

HUEY, GUILDAY & TUCKER

ATTORNEYS AT LAW

106 EAST COLLEGE AVENUE  
SUITE 900, HIGHPOINT CENTER  
TALLAHASSEE, FLORIDA 32301

POST OFFICE BOX 1794  
TALLAHASSEE, FLORIDA 32302

www.hueylaw.com  
TEL: (850) 224-7091  
FAX: (850) 222-2593

e-mail: andy@hueylaw.com

ORIGINAL

RECEIVED FPSC  
00 JUN 19 AM 11:17

RECORDS AND REPORTING

J. ANDREW BERTRON, JR.  
ROBERT D. FINGAR  
THOMAS J. GUILDAY  
J. MICHAEL HUEY††  
GEOFFREY B. SCHWARTZ††  
VIKKI R. SHIRLEY  
MARY K. SIMPSON  
J. KENDRICK TUCKER\*  
CLAUDE R. WALKER\*\*†  
MICHAEL D. WEST  
WILLIAM E. WILLIAMS††

ELIZABETH G. DEMME  
GEORGE W. HATCH, III  
ROBERTO M. VARGAS  
JOHN ANDREW SMITH  
CHRISTOPHER K. HANSEN  
GOVERNMENTAL CONSULTANTS

\*ADMITTED IN FLORIDA & DC  
†BOARD CERTIFIED REAL ESTATE LAWYER  
††CERTIFIED CIRCUIT CIVIL MEDIATOR  
†††CERTIFIED PUBLIC ACCOUNTANT, FL

June 19, 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 is an original and 15 copies of Petitioner ITC^DeltaCom Communications, Inc.'s Objections to BellSouth Telecommunications, Inc.'s First Request for Production of Documents and Interrogatories. 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 Hand  
COM 3  
CTR \_\_\_\_\_  
EGR \_\_\_\_\_  
LEG 1  
OPC JAB/  
PAI Enclosures  
RGO \\NT1\wp\andy.bertron\ITC-Recip\Clerk6.ltr.wpd  
SEC 1  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

RECEIVED & FILED  
Hand  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
07400 JUN 19 2000  
FPSC-RECCRDS/REPORTING

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 OBJECTIONS TO  
BELLSOUTH TELECOMMUNICATIONS, INC.'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES**

COMES NOW, ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") pursuant to the Rules of the Florida Public Service Commission, and hereby files these objections to BellSouth's First Request for Production of Documents and Interrogatories.

**General Objections**

ITC^DeltaCom objects to all discovery requests to the extent they request information which is subject to the attorney-client privilege or any other applicable privilege; work product; not relevant to the issues in this docket and not reasonably calculated to lead to the discovery of admissible evidence; confidential, proprietary or trade secret information pursuant to § 90.506, Florida Statutes, or Rule 1.280(c), Florida Rules of Civil Procedure; customer specific information pursuant to §364.24, Florida Statutes; or is overly broad, unduly burdensome or oppressive to produce.

In the sections below, ITC^DeltaCom will list the BellSouth discovery requests which it finds to be objectionable and then will state its specific objection to each such discovery request.

**Interrogatories**

**Interrogatory No. 9:** State the number of ISP minutes of use from BellSouth to DeltaCom in Florida for each month since August 1997 for which DeltaCom is seeking the payment of reciprocal compensation.

DOCUMENT NUMBER-DATE

07400 JUN 198

FPSC-RECORDS/REPORTING

**Interrogatory No. 10:** For each month since August 1997, state how many of the ISP minutes of use from BellSouth to DeltaCom in Florida you contend “terminated” for jurisdictional purposes in the local calling area.

**Interrogatory No. 11:** In answering the foregoing Interrogatory, please explain in detail the basis for your contention and identify all documents that support or refer or relate to such contention.

**Interrogatory No. 12:** For each month since August 1997, state how many of the ISP minutes of use from BellSouth to DeltaCom in Florida you contend “terminated” for reciprocal compensation purposes in the local calling area.

