordering functionality, TAG has been designed with a pre-ordering component, which can take the pre-ordering information and integrate it into EDI. (TR 1196) Witness Pate explains that TAG is integratable with EDI so that it will allow the ALECs to perform "[a]ddress validation on their side of the interface because they are experiencing some errors there." (TR 1196) He states that by

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making TAG integratable with EDI, ALECs are able to continue using an interface (i.e. EDI) they are comfortable with while they learn TAG. (TR 1197) Witness Pate asserts that the ability to complete the edit checks up front before submitting an order improves the overall accuracy and completeness of that order. (TR 1163) Witness Pate further contends that by putting an order in the sales service order format, most of the edits necessary to ensure that all the information is accurate are in place. (TR 1187)

Staff notes that the FCC determined:

. . . an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself. Such nondiscriminatory access necessarily includes access to the functionality of any internal gateway systems the incumbent employs in performing the above functions for its own customers. (FCC 96-325, ¶523)

Further, in the Ameritech Section 271 Application, FCC Order 97-298, in CC Docket 97-137, issued August 19, 1997. (EXH 1), the FCC found that for those OSS functions that the Bell Operating Company (BOC) uses which have retail analogues, the BOC must "[p]rovide access to competing carriers that is equal to the level of access that the BOC provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness." (FCC 97-298, ¶139)

While ITC^DeltaCom argues that the Act, FCC Orders, and state commission Orders require BellSouth to provide access to OSS at parity, BellSouth counters that the Act only requires them to provide nondiscriminatory access to their OSS functions in substantially the same time and manner in which they provide this access to themselves. Staff agrees with ITC^DeltaCom that BellSouth is obligated to provide ITC^DeltaCom nondiscriminatory access to its OSS functions at parity to that which BellSouth provides to its customers.

The evidence clearly shows that both LENS and EDI are electronic OSS interfaces. While LENS has pre-ordering and ordering capabilities, EDI is a standards-based interface with only ordering and provisioning capabilities. The evidence shows that LENS does not parse the CSR in its pre-ordering mode, and thus the pre-ordering information in LENS is not integratable into EDI's ordering functionality. Staff notes BellSouth's assertion that LENS was developed to ". . . do the most basic easy transaction, which is conversion of accounts from BellSouth to ALEC. . . . and specifically oriented towards the smaller LECs that don't want to develop their own internal OSS systems. . . . It supports preordering and ordering for resale." (Pate TR 1151) Further, staff agrees with ITC^DeltaCom that since LENS is not integratable with EDI, pre-ordering information from LENS must be re-entered into EDI to place an order, and this process is prone to human errors and is inefficient. BellSouth concurs that absent complete electronic flow-through, any human intervention creates room for errors, longer processing times, and is operationally inefficient. While staff is unsure whether TAG can parse the CSR, the evidence seems to support BellSouth's claim that TAG is a standards-based interface with pre-ordering, ordering and provisioning capabilities. Also, TAG is capable of performing address validation, and it is integratable with EDI. Staff believes that TAG appears to be a more adequate interface than the combination of EDI and LENS.

The record shows that while ITC^DeltaCom can perform validation checks during pre-ordering with LENS, it cannot integrate this information into EDI for ordering. Therefore, ITC^DeltaCom is not aware of any errors in submitted orders until BellSouth returns the orders. The record supports the fact that BellSouth is able to detect errors in its orders before submitting them. Staff agrees with BellSouth that the ability to perform up-front edits before submitting any orders improves the overall accuracy and completeness of the orders, and notes that TAG allows the ALECs to perform address validation and other up-front edits on their side of the interface.

Conclusion

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While BellSouth provides ALECs access to its OSS using three electronic interfaces, two of these interfaces (LENS and EDI) have limitations with regards to handling capacity, parsing pre-ordering information, performing error checks, and integration with other interfaces. Although ITC^DeltaCom has no first-hand experience with TAG, there is record evidence that shows that TAG has pre-ordering, ordering and provisioning capabilities. The record also indicates that TAG is integratable with EDI and is able to perform up-front edits.

Staff recommends that the Commission require BellSouth to provide ITC^DeltaCom access to its OSS functionalities that is of the same quality, accuracy and timeliness to that which it provides to its retail operations for pre-ordering, ordering, provisioning, repair and maintenance, and billing for unbundled network elements and resale services.

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ISSUE 3(b): Pursuant to the definition of parity resolved in Issue 3(a), should BellSouth be required to provide the following:

(2) UNEs,

RECOMMENDATION: Yes. According to FCC Order 96-325, ¶312, the Commission should determine that ITC^DeltaCom is entitled to receive the same quality of unbundled network elements and access to unbundled network elements as any other requesting carrier. In addition, unbundled network elements and access to unbundled network elements must be at parity with any equivalent functions which BellSouth performs in the provision of retail services.
(AUDU)

POSITIONS OF THE PARTIES:

ITC^DeltaCom:

BellSouth must provide UNEs to ITC^DeltaCom at cost-based rates that comply with section 252(d) of the Act and FCC pricing Rules. The Commission should modify BellSouth's assumed fill factors and assume utilization of IDLC technology. Rates should be \$14.38 for an SL1 loop and \$17.78 for an SL2 loop.

BELLSOUTH:

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

STAFF ANALYSIS

This issue seeks to answer the question: what constitutes parity in the provision of UNEs for the purpose of the parties' interconnection agreement? This issue does not address parity as it relates to any specific UNE. Instead, this issue shall address

parity using ITC^DeltaCom's experiences with UNes⁴ as expressed in this proceeding compared to BellSouth's provisioning of retail services.

The parties indicated in their briefs that Issue 3(a), which defined parity as it pertains to the parties' interconnection agreement, has been resolved. The record does not contain the definition that the parties have agreed upon; thus, for purposes of Issues 3(b)(1), (2), and (5) staff will use the following definition found in FCC Rules 51.311(a) and (b), and 51.603:

Parity is a three (3) part requirement for non-discrimination for interconnection, unbundled network elements and resale. Parity is nondiscriminatory or equivalent access, meaning that the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC (ILEC) provides to a requesting telecommunications carrier shall at least (at minimum) be equal in quality to that which the ILEC provides to itself. For resale, the ILEC must provide services to requesting telecommunications carriers that are equal in quality, subject to the same conditions, and within the same provisioning intervals that the ILEC provides these services to others, including its end users.

ITC^DeltaCom witness Hyde testifies that during negotiations, BellSouth indicated that it cannot provide UNes at parity since it does not provide UNes to itself. (EXH 4, p.41) Witness Hyde argues that although BellSouth does not bill itself UNE rates for the local service it provides, the same loop and switch UNE functions are used for the BellSouth retail service. Witness Hyde argues

⁴ With respect to parity, two major UNes have been addressed in this proceeding, namely: OSS and IDLC. While these two UNes are not representative of the total universe of UNes, these are the UNes that the parties have focused on. Hence, staff's analysis and recommendation is restricted to the evidence that is contained in the record.

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that "[A] service to an end user just isn't going to work unless you've got the loop. And a loop for retail service and a UNE loop is equivalent functionality." (TR 490) Witness Hyde further argues that there are other BellSouth retail services that utilize transport functionality in addition to the loop and switch function, and he asserts that BellSouth provides itself functionally identical facilities and equipment as UNEs. (TR 379, 395) Witness Hyde contends that the "meaningful opportunity to compete" standard means:

If a customer has to give up features, such as forward disconnect that works on BellSouth integrated digital loop carrier (IDLC) and not on universal digital loop carrier (UDLC) UNEs, or suffer modem degradation on changing from that same IDLC, then the ALEC is being denied a meaningful opportunity to compete. If recurring charges for UNEs are set too high, such as the ADSL, then a barrier to meaningful competition is raised. If UNEs are not maintained as well as retail, then meaningful competition is not possible. (TR 398)

Witness Hyde concurs with BellSouth that BellSouth's duty, under the Act, is not parity, "but it's actually nondiscriminatory access on an unbundled basis with respect to UNEs." (TR 403) Witness Hyde argues that the "nondiscriminatory access" is justification for a higher standard of service for UNEs than for retail service. (TR 404) He further concurs with BellSouth that the parties' interconnection agreement should be consistent with the FCC's standards for ensuring nondiscriminatory access. However, he asserts that this agreement needs to include the "at least equal" phrasing. Witness Hyde contends that:

At least equal in quality means that it can be better and still meet the FCC requirements and the Act. . . . ITC^DeltaCom is not requesting that stringent an interpretation but rather one that says, if you give us parity with retail, that would be acceptable to us as nondiscriminatory access. (TR 405)

ITC^DeltaCom witness Hyde further argues that the "at least equal" phrasing simply means equal to or greater than; nonetheless, he testifies that ITC^DeltaCom will "accept one hundred percent of our UNEs exactly equal" to BellSouth's retail service. (TR 408)

BellSouth witness Varner testifies that it is obligated to provide ITC^DeltaCom with nondiscriminatory access to UNEs. Witness Varner argues that BellSouth complies with its obligations under the Act and FCC Orders, and provides ALECs service in a non-discriminatory manner. (TR 688) Witness Varner further argues that what ITC^DeltaCom is seeking with this issue is "an impossible circumstance, not parity." (TR 688) Witness Varner then testifies that:

ITC^DeltaCom wants to require BellSouth to provide UNEs to ITC^DeltaCom on the same terms that BellSouth provides services to its retail customers. This is impossible, because the provision of UNEs is not the same as the provision of retail service. BellSouth does not provide UNEs to itself or to its retail customers. (TR 688-689)

Witness Varner testifies that parity means "that UNEs are provided in a manner that gives an efficient ALEC a meaningful opportunity to compete." (TR 689) BellSouth witness Varner argues that the phrase, "a meaningful opportunity to compete," calls for a two-part assessment of the individual ALEC's business plan and technical ability. (EXH 8, p.40) Witness Varner explains further:

. . . what you're doing is you're saying, okay, when I provide them with these UNEs, . . . can they come in and actually compete against BellSouth or against other CLECs for these customers given the standards under which they're going to get these UNEs? . . . do they have a real opportunity to come in and compete . . . Another way of looking at it is the technical standards. Let's say we gave them a loop that was inferior quality to loops that we use to provide service. Obviously,

that's not something you'd say gives them meaningful opportunity to compete. (EXH 8, pp.40-41)

Witness Varner further argues that nothing in the Act or FCC Orders requires BellSouth to provide UNEs at a greater standard than they provide to themselves. (TR 757) However, during cross examination, witness Varner testified that BellSouth can work with the language of "at least equal to" if ITC^DeltaCom will agree to drop the "or greater than" phrase. Witness Varner then conceded that the language will be satisfactory, if it is clarified to read: "at least equal to or greater than and it is up to BellSouth to decide if they want to provide a greater than service." (TR 883-884)

ITC^DeltaCom witness Hyde recounts an incident where BellSouth told ITC^DeltaCom, "[i]t is impossible to have parity with BellSouth's retail services." (EXH 4, p.43) Witness Hyde testifies that with UNEs, ITC^DeltaCom desires something that is equivalent. Witness Hyde testifies that when ITC^DeltaCom converts a customer from BellSouth to ITC^DeltaCom, "[W]e don't specifically order IDLC. We order a UNE loop for that customer and the conversion of that customer." Witness Hyde explains that in so doing, ITC^DeltaCom is seeking the equivalent of whatever the customer "is being currently provided." (TR 491) Witness Hyde testifies further that ITC^DeltaCom receives degraded service when a customer migrates from BellSouth with IDLC, and gets to ITC^DeltaCom with non-IDLC UNEs. (TR 414-415) Witness Hyde testifies that:

. . . only when BellSouth serves the customer currently with IDLC does ITC^DeltaCom want the IDLC equivalency. When BellSouth serves a retail customer with copper pair, then we will be very happy with copper pair. . . . If BellSouth uses UDLC to serve that retail. . . . then ITC^DeltaCom will be happy to accept the UDLC. . . . (TR 431)

BellSouth witness Varner argues that the provision of UNEs is not the same as the provision of retail services. (TR 757) Witness Varner contends that the fact that a network element is unbundled is what sets the element apart from other elements that BellSouth

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uses. (EXH 8, p.44) Witness Varner further argues that BellSouth does not provide UNEs to its retail customers. He testifies that "[U]NEs are made available to an ALEC in such a way that the ALEC may either combine those UNEs with the ALEC's other facilities or combine those UNEs with other UNEs acquired from BellSouth." He then explains that this means that "there must be provisions made for giving the ALEC access to the individual UNEs" that is rather unique to the ALEC community. (TR 758; EXH 8, p.44) Witness Varner contends that there is no true parallel to a BellSouth retail service. (EXH 8, p.44) Witness Varner further testifies that "BellSouth does not need such special provisions since BellSouth does not provide UNEs to itself." (TR 758) Witness Varner dismisses the notion that BellSouth has equivalent retail functionality for UNEs, asserting that BellSouth does not provide itself a loop or any UNE that is separated from everything else in the network. (EXH 8, pp.56, 58)

With respect to IDLC, BellSouth witness Varner testifies that IDLC is an integrated technology that integrates the loop into the switch. Witness Varner explains that "if you want an unbundled loop separate from the switch and that customer is getting basic service off IDLC, you can't get it." (EXH 8, p.75) However, he insists that BellSouth's set-up for provisioning IDLC meets the technical specifications for an unbundled loop. (EXH 8, p.75) Witness Varner asserts that BellSouth does not guarantee service levels above the minimum for its customers or for the loops that it provides to ITC^DeltaCom, and concludes that "all we guarantee, is the minimum. But regardless of the technology that's used, they're going to get a facility that meets the technical specifications for an unbundled loop." (EXH 8, p.76)

As earlier stated, this issue seeks to address parity in the provisioning of UNEs in the context of the parties' interconnection agreement. Both the Telecommunications Act of 1996 (Act) and FCC Orders provide ample guidelines on this subject. §251(c)(2)(c) of the Act provides that the ILEC shall provide interconnection for ALECs:

that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any

other party to which the carrier provides interconnection; . . .

With respect to unbundled access, §251(c)(3), reads in part:

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

In implementing the Act, the FCC concluded that the ILECs' obligation to provide nondiscriminatory access to network elements on an unbundled basis covers both physical and logical connection to the element and the element itself. The FCC found that:

. . . new entrants . . . would be denied a meaningful opportunity to compete if the quality of the access to unbundled elements provided by incumbent LECs, as well as the quality of the elements themselves, were lower than what the incumbent LECs provide to themselves. Thus, we conclude it would be insufficient to define the obligation of incumbent LECs to provide "nondiscriminatory access" to mean that the quality of the access and the unbundled elements incumbent LECs provide to all requesting carriers is the same. . . . Accordingly, we conclude that the phrase "nondiscriminatory access" in Section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible,

the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides itself. (FCC 96-325, ¶312)

The FCC further defined what constitutes a UNE and concluded:

. . . operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 521(c)(3), . . . (FCC 96-325, ¶516)

Staff notes that FCC Rules 51.311(a) and (b) incorporate the provisions of ¶312 of FCC Order 96-325, in CC Docket 96-98, issued August 8, 1996. (EXH 1) These two provisions provide adequate ground for understanding parity as it relates to UNEs both at the physical and the logical levels.

Staff agrees with the parties that both the Act and FCC Orders require BellSouth to provide nondiscriminatory access to UNEs. However, the parties disagree as to the degree of compliance BellSouth has achieved. Similarly, the parties disagree on the level of access to UNEs that meets the Act's requirement for parity. Indeed, BellSouth argues that ITC^DeltaCom is seeking "an impossible circumstance, not parity," because ". . . the provision of UNEs is not the same as the provision of retail service." Conversely, ITC^DeltaCom disagrees with BellSouth's claim that parity for UNEs is impossible and, argues that BellSouth has not provisioned UNEs or access to UNEs to ITC^DeltaCom at parity with BellSouth's retail operations. BellSouth further argues that the FCC has described parity as the provision of UNEs in "[a] manner that gives an efficient ALEC a meaningful opportunity to compete." (Varner TR 689) BellSouth contends that this does not call for parity, instead, the 'meaningful opportunity to compete' phrase calls for a "standard." (EXH 8, p.41) Staff notes ITC^DeltaCom's assertion that:

If a customer has to give up features, such as forward disconnect that works on BellSouth IDLC and not on UDLC UNEs, or suffer modem

degradation on changing from that same IDLC, then the ALEC is being denied a meaningful opportunity to compete." (Hyde TR 398)

Staff agrees that the ALECs will be denied "a meaningful opportunity to compete" with BellSouth if the quality of access to a UNE and the UNE itself are lower than BellSouth provides to itself. The FCC found in FCC 96-325, ¶312, that "where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides itself." Staff believes that conditions where customers must receive lesser quality of service or forfeit certain features because the customers elect to receive service from an ALEC do not foster competition in the local market.

Staff is not persuaded by BellSouth's arguments that there are no retail analogues for any UNES, and thus BellSouth cannot provision UNES at parity with its retail services. (Varner TR 689-690) Staff agrees that UNES are provisioned to ALECs in a manner that allows the ALECs to combine these UNES with other network elements. (Varner TR 758). Except for the "special provision for access", staff believes that BellSouth uses these same network elements that it "unbundles" for ALECs use. Therefore, staff believes that a case can be made that absent this "special provision for access," BellSouth and the ALECs utilize the same network elements to serve their end-user customers. (Varner TR 865)

Conclusion

Based on the testimony in the record and provisions of the Act and FCC Order 96-325, it appears that the quality of the access to the UNES or the UNES that BellSouth has provisioned in this proceeding do not provide ITC^DeltaCom with ". . . a meaningful opportunity to compete" with BellSouth. Staff believes that for competition to flourish in the local market, customers must come to rely on the ALECs' services just as they have come to depend on the timeliness and quality of the ILECs' services. For this to occur, the ILECs must provision services to the ALECs that are "at least equal" to that which the ILECs enjoy. Thus, staff recommends that the Commission should find that ITC^DeltaCom is entitled to receive the same quality of UNES and access to UNES as any other requesting

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carrier. In addition, UNEs and access to UNEs must be at parity with any equivalent functions which BellSouth performs in the provision of retail services.

ISSUE 3(b)(5): Pursuant to the definition of parity, should BellSouth be required to provide the following: an unbundled loop using Integrated Digital Loop Carrier (IDLC) technology?

