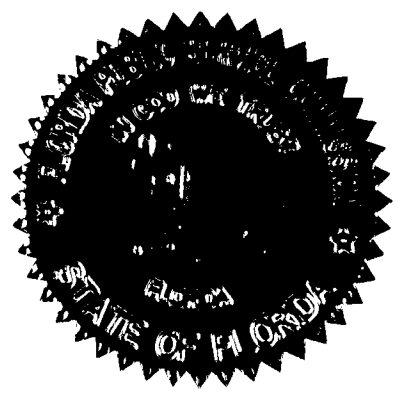


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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.

VOLUME 1

PAGES 1 THROUGH 145

15	PROCEEDINGS:	HEARING
16	BEFORE:	COMMISSIONER J. TERRY DEASON COMMISSIONER BRAULIO L. BAEZ COMMISSIONER CHARLES M. DAVIDSON
18	DATE:	Wednesday, September 3, 2003
19	TIME:	Commenced at 9:30 a.m.
20	PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
23	REPORTED BY:	LINDA BOLES, RPR Official FPSC Reporter (850) 413-6736

1 APPEARANCES:

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

6 FLOYD R. SELF, ESQUIRE, Messer, Caparello & Self,
7 P.A, Post Office Box 1876, Tallahassee, Florida 32302-1876,
8 and NANETTE S. EDWARDS, 4092 South Memorial Parkway,
9 Huntsville, Alabama 35802-4343, and DAVID I. ADELMAN, ESQUIRE,
10 Sutherland, Asbill & Brennan LLP, 999 Peachtree Street, N.E.,
11 Atlanta, Georgia 30309-3996, appearing on behalf of
12 ITC^DeltaCom.

13 PATTY CHRISTENSEN, ESQUIRE, and ADAM TEITZMAN,
14 ESQUIRE, Florida Public Service Commission, Office of the
15 General Counsel, 2540 Shumard Oak Boulevard, Tallahassee,
16 Florida 32399-0850, appearing on behalf of the Commission
17 Staff.

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

I N D E X

WITNESSES

NAME: PAGE NO.

JERRY WATTS

Direct Examination by Mr. Adelman	12
Prefiled Direct Testimony Inserted	24
Prefiled Rebuttal Testimony Inserted	65
Cross Examination by Ms. White	82
Cross Examination by Mr. Teitzman	136
Redirect Examination by Mr. Adelman	138

CERTIFICATE OF REPORTER 145

EXHIBITS

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

NUMBER:		ID.	ADMTD.
1	ITC^DeltaCom Stip 3	6	82
2	Nonconfidential Responses to Staff's Discovery	7	82
3	(Confidential) Confidential Responses to Staff's Discovery	7	82
4	ITC^DeltaCom Stip 4	8	82
5	(Confidential) Confidential Portion of Maziarz Deposition (REPORTER'S NOTE: Exhibit 5 withdrawn in Volume 3, Page 312.)	9	82
6	JW-1	13	144
7	JW-2 and JW-4	15	144
8	(Confidential) JW-3	15	144

P R O C E E D I N G S

1

2

COMMISSIONER DEASON: Call the hearing to order.

3

Could I have the notice read, please.

4

5

6

7

8

9

10

MS. CHRISTENSEN: By notice issued August 4th, 2003, this time and place have been set for a hearing in Docket Number 030137-TP, in re: 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. The purpose of this hearing is as set forth in the notice.

11

COMMISSIONER DEASON: Thank you. Take appearances.

12

13

MS. WHITE: Nancy White and Andrew Shore for BellSouth Telecommunications.

14

15

16

17

18

19

20

MR. SELF: Good morning, Commissioners. I'm Floyd Self of the Messer, Caparello & Self Law Firm appearing on behalf of ITC^DeltaCom. Also with me as co-counsel this morning is Nanette Edwards, whose is in-house counsel for ITC^DeltaCom, and also David Adelman with Sutherland, Asbill & Brennan Law Firm of Atlanta, who is also appearing on behalf of ITC^DeltaCom.

21

22

23

MS. CHRISTENSEN: Patricia Christensen appearing on behalf of the Commission, along with Adam Teitzman appearing on behalf of the Commission.

24

25

COMMISSIONER DEASON: Very well. Preliminary matters.

1 MS. CHRISTENSEN: Yes, Commissioner. The parties
2 have agreed to stipulate to the entry of all interrogatory
3 answers and depositions into the record as well as production
4 of documents. The stipulations are grouped as follows:
5 Stipulation 1 is proffered by ITC^DeltaCom. They're all the
6 nonconfidential discovery responses to ITC^DeltaCom's
7 interrogatories and PODs. And I believe on the cover sheet of
8 that exhibit it's indicated ITC^DeltaCom Stip 3.

9 COMMISSIONER DEASON: Okay. What has been identified
10 as ITC Stip 3 will be identified as hearing Exhibit Number 1.

11 (Exhibit 1 marked for identification.)

12 MS. CHRISTENSEN: The next stipulation is staff's
13 Stipulation, I guess, Number 2, all nonconfidential discovery
14 responses to staff's interrogatories and PODs.

15 COMMISSIONER DEASON: Okay. The confidential
16 portion -- this is what is identified as Stipulation 2 on your
17 list; is that correct?

18 MS. CHRISTENSEN: Nonconfidential portions,
19 Commissioner.

20 COMMISSIONER DEASON: All of the nonconfidential
21 portions?

22 MS. CHRISTENSEN: Correct.

23 COMMISSIONER DEASON: Okay. Is that the bundle of
24 exhibits that we have in front of us?

25 MS. CHRISTENSEN: Correct. That's been previously

1 passed out.

2 COMMISSIONER DEASON: Okay. Is this the large stack?

3 MS. CHRISTENSEN: Yes.

4 COMMISSIONER DEASON: Okay. That will be identified
5 as hearing Exhibit Number 2.

6 (Exhibit 2 marked for identification.)

7 MS. CHRISTENSEN: The next stipulation -- I guess for
8 sake of clarity, Stipulation Number 3, staff proffered
9 confidential portions of all the discovery responses to staff's
10 interrogatories and productions of documents. Staff would like
11 to note at this time that one copy of the confidential
12 materials associated with the stipulation has been provided to
13 the court reporter; however, we have not passed those out to
14 any of the parties.

15 COMMISSIONER DEASON: This will be identified as
16 hearing Exhibit 3. And this is the confidential portions of
17 all discovery; is that correct?

18 MS. CHRISTENSEN: Confidential portions of all
19 discovery responses to staff.

20 COMMISSIONER DEASON: To staff's discovery.

21 MS. CHRISTENSEN: Correct.

22 COMMISSIONER DEASON: Very well. That's 3.

23 (Exhibit 3 marked for identification.)

24 MS. CHRISTENSEN: Stipulation Number 4 indicated on
25 the front cover is ITC's Stip 7 proffered by ITC^DeltaCom are

1 the nonconfidential portions of Andy Plummer and Laurel
2 MacKenzie's depositions. My understanding is that there may
3 also be nonconfidential portions of Jim Maziarz, Maziarz's,
4 excuse me, deposition, but BellSouth would need additional time
5 to indicate which portion of that deposition is, in fact,
6 confidential versus the nonconfidential portion. I would just
7 ask that once BellSouth has made that determination, that the
8 nonconfidential portions be included as part of this
9 stipulation and subsequent hearing exhibit.

10 COMMISSIONER DEASON: Is BellSouth going to be able
11 to comply with that?

12 MR. SHORE: We will. I will take a look at that
13 deposition again over the lunch break, if that is okay with
14 you, Commissioner Deason, and we'll report back to the
15 Commission and to staff counsel.

16 COMMISSIONER DEASON: Very well. With that
17 understanding then, this will be identified as hearing Exhibit
18 Number 4.

19 (Exhibit 4 marked for identification.)

20 MS. CHRISTENSEN: And the final stipulation would be
21 Stipulation Number 5, and that would be proffered by
22 ITC^DeltaCom. And that would be the confidential portions of
23 Jim Maziarz's deposition.

24 COMMISSIONER DEASON: That will be identified as
25 hearing Exhibit 5.

1 (Exhibit 5 marked for identification.)

2 MS. CHRISTENSEN: Staff notes that there are no other
3 stipulations to be entered in this matter.

4 COMMISSIONER DEASON: Okay. Do we have any other
5 preliminary matters?

6 MS. CHRISTENSEN: Staff would like to note that there
7 has been one outstanding request for confidential
8 classification which has been filed, and staff recommends that
9 that be addressed by a separate order.

10 Staff also notes that there are several outstanding
11 claims and notices regarding confidential treatment. Staff
12 would like to remind the parties that they have 20 days after
13 the hearing to file any request for confidential treatment for
14 those documents used in the hearing if they have not already
15 filed such a request.

16 Staff would also like to note that there have been
17 some additional issues that have been resolved since the
18 prehearing conference. Those issues are Issue 1, Issue 8,
19 Issue 11B, and Issue 20.

20 Staff also notes that there were several issues that
21 the parties had requested deferral on pending release of the
22 FCC's Triennial Review Order, and my understanding is that
23 Mr. Self would like to address those and the parties' agreement
24 on those. Those issues would be 30, 31, 33 and 34.

25 COMMISSIONER DEASON: Mr. Self.

1 MR. SELF: Thank you, Commissioner. It's my
2 understanding that the parties have agreed that the four issues
3 that Ms. Christensen identified, 30, 31, 33 and 34, the parties
4 believe that once they've had a chance to read the FCC's opus
5 and understand it, that that order will, in fact, enable them
6 to resolve those issues. So for purposes of this hearing and
7 this request for arbitration they have taken those issues off
8 the table. If the parties, by virtue of that change in law and
9 how the history of that develops in the future, determine that
10 they're unable to resolve one or more of those four issues,
11 they may at a subsequent date file something with the
12 Commission in order to seek the Commission's resolution of
13 those issues. So we just wanted you to be aware of that fact.

14 COMMISSIONER DEASON: Very well. BellSouth is in
15 agreement with that statement?

16 MS. WHITE: Yes, sir.

17 COMMISSIONER DEASON: Very well.

18 MS. CHRISTENSEN: So we can go ahead and indicate
19 that those issues are withdrawn from this proceeding?

20 COMMISSIONER DEASON: Yes.

21 MS. CHRISTENSEN: Okay. And staff has just one more
22 item that we're aware of, and that is with regard to Witness
23 Woods. And my understanding is that he may need to be taken
24 out of order.

25 MR. SELF: That's correct. He has a family issue.

1 We believe he should be arriving here shortly, and it would be
2 our desire to have him as the second witness this morning so he
3 can get out of here.

4 COMMISSIONER DEASON: Any objection?

5 MR. SHORE: No objection.

6 COMMISSIONER DEASON: Very well. Okay. Do the
7 parties have any preliminary matters? BellSouth.

8 MS. WHITE: No, sir.

9 COMMISSIONER DEASON: DeltaCom?

10 MR. SELF: No, sir. We've covered them.

11 COMMISSIONER DEASON: Okay. I believe opening
12 statements have been waived.

13 MR. SELF: Yes, sir.

14 COMMISSIONER DEASON: Very well. We can go ahead and
15 swear in witnesses. All witnesses that are present please
16 stand and raise your right hand. And, Attorneys, make note of
17 who's being sworn and have that verified when the witness takes
18 the stand.

19 (Witnesses collectively sworn.)

20 COMMISSIONER DEASON: Thank you. Please be seated.

21 I believe we're prepared to call the first witness.

22 MR. ADELMAN: Thank you, Commissioner. ITC^DeltaCom
23 calls as its first witness Mr. Jerry Watts to the stand.

24 JERRY WATTS

25 was called as a witness on behalf of ITC^DeltaCom and, having

1 been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ADELMAN:

4 Q Mr. Watts, if you could just confirm for the record
5 that you've been sworn in this proceeding.

6 A That's correct.

7 Q If you could state your full name for the record,
8 Mr. Watts.

9 A Jerry Watts.

10 Q And by whom are you employed, Mr. Watts?

11 A ITC^DeltaCom.

12 Q And in what capacity are you employed by
13 ITC^DeltaCom?

14 A I'm vice president for government and industry
15 affairs.

16 Q Can you very briefly summarize your experience prior
17 to coming to ITC^DeltaCom?

18 A I spent about 30 years with AT&T including prior to
19 divestiture various assignments with Southern Bell, South
20 Central Bell and eventually BellSouth. Most of my career has
21 been in the area of government relations, including regulatory
22 and legislative work at both the state and federal level.

23 Q Thank you, Mr. Watts. Are you the same Jerry Watts
24 that caused to be prefiled on May 19th in this docket 41 pages
25 of question and answer testimony?

1 A Yes.

2 Q Do you have any changes or corrections you'd like to
3 make to your direct prefiled testimony at this time?

4 A No.

5 Q Was there also one exhibit attached to your prefiled
6 direct testimony?

7 A Yes.

8 Q Mr. Watts, if I asked you the questions contained in
9 your 41 pages of direct prefiled testimony today, would your
10 answers be the same if given from the stand?

11 A They would be.

12 MR. ADELMAN: Commissioner, I'm not sure of the right
13 convention for Florida, but I suppose I'll ask that the exhibit
14 attached to Mr. Watts' direct prefiled testimony be marked with
15 the next hearing exhibit number.

16 COMMISSIONER DEASON: That would be hearing Exhibit
17 6.

18 (Exhibit Number 6 marked for identification.)

19 MR. ADELMAN: Thank you.

20 BY MR. ADELMAN:

21 Q Mr. Watts, are you the same Jerry Watts that caused
22 to be prefiled on June 25th in this docket 17 pages of question
23 and answer rebuttal testimony?

24 A Yes.

25 Q Do you have any changes or corrections you'd like to

1 make to that rebuttal testimony at this time?

2 A Yes.

3 Q Can you please identify those for the record?

4 A Yes, I have two, two changes.

5 On Page 3, Line 12 change "ADUF" charges to
6 "ADUF/ODUF" charges. And then on Page 17, Line 16 again change
7 "ADUF" charges to "ADUF/ODUF" charges.

8 Q Mr. Watts, with those two changes, if I asked you the
9 questions contained in your 17 pages of prefiled rebuttal
10 testimony today, would your answers be the same if given from
11 the stand?

12 A Yes.

13 Q Mr. Watts, were there also three exhibits attached to
14 your prefiled rebuttal testimony?

15 A Yes.

16 MR. ADELMAN: And you have those numbered Exhibits 2,
17 3 and 4. Commissioner Deason, I'd ask that those be marked
18 consecutively with the next hearing exhibit numbers, which I
19 guess are 7, 8 and 9.

20 COMMISSIONER DEASON: We'll just make that a
21 composite Exhibit 7.

22 MR. ADELMAN: Thank you.

23 And I'd note for the record that Exhibit 3 is a
24 proprietary exhibit, so it was filed pursuant to the
25 Commission's rules covering confidential information.

1 COMMISSIONER DEASON: Staff, do we need to give the
2 confidential exhibit a separate exhibit number or is it okay to
3 have it part of composite 7?

4 MS. CHRISTENSEN: I believe for ease of the Records
5 and Reporting Department it's better if we give it a separate
6 hearing number.

7 COMMISSIONER DEASON: Okay. Then -- and you say that
8 JW-3 is confidential?

9 MR. ADELMAN: Correct.

10 COMMISSIONER DEASON: Okay. JW-2 then will be
11 hearing Exhibit 7 and JW-3 will be hearing Exhibit 8.

12 MR. ADELMAN: And there was also a JW-4, which is not
13 confidential.

14 COMMISSIONER DEASON: Okay. That will be part of
15 composite 7 then. 7 will be JW-2 and 4.

16 MR. ADELMAN: Thank you.

17 (Exhibits 7 and 8 marked for identification.)

18 BY MR. ADELMAN:

19 Q Mr. Watts, have you prepared a summary of your direct
20 and rebuttal prefiled testimony today?

21 A Yes.

22 Q Can you please provide that to the panel?

23 A Yes.

24 Q Commissioners, thank you for the opportunity to
25 appear before you this week to present ITC^DeltaCom's position

1 on the issues that we have asked you to help us resolve. I'm
2 pleased to say that both parties have negotiated in good faith
3 and have continued to resolve issues since we filed the
4 arbitration petition. Through several mediation sessions and
5 through ongoing settlement discussions the parties have reduced
6 the unresolved issues from 71 to 22. We're currently engaged
7 in settlement discussions and we are hopeful that additional
8 issues will be resolved prior to your decision.

9 Perhaps it would be helpful to try to put our
10 business relationship with BellSouth in context. Consider for
11 a moment that BellSouth represents both our dominant wholesale
12 supplier and our dominant retail competitor. Obviously this
13 results in BellSouth being severely conflicted in their
14 supplier role and results in a supplier that will provide only
15 what the law requires and not what the law allows.

16 In a typical wholesale supplier relationship the
17 supplier will try to become a valued partner of its wholesale
18 customer to ensure a mutually beneficial relationship. To the
19 contrary in BellSouth's case, they view the success of their
20 wholesale customers, the CLECs, as a direct threat to their
21 corporate interests. Does this mean that the people at
22 BellSouth are bad people? No, it doesn't. I like to think of
23 them as good people caught in a bad situation.

