

ORIGINAL

**ITC^DELTACOM COMMUNICATIONS, INC.**

**DIRECT TESTIMONY OF JAMES C. (JIM) WILKERSON**

Before the Florida Public Service Commission  
Docket No. 991946-TP  
Complaint of ITC^DeltaCom Communications, Inc. Against  
BellSouth Telecommunications, Inc., for Breach of  
Interconnection Terms, and Request For Immediate Relief  
June 9, 2000

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTIN

1 **Q: PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.**

2 A: I am James C. (Jim) Wilkerson. My address is 300 Corporate  
3 Parkway, Suite 100, Birmingham, Alabama 35242.

4 **Q: BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A: My employer is Metamor Industry Solutions, Inc. I am a Senior  
6 Consultant with Metamor and in this capacity I provide consulting  
7 services to ITC^DeltaCom.

8 **Q: PLEASE BRIEFLY STATE YOUR EDUCATIONAL AND WORK  
9 EXPERIENCE.**

10 A: In 1979 I graduated with a marketing degree from the  
11 University of Mississippi. From 1979 until 1989 I served in various  
12 technical support and marketing positions with both BellSouth and  
13 AT&T. From 1989 until 1996 I served in the regulatory department of  
14 BellSouth in both a headquarters and a state operations capacity. My  
15 last assignment with BellSouth included responsibility for informing  
16 the Alabama Public Service Commission staff and the industry of  
17 BellSouth's positions regarding competitive local exchange carriers  
18 ("CLECs") interconnection and for negotiating interconnection  
19 agreements with CLECs. Since 1997, I have been in my current  
20 position with Metamor.

21 **Q: PLEASE STATE WHY ITC^DELTACOM HAS ASKED YOU TO  
22 TESTIFY ON ITS BEHALF IN THIS PROCEEDING.**

23 A: In May 1997, ITC^DeltaCom retained my services to  
24 renegotiate its then existing interconnection agreement with

1 BellSouth, in accordance with the "most favored provisions" section  
2 of that agreement. Among the items that I renegotiated with  
3 BellSouth was the issue of reciprocal compensation for local traffic.  
4 It is because of this involvement with BellSouth on this subject that I  
5 was asked to testify in this proceeding.

6 **Q: BRIEFLY DESCRIBE YOUR NEGOTIATIONS WITH BELLSOUTH**  
7 **ON THE SUBJECT OF RECIPROCAL COMPENSATION FOR**  
8 **LOCAL TRAFFIC.**

9 A: The original interconnection agreement was based upon a "bill  
10 and keep" compensation arrangement that BellSouth had agreed to  
11 with another CLEC. Bill and keep compensation arrangements were  
12 inconsistent with ITC^DeltaCom's policy. ITC^DeltaCom's policy on  
13 the interchange of local traffic was, and is, that each and every minute  
14 of traffic that traverses the interconnection arrangement between itself  
15 and an incumbent local exchange company ("ILEC") should be  
16 compensated, regardless of whether it is terminated by the ILEC or  
17 terminated by ITC^DeltaCom. This position was consistent with  
18 ITC^DeltaCom's and my understanding of BellSouth's position on this  
19 subject.

20 As I negotiated the Fourth Amendment to the Agreement,  
21 BellSouth's policy regarding compensation for calls that traverse the  
22 interconnection arrangement was explicitly discussed and confirmed  
23 to be consistent with ITC^DeltaCom's. Consequently, in my  
24 negotiations with BellSouth, we agreed to reciprocal compensation in

1 the amount of 0.9 cents per minute, which applied to all terminating  
2 local traffic without exception. See Exhibit JCW-1, which is a copy of  
3 pages 1-3 of the Fourth Amendment to the Interconnection  
4 Agreement. The final draft of the Fourth Amendment was a document  
5 that was generated by BellSouth and offered to ITC^DeltaCom, which  
6 was accepted.

7 **Q: WAS THERE ANY INDICATION IN YOUR NEGOTIATIONS WITH**  
8 **BELLSOUTH THAT INTERNET SERVICE PROVIDER ("ISP")**  
9 **TRAFFIC WOULD BE EXCLUDED FROM THE RECIPROCAL**  
10 **COMPENSATION ARRANGEMENT.**

11 **A:** Absolutely not. To the contrary, there was every indication that  
12 it would be included. There are several reasons that I say this. First,  
13 in Section VI(B) of the agreement, a PLU (percent local usage) factor  
14 is instituted. This factor, when applied to the totality of the traffic  
15 which traverses the interconnection trunks, separates the traffic into  
16 two distinct categories -- local and switched access. If ISP traffic was  
17 to be excluded, we would have had to agree on yet another factor  
18 which would identify the percent of ISP traffic occurring on the  
19 arrangement. Obviously, we did not.