RECOMMENDATION: Within the existing functionality and capacity of the serving switch, BellSouth should be required to provide an unbundled loop using IDLC technology. In addition, if it is within the existing functionality and capacity of the serving switch, BellSouth should be required to use a "side-door" method. If an unbundled loop using IDLC technology is not within the existing functionality and capacity of the serving switch, ITC^DeltaCom may submit its order for an unbundled loop using IDLC technology through the Bona Fide Request ("BFR") process. (**BARRETT**)

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

Yes. BellSouth must provide UNEs, including IDLC, at parity. BellSouth does not do this currently -- on almost all UNEs that are migrated from BellSouth customers that are served via IDLC or for customers' locations where BellSouth would use IDLC for its own service, BellSouth provides an inferior service to ITC^DeltaCom.

BELLSOUTH:

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.

STAFF ANALYSIS: Integrated Digital Loop Carrier, or IDLC, by definition, is a platform used by BellSouth and other facilities-based local exchange providers that unites loop and switch facilities by eliminating certain interfacing equipment known as Central Office Terminals, or COTs, housed in central offices. (Milner, TR 1232) IDLC is not a single product, service, or UNE,

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but rather, it is a technology used for the provisioning of telecommunications service. (Varner TR 872) IDLC equipment employs advanced electronic circuitry which concentrates, or "channelizes" the switching function from the host central office.

Witness Milner states that BellSouth has deployed IDLC systems in cable relief applications for old or deteriorated plant, for the replacement of excessively long loops in service, and in high growth or high density applications. (EXH 11, p. 20) Witness Milner states that in BellSouth's Florida network, IDLC equipment is used for the provisioning of 28% of all loops, with 13% using Universal Digital Loop Carrier (UDLC), and the remaining 59% utilizing copper alone. (TR 1235)

BellSouth's IDLC systems, however, have technical limitations with respect to ALEC unbundling, primarily due to the direct "integration" of the loop and switch facilities. (Milner TR 1233) With an IDLC configuration, the channelized loop cannot be easily unbundled, nor can the switching function be directly performed by non-host switching equipment. Witness Milner states that:

. . . if an ALEC wants to serve an end-user over the ALEC's own switch and that end-user customer was previously served over [BellSouth's] IDLC equipment, the loop can no longer be "integrated" with the BellSouth switch. (TR 1211)

Nonetheless, witness Milner indicates that, when technically feasible, BellSouth will unbundle and provide loops to ALECs (including ITC^DeltaCom) on a nondiscriminatory basis. (TR 1211)

ITC^DeltaCom witness Hyde, however, contends that "BellSouth provides an inferior service to the CLECs . . . which is the result from their refusal to provide IDLC equivalent service in most instances." (emphasis added)(TR 341) The witness further states that instead, BST uses either excessively long copper loops, outdated Universal Digital Loop Carrier (UDLC), or in rare instances, provides the "side-door" IDLC, but does so via a voice-grade interface, which will not always provide the same quality and features of [BellSouth provisioned] IDLC. (TR 341) ITC^DeltaCom's case is based on this perceived inequality.

Witness Hyde challenges BellSouth to ". . . deliver to a CLEC a digital signal that is equivalent to that which enters a [BellSouth] switch when IDLC is employed." (TR 344) His discussion of the need for equality is in the context of analog-to-digital conversions, noise on the loop, and degraded computer modem performance. (TR 341, 415) Witness Hyde asserts that, absent an IDLC equivalent product from BellSouth, ITC^DeltaCom is not being given a meaningful opportunity to compete in about one-fourth of BellSouth's exchange areas. (TR 432) In sum, the witness offers that "in any event, the quality is less than BellSouth provides to itself," and that in raising the issue, all ITC^DeltaCom truly wants is "something equal." (TR 341, 415) Witness Hyde believes that BellSouth should employ the IDLC unbundling method known as "side-door" provisioning more extensively. (TR 381)

Witness Hyde explains that unbundling the IDLC and provisioning the UNE via the "side-door"

. . . pulls off [from the BellSouth IDLC] a voice-grade byte stream and puts it out to the side to another connection . . . enabling an individual connectivity in the central office." (TR 428-429)

Witness Hyde acknowledges that the "side-door" connectivity has been deployed for ITC^DeltaCom, but that the deployment has been limited. (TR 381) The witness describes the "side door" provisioning as "IDLC-equivalent." (TR 429) He further explains that ITC^DeltaCom wants "whatever it takes to provide . . . at least equal service . . . by whatever methodology it takes to do it." (TR 430) Witness Hyde indicates that ITC^DeltaCom wants its loops provisioned in the exact medium as BellSouth provisions its own services, stating that "if BellSouth serves a retail customer with a copper pair, then we will be happy with a copper pair . . . if BellSouth serves a customer with an old-fashioned UDLC, then ITC^DeltaCom will accept the UDLC." (TR 431) In conclusion, witness Hyde states that all ITC^DeltaCom wants is an "equivalency to what BellSouth is providing their end users." (TR 434)

BellSouth witness Milner contends that, in order to provision the IDLC loop to the ALEC, ". . . the loop must be removed from

BellSouth's switch so that it can be connected to the ALEC's switch." (TR 1232) He identifies six technically feasible methods to unbundle loops served by IDLC. They are: (1) Remove the loop distribution pair from the IDLC and re-terminate to a spare UDLC or copper loop facility; (2) Remove the loop distribution pair from the host IDLC and re-terminate the pair to use an Integrated Network Access system or other IDLC; (3) Utilize a "side-door" capacity of the host IDLC, if equipped; (4) Utilize a "side-door" capacity of an alternative IDLC; (5) Install and activate a new UDLC or alternative system, and (6) Convert some existing IDLC capacity to UDLC. (Milner TR 1234 - 1235) BellSouth witness Varner concurs, adding that BST cannot provision an IDLC-delivered unbundled loop separate from their switch. (TR 870 - 871) Witness Varner states that a UNE ". . . stripped off of a [BellSouth] IDLC would not become a functional equivalent to [BST provisioned] IDLC until ITC^DeltaCom put in their own IDLC system, but if they did that, they'd probably just buy from us the loop distribution facilities, not the unbundled loop . . ." (TR 891)

Witness Varner further states that BST will provide either analog or digital loops to ITC^DeltaCom, depending solely upon what they've asked for. (TR 871) The witness states that any loop provisioned on an unbundled basis adheres to:

. . . a set of technical specifications that go with that loop regardless of whether that loop is over UDLC or over copper or whether it was previously a part of basic service provided over IDLC, it's going to meet those minimum technical specifications." (EXH 8, p. 75-76)

Witness Varner adds that BellSouth will not guarantee service levels above the minimum technical standards for any loops, whether provisioned to a BST end user or to an ALEC such as ITC^DeltaCom. (emphasis added) (TR 889) Witnesses Milner and Varner both contend that BellSouth's retail services meet the same technical standards as UNEs, acknowledging that they do not provide UNEs to themselves or to their end user customers. (TR 888, 1214)

Witness Milner states that "the inherent capabilities of the various types of loops (copper loops, IDLC loops, and UDLIC loops) are the same whether used for a BellSouth retail customer or an ALEC's customer." (TR 1235)

Witness Varner addresses capability in the context of transmission specifications and modem performance, drawing a distinction, however, on whether a certain level will be "guaranteed," or not. (TR 888 - 889) Witness Varner concludes by stating that:

. . . no matter what technology we use, whether it's UDLIC, plain copper wire, next generation digital carrier, or whatever, we're obligated to provide them . . . a loop that [will] meet those standards, those [minimum] technical specifications, and that is all that BellSouth will guarantee." (TR 888 - 889)

Witness Varner states that any achieved performance level that exceeds the technical specifications for a given loop will not be guaranteed. (TR 889) If a higher level of performance is sought, Varner suggests that ITC^DeltaCom could purchase other types of unbundled loops that have a higher set of technical specifications. (TR 889) Witness Milner states that requests for specific transmission parameters on a given UNE could be accommodated for ITC^DeltaCom via the Bona Fide Request (BFR) process, but that he is unsure if ITC^DeltaCom has submitted any BFRs. (TR 1231)

Witness Varner again reiterates that BellSouth provides and will continue to provide ITC^DeltaCom with nondiscriminatory access to unbundled loops, including IDLC delivered loops. (EXH 8, p. 53, TR 874)

Staff, however, recommends that within its technical capabilities, BellSouth should be required to provide an unbundled loop using IDLC technology, if requested by ITC^DeltaCom. The testimony in this proceeding demonstrates that an IDLC-delivered loop can be unbundled by BellSouth in various ways. BellSouth asserts that certain factors determine which method to employ for unbundling the IDLC loop, and not all methods are universally

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applicable across their network, contending, though, that all UNE loops meet the minimum transmission specification for the particular loop type. (EXH 8, p. 53)

However, ITC^DeltaCom argues that the IDLC-provisioned unbundled loop is not an equivalent product and the end-user customer receives degraded service (i.e., degraded from that which he receives directly from BellSouth). (Hyde, TR 397) Witness Hyde discusses at length the "inferior" service, particularly in the context of the analog-to-digital conversion(s) necessary for the unbundling of IDLC loops, and the resultant effect on the performance of a V.90 computer modem. (TR 397) He claims that the multiple conversions (analog-to-digital, digital-to-analog) are responsible for slower processing speeds, excessive noise, or otherwise unequal performance on the ITC^DeltaCom provisioned loop, and without the equivalent UNE to match up with the incumbent, ITC^DeltaCom is not being provided a "meaningful opportunity to compete." (Hyde, TR 398) Witness Hyde supports that the "side-door" provisioning method is "the closest thing to the [BellSouth-provisioned] IDLC itself." (TR 429)

Staff agrees that technical considerations do, in fact, enter into the unbundling issue for IDLC-delivered loops. Staff accepts on its face BellSouth's assertion that their six named methods of unbundling IDLC loops will provide a UNE product that meets the appropriate technical specifications, as BST testimony contends. BellSouth witness Varner states that a non-affiliated standards body has established the technical performance levels for various loops, and that all BellSouth provisioned loops meet those standards. (TR 888) The witness specifically identified a transmission parameter for a two-wire analog loop, citing that the specification allows the ability to transmit at 9,600 cycles per second. (TR 888)

Staff acknowledges that various central office platforms are in use across the BellSouth service areas in Florida, and that certain specific IDLC unbundling methods may not be available in all cases. Staff notes, however, that BellSouth provides the BFR option for individual, specific transmission parameters, if requested. Staff concludes that, absent any specific BFR, BellSouth is (equally) provisioning a UNE that meets the minimum

transmission or technical standard to the ALECs, including ITC^DeltaCom. BellSouth argues that the same minimum standards for IDLC-provisioned UNEs are adhered to in provisioning service to their own retail customers. (Varner, TR 888 - 889)

Staff agrees with ITC^DeltaCom witness Hyde's assertion that a "side-door" configuration of an IDLC UNE loop is the method that most nearly replicates the BellSouth provisioned IDLC loop. Witness Hyde asserts that the side-door connectivity for IDLC unbundling is the most preferable method. (TR 429)

With the "side-door" arrangement, the physical path that the telephone circuit follows is virtually the same for the UNE as for the BellSouth provisioned IDLC loop, which is not the case for the other methods. Under the "side-door" method, the telephone circuit for the UNE actually enters the BellSouth host switching equipment, but the signal is separated to a permanent connection panel or interface, before any switching functions are performed. The switching, therefore, is performed by the ALEC's (ITC^DeltaCom) equipment, because the switching function was enabled via the permanent "side-door" interface panel.

BellSouth's witness Milner, however, states that the "side-door" configuration cannot be supported by certain switches in the BellSouth network, and furthermore, where it is available, the capacity for its functionality is very limited. (TR 1301) He did acknowledge that most of their switches do have the "side-door" provisioning capability, but stated that maintaining that connection (the 'side-door' provisioning) consumed their limited switching resources. (TR 1301) The witness stated that there were "no more or no less . . . analog-to-digital transformations . . ." when comparing the "side-door" IDLC provisioning to BellSouth's own IDLC provisioning. (TR 1307)

Staff acknowledges that the limited capacity for "side-door" provisioning of IDLC does impose some constraints on BellSouth. Nonetheless, staff agrees that where technically feasible, BellSouth should employ the "side-door" arrangement option as a preferred method for provisioning IDLC UNEs. Staff also agrees with BellSouth's assertion on its face that any UNE, whether provisioned via the "side-door," copper loop, or any other method

will meet the given technical standards for that type of loop. Witness Milner states that if ITC^DeltaCom requests a particular transmission parameter over and above a standard voice-grade loop, that BellSouth would accommodate them through their normal ordering process, or through the BFR mechanism. (TR 1212) Staff agrees, and absent any specific directive such as a BFR, and within the existing functionality and capacity of the serving switch, BellSouth should be required to provide an unbundled loop using IDLC technology, and specifically, a "side-door" method, if possible. If an unbundled loop using IDLC technology is not within the existing functionality and capacity of the serving switch, ITC^DeltaCom may submit its order for an unbundled loop using IDLC technology through the BFR process.

Conclusion

The record supports that BellSouth has met its obligation under Section 251 of the Act to provide non-discriminatory access to UNE loops. Staff believes that BellSouth provides the avenue of choice to ITC^DeltaCom, and there is little, if any, evidence in this record to support that ITC^DeltaCom has requested loops with specific transmission characteristics from BellSouth. BellSouth states that if ITC^DeltaCom - or any other ALEC - desires a loop which was provisioned by them via an IDLC and having certain capabilities, the ALEC may order it, and where technically feasible, BST will provide the service, as requested.

Staff believes that the performance and inherent capabilities of UNE loops are a function of what the ALEC orders, and less about what the incumbent provisions. A two-wire voice grade loop, for example, will have limited performance characteristics whether provisioned from BellSouth via IDLC or not, and if more stringent performance parameters are desired, then a UNE loop other than a two-wire voice grade loop should be ordered by ITC^DeltaCom.

It appears to staff that ITC^DeltaCom's claim of an inferior product stems from their expectations of greater capabilities from BellSouth provisioned voice-grade UNES, without actually identifying the transmission parameters it seeks. IDLC, after all, is a provisioning technique employed by BellSouth, and if ITC^DeltaCom requests a loop to be provisioned using IDLC

technology, BellSouth states that, within their technical abilities, they will oblige.

Staff therefore believes that, within the existing functionality and capacity of the serving switch, BellSouth should be required to provide an unbundled loop using IDLC technology. In addition, if it is within the existing functionality and capacity of the serving switch, BellSouth should be required to use a "side-door" method. If an unbundled loop using IDLC technology is not within the existing functionality and capacity of the serving switch, ITC^DeltaCom may submit its order for an unbundled loop using IDLC technology through the BFR process.

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

RECOMMENDATION: No. BellSouth should not be required to provide ITC^DeltaCom extended loops or the loop/port combination. However, BellSouth has agreed to provide ITC^DeltaCom with extended loops and the loop/port combination. **(FAVORS)**

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

Yes. The existing interconnection agreement compels BellSouth to negotiate in good faith to provide extended loops. Indeed, pursuant to the existing agreement, BellSouth has provided 2500 such extended loops, which allow ITC^DeltaCom to serve more sparsely populated areas.

BELLSOUTH:

ITC^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)

STAFF ANALYSIS

The issue before the Commission is to determine whether BellSouth should be required to provide ITC^DeltaCom with enhanced extended loops (EELs) and the loop/port combination as unbundled network elements (UNEs). There is no dispute as to whether BellSouth will provide these combinations. BellSouth has agreed to do so. (TR 696) The dispute is over whether BellSouth is obligated under Section 251 of the Telecommunications Act to provide these combinations as UNEs.

Staff notes that neither party presented much evidence on the loop/port combination. In fact, ITC^DeltaCom witness Hyde states:

To be quite honest, I feel there's only really one truly in dispute, and that's the extended loop. The loop/port combination, we're quite willing to wait until some final order from the FCC and the courts say yes or no.

So, for the purpose of this contract, ITC^DeltaCom is more than willing to limit it to the extended loop. (TR 483)

Therefore, there is only one combination in dispute, the EEL. Nevertheless, staff points out that BellSouth has agreed to provide the loop/port combination to ITC^DeltaCom.

ITC^DeltaCom witness Hyde explains:

When an ITC^DeltaCom customer is served out of Central Office A but the ITC^DeltaCom collocation site is in Central Office B, ITC^DeltaCom can, under its current contract, obtain an extended loop from Central Office A to the ITC^DeltaCom collocation site in Central Office B via dedicated transport. By declining to provide the extended loop as a UNE, BellSouth forces ITC^DeltaCom to pay a higher rate for that capability or to pay the extra costs of collocation in marginal offices. (TR 346)

Witness Hyde claims that under the parties' current contract there was a provision for BellSouth to provide EELs. Paragraph IV B14 of the current agreement reads:

The parties shall 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 unbundled loop(s) at another such BellSouth location over BellSouth facilities. (TR 368)

Witness Hyde states that there is no way to comply with the provisions of paragraph IV B14 except to provide extended loops. (TR 368) He also states that shortly after the original agreement was signed, ITC^DeltaCom took its proposed extended loop arrangement to BellSouth, and BellSouth accepted that arrangement and began installing service. Witness Hyde further states "BellSouth continued to accept orders for extended loops until March of 1999 when ITC^DeltaCom complained about the quality of service being provided." (TR 369)

Witness Hyde further argues:

BellSouth has provided ITC^DeltaCom more than two thousand five hundred loops. It is difficult to comprehend how a company such as BellSouth could provide ITC^DeltaCom more than 2500 extended loops under the provisions of paragraph IV B14 and still claim that it was under no obligation to do so. In order to maintain the status quo, it is necessary for BellSouth to continue to provide extended loops to ITC^DeltaCom. (TR 369)

Staff notes that none of those 2500 extended loops were provisioned in Florida. (TR 452)

BellSouth witness Varner counters that "[c]ontrary to their claim, BellSouth has not provided DeltaCom with an EEL. DeltaCom ordered channelized specialized access service, a tariff service, and then ordered unbundled loops to be terminated on the special access facility and BellSouth provided those in error." (TR 788) Witness Varner further explains:

When they ordered them, the way that they ordered them, and our technicians worked them -- At first, our technicians didn't think we should do it. They went to the account manager and the account manager gave them bad information and said it was okay to do this. So, they went ahead and connected them. And then as a result of that, DeltaCom found out

they wouldn't work. There were certain plug-ins, as I understand it, that needed to be different. And then, as a result of that, when DeltaCom reported service problems to us -- we went and looked at it. (TR 796)

ITC^DeltaCom witness Hyde agrees that ITC^DeltaCom is being provided a UNE loop, UNE cross connection, and special access transport through the tariff. (TR 446) In other words, ITC^DeltaCom is buying a tariffed service and combining that with unbundled network elements. (TR 447)

BellSouth witness Varner states that the FCC's Rules 51.315(c) through 51.315(f) (incumbent local exchange company (ILEC) combination of UNES) were vacated by the Eighth Circuit Court. (TR 673) He believes that since these rules are not in effect, any action by this Commission requiring BellSouth to combine network elements would be in direct conflict with the Telecommunications Act of 1996. (TR 673)

Witness Varner argues:

In accordance with the FCC's Rule 51.315(a), BellSouth is obligated to provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine them in order to provide a telecommunications service. Though requesting telecommunications carriers may combine unbundled elements in any manner they choose, BellSouth is not required to combine unbundled network elements for those carriers. (TR 676)

He further states:

The Eighth Circuit vacated the FCC's rules that purported to impose such a requirement (§§51.315(c)-(f)). The Eighth Circuit's decision vacating these rules was not challenged by any party, and because those rules are not in effect, BellSouth is not

required to combine network elements. However, BellSouth is willing to perform this function upon execution of a commercial agreement that is not subject to the requirements of the Act. (TR 676)

Witness Varner asserts:

ITC^DeltaCom has requested what it terms an "extended loop" or a local loop combined with dedicated transport. There is no question that an extended loop would constitute a combination of a local loop and dedicated transport. Except through voluntary agreements, BellSouth is not required to combine individual UNEs such as the loop and dedicated transport. (TR 695)

ITC^DeltaCom witness Hyde agrees that BellSouth would have to combine the loop and dedicated transport that comprise the EEL. (TR 483) He also agrees that there is no law or rule that requires BellSouth to combine elements. (TR 440)

BellSouth witness Varner states that "[e]ven though the FCC's Rule 51.315(b) (Pre-existing combinations) has been reinstated by the Eighth Circuit, it cannot be effectively applied until the FCC reestablishes the UNE list in FCC Rule 51.319 that was vacated by the Supreme Court." (TR 673) FCC Rule 51.315(b) reads:

Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent currently combines.