**Interrogatory No. 13:** In answering the foregoing Interrogatory, please explain in detail the basis for your contention and identify all documents that support or refer or relate to such contention.

#### **Objections to Interrogatories 9-13**

**Response:** ITC^DeltaCom objects to this Interrogatory on the grounds that ITC^DeltaCom treats ISP customers as any other local customer and therefore in the normal course of business does not separately track minutes of use associated only with ISP customers. It would be unduly burdensome to generate a study to separately identify ISP minutes of use from other local minutes. However, the question is irrelevant to the issues pending before the Commission in this docket. ITC^DeltaCom contends that all local traffic, including ISP traffic, should be compensated at the rate set forth in the interconnection agreement. ITC^DeltaCom billed BellSouth each month from January 1999 through July 1, 1999 for total local traffic initiated by BellSouth customers and delivered by ITC^DeltaCom. BellSouth should pay agreed upon compensation for ITC^DeltaCom’s termination of this traffic generated by BellSouth customers. ITC^DeltaCom would add that all ISP minutes of use from BellSouth to ITC^DeltaCom were terminated at the ISP and therefore BellSouth

should pay ITC^DeltaCom compensation for all such minutes of use at the agreed upon rate in the interconnection agreement.

ITC^DeltaCom would also add that BellSouth only paid a portion of the reciprocal compensation billed, claiming that the remainder was not due because it constituted traffic delivered to ITC^DeltaCom's ISP customers. There is no provision in the Interconnection Agreement for tracking or measuring ISP traffic, and ITC^DeltaCom did not thereafter modify its billing systems to exclude ISP traffic from other local traffic. Although BellSouth has claimed in other jurisdictions that it has developed a mechanism for tracking ISP minutes of use, BellSouth apparently doubts the reliability of its procedures and now asks that ITC^DeltaCom attempt to calculate the amount of ISP traffic for which BellSouth has refused payment. ITC^DeltaCom should not be required to do so.

**Interrogatory No. 18:** For the ISP customers identified in response to Interrogatory No. 17, state, on an annual basis since 1997, from inception of service to present (a) the total amount billed by DeltaCom for service to each such customer; (b) the amounts of any credits, rebates, or adjustments given to such customers; and (c) the total amount of revenue collected from such customers.

**Response:** ITC^DeltaCom objects to this Interrogatory on the grounds that the information requested is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, BellSouth is a direct competitor of ITC^DeltaCom, and this information contains trade secrets which are proprietary and confidential pursuant to 90.506, Florida Statutes, and Rule 1.280(c)(7), Florida Rules of Civil Procedure.

**Interrogatory No. 21:** Explain in detail the relationship, if any between DeltaCom and Earthlink, Inc., including but not limited to, Earthlink Network or MindSpring Enterprises. In

answering this Interrogatory, state the date this relationship began and identify all documents referring or relating to such relationship.

**Response:** Earthlink formerly MindSpring is a customer. ITC^DeltaCom objects to providing information about the date it began providing service to this customer and/or providing all documents referring to such customer relationship on the grounds that the request seeks information which is proprietary and confidential pursuant to Section 90.506, Florida Statutes, and Rule 1.280(c)(7) , Florida Rules of Civil Procedure.

**Interrogatory No. 23:** For each year beginning in 1997, state, on an annual basis, the total revenues DeltaCom earned or expects to earn from its ISP customers in Florida.

**Response:** ITC^DeltaCom objects to this Interrogatory on the grounds that the information requested is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, BellSouth is a direct competitor of ITC^DeltaCom, and this information contains trade secrets which are proprietary and confidential pursuant to 90.506, Florida Statutes, and Rule 1.280(c)(7), Florida Rules of Civil Procedure.

**Interrogatory No. 24:** For each year beginning in 1997, state, on an annual basis, the total revenues DeltaCom earned or expected to earn from its end-user customers, including ISPs, in Florida.