24 The dilemma that this situation would cause the --
25 I'm sorry. The Congress and the FCC realized the dilemma that

1 this situation would cause and included provisions in the Act
2 and in various FCC orders to protect against anticompetitive
3 behavior. A critical part of the safeguards are the
4 responsibility of state regulatory bodies like the Florida
5 Public Service Commission. State commissions are responsible
6 for the arbitration and approval of interconnection agreements,
7 setting rates for unbundled network elements, and in the coming
8 months will conduct impairment analysis and make decisions
9 about the availability of UNE-P, unbundled loops and transport.
10 Obviously, the Congress and the FCC determined that the states
11 are best positioned and equipped to make decisions on some of
12 the most important issues affecting local competition.

13 You can be assured that the remaining issues are
14 critical to ITC^DeltaCom's ability to serve Florida consumers
15 and to compete effectively with BellSouth, other ILECs and
16 CLECs. The positions we will present to you are supported by
17 the provisions of the 1996 Telecom Act as well as the
18 underlying principles of parity, nondiscrimination and
19 reciprocity.

20 To the extent that any of the remaining open issues
21 are impacted by the just released FCC Triennial Review Order or
22 by the forthcoming state impairment cases, we are requesting
23 that the Commission take whatever action it deems necessary to
24 effect interim rates, terms and conditions that govern the
25 relationship of the companies and are in the best interest of

1 Florida consumers. Our goal is to provide all the information
2 that is available to us at this time so that the Commission can
3 render an informed decision.

4 Other company witnesses appearing this week for
5 ITC^DeltaCom will be Mary Conquest and Steve Brownworth.
6 Ms. Conquest is our intercompany program manager with the
7 responsibility for facilitating our system's interfaces with
8 BellSouth and other telecommunications companies. She will be
9 discussing operation support systems and other operational
10 issues.

11 Mr. Brownworth is our director of network system
12 planning and will discuss network interconnection issues.
13 Additional expert testimony will be provided by an outside
14 consultant, Don Wood. Mr. Wood will address cancellation
15 charges.

16 Through our ongoing negotiations eight of the 15
17 issues originally addressed in my testimony have now been
18 settled. Each of the seven remaining unresolved issues is
19 important to our business relationship with BellSouth and our
20 ability to operate our company in the most effective and
21 efficient manner. The following is a brief summary of
22 ITC^DeltaCom's position on these issues.

23 Issue 11A, access to UNEs. ITC^DeltaCom's position
24 on access to UNEs is that the language in the contract should
25 reference both state and federal authority. BellSouth refuses

1 to include a reference to state authority saying that the
2 arbitration is authorized under Section 252 of the Telecom Act
3 and state authority should not be included.

4 Since the states are charged with establishing UNE
5 rates and will be conducting the forthcoming Triennial Review
6 impairment cases, we find BellSouth's position on this issue
7 nonsensical. ITC^DeltaCom recognizes the substantial authority
8 that state utility commissions have in establishing rates,
9 terms and conditions for UNEs, and we feel strongly that this
10 Commission should be recognized in the interconnection
11 agreement.

12 Issue 26, line cap and other restrictions. In those
13 situations where unbundled switching beyond the line cap is not
14 required to be priced at TELRIC rates, the replacement rates
15 would have to be reviewed and approved by the Florida Public
16 Service Commission before becoming effective. Currently
17 BellSouth proposes so-called market rates for switching of \$14
18 as compared to the Commission-approved TELRIC rate of \$1.40.
19 This disparity clearly demonstrate, demonstrates that there is
20 no competitive market for switching in Florida and that
21 BellSouth's rate is entirely arbitrary.

22 In a recent deposition that I attended taken from
23 BellSouth product manager for UNE services Jim Maziarz,
24 Mr. Maziarz stated that he had no idea when or how the
25 so-called market rate of \$14 was established. Even more

1 incredible were his statements regarding the impact of the \$14
2 rate on BellSouth margins for UNE-P. Mr. Maziarz claimed that
3 UNE-P --

4 MS. WHITE: Excuse me. I'm going to have to object
5 to that. I think he's discussing Mr. Maziarz's deposition.
6 Mr. Maziarz's deposition is not mentioned anywhere in
7 Mr. Watts' testimony, direct or rebuttal, that I'm aware of.

8 COMMISSIONER DEASON: There's been an objection that
9 the summary is outside the scope of prefiled direct and
10 rebuttal.

11 MR. ADELMAN: Well, it certainly is within the scope
12 of probably the, the central issue that Mr. Watts' prefiled
13 testimony addresses, but it is true that Mr. Maziarz's
14 deposition was taken two weeks or more after the rebuttal
15 testimony was filed.

16 COMMISSIONER DEASON: I understand. The summary is
17 strictly limited to prefiled direct and rebuttal, and you need
18 to direct your witness to confine his summary to what was
19 prefiled.

20 MR. ADELMAN: Thank you. I think he's just about
21 concluded anyway. Thank you, Commissioner.

22 COMMISSIONER DEASON: Okay.

23 THE WITNESS: I'll move on to the next issue. Issue
24 58, unilateral amendments to the interconnection agreement.
25 BellSouth references numerous off-contract documents in the

1 interconnection agreement. At the time of negotiation
2 ITC^DeltaCom can determine the existing contents of these
3 documents and the impact on the terms of the agreement.
4 Regrettably, BellSouth wants to be able to change these
5 documents at any time after the new agreement is signed and
6 effective. Since changing the documents can in effect change
7 the contract, we're requesting language that requires
8 ITC^DeltaCom's approval for any significant changes after the
9 agreement is signed. If BellSouth is allowed to have the
10 unilateral ability to alter these documents, ITC^DeltaCom could
11 be exposed to significant additional expense and operational
12 problems with the resulting negative impact on our customers.

13 Issue 59, payment due date. BellSouth is refusing to
14 allow ITC^DeltaCom a 30 day from receipt of bill due date.
15 BellSouth wants the 30 days to begin with the billing date and
16 not the bill-rendered date. There is a three to seven or more
17 day delay from the bill date to the bill-rendered date with
18 electronic billing that allows the instantaneous receipt of the
19 bill on the bill-rendered date. ITC^DeltaCom believes its
20 request is reasonable and should be adopted by the Commission.

21 Issue 60, deposits. ITC^DeltaCom has requested
22 reasonable and reciprocal deposit parameters. The fact that
23 BellSouth refuses to accept its own proposed deposit parameters
24 on a reciprocal basis speaks for itself. No deposit
25 requirement should be imposed by BellSouth on CLECs that

1 BellSouth isn't willing to accept in their customer
2 relationship with those same CLECs. Given BellSouth's size and
3 financial strength, this is another position I find hard to
4 understand. A casual analysis of BellSouth's losses due to bad
5 debt shows that they are relatively small and don't justify
6 their aggressive and unreasonable deposit policy.

7 Issue 62, limitation on backbilling. ITC^DeltaCom
8 has proposed a backbilling period of 90 days. This proposal is
9 reasonable for a wholesale business relationship and will
10 explicitly prevent future situations where BellSouth attempts
11 to retroactively bill for services provided over several years.

12 BellSouth recently billed ITC^DeltaCom for daily
13 usage file records from February of 2000. This billing was
14 over \$500,000 and is a good example of BellSouth's backbilling
15 practices. Retroactive wholesale billing over extended periods
16 is difficult to validate and may be impossible to recover from
17 end users. It is reasonable to expect a company with
18 BellSouth's resources to render a correct bill within 90 days.

19 Issue 63, audits (BellSouth's refusal to allow pick
20 and choose from Attachment 7.) For obvious reasons,
21 ITC^DeltaCom wants the ability to audit BellSouth billing.
22 BellSouth has audit language and other interconnection
23 agreements and is refusing to allow ITC^DeltaCom to pick that
24 language for this agreement. We believe BellSouth is wrong on
25 the pick and choose issue and that reciprocity on audits is

1 fair to both companies. We are requesting that the Commission
2 allow us to include language that provides for billing audits.

3 Finally, let me say again that we appreciate your
4 assistance in resolving these issues, and I am confident that
5 your decision will be fair to both companies and in the best
6 interest of Florida consumers. That completes my summary.

7 MR. ADELMAN: Thank you, Mr. Watts. Commissioner, at
8 this time I move for the admission of Mr. Watts' prefiled
9 direct and rebuttal testimony, as well as the exhibits attached
10 thereto which have been previously marked.

11 COMMISSIONER DEASON: Okay. Without objection, the
12 prefiled direct and rebuttal will be inserted into the record.

13
14
15
16
17
18
19
20
21
22
23
24
25

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

2 A: My name is Jerry Watts, I am Vice President of Government and Industry
3 Affairs for ITC^DeltaCom, Communications, Inc., ("ITC^DeltaCom" or
4 "ITCD"). My business address is 4092 South Memorial Parkway,
5 Huntsville, Alabama, 35802.

6

7 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **BUSINESS EXPERIENCE.**

9 A: I am a graduate of Auburn University with a B.S. in Accounting. I have
10 over thirty years experience in the telecommunications industry including
11 positions with Southern Bell, South Central Bell, BellSouth, AT&T, and
12 ITC^DeltaCom. Most of my career has been in the area of Government
13 Affairs with responsibility for both regulatory and legislative matters at the
14 state and federal level.

15

16 I have served as an officer or board member for several industry
17 associations including the Alabama Mississippi Telephone Association,
18 The Georgia Telephone Association, The Alabama Inter-Exchange
19 Carriers Association, The Southeastern Competitive Carriers Association
20 and The Georgia Center for Advanced Telecommunications Technology.
21 I currently serve as President of The Competitive Carriers of the South,
22 ("CompSouth"), a non-profit association of sixteen competitive
23 telecommunications companies operating in the southeast.

1

2 I have previously presented testimony in Alabama, Louisiana,
3 Mississippi, North Carolina, Tennessee and Florida.

4 **Q: WHAT ARE YOUR RESPONSIBILITIES AT ITC^DELTACOM?**

5 A: I am responsible for ITC^DeltaCom's relationship with state and federal
6 government entities including state public utility commissions, state
7 legislatures, the FCC and the US Congress. I am also responsible for
8 facilitating the working relationship of ITC^DeltaCom with other
9 telecommunications companies including incumbent local exchange
10 companies, competitive local exchange companies and interexchange
11 carriers.

12

13 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A: The purpose of my testimony is to provide an overview of our request for
15 arbitration including the operational imperatives that underlie our position
16 on unresolved issues.

17

18 **Q: WILL YOU ADDRESS ITC^DELTACOM'S POSITION ON ALL
19 UNRESOLVED ISSUES IN YOUR TESTIMONY?**

20 A: No. I will address our position on certain issues and will defer to other
21 witnesses to address the issues within their area of expertise. Those
22 witnesses along with their respective arbitration issues are as follows:

23

1 Steven Brownworth will discuss the following Issues: 8, 11(b), 13(b), 18,
2 20 (b), 21, 23, 24, 27, 29, 36, 37, 39, 40, 41, 44, 46, 47, and 57.

3

4 Mary Conquest will discuss Issues 2, 6, 9, 25, 64, 65(b), 66, 67, and 69.

5

6 Don Wood will discuss Issues 50, 51, 53, 54, 55, 56, and 70.

7

8 **Q: WHICH ISSUES WILL YOU ADDRESS IN YOUR TESTIMONY?**

9 A: I will address the following issues in my testimony:

10 Issue 1: Term of Agreement

11 Issue 11(a): Access to UNEs

12 Issue 26: Line Cap and Other Restrictions

13 Issue 30: Provision of Combinations.

14 Issue 31: EELs (are EELs subject to local use restrictions)

15

16 Issue 33: Special Access Conversion to EELs (can ITCD provide a
17 blanket certification that refers all three safe harbors for
18 special access conversions?)

19 Issue 34: Audits (should ITCD be required to reimburse BellSouth for
20 the full cost of an audit?)

21 Issue 42: Audits of PIU/PLU (does a party have to pay for the audit if
22 factors are more than 20 % overstated?)

23 Issue 45: Switched Access Charges Applicable to BellSouth

1 Issue 58: Unilateral Amendments to the Interconnection Agreement

2 Issue 59: Payment Due Date

3 Issue 60: Deposits

4 Issue 62: Limitation on Back billing

5 Issue 63: Audits (BellSouth's refusal to allow pick and choose from
6 attachment 7)

7

8 **Q: ARE THERE ANY ISSUES INCLUDED IN YOUR PETITION THAT**
9 **HAVE NOW BEEN RESOLVED BETWEEN THE PARTIES?**

10 A: Yes. The following issues have been settled: 3, 4, 5, 7, 10, 11(c), 12,
11 13(a), 14, 16, 17, 19, 20 (first subpart), 22, 28, 32, 35, 38, 43, 48, 49, 52,
12 65(a), 68 and 71.

13

14 **Q: WHY HAS ITC^DELTACOM REQUESTED ARBITRATION OF THE**
15 **ISSUES IN THIS CASE?**

16 A: Following several months of good faith negotiations with BellSouth, we
17 determined that the issues identified in our petition could not be resolved
18 by the parties. Since filing the arbitration petition on February 7, 2003,
19 we have continued settlement discussions and mediation and have
20 reduced the number of pending issues. The remaining issues have a
21 direct impact on ITC^DeltaCom's ongoing ability to serve our customers
22 and to compete with other competitive local exchange companies
23 ("CLECs") and incumbent local exchange companies ("ILECs"). Our

1 position on the issues in this case are supported by our rights under the
2 federal Telecommunications Act of 1996 ("Telecommunications Act" or
3 "Act") and the needs of our business.

4

5 **Q: WHAT ARE THE OPERATIONAL AND BUSINESS IMPERATIVES**
6 **THAT SUPPORT YOUR POSITION?**

7 A: Through this arbitration we seek a mutually beneficial interconnection
8 agreement with BellSouth based on the basic principles of parity, non-
9 discrimination, reciprocity, and continuity. These principles provide the
10 arbitration panel with a framework to decide the contested issues in a
11 way that ensures the protection of the rights of the parties and the best
12 interest of Florida consumers.

13

14 **Q: HOW IS PARITY ADDRESSED BY YOUR PETITION AND WHY IS IT A**
15 **REQUIREMENT OF THE ACT?**

16 A: Parity is required so that ITC^DeltaCom can be assured of a reasonable
17 business relationship with its dominant provider of wholesale services,
18 BellSouth. Without a requirement of parity, BellSouth would be able to
19 discriminate in favor of its own retail interests and/or affiliates and make
20 it virtually impossible for a CLEC like ITC^DeltaCom to compete.
21 Because BellSouth is the dominant provider of wholesale services to
22 CLECs and the dominant retail competitor of CLECs, the parity
23 requirements of the Act must be effectively enforced through appropriate

1 contract language and performance measurement plans and penalties.
2 Moreover, Congress explicitly recognized the vulnerability of competitive
3 carriers and, to help level the field between new entrants and
4 incumbents, required the ILECs to provide access to UNEs on “terms,
5 and conditions that are just, reasonable, and nondiscriminatory.” (47
6 U.S.C. § 251(c)(3)).

7
8
9 The Federal Communications Commission (“FCC”), in interpreting this
10 statutory language, has explained that this language “means, at a
11 minimum, that whatever those terms and conditions are, they must be
12 offered equally to all requesting carriers, and where applicable, they
13 must be equal to the terms and conditions under which the incumbent
14 LEC provisions such elements to itself.”(See First Local Competition
15 Order, ¶ 315 (internal citations omitted)). Furthermore, the FCC also held
16 that, in order to be consistent with the Act’s goal of promoting
17 competition, the ILEC must be held to a higher standard than just
18 providing all competitors with the same level of service. Rather, the FCC
19 held that the terms of Section 251(c)(3) “require incumbent LECs to
20 provide unbundled elements under terms and conditions that would
21 provide and efficient competitor with a meaningful opportunity to
22 compete.” (Id.)

23

1 In addition, the FCC has held that, in order to provide nondiscriminatory
2 access to UNEs, "incumbent LECs must provide carriers purchasing
3 access to unbundled network elements with the pre-ordering, ordering,
4 provisioning, maintenance and repair, and billing functions of the
5 incumbent LECs operations support systems." (Id. at ¶ 316 (internal
6 citations omitted). See also, 47 C.F.R. § 51.313(c) ("[a]n incumbent LEC
7 must provide a carrier purchasing access to unbundled network
8 elements with the pre-ordering, ordering, provisioning, maintenance and
9 repair, and billing functions of the incumbent LEC's operations support
10 systems.")

11 Consistent with the Act, and the FCC's orders interpreting the
12 requirements of the Act, ITC^DeltaCom has requested that BellSouth
13 provide Operational Support System ("OSS") capabilities as well as
14 interconnection and service delivery options that allow ITC^DeltaCom to
15 have the opportunity to deliver competitive products and services to
16 consumers on at least the same terms as BellSouth. Every request has
17 been based on a reasonable expectation that BellSouth can and should
18 provide UNEs on the nondiscriminatory (parity) terms required by the
19 Act. Although performance measure plans are one tool for monitoring
20 parity and enforcing parity, these plans are not adequate to replace the
21 specific contractual obligations requested in our petition.

