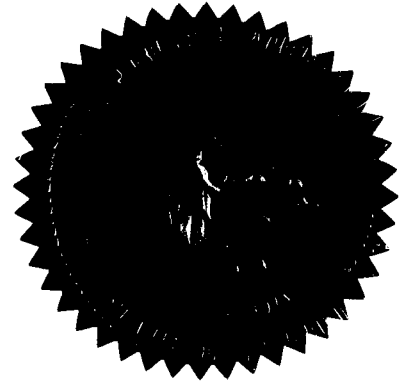


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030137-TP

In the Matter of

PETITION FOR ARBITRATION OF
UNRESOLVED ISSUES IN NEGOTIATION
OF INTERCONNECTION AGREEMENT WITH
BELLSOUTH TELECOMMUNICATIONS, INC.
BY ITC^DELTACOM COMMUNICATIONS,
INC. d/b/a/ ITC DELTACOM.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER BRAULIO L. BAEZ
Prehearing Officer

DATE: Monday, August 18, 2003

TIME: Commenced at 1:30 p.m.
Concluded at 1:50 p.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
OFFICIAL FPSC REPORTER
(850) 413-6732

DOCUMENT NUMBER DATE

FLORIDA PUBLIC SERVICE COMMISSION 7836 AUG 22 03

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 NANCY WHITE, ESQUIRE, BellSouth Telecommunications,
3 Inc., c/o Ms. Nancy H. Sims, 150 South Monroe Street, Suite
4 400, Tallahassee, Florida, 32301-1556, appearing on behalf of
5 BellSouth Telecommunications, Inc.

6 NANETTE S. EDWARDS, ITC^DeltaCom, 700 Blvd. South,
7 Suite 101, Huntsville, Alabama, 35802-4343, appearing on
8 behalf of ITC^DeltaCom.

9 FLOYD SELF, ESQUIRE, Messer Law Firm,
10 P.O. Box 1876, Tallahassee, Florida 32302-1876,
11 appearing on behalf of ITC^DeltaCom.

12 DAVID I. ADELMAN, ESQUIRE, and CHARLES B.
13 JONES, III, Esquire, Sutherland Asbill & Brennan,
14 LLP, 999 Peachtree Street, NE, Atlanta, Georgia
15 30309, appearing on behalf of ITC^DeltaCom.

16 PATTY CHRISTENSEN, ESQUIRE, FPSC General
17 Counsel's Office, 2540 Shumard Oak Boulevard,
18 Tallahassee, Florida 32399-0850, appearing on
19 behalf of the Commission Staff.

20

21

22

23

24

25

P R O C E E D I N G S

1
2 COMMISSIONER BAEZ: We will call the hearing to
3 order. Is everybody that needs to be here? Okay, great. Do
4 we have someone on the connection, Mr. Self?

5 MR. SELF: We were going to, but I understand they
6 are not going to be calling in.

7 COMMISSIONER BAEZ: Okay. Their loss.

8 Ms. Christensen, can you read the notice?

9 MS. CHRISTENSEN: Certainly. By notice issued August
10 4th, 2003, this time and place have been set for a prehearing
11 conference in Docket Number 030137-TP, in re: Petition for
12 arbitration of unresolved issues in negotiation of
13 interconnection agreement with BellSouth Telecommunications,
14 Inc. by ITC^DeltaCom Communications, Inc., doing business as
15 ITC^DeltaCom. The purpose of this prehearing conference is as
16 set forth in the notice.

17 COMMISSIONER BAEZ: And we'll take appearances.

18 MS. WHITE: Nancy White for BellSouth.

19 MR. SELF: Floyd Self on behalf of Messer, Caparello
20 and Self, and appearing for ITC^DeltaCom. I would also like to
21 enter appearances for Nanette Edwards, in-house counsel for
22 ITC^DeltaCom, as well as David Adelman and Charles Jones with
23 the Sutherland and Asbill law firm in Atlanta, also on behalf
24 of ITC^DeltaCom.

