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**CERTIFIED PUBLIC ACCOUNTANT, FL

June 8, 2000

BY HAND DELIVERY THIS DATE

Blanca S. Bayo
Director, Division of Records and Recording
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket #991946-TP; *Request for Arbitration by ITC^DeltaCom Communications, Inc. Against BellSouth Telecommunications, Inc. for Breach of Interconnection Terms*

Dear Ms. Bayo:

Enclosed for filing in the referenced case are an original and 15 copies of Petitioner ITC^DeltaCom Communications, Inc.'s Motion for Protective Order. Please file stamp the extra enclosed copy and return it to our runner.

Thank you for your assistance.

Sincerely,

HUEY, GUILDAY & TUCKER, P.A.

J. Andrew Bertron, Jr.

APP _____
CAF _____
CMP _____
COM _____
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3 Enclosures

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DOCUMENT NUMBER-DATE
07046 JUN-88
FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

Complaint of ITC^DeltaCom Communications, Inc.)
Against BellSouth Telecommunications, Inc., for)
Breach of Interconnection Terms, and Request)
For Immediate Relief)
_____)

Docket No. 991946-TP

ITC^DELTACOM COMMUNICATIONS, INC.'S
MOTION FOR PROTECTIVE ORDER

COMES NOW, ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"), and moves the Florida Public Service Commission pursuant to Rule 1.280(c), Fla. R. Civ. P., for a Protective Order in connection with the proposed depositions by BellSouth Telecommunications, Inc. ("BellSouth") of ITC^DeltaCom's General Counsel, Mr. Tom Mullis, and ITC^DeltaCom's proposed expert witness, James Wilkerson, and says as follows:

1. On December 17, 1999, ITC^DeltaCom initiated this proceeding by filing a Complaint for Breach of Interconnection Terms and Request for Immediate Relief against BellSouth. Subsequently, a discovery schedule was established, with direct testimony and exhibits being due on June 9, 2000, and rebuttal testimony and exhibits due on July 10, 2000.

2. On May 24, 2000, BellSouth noticed the depositions of Tom Mullis and James Wilkerson for June 1. BellSouth unilaterally set the June 1 date, time and location. BellSouth did not discuss the June 1 date with ITC^DeltaCom prior to filing the notice of deposition.

3. Prior to filing this Motion for Protective Order, ITC^DeltaCom attempted to work in good faith with BellSouth in connection with BellSouth's attempted depositions. Attached as composite Exhibit "A" is the correspondence between the parties regarding the depositions. This correspondence demonstrates that communications between the parties have broken down and intervention by the Commission is required to resolve this discovery dispute. The attached June

DOCUMENT NUMBER-DATE
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1, 2000 letter from BellSouth threatens to issue deposition notices for June 19, 2000, if the parties cannot agree on a deposition schedule, to include the deposition of Mr. Mullis. On information and belief, the deposition of Mr. Mullis is not intended for the discovery of admissible evidence in this case, and will cause undue burden, expense, and annoyance to ITC^DeltaCom. Mr. Tom Mullis is not a proposed witness for ITC^DeltaCom. Historically, BellSouth and ITC^DeltaCom have not deposed officers of their respective companies. It is highly unorthodox for BellSouth to depose an officer whom ITC^DeltaCom does not propose to sponsor in this case in either direct or rebuttal testimony. Mr. Mullis is ITC^DeltaCom's General Counsel and Senior Vice President for Regulatory and Legal Affairs and is responsible for day-to-day legal and regulatory functions. Most or all of the information sought by BellSouth from Mr. Mullis is protected by the attorney/client privilege and/or constitutes work product.

4. ITC^DeltaCom submits that to allow depositions to be taken prior to July 10, 2000, the date by which direct and rebuttal testimony are due to be filed in this case, would be premature, unduly burdensome, and cause duplicative discovery. If the depositions, as BellSouth would propose, are taken on June 19, BellSouth will not have ITC^DeltaCom's rebuttal testimony. BellSouth, on information and belief, would reserve its right to recall the ITC^DeltaCom deponents for a future date after the rebuttal is filed, which is unduly burdensome discovery against ITC^DeltaCom. Such discovery should not be allowed by the Commission.

