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Legal Department

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RECORDS AND
REPORTING

January 11, 2000

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

Re: Docket No. 991946-TP (ITC^DeltaCom Complaint)

Dear Ms. Bayó:

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

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

Sincerely,

Michael P. Goggin
(3H)
Michael P. Goggin

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- RRR _____
- SEC _____
- VAW _____
- OTH _____

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)	Docket No. 991946-TP
)	
Complaint of ITC^DeltaCom)	
Communications, Inc. Against BellSouth)	
Telecommunications, Inc. for Breach of)	
Interconnection Terms, and Request for)	
Immediate Relief)	
<hr/>		Filed: January 11, 2000

BELLSOUTH TELECOMMUNICATIONS, INC.'S ANSWER AND RESPONSE TO COMPLAINT OF ITC^DELTACOM COMMUNICATIONS, INC.

BellSouth Telecommunications, Inc., ("BellSouth"), hereby files its Answer and Response, pursuant to Rule 1.110, Florida Rules of Civil Procedure and Rules 25-22.037 and 25-22.0375, Florida Administrative Code, to the Complaint of ITC^DeltaCom Communications Inc. (the "Complaint"). The Complaint seeks a ruling that dial-up access to the internet through an Internet Service Provider ("ISP") should qualify for reciprocal compensation under the terms of BellSouth's Interconnection Agreement with ITC^DeltaCom Communications Inc. ("DeltaCom") when an ISP customer who is also a BellSouth end user accesses the internet through an ISP served by DeltaCom. There is no legal, factual or policy basis for such a ruling because, as the Federal Communications Commission ("FCC") has confirmed, such traffic does not "terminate" on DeltaCom's network.¹ Indeed, the FCC found that such traffic is "largely

¹ See Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket 96-68, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, FCC Order No. 99-38 (Feb. 25, 1999) ("FCC Declaratory Ruling").

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interstate," not local.² As a result, it is clear that dial-up access to the internet through an ISP is not subject to the reciprocal compensation requirements of the Interconnection Agreement between BellSouth and DeltaCom. Accordingly, DeltaCom is not entitled to the relief it seeks in this proceeding, and the Commission should dismiss its Complaint.

FIRST DEFENSE

The Complaint fails to state a cause of action for which relief can be granted.

SECOND DEFENSE

In response to the specific allegations of the Complaint, BellSouth states the following:

1. BellSouth admits, upon information and belief, the allegations in Paragraph 1 of the Complaint.
2. BellSouth admits the allegations in Paragraph 2 of the Complaint.
3. BellSouth admits, upon information and belief, the allegations in Paragraph 3 of the Complaint.

² *Id.* See also, *Complaint of MCI WorldCom, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, Order, Massachusetts D.T.E. 97-116-C (May 19, 1999) (Reversing an earlier order requiring payment of reciprocal compensation on dial-up internet access through an ISP); *In the Matter of the Petition of Global NAPS, Inc. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements With Bell Atlantic-New Jersey, Inc. Pursuant to Section 256(b) of the Telecommunications Act of 1996*, Decision and Order, N.J.B.P.U. (July 12, 1999) (ISP-bound traffic is interstate and not subject to reciprocal compensation obligations); Order, *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services Inc.* (W.D.N.C. May 20, 1999) (remanding order of NCUC which had required payment of reciprocal compensation for dial-up internet traffic in wake of FCC's determination that such traffic is not local).

4. BellSouth admits that the Commission has jurisdiction to hear this matter. The statutes, rules and Commission Order cited by DeltaCom in Paragraph 4 of the Complaint speak for themselves.

5. BellSouth admits that the Commission has jurisdiction to hear this matter. The statutes and decision to which DeltaCom refers in Paragraph 5 of the Complaint speak for themselves.

6. BellSouth admits that it entered into an interconnection, unbundling and resale agreement with DeltaCom as well as amendments (collectively, the "Agreement"). The Agreement to which DeltaCom refers in Paragraph 6 of the Complaint speaks for itself.