25 COMMISSIONER BAEZ: Okay. Staff.

1 MS. CHRISTENSEN: Patricia Christensen appearing on
2 behalf of the Commission.

3 COMMISSIONER BAEZ: Great. And, Ms. Christensen, I
4 am showing some preliminary matters, confidentiality matters.

5 MS. CHRISTENSEN: Commissioner, there are several
6 confidentiality claims as well as notice of intent that have
7 been filed in this docket. Staff would recommend that those be
8 addressed by separate orders once the request for confidential
9 treatment is filed by the parties.

10 COMMISSIONER BAEZ: Okay. Any objections by the
11 parties? Great.

12 MS. WHITE: (Indicating no.)

13 COMMISSIONER BAEZ: Great. We will deal with those
14 under separate order. Are there any preliminary matters that
15 the parties need to bring to my attention?

16 MS. WHITE: Two things. One is I would ask whether
17 we are going to do rebuttal and direct at the same time.

18 COMMISSIONER BAEZ: We'll take care of that. Mr.
19 Self.

20 MR. SELF: Not as a preliminary matter, no, sir.

21 COMMISSIONER BAEZ: Great. Well, let's take care of
22 that. I mean, is there any objection to taking rebuttal and
23 direct together?

24 MS. CHRISTENSEN: Staff has no objection.

25 COMMISSIONER BAEZ: Okay.

1 MR. SELF: No objection.

2 COMMISSIONER BAEZ: One off table, Ms. White. We are
3 going to go section-by-section on this prehearing order, on the
4 draft. And let's take the first five sections, if there is any
5 changes to it that need to be made. None that you can see.
6 All right. Section VI, order of witnesses.

7 MR. SELF: I believe, Commissioner Baez, that the
8 order of witnesses there for DeltaCom is how they want it.

9 COMMISSIONER BAEZ: Okay. Ms. White, you don't have
10 any changes, you're all right?

11 MS. WHITE: Yes.

12 COMMISSIONER BAEZ: All right. Section VII, basic
13 positions. And we are just going to move through this. If you
14 all have changes to make, you just let me know.

15 MS. CHRISTENSEN: Commissioner, staff would recommend
16 to -- our basic position are outlined in the -- staff's basic
17 position are some notations that several of the issues have
18 been closed and resolved by the parties. I would request to
19 delete from the basic position section and deal with that under
20 the stipulation section later in the order.

21 COMMISSIONER BAEZ: Okay. And that will be the
22 second paragraph down?

23 MS. CHRISTENSEN: On Page 9, that would be the first
24 paragraph and the second paragraph.

25 COMMISSIONER BAEZ: Great. Show that deletion. All

1 right. Issues and positions. Issue A; Issue 1A; B; Issue 2.

2 MR. SELF: Commissioner?

3 COMMISSIONER BAEZ: Yes.

4 MR. SELF: I don't really have anything with respect
5 to any of the issues. I mean, I don't need to go through --

6 COMMISSIONER BAEZ: If you don't have any, okay.

7 MR. SELF: Right. It is my understanding that there
8 may be a disconnect on a couple of the issues where -- for
9 example, I believe it is Issue 2D, which is on Page 14,
10 DeltaCom has indicated that the issue is closed, there is a
11 position for BellSouth, there may be one or two other issues
12 that don't quite sync up together.

13 COMMISSIONER BAEZ: And I had 2D tabbed, Ms. White.
14 We can take it up now, and I just want to get some
15 clarification from the parties as to who is --

16 MS. WHITE: The latest information that I have is
17 that that issue is not closed, so I would think that DeltaCom
18 would need to put a position in there.

19 COMMISSIONER BAEZ: And that is your understanding as
20 well, Mr. Self? Are you prepared to offer a position on that
21 issue?

22 MR. SELF: I do not have an answer to that question.
23 But if we could get a couple of days, and we will either get
24 resolved by agreeing that the issue is closed, or we will get
25 an issue to staff for inclusion in the final version.

1 COMMISSIONER BAEZ: Staff, how soon do you need Mr.
2 Self to provide ITC^DeltaCom's position?

3 MS. CHRISTENSEN: Commissioner, I believe by the end
4 of the week should be sufficient. I don't believe we need to
5 get the draft prehearing order until midweek next week on
6 Wednesday. So I think by Friday should be sufficient. Earlier
7 in the morning, if possible, like before noon.