5. If their depositions are taken in Birmingham, Alabama, Mr. Mullis and Mr. Wilkerson are currently available for deposition the weeks of July 17th, July 24th, August 1st and August 7th, with a few days excepted.

6. In the spirit of administrative economy, it would best serve the Commission's and the parties' time and effort to now consider ITC^DeltaCom's Motion for Summary Final Order, which may obviate the need for further discovery in this case. Because the cut-off date for discovery is not until August 18, 2000, ITC^DeltaCom respectfully submits that there is plenty of time to complete discovery after a ruling on the Motion for Summary Final Order, should the Commission rule that an evidentiary hearing is necessary. Therefore, in fairness to the Commission and to the parties, ITC^DeltaCom submits that its Motion for Summary Final Order should be resolved before deposition discovery is allowed to go forward.

WHEREFORE, ITC^DeltaCom requests that:

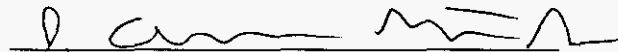
(i) The Commission issue an Order denying BellSouth's proposed deposition of Tom Mullis. However, if the deposition of Mr. Mullis is allowed to go forward, there will be a need for close supervision of the deposition to make sure that it is not used for the improper purposes of annoying, embarrassing or oppressing the deponent or ITC^DeltaCom, or the discovery of attorney/client privileged information or protected work product. Pursuant to Rule 1.490, Fla. R. Civ. P., ITC^DeltaCom requests that a special discovery master or referee be appointed to attend the deposition and protect the rights of Mr. Mullis and ITC^DeltaCom in connection therewith;

(ii) The depositions in this case be postponed until July 10, 2000 or later, after direct and rebuttal testimony have been filed, so that the depositions only need to be taken once;

(iii) The depositions not be taken until ITC^DeltaCom's Motion for Summary Final Order is addressed by this Commission, so that the Commission and the parties can determine if such discovery is necessary; and,

(iv) Such other and further orders be entered as may be appropriate and just in the circumstances relating to the discovery matters addressed here, including time, place and subject matter restrictions as are appropriate.

Respectfully submitted this 8th day of June 2000.



J. Andrew Bertron, Jr. (Fla. Bar # 982849)
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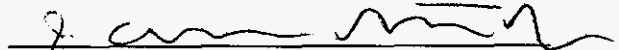
Nanette Edwards
Senior Manager, Regulatory Attorney
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Birmingham, Alabama 35203
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Telecopier (205) 716-3010

**Counsel for ITC^DeltaCom Communications,
Inc.**

CERTIFICATE OF SERVICE
DOCKET NO. 991946

I hereby certify that a true and correct copy of the foregoing has been furnished by **facsimile and U.S. Mail** this 8th day of June, 2000 to Nancy B. White c/o Nancy H. Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301-1556; R. Douglas Lackey and E. Earl Edenfield, Jr., 675 West Peachtree St., NE, Suite 4300, Atlanta, Georgia 30375; and Diana Caldwell, Esq., Staff Counsel, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850.



Attorney

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Bennett L. Ross
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0783
Facsimile: 404-658-9022

May 31, 2000

VIA TELECOPIER

Nanette S. Edwards, Esq.
Regulatory Attorney
ITC^DeltaCom
700 Boulevard South, Suite 101
Huntsville, AL 35802

Re: *In Re: Complaint of ITC^DeltaCom Communications, Inc. Against
BellSouth Telecommunications, Inc. for Breach of Interconnection
Terms, and Request for Immediate Relief; Docket No. 991946-TP*

Dear Nanette:

This letter will confirm our conversation this morning concerning the notices issued by BellSouth for depositions in the above-referenced case. Although currently scheduled for June 1, 2000, as you and I discussed, BellSouth is willing to reschedule the depositions to some mutually convenient date and time during the week of June 5, 2000. BellSouth also is willing to conduct the depositions in either Birmingham or Tallahassee, depending on which site is more convenient for the witnesses and for the parties.