22

1 **Q: HOW ARE THE ISSUES IN THIS ARBITRATION IMPACTED BY NON-**
2 **DISCRIMINATION AS OPPOSED TO THE REQUIREMENT OF**
3 **“PARITY” WITH BELLSOUTH?**

4 A: Nondiscrimination is required to prohibit those situations where BellSouth
5 seeks to impose disparate requirements or conditions on ITC^DeltaCom
6 as compared to BellSouth’s other wholesale customers. Discrimination
7 among wholesale customers distorts competitive forces and has a net
8 negative impact on consumers.

9
10 **Q: HOW ARE THE ISSUES IN THIS CASE IMPACTED BY RECIPROCITY**
11 **AND CONTINUITY?**

12 A: Reciprocity is a key principle required for a reasonable and mutually
13 beneficial business relationship between ITC^DeltaCom and BellSouth.
14 Reciprocity should be applied to those issues that are related to terms
15 and conditions such as deposit requirements, as well as issues related to
16 the right to bill for like services and processes when they are provided by
17 either party. The principle of equal pay for equal services performed
18 should apply to both parties. However, contrary to BellSouth’s argument,
19 it is not realistic to require a small non-incumbent carrier such as
20 ITC^DeltaCom to adhere to the same performance measures and
21 enforcement mechanisms as those currently required of BellSouth.

22

1 Continuity relates to the continuation of provisions of the prior contract
2 that have had a significant impact on ITC^DeltaCom's operational plans
3 and strategies. Changes to existing contract provisions that have a
4 significant impact should only be made in response to government
5 mandate or mutual agreement. The net result of arbitrary and
6 unnecessary changes is the addition of cost that is ultimately borne by
7 consumers.

8

9 **Issue 1: Term of Agreement**

10 **Q: WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION PANEL**
11 **REGARDING THE TERM OF THE INTERCONNECTION**
12 **AGREEMENT?**

13 **A:** ITC^DeltaCom has requested a contract term of five years. BellSouth
14 will not agree to an agreement longer than three years. Further,
15 BellSouth proposes to convert the arbitrated interconnection agreement
16 to BellSouth's template agreement at the end of three years if a
17 replacement contract has not been approved by the Commission.

18

19 A five year contract will benefit both ITC^DeltaCom and BellSouth as well
20 as the Florida Public Service Commission. The cost of negotiating,
21 mediating and arbitrating an interconnection agreement is substantial for
22 both parties. Moreover, the cost to the Commission that is borne by
23 Florida taxpayers is also substantial. Distributing those costs over five

1 years as compared to three years reduces the per-year cost by 13.3%.
2 These very real costs that ultimately are paid by the consuming public
3 can be easily mitigated by a longer contract period.

4
5 Our experience with the existing interconnection agreements further
6 illustrates the inefficiency of a three-year contract. Due to the timing of
7 regulatory orders and on-going disputes between the parties, the existing
8 three-year interconnection agreements were only approved for
9 approximately an average of fifteen months before their scheduled
10 expiration. Due to the magnitude of the negotiation/arbitration process,
11 the parties agreed to extend the agreements by six months, resulting in
12 an effective contract term of three and one half years or only eighteen
13 months shorter than the five year term being proposed by
14 ITC^DeltaCom.

15
16 A longer contract term also provides continuity in our business
17 relationship with BellSouth and extends the planning horizon for
18 operational and marketing strategies. Regardless of the term, the
19 interconnection agreement is not a static document and both parties are
20 protected under the change of law provisions.

21

1 The shorter three-year agreement proposed by BellSouth imposes
2 additional annual cost on the companies, requires more work and
3 expense by the Commission, and provides no discernable benefits.

4
5 Additionally, BellSouth's proposal to revert to its template agreement at
6 the end of the contract term would result in ITC^DeltaCom being
7 exposed to the requirements of an interconnection agreement that has
8 not been approved by any regulatory body. Currently, our
9 interconnection agreement (as well as many other interconnection
10 agreements on file with the Commission) provide that until the
11 Commission issues a decision in the arbitration, the parties will operate
12 under the existing Commission-approved interconnection agreement.
13 The result of BellSouth's proposal could be a catastrophic impact on
14 consumers that would be beyond the control of the Commission.

15 Importantly, ITC^DeltaCom's interconnection agreements with other
16 ILECs such as SBC, Sprint and Verizon allow ITC^DeltaCom to continue
17 under the same rates, terms and conditions while the Commission
18 deliberates on the arbitration issues.

19
20 ITC^DeltaCom recommends adoption of a five year interconnection
21 agreement and at the end of five years an automatic month to month
22 extension of the agreement until a replacement contract is approved by
23 the Commission.

1

2 **Issue 11(a): Access to UNEs**

3 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING ACCESS TO**
4 **UNES AND WHAT IS YOUR RECOMMENDATION TO THE**
5 **ARBITRATION PANEL?**

6 A: The recent FCC decision in its Triennial Review, along with the analysis
7 to be performed by state public utility commissions, will have a significant
8 impact on this and other issues related to the availability of unbundled
9 network elements. ITC^DeltaCom's position in this proceeding will reflect
10 our understanding of current statutory and regulatory requirements and
11 our analysis of the FCC press release regarding the Triennial decision.
12 We reserve the right to amend our position when the Triennial order is
13 released and to the extent state commission impairment cases impact
14 existing rules and requirements.

15

16 In conjunction with Issue 11(a), ITC^DeltaCom asserts that the
17 interconnection agreement language should specify that BellSouth's
18 rates, terms, and conditions for network elements and combinations of
19 network elements must be compliant with both **state** and federal rules
20 and regulations. BellSouth's position is that there should be no
21 reference to state authority because the agreement is only subject to
22 section 251 of the Telecommunications Act.

23

1 The interconnection agreement clearly must be compliant with both
2 federal and state requirements. The plain language of the Act, in
3 preserving state authority, states that the FCC “shall not preclude the
4 enforcement of any regulation, order, or policy of a State commission” so
5 long as those regulations, orders, or policies pertain to the access and
6 interconnection obligations of local exchange carriers, and are consistent
7 with, and do not frustrate the implementation of, Section 251 of the Act. (
8 47 U.S.C. § 251(d)(3)).

9 Furthermore, Section 261 of the Act specifically provides that

10

11 [n]othing in this part precludes a State from imposing
12 requirements on a telecommunications carrier for intrastate
13 services that are necessary to further competition in the provision
14 of telephone exchange service or exchange access, as long as
15 the State’s requirements are not inconsistent with this part or the
16 Commission’s regulations to implement this part. (47 U.S.C. §
17 261.)
18

19 The Act contains explicit statutory language preserving state authority to
20 enforce state-created interconnection obligations that are not
21 inconsistent with the Act, along with the explicit delegation of authority to
22 the states in their role as arbiters of interconnection obligations “to
23 arbitrate any open issues.” (47 U.S.C. § 252(b)(1)).

24

25 Therefore, the Florida Public Service Commission is well within its
26 authority to require any interconnection agreement that results from this

1 arbitration to comply, and be consistent with, other regulations, orders,
2 and policies of this Commission.

3

4 ITC^DeltaCom recommends that the agreement include specific
5 language requiring compliance with both state and federal requirements
6 for unbundled network element rates terms and conditions. Our
7 proposed language is as follows:

8

9 This Attachment sets forth rates, terms and conditions for Network
10 elements, combinations of Network Elements, Operator Services
11 and Directory Assistance as required by state and federal rules
12 and regulations and pursuant to Section 251(c)(3) of the Act.

13

14 Subpart (b) of Issue 11 will be addressed in the Prefiled Testimony of
15 Mr. Brownworth.

16

17 **Issue 26: Line Cap and Other Restrictions**

18 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING LINE CAP AND**
19 **OTHER RESTRICTIONS AND WHAT IS YOUR RECOMMENDATION**
20 **TO THE ARBITRATION PANEL?**

21

22 **A:** Issue 26 (a) through (c) address the pricing and availability of unbundled
23 local switching. Although it is easiest to address each subpart

1 separately, a general observation would be useful: BellSouth's federal
2 obligations to offer unbundled local switching are being addressed by the
3 FCC's recently announced, but not yet released, decision in the Triennial
4 Review. That decision is expected to provide the Florida Commission
5 guidance as to how it should evaluate whether local switching should be
6 made available, and the results from those Florida specific proceedings
7 will, of course, be important to the final interconnection agreement
8 between ITC^DeltaCom and BellSouth. To some extent, issue 26 is
9 awkwardly situated. In part it addresses a prior federal rule (the "4-line"
10 restriction) that is no longer relevant; and in part, it addresses how
11 "replacement" prices would be established should the Florida
12 Commission determine in the future that switching (or some other
13 network element) should no longer be offered at TELRIC-based rates.
14 Nevertheless, these issues have been raised and, to the extent that the
15 issues can be addressed, my testimony does so.

16

17 **Q: PLEASE EXPLAIN ISSUE 26(A).**

18 A: Issue 26(a) addresses whether the line cap on local switching (to
19 the extent that such a federal restriction remains in effect) should
20 be applied. Today, the current contract provides as follows:

21

22 Notwithstanding BellSouth's general duty to unbundle local
23 circuit switching, BellSouth shall not be required to
24 unbundle local circuit switching for ITC^DeltaCom, when
25 ITC^DeltaCom serves a single end users account name at

1 a single physical end user location with four (4) or more two
2 (2) wire voice grade loops equivalents or lines in locations
3 served by BellSouth's local circuit switches, which are in
4 the following MSAs:.....

5
6 BellSouth argues that if an end user that has more than one
7 location the lines should be aggregated. ITC^DeltaCom disagrees
8 with BellSouth's interpretation of the federal rule generally –
9 including whether it is even still in effect. In any event, the
10 language proposed by BellSouth should be rejected pending the
11 final determination of the FCC and the Florida Commission
12 regarding this issue. Additionally, ITC^DeltaCom believes that the
13 Florida Commission addressed this issue in the AT&T /BellSouth
14 arbitration in Docket No. 000731-TP, Order No. PSC-01-1951-
15 FOF-TP issued September 28, 2001 at pages 6-7.

16

17 **Q: PLEASE EXPLAIN ISSUE 26(B).**

18 A: Issue 26(b) addresses the need for contract language that prohibits
19 BellSouth from imposing restrictions on local switching. Although this
20 language is included in the existing interconnection agreement and in the
21 interconnection agreement of other CLECs, BellSouth refuses to include
22 the requested language. ITC^DeltaCom asserts that the language is
23 necessary to ensure that BellSouth does not attempt to impose arbitrary
24 restrictions or limitation, either explicitly or implicitly, that create barriers
25 to ITC^DeltaCom's ability to access UNEs under state and federal rules
26 and regulations.

1

2 ITC^DeltaCom recommends the inclusion of the following proposed
3 language:

4

5 Except as otherwise provided herein, BellSouth shall not
6 impose any restrictions on ITC^DeltaCom regarding the
7 use of Switching Capabilities purchased from BellSouth
8 provided such use does not result in demonstrable harm to
9 either the BellSouth network or personnel or the use of the
10 BellSouth network by BellSouth or any other
11 telecommunications carrier.

12

13 **Q: PLEASE EXPLAIN ISSUE 26(C).**

14 **A:** Issue 26(c) addresses the requirement for BellSouth to obtain
15 Commission approval for a methodology for establishing a replacement
16 rate (sometimes labeled incorrectly as a “market” rate) in those instances
17 where a replacement rate is authorized in lieu of TELRIC pricing. To
18 characterize these rates as “market rates” without a demonstration that a
19 competitive market exist is inappropriate. Clearly, BellSouth’s existing
20 “market rate” for an unbundled port of \$14.00 as compared to the Florida
21 cost based TELRIC rate of \$1.40 indicates the absence of competitive
22 alternatives. Moreover, BellSouth’s so called “market rate” nonrecurring
23 charge of \$90.00 as compared to the Florida Commission approved non-

1 recurring rate of \$3.37 also demonstrates the lack of competition and the
2 arbitrary nature of these rates. ITC^DeltaCom asserts that BellSouth
3 should not be allowed to arbitrarily and unilaterally establish a
4 replacement rate for local switching or any other service without
5 Commission approval of the methodology for establishing the rate and a
6 Commission review of the underlying data.

7
8 ITC^DeltaCom recommends that BellSouth be required to obtain
9 Commission approval of any "replacement rate" that would apply to the
10 sale of any network functionality that is no longer considered, as a result
11 of federal and state decisions, an unbundled network element subject to
12 the TELRIC pricing standard. The Commission should review such
13 proposed rates after it has determined that a network element should no
14 longer be priced at TELRIC.

15

16 **Issue 30: Provision of Combinations**

17 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING PROVISION OF**
18 **COMBINATIONS AND WHAT IS YOUR RECOMMENDATION TO THE**
19 **ARBITRATION PANEL?**

20 **A:** Issue 30 addresses the following issues: Should BellSouth be required
21 to provide combinations if they are technically feasible? Should
22 BellSouth be required to provide ITC^DeltaCom the same conditions for
23 network elements and combinations that BellSouth has provided to other

1 carriers? What terms and conditions should apply to the provision of
2 combinations?

3

4 Assuming that the network combinations are technically feasible—as
5 evidenced by whether such UNEs, or their functional equivalents, are
6 currently combined as a matter of practice in the BellSouth network
7 today—then those network elements must be combined for the
8 requesting carriers. (See generally, 47 C.F.R. § 51.315.)

9

10 In all instances where the individual component UNEs are required to be
11 offered to requesting carriers, BellSouth is likewise required to make
12 these elements available to ITC^DeltaCom on a combination basis, and
13 under the same terms and conditions that BellSouth provides or offers to
14 any other carrier. The legal source for this obligation comes from
15 Section 251(c)(3) of the Act, which provides that UNEs be offered on a
16 “nondiscriminatory” basis. Principles of nondiscrimination require that
17 BellSouth provide UNEs to any requesting carrier, including
18 ITC^DeltaCom, on the same basis as it provides these elements to: (1)
19 any BellSouth retail customer; (2) any affiliate or internal unit of
20 BellSouth; or (3) any other carrier customer. (See, pp. 4-5 of my
21 testimony. See also, 47 C.F.R. §§ 51.311, 313, and 315 (describing
22 principles of nondiscrimination with respect to providing UNEs and UNE
23 combinations)).

1 Therefore, if BellSouth provides service to its retail customers using the
2 functional or constructive equivalent of UNEs, then BellSouth must make
3 the same UNE combinations available to requesting carriers. Clearly, “to
4 the extent technically feasible, the quality of an unbundled network
5 element, as well as the quality of the access to such unbundled network
6 element, that an incumbent LEC provides to a requesting
7 telecommunications carrier shall be at least equal in quality to that which
8 the incumbent LEC provides to itself.” 47 C.F.R. § 51.311(b)).

9
10 Finally, the same performance intervals for service quality must be
11 available to requesting carriers that are available to any other BellSouth
12 customer, retail or wholesale. The only reliably accurate way this
13 Commission can determine and ensure that UNEs and UNE
14 combinations are provided to requesting carriers on a nondiscriminatory
15 basis is to require the measurement and reporting of performance
16 intervals. As the FCC has noted, “[m]andating nondiscriminatory access,
17 however, is not the same thing as achieving it in practice.” (In the Matter
18 of Performance Measurements and Reporting Requirements for
19 Operations Support Systems, Interconnection, and Operator Services
20 and Directory Assistance, CC Docket No. 98-56, Notice of Proposed
21 Rulemaking, Rel. April 17, 1998 at ¶ 13). The FCC further observed,
22 “[p]erformance measurements and reporting requirements should make
23 much more transparent, or observable, the extent to which an incumbent

1 LEC is providing nondiscriminatory access, because such requirements
2 will permit direct comparisons between the incumbent's performance in
3 serving its own retail customers and its performance in providing service
4 to competing carriers." (Id. at ¶ 14).

5 Such performance reports and performance guarantees are an ordinary
6 and accepted commercial practice.

7

8 For example, ITC^DeltaCom, like most competitive carriers, must offer
9 (and deliver) superior performance and performance guarantees to its
10 customers in the form of "service level agreements" or "SLAs." If
11 ITC^DeltaCom fails to deliver on its promised service, or repair,
12 commitment to a customer, we are frequently liable to the customer for
13 substantial service credits. If ITC^DeltaCom's interconnection
14 agreement with its largest single input supplier (and largest single retail
15 competitor) does not have explicit performance requirements, along with
16 outage credits for failed performance, then our largest rival is given an
17 unacceptable level of control over our costs. Such unchecked control
18 over a rival's service quality also provides the input monopolist,
19 BellSouth, with a powerful lever with which it can effectively "discipline"
20 what it deems to be overly aggressive retail price or service competition.
21
22 ITC^DeltaCom recommends the adoption of its proposed language to
23 ensure the non-discriminatory availability of ordinarily combined (within

1 the BellSouth network) UNEs under nondiscriminatory terms and
2 conditions.

3

4 BellSouth shall provide to ITC^DeltaCom for the provision
5 of a telecommunications service, non-discriminatory access
6 to Network Elements at any technically feasible point on
7 terms and conditions that are just, reasonable, and non-
8 discriminatory in accordance with the terms and conditions
9 of the Agreement.