7. The terms of the Agreement to which DeltaCom refers in Paragraph 7 of the Complaint speak for themselves.

8. BellSouth denies the allegations in Paragraph 8 of the Complaint.

9. BellSouth admits that it has had communications with DeltaCom regarding the parties' disagreement over whether the reciprocal compensation provisions of the Agreement should apply to non-local ISP-bound traffic and that the parties have not resolved this disagreement. BellSouth denies the remaining allegations in Paragraph 9 of the Complaint.

10. The terms of the Agreement to which DeltaCom refers in Paragraph 10 of the Agreement speak for themselves. BellSouth denies the remaining allegations in Paragraph 10.

11. BellSouth admits that a BellSouth end user who is a customer of an ISP served by DeltaCom can access the internet through its ISP, and that a

DeltaCom end user who is a customer of an ISP served by BellSouth can access the internet through its ISP. BellSouth denies the remaining allegations of Paragraph 11 of the Complaint.

12. BellSouth admits that, at the time it entered into the Agreement, it anticipated that each party would carry local exchange traffic originated on the other party's network as well as non-local ISP-bound traffic. BellSouth denies the remaining allegations of Paragraph 12 of the Complaint.

13. BellSouth denies the allegations in Paragraph 13 of the Complaint.

14. BellSouth denies that it treats non-local ISP-bound traffic as local. BellSouth admits that certain FCC orders require it to account for non-local ISP traffic in a manner different from the manner in which it accounts for other interstate traffic, and to charge enhanced service providers, such as ISPs, rates for the access services that they use that are different from the access charges that apply to interexchange carriers. The terms of those FCC orders speak for themselves. The remaining allegations in Paragraph 14 of the Complaint are denied.

15. The terms of the Agreement to which DeltaCom refers in Paragraph 15 of the Complaint speak for themselves. The remaining allegations in Paragraph 15 of the Complaint are denied.

16. The terms of the Agreement to which DeltaCom refers in Paragraph 16 of the Complaint speak for themselves. The remaining allegations in Paragraph 16 of the Complaint are denied.

17. BellSouth denies the allegations in Paragraph 17 of the Complaint.

18. The Commission Order to which DeltaCom refers in Paragraph 18 of the Complaint speaks for itself. To the extent that a response is required to any remaining allegations in Paragraph 18, they are denied.

19. The Commission Order to which DeltaCom refers in Paragraph 19 of the Complaint speaks for itself. To the extent that a response is required to any remaining allegations in Paragraph 19, they are denied.

20. The orders and decisions to which DeltaCom refers in Paragraph 20 of the Complaint speak for themselves. To the extent that a response is required to any remaining allegations in Paragraph 20, they are denied.

21. The order and decision to which DeltaCom refers in Paragraph 21 of the Complaint speak for themselves. To the extent that a response is required to any remaining allegations in Paragraph 21, they are denied.

22. The FCC order to which DeltaCom refers in Paragraph 22 of the Complaint speaks for itself. To the extent that a response is required to any remaining allegations in Paragraph 22, they are denied.

23. The FCC order to which DeltaCom refers in Paragraph 23 of the Complaint speaks for itself. To the extent that a response is required to any remaining allegations in Paragraph 23, they are denied.

24. The ad damnum clause following Paragraph 23 of the Complaint includes conclusions to which no response is required. BellSouth denies that DeltaCom is entitled to any of the relief it demands in this clause. To the extent that this clause, or any of the preceding paragraphs of the Complaint includes

factual allegations to which BellSouth does not specifically respond above, they are denied.

WHEREFORE, having fully answered the allegations raised in the Complaint, BellSouth respectfully requests that the Complaint of ITC^DeltaCom Communications, Inc. be dismissed as DeltaCom is not entitled to the relief sought.

Respectfully submitted this 11th day of January, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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(M)

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**CERTIFICATE OF SERVICE
DOCKET NO. 991946-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 11th day of January, 2000 to the following:

Diana Caldwell
Staff Counsel
Florida Public Service
Commission
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Michael P. Goggin
(M)