Because the notice has been properly issued for depositions on June 1, I would like for us to agree on a new date before the close of business today. You indicated that you would have to talk to both Mr. Wilkerson and Mr. Mullis, but stated that you were not sure you would have a chance to do so today and that DeltaCom did not want the depositions to be taken at all until after the Commission rules on DeltaCom's motion for summary disposition. This puts me in a rather awkward position. I am agreeable to postponing the depositions from June 1 if you are agreeable that the depositions will take place sometime during the week of June 5. I do not believe the depositions will take very long and would appreciate your cooperation in concluding these depositions as soon as possible.

EXHIBIT "A"

I look forward to hearing from you at your earliest convenience.

Yours very truly,



Bennett L. Ross

cc: Diana Caldwell, Esq. (via telecopier)
Nancy White, Esq. (via telecopier)
Michael Goggin, Esq. (via telecopier)
E. Earl Edenfield, Jr., Esq.

214641

June 1, 2000

VIA FACSIMILE: (404) 658-9022

Mr. Bennett Ross
General Attorney
BellSouth Telecommunications, Inc.
675 W. Peachtree Street
Atlanta, Georgia 30375-0793

RECEIVED

JUN 7 2000

**HUEY, GILDAY,
& TUCKER, P.A.**

RE: Docket No. 991946-TP – Complaint of ITC^DeltaCom Communications, Inc., v. BellSouth Telecommunications, Inc., for Breach of Interconnection Terms, and Request for Immediate Relief

Dear Mr. Ross:

In connection with the above-captioned case, ITC^DeltaCom believes it is premature for any depositions to be taken place prior to the pre-filing of all testimony as is customary in proceedings before the Florida Public Service Commission and prior to the Commission's determination of the pending motion for summary disposition and motion for continuance of discovery and filing of testimony.

Trusting that the Commission will rule on our pending motions before the end of June, yesterday I offered generally any date in the month of July if discovery is still needed, but you were unwilling to consider taking the depositions on *any* day in that month. In fact, you indicated that June 5th is the only date that you would consider. As you are well aware, ITC^DeltaCom has filed a complaint against BellSouth in South Carolina for failure to pay reciprocal compensation for ISP traffic. All of our time next week will be devoted to preparing for the planned mediation in South Carolina with BellSouth and for the evidentiary hearing scheduled for June 12th-13th, 2000, in the event the mediation does not resolve the case. We are hopeful that the planned mediation achieves a mutually acceptable resolution of the case, but we nevertheless must prepare for the evidentiary hearing in the event that it does not. Consequently, neither I nor the requested witnesses will be available next week.

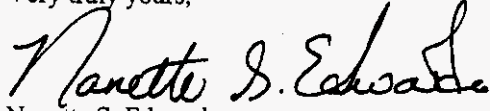
Further, I also pointed out that the hearing in Florida is currently scheduled for August 25, 2000 and the deadline for completing discovery is not until August 18, 2000. I would ask that you reconsider your position in light of the fact that the Commission has two motions pending before it that would possibly alleviate the need for these depositions and save the Commission and the parties the cost and resources of conducting these depositions.

If the Commission has not ruled on the motions or has ruled that an evidentiary hearing is necessary, then we expect that Mr. Mullis and Mr. Wilkerson will be made available at a mutually convenient time in July. I would also provide notice to you that if the Commission does not grant our motion for summary disposition, then ITC^DeltaCom would likewise need to take the depositions of the following BellSouth individuals: Mr. Ernest Bush, Mr. Buck Alford, Mr. Charles R. Morgan, Margaret Greene and Pinky Reichert, Bob Cunningham, and Susan Claytor contemporaneously with the depositions of Mr. Mullis and Mr. Wilkerson.

Please contact me at your convenience to discuss this matter further.

Mr. Bennett Ross
June 1, 2000
Page 2

Very truly yours,



Nanette S. Edwards
Regulatory Attorney

cc: Diana Caldwell, Esq.
Andy Bertron, Esq.