**Response:** ITC^DeltaCom objects to this Interrogatory on the grounds that the information requested is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The Interrogatory also seeks information that is proprietary. Moreover, BellSouth is a direct competitor of ITC^DeltaCom, and this information contains trade secrets which are proprietary and confidential pursuant to 90.506, Florida Statutes, and Rule 1.280(c)(7), Florida Rules of Civil Procedure.

**Interrogatory No. 26:** For the total number of ISP customers that DeltaCom serves in Florida, state the number of equivalent access lines for which these customers account.

**Response:** ITC^DeltaCom objects to this Interrogatory on the grounds that such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, BellSouth is a direct competitor of ITC^DeltaCom, and this information contains trade secrets which are proprietary and confidential pursuant to 90.506, Florida Statutes, and Rule 1.280(c)(7), Florida Rules of Civil Procedure.

**Interrogatory No. 44:** Has DeltaCom made any changes to its billing systems in order to ensure that it does not bill BellSouth reciprocal compensation for ISP traffic consistent with the South Carolina Public Service Commission's Order on Arbitration, *In re: Petition of ITC^DeltaCom Communications, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 1999-259-C, Order No. 1999-690, at 64 (S.C. Public Service Comm'n Oct. 4, 1999)?

**Interrogatory No. 45:** If the answer to Interrogatory No. 44 is in the affirmative, please describe with particularity the nature of the changes DeltaCom has made to its billing systems, including, but not limited to, the date such changes began, the date when such changes were or are expected to be completed, and the cost involved in implementing such changes.

**Interrogatory No. 46:** If the answer to Interrogatory No. 44 is in the negative, please describe with particularity all steps DeltaCom intends to take to ensure that it does not bill BellSouth reciprocal compensation for ISP traffic consistent with the South Carolina Public Service Commission's Order on Arbitration, *In re: Petition of ITC^DeltaCom Communications, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of*

1996, Docket No. 1999-259-C, Order No. 1999-690, at 64 (S.C. Public Service Comm'n Oct. 4, 1999).

### **Objections to Interrogatories 44-46**

ITC^DeltaCom objects to these Interrogatories on the grounds that it is irrelevant to any issue in this litigation. Whether ITC^DeltaCom has taken any steps to address the SCPSC's ruling in the arbitration decision issued in October of 1999, well after the expiration of the Interconnection Agreement at issue in this case, is not relevant to whether that Interconnection Agreement requires the payment of ISP traffic.

The SCPSC order was issued in October of 1999 and deals with the arbitration issue of reciprocal compensation on a going forward basis. In fact, in reaching its decision in October of 1999, the SCPSC made clear in its arbitration decision that it was only addressing the issue of reciprocal compensation for ISP traffic on a going-forward basis. By way of background, ITC^DeltaCom had previously filed a Complaint in South Carolina for the nonpayment of ISP traffic. That Complaint was set for hearing after the BellSouth/ITC^DeltaCom arbitration hearing. Ultimately, BellSouth and ITC^DeltaCom settled the Complaint for nonpayment of ISP traffic under the previous interconnection agreement in South Carolina.

In summary, the interconnection agreement and amendments at issue in this case were signed in 1997. The SCPSC order on arbitration does not address the issues in this docket and does not apply retroactively.

### **Request for Production of Documents**

**Request No. 2:** Produce all documents that refer or relate to or were generated in connection with DeltaCom's negotiation or execution of the Interconnection Agreement, including all amendments thereto.

**Response:** ITC^DeltaCom objects to this Request on the grounds of attorney-client privilege and work product doctrine.

**Request No. 6:** Produce all documents that refer or relate to any projections, estimates, studies, calculations, or budgets developed by or on behalf of DeltaCom that reflect the amount of reciprocal compensation DeltaCom expected to receive from BellSouth.