8 COMMISSIONER BAEZ: Well, the sooner the better, but
9 certainly by morning of Friday, morning of the end of the week.

10 MR. SELF: That's fine with me. And was there one
11 other issue, Patty?

12 MS. WHITE: Issue 8A. 8B is already closed. The
13 latest information I have is that 8A is closed, it has been
14 resolved, too. But I don't know if -- Mr. Self probably needs
15 to confirm that.

16 COMMISSIONER BAEZ: Can confirm that.

17 MR. SELF: I will do that. And I think with the
18 exception of those two issues, all of the ones that are
19 indicated as disputed are still in dispute. And with that I
20 really don't have anything else with any of the issues. I have
21 given a typo to Ms. Christensen.

22 COMMISSIONER BAEZ: Okay. Great. That's good.
23 That's good. Ms. White, I will offer you the same opportunity.

24 MS. WHITE: No, that's it. I think both parties
25 acknowledge that we are still talking, and we have been very

1 successful, I think, in getting a lot of issues down to 20
2 some-odd, and hopefully before the hearing starts we can narrow
3 that down even more.

4 COMMISSIONER BAEZ: And I wanted to ask one
5 particular question, and it concerns Issue 25. And I guess it
6 is really more for my edification than anything else, but why
7 exactly are we dealing with this issue here? Isn't it part of
8 some -- isn't it part of a generic docket?

9 MR. SELF: The BellSouth FastAccess case, it is my
10 understanding, is a narrower issue than the issue that is set
11 forth here in the draft prehearing order such that this issue
12 is larger. So that is why this one is still in here. Now,
13 whether the other case resolves some or all of this issue,
14 obviously none of us can answer that today.

15 COMMISSIONER BAEZ: Okay.

16 MS. CHRISTENSEN: Commissioner, staff would also like
17 to get some clarification from the parties. There were a
18 number of issues that they had requested deferral on in light
19 of the issuance of the FCC triennial review order, it was not
20 clear whether or not they wanted to defer for the Commission to
21 rule at a future point in time, or if that deferral would, in
22 fact, withdraw the issue from this arbitration to defer it to
23 the triennial review order.

24 MR. SELF: I think the assumption in the position on
25 those, I believe it is about four issues, was predicated on the

1 assumption that the order would have been out a couple of years
2 ago now. I will need to double-check to see what that deferral
3 really means.

4 COMMISSIONER BAEZ: Yes. I think we need to clear up
5 what exactly is contemplated. Just from my perspective, just
6 solely or purely on a procedural basis, you know, what exactly
7 are we going to do with them, Ms. Christensen. I leave it to
8 you all to kind of straighten out exactly what is intended.

9 MS. CHRISTENSEN: What I would recommend, and I guess
10 now is as good a time as any to address it, there are issues
11 that have been closed, there were some issues that were closed
12 before the order establishing procedure was issued, and there
13 have been issues that have been closed subsequent to the order
14 establishing procedure.

15 My recommendation would be to take those closed
16 issues and indicate in the stipulation section that they have
17 been withdrawn by the parties and indicate the issue numbers.
18 And in regards -- and then delete that from the issue section
19 here altogether so that the only issues that would remain are
20 those issues that are actually in dispute. Not an issue
21 number, nothing. They would just be gone and indicated under
22 the stipulation section.

23 However, regarding the issues that were going to be
24 deferred until the FCC triennial order, I would go ahead and
25 leave those in with full text with that indication next to

1 them. And if we can hopefully resolve that prior to the
2 hearing, we can address that as a preliminary matter at the
3 hearing.

4 COMMISSIONER BAEZ: All right. On the first part of
5 your suggestion, any thoughts from the parties?

6 MS. WHITE: I'm okay with that, I think, as long as
7 we make it clear that they have been withdrawn from arbitration
8 because they have been settled. I don't want it to be, you
9 know, ten years from now somebody look at it and say, oh, well,
10 DeltaCom just withdrew.