10

11 BellSouth will permit ITC^DeltaCom to interconnect
12 ITC^DeltaCom's facilities or facilities provided to
13 ITC^DeltaCom by an ILEC or by third parties with each of
14 BellSouth's Network Elements at any point designated by
15 ITC^DeltaCom that is technically feasible. Any request by
16 ITC^DeltaCom to interconnect at a point not previously
17 established (i) in accordance with the terms of the
18 Agreement or (ii) under any arrangement BellSouth may
19 have with another telecommunications carrier, shall be
20 subject to the process set forth in Attachment 9 of this
21 Agreement, incorporated herein by this reference.

22

23 ITC^DeltaCom may use one or more Network Elements
24 and Combinations to provide to itself, its affiliates and to
25 ITC^DeltaCom end users any feature, function, capability
26 or service option that such Network Elements and
27 Combinations are technically capable of providing or any
28 feature, function, capability or service option that is
29 described in the Telcordia and other industry standard
30 technical references.

31

32 In addition to Combinations furnished by BellSouth to
33 ITC^DeltaCom hereunder, BellSouth shall permit
34 ITC^DeltaCom to combine any Network Element or
35 Network Elements provided by BellSouth with another
36 Network Element, other Network Elements or Access
37 Services obtained from BellSouth or with compatible
38 network components provided by ITC^DeltaCom or
39 provided by third parties to ITC^DeltaCom to provide

1 telecommunications services to ITC^DeltaCom, its affiliates
2 and to ITC^DeltaCom end users.
3

4 **Issue 31: Are New EELs Subject to Local Use Restrictions**

5 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING WHETHER**
6 **NEW EELs ARE SUBJECT TO LOCAL USE RESTRICTIONS**

7 A: ITC^DeltaCom asserts that "new" EELs as opposed to converted EELs
8 are not subject to local use restrictions. The FCC's Supplemental Order
9 Clarification and ITC^DeltaCom's current contract clearly provide that
10 only special access conversions to EELs are subject to the "safe harbor"
11 requirements and the audit provisions described in the Supplemental
12 Order Clarification. The FCC's sole claimed purpose in adopting these
13 "temporary" restrictions on EEL conversions was a concern that the
14 ILECs' embedded base of special access circuits would quickly and
15 entirely be converted to UNE combinations. This Commission should be
16 mindful also that the "embedded base" of ILEC special access circuits
17 the Commission sought to preserve—pending further analysis of other
18 factors such as the effects of conversions on universal service—was the
19 special access circuit base as of three years ago. Since that time,
20 BellSouth's special access revenues have only grown, and have not
21 receded. For example, BellSouth's Interstate Access Revenues grew
22 from approximately \$3.9 billion in 1999 to \$4.3 billion in 2001. (FCC's
23 ARMIS Report 43-01.) In this respect, the pernicious effect of the local
24 use restrictions on local service competition has only spread. There is

1 certainly no public interest reason for this Commission to extend these
2 anticompetitive restrictions—which artificially inflate the costs of
3 BellSouth’s local and long distance competitors, and the prices paid by
4 Florida consumers.

5
6 In fact, there is good reason for this Commission to eliminate these ill-
7 advised restrictions on the use of EEL combinations given the FCC’s
8 recent Triennial Review decision. In the press release and attachment
9 released on February 20, 2003, the FCC indicates that it has decided to
10 eliminate its local usage-based restrictions in favor of “eligibility criteria”
11 that are architecturally-based and designed to ensure that carriers
12 providing local service are not denied access to the EEL combination.
13 (See FCC’s February 20, 2003 Attachment to Press Release at 3). The
14 new “eligibility criteria” will not be limited to “new” EEL combinations
15 either, but will also apply to conversions of existing special access
16 conversions.

17
18 ITC^DeltaCom recommends that the most prudent course for the
19 Commission, pending release of the FCC’s written order, is to reject
20 BellSouth’s plea to extend the application of the existing, and recently
21 repudiated, anticompetitive local use restrictions to new service
22 arrangements.

23

1 **Issue 33: Special Access Conversion to EELs**

2 **Q: WHAT IS ITC^DELTA COM'S POSITION REGARDING SPECIAL**
3 **ACCESS CONVERSION TO EELs – SHOULD A BLANKET**
4 **CERTIFICATION UNDER ALL THREE SAFE HARBORS BE**
5 **AVAILABLE?**

6 **A:** In some cases the conversion from special access to UNE combination
7 can fall under more than one safe harbor. ITC^DeltaCom should be able
8 to use each and every safe harbor, if applicable. Furthermore, there is
9 nothing in the FCC's Supplemental Clarification Order that suggested,
10 recommended, or required competitive carriers to certify with specificity
11 for each special access circuit, in advance, under which safe harbor they
12 were seeking to convert the circuit. The Commission only required that
13 the requesting carrier had to certify that the circuit in question met one of
14 the safe harbors. The FCC also, however, stated that, upon certification
15 by the requesting carrier, the ILEC was required to convert the circuit.
16 The FCC specifically prohibited ILECs from engaging in "pre-conversion"
17 audits of the requesting carriers' certifications.

18
19 A requirement such as the one BellSouth suggests—that a requesting
20 carrier certify with specificity for each circuit being converted—serves no
21 useful purpose and is conceptually antithetical to the FCC's admonition
22 against "pre-provisioning" audits. In addition, requiring certification with
23 specificity for each circuit allows BellSouth to receive an unnecessary

1 and improper amount of information about its competitors' business
2 activities and retail service arrangements. Precisely how much of a retail
3 customer's local traffic a competitive carrier is providing is of no import to
4 the only legal requirement a requesting carrier must satisfy: that it certify
5 it is providing a "significant" amount of local service to an end-user and
6 that they qualify under one of the enumerated safe harbors. Finally,
7 while BellSouth's request would have been appropriately rejected by the
8 Commission even if the local use restrictions were to remain in place,
9 given the FCC's own repudiation of these restrictions, it would be a
10 frivolous waste of the Commission's resources to consider the merits of
11 imposing another layer of restrictions on top of restrictions the FCC has
12 already deemed to be inappropriate.

13

14 **Issue 34: Audits – Reimbursement Issues**

15 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING WHETHER**
16 **ITC^DELTACOM SHOULD BE REQUIRED TO REIMBURSE**
17 **BELLSOUTH FOR THE FULL COST OF AN AUDIT AND WHAT IS**
18 **YOUR RECOMMENDATION TO THE ARBITRATION PANEL?**

19 **A:** ITC^DeltaCom's position is that under no circumstances should
20 BellSouth be allowed to recover more than 50% of the cost of an audit
21 and that no cost recovery would be triggered unless the audit results
22 indicate greater than 25% of non-compliance on substantive issues. To
23 recover audit expenses, BellSouth would have to petition the

1 Commission for approval based on the greater than 25% standard. This
2 process will allow the Commission to review the audit findings as well as
3 input from ITC^DeltaCom to determine if expense recovery is appropriate
4 and at what level. Allowing BellSouth to recover audit expense based on
5 insignificant non-compliance would result in unnecessary audits and
6 related costs that would ultimately be borne by consumers.

7

8 ITC^DeltaCom recommends the adoption of the 25% non-compliance
9 standard with a 50% cap on expense recovery and an appropriate
10 Commission review process.

11

12

13 **Issue 42: Audits of PIU/PLU**

14 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING AUDITS OF**
15 **PIU/PLU – SPECIFICALLY, SHOULD ITC^DELTACOM HAVE TO PAY**
16 **FOR THE AUDIT IF FACTORS ARE MORE THAN 20%**
17 **OVERSTATED?**

18 **A:** No. ITC^DeltaCom rejects BellSouth's position that ITC^DeltaCom must
19 pay for the full costs of a PIU/PLU audit if the factors are more than 20%
20 overstated. ITC^DeltaCom's position with regard to this issue is the
21 same as with regard to Issue No. 34, and my testimony regarding that
22 issues is incorporated here by reference.

23

1 **Issue 45: Switched Access Charges Applicable to BellSouth**

2 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING SWITCHED**
3 **ACCESS CHARGES APPLICABLE TO BELLSOUTH?**

4 A: ITC^DeltaCom's position is that any language in the agreement that
5 requires ITC^DeltaCom to pay access charges, or access charge rates
6 by reference to BellSouth access tariffs, should be reciprocal and that
7 ITC^DeltaCom should be able to charge BellSouth pursuant to
8 ITC^DeltaCom's access tariffs under like circumstances.

9
10 ITC^DeltaCom recommends the adoption of language that ensures the
11 reciprocity of billing for services performed.

12

13 **Issue 58: Unilateral Amendments to the Interconnection Agreement**

14 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING UNILATERAL**
15 **AMENDMENTS TO THE INTERCONNECTION AGREEMENT?**

16 A: BellSouth desires to incorporate their Guides, documents written by
17 BellSouth without any regulatory oversight or input from the industry, into
18 the interconnection agreement. BellSouth would be able to modify these
19 "Guides" at any time without approval or input from ITC^DeltaCom, any
20 other carrier, or this Commission and then apply them to ITC^DeltaCom.

21

22 One party to a contract cannot unilaterally make changes that affect the
23 other party. ITC^DeltaCom's position is that any reference to a

1 document or source must be clearly defined at a date certain or the
2 document must be included as an attachment to the agreement. Any
3 changes to that document that would have a material impact on
4 ITC^DeltaCom or cause ITC^DeltaCom to incur additional expense must
5 be mutually agreed to by the parties. BellSouth would prefer to be in the
6 position of being able to arbitrarily alter the terms of the contract without
7 ITC^DeltaCom's knowledge and or approval. ITC^DeltaCom
8 recommends that BellSouth be prohibited from referencing incorporating
9 documents or sources or making changes to those documents except as
10 agreed to by ITC^DeltaCom.

11

12 **Issue 59: Payment Due Date**

13 **Q: WHAT IS YOUR POSITION REGARDING PAYMENT DUE DATES**
14 **AND WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION**
15 **PANEL?**

16 **A:** ITC^DeltaCom's position is that the payment due date for BellSouth
17 invoices be no sooner than 30 days from ITC^DeltaCom's receipt of the
18 invoice. Given the availability and use of electronic invoicing, this is a
19 reasonable due date based on the general commercial practice of 30-
20 day due dates. Utilizing the received date as the starting point for the 30
21 days is critical because BellSouth has an extensive record of late or
22 delayed billing. Although BellSouth has continued to work on correcting
23 billing problems including late billing, ITC^DeltaCom should not be

1 required to compensate for deficiencies in BellSouth's billing systems.
2 Moreover, ITC^DeltaCom's record of prompt payment should not be
3 unfairly impacted by unrealistic due dates on late-delivered invoices.

4
5 ITC^DeltaCom recommends adoption of a billing due date standard of 30
6 days from receipt of the invoice.

7

8 **Issue 60: Deposits**

9 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING DEPOSITS,**
10 **AND WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION**
11 **PANEL?**

12 **A:** The deposit language should be reciprocal because BellSouth does pay
13 for certain services performed by ITC^DeltaCom and furthermore should
14 pay for work performed by ITC^DeltaCom on BellSouth's behalf. If a
15 party has a good payment history, no deposit should be required.
16 Therefore, BellSouth's resistance to accept the terms it wishes to impose
17 on ITC^DeltaCom is truly puzzling, as it seems solely calculated to
18 enable BellSouth to employ, with no consequences attached, a strategy
19 of bad-faith non-payment as a supplement to its already-formidable
20 market power. As I stated previously, ITC^DeltaCom is willing to
21 acknowledge that a failure to pay undisputed bills in a timely manner can
22 form the reasonable basis for additional assurance of payment to the
23 billing party. It is disappointing that BellSouth refuses to commit to a

1 reasonable, reciprocal commercial relationship, and has thereby chosen
2 to waste this Commission's resources on a request that has no legitimate
3 basis.

4
5 What is equally unreasonable is BellSouth's insistence that
6 ITC^DeltaCom, after years of timely payment to BellSouth for wholesale
7 services, should be required to provide even greater payment assurance
8 to BellSouth at ITC^DeltaCom's expense.

9
10 To justify increasing the burden on ITC^DeltaCom, for BellSouth's
11 benefit, BellSouth claims that the telecommunications market has
12 become more "risky" and that BellSouth's obligation to provide wholesale
13 services to requesting carriers exposes it to even more risk. While this
14 argument may attract some interest, when coupled with BellSouth's
15 casual empiricisms regarding the overall state of the industry, its premise
16 fails to withstand scrutiny. For this reason, the FCC recently, and
17 correctly, rejected the requests of BellSouth and other ILECs to demand
18 increased deposit requirements under their interstate services tariffs.
19 (*See, In the Matter of Verizon Petition for Emergency Declaratory and*
20 *Other Relief*, WC Docket No. 02-202, *Policy Statement*, Rel. December
21 23, 2002 ["Policy Statement"]).

22

1 In its Policy Statement, the FCC concluded that “the risk posed by
2 uncollectibles may not be as great as alleged by certain carriers.” (Policy
3 Statement, ¶ 14.)

4 While certain factors may reasonably precipitate accelerated billing and
5 collection cycles, the FCC nonetheless maintained the status quo with
6 respect to deposit requirements, explaining, “[w]e do not believe,
7 however, that additional deposit requirements are warranted at this time.”
8 (Id.)

9
10 In justifying its decision not to require additional deposit requirements,
11 the FCC noted that “incumbent LECs operating under price caps
12 normally are considered subject to both the benefits and burdens of
13 unconstrained earnings.” (Id. at ¶ 18).

14 For example, the FCC contrasted the extraordinary returns earned by
15 incumbents in the “crisis” year 2001--which for BellSouth was 19%--with
16 their more “ordinary” (although still high) returns in 1990—in which
17 BellSouth earned a 13% rate of return on interstate services. (Policy
18 Statement at ¶ 18 (internal citations omitted)). The FCC’s ARMIS data is
19 required to be reported by April 1 of the following year, so as of the time
20 this testimony was written, 2001 was the last year for which data were
21 available.

22

1 To further test the premise that BellSouth has exaggerated its exposure
2 from its obligation to wholesale services as a common carrier,
3 ITC^DeltaCom looked at the ARMIS data reported by BellSouth on report
4 43-04, which is BellSouth's interstate access data, net of all non-
5 regulated revenues and associated uncollectibles. The data is
6 disaggregated into total interstate network access revenue and
7 uncollectibles (column d, rows 4014 and 4040) and total special access
8 revenue and associated uncollectibles (column o, rows 4014 and 4040).

9
10 According to the FCC's ARMIS data, in 2001 BellSouth had uncollectible
11 revenues of approximately \$68 million on total access service revenues
12 of approximately \$4.5 billion, for an uncollectible revenue percentage of
13 around 1.5% of revenues. While this rate is approximately double the
14 year 2000 rate of .76%, the overall uncollectible rate is still extremely
15 low. If we consider special access in isolation, because this is the
16 primary access service that ITC^DeltaCom uses, the numbers get even
17 lower still. For 2000, BellSouth had uncollectible revenues for special
18 access of \$1.5 million over total special access revenues of \$1.2 billion,
19 leaving an uncollectible revenues rate of .13%. In 2001, that number did
20 increase substantially, in percentage terms, to uncollectible revenues of
21 \$11.4 million on total special access revenues of \$1.8 billion, or .62% of
22 total special access revenues.

23

1 In other words, 62 cents out of every \$100 billed was uncollectible. This
2 figure, low as it is, should not, in any event, be considered a "loss" for
3 BLS. Because BLS is in no way capacity-constrained, it is not as if these
4 \$11.4 million in sales represented sales to non-paying customers that
5 could have been made to more credit-worthy customers. The "risk" that
6 BellSouth faces as a wholesale carrier, however, is better appreciated
7 when compared to unregulated wholesale telecommunications service
8 providers.

9
10 To get a better sense, in relative terms, for the "risk" faced by BellSouth
11 versus competitive carriers, we have to use a slightly "rougher" data set
12 than that available on ARMIS, but we can still get a relative idea from
13 publicly filed data by comparing a "snapshot" of various carriers at the
14 end of their fiscal years. By comparing accounts receivable allowances
15 for doubtful accounts to overall accounts receivable, we can get a sense
16 of each carrier's bad debt exposure at the point when the balance sheet
17 data were collected. These data are not an accurate depiction of the
18 true scope of uncollectible revenues for any one firm, because, as noted
19 above, uncollectible revenue is normally an expense item that is part of
20 the "Sales, General, & Administrative" expense line on an income
21 statement. So, while this data is only a snapshot of each firm's
22 estimated allowance for uncollectible accounts out of total current
23 accounts receivable, it is still clear that BellSouth faces lower business

1 risks than most competitive carriers who have a similarly high degree of
 2 exposure to carrier customers. For comparison purposes,
 3 ITC^DeltaCom chose to compare Level 3 Communications ("LVLT"), a
 4 long-haul wholesale transport provider, NEON Communications
 5 ("NOPT"), a local metro wholesale carrier, Time Warner
 6 Telecommunications ("TWTC"), a metro wholesale and large enterprise
 7 retail competitor, WorldCom ("WCOM"), a local, long distance, voice and
 8 data integrated carrier, which provides both local and long-haul
 9 wholesale and retail services, and XO Communications ("XOXO"), a
 10 local and long-haul broadband provider, serving both enterprise and
 11 wholesale customers. These numbers are taken from the carriers "10-K"
 12 Annual Reports filed with the SEC.