20 Second, the interconnection agreement is an all-inclusive  
21 comprehensive document. It does not deal only with local traffic  
22 issues. It deals with each and every item that is involved when two  
23 LECs must interconnect their networks. It is designed to govern all  
24 aspects of the interconnection relationship, encompassing

1 interconnection arrangements, terms, conditions, and prices for  
2 originating and terminating all traffic including local, intrastate, and  
3 interstate telecommunications traffic. Accordingly, the agreement  
4 includes provisions for unbundled network elements, local traffic  
5 interconnection arrangements and exchange, meet-point billing  
6 arrangements (for access), toll traffic interconnection, number  
7 resources, access to poles/ducts/conduits/rights-of-way, 800 traffic,  
8 911/E911 traffic, operator services, announcements, repair calls, busy  
9 line verification and interrupt, directory assistance, directory  
10 listings/distribution, signaling and signaling databases, number  
11 portability, disconnection of customers, resale of services, and  
12 universal service. If BellSouth considered ISP traffic to be something  
13 other than local for purposes of computing reciprocal compensation  
14 in August 1997, BellSouth should and would have delineated this  
15 traffic in its own unique section of the agreement, with its own  
16 compensation arrangement. Obviously, it was not delineated.

17 Third, the interconnection agreement contains a clear definition  
18 of local traffic in its Attachment B as follows: "Local Traffic means  
19 **any telephone call** that originates in one exchange or LATA and  
20 terminates in either the same exchange or LATA, or a corresponding  
21 Extended Area Service (EAS) exchange." (Emphasis added.) If  
22 BellSouth considered ISP traffic to be something other than local, it  
23 could not have used the phrase "any telephone call" in this definition  
24 without qualifying it in some way. Obviously, it did not.

1           As a matter of fact, in interconnection agreements that  
2           BellSouth subsequently attempted to negotiate with CLECs, the  
3           definition of local traffic was modified significantly by adding this  
4           sentence: "Local traffic does not include traffic that originates from or  
5           terminates to an enhanced service provider or information service  
6           provider." This language is a clear recognition by BellSouth that its  
7           previous agreements, including the one with ITC^DeltaCom, did not  
8           exclude ISP traffic. Also, BellSouth's use of this verbiage indicates  
9           that BellSouth understood and intended in 1997 that any traffic  
10          delivered to an ISP "terminates to" that ISP.

11   **Q:   DURING YOUR TENURE WITH BELLSOUTH, WERE YOU**  
12   **RESPONSIBLE FOR NEGOTIATING INTERCONNECTION**  
13   **AGREEMENTS?**

14   A:       Yes.

15   **Q:   AS A NEGOTIATOR FOR BELLSOUTH, HOW WAS ISP TRAFFIC**  
16   **COVERED UNDER BELLSOUTH'S INTERCONNECTION**  
17   **AGREEMENTS?**

18   A:       During the time that I had responsibility to negotiate  
19           interconnection agreements for BellSouth, ISP traffic was treated as  
20           local and BellSouth charged ISPs out of its local tariff. I was never  
21           instructed or informed by anyone at BellSouth that ISP traffic was to  
22           be excluded from reciprocal compensation. When I negotiated the  
23           Fourth Amendment for ITC^DeltaCom, I was not given any indication

1 by BellSouth's negotiators that ISP traffic would not be treated as  
2 local for purposes of reciprocal compensation.

3 **Q: WHAT OTHER CONSIDERATIONS WOULD MAKE IT**  
4 **UNREASONABLE TO EXCLUDE ISP TRAFFIC FROM THE LOCAL**  
5 **TRAFFIC CATEGORY?**

6 A: Two additional considerations are important. First, it is helpful  
7 to understand how BellSouth has traditionally treated this traffic. Prior  
8 to the advent of CLECs, compensation for the carriage of local traffic  
9 was only an issue with independent telephone companies and with  
10 cellular companies. In this regard, EAS settlements, area calling  
11 service (ACS) settlements, and cellular interconnection have  
12 traditionally included ISP traffic. It is only now, when BellSouth has  
13 recognized that including this traffic for CLECs means significant  
14 revenue flows to CLECs, that it wants to exclude it. Only when it was  
15 a revenue producer did they want it included.

16 Second, from a purely logical standpoint, it is critical to  
17 recognize that the services involved in an ISP call are tariffed in  
18 BellSouth's "Basic Local Exchange Service Tariff" (GSST - Section  
19 A3) and in ITC^DeltaCom's local tariff. The services purchased by  
20 the end users as well as the ISPs themselves are included in this tariff  
21 as local services. If these services were not considered local by  
22 BellSouth, they would not appear in this section of the tariff. For  
23 BellSouth to now claim that these services should not be treated as  
24 local for purposes of reciprocal compensation is totally illogical,

1 ignores the facts, and is a blatant attempt to avoid plain obligations  
2 which they voluntarily assumed pursuant to the terms of its  
3 Interconnection Agreement (as amended) executed in 1997.