Witness Varner asserts:

Last, BellSouth must provide combinations of loops and transport only where they are currently combined. In the case of the EEL, they're not.

The definition of currently combined, I will admit is not clear. But based on the FCC's action, BellSouth believes that currently combined means that the combination of UNES must already be in existence and providing service to a BellSouth end user. (TR 790)

ITC^DeltaCom witness Wood counters:

. . . you don't need to go to the FCC orders to find the currently combines language. It's actually in the rule. Rule 315(b), that there is agreement among the parties that's in effect today, requires that BellSouth provide those elements in combination when it currently combines those elements in its network.

Well, there is certainly no doubt that BellSouth currently combines local loops and transport facilities in its network today to provide service to its retail customers. It has tariffed services called private line, special access. (TR 583)

However, BellSouth witness Varner asserts that BellSouth provides special access circuits to carriers, not to BellSouth end users. (TR 811)

Staff reiterates that the issue is not whether BellSouth will provide the EEL to ITC^DeltaCom, but whether BellSouth is obligated to provide the EEL as a UNE. The list of unbundled network elements that an incumbent LEC must provide to requesting telecommunications carriers was provided in FCC Rule §51.319. However, this rule was vacated by the United States Supreme Court and remanded back to the FCC. The FCC has now issued its Order on this rule; however, it was not issued until after the hearing in this case was held. The FCC did issue a press release prior to the issuance of the actual Order that was entered as evidence, but staff notes that the press release is not legal authority.

Nonetheless, staff would like to point out that the EEL was not listed as a UNE in the FCC press release.

BellSouth argues that in order to provide the EEL, it would have to combine the loop and dedicated transport for ITC^DeltaCom, and it is not required to do that. ITC^DeltaCom witness Hyde concurs. (TR 440, 483) Staff does agree that FCC Rules 51.315(c)-(f) regarding incumbent LEC provisioning of combinations were vacated by the Eighth Circuit and continue to be vacated. Accordingly, at this time incumbent LECs are not required to combine network elements for other telecommunications carriers.

Staff does not agree that paragraph IV B14 of the parties' existing agreement required BellSouth to provide EELs to ITC^DeltaCom. Staff believes that this provision only placed an obligation on the parties to negotiate in good faith a means to enable ITC^DeltaCom to utilize only one collocation arrangement at one BellSouth location per LATA. ITC^DeltaCom witness Hyde concurs with this interpretation. (TR 399, 445)

Further, staff does not believe that BellSouth provided ITC^DeltaCom with a UNE EEL under their existing agreement. ITC^DeltaCom was provided the combination of a UNE loop combined with special access, purchased at the tariffed price. The evidence of record does not indicate that ITC^DeltaCom was provided a UNE loop combined with UNE dedicated transport, priced at the sum of the UNE prices.

For these reasons staff does not believe that BellSouth should provide ITC^DeltaCom the EEL as a UNE. However, BellSouth has agreed to provide ITC^DeltaCom both the EEL and the loop/port combination upon execution of a separate commercial agreement.

Conclusion

BellSouth should not be required to provide ITC^DeltaCom EELs or the loop/port combination. However, BellSouth has agreed to provide ITC^DeltaCom with EELs and the loop/port combination.

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

RECOMMENDATION: The parties should negotiate the rates for these combinations. (OLLILA)

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

BellSouth should be required to submit a cost study for extended loops that recognizes the price for combinations is less than the sum of the elements which are combined. The interim price should be the sum of the TELRIC-based price of the components of the extended loop.

BELLSOUTH:

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

STAFF ANALYSIS

In Issue 8(a), staff recommends that BellSouth should not be required to provide ITC^DeltaCom extended loops or the loop/port combination as unbundled network elements. However, as staff notes in the recommendation, BellSouth has agreed to provide ITC^DeltaCom with extended loops and the loop/port combination.

According to 47 CFR Part 51, Subpart F-Pricing of Elements, certain pricing rules apply to unbundled network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation. Specifically, §51.503(b) provides:

An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in §§51.507 and 51.509, and shall be established, at the election of the state commission-

(1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in §§51.505 and 51.511; or

(2) Consistent with the proxy ceilings and ranges set forth in §51.513.

carriers.

However, since staff recommends in Issue 8(a) that BellSouth is not required to provide extended loops or the loop/port combination, the FCC's pricing rules do not apply. Therefore, staff recommends that the parties should negotiate the rates for these combinations.

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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)?

RECOMMENDATION: Staff recommends that the parties should continue to operate under the terms of their current interconnection agreement in regards to this issue until the FCC issues its final ruling on whether reciprocal compensation is due for ISP-bound traffic. (FAVORS)

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

Yes. Where costs are incurred by ITC^DeltaCom for carrying the traffic of a BellSouth customer, BellSouth must compensate ITC^DeltaCom for such carriage, consistent with the principles of cost causation. The fact that an ISP business customer, contrasted with other business customers, is the recipient of such calls makes no difference.

BELLSOUTH:

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.

STAFF ANALYSIS

The issue before the Commission is to determine whether the parties should be required to pay reciprocal compensation for all calls that are properly routed over local trunks, including calls to ISPs. However, staff must point out that payment of reciprocal compensation for local calls that are not bound for ISPs does not

seem to be in dispute. The real dispute is over payment of reciprocal compensation for ISP-bound traffic. More specifically, the issue is when an end user of one party calls an ISP that is an end user of the other party, whether or not the party that serves the customer originating the call should pay reciprocal compensation to the other party which serves the ISP.

ITC^DeltaCom witness Rozycki explains that there are multiple parts to each Internet session. He states:

Assuming the call is initiated over standard phone lines, the initial part of the call, its delivery to the Internet service provider or ISP, may be handled by one or more carriers. Each of these carriers plays a role in delivering the call to its destination, and as such, each should be compensated. (TR 76)

BellSouth witness Varner states that "as previously confirmed by the FCC's Declaratory Ruling, ISP-bound traffic is jurisdictionally interstate; therefore, reciprocal compensation for ISP-bound traffic under Section 251 is not applicable." (TR 704) ITC^DeltaCom witness Rozycki agrees that the FCC did find that ISP-bound traffic is interstate in nature, but he argues that the appropriate level of compensation for ISP-bound traffic is not simplified by this finding. (TR 97) Witness Rozycki further states that ITC^DeltaCom should be paid for delivering ISP-bound traffic for BellSouth regardless of the jurisdictional nature of that traffic. (TR 118) He states that "since ITC^DeltaCom uses the same facilities to deliver those calls as it does to deliver any other local call, then it is appropriate to charge exactly the same rate for the delivery of either type of traffic." (TR 118) He further states that the only way that ITC^DeltaCom can recover those costs is through reciprocal compensation. (TR 118)

BellSouth witness Varner argues that ISPs are carriers and that the service provided to them is access service. Because of this, he believes that this eliminates any possible claim for reciprocal compensation. (TR 710) ITC^DeltaCom witness Rozycki counters that ISPs do not currently obtain certificates of

authority to provide telecommunications services in Florida nor are they regulated as carriers by the FCC. (TR 94)

Witness Rozycki also states that ITC^DeltaCom believes in the "calling party pays" concept. In other words, the party or company responsible for originating a call is responsible for the costs associated with that call. (TR 75) BellSouth witness Taylor counters that the principle of cost causation requires that the ISP customer pay at least the cost its call imposes on the circuit-switched network. (TR 925)

BellSouth witness Varner does not believe that state commissions should address this issue. In regards to the FCC's recent Declaratory Ruling, he states:

. . . the FCC has, will retain, and will exercise jurisdiction over this traffic. As a practical matter, it appears fruitless for state commissions to deal with this issue at this time. Although the FCC appears to temporarily give states the authority to create an interim compensation arrangement until the FCC establishes rules, the FCC's authority to confer this ability on the states is being challenged in court. Consequently, states could find that they do not have the authority to create even an interim compensation arrangement. Even if the states do have the authority, such authority is valid only until the FCC completes its rulemaking on the subject. (TR 703)

Witness Varner also states that compensation for ISP traffic is not subject to a Section 252 arbitration. He argues that reciprocal compensation in the Act is limited to "local traffic," and that the FCC, in its Declaratory Ruling, makes clear that traffic to ISPs is interstate in nature. (TR 704) ITC^DeltaCom witness Rozycki disagrees and states that the FCC Declaratory Ruling provides the authority for state commissions to arbitrate this issue, and that the FCC tentatively concluded "that even if

the FCC ultimately adopts a federal policy, states should still set inter-carrier compensation rates for ISP-bound traffic." (TR 100)

FCC Declaratory Ruling

The FCC issued a Declaratory Ruling and Notice of Proposed Rulemaking regarding inter-carrier compensation for ISP-bound traffic in Order FCC 99-38, issued in CC Docket No. 96-98, released on February 26, 1999. (EXH 1) In that Order, the FCC concluded that "ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate." (FCC 99-38, ¶2) However, the FCC did not make a determination as to whether reciprocal compensation is due for ISP-bound traffic. Instead, it acknowledged that it currently does not have a rule governing inter-carrier compensation for ISP-bound traffic, and until it adopts a final rule, state commissions may continue to determine whether reciprocal compensation is due for this traffic. (FCC 99-38, ¶22, ¶28)

Further, in addressing the nature of ISP-bound traffic, the FCC explained:

Generally speaking, when a call is completed by two (or more) interconnecting carriers, the carriers are compensated for carrying that traffic through either reciprocal compensation or access charges. When two carriers jointly provide interstate access (e.g., by delivering a call to an interexchange carrier (IXC)), the carriers share access revenues received from the interstate service provider. Conversely, when two carriers collaborate to complete a local call, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to section 251(b)(5) of the Act. Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two interconnecting carriers deliver traffic to an ISP. (FCC 99-38, ¶9)

As explained, carriers share access revenues received from IXCs for delivering interstate traffic. In the case of ISP traffic, the FCC has given enhanced service providers (ESPs), of which ISPs are a subset, an exemption from paying interstate access charges even though it recognized that ESPs use interstate access services. The FCC explains that this exemption was adopted at the inception of the interstate access charge regime to protect certain users of access services, such as ESPs, that had been paying the generally much lower business service rates from the rate shock that would result from immediate imposition of carrier access charges. (FCC 99-38, ¶5, footnote 10) In 1997, the FCC decided that retaining the ESP exemption would avoid disrupting the still-evolving information services industry and advance the goals of the 1996 Act to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." (FCC 99-38, ¶6) Thus the FCC, as recently as 1997, decided to continue the access charge exemption for ESPs.

Further, the FCC directed the states to treat ISP traffic as if it were local, by permitting ISPs to purchase their public switched telephone network (PSTN) links through local business tariffs. (FCC 99-38, ¶9) Therefore, an ISP need only subscribe to services from a LEC's local business tariffs to receive incoming calls from its customers. In addition, incumbent LEC expenses and revenues associated with ISP-bound traffic traditionally have been characterized as intrastate for separations purposes.

This treatment of ISP traffic as "local" seems to be the point of contention between ILECs and ALECs. The FCC readily admits in its recent Declaratory Ruling that it has treated ISP-bound traffic as local traffic even though it was aware that ISPs used interstate access services. The FCC even states that it "continues to discharge its interstate regulatory obligations by treating ISP-bound traffic as though it were local." (FCC 99-38, ¶5)

The FCC has realized the problems that its treatment of this traffic has caused throughout the country. It stated:

Until now, however, it has been unclear whether or how the access charge regime or reciprocal compensation applies when two

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interconnecting carriers deliver traffic to an ISP. . . . As a result, and because the Commission had not addressed inter-carrier compensation under these circumstances, parties negotiating interconnection agreements and the state commissions charged with interpreting them were left to determine as a matter of first impression how interconnecting carriers should be compensated for delivering traffic to ISPs, leading to the present dispute. (FCC 99-38, ¶9)

However, the FCC stated that it currently has no rule governing inter-carrier compensation for ISP-bound traffic, but believes that adopting such a rule to govern prospective compensation would serve the public interest. (FCC 99-38, ¶28) To this end, the FCC has issued a Notice of Proposed Rulemaking seeking comments on two proposals for a rule.

Staff agrees with ITC^DeltaCom witness Rozycki that state commissions may determine that reciprocal compensation is due for ISP-bound traffic. The FCC stated:

A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding -- or a subsequent state commission decision that those obligations encompass ISP-bound traffic -- does not conflict with any Commission rule regarding ISP-bound traffic. (FCC 99-38, ¶26)

However, staff recommends that the parties continue to operate under the terms of their current interconnection agreement in regards to this issue until the FCC issues its final rule on this matter. Staff acknowledges that the FCC has claimed jurisdiction over this traffic as it stated:

We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes and, hence, to treat ISP-bound traffic as local, does not affect the

Commission's ability to exercise jurisdiction
over such traffic. (FCC 99-38, ¶16)

As mentioned earlier, the FCC does intend to adopt a final rule to govern inter-carrier compensation for ISP-bound traffic. Therefore, any decision the Commission makes will only be an interim decision. As such, staff recommends that the parties should continue to operate under the terms of their current interconnection agreement until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is due for this traffic.

Conclusion

Staff recommends that the parties continue to operate under the terms of their current interconnection agreement until the FCC issues its final ruling on whether ISP-bound traffic should be defined as local or whether reciprocal compensation is otherwise due for this traffic. The root of the problem stems from the FCC's treatment of this traffic. On the one hand, the FCC has recently ruled that ISP-bound traffic is jurisdictionally mixed and largely interstate. On the other hand, it has recognized that it has treated this traffic as local, but retains jurisdiction over this traffic. The FCC has also determined that a rule concerning prospective inter-carrier compensation for this traffic would be in the public interest. To this end, it has issued a Notice of Proposed Rulemaking seeking comments on two proposals for such a rule. Therefore, any decision this Commission makes presumably will be preempted if it is not consistent with the FCC's final rule.

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

RECOMMENDATION: The rate for reciprocal compensation should be \$0.009 per minute, which is the rate in the BellSouth's and ITC^DeltaCom's current agreement. (OLLILA)

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

The current rate is \$.009 per minute of use. ITC^DeltaCom has proposed an interim rate of \$.0045 until cost-based rates are established. If the Commission establishes a permanent rate, the rate should be based on the tandem local interconnection rate established in Docket No. 960833-TP.

BELLSOUTH:

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 [sic] 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.

STAFF ANALYSIS

In Issue 23, staff recommends that ITC^DeltaCom and BellSouth should continue to operate under the terms of their current agreement. The reciprocal compensation rate in their current agreement is \$0.009 per minute. (TR 92; EXH 8, LFX AJV-1) Staff believes that based on the recommendation in Issue 23, it would be appropriate simply to recommend the current rate. However, given that the parties have proposed other rates, staff believes that it is also appropriate to evaluate the proposed rates, which staff has done.

Staff notes that BellSouth's position includes an incomplete and incorrect reference to a Commission Order. BellSouth's brief contains the same incorrect reference, "[I]n 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." (BellSouth Brief at 24) However, rates for those elements were not set in that order. BellSouth witness Varner's reference for his proposed rates for end office switching, tandem switching, and common transport in his exhibit AJV-1 is Order No. PSC-96-1579-FOF-TP, issued December 31, 1996 in the same docket. (EXH 23, AJV-1, p. 2) This Order does include rates for end office switching, tandem switching and common transport rates. (Order No. PSC-96-1579-FOF-TP, pp. 114-115) Therefore, staff assumes that the Order BellSouth meant to refer to in its brief is Order No. PSC-96-1579-FOF-TP.

In its brief BellSouth states that

. . . the Commission has already established "just and reasonable" reciprocal compensation rates. In its April 29, 1998 Order [sic] 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, (BellSouth Brief at 24)

Staff suggests that there is no need for ITC^DeltaCom to offer any explanation as to why the ordered reciprocal compensation rates should apply to it because BellSouth witness Varner is not proposing the rates the Commission ordered for the "transport and termination of calls on each other's network facilities." (Order No. PSC-96-1579-FOF-TP, p.68) The ordered rates are "\$.00125 per minute for tandem switching and \$.002 for end office termination." (Ibid.) Although BellSouth witness Varner mistakenly refers to the Commission's "April 29, 1998 Order," he states that "BellSouth's position is that the appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching, and common transport," rather than the Commission-ordered "blended rates." (TR 730) He asserts that the elemental rates are appropriate "because they will more closely match the costs incurred to transport and terminate the traffic." (TR 730)

BellSouth's proposed rates are shown in Table 24-1.