13

14		2001	2000
15	Company	A/R Allowance/ Net A/R	A/R Allowance/ Net A/R
16			
17	BLS	9.1%	7.3%
18	LVLT	20.6%	6%
19	NOPT	16.2%	13.6%
20	TWTC	38%	21.5%
21	WCOM	20.4%	22.5%
22	XOXO	15%	11.6%

23

1 BellSouth cannot reasonably or rationally justify requiring greater deposit
2 requirements from ITC^DeltaCom. ITC^DeltaCom's long-term payment
3 history with BellSouth is excellent. Additionally, BellSouth faces very low
4 aggregate financial risk from its obligation to provide wholesale
5 services—especially when compared with telecommunications service
6 providers with less market power. Finally, it is compelling that the FCC
7 considered and rejected similar requests from BellSouth only five months
8 ago.

9
10 ITC^DeltaCom's proposed deposit parameters provide a reasonable
11 balance between each company's need to mitigate risk of non-payment
12 and protection from demands for unnecessary and financially
13 burdensome deposits. ITC^DeltaCom recommends the adoption of the
14 following proposed deposit parameters that are reciprocal and consistent
15 with the FCC policy on deposits:

16

17 **Existing Customer Definition:**

18

19 Any customer with an existing business relationship with
20 BellSouth.

21

22 **New Customer Definition:**

23

24

25

26

27

An entity that has had no prior business relationship with
BellSouth including the past relationship of a prior entity
that makes up at least 30% of the equity of the successor
enterprise.

1 **Bill Due Date, Notice and Cure Intervals:**

2

3

4

5

6

7

8

9

The Due Date for payment is thirty (30) days from receipt of the invoice. Late payment charges accrue after the Due Date. Notice of delinquency will be provided ten (10) days after Due Date, and the billed party will have fifteen (15) days from such notice to cure.

10

11

12

13

Late Payment Definition:

Payments are considered late if not postmarked or wire transferred on or before the Due Date.

14

15

16

17

18

19

20

Poor Payment History Definition:

If greater than 10%, net legitimate disputes, of the average of the last twelve months invoiced charges is outstanding 30 days after Due Date, the Billing Party may utilize the remedies listed below assuming the notice was provided and Billed party failed to cure.

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

Liquidity Standard:

EBITDA positive 12-month LTM basis excluding any nonrecurring charges or special restructuring charges. "EBITDA" means, for any period, the sum, determined on a Consolidated basis, of (a) net income (or net loss) after eliminating extraordinary and/or non recurring items to the extent included in net income (except as provided in this definition), (b) interest expense, (c) income tax expense, (d) depreciation expense, (e) amortization expense, (f) the aggregate of all non-cash charges deducted in arriving at net income in clause (a) above, including, but not limited to, asset impairment charges, (g) any restructuring charges (h) all restructuring charges incurred under or in connection with the Plan of Reorganization, in each case of the Parent and its Subsidiaries, determined in accordance with GAAP for such period (including, without limitation, Emerging Issues Task Force Issue 94-3 and Statement of Financial Accounting Standards No. 146).

39

40

41

42

43

Bond Rating is triple C or worse.

Upon notice of a material default of a bank (or other loan provider's) debt covenant and upon the Billed Party's failure to either cure or obtain a waiver from such default within 20 days of such notice, the Billing Party may utilize

1 the remedies listed below unless the Billed Party has ample
2 liquidity to fund the accelerated obligation.

3
4 **Remedies if fail Late Payment or Liquidity Standards:**

5
6 *Accelerated Payment Schedule*

7 Billed Party is required to pay half within 15 days and other
8 half within 30 days. Billing Party may designate up to 5
9 cycles. Billed Party has (5) business days to cure if missed
10 an accelerated payment.

11
12 If Billed Party has not cured within 5 Business Days then:

13
14 *Partial Deposit*

15 Billing Party may require a 1/2 month deposit for services
16 billed in arrears on a normal billing cycle and 1/4 month
17 deposit for services billed in advance subject to the 90%
18 standard described and upon making the deposit, the
19 normal payment schedule applies.

20
21 *Full Deposit*

22 If fail to provide deposit and after 15 day notice, then a 2
23 month deposit for services billed in arrears and a one
24 month deposit on services billed in advance is due within
25 thirty days.

26
27 **Deposit Refund:**

28 A deposit shall be refunded with accrued interest following
29 a period of six months prompt payment. In the case of a
30 cash deposit, for the period the deposit is held, the
31 customer shall receive simple interest at the rate of one
32 percent per month (.000329 per day) or 12 percent
33 annually.

34
35 **Issue 62: Limitations on Back Billing**

36 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING LIMITATIONS**
37 **ON BACK BILLING, AND WHAT IS YOUR RECOMMENDATION TO**
38 **THE ARBITRATION PANEL?**

1 A: ITC^DeltaCom's position is that back billing should be limited to 90 days
2 between carriers. Currently, the Commission does not have a rule or
3 regulation regarding backbilling between carriers. Ninety days provides
4 ample time for the rendering of correct invoices and is being proposed as
5 a reciprocal requirement. Back billing for extended periods of time
6 exposes both companies to the problem of not being able to establish
7 accurate cost structures for the pricing of retail services. Moreover, back
8 billing based on revisions in policy and or changes in the interpretation of
9 rules or regulation make it difficult for the billed party to challenge the
10 new or increased charges. Data that is readily available during a 90 day
11 period may no longer be available over extended back billing periods.
12 Although longer back billing periods may be reasonable for retail
13 services, the retail standard should not be used for wholesale invoices.

14
15 As one example, ITC^DeltaCom received notice from BellSouth on
16 March 21, 2003 regarding backbilling for daily usage file ("DUF") records
17 provided in February of 2000. See confidential correspondence attached
18 as Exhibit JW-1.

19
20 As it stands, ITC^DeltaCom has received or expects to receive
21 backbilled invoices for services provided in February 2000. Obviously,
22 ITC^DeltaCom's ability to operate as a competitor against BellSouth in
23 the local market is in severe jeopardy when BellSouth sends notification

1 that it will be sending billing for approximately \$550,000 for ODUF/ADUF
2 records provided from February of 2000 to November of 2001.

3 Certainly, ITC^DeltaCom cannot now go back to its retail customer base
4 in Florida and assess charges that are more than 12 months old.

5

6 ITC^DeltaCom requests a reciprocal back billing period not to exceed 90
7 days.

8

9 **Issue 63: Audits – Pick and Choose**

10 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING BELLSOUTH'S**
11 **REFUSAL TO ALLOW ITC^DELTACOM TO PICK AND CHOOSE**
12 **BILLING AUDIT LANGUAGE FROM ATTACHMENT 7 AND WHAT IS**
13 **YOUR RECOMMENDATION TO THE ARBITRATION PANEL?**

14 **A:** BellSouth has recently adopted a position that pick and choose rules do
15 not apply to billing language by asserting that billing is not a service
16 under section 251. ITC^DeltaCom's position is that the pick and choose
17 rule applies to all contract provisions and specifically in the case of billing
18 language. Billing has long been considered a service as normal practice
19 in the industry and we believe BellSouth's position is without merit.

20

21 Furthermore, as I noted in my overview of the Act's nondiscrimination
22 requirements, the FCC has consistently held that access to OSS
23 functionalities (of which, billing is one) are a critical element of providing

1 nondiscriminatory access to UNEs under Section 251(c)(3). This has
2 been a general requirement applicable to all ILECs under the Act. With
3 respect to the RBOCs, like BellSouth, the FCC has further, and
4 consistently, held “[d]eploying the necessary OSS functions that allow
5 competing carriers to order network elements and combinations of
6 network elements and *receive the associated billing information* is critical
7 to provisioning those network elements.” (Ameritech Michigan 271 Order
8 ¶ 160 (emphasis added). See also, Verizon Pennsylvania 271 Order ¶
9 15 (“[c]onsistent with prior section 271 orders, a BOC must demonstrate
10 that it provides competing carriers with wholesale bills in a manner that
11 gives competing carriers a meaningful opportunity to compete.” (internal
12 citations omitted)).

13

14 Thus, consistent with settled principles of nondiscriminatory access to
15 UNEs as well as BellSouth’s continuing Section 271 obligations in this
16 state, ITC^DeltaCom recommends that BellSouth’s prohibition on pick
17 and choose—with respect to carrier billing services—be denied.

18

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

20 **A:** Yes.

1 **Q: PLEASE STATE YOUR NAME, POSITION AND BUSINESS**
2 **ADDRESS.**

3 **A:** My name is Jerry Watts, I am Vice President of Government and
4 Industry Affairs for ITC^DeltaCom, Inc. My business address is
5 4092 South Memorial Parkway, Huntsville, Alabama, 35802.

6
7 **Q: ARE YOU THE SAME JERRY WATTS WHO PRESENTED**
8 **DIRECT TESTIMONY ON BEHALF OF ITC^DELTACOM IN THIS**
9 **CASE?**

10 **A:** Yes.

11

12 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 **A:** The purpose of my testimony is to respond to the testimony of
14 BellSouth witnesses Blake and Ruscilli including certain assertions
15 regarding my direct testimony.

16

17 **RESPONSES TO BELLSOUTH WITNESS BLAKE**

18

19 **Issue 26: Local Switching—Line Cap and Other Restrictions**

20 **Q: REGARDING ISSUE 26(a), BELLSOUTH ARGUES (BLAKE, pp.**
21 **3-4) THAT THE “4-LINE” RESTRICTION IS STILL IN EFFECT**
22 **AND MUST BE GRANTED PRECLUSIVE WEIGHT IN THE**
23 **PRESENT ARBITRATION. IS THIS CORRECT?**

1 A: While the parties could argue whether or not the “4-line” restriction
2 is consistent with the parts of the FCC’s Triennial Review decision
3 that have been made public, regardless of whether the FCC’s old
4 UNE rules should be given effect, this Commission is not required
5 to utilize the “4-line” restriction in Florida. As I explained in my
6 previous testimony, the Telecom Act and the FCC’s unbundling
7 rules have been consistently interpreted to provide federally-
8 prescribed *minimum* unbundling obligations, *to which the states*
9 *are free to add*, consistent with Section 251(d)(3) of the Act and
10 FCC Rule 317 (which requires the state to conduct its own
11 “necessary or impair” test prior to requiring additional unbundling).
12 (See 47 U.S.C. § 251(d)(3). See also, 47 C.F.R. § 51.317. For the
13 FCC’s consistent interpretation of the Act as permitting state
14 commissions to add to the national list of UNEs, see *Local*
15 *Competition Order*, ¶¶ 281-83, and the *UNE Remand Order*,
16 ¶¶ 153-55.) Given that we know the general direction the FCC is
17 taking with respect to impairment for unbundled switching—and
18 that no conflict exists between the old rules and what we know of
19 the new rules—it is clear that the Florida Public Service
20 Commission has the discretion to find that ITC^DeltaCom is
21 impaired without access to unbundled switching at the analog line
22 level. Moreover, Chapter 364, Florida Statutes, includes provisions

1 for the implementation of local competition that must be complied
2 with by BellSouth and enforced by the Commission.

3

4 **Q: DOES BELLSOUTH CURRENTLY HAVE THE ABILITY TO BILL**
5 **UNBUNDLED SWITCHING IN CONJUNCTION WITH THE 4**
6 **LINE RULE?**

7 A: No. Attached as Exhibit JW-2 is the BellSouth carrier notice letter
8 informing ALECs that BellSouth will do a "true-up" twice a year.
9 Attached as Exhibit JW-3 is a confidential spreadsheet containing
10 BellSouth's backbilling to ITC^DeltaCom for market rates.

11 Additionally, BellSouth recently backbilled ITC^DeltaCom for
12 ~~ADUF~~ charges as far back as February 2000. The bottom line is
13 that BellSouth is not billing ALECs correctly and it appears that
14 despite working on this for several years, BellSouth is not able to
15 modify its billing systems to bill in conjunction with the 4-line rule.
16 Moreover, it appears that BellSouth has no plans to correct its
17 billing problems.

18

19 **Q: WITH RESPECT TO ISSUE 26(b), BELLSOUTH ARGUES THAT**
20 **THE COMMISSION HAS NO AUTHORITY TO ESTABLISH**
21 **RATES FOR WHOLESALE SERVICES NOT SPECIFICALLY**
22 **REQUIRED TO BE UNBUNDLED UNDER SECTION 251. HOW**
23 **DO YOU RESPOND?**

1 A: BellSouth's assertion is incorrect. First, even if BellSouth is not
2 required under the Section 251(c)(3) UNE rules to provide the
3 element as a UNE, as a Bell Operating Company ("BOC") it
4 continues to have the obligation to provide "interconnection" and
5 certain network elements under the Section 271 competitive
6 checklist. The obligations of Section 271 to BOCs attach
7 independently of Section 251's obligations imposed on ILECs
8 generally.

9
10 The Supreme Court has repeatedly held to "the normal rule of
11 statutory construction that identical words used in different parts of
12 the same act are intended to have the same meaning." *Brooke*
13 *Group Ltd. v. Brown & Williamson Tobacco Co.*, 509 U.S. 209, 230
14 (1993) (internal citations omitted). The FCC, in its February 20th
15 "attachment" to its Triennial Review press release, states

16
17 The requirements of section 271(c)(2)(B) establish an
18 independent obligation for BOCs to provide access to loops,
19 switching, transport, and signaling, under checklist items 4-6
20 and 10, regardless of any unbundling analysis under section
21 251. Where a checklist item is no longer subject to section
22 251 unbundling, section 252(d)(1) does not operate as the
23 pricing standard. Rather, the pricing of such items is

1 governed by the “just and reasonable” standard established
2 under sections 201 and 202 of the Act.

3
4 While the FCC, in its explanation, seeks to avoid the “normal rule
5 of statutory construction” articulated by the Supreme Court by
6 saying that Section 252(d)(1) “does not operate as the pricing
7 standard,” the FCC cannot simply ignore the plain language of the
8 Act. Section 252(d)(1) and Sections 201 and 202 of the Act all use
9 the exact same terms—“just and reasonable.” As the Supreme
10 Court has frequently held, these terms are to be given consistent
11 meaning within the same statute. Moreover, the Florida Public
12 Service Commission in this arbitration is bound by the terms of
13 Section 252(c)(2), which requires that a “State commission shall
14 establish *any rates* for interconnection, *services*, or network
15 elements according to subsection (d).” (emphasis added)

16
17 Thus, the FCC’s press release notwithstanding, it is unlikely that
18 this Commission would ignore the plain language of the Act and
19 allow BellSouth to unilaterally establish its own prices for any
20 element or service required by the Act, regardless of whether the
21 element or service is specifically required under Section 251(c)(3).
22 Should any existing or future UNEs no longer be priced under FCC
23 TELRIC rules, ITC^DeltaCom believes that this Commission will

1 prescribe an alternative pricing methodology for BellSouth
2 “substitute” rates that protect consumers from arbitrary and
3 anticompetitive pricing. Moreover, ITC^DeltaCom has
4 recommended that no “substitute” rate could become effective for
5 BellSouth services without approval by the Commission. Absence
6 of Commission control of the prices for de-listed UNE’s would
7 result in BellSouth’s ability to set rates at levels so high that they
8 would, as a practical matter, be able to discontinue providing the
9 UNE in violation the section 271 requirements.

10

11

12 **RESPONSES TO BELLSOUTH WITNESS RUSCILLI**

13

14 **Issue 1: Term of the Agreement**

15 **Q: BELLSOUTH WITNESS RUSCILLI SUGGESTS THAT IF THE**
16 **PARTIES WERE TO CONTINUE TO OPERATE UNDER A**
17 **COMMISSION-APPROVED INTERCONNECTION AGREEMENT**
18 **PENDING ARBITRATION OF A NEW AGREEMENT,**
19 **BELLSOUTH WOULD BE STIFLED IN ITS ABILITY TO**
20 **IMPLEMENT NEW, EFFICIENT PROCESSES. DO YOU**
21 **AGREE?**

22 **A:** No. It is unlikely that that the longer contract term requested by
23 ITC^DeltaCom will force BellSouth to operate inefficiently, as

1 witness Ruscilli contends (pp. 3-4). As an initial matter,
2 ITC^DeltaCom would most likely be more than willing to
3 consensually amend its agreement at any time to allow for
4 BellSouth to implement more productive or efficient processes.

5
6 BellSouth and ITC^DeltaCom have periodic meetings to discuss
7 operational problems and to work toward mutually acceptable
8 solutions. A longer term means that the Commission and the
9 parties' resources are more efficiently utilized.

10

11

12 **Issue 11: Access to UNEs**

13 **Q: BELLSOUTH WITNESS RUSCILLI SUGGESTS THAT ONLY**
14 **THOSE OBLIGATIONS REQUIRED UNDER SECTION 251 OF**
15 **THE ACT ARE PROPERLY INCLUDED WITHIN THE**
16 **INTERCONNECTION AGREEMENT. DO YOU AGREE?**

17 **A:** No. Unfortunately for Mr. Ruscilli's position, the plain language of
18 the Act clearly empowers the Florida Public Service Commission to
19 decide "any open issue" during an arbitration. As long as the
20 provisions in question are not inconsistent with Section 251 and
21 the FCC's regulations implementing that Section, the state
22 commission has discretion to incorporate these issues into the
23 interconnection agreement. Sections 252(c)(1) and 252(e)(2)(B).