11 MS. CHRISTENSEN: No, and I had the same concern.
12 That's why if you look --

13 COMMISSIONER BAEZ: Exactly. There has to be some
14 finality to it.

15 MS. CHRISTENSEN: I think if you look under the
16 proposed stipulation section, it says the parties have agreed
17 that the following issues have been resolved and are closed and
18 are thus withdrawn from this arbitration. And then we have A,
19 which talks about those issues that were closed prior to the
20 OEP, and then B, which are those issues that were closed
21 subsequent to the OEP, but prior to the issuance of the order
22 establishing procedure, and then just a notation regarding
23 those deferred issues. Although I would still recommend
24 leaving the text of those issues in under the issue section.
25 Because, you know, staff is cognizant that we want some record

1 of what those issues are, and they will have been clearly
2 indicated. The issues are all outlined in the OEP.

3 All the issues that were provided to the Commission
4 are in the OEP, so somebody can be able to go back and look at
5 the order and figure out what specifically those issues
6 addressed. Because we have the same concerns as Ms. White,
7 that once they are withdrawn, that it doesn't reflect on the
8 Commission as not having resolved them because they were taken
9 away from the Commission's purview.

10 MS. WHITE: That's fine with BellSouth.

11 COMMISSIONER BAEZ: Mr. Self. You are okay with
12 that, Ms. White?

13 MS. WHITE: Yes.

14 COMMISSIONER BAEZ: Mr. Self.

15 MR. SELF: And I think that is fine, too. And maybe
16 just to clarify, in your very first sentence where it says the
17 parties have agreed that the following issues, you know, maybe
18 you want to say after that, "as identified in the OEP".

19 MS. CHRISTENSEN: That would be a good clarification
20 to put the reader on notice of where they can find the issues,
21 and I can add that.

22 MR. SELF: And I think the procedure that she has
23 outlined is acceptable to DeltaCom, as well.

24 COMMISSIONER BAEZ: Very well. Do we have pending
25 motions other than -- we don't have any pending motions,

1 correct?

2 MS. CHRISTENSEN: No pending motions. However, there
3 were some minor changes to the exhibit list that staff would
4 like to note.

5 COMMISSIONER BAEZ: Let's go back to the exhibit
6 list.

7 MS. CHRISTENSEN: Staff notes that ITC^DeltaCom had
8 filed on August 1st a replacement of Exhibit SB-9. I don't
9 know that we need to note it anywhere, but I believe it is the
10 same exhibit that is identified under the exhibit list, I just
11 want to get clarification.

12 MR. SELF: I'm sorry, what was the question?

13 MS. CHRISTENSEN: The question was I believe you had
14 filed a replacement exhibit. There was something about it
15 being the wrong exhibit that was attached to the testimony. I
16 just want to make sure that we have the right exhibit
17 identified here in the prehearing order.

18 MR. SELF: I will double-check that in this case.

19 MS. CHRISTENSEN: And staff inadvertently left off
20 Mr. Wood's DJW-3, the call summary that is confidential, and we
21 would just note that we are going to add that to the prehearing
22 order under the rebuttal section.

23 COMMISSIONER BAEZ: JW --

24 MS. CHRISTENSEN: JW-3, it is the cost summary.

25 COMMISSIONER BAEZ: Right.

1 MS. CHRISTENSEN: It was identified as confidential.

2 COMMISSIONER BAEZ: Okay. Anything else?

3 MR. SELF: Commissioner, one matter. It might be an
4 exhibit, it might be a stipulation, so I'm not sure where
5 exactly the discussion would be. And really I guess there is
6 two questions. One is DeltaCom last Friday took the
7 depositions of three BellSouth employees who were nontestifying
8 witnesses. The parties will need to review the transcripts
9 when they become available. There was nothing for you to
10 decide at the moment, but I just wanted to put you and the
11 staff, and I have discussed with Ms. White, on notice that
12 DeltaCom may seek to have those deposition transcripts entered
13 as exhibits in the hearing.

14 My other question is whether or not the staff is
15 interested, and BellSouth, in whether some of the discovery
16 responses be entered as stipulated exhibits into the record at
17 the hearing.