Table 24-1: BellSouth's Proposed Rates

		Rate
End office switching	Initial minute	\$0.0175
End office switching	Additional minute	\$0.0050
Tandem switching	Per minute	\$0.0029
Common transport	Per mile, per minute	\$0.000012
Common transport	Facilities termination per minute	\$0.005

Source: EXH 23, AJV-1, pg. 2

ITC^DeltaCom proposes an "interim" rate of \$0.0045 "until cost-based rates are established." (ITC^DeltaCom Brief at 15) ITC^DeltaCom witness Rozycki did not provide a rationale for \$0.0045. (TR 92) It appears to staff as if ITC^DeltaCom simply took its current rate of \$0.009 and divided it in half. A permanent rate, ITC^DeltaCom asserts in its position, "should be based on the tandem local interconnection rate established in Docket No. 960833-TP." It is not clear to staff to which "tandem" rate ITC^DeltaCom is referring.

As an aid in analysis, staff computed charges for calls of varying lengths using the \$0.009 rate, the \$0.0045 rate, and BellSouth's proposed rates. The results are shown in Table 24-2.

For BellSouth's proposed rates, staff calculated two sets of results. The first set assumes end office switching only and common transport at 10 miles. The second set assumes tandem switching only and common transport at 10 miles. Naturally, computation of reciprocal compensation charges based on BellSouth's proposed rates requires that assumptions be made. The common transport mileage may vary, changing the charge for a call; however, there is insufficient evidence in the record to determine an average transport mileage. Staff believes ten miles may be a conservative assumption.

In Table 24-2, staff assumes that either the tandem switching rate or end office switching rate would apply. ITC^DeltaCom asserts that the one switch it has in Florida "performs the same

functions as the BellSouth tandem." (EXH 12, response to Interrogatory No. 29, EXH 10, Response to Interrogatory No. 2) However, there is insufficient evidence in the record to determine whether the end office switching rate or the tandem switching rate would apply.

Table 24-2 Charge for Different Length Calls Using the Current Rate and the Proposed Rates

Length of call	Charge for call using current \$0.009 rate	Charge for call using BellSouth's proposed rates (end office switching)	Charge for call using BellSouth's proposed rates (tandem switching)	Charge for call using ITC^DeltaCom's proposed interim \$0.0045 rate
1 minute	\$0.009	\$0.02262	\$0.00802	\$0.0045
10 minute	\$0.090	\$0.11370	\$0.08020	\$0.0450
30 minute	\$0.270	\$0.31610	\$0.24060	\$0.1350
60 minute	\$0.540	\$0.61970	\$0.48120	\$0.2700
120 minute	\$1.080	\$1.22690	\$0.96240	\$0.5400

Use of ITC^DeltaCom's proposed interim rate, \$0.0045, consistently results in calls that are less expensive, even much less than the other proposals. Use of the current rate, \$0.009, results in per call costs that are between BellSouth's proposed rates for use of the tandem switch alone and use of the end office switch alone.

Staff believes that there is insufficient evidence in this proceeding's record to determine whether the rates proposed by BellSouth are appropriate for use for reciprocal compensation, particularly in light of BellSouth's proposing unbundled network element rates rather than the Commission-ordered rates for reciprocal compensation.

Staff believes that there is insufficient evidence in the record to conclude that ITC^DeltaCom's proposed interim rate \$0.0045 is appropriate.

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Since there is insufficient record evidence to conclude that a rate other than the current rate is appropriate, and thus consistent with staff's recommendation in Issue 23, staff recommends that the rate for reciprocal compensation continue to be set at \$0.009 per minute.

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

RECOMMENDATION: No. There is insufficient evidence in the record to substantiate that BellSouth should provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed. Cageless physical collocation should be provisioned within three months in accordance with the conditions set forth in FPSC Order No. PSC-96-1579-FOF-TP. **(FAVORS)**

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

Yes. Cageless collocation should be provisioned at intervals shorter than standard physical collocation and similar to virtual collocation. ITC^DeltaCom must have a collocation to effectively compete. BellSouth does not depend upon collocation. Unnecessary delays will give BellSouth a competitive advantage.

BELLSOUTH:

No. BellSouth is not required by the 1996 Act or FCC 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.

STAFF ANALYSIS

The issue before the Commission is to determine whether BellSouth should provide cageless collocation to ITC^DeltaCom thirty days after a firm order is placed. Staff notes that cageless collocation refers to cageless physical collocation.

ITC^DeltaCom witness Wood describes cageless collocation as:

A cageless collocation arrangement permits a CLEC, such as ITC^D, to place certain equipment in the BellSouth central office for

the purpose of interconnecting with the BellSouth network. ITC^D owns the equipment and retains all responsibility for its care and maintenance. In contrast to "caged" or "walled" collocation, however, this equipment is not physically separated from BellSouth's network equipment by the erection of physical barriers or the deployment of separate supporting facilities (such as HVAC). (TR 531)

Witness Wood further states:

ITC^D has requested that BellSouth commit to a 30-day turnaround time for such a collocation arrangement. While such a provisioning interval is significantly shorter than for walled or caged collocation, it is reasonable. In a cageless collocation arrangement, BellSouth will not need to determine if room exists within its central office for the construction of a physically separated space, design the enclosure, or have it constructed. The provisioning interval for cageless collocation should also be shorter than that for virtual collocation, because of the lack of the administrative tasks associated with the exchange of ownership of the equipment. (TR 533)

Witness Wood asserts that a cageless arrangement closely resembles a virtual collocation arrangement. (TR 572)

Witness Wood makes many references to the FCC First Advanced Services Order, FCC 99-48, issued in CC Docket No. 98-147, released March 31, 1999. He states that paragraph 40 of the FCC Advanced Services Order requires "incumbent LECs 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 choose." (TR 573)

Witness Wood opines that given the requirement by the FCC that BellSouth take a proactive approach to making these new forms of collocation available to competitors, the time frame required to provision a new arrangement once requested must be less than would otherwise be required. (TR 574)

Witness Wood states:

30 days is actually very, very generous in that regard. . . I would have been very comfortable supporting a much shorter provisioning interval for cageless collocation. Thirty days is what DeltaCom was willing to live with. (TR 642)

In fact, witness Wood believes that all that is required after a firm order for cageless collocation is received is administrative work which can be done in thirty minutes. (TR 650)

In response to the thirty-day provisioning interval for cageless collocation, BellSouth witness Milner states:

BellSouth has found that its provisioning interval is not controlled by the time required to construct an arrangement enclosure. . . . Included in the overall provisioning interval is the time required to complete the space conditioning, add to or upgrade the heating, ventilation, and air conditioning system for that area, add to or upgrade the power plant capacity and power distribution mechanism, and build out network infrastructure components such as the number of cross-connects requested. When the construction of an arrangement enclosure is not required or is not performed by BellSouth, all other collocation area and network infrastructure work must still take place. The absence of enclosure construction has little, if any, bearing on the overall provisioning interval. (TR 1245-1246)

Regarding whether cageless collocation should be shorter than virtual collocation witness Milner asserts:

BellSouth does not "exchange ownership" of virtual collocation equipment, but rather executes a virtual collocation equipment lease agreement. . . . BellSouth's provisioning interval includes the time required to make the space available to a virtual collocator, and not the time required to complete the administrative tasks associated with closing out a project. Since this administrative activity is not included in the provisioning interval for virtual collocation, it has no bearing on the length of the provisioning interval. (TR 1253)

Further, witness Milner states that BellSouth is not required by the FCC's Advanced Services Order to provide cageless collocation within 30 days. (TR 1244) Witness Milner states that BellSouth has offered to complete DeltaCom's physical collocation arrangements, whether caged or cageless, as soon as possible but within 90 business days for ordinary circumstances and 130 days for extraordinary circumstances. (TR 1263)

Staff is not persuaded by ITC^DeltaCom witness Wood's arguments that cageless collocation can be provided in thirty days. He makes many references to paragraph 40 of the FCC Advanced Services Order, which reads:

We now adopt new rules requiring incumbent LECs to make certain collocation arrangements available to requesting carriers. In adopting new rules, we reject the arguments of incumbent LEC commenters that additional collocation rules are not necessary. . . . We require incumbent LECs to make each of the 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 choose. We note, however, that incumbent LECs and their competitors can, in the course of voluntary negotiations, agree to additional or different collocation terms and conditions beyond those we require in this order. (FCC 99-48, ¶40)

Witness Wood interprets this paragraph to mean that BellSouth must know within all of its existing offices, within the existing equipment bays, where the equipment would be placed and where there is space available that would accommodate ALEC equipment. (TR 631)

Staff does agree that incumbent LECs are required to know space availability in their central offices. The FCC states:

For network planning purposes, new entrants need to know what incumbent LEC offices are available for collocation. . . Each new entrant cannot be required to apply for collocation space in every central office in order to find out if there is space available in that central office, when such information is readily available to the incumbent LEC that occupies that office. (FCC 99-48, ¶59)

However, staff does not agree with the extreme interpretation that ITC^DeltaCom witness Wood holds. Staff does not believe there is evidence to show that incumbent LECs are required to survey each and every central office to determine where each and every possible combination of the alternative arrangements may be placed.

Witness Wood claims that cageless physical collocation should be provisioned more quickly than virtual collocation. However, when asked ITC^DeltaCom's average time for provisioning virtual collocation, witness Wood did not know and speculated thirty to sixty days based on his experience with other ILECs. (EXH 2, p. 12)

Witness Wood also does not believe that changes to the central office such as upgrades to the power and HVAC systems are necessary for cageless collocation. (TR 531) BellSouth witness Milner states that these upgrades still take place. (TR 1245-1246) While the record does not show that upgrades to these systems are always necessary, staff believes it would be prudent to evaluate these systems based on the equipment that the ALEC is collocating and to make the upgrades when required.

BellSouth witness Milner states that "BellSouth's provisioning intervals of 90 business days under normal conditions or 130 business days under extraordinary conditions are appropriately applied to either enclosed (caged) or unenclosed (cageless) physical collocation." (TR 1246) He further believes that BellSouth is operating within the parameters of this Commission's guidelines as they were issued in Order Nos. PSC-96-1579-FOF-TP and PSC-98-0595-FOF-TP. In pertinent part those Orders state:

Upon consideration we conclude that maximum time periods for the establishment of physical collocation of three months and virtual collocation of two months are reasonable for ordinary conditions. (Order No. PSC-96-1579-FOF-TP, p.102)

As set forth above, we clearly stated that three months is a reasonable amount of time for establishment of physical collocation under ordinary conditions. We further indicated that BellSouth may reach an agreement as to a required time for a particular collocation request. If BellSouth is unable to reach an agreement with the requesting party on the time for a particular collocation request, then the parties may seek our guidance. In seeking such guidance, we clearly stated that BellSouth must be prepared to demonstrate to us why more than three months is necessary. (Order No. PSC - 98-0595-FOF-TP, pg. 7)

Further, when asked how he arrived at the thirty day provisioning interval for cageless physical collocation, witness Wood replied "the advanced services order." (TR 642) However, the Advanced Services Order specifically reads:

We do not adopt specific provisioning intervals at this time. 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 time frames for provisioning. While we do not at this time adopt specific intervals, we retain authority to adopt specific time frames in the future as we deem necessary. (FCC 99-48, ¶54)

Therefore, staff recommends that the provisioning interval for cageless physical collocation be three months in accordance with the Commission's previous Orders. However, staff notes that the Commission is considering the provisioning interval for cageless physical collocation in docket numbers 981834-TP and 990321-TP where it is possible that a separate provisioning interval may be determined. Nevertheless, the evidence of record in this proceeding is unpersuasive that the interval should be thirty days; therefore, the three month provisioning interval for physical collocation previously ordered by the Commission appears reasonable and should apply in this case.

Conclusion

There is insufficient evidence in the record to substantiate that BellSouth should provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed.

However, staff notes that the Commission is considering the provisioning interval for cageless physical collocation in docket numbers 981834-TP and 990321-TP where it is possible that a separate provisioning interval may be determined. Nevertheless, the evidence of record in this proceeding is unpersuasive that

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the interval should be thirty days; therefore, the three month provisioning interval for physical collocation previously ordered by the Commission appears reasonable and should apply in this case.

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

RECOMMENDATION: No charges should be imposed at this time. The determination of the appropriate charges, if any, that BellSouth may impose for OSS cost recovery should be dealt with in a generic proceeding. (FULWOOD)

POSITIONS OF THE PARTIES

ITC^DeltaCom:

BellSouth should not be allowed to impose OSS development costs on ITC^DeltaCom. For orders handled electronically, there is no justification for any charges. For orders that "fall-out," BellSouth should not be able to impose charges until it submits a TELRIC-compliant cost study subject to scrutiny in a hearing.

BELLSOUTH:

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.

STAFF ANALYSIS:

In this proceeding BellSouth proposes to establish and incorporate into its agreement with ITC^DeltaCom, charges to recover costs BellSouth has incurred associated with the development and implementation of nondiscriminatory electronic interfaces to provide ALECs the ability to access certain BellSouth operational support systems (OSS). These interfaces allow ALECs to access BellSouth's OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing for resale services, and unbundled network elements (UNEs). Since BellSouth was required by the Act to develop and implement these interfaces, the company asserts it should be allowed to recover

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the development, implementation, and maintenance costs of these interfaces, as well as any ongoing order processing costs that it incurs. (TR 989-990)

BellSouth proposes two types of charges that would be levied per local service request (LSR). The charge for LSRs submitted electronically is \$6.63, while the charge for manual LSRs is \$20.08. (TR 1010-1011) According to BellSouth witness Caldwell, the proposed \$6.63 charge for LSRs submitted electronically is designed to recover two cost components. The first component, \$2.45, relates to the development and implementation costs of the electronic interfaces. The second component, \$4.18, represents Bellsouth's ongoing order processing costs for an ALEC LSR. (EXH 25)

BellSouth's ongoing processing component of \$4.18 is intended to recover costs associated with both recurring and nonrecurring costs. The recurring component, \$2.84, includes both capital and non-capital costs. Capital costs are associated with the purchase of an item of plant, i.e., an investment. They consist of depreciation, cost of money, and income taxes. Non-capital recurring costs are expenses associated with the use of an investment. These operating expenses consist of plant-specific expenses, such as maintenance, ad valorem, and gross receipts taxes. The nonrecurring component, \$1.34, seeks to recover costs associated with order "fallout." This component is derived from local carrier service center (LCSC) labor costs associated with processing orders submitted manually, \$20.08, multiplied by the forward-looking probability, 6.67%, that an order may "fallout." (TR 1033)

According to BellSouth's witness Caldwell, development, implementation, and ongoing support costs for eight interfaces are reflected in the cost study for the per electronic LSR charge: EDI (Electronic Data Interexchange), LENS (Local Exchange Navigational System), TAG (Telecommunications Access Gateway), LEO (Local Exchange Ordering), LESOG (Local Exchange Service Order Generator), BSOG (BellSouth Service Order Generator), TAFI (Trouble Analysis Facilitation Interface), and ECTA (Electronic Communications Trouble Administration). EDI, LENS, TAG, LEO, LESOG, and BSOG pertain to preordering and ordering, while TAFI and ECTA are systems for trouble maintenance and repair. (EXH. 25, DDC-4)

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BellSouth's cost study reflects the Total Service Long Run Incremental Costs (TSLRIC) plus shared and common cost associated with network capabilities. (TR 991-992) BellSouth applied a three-year interval for cost recovery. The proposed rates were derived by dividing its projected total region-wide LSRs for the period 1999-2001 into the total cost of the eight interfaces. (TR 1029) In most cases, all OSS interfaces are supported by the same computer, and have the same OSS support personnel working on the different systems. Therefore, ALECs would pay a flat rate regardless of which system they may or may not use. (TR 1041)

ITC^DeltaCom Witness Rozycki states that BellSouth offered two pricing options for OSS. The first option is a regional charge of \$3.50 per LSR, while the other is to pay any state-ordered rates. Because this Commission has determined in Order No. PSC-96-1579-FOF-TP, Docket Nos. 960833-TP, 960846-TP, and 960916, issued on December 31, 1996, that new entrants and incumbents will each incur costs to develop OSS, and concluded that "each party should bear its own cost," the second option is the most attractive to ITC^DeltaCom. (TR 61)

ITC^DeltaCom offers several arguments as to why OSS charges are inappropriate. Witness Rozycki refers to the Telecommunications Act of 1996, and FCC and state Orders which require that non-discriminatory access to OSS functions be provided to CLECs by January 1, 1997. BellSouth was not required to build separate systems for CLECs, but instead was allowed to modify its existing OSS for CLEC access. Modifying existing OSS would have been less costly, and would have provided CLECs with direct, non-discriminatory access to OSS. Building a separate system requires CLECs to build compatible systems, and therefore CLECs would incur additional cost. (TR 110-111)

Witness Thomas states that BellSouth's OSS systems do not provide non-discriminatory access, and ITC^DeltaCom needs non-discriminatory access to pre-ordering information to submit accurate orders to BellSouth. (TR 206) Though LENS provides access to pre-ordering information, LENS information cannot be integrated into EDI. Without such integration, ITC^DeltaCom must re-enter the information into EDI, which is inefficient and subject to human error. Witness Thomas also asserts that the Telecommunication Act of 1996 requires

that:

. . .if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether from fairly competing. Thus providing non-discriminatory access to these support systems functions, which would include access to information such systems contain, is vital to creating opportunities for meaningful competition. (TR 207)

According to ITC^DeltaCom witness Thomas, the lack of parity severely disadvantages CLECs when competing against BellSouth. He states that because BellSouth asserts that it only has to provide equal services when it is technically feasible to do so, this essentially would allow BellSouth to pick and choose at its own discretion what is technically feasible. (TR 210)

ITC^DeltaCom witness Wood states that the use of a forward-looking costing methodology is necessary to ensure that the inputs and assumptions to the cost study reflect forward-looking efficient values. He contends that, BellSouth's proposed non-recurring charges (NRCs) are not consistent with forward-looking costs when electronic systems that flow through without human intervention are not functioning properly, or not providing the full functionality required to provide service to end-use customers. (TR 520-521) Witness Wood states when evaluating BellSouth's proposals, the Commission should ensure that its NRCs for OSS are based upon the same TELRIC principles that have been adopted by the FCC for setting UNE prices. ILEC NRC studies reflect existing OSS that were designed in a monopoly market. If ILECs are allowed to be compensated for any costs they incur, regardless of how inefficiently the cost was incurred,

CLECs will be placed at a competitive disadvantage (TR 522) Moreover, witness Wood asserts that every carrier must incur costs to effect changes envisioned by the Telecommunication Act, and no carrier should be permitted to use its existing market power to impose costs on another carrier or carriers. Therefore, each carrier should bear its own costs. (TR 527) However, if the Commission concludes that BellSouth should be permitted to recover some portion of its OSS costs through non-recurring charges, witness Wood states the following principles should apply:

Whatever portion of these transition costs BellSouth is permitted to impose should be recovered in a competitively-neutral and non discriminatory manner, which recognizes that BellSouth's customers also benefit from the local competition and should therefore, defray a pro rata share.