1
2 Further, given BellSouth's desire to incorporate unilateral
3 amendments to the interconnection agreement by reference
4 (Ruscilli, Issue 58, pp. 37-39), it is hard to understand why
5 BellSouth would resist ITC^DeltaCom's desire to incorporate terms
6 concerning other legitimately related services or requirements into
7 the interconnection agreement by reference. The terms of the
8 Commission-designated services or requirements that
9 ITC^DeltaCom seeks to incorporate by reference are not
10 unilaterally set by ITC^DeltaCom. Thus, unlike the situation in
11 which BellSouth seeks the right to unilaterally amend the
12 interconnection agreement (even over ITC^DeltaCom's objection),
13 ITC^DeltaCom does not unilaterally control the services and terms
14 for which it seeks incorporation into the interconnection agreement.

15

16 **Issue 58: Unilateral Amendments to the Interconnection Agreement**

17 **Q: BELLSOUTH WITNESS RUSCILLI CONTENDS THAT**
18 **ALLOWING BELLSOUTH TO UNILATERALLY AMEND**
19 **INTERCONNECTION AGREEMENTS AND CHANGE PRICES IS**
20 **THE ONLY WAY THAT IT CAN EFFICIENTLY IMPROVE ITS**
21 **PROCESSES. DO YOU AGREE THAT REQUIRING**
22 **BELLSOUTH TO EXECUTE AMENDMENTS WHEN IT**

1 **CHANGES PROVISIONING PROCESSES AND PRICES WOULD**
2 **IMPOSE INEFFICIENCIES ON BELLSOUTH?**

3 A: No, I do not believe that denying a dominant supplier unfettered
4 discretion to unilaterally change terms and conditions in
5 interconnection agreements with its wholesale customers will result
6 in any increased inefficiency. If anything, limiting BellSouth's
7 ability to behave like an unregulated monopoly may well
8 encourage it to treat its customers like competitive market vendors
9 treat their customers. Requiring BellSouth to execute
10 interconnection agreement amendments when it seeks to change
11 processes or prices should encourage BellSouth to work with its
12 customers to develop the most cost-efficient processes for both
13 BellSouth and its wholesale customers. On the other hand,
14 allowing BellSouth unfettered discretion to change processes and
15 impose costs *without regulatory scrutiny* will only further encourage
16 BellSouth to inefficiently transfer costs to its wholesale customers
17 and ultimately Florida consumers.

18

19 **Issue 59: Payment Due Date**

20 **Q: BELLSOUTH CONTENDS THAT ITC^DELTACOM SHOULD BE**
21 **REQUIRED TO PAY ITS BILL ON THE NEXT BILL DATE,**
22 **REGARDLESS OF WHEN ITC^DELTACOM ACTUALLY**

1 **RECEIVES THE BILL. WHAT WOULD BE THE EFFECT OF**
2 **SUCH A REQUIREMENT?**

3 A: It would do nothing more than penalize ITC^DeltaCom for
4 BellSouth's inefficiency, while providing no corresponding incentive
5 for BellSouth to become anything but more inefficient. BellSouth
6 would have no incentive to become more efficient in its billing
7 processes. To the contrary, BellSouth would benefit by allowing
8 ITC^DeltaCom less time to thoroughly analyze its bills. Even if
9 ITC^DeltaCom could effectively analyze its bills within the less-
10 than-thirty-day time frame BellSouth proposes, it would expend
11 more resources to accomplish the task in a shortened interval.
12 ITC^DeltaCom therefore would bear the costs of any increased
13 inefficiency on the part of BellSouth. Approximately 94% of
14 BellSouth's billing to ITC^DeltaCom is by way of electronic
15 invoicing. Although these bills are delivered electronically they are
16 not sent to ITC^DeltaCom for up to seven days after the billing
17 date. BellSouth controls the delivery date and is not dependent on
18 ITC^DeltaCom to determine it. ITC^DeltaCom needs every day of
19 its requested 30 days to analyze the bills for accuracy and to
20 dispute bills that are not correct. In a typical month ITC^DeltaCom
21 receives approximately 1700 invoices over 21 billing periods.
22 Errors are common as is evidenced by the nearly 4000 billing
23 disputes that are currently pending. A reasonable and fair

1 outcome would be for BellSouth to provide ITC^DeltaCom 30 days
2 from when ITC^DeltaCom receives its bill. This requirement would
3 put BellSouth firmly in charge of when it gets paid, with no
4 corresponding costs to ITC^DeltaCom.

5

6 **Issue 60: Deposits**

7 **Q: WITH RESPECT TO SUBPART (A) OF THIS ISSUE,**
8 **BELLSOUTH CLAIMS THAT IT WOULD BE UNREASONABLE**
9 **TO MAKE THE DEPOSIT LANGUAGE RECIPROCAL,**
10 **BECAUSE BELLSOUTH IS NOT “SIMILARLY SITUATED” WITH**
11 **A COMPETITIVE CARRIER. DO YOU AGREE?**

12 **A:** I agree that BellSouth is not “similarly situated” with a competitive
13 provider in that, unlike BellSouth, competitive carriers such as
14 ITC^DeltaCom have no captive customers against whom they can
15 discriminate. For this reason, ITC^DeltaCom’s tariff language,
16 which BellSouth claims is “more rigid” than BellSouth’s proposed
17 language, does not tell the whole story. Regardless of
18 ITC^DeltaCom’s tariff language, no ITC^DeltaCom customer has
19 to accept these, or any other terms, proposed by ITC^DeltaCom
20 unless the customer agrees. On the other hand, interconnecting
21 carriers must accept whatever terms BellSouth dictates. For this
22 very reason, reciprocal deposit language should be required by the
23 Commission as a way of helping to make the parties more

1 "similarly situated" with respect to market power. If the terms that
2 BellSouth wants are truly reasonable, then BellSouth should be
3 willing to comply with the same terms it seeks to extract from its
4 captive customers.

5
6 **Q: BELLSOUTH CONTINUES TO ASSERT THAT ITC^DELTACOM**
7 **SHOULD NOT BE ELIGIBLE FOR A RETURN OF ITS DEPOSIT**
8 **SIMPLY BY GENERATING A GOOD PAYMENT HISTORY.**
9 **BELLSOUTH CONTENDS THAT A GOOD PAYMENT HISTORY**
10 **DOES NOT INSULATE IT FROM ALL RISK OF DEFAULT. DO**
11 **YOU AGREE? IS THIS A REASONABLE POSITION?**

12 **A:** I do agree that, absent holding a deposit from each customer in
13 perpetuity, there is no way for BellSouth to realize the absolute
14 insulation from business risk that it seems to desire. However,
15 competitive markets are characterized by greater levels of risk and
16 greater possibilities of return than regulated monopoly markets. It
17 is unreasonable for BellSouth to expect greater insulation from
18 risk, by way of its residual market power, than that available to
19 competitive market participants.

20
21 With respect to subpart (b) of this issue, BellSouth is seeking not
22 the reasonable assurance of payment, but absolute insurance from
23 ordinary business risk. While a good payment history does not

1 guarantee BellSouth the near certainty that it seems to demand
2 with respect to future payment, it is reasonable. It is doubtful that
3 ITC^DeltaCom holds any customer's deposit in perpetuity.
4 Similarly, this Commission would not allow BellSouth to hold a
5 retail consumer's deposit indefinitely, assuming that consumer had
6 a record of timely payment.

7
8 It is natural for BellSouth, as a government-created monopoly, to
9 seek to raise rates to the full extent its market power will allow.
10 BellSouth's request that its competitors insure it against the
11 ordinary risks of being a wholesale provider is simply another way
12 of transferring costs (in the form of business risk) from its
13 shareholders to its competitors. Such a transfer of costs has no
14 different effect than would an outright price increase.

15
16 It is helpful to consider the severity of the "problem," given the
17 clear burden of the "cure" to be borne by competitive carriers such
18 as ITC^DeltaCom. According to the FCC's ARMIS database,
19 BellSouth's uncollectible rate on interstate special access services
20 sold in Florida has risen somewhat, but at a remarkably low rate,
21 over the past three years. This is all the more remarkable given
22 the striking growth in interstate special access revenue over the
23 same time period. Based on the numbers reported in FCC ARMIS

1 Report 43-04, BellSouth's uncollectible rates from 2000 through
2 2002 increased by 1.9%. (Data discussed is taken from the
3 BellSouth Florida information on the FCC ARMIS Report 43-04 for
4 the years 2000-2002. Percentage interstate special access
5 uncollectibles were calculated by dividing the uncollectible
6 interstate revenue (line 4040, column d) by the interstate special
7 access revenue (line 4012, column d).) To gain some perspective
8 on these percentage numbers, in absolute terms, BellSouth's
9 uncollectible revenues have increased by about \$21 million during
10 this time period, while its total interstate special access revenues in
11 Florida grew by nearly \$258 million. BellSouth never disputes
12 ITC^DeltaCom's assertion that BellSouth faces no extraordinary
13 risks other than those borne by other market participants.
14 BellSouth only responds that, even with a demonstrated history of
15 good payment, there is some chance a customer will still default.
16 This is an unpleasant part of a competitive marketplace, but not a
17 basis for transferring costs to ITC^DeltaCom.

18

19 **Q: HAS THE FCC EVER SANCTIONED DEPOSIT REQUIREMENTS**
20 **LIKE THOSE BELLSOUTH HAS SUBMITTED IN THIS**
21 **PROCEEDING?**

22 **A:** No.

23

1

2 **Issue 62: Limitation on Backbilling**

3 **Q: DO YOU BELIEVE THAT THE PROPER TIME FRAME FOR**
4 **BELLSOUTH TO RECOVER BACKBILLED AMOUNTS SHOULD**
5 **CORRESPOND TO THE TIME PERIOD UNDER CHAPTER 25-**
6 **4.110(10) OF THE RULES OF THE FLORIDA PUBLIC SERVICE**
7 **COMMISSION?**

8 A: No. Because the Florida PSC has broad authority to regulate the
9 rates and billing practices of common carriers, the Commission is
10 free to set different terms for carriers seeking the recovery of
11 carrier-to-carrier backbilled charges, as opposed to end-user
12 backbilled charges, and it should in this instance. The time period
13 of 90 days requested by ITC^DeltaCom is reasonable given the
14 circumstances of the parties' relationship and the difficulty that
15 ITC^DeltaCom has in collecting back-billed charges from its own
16 customers.

17

18 It seems unreasonable that BellSouth on the one hand contends
19 that 30 days from the billing date is an adequate period for
20 ITC^DeltaCom to analyze the accuracy of its bill, but that BellSouth
21 should have 12 months to discover and bill for any errors it makes.
22 The 90-day backbilling limitation proposed by ITC^DeltaCom is
23 necessary to provide the requisite incentives for BellSouth to

1 deliver timely and accurate bills to ITC^DeltaCom. As BellSouth
2 well knows, in a competitive environment customers are unlikely to
3 accept charges backbilled in excess of 90 days. Moreover, in a
4 competitive market churn figures are higher, so it is quite likely that
5 after the 12 months proposed by BellSouth, many of these same
6 customers will no longer be with ITC^DeltaCom.

7
8 Charges that are backbilled after 90 days are substantially
9 uncollectible by ITC^DeltaCom from its customers. Moreover,
10 even if the customer agrees to pay the charges, the customer will
11 have a negative opinion of ITC^DeltaCom. Thus, with no
12 reasonable backbilling window, BellSouth has no incentive to
13 improve its own billing accuracy. At best (for BellSouth), it gets to
14 impose costs on its competitors that they must absorb (because
15 their own customers are either gone or refuse to pay). At worst,
16 the competitor recovers from its customer but suffers from a
17 customer perception of incompetence. Because of these distorted
18 incentives, the business relationship between BellSouth and
19 ITC^DeltaCom is not directly comparable to an ordinary contract,
20 where both parties have an incentive to diligently comply and
21 police compliance. For these reasons, the Commission should
22 exercise its lawful jurisdiction and impose a reasonable time

1 limitation on actions to recover backbilled charges under this
2 interconnection agreement.

3
4 Further, ITC^DeltaCom's ability to verify the correctness of
5 BellSouth's billing is diminished over time due to issues
6 surrounding retention and quality of data. It is much more difficult
7 to verify records and identify billing errors when bills are not
8 rendered in a reasonable period of time.

9
10 Finally, this Commission should note that allowing BellSouth the
11 ability to backbill over 90 days encourages BellSouth to backbill
12 rather than "fix" its billing problems. Attached as Exhibit JW-4 is an
13 affidavit from ITC^DeltaCom's Senior Manager of Line Cost
14 Accounting, Mr. Kevin McEacharn, and an e-mail from BellSouth
15 regarding spreadsheets showing backbilling by BellSouth for
16 ~~ADUF~~^{ADUF/ODUF} charges. Those spreadsheets were attached as Exhibit JW-
17 1 to my Direct Testimony.

18

19

20 **Q: DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

21 **A:** Yes.

1 COMMISSIONER DEASON: And we will wait until the
2 conclusion of cross-examination to move exhibits.

3 MR. ADELMAN: Thank you. And I tender this witness
4 for cross-examination at this time.

5 COMMISSIONER DEASON: And just so the record is
6 clear, Exhibits 1 through 5, which is my understanding have all
7 been stipulated, will be admitted into the record with no
8 objection. Hearing no objection, show that Exhibits 1 through
9 5 are admitted.

10 (Exhibits 1, 2, 3, 4 and 5 admitted into the record.)

11 (REPORTER'S NOTE: Exhibit 5 withdrawn in Volume 3,
12 Page 312.)

13 COMMISSIONER DEASON: Ms. White.

14 MS. WHITE: Yes. Thank you.

15 CROSS EXAMINATION

16 BY MS. WHITE:

17 Q Good morning, Mr. Watts.

18 A Good morning.

19 Q My name is Nancy White. I represent BellSouth
20 Telecommunications.

21 Let's start off with Issue 26. On 26A, Issue 26A is
22 whether the line cap on local switching in certain designated
23 metropolitan statistical areas is only for a particular
24 customer at a particular location. Would you agree that's what
25 Issue 26A is?

1 A Yes.

2 Q And you're aware, aren't you, because you've cited it
3 on Page 16 of your direct testimony that the Florida Commission
4 previously decided this issue in the AT&T arbitration
5 proceeding?

6 A Yes.

7 Q Are you asking the Commission to do something
8 different today than what it did in the AT&T proceeding?

9 A Yes. We're asking that the Commission reconsider
10 this issue. We have language in our current contract that
11 provides for the lines, the 3-line cap to apply at a single
12 location, not aggregating the lines within the, within the MSA.
13 And additionally I believe that this issue is part of
14 the recently issued Triennial Order, and so we would ask that
15 the Commission review for itself the provisions of the
16 Triennial Order and once again review this issue for
17 ITC^DeltaCom.

18 Q Maybe I misunderstood your answer. Did you say that
19 in the AT&T arbitration order the Commission restricted AT&T's
20 ability to purchase local circuit switching?

21 A You'll have to tell me where you're referring to.
22 MS. WHITE: Let me -- may I approach the witness,
23 please?

24 COMMISSIONER DEASON: Yes.

25 BY MS. WHITE:

1 Q I'm going to hand out a portion of the order on
2 reconsideration in the AT&T arbitration. It's Order Number
3 PSC-01-1951-FOF-TP issued on September 28th, 2001, and ask you
4 to look at Page 7. And, Mr. Watts, if you'd just let me know
5 when you've had a chance to review that.

6 MR. ADELMAN: Ms. White, is there a paragraph you
7 want to refer us to?

8 MS. WHITE: The Commission -- the Florida
9 Commission's orders do not number paragraphs. The section on
10 local switching starts on Page 6, which I've included, and
11 continues on Line, excuse me, Page 7 and essentially consists
12 of two paragraphs.

13 THE WITNESS: Okay. I've finished reading it. What
14 was the question again?

15 BY MS. WHITE:

16 Q The question was you would agree, wouldn't you, that
17 the Commission said that BellSouth would not be allowed to
18 aggregate lines provided to multiple locations of a single
19 customer to restrict AT&T's ability to purchase local circuit
20 switching; isn't that correct?

21 A Yes.

22 Q And you agree with that ruling; isn't that correct?

23 A I do.

24 Q Let's look at Issue 26B. Issue 26B --

25 COMMISSIONER DEASON: I'm sorry, Ms. White. I'm

1 trying to -- let me just ask the witness a question.

2 MS. WHITE: Sure.

3 COMMISSIONER DEASON: What's the issue then? On the
4 previous line of questions, what's the issue?

5 THE WITNESS: I'm sorry?

6 COMMISSIONER DEASON: Tell me what the issue is.

7 THE WITNESS: On 26A?

8 COMMISSIONER DEASON: Yes.

9 THE WITNESS: Various commissions throughout the
10 region ruled in various ways on the ability of BellSouth to
11 aggregate lines for the application of the line cap. I'm
12 pleased that the Florida Commission is one of those commissions
13 that ruled in favor of the position that ITC^DeltaCom has taken
14 and is consistent with the language we have in our existing
15 contract, which in effect says that the lines have to be at the
16 same premise. They can't be aggregated from various locations.
17 So it's not an issue in this jurisdiction.