**Request No. 7:** Produce all documents that refer or relate to any projections, estimates, studies, calculations, or budgets developed by or on behalf of DeltaCom that reflect the volume of calls DeltaCom expected to receive from BellSouth customers to Internet Service Providers served by DeltaCom.

**Response to Document Requests 6-7:** ITC^DeltaCom objects to this Request on the grounds that the information sought is irrelevant and is not calculated to lead to the discovery of admissible evidence. In addition, ITC^DeltaCom's projections and budgets are proprietary. BellSouth is a direct competitor of ITC^DeltaCom, and this information contains trade secrets which are proprietary and confidential pursuant to 90.506, Florida Statutes, and Rule 1.280(c)(7), Florida Rules of Civil Procedure.

**Request No. 11:** Produce all documents referring or relating to the August 12, 1997 memorandum from Ernest Bush of BellSouth, which is attached as Exhibit CJR-5 to the Rebuttal Testimony of Christopher Rozycki on behalf of DeltaCom in Docket No. 1999-033-C (S.C. Public Service Comm'n).

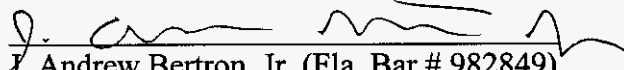
**Response:** ITC^DeltaCom objects to this Request on grounds that it is overly broad and unduly burdensome to the extent it seeks every document that may "refer or relate" to the August 12, 1997 Memorandum. ITC^DeltaCom also objects to the extent it seeks the production of public documents or documents protected by the attorney-client privilege or work product doctrine.



**Request No. 13:** Produce all documents referring or relating to the amount of ISP traffic from BellSouth to DeltaCom.

**Response:** ITC^DeltaCom objects to this Request on the grounds that ITC^DeltaCom treats ISP customers as any other local customer and therefore in the normal course of business does not separately track minutes of use associated only with ISP customers. It would be unduly burdensome to generate a study to separately identify ISP minutes of use from other local minutes. However, the question is irrelevant to the issues pending before the Commission in this docket. ITC^DeltaCom contends that all local traffic, including ISP traffic, should be compensated at the rate set forth in the interconnection agreement.

Respectfully submitted this 19 day of June, 2000

  
J. Andrew Bertron, Jr. (Fla. Bar # 982849)  
Huey, Guilday & Tucker, P.A.  
106 E. College Ave., Suite 900 (32301)  
Post Office Box 1794  
Tallahassee, Florida 32302  
(850) 224-7091  
(850) 222-2593 (facsimile)

Nanette Edwards  
Senior Manager, Regulatory Attorney  
ITC^DeltaCom  
4092 S. Memorial Parkway  
Huntsville, Alabama 35802  
PH: (256) 382-3856  
FAX: (256) 382-3936  
**Counsel for ITC^DeltaCom Communications, Inc.**

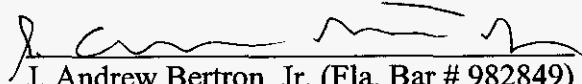
**CERTIFICATE OF SERVICE**  
**DOCKET NO. 991946-TP**

I hereby certify that a true and correct copy of the foregoing has been furnished to the following this 19 day of June, 2000:

Nancy B. White  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.,  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301-1556  
**By Facsimile and U.S. Mail**

R. Douglas Lackey  
E. Earl Edenfield, Jr.  
675 West Peachtree St., NE  
Suite 4300  
Atlanta, Georgia 30375  
**By Facsimile and U.S. Mail**

Diana Caldwell, Esq., Staff Counsel  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850  
**By Hand Delivery**

  
J. Andrew Bertron, Jr. (Fla. Bar # 982849)  
Huey, Guilday & Tucker, P.A.  
106 E. College Ave., Suite 900 (32301)  
Post Office Box 1794  
Tallahassee, Florida 32302  
(850) 224-7091  
(850) 222-2593 (facsimile)