CLECs should not pay BellSouth for upgrading systems which would benefit its retail services.

These costs should not be assessed as NRCs, but should be amortized over the expected economic life of the OSS. (TR 528-529)

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Witness Wood also states that BellSouth's inputs for ongoing cost are inconsistent with the language of the *FCC's First Report and Order* in FCC Order No. 96-325. He believes BellSouth ignores the fact that the Order requires studies to be based on the "most efficient technology available." If the Commission were to find that ITC^DeltaCom should pay some portion of BellSouth's OSS as well as its own, the TELRIC standard requires these costs be calculated by placing all forward-looking costs in the numerator, and dividing by all users of OSS, including BellSouth (and its retail customers), in the denominator. (TR 561)

ITC^DeltaCom witness Rozycki notes an inconsistency in the "TELRIC cost" of OSS in the states of Florida and Alabama. Witness Rozycki argues that the Alabama rate is around \$11 while the Florida rate is approximately \$6. The witness states that CLECs are using the same basic OSS regardless of the state, so, how could costs differ if all users were considered? Witness Rozycki concludes BellSouth is attempting to recover its costs with a proposed \$3.50 charge offered regionally, but the math is not consistent. (TR 185-186)

Fundamentally, this issue involves whether or not the charges BellSouth proposed for providing OSS functions to this CLEC are recoverable, and if recoverable, are they in compliance with the FCC's pricing methodology. To date, this Commission has not determined what costs, if any, should be recovered by BellSouth from ALECs for providing them access to its OSS functions. ITC^DeltaCom witness Rozycki referred to Order No. PSC-96-1579-FOF-TP, which concluded that "each party should bear its own costs of developing and implementing electronic interface systems." However, in Order No. PSC-98-0604-FOF-TP, issued in Dockets Nos. 960757-TP, 960833-TP, and 960846-TP, the Commission stated that "[w]e recognize that OSS costs, manual and electronic, may be recoverable costs incurred by BellSouth." (P.165) In the two proceedings, the

Commission declined to establish cost recovery for OSS. However, the Commission encouraged parties to negotiate rates for OSS functions. In Order No. PSC-98-0604-FOF-TP, the Commission concluded that:

. . . if, however, the companies are unable to reach agreement through such negotiations, they may of course seek our guidance.

Staff believes that an arbitration proceeding between two parties is not the proper forum for establishing rates for an UNE that will consequently affect all competitors. Further, based on the record from this proceeding, staff is unable to determine whether the development, implementation, and ongoing costs associated with processing a LSR are reasonable. Consequently, we recommend that OSS cost recovery charges not be set at this time.

Staff's relies on three areas for our recommendation. First, staff believes the record in this proceeding is not adequate for us to draw a definitive conclusion as to the reasonableness of the OSS costs for which BellSouth seeks recovery. BellSouth witness Caldwell sponsored the cost study, Exhibits DDC-2, DDC-3, and DDC-4. (EXH. 25) Staff believes there are certain aspects and assumptions of this study which warrant further scrutiny and evaluation. For example, the nonrecurring charges BellSouth proposes to recover for "fallout" orders is based on the assumption that CLEC errors cause "fallout." (TR 1031) However, some "fallout" is due to the inability of existing OSS to be able to process certain types of complex orders (i.e., hunting, synchronet, and PBX orders). (TR 1137) Thus, inefficiencies in OSS do not allow complex orders to flow through electronically, but BellSouth seeks to recover these costs from CLECs. Also, staff questions whether or not the proposed development and use costs associated with TAFI is consistent with the pricing methodology of the other elements. TAFI is the same repair and maintenance interface used by BellSouth retail repair attendants. The

systems were modified with a security layer so CLECs would only have access to their accounts. (TR 1199-1200) Staff is unsure whether the cost associated with TAFI should be shared by all customers including BellSouth customers?

Second, BellSouth proposes to recover its OSS costs on a per local service request basis, over three years. Staff is uncertain why three years is considered most reasonable when OSS usage will be ongoing. Moreover, if costs are to be completely recovered in three years, the early entrants in the market will bear the cost burden for future participants. It is unclear whether BellSouth will seek recovery costs for development and implementation after three years. Further, a review of BellSouth witness Caldwell's Exhibit DDC-3 appears to indicate that a sizable portion of the cost are either non-recurring or volume insensitive. Staff believes there may be other methods of recovering costs which may have less of an impact on the CLECs.

Third, BellSouth's interfaces are still in the developmental stage and an independent determination has not been made that these systems provide pre-ordering or ordering functions to CLECs in the same time and manner as BellSouth's internal interfaces. Staff believes that there are uncertainties raised by the record in this proceeding. First, because BellSouth is constantly upgrading its OSS, does this substantiate ITC^DeltaCom's claim that BellSouth's OSS does not provide the non-discriminatory access necessary to fairly compete? If so, at what point will BellSouth OSS offer the non-discriminatory access that is required? Second, how good does BellSouth's OSS have to be before cost recovery charges are appropriate? Third, should the cost for OSS be spread among all consumers? CLECs are required to pay for all systems even though they may not use them. (TR 1041) Staff questions whether it is appropriate that ITC^DeltaCom or any CLEC should pay for systems it does not use.

In conclusion, staff recommends that BellSouth's

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OSS charges proposed in this proceeding should not be approved for inclusion in the new agreement. Staff believes there are numerous issues related to OSS costs which cannot be adequately resolved based on the record in this proceeding. Further, we believe that OSS cost recovery more appropriately should be dealt with in a generic proceeding, and not in this arbitration proceeding. If the Commission were to establish OSS charges in this docket, such an action would be a basis for BellSouth including the same charges in all future negotiated agreements.

ISSUE 39: What are the appropriate recurring and non-recurring rates and charges for:

- a) two-wire ADSL/HDSL compatible loops,
- b) four wire ADSL/HDSL compatible loops, or
- c) two-wire SL1 loops.

RECOMMENDATION: The appropriate rates are provided in Table 39-1, below. These rates should not be subject to true-up. (OLLILA)

Table 39-1: Recommended Rates

	Recommended Recurring Rate	Recommended Non-Recurring Rate (First)	Recommended Non-Recurring Rate (Additional)
two-wire ADSL	\$15.81	\$113.85	\$99.61
two-wire HDSL	\$12.12	\$113.85	\$99.61
four-wire ADSL	not applicable	not applicable	not applicable
four-wire HDSL	\$18.24	\$116.91	\$101.71
two-wire SL1	\$17.12	\$31.79	\$28.87

POSITIONS OF THE PARTIES:

ITC^DELTA COM:

The Commission should adopt rates which move closer toward FCC compliant TELRIC rates. The Commission should adopt the adjustments to BellSouth's cost study submitted by ITC^DeltaCom. The resulting interim rates should be subject to true-up pending a final determination of rates in light of the FCC Rules.

BELLSOUTH:

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.

STAFF ANALYSIS

"What is the appropriate cost methodology?" underlies all of the UNE cost and pricing issues. The current uncertainty in regard to UNE pricing, and BellSouth's view of that uncertainty, is set out by BellSouth witness Varner.

Even though the FCC's pricing Rules 51.501-51.515 (Pricing of Elements) . . . have been reinstated [by the January 25, 1999, Supreme Court decision], they must still be reevaluated by the Eighth Circuit because the Eighth Circuit's earlier ruling was based solely upon jurisdictional arguments and did not consider the various challenges raised to these rules on their merits. Although these rules are in effect while the Eighth Circuit revisits them, the final pricing rules will not likely be known until the Eighth Circuit acts, which could be several months in the future. In the interim, BellSouth is proposing prices that are consistent with the FCC's pricing methodology and with this Commission's arbitration decisions. BellSouth also proposes that those prices be modified prospectively, if necessary, when the FCC issues its final rules. (TR 672)

This Commission ordered recurring and non-recurring rates for two-wire ADSL and HDSL loops, and four-wire HDSL loops in Order No. PSC-98-0604-FOF-TP, in Docket Nos.

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960757-TP, 960833-TP, and 960846-TP, dated April 29, 1998. In his rate proposal, BellSouth witness Varner proposes the rates, ordered in the April 29, 1998 Order, but also refers to an earlier Order in the same docket, Order No. PSC-96-1579-FOF-TP, issued December 31, 1996.

In its December 31, 1996 Order, at page 22, this Commission determined "that the appropriate cost methodology to determine the prices for unbundled elements is an approximation of Total Service Long Run Incremental Cost (TSLRIC)."

Then, on page 32, the Commission found that "BellSouth's cost studies are appropriate because they approximate TSLRIC cost studies and reflect BellSouth's efficient forward-looking costs." Finally, on page 33, the Commission stated that "we find it appropriate to set permanent rates based on BellSouth's TSLRIC cost studies. The rates cover BellSouth's TSLRIC costs and provide some contribution toward joint and common costs." Subsequently, in the April 29, 1998 Order, the Commission established additional recurring and nonrecurring UNE rates, also covering BellSouth's TSLRIC costs plus some contribution toward joint and common costs. (TR 679-680)

Witness Varner then provides BellSouth's rationale for proposing the same ADSL/HDSL (xDSL) rates, ordered by this Commission in Order No. PSC-98-0604-FOF-TP, in this proceeding.

BellSouth's cost studies are generic in that they determine the costs to BellSouth of providing UNEs to any requesting carrier. These costs do not vary, whether it is AT&T or ITC^DeltaCom which is requesting the element. Therefore, the costs that this Commission has already used to establish rates for AT&T, MCI,

and other ALECs should be the same for ITC^DeltaCom or for any other ALEC.

. . . the final requirements for pricing are unknown until the Eighth Circuit makes its decision. For this interim period, the most reasonable course is to continue to apply rates that this Commission has already found to be just, reasonable, and cost-based as required by the Act. (TR 680-681)

ITC^DeltaCom witness Wood contends that,

The Commission's decision in this proceeding should, and must, take into consideration these reinstated rules. As a result, the Commission's previous conclusions in Docket Nos. 960757-TP, 960833-TP, and 960846-TP must be evaluated in light of the new legal standards that are to be applied.

I strenuously disagree, however, with Mr. Varner's assertions that the Commission should not, and need not, apply the law as it currently stands in this proceeding because the applicable law may change in the future.

. . . Mr. Varner's assertion in his testimony that the Commission is bound in this proceeding by its conclusions in Docket Nos. 960757-TP, 960833-TP, and 960846-TP is both factually incorrect and clearly inconsistent with the language of the order that the Commission was making certain decisions based on the status of the law at that time. . . . It is reasonable for the Commission's conclusions to now be updated as necessary to comply with the decisions of the courts. (TR 544-545)

Witness Wood is correct when he states that, with reference to the December 31, 1996 Order, the Commission made decisions based on the then-current status of the law. However, staff notes, the Commission also considered the then-stayed pricing rules:

The FCC states that, "while we are adopting a version of the methodology commonly referred to as the TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term "total element long run incremental cost" (TELRIC) to describe our version of this methodology." See FCC Order 96-325 at ¶ 678. It should be noted that the methodology the FCC uses to define TELRIC would not necessarily be used by this Commission in determining the TSLRIC costs. . . . Upon consideration, we do not believe there is a substantial difference between the TSLRIC cost of a network element and the TELRIC cost of a network element. (Order No. PSC-96-1579-FOF-TP, issued December 31, 1996, pp. 23-24)

During the hearing, witness Wood clarified ITC^DeltaCom's position:

I think there is general agreement that we've got some existing rates that were based on the fact that the FCC rules had been stayed at the time. I know they're geographic deaveraging issues, UNE combination costing issues, and that you're resolving a lot of those or addressing a lot of those in a separate generic docket and I don't want to reargue that here because you've already got the appropriate forum for that. (TR 581)

The generic docket that witness Wood is referring to is Docket No. 990649-TP. This docket, with hearings scheduled for July and September, 2000, will address recurring and non-recurring prices for UNES.

Staff agrees with witness Wood's characterization of Docket No. 990649-TP as the "appropriate forum" for UNE pricing in light of changes in the status of the law. Certainly, staff believes there is little or no substantive testimony in this proceeding on whether or not the cost methodology used by BellSouth conforms to the current state of the law. Therefore, staff cannot conclude, in this proceeding, whether BellSouth's cost methodology is inappropriate given the current law. Therefore, staff recommends that BellSouth's cost methodology be viewed as appropriate for the purposes of this proceeding. Staff does not find ITC^DeltaCom's position advocating "rates subject to a true-up pending a final determination of rates in light of the FCC Rules" to be persuasive because staff believes that there is insufficient evidence in the record to conclude that the rates ordered in this proceeding will be out of compliance with the current state of the law and the FCC's rules. Therefore, staff recommends that the rates ordered in this proceeding not be subject to true-up.

BellSouth's Cost Study Methodology

According to BellSouth witness Caldwell, BellSouth's cost study is "based on the cost study methodology accepted by this Commission in Order No. PSC-98-0604-FOF-TP in Docket Nos. 960757-TP, 960833-TP, and 960846-TP dated April 29, 1998." (TR 991) This Order established recurring and non-recurring rates for two-wire ADSL and HDSL, and four-wire HDSL. In this proceeding, BellSouth proposes the same rates for two-wire ADSL and HDSL, and four-wire HDSL that the Commission ordered in Order No. PSC-98-0604-FOF-TP. (TR 988) BellSouth filed new cost studies for those elements for which the Commission had not ordered rates, namely, recurring and non-recurring rates for the SL1 and SL2 loops (Issues 39 and 40), and two-wire SL2 loop Order Coordination for Specified Conversion Time (Issue 40). (TR 988) In Order No. PSC-98-0604-FOF-TP, the Commission made specific adjustments to BellSouth's proposed cost methodology, and, according to witness Caldwell, those adjustments were incorporated into

the new cost studies. Some inputs used for the new cost studies were updated to the 1998-2000 time period. (TR 992-993)

Specific adjustments ordered by the Commission in Docket Nos. 960757-TP, 960833-TP, and 960846-TP, and incorporated into the new cost studies include: a 9.9 percent cost of capital, depreciation lives and net salvage values, Florida-specific tax factors (although the tax factors have been updated to the 1998-2000 period), a 5.12 percent common cost factor, recalculation of the shared cost factor, the exclusion of the shared component of the labor rate (to be included in the recurring shared factors), and the separate study of disconnect costs. (TR 993-994) Other specific, Commission-ordered adjustments include an increase of 10 percent to the distribution fill factor and 5 percent to the feeder fill factor (BellSouth calculated the increases based on end-of-1997 fill factors), protector investment in the NID to reflect only the actual number of lines per location, aerial drop length of 200 feet and buried drop length of 150 feet, and the elimination of service inquiry and service order time from the non-recurring study. (TR 994-995) BellSouth also excluded the Access Customer Advocacy Center (ACAC), as ordered in Docket Nos. 960757-TP, 960833-TP, and 960846-TP from the cost studies, although it argues that the cost of the ACAC should be included. (TR 995) Staff includes a discussion of the ACAC costs in its analysis of non-recurring rates.

Updated inputs in BellSouth's cost study included, in addition to Florida tax rates, cable and cross box material prices, drop wire and NID prices, switch weightings, plant loadings, investment inflation factors, plant specific expense, labor rates, and regional Telephone Plant Indexes. (EXH 10, response to Interrogatory No. 3)

Based on the record evidence, staff believes that BellSouth has filed its new cost studies in conformance with Order No. PSC-98-0604-FOF-TP. ITC^DeltaCom did not

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speak to whether certain inputs should be updated or not for the new cost studies. Considering the record evidence, staff finds BellSouth's choice of inputs to update for the new cost studies to be reasonable.

RECURRING RATES

- a) Two-wire ADSL/HDSL compatible loops
- b) Four-wire ADSL/HDSL compatible loops

With reference to four-wire ADSL compatible loops, BellSouth states in its position, "ADSL functionality is not applicable to four-wire loops." During his deposition, ITC^DeltaCom witness Hyde agreed that there is not a four-wire ADSL loop. (EXH 3, pp. 17-18) Therefore, rates will be recommended only for two-wire ADSL/HDSL compatible loops and four-wire HDSL compatible loops.

ITC^DeltaCom did not propose any adjusted rates for two-wire ADSL/HDSL and for four-wire HDSL loops. ITC^DeltaCom witness Hyde states,

In their recurring ADSL cost study BellSouth has recognized that the extra costs associated with digital loop carrier are not appropriate to ADSL since ADSL will not work with digital loop carrier and also that the ADSL loops are shorter and thus less costly. Those costs are reflected in ADSL recurring rates that are less than voice grade rates. (TR 376)

Absent any dispute or counter-proposal by ITC^DeltaCom, staff recommends approval of BellSouth's proposed recurring rates, which are identical to those ordered by this Commission in Order No. PSC-98-0604-FOF-TP, for two-wire and four wire ADSL and for four-wire HDSL. Furthermore, staff notes that generic Docket No. 990649-TP explicitly considers recurring rates for loops, including xDSL loops. Staff's recommended rates are shown in Table 39-2 below:

Table 39-2: Staff's Recommended Recurring Rates -
xDSL Loops

xDSL	Recurring Rate
Two-wire ADSL loop	\$15.81
Two-wire HDSL loop	\$12.12
Four-wire HDSL loop	\$18.24

Source: EXH 23, AJV-1, p. 1

c) Two-wire SL1 loops

ITC^DeltaCom included proposed rates for the SL1 and the SL2 loops in its position for Issue 3(b)2, rather than in Issue 39(c) or Issue 40(b):

BellSouth must provide UNEs to ITC^DeltaCom at cost-based rates that comply with Section 252(d) of the Act and FCC pricing Rules. The Commission should modify BellSouth's assumed fill factors and assume utilization of IDLC technology. Rates should be \$14.38 for an SL1 loop and \$17.78 for an SL2 loop.

Staff would note that ITC^DeltaCom originally proposed incorrect rates that were higher than BellSouth's proposed rates. (EXH 2, pp. 29-30) ITC^DeltaCom witness Wood provided the corrected rates (\$14.38 for the SL1 loop and of \$17.38 for the SL2 loop) in a late-filed deposition exhibit. (EXH 2, DJW-1)

Staff's analysis of the recurring rate for an SL1 loop also applies to the SL2 loop.