18 MS. WHITE: So -- I'm sorry, Commissioner Deason.
19 Are you --

20 COMMISSIONER DAVIDSON: I have a follow-up to
21 Commissioner Deason. I had the same thought. If -- taking
22 that last sentence or the next-to-the-last sentence,
23 "Therefore, we find that BellSouth will not be allowed to
24 aggregate lines," et cetera, what would you propose that the
25 Commission do to that language? Accept it, modify it, reject

1 it? And if modify or reject, what specifically would you
2 propose that we say or do?

3 THE WITNESS: Unless there's something I don't
4 understand, and I think I do understand the ruling that the
5 Commission made, I think the ruling that the Commission made is
6 acceptable, entirely acceptable to ITC^DeltaCom on this issue.

7 COMMISSIONER DAVIDSON: Well, I guess then I have the
8 same, still the same question as Chairman Deason on this.
9 What's the issue? What am I missing?

10 MR. ADELMAN: Commissioner, because it's a legal
11 question, with your permission, if I could --

12 COMMISSIONER DEASON: I'm sorry. Is your microphone
13 on?

14 MR. ADELMAN: I think so.

15 COMMISSIONER DEASON: Okay. You may need to --

16 MR. ADELMAN: We would be glad to close this issue
17 based on the Commission, this Commission's decision in the AT&T
18 case, but it takes two parties to close an issue. And we need
19 contract language or I suppose -- I mean, this is really a
20 question for BellSouth. We need an order from you in this
21 docket that is the same as the language in your AT&T decision.
22 We would be pleased to close that issue based on this ruling,
23 but it takes two parties to close an issue.

24 MS. WHITE: Well, I agree it takes two parties to
25 close an issue. And if Mr. Adelman and the Commission would

1 like to look at Ms. Blake's testimony, she mentions this order,
2 as did Mr. Watts, and agrees that BellSouth could be bound by
3 that order and would agree to what's in that order. So I'm a
4 little confused.

5 COMMISSIONER DEASON: Well, let's look at the
6 positive side. We're making progress here.

7 COMMISSIONER DAVIDSON: Yeah. We're down to
8 21 issues now.

9 COMMISSIONER DEASON: Okay. Ms. White, you may
10 continue with your cross-examination.

11 MS. WHITE: Thank you.

12 BY MS. WHITE:

13 Q Let's look at Issue 26B, and that concerns whether
14 the agreement should include language that prevents BellSouth
15 from imposing restrictions on DeltaCom's use of local
16 switching.

17 Are you familiar -- are you -- isn't it true that
18 BellSouth and DeltaCom have agreed to language in the agreement
19 already that requires BellSouth to provide nondiscriminatory
20 access to switching?

21 A Could you give me a specific reference?

22 Q Yes. Do you have Ms. Blake's testimony in front of
23 you?

24 A I do not.

25 Q All right. Let me see if I can -- if the Commission

1 would give me a minute.

2 MR. ADELMAN: Ms. White, if it's the direct
3 testimony, I have one handy.

4 MS. WHITE: Yes. I'm sorry. No. It is the rebuttal
5 testimony. It's Pages 2 and 3 of Ms. Blake's rebuttal
6 testimony.

7 BY MS. WHITE:

8 Q And if you could read the question beginning on Page
9 2, Line 14 and continuing on to Page 3, Line 5, and let me know
10 when you're done, please.

11 A Okay. I finished.

12 Q Have you reviewed the language that Ms. Blake has
13 cited in this, in Pages 2 and 3 of her rebuttal testimony?

14 A I just read it. Yes.

15 Q No. Have you reviewed the sections that she cites,
16 I'm sorry, Section 10.1.1 of Attachment 2?

17 A I have reviewed it as we have gone through the
18 negotiations process and --

19 Q Okay. Let me try it this way. Do you have any
20 reason to doubt Ms. Blake's testimony on Pages 2 and 3 of her
21 rebuttal as to what Section 10.1.1 of Attachment 2 says?

22 A I do not. And we, we -- by way of the language that
23 we are requesting, we seek, I believe, additional clarity in
24 this aspect of the contract. There are many, many places
25 within the contract language where BellSouth asserts that the

1 language that they have agreed to or that the language that
2 applies in a different section is adequate and so, therefore,
3 the language that we have requested is not necessary. So this
4 is one of those sections.

5 Q Well, maybe I'm a little confused, but how do you
6 provide clarity to "BellSouth is obligated to provide
7 nondiscriminatory access to local circuit switching capability
8 and local tandem switching capability with one exception"?

9 A Well, there, there are a lot of words in, in
10 Ms. Blake's cite that are not the same language that we have
11 proposed regarding this issue. And if, in fact, the language
12 that we have proposed regarding this issue is covered by the
13 language that Ms. Blake cites, then I don't, I don't understand
14 why there is a problem with including the language that we have
15 asked for. The worst thing that could be, the worst thing that
16 could be alleged is that it is redundant.

17 Q So even if Ms. Blake's -- even if the language in
18 Section 10.1.2 of Attachment 2 is clear, you want your language
19 in there anyway?

20 A Yes.

21 COMMISSIONER DAVIDSON: Sir, let me ask this
22 question. Do you believe that the language in 10.1.2 of
23 Attachment 2 is clear?

24 THE WITNESS: It's clear for the purpose of what the
25 language speaks to. We believe that the language that we have

1 requested adds some clarity and strength to the position that
2 we would like to take on this issue.

3 COMMISSIONER DAVIDSON: Let's start with the existing
4 language. How in your opinion is it unclear? Give me the
5 different aspects of lack of clarity in your opinion.

6 THE WITNESS: Can I take just a minute to get the
7 language that we have requested so that I can compare the two?

8 COMMISSIONER DAVIDSON: Certainly.

9 MR. ADELMAN: Commissioner, in the interest of
10 letting this witness provide the most complete answer to your
11 question, I'll be glad to provide him with the language that we
12 have proposed so that he can compare the two. It's -- if
13 there's --

14 MS. WHITE: Excuse me, but if he looks at Page 17 of
15 his direct testimony, I believe he cites the language that
16 DeltaCom has proposed.

17 COMMISSIONER DAVIDSON: And I'm initially interested
18 in what's unclear about the language on the table now. I
19 certainly understand that each party has the language that they
20 prefer.

21 (Pause.)

22 THE WITNESS: Again, I don't take issue with the
23 language that's in the cite in Ms. Blake's testimony. We want
24 the language that I have cited in my testimony in addition to
25 this language. So I'm not taking issue with the clarity or

1 specificity. But as you can see, if you look at the cite in my
2 testimony, it addresses additional information in addition to
3 the information that's cited in, in her cite from another part
4 of the contract.

5 COMMISSIONER DAVIDSON: So on this issue, just to be
6 clear, on this 26B, the issue, there's agreement on the
7 existing language in 10.1.2, and the issue is the additional,
8 just the additional language that you all proposed.

9 THE WITNESS: That's correct.

10 COMMISSIONER DAVIDSON: Thank you.

11 MS. WHITE: Thank you, Commissioner Davidson.

12 BY MS. WHITE:

13 Q Let's move on to Issue 26C, and that's an issue
14 concerned with whether BellSouth is required to provide local
15 switching at market rates where BellSouth is not required to
16 provide local switching as an unbundled network element; is
17 that correct?

18 A That's correct.

19 Q Now would you agree that the FCC in Order
20 99-283 issued by the FCC on September 15th, 1999, found that if
21 an ILEC, an incumbent local exchange company, provided enhanced
22 extended links, then CLECs were not impaired without access to
23 unbundled switching for end users with four or more lines in
24 the top 50 MSAs?

25 A Yes.

1 Q And would you agree, subject to check, that
2 Ft. Lauderdale, Miami and Orlando are in the top 50 MSAs?

3 A Yes.

4 Q Would you agree that BellSouth provides extended,
5 excuse me, enhanced extended links or EELs at cost-based rates
6 in Florida?

7 A I'm sorry. Could you repeat the question?

8 Q Yes. Would you agree that BellSouth provides EELs,
9 enhanced extended links, at cost-based rates in Florida?

10 A Yes.

11 Q Now would you agree that one of the reasons that the
12 FCC gave for this exception was because nearly all of the top
13 50 MSAs contain competitive alternatives for local switching?

14 A I don't have a specific -- if you have a specific
15 cite or something that you'd like for me to look at, I'd be
16 glad to.

17 MS. WHITE: Yes. May I please approach the witness?

18 COMMISSIONER DEASON: Yes.

19 BY MS. WHITE:

20 Q I'm handing out the FCC Order Number 99-238, third
21 report in order adopted on September 15th, 1999, and I will
22 submit to you that this is not the entire order since the FCC
23 unfortunately likes to issue orders of several, several hundred
24 pages in advance as -- you know, I didn't give you the right
25 thing. Sorry. Let me try that again.

1 I'm sorry. If you look at Page -- I mean, excuse me.
2 This is the section on local switching that begins on Page 110
3 of that order. And, Mr. Watts, if you would look at paragraph
4 281. And when you've -- when you're there and you've had a
5 chance to look at paragraph 281 and satisfy yourself to what it
6 says, if you'd just let me know.

7 COMMISSIONER BAEZ: Ms. White, I think you did give
8 us the wrong one. We don't have 281 -- at least I don't have
9 281 in front of me.

10 MR. SELF: I don't have paragraph 281 in this.

11 MS. WHITE: All right. Then excuse me. Let me --
12 all right. Let me read it into the record because apparently I
13 don't have a copy of that paragraph, so I apologize. Let me
14 read it into the record, and then I will show it to the witness
15 so he can see what comes before and after.

16 Paragraph 281 states that, "Based on the evidence in
17 the record, we conclude that exempting incumbent local exchange
18 companies from unbundling local circuit switching in certain
19 circumstances in the top 50 MSAs is reasonable because nearly
20 all of the top 50 MSAs contain a significant number of
21 competitive switches."

22 Would you hand that to Mr. Watts? And I apologize
23 for not having copies for the, for the Commissioners. I
24 obviously didn't make a copy of the whole thing.

25 THE WITNESS: And what was the question again?

1 BY MS. WHITE:

2 Q The question was would you agree that one of the
3 reasons for the 4-line exception was because the FCC said that
4 nearly all of the top 50 MSAs contain competitive alternatives
5 for local switching?

6 A Yes. I would agree that that was the finding in this
7 particular paragraph.

8 Q Okay. Now has DeltaCom purchased any unbundled local
9 switch ports from BellSouth in a top MSA in Florida?

10 A Yes.

11 Q Do you know where?

12 A I do not know specifically.

13 Q Do you know how many?

14 A No, I do not.

15 Q Do you know whether DeltaCom is paying a market rate
16 for any of those unbundled local switch ports?

17 A To my knowledge we have been billed the market rate
18 and we have challenged the, disputed the billing of the market
19 rate. And our position on this issue has to do -- although we
20 hope through the impairment case analysis that the Florida
21 Commission will again look at this issue relative to the, to
22 the 4-line carve out, the issue in my testimony has to do with
23 the determination of the market rate once a UNE, unbundled
24 switching or any other UNE is delisted, which is the case here.

25 COMMISSIONER DEASON: Ms. White, let me, let me just

1 for my own clarification.

2 MS. WHITE: I'm sorry. Sure.

3 COMMISSIONER DEASON: So you agree that this is an
4 element to which a market rate would apply.

5 THE WITNESS: Subject to -- I know there have been
6 some appeals, some remands, but subject to the current status
7 of this issue, yes. I'm not contesting that in my testimony.

8 COMMISSIONER DEASON: So what you're contesting is
9 the level of the market rate?

10 THE WITNESS: The level of the market rate and
11 BellSouth's -- what we are suggesting or recommending to the
12 panel is that BellSouth be required to obtain Commission
13 approval for the methodology for determining a market rate or a
14 replacement rate and that that rate be approved before it
15 becomes effective.

16 COMMISSIONER DEASON: Well, I guess I'm at a loss. I
17 didn't know this Commission was in the business of setting
18 market rates. The market does that.

19 THE WITNESS: Well, the position that, that we have
20 taken, the concern we have is that the TELRIC rate that this
21 Commission has approved as a cost-based, just and reasonable
22 rate in this case is, I believe, \$1.50 or in that range. I'd
23 have to look back at my testimony, but it's --

24 COMMISSIONER DEASON: I think your summary
25 indicated \$1.40.

1 THE WITNESS: \$1.40. That's correct.

2 COMMISSIONER DAVIDSON: That's not a market rate, is
3 it?

4 COMMISSIONER DEASON: No. That's TELRIC.

5 THE WITNESS: No. But in the absence of a
6 competitive market, it's a surrogate rate. It's the -- a
7 long-run incremental cost rate. The fact that the so-called
8 market rate that BellSouth has, has offered here is \$14 as
9 compared to \$1.40 I believe should send up a red flag to the
10 Commission. It certainly has to the industry.

11 Further, in the deposition, in the discovery that we
12 served on BellSouth, they have made it very clear that there is
13 no basis for the \$14 rate, no cost basis, no market analysis
14 basis. Not only do they not have any work papers, any e-mails,
15 any documentation to substantiate the \$14 rate, they indicate
16 that the people who developed the rate are no longer with the
17 company.

18 So what we're asking the Florida Commission to do,
19 and I think in the face of this rate being applied by
20 BellSouth, we believe that regulatory oversight is appropriate.

21 COMMISSIONER DAVIDSON: Chairman, I didn't mean to
22 interrupt your line there with that interjection.

23 COMMISSIONER DEASON: Well, that's fine.

24 I guess I'm at a loss still. Either there's a market
25 for this service, and if you don't like \$14, you go get it from

1 someone else, if this is something that there is a market to,
2 to obtain these services, which the FCC has ruled is the case.
3 So if TELRIC does not apply, it's still your position that this
4 Commission has the jurisdiction and the responsibility to try
5 to ascertain what the general market rate should be and then to
6 require that rate apply?

7 THE WITNESS: That's correct, Commissioner. And one
8 aspect of this that we would want the panel to consider is that
9 in those cases where a UNE, unbundled switching or any other
10 UNE is delisted, is no longer required to be priced at TELRIC
11 rates. And that could be in this particular circumstance or it
12 could be in the future as you go through the impairment
13 analysis if you determine there are UNEs that should no longer
14 be priced at TELRIC.

15 The, the 271 checklist in the Act requires that the
16 UNEs continue to be made available as part of the checklist and
17 that they be made available at just and reasonable rates.

18 Now we're concerned, we believe, that BellSouth is in
19 a position, continues to be in a position of dominance in both
20 the retail and as a wholesale supplier, and that, again, that
21 regulatory oversight is appropriate in this case. I mean, it's
22 nonsensical to me that, that the, you know, the best, the best
23 information and methodology we have for setting a surrogate
24 rate, a competitive rate in lieu of a competitive market is the
25 TELRIC methodology that's been brought before this Commission

1 as it has every other commission in this region. Your staff
2 made whatever adjustments they felt were appropriate and they
3 determined a rate for switching of, of a dollar and change.
4 And BellSouth is trying to say that you go from a dollar and
5 change to \$14. That just doesn't make any sense to me. And I
6 believe at a minimum that, that it would be appropriate for the
7 Commission and for the staff to analyze what methodology they
8 used to get to the \$14 rate. In the case of this rate, they
9 don't know and haven't been able to determine. That to me
10 would be another red flag that this is, that this is
11 inappropriate behavior.

12 COMMISSIONER DEASON: I'm just reading BellSouth's
13 position in relation to this issue, and apparently it's their
14 position that this is not appropriate for an arbitration
15 proceeding.

16 Have you attempted to sit down outside the confines
17 of an arbitration proceeding and just negotiate a fair rate for
18 this and have a contract outside arbitration and a contract
19 that this Commission has got to approve; just two business
20 people sitting down and trying to reach an agreement as to
21 what's fair where both can make money and do business?

22 THE WITNESS: Yes.

23 COMMISSIONER DEASON: And that did not work?

24 THE WITNESS: And it was not outside this arbitration
25 because these market rates are part of our interconnection

1 agreement. BellSouth includes them in the, the rate pages that
2 are attached to or part of our interconnection agreement. And
3 we raised this issue within the context of our negotiation
4 process.

5 Initially BellSouth said they would take it under
6 consideration, but they were ultimately unwilling to negotiate
7 any rate other than the \$14 rate that they have established.

8 COMMISSIONER DEASON: Commissioner Davidson, do you
9 have any follow-up?

10 COMMISSIONER DAVIDSON: I guess one question
11 following up to the Chair's question. I'm still at a loss.
12 And I understand that one big issue is to what extent is there
13 a competitive market for certain elements? But if we assume
14 for a moment that for this element there is a market, as the
15 FCC has indicated, I'm at the same loss that the Chair is.

16 If there's a market, does it matter at what price
17 Bell sets the rates? If there is a market, which means you can
18 obtain this from other providers, does it matter whether
19 it's \$10, \$14 or \$100 if there is a market? And I understand
20 that's a big if. But assuming there is a market, what does it
21 matter?