Bennett L. Ross
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street
Atlanta, Georgia 30375-0001
Telephone: 404-335-0793
Facsimile: 404-858-2022

June 1, 2000

VIA TELECOPIER

Nanette S. Edwards, Esq.
Regulatory Attorney
ITC^DeltaCom
700 Boulevard South, Suite 101
Huntsville, AL 35802

Re: *In Re: Complaint of ITC^DeltaCom Communications, Inc. Against
BellSouth Telecommunications, Inc. for Breach of Interconnection
Terms, and Request for Immediate Relief; Docket No. 991946-TP*

Dear Nanette:

I am in receipt of your letter of June 1, 2000. BellSouth does not agree that depositions are "premature" because testimony has yet to be filed. While depositions often are taken in Florida after the submission of pre-filed testimony, there is no rule in Florida of which I am aware which requires that this be the case. Furthermore, BellSouth is simply unwilling to stand idly by while DeltaCom's motion for a continuance of discovery and the filing of testimony is pending before the Commission. Because there has been no stay of discovery in this case, BellSouth has the right to prepare its case, including obtaining relevant discovery, as it sees fit.

Your letter correctly reflects DeltaCom's offer to make Mr. Mullis and Mr. Wilkerson available for depositions during the month of July. However, as I previously advised you (although you did not mention it in your letter), both Mr. Edenfield and I are representing BellSouth in a cost proceeding in Florida that is currently scheduled for hearing the week of July 17, 2000. There are approximately 25 parties participating in that proceeding, and it is likely that numerous depositions will be conducted in the early part of July prior to the hearings. I thought I was quite clear that under these circumstances BellSouth did not want to wait until July to take depositions in this case.

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NO. 783 P003/003

Your statement that I "indicated that June 5th is the only date" BellSouth would consider for the depositions is inaccurate. My letter of May 31, 2000 clearly states that "BellSouth is willing to reschedule the depositions to some mutually convenient date and time during the week of June 5, 2000." Notwithstanding the mediation in South Carolina and the pending hearing in South Carolina on June 12, I find it difficult to believe that we could not find a half a day during the week of June 5, 2000 to take the depositions. Your suggestion that Mr. Mullis is not available because he is preparing for the South Carolina hearings is curious, given that Mr. Mullis is not a witness in that case nor has he entered a notice of appearance as counsel of record for DeltaCom.

Nevertheless, in the spirit of compromise and in light of our efforts to settle our differences in South Carolina, BellSouth is willing to reschedule the depositions for the week of June 19. I would appreciate your giving me some dates during that week that are convenient for Mr. Mullis and Mr. Wilkerson no later than June 7, 2000. If I do not hear from you by that date, I will have no choice but to issue notices to set the depositions.

As far as your request to take depositions of seven BellSouth employees, BellSouth has no objection to the extent these employees have information relevant to the issues in this case. It is not clear to me how several of the individuals you have identified fall into this category, and BellSouth will seek appropriate relief from the Florida Commission to the extent you insist upon taking their depositions. For example, that DeltaCom wants to depose two officers of BellSouth, one of whom was not even employed by BellSouth at the time the parties executed their interconnection agreement, suggests that DeltaCom is more interested in seeking to harass BellSouth than in discovering admissible evidence.

I look forward to hearing from you at your earliest convenience.

Yours very truly,



Bennett L. Ross

cc: Diana Caldwell, Esq. (via telecopier)
Nancy White, Esq. (via telecopier)
Michael Goggin, Esq. (via telecopier)
E. Earl Edenfield, Jr., Esq.

214860



4002 South Memorial Parkway ▶ Huntsville, AL 35802 ▶ 1-256-382-3900

June 7, 2000

VIA FACSIMILE: (404) 658-9022

Mr. Bennett Ross
General Attorney
BellSouth Telecommunications, Inc.
675 W. Peachtree Street
Atlanta, Georgia 30375-0793

RE: Docket No. 991946-TP - Complaint of ITC^DeltaCom Communications, Inc., v. BellSouth Telecommunications, Inc., for Breach of Interconnection Terms, and Request for Immediate Relief

Dear Mr. Ross:

This letter is in response to your letter dated June 1, 2000. Unfortunately, I have not been able to complete a response to you at this time. I will get a response to you by close of business tomorrow.

Very truly yours,

A handwritten signature in cursive script that reads "Nanette S. Edwards".

Nanette S. Edwards
Regulatory Attorney

cc: Diana Caldwell, Esq.
Andy Bertron, Esq.