According to BellSouth witness Caldwell, an SL1 loop is a "nondesignated circuit," which "would equate more to 'POTS like' service . . ." (TR 989) The SL2 loop "is

provided as a designed circuit and includes a test access point." (TR 989) The SL2 loop "would equate more to the unbundled loop currently approved and offered to Alternative Local Exchange Carriers ("ALECs") in Florida." (TR 989)

ITC^DeltaCom witness Wood stated that "ITC^DeltaCom has identified specific inputs, assumptions, or methodologies in the BellSouth cost studies that must be updated in order to comply with the FCC rules now in effect." (TR 550) What follows is the testimony witness Wood provided to substantiate his proposed rates for the SL1 and SL2 loops:

. . . it is possible to change certain inputs and assumptions so that the results produced (and the resulting UNE prices adopted) will more closely approximate what the law requires. For example, the fill factors utilized by BellSouth in its cost studies are based, according to its engineering witness, on historic experience. An additional assumption relates to the use of the forward-looking technology for digital loop carrier systems. The use of integrated DLC ("IDLC") is now appropriate for two reasons. First, the FCC rule has been reinstated requiring BellSouth to provide the loop and port without physical separation. Second, BellSouth's previous testimony to the contrary, since the hearing in Docket Nos. 960757-TP, 960833-TP, and 960846-TP BellSouth has demonstrated that it is possible to provide a local loop UNE that is physically separate from the switch port utilizing IDLC technology. It is my understanding that BellSouth has provided a number of such arrangements to ITC^DeltaCom. For each of these reasons, it is appropriate to replace BellSouth's assumption of obsolete universal DLC technology with the "efficient, forward-looking" IDLC technology.

The version of its cost models presented by BellSouth in Docket Nos. 960757-TP, 960833-TP, and 960846-TP are "hardwired" in such a way that IDLC assumptions cannot be introduced. BellSouth presented a version of its models in a recent Georgia proceeding, [footnote omitted] however, that does permit the user to assume that IDLC facilities will be utilized. Based on my analysis conducted in that proceeding, changing this assumption causes the reported local loop cost to decrease by just over 10%. [footnote omitted]

By changing only these two assumptions, it is possible to calculate a more appropriate rate for a 2-wire analog loop (this same loop that would be utilized as part of an extended loop arrangement). As I stated above, these adjustment [sic] to inputs are not sufficient to develop costs (and therefore rates) that comply with the FCC pricing rules. A change to these inputs can be used to produce interim rates that move in the direction of compliance, however, and should be subject to a true-up when the Commission has had the opportunity to conduct a more complete investigation. (TR 551-553)

Staff agrees with ITC^{DeltaCom} witness Wood that the use of higher fill factors and integrated digital loop carrier is likely to result in lower costs. However, witness Wood did not provide any backup documentation to support his corrected proposed rates. Furthermore, one of his proposed rates appears to be based on evidence in a Georgia proceeding. Staff finds this lack of backup documentation curious, because in witness Wood's own words,

In order to develop appropriate prices for UNES, it is critical that the cost studies being relied upon by BellSouth to justify both recurring and non-recurring charges be fully-

available [sic] to the Commission staff and to the parties, in electronic (functioning) format, for full review. Furthermore, these studies, and the underlying input data, should be provided with sufficient time to permit the parties to understand the network architecture, unit cost, and operating assumptions being employed, in order to ensure that they properly reflect forward-looking principles and are fully compliant with the applicable legal standards. (TR 516)

Table 39-3 below provides both ITC^DeltaCom's proposed rates and BellSouth's proposed rates.

Table 39-3: Proposed SL1 and SL2 Recurring Rates

	ITC^DeltaCom's Proposed Rates	BellSouth's Proposed Rates
SL1 Loop	\$14.38	\$17.12
SL2 Loop	\$17.78	\$20.52

Source: EXH 2, DJW-1; EXH 23, AJV-1, p.1

Staff believes the record evidence to support ITC^DeltaCom's proposed rates is insufficient, and in fact, does not meet the standards espoused by ITC^DeltaCom's witness. Staff believes that BellSouth has filed its cost study for SL1 and SL2 loops in compliance with Commission Order No. PSC-098-0604-FOF-TP, issued April 29, 1998. Therefore, staff recommends that BellSouth's proposed recurring rates for SL1 and SL2 loops, \$17.12 and \$20.52, respectively, be approved.

NON-RECURRING RATES

- a) Two-wire ADSL/HDSL compatible loops
- b) Four-wire ADSL/HDSL compatible loops

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For the ADSL/HDSL loops, BellSouth proposed the non-recurring rates ordered by the Commission in Order No. PSC-98-0604-FOF-TP, issued April 29, 1998.

ITC^DeltaCom proposed non-recurring rates for two-wire ADSL and HDSL loops, but not for four-wire HDSL loops. In its testimony, ITC^DeltaCom refers only to ADSL loops in its arguments. It is unclear to staff whether ITC^DeltaCom means "ADSL" to include HDSL or not.

ITC^DeltaCom witness Hyde asserts that because "ADSL is an overlay service placed on voice grade facilities," its non-recurring charge "should be the NRC [non-recurring charge] for an equivalent voice grade loop plus an incremental cost for checking to see if the loop will meet the ADSL criteria." (TR 373) Witness Hyde disagrees with BellSouth's assumption that a dispatch is always required for an ADSL loop.

It is important to note that the dispatch assumed by BellSouth is the same dispatch that is necessary for the installation of a loop regardless of whether or not that loop is the BellSouth retail exchange service loop or a UNE loop. Dispatch of a technician to the customer premises for ADSL alone is more a function of non-regulated customer premises equipment than of the loop itself. If an end user is served by an existing non-loaded copper facility (plain old copper wire), no dispatch is required to convert that end user to ADSL UNE loops. (TR 374)

In addition, witness Hyde charges that the BellSouth cost study is not "forward-looking," because BellSouth's original study did not include the possibility of "competitive losses" of existing BellSouth ADSL customers. (TR 375) He contends that "[C]onversion of an existing BellSouth ADSL service to ADSL UNE loop would not require a dispatch since the loop is already ADSL compatible.

Work would only be required in the central office." (TR 375)

Witness Hyde also contends that when an existing BellSouth customer is served by a "plain old copper" or ADSL compatible loop, dispatch is not required. (TR 374) In addition, he opines that there is "some" quantity of spare ADSL compatible loops already connected to NIDs which would not require dispatch. (TR 375)

In further support of his position, witness Hyde states that BellSouth's non-recurring charge for its (interstate) tariffed ADSL service is \$50.

The majority of the costs are associated with installation of the central office ADSL equipment and connection of that equipment with transport Permanent Virtual Circuits (PVCs). A very small portion of the costs are to verify through loop records that the loop is "plain old copper" without such equipment as load coils and bridge taps. (TR 376)

He estimates this "small portion" of the costs "could be as low as \$1 or \$2," which "should then be added to the appropriate voice grade UNE loop NRC cost." (TR 376) However, he asserts that BellSouth has not produced "an appropriate voice grade UNE loop NRC cost to apply to ADSL," because voice grade UNE loop non-recurring costs include digital loop carrier. (TR 376)

BellSouth witness Milner provided some "highlights" of the steps BellSouth takes in provisioning an ADSL compatible loop.

One is to create a design layout record. One is to ensure that there are no bridge taps, load coils, other impediments; and third, to do what we call end-to-end testing to make sure that the loop does support the right characteristics,

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that it has the technical parameters necessary to support ADSL service. (TR 1314)

Witness Milner stated that "a dispatch is done in order to make sure that loop conforms to the technical standards or specifications for an ADSL compatible loop." (TR 1267) With tariffed ADSL service, however, BellSouth "provide[s] information to internet service providers that give [sic] them an indication of which loops we believe can support ADSL service, and, by like token, which cannot. ADSL compatible loops though is a guarantee that it will work." (TR 1312)

According to witness Milner, a customer receiving the ADSL service provided by an internet service provider is not guaranteed that the line will always have the capability for ADSL service. (TR 1312-1313) An ADSL compatible loop, though, is different.

One of the things that BellSouth does in providing an ADSL compatible loop to DeltaCom or any other ALEC is to so note that is an ADSL compatible loop in our inventory records, such that we don't do things that would render it not compatible, such as moving it to IDLC [integrated digital loop carrier, which cannot support ADSL], adding bridge taps, adding load coils or other things that we might do not knowing that particular loop was ADSL compatible. So we mark those loops in our inventory base to make sure that we don't do those things knowingly which would interrupt the ADSL compatibility of that loop. (TR 1314)

BellSouth and ITC^DeltaCom appear to have a fundamental disagreement about what activities are necessary in order to provision an ADSL compatible loop. ITC^DeltaCom witness Hyde portrays an ADSL compatible loop as a regular copper loop except that someone has to spend no longer than five minutes to "check the loop to see if it is or is not compatible." (TR 461) He also does not

believe that end-to-end testing is "necessary a hundred percent of the time." (TR 467) ITC^DeltaCom witness Hyde agrees that if BellSouth "is doing more work than just looking at a cable record," he has "underestimated the non-recurring charges BellSouth should be able to recover," but only if "one assumes" that functions other than checking a cable record "are required and are necessary." (TR 468)

ITC^DeltaCom witness Hyde also argues that a guarantee of ADSL compatibility, initial or ongoing, is associated with recurring costs, not non-recurring costs. (TR 463) In addition, he contends that although ITC^DeltaCom wants a design record, it is not necessary for an ADSL compatible loop. (TR 463-464).

Staff is not persuaded by ITC^DeltaCom witness Hyde that a guarantee of initial compatibility is a recurring cost. Staff is also not persuaded that a guarantee of compatibility going forward is a recurring cost. The very nature of a non-recurring cost is that of a one-time cost. Certainly staff finds it difficult to believe that determining compatibility is an on-going cost either the first time a loop is checked for compatibility or when records are changed to ensure that a loop remains compatible.

Staff is also not persuaded by witness Hyde's arguments that dispatch is rarely, if ever, required. Certainly, staff believes that in the context of providing a customer with what the customer has ordered, and ensuring that the product works properly, the record evidence does not support a recommendation that end-to-end testing is inappropriate. Staff suspects that if ITC^DeltaCom purchased ADSL compatible loops that were not tested and did not work, ITC^DeltaCom would be a very unhappy BellSouth customer. Therefore, staff believes that there is insufficient record evidence to conclude that BellSouth's non-recurring ADSL functions are inappropriate.

ITC^DeltaCom witness Hyde provided an estimate of what he believes the appropriate non-recurring costs for two-wire ADSL and HDSL compatible loops to be. (EXH 20) His non-recurring costs are based on "the Voice Grade SL2 costs and added time for verifying the facilities for ADSL compatibility." (TR 377) He states that his proposed non-recurring costs "still contain some unnecessary costs which cannot be identified until BellSouth files a cost study that complies with the FCC's reinstated rules." (TR 377-378) When asked, during his deposition, how he knew that there are unnecessary costs if he cannot identify them, he responded, "[T]here are some functionalities that I believe to be in those cost studies that do not comply with the FCC's reinstated rules. However, I cannot identify those costs." (EXH 3, p. 34)

Table 39-4 below compares BellSouth's and ITC^DeltaCom's proposed non-recurring rates for two-wire ADSL and HDSL loops.

Table 39-4: Proposed Non-Recurring Rates for Two-Wire ADSL/HDSL

	BellSouth's Proposed Non- Recurring Rate	ITC^DeltaCom's Proposed Non- Recurring Rate
Two-wire ADSL/HDSL: First	\$113.85	\$45.27
Two-wire ADSL/HDSL: Additional	\$99.61	\$22.55
Four-wire HDSL: First	\$116.91	
Four-wire HDSL: Additional	\$101.71	

Source: EXH 23, AJV-1, p. 1; EXH 20, p. 5.

In summary, staff believes that ITC^DeltaCom has provided no persuasive argument concerning ADSL/HDSL non-

recurring costs. Therefore, staff recommends that the non-recurring rates for two-wire ADSL/HDSL and four-wire HDSL contained in Order No. PSC-98-0604-FOF-TP, released April 29, 1998, and proposed by BellSouth are appropriate in this case.

c) Two-wire SL1 loops

Staff's analysis of the proposed non-recurring charges for SL1 loops also applies to SL2 loops. Table 39-5, below, shows BellSouth's proposed non-recurring charges for both SL1 and SL2 loops, including the ACAC charges and excluding the ACAC charge.

Table 39-5 BellSouth's Proposed Non-Recurring Rates
for SL1 and SL2 Loops

	Proposed Rate Including ACAC	Proposed Rate Excluding ACAC
SL1 Loop: First	\$34.04	\$31.79
SL1 Loop: Additional	\$31.12	\$28.87
SL2 Loop: First	\$84.40	\$38.02
SL2 Loop: Additional	\$81.56	\$35.18

Source: EXH 23, AJV-1, p. 1; EXH 25, DDC-1, Bates-stamped pp. 49, 57

BellSouth's proposed ACAC charge for the first and additional SL1 loops is \$2.25. For the first and additional SL2 loops it is \$46.38. (EXH 25, DDC-5)

BellSouth contends that the costs associated with the Access Customer Advocacy Center (ACAC), which were excluded in Order No. PSC-98-0604-FOF-TP, should be included in the new cost studies.

ACAC is responsible for order coordination during connect and test for SL1 and SL2 loops.

One of the characteristics of a SL2 loop is that it includes manual order coordination performed by the ACAC. At the time the ALEC requests provisioning there are up to three separate activities which occur, Disconnect, Connect, and Remote Call Forwarding. A service order is generated for each of these three activities. In a purely mechanized environment these three orders can get out of sequence. This creates a potential service outage time of one hour. The only way to keep the orders in sequence is to manually coordinate them. This activity is performed by the ACAC and reduces the service outage time to no more than fifteen minutes. Since the ALEC ordering SL2 receives order coordination, it is appropriate to include these costs. (TR 996)

Order No. PSC-98-0604-FOF-TP, released April 29, 1998, excluded the ACAC from recovery, stating, ". . . all ordering charges, manual or electronic, shall be excluded from the non-recurring rates in these proceedings." (Order No. PSC-98-0604-FOF-TP, page 165) Certainly, the generic proceeding currently underway, Docket No. 990649-TP, is likely to address this issue.

For the SL1 loop, BellSouth's proposed ACAC time for the first and each additional loop is 0.055 hour. For the SL2 loop, BellSouth's proposed ACAC time for the first and each additional loop is 1.1361 hours. For the two-wire SL2 Order Coordination for Specified Conversion Time BellSouth's proposed ACAC time is 0.3333 hour. (EXH 25, DDC-5)

ITC^DeltaCom provided no testimony on the ACAC. However, when asked about BellSouth's proposal to include the ACAC in the new non-recurring cost studies, ITC^DeltaCom witness Hyde replied that he does not believe that the ACAC time should be added to the cost.

It seems to me that to have a manual coordination for services for which BellSouth with their own end users, to the best of my knowledge, handles on a mechanical basis and does not have the same type of system, would be inappropriate. It is certainly an inefficient way to do business, if indeed it is required for any manual.

But on top of that, I certainly do not think that the Access Customer Advocacy Center does any work on unbundled network elements. (EXH 3, p. 13)

Staff does not find ITC^DeltaCom's argument to exclude ACAC time to be at all persuasive. Even if ITC^DeltaCom believes that the ACAC "does any work on unbundled network elements," it has not provided any documentation supporting its claim. Even though ACAC was excluded in Order No. PSC-98-0604-FOF-TP, staff does find BellSouth's argument to include ACAC for SL2 loops to be persuasive. However, BellSouth provides no explanation of why it includes ACAC time for the SL1 loop or for two-wire SL2 Order Coordination for Specified Conversion Time. Based on the record evidence, staff recommends that BellSouth's proposed ACAC time, and associated cost, should be included in the non-recurring costs for the SL2 loop only.

Staff believes that the remainder of BellSouth's non-recurring cost study for the SL1 and SL2 loops is in conformance with Commission Order No. PSC-98-0604-FOF-TP and is appropriate for this case.

ITC^DeltaCom witness Hyde proposed non-recurring costs for the SL1 and SL2 loops. He proposed adjustments to the additional loop work time:

Basically, what I have done here in order to reflect a best estimate, if you will, of those efficiencies to be gained is to take the initial

time and apply a very conservative factor to it, which the factor I used was half, to say that if there is an amount of time for that first loop, then each additional loop should be no more than one-half. I applied that to everything, excluding the cross-connect, that had an additional time framework on it. (EXH 3, p. 35)

Table 39-6, on the following page, provides BellSouth's and ITC^DeltaCom's proposed work times, excluding ACAC times.

Table 39-6: BellSouth's and ITC^DeltaCom's Proposed Work Times for the SL1 and SL2 Loops (Hour)

	BellSouth Proposed: First	BellSouth Proposed: Additional	ITC^DeltaC om Proposed: Additional
SL1: Engineering (Address & Facility Inventory)	0.2000	0.2000	0.1000
SL1: Engineering (Outside Plant Engineering)	0.1000	0.1000	0.0500
SL1: Connect & Test (CO I&M Field - Ckt &Fac)	0.0583	0.0583	0.0583
SL1: Connect & Test (I&M)	0.3175	0.3175	0.1588
SL1: Travel (I&M)	0.0667	0	0
SL1 Total Time	0.7425	0.6758	0.3671
SL2: Engineering (Address & Facility Inventory)	0.2000	0.2000	0.1000
SL2: Engineering (Circuit Provisioning Group)	0.1300	0.1300	0.0650
SL2: Engineering (Outside Plant Engineering)	0.1000	0.1000	0.0500
SL2: Connect & Test (CO I&M Field - Ckt &Fac)	0.0583	0.0583	0.1588
SL2: Connect & Test (I&M - Spec. Svcs)	0.3175	0.3175	0.0583
SL2: Travel (I&M - Spec. Svcs)	0.0600	0	0
SL2 Total Time	0.8658	0.8058	0.4321

Source: EXH 25, DDC-1, Bates-stamped pp. 63, 69; EXH 20, pp. 1,3

During his deposition, witness Hyde acknowledged that the 50 percent reduction was based on his experience, although no cost studies were provided to support the 50 percent reduction. (EXH 3, p. 66)

Witness Hyde did not modify the work times for the first loop, for both the SL1 and SL2 loops. (EXH 3, pp. 35-36) However, he does not accept BellSouth's time. (EXH 3, pp. 35-36)

Again, not having a rationale and a cost study that I thought complied with the FCC's reinstated rules, not having the cost study, I did not attempt to adjust those. (EXH 3, pp. 35-36)

When asked about witness Hyde's reduction of additional work times for both the SL1 and SL2 loops, BellSouth witness Caldwell agreed that travel time is only needed for the first loop. (EXH 6, pp. 25-26) With regard to the other functions, witness Caldwell stated,

In terms of the other work time, the subject matter experts that provided this information did not see a difference between the first and additional. In other words, they felt that the amount of time necessary to perform the activities would be the same on the first as well as the additional. . . . Yes, that answer would hold true for the installation time. There is no additional travel. (EXH 6, p. 26)

Staff is not persuaded by ITC^DeltaCom's argument for reducing the additional work times. ITC^DeltaCom offered no cost studies or other documentation to support a reduction in additional work times. Based on the record evidence, staff recommends that BellSouth's proposed non-recurring rates, less the ACAC charge for the SL1 loop, be approved. As with the ADSL/HDSL rates, staff expects that non-recurring charges will be scrutinized in detail in the generic docket, Docket No. 990649-TP.