4 **Q: PLEASE SUMMARIZE YOUR TESTIMONY.**

5 A: For all the reasons delineated above, it is a clear breach of the  
6 Interconnection Agreement for BellSouth to exclude ISP traffic from  
7 reciprocal compensation payments. As the draftsman of the  
8 agreement, BellSouth had every opportunity to raise ISP traffic as an  
9 issue in our negotiations, but did not. It was DeltaCom's  
10 understanding that the agreement, as amended, include the payment  
11 of reciprocal compensation for all local traffic, which included ISP  
12 traffic. BellSouth should not now be allowed to operate outside the  
13 "four corners" of the interconnection agreement with ITC^DeltaCom  
14 in an effort to avoid contractual obligations and responsibilities.

15 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 A: Yes, it does.



FOURTH AMENDMENT

TO

INTERCONNECTION AGREEMENT BETWEEN  
DELTACOM, INC. AND  
BELLSOUTH TELECOMMUNICATIONS, INC.  
DATED MARCH 12, 1997

Pursuant to this Agreement (the "Fourth Amendment"), DeltaCom, Inc. ("DeltaCom") and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties", hereby agree to further amend that certain Interconnection Agreement, as heretofore amended, between the Parties dated March 12, 1997 ("Interconnection Agreement").

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DeltaCom and BellSouth hereby covenant and agree as follows:

1. The Parties agree to delete in its entirety Section VIII(B) of the Interconnection Agreement and substitute the following Section VIII(B).

For originating and terminating interexchange toll traffic, each Party shall pay the other Party's tariffed switched network access service rate elements on a per minute of use basis. Said rate elements shall be as set out in the Parties' respective access services tariffs as those tariffs are amended from time to time during the term of this Agreement. The appropriate charges will be determined by the routing of the call. If DeltaCom is the BellSouth end user's presubscribed interexchange carrier or if the BellSouth end user uses DeltaCom as an interexchange carrier on a 10XXX basis, BellSouth will charge DeltaCom the appropriate tariff charges for originating network access services. If BellSouth is serving as the DeltaCom end user's presubscribed interexchange carrier or if the DeltaCom end user uses BellSouth as an interexchange carrier on a 10XXX basis, DeltaCom will charge BellSouth the appropriate BellSouth tariff charges for originating network access services. However, in states where DeltaCom has an effective access services tariff, the Parties agree that DeltaCom will charge BellSouth the appropriate DeltaCom tariff charges for originating network access services.

2. Except for Operator Provided Call Handling service provided by BellSouth in Alabama, Georgia and Kentucky, the Parties agree to amend Attachment C-10 of the Interconnection Agreement to include a rate of \$1.17 per work minute for Operator Provided Call Handling.

3. The Parties agree to delete in its entirety Section VI(B) of the Interconnection Agreement and substitute the following Section VI(B):

With the exception of the local traffic specifically identified in subsection (C) hereafter, each party agrees to terminate local traffic originated and routed to it by the other party. Each Party will pay the other for terminating its local traffic on the other's network the local interconnection rate of \$.009 per minute of use in all states. Each Party will report to the other a Percent Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

4. The Parties agree to delete in its entirety Section VI(C) of the Interconnection Agreement and substitute the following Section VI(C):

If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) a CLEC other than DeltaCom; (2) an ILEC other than BellSouth; or (3) another telecommunications company such as a wireless telecommunications service provider, the party performing the intermediary function will bill a \$.0015 per minute charge. However, BellSouth agrees that DeltaCom may cross-connect directly to such third Parties at the POI. In such an event, tariffed cross-connection non recurring charges will apply, and no transiting charge will apply.

5. Except for Number Services Intercept Access Service provided by BellSouth in the state of Georgia, the Parties agree to amend Attachment C-11 of the Interconnection Agreement to delete the rate of \$0.30 per intercept query and replace said rate with a rate of \$0.25 per intercept query.

6. The Parties agree to amend the Interconnection Agreement to include Attachment 1 attached to this Amendment and incorporated herein by this reference.

7. Amendment 1 to the Interconnection Agreement relating to resale, executed on March 12, 1997, is deleted in its entirety and replaced with Attachment 2, attached hereto and incorporated herein by this reference.

8. The Parties agree that all of the other provisions of the Interconnection Agreement shall remain in full force and effect.

9. The Parties further agree that either or both of the Parties is authorized to submit this Amendment to the appropriate state public service commission or other regulatory body

having jurisdiction over the subject matter of this Amendment, for approval subject to Section 252(e) of the federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives and made effective on the date indicated below.

DELTACOM, INC.

By: Tom Myller

DATE: August 13, 1997

BELLSOUTH TELECOMMUNICATIONS, INC.

By: [Signature]

DATE: August 22, 1997

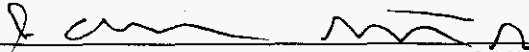
**CERTIFICATE OF SERVICE**  
**DOCKET NO. 991946-TP**

I hereby certify that a true and correct copy of the foregoing has been furnished to the following this 9<sup>th</sup> day of June , 2000:

Nancy B. White  
c/o Nancy H. Sims  
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