18 MS. CHRISTENSEN: I believe that staff can work with
19 DeltaCom in identifying those discovery responses. Generally,
20 staff is amenable to entering as much discovery as we possibly
21 can into the record. So as far as staff is concerned, that
22 would not be a problem. As far as the depositions, I know
23 there have been some preliminary discussions regarding DeltaCom
24 asking or requesting that those be entered. At this point I
25 know of no objection from staff's point of view in having those

1 entered into the record. As far as I'm concerned, we could
2 take care of it as a stipulation today, but I'm not sure that
3 Ms. White would be in a position to answer that question. I'm
4 not exactly sure where we could indicate that as a potential
5 stipulation in the order. I don't know if we need to even
6 address it at all.

7 COMMISSIONER BAEZ: I don't know that it is even
8 appropriate. I mean, I'm not sure that even Mr. Floyd has made
9 up his mind whether it is going to be introduced or not. So
10 let's just call it a developing story.

11 MR. SELF: But I wanted you to know of that
12 possibility.

13 COMMISSIONER BAEZ: Thank you, I appreciate it. Do
14 we have anything else? Ms. White.

15 MS. WHITE: One thing. Under Section 14, the
16 rulings, we understand that opening statements shall not exceed
17 10 minutes per party. I have spoken with Mr. Floyd -- Mr.
18 Self. Mr. Floyd, Mr. Floyd.

19 COMMISSIONER BAEZ: What did Mr. Floyd think about
20 it?

21 MS. WHITE: Prior to this, and I think we both agreed
22 that we don't need opening statements. So I wanted to -- if we
23 are going to have to make one, I wanted to know before we left
24 today, and he agreed we did not need to make one.

25 COMMISSIONER BAEZ: Are we waiving opening

1 statements?

2 MR. SELF: Yes.

3 COMMISSIONER BAEZ: On the record.

4 MS. WHITE: On the record.

5 COMMISSIONER BAEZ: Boy, it makes it worthwhile to --

6 MR. SELF: Unless you have this overwhelming burning
7 desire.

8 COMMISSIONER BAEZ: I can only speak as one
9 Commissioner, and opening statements are fine with me if they
10 are waived. And if not, well, it's in the order now, so too
11 bad.

12 MR. SELF: The beauty of being the prehearing
13 officer.

14 COMMISSIONER BAEZ: That's right. It's luck of the
15 draw here.

16 MS. CHRISTENSEN: Commissioner, should we go ahead
17 and indicate that the parties have agreed or stipulated to
18 waive opening statements in the stipulation section?

19 COMMISSIONER BAEZ: I don't think any good deed
20 should go unpunished, so absolutely. We don't want them
21 changing their mind at the last minute. Is that all? What are
22 the hearing dates just for --

23 MS. CHRISTENSEN: Commissioner, the hearing dates are
24 currently scheduled for September 3rd, 4th, and 5th, as needed,
25 and the parties have assured me that they will at least need

1 two and a half days. I have tried to talk them down to two,
2 but they assure me they will probably need that extra half day.
3 But if they keep working --

4 COMMISSIONER BAEZ: Press on, Ms. Christensen.

5 MS. WHITE: It isn't they.

6 MS. CHRISTENSEN: Oh, yes. Mr. Self.

7 MR. SELF: I would --

8 COMMISSIONER BAEZ: Now, now, children, please.

9 MR. SELF: I would much rather tell you two and a
10 half days and finish in two than tell you --

11 COMMISSIONER BAEZ: Exceed all my expectations.
12 Well, keep at it. If there is nothing else, then this
13 prehearing is concluded. Thank you all for coming.

14 MR. SELF: Thank you.

15 (The prehearing concluded at 1:50 p.m.)

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

CERTIFICATE OF REPORTER

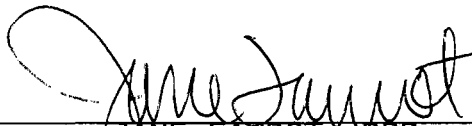
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 21st day of August, 2003.



JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732