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Therefore, staff recommends that the non-recurring rate for the SL1 loop should be \$31.79, and \$28.87 for each additional loop. Staff recommends that BellSouth's proposed non-recurring rate of \$84.40 for the first SL2 loop and \$81.56 for each additional SL2 loop, be approved.

ISSUE 40(a): Should BellSouth be required to provide:

1. 2-wire SL2 loops or
2. 2-wire SL2 loop Order Coordination for Specified Conversion Time?

RECOMMENDATION: This issue has been resolved because BellSouth has agreed to provide (1) 2-wire SL2 loops and (2) 2-wire SL2 loop Order Coordination for Specified Conversion Time. (OLLILA)

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

ITC^DeltaCom did not provide a position.

BELLSOUTH:

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.

STAFF ANALYSIS

BellSouth agreed, in its direct testimony, to provide 2-wire SL2 loops and 2-wire SL2 loop Order Coordination for Specified Conversion Time, and provided cost studies. ITC^DeltaCom did not provide a position for this issue in its post-hearing brief, therefore, staff believes that this issue is resolved.

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

RECOMMENDATION: The appropriate recurring rate for the two-wire SL2 loop is \$20.52. The appropriate non-recurring rate for the two-wire SL2 loop is \$84.40 for the

first loop, and \$81.56 for each additional loop. The appropriate non-recurring rate for two-wire SL2 loop Order Coordination for Specified Conversion Time is \$23.24. These rates should not be subject to true-up. (OLLILA)

POSITIONS OF THE PARTIES:

ITC^DELTA COM:

The Commission should adopt rates which move closer toward FCC compliant TELRIC rates. The Commission should adopt the adjustments to BellSouth's cost study submitted by ITC^DeltaCom. The resulting interim rates should be subject to true-up pending a final determination of rates in light of the FCC Rules.

BELLSOUTH:

Since it not [sic] 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.

STAFF ANALYSIS

Consistent with its recommendation in Issue 39, staff does not find ITC^DeltaCom's position advocating "rates subject to a true-up pending a final determination of rates in light of the FCC Rules" to be persuasive because staff believes that there is insufficient evidence in the record to conclude that the rates ordered in this proceeding will be out of compliance with the current state of the law and the FCC's rules. Therefore, staff recommends that the rates ordered in this proceeding not be subject to true-up,

Two-wire SL2 Loop

As staff noted in Issue 39, staff's analysis of rates for the SL2 loop also apply to the SL1. Therefore, staff refers the reader to Issue 39 (c) for the discussion of the recurring and non-recurring rates for the SL2 loop.

Staff recommends that BellSouth's proposed recurring rate for the SL2 loop, \$20.52, be approved.

Staff recommends that BellSouth's proposed non-recurring rate of \$84.40 for the first SL2 loop and \$81.56 for each additional SL2 loop, be approved.

Two-wire SL2 Loop Order Coordination for Specified Conversion Time

BellSouth witness Varner defines this element:

The option of order coordination for specified conversion time is offered on SL2 loops. This option allows an ITC^DeltaCom [sic] to request a specific conversion time and BellSouth will make every effort to accommodate the request. Such a charge would be appropriate in a situation where the requested time was during a period when the serving central office involved was not manned. The charge covers the cost to provide coverage at that office to complete the cutover work. If the ITC^DeltaCom [sic] desires a cutover time outside of normal working hours, then overtime rates may also apply. A specified order conversion charge would only apply to the first loop on the order. Therefore, whether there is one loop or 10 loops on the order, a single charge for specified conversion time would be applied. (TR 735-736)

Witness Hyde's exhibit (EXH 20) containing his proposed non-recurring costs for the xDSL, SL1, and SL2 loops does not mention an SL2 loop order coordination charge for specified conversion time. When asked during his deposition whether ITC^DeltaCom had proposed a rate

for this service, witness Hyde responded, "I believe that was filed back with the original UNE cost case as best I can recall, the reason that I did not file was because I did not have the appropriate information from which to go through and develop those costs." (EXH 3, p. 38) Witness Hyde went on to say that, "[T]he SL1 and SL2, I believe, as well as the ADSL, were filed more recently than the original SL2 with order coordination time. And the reason I did not file it was, again, I did not have access to the appropriate programs. I do not, however, concur that it's appropriate times reflected [sic] there." (EXH 3, p. 38) It is unclear to staff to which "original UNE cost case" witness Hyde is referring. However, if it was Docket Nos. 960757-TP, 960833-TP and 960846-TP, then staff notes that this element did not appear in that proceeding. In fact, BellSouth's direct testimony, in this proceeding, includes a cost study for the SL2 loop order coordination charge for specified conversion time.

BellSouth's recommended rate for this (non-recurring) charge includes a charge of \$13.61 for the ACAC, for a total rate of \$36.85. (EXH 25, DDC-5; EXH 25, DDC-1, Bates-stamped p. 61; EXH 23, AJV-1, p. 1). Consistent with staff's recommendation in Issue 39, staff recommends that the additional ACAC charge be eliminated from this rate.

Based on the record evidence, staff believes that BellSouth's proposed rate for the two-wire SL2 loop order coordination for specified conversion, less the additional ACAC charge is reasonable, and should be approved. Thus, staff recommends a non-recurring rate of \$23.24 for two-wire SL2 loop order coordination charge for specified conversion time.

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

RECOMMENDATION: No. However, based on the record, BellSouth will incur at least an administrative cost related to disconnection. Therefore, staff believes a disconnection charge will always apply. (HINTON)

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

Disconnect charges should not be charged to ITC^DeltaCom when no physical disconnection occurs. Further, when a disconnect takes place because the customer chooses an alternative provider, BellSouth should not be allowed to charge a disconnect and a reconnect fee -- this would be double-counting charges for the same work activity.

BELLSOUTH:

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.

STAFF ANALYSIS

The issue before the Commission is to determine if BellSouth Telecommunications, Inc. (BellSouth) should be permitted to charge a disconnection charge when it incurs no costs associated with that disconnection. ITC^DeltaCom Communications, Inc. (ITC^DeltaCom) witness Wood raises two areas of contention related to this issue: "[a] question of timing, and a question of double counting of costs." (TR 537) First, witness Wood explains that

incumbent local exchange companies (ILECs) will often charge retail customers for service disconnection at the time service is installed, out of concern for customers disappearing without paying the charge when disconnection occurs. Witness Wood contends that alternative local exchange companies (ALECs) have an ongoing relationship with BellSouth, and as a result, this concern does not exist. (TR 537) He states that "[i]t is clear, therefore, that -- at a minimum -- disconnect charges should not be assessed to CLECs until the customer actually leaves the system." (TR 537)

BellSouth witness Varner argues that while BellSouth does charge a discounted disconnection fee at the time service is installed in states where this is permitted, in Florida BellSouth does not assess disconnection charges until the disconnection actually occurs. (TR 772) BellSouth witness Caldwell further addresses this by stating:

This Commission has already made a decision on this aspect of disconnect costs in Dockets Nos. 960757-TP, 960833-TP, and 960846-TP where it stated; "it is appropriate to assess those [disconnect] charges at the time the costs are in fact incurred." (Order PSC-98-0604-FOF-TP at Page 69) Thus, BellSouth presented these costs as separate items in this docket. (TR 1006)

ITC^DeltaCom witness Wood's second contention is that "disconnect charges should not be assessed if a disconnect does not actually occur." (TR 537) Witness Wood explains that in many cases a line is not disconnected even when a customer leaves the premises, but rather the line is maintained in "soft dial tone" mode pending a new customer taking residence. (TR 537-538) Witness Wood argues that "[i]t is clearly not appropriate to assess a nonrecurring charge, whose calculation is based on work times for a physical disconnection, when no such physical disconnection takes place." (TR 538)

BellSouth witness Caldwell argues that "disconnect charges only apply when the ALEC requests that a UNE no longer be provided by BellSouth." (TR 1008) Witness Caldwell argues that when BellSouth is the end-to-end provider of service, it may not perform a physical disconnect (although a records change would still occur), but when an ALEC no longer wants to purchase unbundled network elements from BellSouth, certain physical activities will take place, e.g., disconnecting the unbundled loop from the cross-connects. (TR 1007) Witness Caldwell further states that "[i]f ITC^DeltaCom wants, for some unknown reason, to retain the original loop, then no disconnect charges would be assessed. However, ITC^DeltaCom would still be responsible for the recurring charges associated with that retained loop." (TR 1007-1008)

ITC^DeltaCom witness Wood further contends that even if a disconnect does take place, the nonrecurring charge assessed to the ALEC may not be appropriate. (TR 538) Witness Wood argues that if the disconnect is the result of a customer selecting another local service provider, the disconnect from one carrier and connect to the new carrier is a single activity. Witness Wood states that "[u]nder such a circumstance, it would be an overcharge to assess *both* a connect charge and a disconnect charge, because both would represent the same work activity." (TR 538)

BellSouth witness Caldwell argues that "the activities may take place at the same time, but different transactions, potentially involving different work groups, occur and can be separately identified into connect and disconnect categories." (TR 1007) Witness Caldwell gives an example of an end user served by ITC^DeltaCom via UNES purchased from BellSouth. If this customer was to switch back to BellSouth and ITC^DeltaCom was to relinquish the UNES, a records change would be made and the cross-connects to ITC^DeltaCom's collocation space would be removed. These activities would be billed to ITC^DeltaCom as a disconnection charge. Separate activities re-establishing the end user's service with BellSouth would

occur and those costs would then be billed to the end user. (TR 1007)

BellSouth witness Varner states that "[i]f there are any instances when BellSouth does not incur any costs associated with a disconnection, BellSouth should not charge ITC^DeltaCom for the disconnection. However, BellSouth is entitled to recover its costs incurred to disconnect service." (TR 737)

Staff's Analysis

Staff believes that where no cost is incurred during disconnection, no charge should follow. However, the evidence of record supports the assertion that there will always be a cost involved with disconnection. If an ALEC purchases UNEs from an ILEC and then requests a disconnect, the ILEC will perform certain physical activities involved in disconnecting that UNE. If an ALEC purchases ILEC services for the purpose of resale, the ILEC will perform at least an administrative records change in response to a disconnection request. These incurred costs are then assessed as a disconnection charge. (Caldwell TR 1007-1008)

The one grey area regarding disconnection argued by the parties involves the status of a UNE purchased by an ALEC, but for which the end user vacates the premises. In this case the line is not disconnected, but instead it is held in "soft dial tone" mode awaiting a new customer taking residence. ITC^DeltaCom argues that a UNE maintained in "soft dial tone" mode should not generate a disconnection charge. (Wood TR 537-538) BellSouth witness Caldwell contends that if ITC^DeltaCom wants to retain the original loop, then no disconnect charges would be assessed. However, ITC^DeltaCom would still be responsible for the recurring charges associated with that loop. (TR 1007-1008) Staff is unsure why ITC^DeltaCom would continue to lease the UNE loop after the customer vacates the premises, because any new resident would not be obligated to take service from ITC^DeltaCom. However,

in the case of "soft dial tone" staff is unconvinced that ITC^DeltaCom actually requests a disconnection, and BellSouth has stated that no disconnect charge is assessed when the loop is retained by the ALEC. Therefore, staff believes the scenario of "soft dial tone" mode is a non-issue when addressing disconnection charges.

Conclusion

Staff recommends that where BellSouth incurs no costs related to a disconnect, it should not be permitted to charge ITC^DeltaCom for such disconnection. However, based on the record, BellSouth will incur at least an administrative cost related to disconnection. Therefore, staff believes a disconnection charge will always apply.

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?

RECOMMENDATION: The Commission should set rates as specified in Table I of the Staff Analysis. (FULWOOD)

POSITIONS OF THE PARTIES

ITC^DeltaCom:

Until BellSouth produces, and the Commission adopts, the results of an FCC-compliant TELRIC cost study for cageless collocation, interim rates should be based on BellSouth rates for virtual collocation with adjustments to remove charges for installation, maintenance and repair and training.

BELLSOUTH:

The appropriate recurring and nonrecurring rates for the applicable elements of cageless collocation 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 keys security access to collocation space the rate in the Commission's Order No. PSC-98-0604-TP.

STAFF ANALYSIS:

In this proceeding ITC^DeltaCom wishes to incorporate into its agreement with BellSouth rates for cageless and shared collocation, two forms of collocation that were approved by the FCC in the recently issued Advanced Services Order, FCC 99-48. BellSouth proposes that the charges for cageless and shared collocation should be the applicable rates contained in FPSC Order No. PSC-98-0604-

FOF-TP. This Order included rates for a collocator's application, cage construction, floor space, power, and cross connects. Because the rate for cage construction is a separate element which may or may not be applied, BellSouth contends that nothing in the Advanced Services Order requires that these rates be revisited. BellSouth's witness Caldwell states that cageless collocation is a form of physical collocation which does not require a cage (TR 1013). BellSouth also proposes interim rates for a keyless Security Access System. These interim rates are based upon the rates approved by this Commission, in Order No. PSC-98-0604-FOF-TP, until a cost study can be completed. (TR 738)

ITC^DeltaCom witness Wood states that a cageless physical collocation arrangement is different than a traditional caged physical collocation arrangement. Witness Wood offers a general outline of the process involved in physical collocation:

. . . where BellSouth would have to go into a central office. They'd first have to identify some available space, generally in a hundred or fifty-foot increments. They would have to design an enclosure for that space. They would have to build or have someone build the enclosure for that space. They'd have to take power cables to that space. They'd have to take heating, ventilation, and air conditioning capability to that space. . . (TR 578)

Witness Wood believes the Commission approved rates reflect the significantly higher cost associated with these activities. Witness Wood states that from a costing perspective, the characteristics of a virtual collocation arrangement are more applicable to a cageless physical collocation arrangement than are those of a traditional caged physical collocation arrangement (TR 572). He

contends that the FCC's description of cageless collocation mirrors the characteristics of a virtual collocation arrangement. Unlike virtual collocation, a CLEC would be responsible for the installation, maintenance, and repair of its own equipment. (TR 572) In support of ITC^Deltacom's argument, Witness Wood cites excerpts from paragraphs 42 and 43 of the Advanced Service Order:

. . . caged collocation space results in the inefficient use of the limited space in a LEC premises, and we consider the efficient use of collocation space to be crucial to the continued development of the competitive telecommunication market. . . (FCC 99-48, ¶ 42)

. . . incumbent LECs must allow competitors to collocate in any unused space in the LEC's premises, without requiring the construction of a room, cage, or similar structure, and the creation of a separate entrance to the competitor's space. . . (FCC 99-48, ¶ 42)

. . . We require incumbent LECs to make collocation space available in single bay increments. . . (FCC 99-48, ¶ 43)

According to ITC^DeltaCom witness Wood's interpretation of the two paragraphs, CLECs are allowed to place their own equipment in any space that is available in BellSouth's equipment racks. Further, CLECs only have to purchase space sufficient for their needs. (TR 572) Witness Wood contends that BellSouth has not done a cageless physical collocation cost study. (TR 618) He also states that until a cost study is completed, the rates for virtual collocation should apply with an exception for the cost of maintenance. (TR 627)

However, BellSouth witness Milner argues that cageless physical collocation is not like virtual collocation. He cites paragraph 38 of FCC Order No. 99-48 which states:

. . . physical collocation that does not require the use of collocation cages ("cageless" collocation) . . .

Witness Milner argues that ITC^DeltaCom's assertion that physical collocation is the same as virtual collocation except for the maintenance, is just fundamentally wrong. (TR 1289) Witness Milner states that ITC^DeltaCom witness Wood gave the impression that BellSouth owns the equipment in a virtual arrangement, but that is not true. (TR 1290)

Conclusions and Recommendations

There are two major areas that staff considered in the determination of charges for shared and cageless physical collocation. First, how does the FCC's Advanced Services Order No. 99-48 define cageless and shared collocation? Second, to what extent are the prices and rate structures previously approved by this Commission applicable to new types of collocation arrangements? Addressing the first area, the initial definition of "cageless" collocation is provided in paragraph 38 of Order No. 99-48:

. . . Physical collocation that does not require the use of collocation cages ("cageless" collocation). . .

This definition supports BellSouth's position that the rates approved by Order No. PSC 98-0604-FOF-TP included a separate cage construction element; therefore, the other previously approved rates for physical collocation should apply to cageless collocation. (TR 738) However, the FCC's Order further clarifies what space ILECs must make available for cageless collocation:

. . . Subject only to technical feasibility and the permissible security parameters outlined below, incumbent LECs must allow competitors to collocate in any unused space in the incumbent LEC's premises. . . (FCC 99-48, ¶ 42)

Incumbent LECs must also ensure that cageless collocation arrangements do not place unreasonable minimum space requirements on collocating carriers. Thus, a competitive LEC must be able to purchase collocation space sufficient, for example, to house only one rack of equipment, and should not be forced to purchase collocation space that is much larger than the carrier requires. We require incumbent LECs to make collocation space available in single-bay increments, meaning that a competing carrier can purchase space in increments small enough to collocate a single rack, or bay, of equipment. . . (FCC 99-48, ¶ 43)

Finally, we require incumbent LECs, when space is legitimately exhausted in a particular LEC premises to permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible. . . (FCC 99-48, ¶ 44)

Staff agrees with ITC^DeltaCom witness Wood's argument that the FCC's Order establishes differences between cageless physical collocation and traditional physical collocation arrangements. (TR 572) However, staff is not persuaded that the rate elements for virtual collocation should apply. Staff believes the FCC's Order defines cageless physical collocation more specifically than physical collocation without the use of a cage. Under the FCC order regarding cageless collocation, CLEC's locating their own equipment within an ILEC's central office may purchase space increments small enough to accommodate a particular carrier's arrangement. Staff notes that cageless physical collocation offers new arrangement possibilities that were not available when the Commission approved Order No. PSC-98-0604-FOF-TP for physical collocation. Further, staff believes that the record shows that though cageless collocation arrangements may mirror caged physical collocation arrangements without a "cage", they may also "structurally" resemble virtual collocation arrangements depending on availability in a particular central office.

Next, staff addresses the second area, which is to what extent the prices and rate structures previously approved by this Commission are applicable to new types of collocation arrangements. In the previous Order, the physical collocation rates assumed CLECs would require separate floor space, cable racks, additional power facilities, and additional ventilation. This Commission's Order did not incorporate equipment rack sharing or single bay offerings. Staff believes that the FCC's Order calls for changes in the rate structure previously approved in Order No. PSC 98-0604-FOF-TP. The specific rate elements and basis for change are addressed below.

Application Fee/Planning Fee

The application fee recovers costs associated with man-hours of planning and design engineering required to establish a separate facility for collocators, incurred after receiving an application. This Commission's previous Order approved AT&T/MCI's proposed charges with minor modifications to the nonrecurring and recurring charges. According to the FCC's Order, the process must be changed to:

. . . require incumbent LECs to make each of the 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 choose. (FCC 99-48, ¶ 40)

At a minimum, the language in the FCC's Order clearly requires ILECs to make space availability information accessible to CLECs who may want to collocate. Prior to the FCC's Order, ILECs were responsible for conducting the planning and design activities only after a request from a potential collocator. ILECs were not required to inventory or provide space availability information to CLECs until an application was submitted. In compliance with the Order, BellSouth is conducting an inventory of available space per central office. Once the inventory is completed, the information will be released on their web site. (TR 1293)

According to ITC^DeltaCom witness Wood, an application for traditional physical collocation requires that ILECs identify floor space, power, and HVAC capabilities which cageless physical collocation does not require. (TR 621) However, BellSouth witness Milner believes the processes involved in handling an application and the subsequent cost will not change, because they are CLEC specific. (TR 1295) Staff agrees with witness Wood that the fundamental change in the process subsequently affects the labor cost involved in processing an application. Processing an application now requires the LEC to review the space inventory, respond, and to determine if power and ventilation upgrades are necessary. Incorporating the fact that this is a dynamic process, staff believes 9 hours is an appropriate labor time for verification and coordination. Also, staff added 11 labor hours for Common Systems Management, Circuit Capacity Management, and Outside Plant Engineering associated with determining possible plant upgrades per applicant. Staff believes that 20 hours is an appropriate assumption for calculating a nonrecurring rate for cageless physical collocation. Staff derives this labor estimate from labor hours used in Order No. PSC-98-0604-FOF-TP and believes that it is reasonable based on the facts presented in this case. Staff believes that \$1279 should be the rate.

Space Preparation

The space preparation charge recovers the cost of the survey, engineering design, and building/support system modifications for collocation. The previous FPSC Order concluded that space preparation charges should be determined on an individual case basis (ICB). Staff believes the FCC's Order supports ICB rates for space preparation. Staff notes that any power and air conditioning upgrade costs should be prorated in accordance with space used. In particular, the FCC Order states:

We conclude, based on the record, that incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocater in a particular incumbent's premises will not be responsible for the entire cost of site preparation. For

example, if an incumbent LEC implements cageless arrangements in a particular central office that requires air conditioning and power upgrades, the incumbent LEC may not require the first collocating party to pay the entire cost of site preparation. (FCC 99-48, ¶ 51)

When additional air conditioning and power is required, these non-recurring costs should be recovered by a nonrecurring space sensitive charge. Further, staff notes these charges only apply where upgrades are required. Where ITC^DeltaCom has an existing virtual collocation arrangement which it wishes to convert to a cageless physical collocation, BellSouth may not impose a space preparation charge on ITC^DeltaCom, unless, power and ventilation upgrades become necessary due to other collocators.

Floor Space/Cabling/Power/Connects

Staff believes that the charges approved in FPSC Order No. 98-0604-FOF-TP are appropriate for this case. The physical collocation rates approved for floor space, power, cable installation, and cross connects should apply for cageless physical collocation. However, cable rack rates for virtual collocators who wish to convert existing equipment to cageless physical collocation should remain the same. In FPSC Order No. 98-0604-FOF-TP, the cable rack charges were approved in 1/4 rack units. Because virtual collocators share the same cable racks as the ILECs, the charges approved reflected the lesser cost. In the event ITC^DeltaCom wishes to convert its equipment to a cageless physical collocation arrangement, the cable rack charge should continue to reflect the shared rate. Staff notes that cable rack rates depend upon the equipment location in the central office.

Security

The security charge recovers costs for access cards and maintenance in central offices where card readers are in place. Staff agrees with BellSouth that the previously adopted rates should also apply to cageless physical collocation, until BellSouth has conducted a new study of security access costs. In

the case where there are no card readers in place, staff believes that BellSouth should be required to install card readers or provide other methods of non-discriminatory access at the same cost.

Summary

Staff concludes that BellSouth should be allotted a reasonable time interval to make available space accessible to CLECs. The space preparation fee, though not specifically determined previously, should recover the cost for upgrades in power and air conditioning from all collocators where applicable, consistent with FCC 99-48, ¶ 51. Staff recommends the following rates for cageless collocation:

**TABLE I
 CAGELESS COLLOCATION RATES**

ELEMENT	UNIT	STAFF RECOMMENDED NON-RECURRING RATES	STAFF RECOMMENDED RECURRING RATES
APPLICATION FEE/ PLANNING FEE	Per Request Per Request *	\$1,279.00 Not applicable	\$15.53** \$15.53**
SPACE PREPARATION	Per Request Per Request *	ICB Not applicable	ICB per Central Office ICB per Central Office
FLOOR SPACE/ LAND & BUILDING	Per Square Ft.	Not Applicable	\$4.25**
CABLE INSTALLATION	Per Cable	\$1,056.00**	\$2.77**
CABLE RACK	Per Rack Per 1/4 Rack*	Not Applicable Not Applicable	\$22.94** \$2.24**
POWER	Per Amp	Not Applicable	\$6.95**
CROSS CONNECTS			
2-wire	Per 100 Circuits	\$1,157.00**	\$5.24**
4-wire	Per 100 Circuits	\$1,157.00**	\$5.24**
DS-1/DCS	Per 28 circuits	\$1,950.00**	\$226.39**
DS-1/DSX	Per 28 circuits	\$1,950.00**	\$11.51**
DS-3/DCS	Per Circuit	\$528.00**	\$56.97**
DS3/DSX	Per Circuit	\$528.00**	\$10.06**
OPTICAL CIRCUITS	Per Connection	\$2,431.00**	\$6.46**
SECURITY ACCESS	Per 5 Card	\$85.12**	Not Applicable

* - represents a virtual collocator converting existing equipment to a cageless arrangement.

** - rates approved in PSC-98-0604-FOF-TP

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

RECOMMENDATION: Tax issues are not addressed in Sections 251 or 252 of the Telecommunications Act of 1996 and are not appropriate for arbitration under those sections. Therefore, staff recommends that the Commission should not require that language covering tax liability be included in the interconnection agreement. However, the parties may decide through negotiation to include tax provisions in their agreement. (HINTON)

POSITIONS OF THE PARTIES:

ITC^DELTACOM:

Language is not necessary. If it must be included, it should simply require parties to implement the contract consistent with applicable tax laws. Each party should bear its own tax liability.

BELLSOUTH:

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.

STAFF ANALYSIS

The issue before the Commission is to determine if language covering tax liability should be included in the agreement, and what that language should include. ITC^DeltaCom Communications, Inc.'s (ITC^DeltaCom) position is that tax liability should be addressed outside the interconnection agreement and is a matter between the particular companies and the taxing authorities. ITC^DeltaCom witness Rozycki states that "ITC^DeltaCom's current interconnection agreement contains no language regarding taxes.

During the two years that the existing agreement has been in place, there have been no disputes over the payment of taxes." (TR 69) Witness Rozycki further contends that BellSouth Telecommunications, Inc.'s (BellSouth) proposed agreement introduces extensive language to deal with a problem that does not exist. (TR 69-70) While ITC^DeltaCom contends that there is no need for tax language in the agreement, ITC^DeltaCom has introduced its own language and does not understand why it is not suitable. Witness Rozycki argues that each party should simply comply with all applicable local, state and federal rules and regulations. (TR 114)

BellSouth witness Varner contends that BellSouth's proposed language is based upon its experiences with tax matters and liability issues in connection with the parties' obligations under interconnection agreements, and the variety of taxes that are imposed upon telecommunications carriers. (TR 741) Witness Varner further argues that "[a]s 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." (TR 741) However, BellSouth asserts that this issue is not appropriate for arbitration proceedings under Section 252 of the Telecommunications Act of 1996 (Act). (Varner TR 741)

Staff agrees that tax liability is not an issue appropriate for arbitration under Sections 251 and 252 of the Act. Section 252(c) of the Act provides in part:

Standards for Arbitration - In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall -

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;

In arbitrating any open issues under Section 252 of the Act, the Commission has to ensure that the resolution meets the

requirements of Section 251. Section 251 promulgates no requirements regarding tax liability; therefore, staff believes this issue is not appropriate for arbitration.

Conclusion

Staff believes that tax issues are not addressed in Sections 251 or 252 of the Act and are not appropriate for arbitration under those sections. Therefore, as there is no requirement to address tax issues under the Act, staff recommends that the Commission should not require that language covering tax issues be included in this agreement. However, both parties have proposed language covering tax liability and through negotiation may decide to include this language in the interconnection agreement.

INFORMATION ISSUE 51: (No vote necessary) Pursuant to Order No. PSC-99-2217-PHO-TP (the Prehearing Order) parties were directed to address in their post-hearing briefs whether the Commission has jurisdiction to assess penalties pursuant to Section 364.285, Florida Statutes, if it appears that a party is failing to comply with a Commission-approved negotiated or arbitrated agreement. (CALDWELL)

POSITIONS OF THE PARTIES:

ITC^DELTA COM

ITC^DeltaCom asserts the answer to the questions is "yes." In support of its position, ITC^DeltaCom states Section 364.285, Florida Statutes, provides the Commission with the authority. ITC^DeltaCom states that if BellSouth refuses to comply with, or willfully violates the terms of an Order approving the interconnection agreement between BellSouth and ITC^DeltaCom, the Commission has the authority to impose penalties as outlined in the law.

BELLSOUTH

BellSouth argues that the Commission does not have jurisdiction pursuant to Section 364.285, Florida Statutes, to assess fines or penalties if a party to an agreement approved by the Commission pursuant to Section 252 of the Telecommunications Act of 1996 (the Act) breaches that agreement, whether the agreement is entered into through negotiation or as a result of arbitration. BellSouth argues that to rule otherwise would be inconsistent with the Act and the role of the Commission under the Act.

In support of its position, BellSouth argues that the rights and obligations of the parties to an interconnection, resale, or unbundling agreement are not determined by the Commission's Order approving the agreement, but arise from the agreement itself. BellSouth states that parties are required to seek Commission approval of their agreement to ensure the terms to which the parties agree to obligate themselves are consistent with the Act and with the public interest. 47 U.S.C. § 252(e).

BellSouth argues that the Commission's Order approving the agreement is merely a finding that the terms under which the parties have agreed to conduct business are not unlawful. BellSouth opines that if an ALEC or an ILEC breaches an agreement, they violate a duty owed to the other party by virtue of the agreement itself; they do not violate an Order of the Commission. Therefore, BellSouth concludes that the Commission's authority to assess penalties under Section 364.285, Florida Statutes, does not apply.

BellSouth also argues that the Commission's Order resolving an arbitration under the Act does not provide jurisdiction to penalize a party under Section 364.285, Florida Statutes, if it later breaches the arbitrated agreement. BellSouth states the Commission's role in such cases is limited to deciding which disputed terms must be included in the agreement, because once the parties submit for approval an agreement including the arbitrated terms, they have complied with the Commission's arbitration Order. See 47 U.S.C. § 252(b). BellSouth concludes that after the agreement has been approved, the arbitration order does not provide any basis for assessing fines or penalties under Section 364.285, Florida Statutes.

Finally, BellSouth argues that the Commission is fulfilling the role Congress envisioned for it when the Act was passed, which is to construe the Act, review the agreements between carriers to ensure that they are consistent with the Act, and construe and enforce the agreements it has approved. A party aggrieved by an alleged breach may pursue remedies before the Commission or the courts. BellSouth states the Commission has the power to provide effective injunctive relief to enforce the agreements it has approved. The inability to assess penalties for breach of interconnection, unbundling, or resale agreements approved by the Commission, BellSouth reasons, does not deprive the Commission or the parties of adequate means to enforce such agreements.

ITC^DELTA COM'S RESPONSE

ITC^DeltaCom responded to BellSouth's brief on December 22, 1999. ITC^DeltaCom disagrees with BellSouth and argues that the Commission has authority under Section 364.285, Florida Statutes,

to impose penalties on BellSouth if BellSouth refuses to comply with, or willfully violates the terms of the interconnection agreement approved by a lawful order of the Commission. (ITC^DeltaCom Resp. p. 3)

ITC^DeltaCom's response to BellSouth's argument that the Order approving an agreement is not a mandate to conduct business in a manner determined by the Commission, it is merely a finding that the terms under which the parties have agreed to conduct business are not unlawful (BST Br. p. 3) ITC^DeltaCom argues BellSouth cannot have it both ways where the Commission has no authority to approve an interconnection agreement containing self-effectuating performance guarantees and, on the other hand, that the Commission may not impose penalties pursuant to its statutory authority because the rights and obligations of the parties "arise from the agreement itself" (ITC^DeltaCom Resp. p. 3) ITC^DeltaCom argues that the interpretation is contrary to the plain meaning of the statute and the results proposed by BellSouth promotes an impractical and inefficient approach. (ITC^DeltaCom Resp. p. 5)

STAFF ANALYSIS

Section 364.285(1), Florida Statutes, provides:

The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willful violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed and collected by the commission; or the commission may, for any violation, amend, suspend, or revoke any certificate issued by it.

Under Chapter 364, the Commission has the ability to assess penalties for refusal to comply with or for willful violation of any rule or order of the Commission or of Chapter 364, Florida Statutes. Under Section 364.015, Florida Statutes, the Commission

may also provide injunctive relief.

To assess penalties, the Commission must find a company has refused to comply with or has willfully violated a Commission rule, Order or statutory provision. Section 364.285(1), Florida Statutes. To find that a breach of an agreement is a violation of a Commission order assumes that the agreement is incorporated into the Order. Such incorporation occurs for example, when the Commission approves a territorial agreement under Chapter 366, Florida Statutes; however, staff does not believe that the same total incorporation occurs when the Commission approves agreements under Section 252 of the Act or Chapter 364, Florida Statutes, such that the Commission may assess penalties against a company for failure to comply with an approved agreement. Staff believes that there is a distinction.

Incorporation of an agreement into a Commission Order was recognized by the Florida Supreme Court. In PSC v. Fuller the Court found that the practical effect of the Commission's approval of a territorial agreement was to make the approved contract an Order of the Commission, binding as such upon the parties. Public Service Commission v. Fuller, 551 So. 2d 1210, 1212 (Fla. 1989). Moreover, the Court held that the agreement has no existence apart from the PSC Order approving it and that the territorial agreement merged with and became a part of [FPSC] Order No. 4285. Any modification or termination of that Order must first be made by the PSC. Id. At 1212. In other words, territorial agreements would be illegal contracts (anti-competitive agreements) if not for the Commission's approval. Every aspect of the agreement is approved pursuant to statutory authority and the companies may not make any changes to the agreement unless approved by the Commission. For instance, the territorial agreement may not be terminated without Commission approval. City of Homestead v. Beard, 600 So. 2d 450 (Fla. 1992).

Territorial agreements approved by the Commission are different than interconnection, resale, or unbundling agreements approved by the Commission by operation of the authority granted to the Commission and the nature of the agreements themselves. The Commission has the authority to determine if the interconnection, resale, or unbundling agreements are consistent

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with the provisions of Sections 251 and 252 of the Act. 47 U.S.C. 252(e). The Commission has authority under Chapter 364, Florida Statutes, to promote competition and protect consumers. Section 364.01(3) and (4), Florida Statutes. To that end, the Commission under the Act reviews the contract to ensure compliance with the Act, and the Commission may also establish or enforce other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. 47 U.S.C. 252(e)(3). Therefore, staff believes the Commission's authority over an interconnection, resale, or unbundling agreement is limited by the Act and state law.

Specifically, Section 252(e) of the Act specifies state commissions are to determine whether the agreements meet the requirements of Sections 251 and 252. Further, a state commission may only reject an agreement under limited circumstances. 47 U.S.C. 252(e)(2). Both by statute and the Act, the Commission's authority over telecommunications companies is more limited than the Commission's authority over electric utilities. (Compare 364.01 and 366.04, Florida Statutes.) Without the Commission's approval of a territorial agreement, electric utilities' territorial agreement would be a violation of anti-trust laws and, therefore, illegal. Interconnection, resale, or unbundling agreements are, however, contracts to conduct business and encouraged by Congress and the Florida Legislature. Also, interconnection, resale, or unbundling agreements are deemed approved if the Commission does not act within ninety days of these agreements being filed with the Commission.

In conclusion, staff believes that for the reasons stated above, a breach of an agreement between companies is not a refusal to comply or willful violation of the Commission's Order approving the agreement that is punishable under Section 364.285(1), Florida Statutes. A breach of an agreement is a cause of action that may be brought to the Commission or the Federal courts for resolution.

ITC^DeltaCom also argues in its Response that self-effectuating performance guarantees are needed and this Commission has the authority to require them. Staff believes that this argument goes beyond the question asked the Prehearing Order.

Staff further believes that the third section of the Response regarding tandem interconnection rates also goes beyond the question and, therefore, both arguments should be disregarded.

Staff does not suggest that the Commission cannot set performance standards in a generic proceeding where it has the authority to do so. Staff believes such standards could then be required in all agreements and a company's refusal to comply with or willful violation of those standards would be punishable under Section 364.285, Florida Statutes. Staff simply believes there is a distinction between Issue 51 addressed above and this scenario.

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ISSUE 52: Should this docket be closed?

RECOMMENDATION: No, the parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.
(Caldwell)

STAFF ANALYSIS: The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.