22 THE WITNESS: Well, it matters because the -- as you
23 say, if you assume there's a market, that assumption would
24 include the, the assumption or the end result that a -- if
25 there is truly a competitive market, that it would drive that

1 rate, that market rate toward long-run incremental cost. And
2 as I said, the TELRIC rate, which is the regulatory surrogate
3 for a market rate when the market doesn't exist, is a dollar
4 and change. It doesn't make any sense to me. And I think, you
5 know, we can make this more complicated than it is or we can
6 simply say that the FCC has stated that, you know, the market
7 is competitive; therefore, BellSouth can charge anything they
8 want to.

9 As I said before, the Act includes 271 requirements
10 which BellSouth has to continue to meet to stay in the long
11 distance business. Those requirements require that unbundled
12 network elements continue to be provided, whether at TELRIC or
13 otherwise, at just and reasonable rates. We don't think this
14 is a just and reasonable rate.

15 I am sure there are examples, and I can't think of
16 one off the top of my head, in American industry of a dominant
17 provider in what may have been called a competitive market at a
18 point in time, you know, gouging customers because they were in
19 a position to do that. In my judgment that's what we have
20 here. BellSouth, you're in a position where, as a practical
21 matter, as a practical matter you've got a customer with three
22 lines and he wants to add another line. The, the -- I don't
23 know of anybody, and I deal with a lot of CLECs, who, who have
24 reasonable mass market OSS-supported suppliers available to
25 them in these top 50 MSAs.

1 I understand the determination that the FCC made at
2 that point in time, but I, again, I think that what BellSouth
3 is attempting to charge here for unbundled switching should
4 send up a red flag to regulators. And ultimately we believe
5 very strongly that the last, the last arbiter of many of these
6 issues is the state commission. If you should determine that
7 you don't have the authority or if this is an inappropriate
8 area for you, so be it. But we, we felt like it was
9 appropriate, important to bring it to your attention, and we
10 believe it's an area that needs further, that it needs further
11 study.

12 COMMISSIONER DAVIDSON: So is the basis then for the
13 statement, "Those rates must be approved by the Commission and
14 supported by relevant market data and analysis," is the basis
15 for that assertion 271, Section 271?

16 THE WITNESS: That's part of the basis.

17 COMMISSIONER DAVIDSON: What's the other part?

18 THE WITNESS: The other part is that even -- we
19 believe the rate is required to be just and reasonable.

20 COMMISSIONER DAVIDSON: Under 271?

21 THE WITNESS: Under 271.

22 COMMISSIONER DAVIDSON: Okay. What else?

23 THE WITNESS: And that if, in fact, the Commission --
24 if, in fact, the rate is clearly in our judgment out of line
25 with, and BellSouth has not offered any basis for the rate, it

1 seems to me at a minimum the Commission would be interested in
2 reviewing --

3 COMMISSIONER DAVIDSON: Is that the 271 obligation
4 though? I'm trying to get at the legal basis for the
5 assertion.

6 THE WITNESS: We believe that it is clearly a
7 271 requirement that switching continue to be offered if it is
8 not offered at TELRIC rates under the 271 checklist and that it
9 be offered at a just and reasonable rate.

10 Just and reasonable, and this issue has come up
11 before some other commissions, I believe historically has
12 included some cost-based showing by the company trying to use,
13 trying to institute a rate as just and reasonable.

14 COMMISSIONER DAVIDSON: One more question on this.
15 If this -- if the Florida Commission did not find a basis under
16 271 for the type of rate regulation suggested here, would
17 BellSouth be free to set rates at whatever price it wants for
18 this element?

19 THE WITNESS: Depending on what the Commission's
20 finding is in this case for the purpose of this arbitration,
21 certainly we will be guided by the determination that the
22 Commission makes.

23 I believe that this issue will be brought before or
24 to the Commission by other carriers outside this arbitration.
25 I believe that it is a significant issue going forward when we

1 are going to be over time in an environment, I assume, where
2 certain UNEs will be delisted from time to time. And, again,
3 the extent or the, the difference between the so-called market
4 rate, which we would call a substitute rate, and the rate that
5 you have found to be just and reasonable, the TELRIC rate, in
6 my judgment is a red flag and would indicate that, you know,
7 that this is an issue that certainly --

8 COMMISSIONER DAVIDSON: I understand. I get the
9 point.

10 THE WITNESS: -- demands further study.

11 COMMISSIONER DEASON: Commissioner Baez, you have a
12 question?

13 COMMISSIONER BAEZ: Yes. Just a couple.

14 Mr. Watts, are you aware of any other jurisdictions
15 where this question has arisen?

16 THE WITNESS: In the BellSouth states?

17 COMMISSIONER BAEZ: Well, as an issue. The question
18 of what, what jurisdiction or what authority a state commission
19 might have to review what are claimed to be or alleged to be
20 market rates.

21 THE WITNESS: It's been raised at every state where
22 we are in arbitration for our interconnection agreement, and
23 that would be all the BellSouth states except Kentucky,
24 Mississippi and South Carolina.

25 COMMISSIONER BAEZ: And have the commissions ruled?

1 THE WITNESS: Not at this time.

2 COMMISSIONER BAEZ: Not at this time? So there's
3 nothing -- there's no decision out there that might give us
4 some guidance?

5 THE WITNESS: No.

6 COMMISSIONER BAEZ: And, secondly, I guess it's --
7 the Order FCC 99-238 that Ms. White asked you about, is there
8 any part in the, in the order where it's established that the
9 top 50 MSAs have, have market, have a competitive market, is
10 there any mechanism or any language that gives that
11 establishment of the top 50 MSAs some kind of review to your
12 knowledge? I mean, is there a, is there a review mechanism for
13 what I, what I assume is some kind of presumption if you're in
14 the top 50 MSAs?

15 THE WITNESS: I believe that under the -- and I've
16 only made a very high level review at this time of the
17 Triennial. I believe that this issue will be part of the
18 impairment analysis as we go through those, those cases.

19 COMMISSIONER BAEZ: So then if, if you're correct
20 that it becomes part of the impairment analysis, then is it a
21 choice -- does the state commission have a choice as to what
22 form it or under what docket or what, what proceeding it
23 analyzes that situation?

24 THE WITNESS: I can only give you -- again, I've
25 made -- I know that your staff, I'm sure, is reviewing the

1 Triennial Order and the content of the order. I believe there
2 are provisions in there for reviewing the carve out, for
3 reviewing the, the crossover point for mass market to
4 enterprise level.

5 COMMISSIONER BAEZ: So if that's --

6 THE WITNESS: It has to do with switching. The issue
7 that we raise here has to do with not only the determination of
8 when a, quote, market rate or replacement rate or when a UNE
9 would be delisted, it has to do really with what rate, how the
10 rate will be determined or reviewed when a UNE is delisted,
11 whatever that UNE is. Here we're dealing with unbundled
12 switching obviously.

13 And so for the purpose of this arbitration, we're
14 really getting at, I guess, on this issue getting at two
15 things. One, we don't believe that the \$14 rate meets the just
16 and reasonable test. We believe that's supported by the fact
17 that BellSouth's produced no backup for the rate, including no
18 market analysis. You would think if they had done an analysis
19 of the competitive options available to CLECs, that they could
20 have produced that. My understanding based on the discovery
21 they produced and based on the deposition of Mr. Maziarz is
22 that they did -- they can't determine that they did any such
23 analysis.

24 So the issue here is we believe that the state
25 commission should, should make a determination of the

1 reasonableness of the replacement or market rate. And
2 secondly, in the case of this arbitration, what rate should be
3 in effect until that determination is made?

4 COMMISSIONER BAEZ: Thank you.

5 COMMISSIONER DEASON: Ms. White, I have a legal
6 question for you.

7 MS. WHITE: Thank you.

8 COMMISSIONER DEASON: In your position you said that
9 it is, it's inappropriate to, in the context of an arbitration,
10 to be setting market rates.

11 More specifically is this -- does this Commission
12 have jurisdiction to set a market rate or is it something we
13 have the discretion to do? What's, what's the legal parameters
14 from your viewpoint?

15 MS. WHITE: Well, it would be our view that the
16 Commission does not have the jurisdiction or authority to set
17 market rates. I mean, that's the whole, that's the whole
18 notion of market rates is that the company sets the rate for a
19 service or a product where they want to. If it's too high,
20 they're not going to sell any of it. It's not --

21 COMMISSIONER DEASON: But your position is this is
22 not the appropriate forum.

23 MS. WHITE: Exactly.

24 COMMISSIONER DEASON: Is there any appropriate forum
25 for this Commission to set a market rate?

1 MS. WHITE: I don't believe so. Now, granted, I have
2 not read the Triennial Review. I will admit that. So I have
3 no idea what that says. But to my knowledge there is no
4 appropriate -- it's never appropriate for the Commission to set
5 a market rate.

6 COMMISSIONER DEASON: Well, let me ask staff, is this
7 something -- is this going to be a legal issue concerning the
8 Commission's jurisdiction to set a market rate?

9 MS. CHRISTENSEN: I certainly think by the
10 discussions that have been raised here today that that would be
11 something that would be helpful and enlightening. I do believe
12 this could certainly implicate some Commission jurisdiction
13 because I think the threshold question is do we even have
14 jurisdiction to address this particular issue as presented in
15 this arbitration?

16 COMMISSIONER DEASON: So it would be appropriate to
17 have this briefed by the parties in your opinion?

18 MS. CHRISTENSEN: Yes, Commissioners.

19 COMMISSIONER DEASON: Okay. I would invite the
20 parties to address the Commission's jurisdiction and the
21 appropriate, from a legal context, and the appropriateness of
22 the Commission setting some type of a market rate within the
23 context of an arbitration.

24 MR. ADELMAN: And, Commissioner, we certainly will do
25 that, as we will in all the other states so you know the same

1 issue is discussed in almost the same way in the other states.
2 And we will cite you to Sections 201 and 202 of the Act, to
3 your own Florida Statutes 364 for the proposition that all
4 rates must be just and reasonable.

5 The reason we're here in this case on this issue is
6 because the Act tells us where the parties have reached an
7 impasse for any rate, term or condition in the interconnection
8 agreement, we're to bring that impasse to you for resolution.
9 And this is a rate, term and condition that BellSouth and --

10 COMMISSIONER DEASON: But you do agree that you can
11 bring it, but we have to have the jurisdiction to, to resolve
12 the impasse before we can --

13 MR. ADELMAN: I absolutely agree, and I think the
14 briefs will be very clear. I don't think that will be a
15 serious question by the end of this case.

16 COMMISSIONER DEASON: Okay. Ms. White, we have
17 thoroughly disrupted your cross-examination. You may continue.

18 MS. WHITE: That's all right. That's all right. I
19 do have a few more questions though on Issue 26C.

20 BY MS. WHITE:

21 Q Has DeltaCom investigated what competitive
22 alternatives are available for unbundled switching in the
23 Florida area served by BellSouth?

24 A Yes.

25 Q Have you investigated what other carriers are

1 charging for unbundled local switching?

2 A Yes. Our network organization, our line cost people
3 are routinely seeking the best, most efficient, most economic
4 way of serving our customers. So, yes, we're checking all
5 methods and sources and various business strategies for serving
6 our customers.

7 Q So does DeltaCom buy unbundled local switching from
8 carriers in Florida other than BellSouth?

9 A No.

10 Q And DeltaCom has its own switches in Florida, doesn't
11 it?

12 A Yes.

13 Q Am I correct that you have switches in Ocala, in
14 Jacksonville and in West Palm Beach?

15 A I believe that's correct.

16 Q So you could use your own switch instead of
17 purchasing one from BellSouth; isn't that correct?

18 A We do use our own switch depending on the
19 characteristics of the customer. We found -- we have not found
20 a way, although there are a few exceptions, we've not found a
21 way to serve the analog, the mass market customer economically
22 or in a way that we can be competitive using our own switches.

23 Q So it's cheaper for you to use your own -- for you to
24 buy UNEs from BellSouth at TELRIC rates to serve that customer
25 than it is to use your own switch?

1 A If you consider -- I wouldn't say it's cheaper for us
2 to physically create a, you know, have a switch with a switch
3 port. If you consider the, all the costs that go along with
4 trying to serve individual mass market analog customers using
5 our own switch, yes, it's cheaper to use UNE-P than it is to
6 try to use our own switch.

7 Q Now would you agree, and I believe you did agree in
8 some questions from the Commissioners, that the current
9 interconnection agreement between BellSouth and DeltaCom
10 contains the \$14 market rate; is that correct?

11 A That's correct.

12 Q And DeltaCom signed that interconnection agreement,
13 didn't they?

14 A Yes, we did.

15 Q And, in fact, you signed a September 2002 amendment
16 on behalf of DeltaCom that also contained the \$14 rate; isn't
17 that true?

18 A Yes.

19 Q Now I think you said earlier that even though that
20 rate is in the agreement, you're not paying it, DeltaCom is not
21 paying their bill for that right. Is that -- did I hear that
22 correctly?

23 A I can't say with certainty that we have not paid any
24 invoice with that rate. I know that we are challenging that
25 rate and we're filing billing disputes relative to the

1 backbilling on that rate.

2 Q Okay. And those are still between the companies at
3 this point. It hasn't reached the level of a Commission
4 complaint, has it?

5 A No.

6 Q And part of it, you said, concerns BellSouth's
7 backbilling of the market rate to DeltaCom?

8 A That's correct.

9 Q Isn't it correct that in the September 2002 amendment
10 to the interconnection agreement between BellSouth and DeltaCom
11 there was an indication in there that BellSouth did not have
12 the billing capability at that time to bill market rates and
13 would be performing a true-up?

14 A In which amendment was that?

15 Q September 2002.

16 A We, we signed an amendment at that point in time.
17 The circumstances were we were in a great deal of operational
18 stress because an amendment had to be effected to allow us to
19 continue to --

20 MS. WHITE: I'm sorry to interrupt the witness.

21 THE WITNESS: I'm sorry.

22 MS. WHITE: But I believe my question was whether
23 DeltaCom -- whether certain language was in that amendment. I
24 don't think I got a yes or no answer before he explained.

25 THE WITNESS: I'm sorry.

1 MR. ADELMAN: Commissioner, he'd like to explain the
2 circumstances under which --

3 COMMISSIONER DEASON: He will be given the
4 opportunity, but he needs to preface his answer with a yes or
5 no.

6 MR. ADELMAN: And I would further lodge an objection
7 that this is outside the scope of his prefiled testimony,
8 although we're glad to provide the information to the
9 Commission.

10 COMMISSIONER DEASON: You may continue with the
11 question and the answer.

12 BY MS. WHITE:

13 Q I believe my question was whether you were aware that
14 the September 2002 amendment to the interconnection agreement
15 between BellSouth and DeltaCom had language indicating that
16 BellSouth did not have the billing capability to bill market
17 rates at that time and would be performing a true-up.

18 A Yes. And if I could --

19 Q Absolutely.

20 A -- go ahead with the, giving a little background on
21 the circumstances.

22 We had a situation at that point in time where
23 BellSouth had stopped processing our orders based on a code
24 that had to be included on certain types of orders. We had not
25 effected an amendment to change the language in the contract

1 that would accommodate the addition of this code.

2 BellSouth presented the agreement to us. We went to
3 BellSouth, escalated the problem. They agreed to effect the
4 amendment. As part of that agreement they included the
5 language that had to do with the backbilling of the market
6 rate. And I was involved in that, directly involved in that,
7 signed the agreement, and that was the circumstances. But,
8 yes, we did sign the agreement for the backbilling.

9 COMMISSIONER DAVIDSON: Are you saying that is -- in
10 ITC's opinion is that language binding on ITC or not binding on
11 ITC?

12 THE WITNESS: It is binding. I just wanted the
13 Commission to have the benefit of knowing what the
14 circumstances were. We're not trying to not abide by the
15 agreement that we signed at that point in time.

16 COMMISSIONER DAVIDSON: And the language in, I
17 believe it's in the agreement as opposed to the amendment
18 referencing the \$14 rate, is that language binding on ITC or
19 not binding on ITC?

20 THE WITNESS: I'm sorry. The language in the --
21 could you give me --

22 COMMISSIONER DAVIDSON: Ms. White, could you point
23 out the language again that contains --

24 MS. WHITE: They're actually in the original
25 interconnection agreement and the September 2002 amendment, and

1 I have copies of both if you'd like to, if you want me to hand
2 them out.

3 COMMISSIONER DAVIDSON: The September 2002 amendment
4 from Ms. White, and then I'll get back to the witness, is
5 effective for what period of time?

6 MS. WHITE: I'm sorry. From September 2002 until the
7 date that a new agreement goes into effect, I believe, which
8 is -- and the new agreement is the subject of this arbitration.

9 COMMISSIONER DAVIDSON: That's correct. Is ITC
10 adhering to the terms of the existing agreement and amendment
11 at this point in time?

12 THE WITNESS: We have -- ITC^DeltaCom has filed
13 disputes regarding backbilling, Commissioner. I would have to
14 do further checking to see what the status of that is.

15 In all -- we are doing a continuing legal analysis of
16 our rights relative to this backbilling. And particularly
17 since we found out that this rate has no basis in any way that
18 BellSouth can produce has obviously raised additional concerns
19 we have about the backbilling. So we're still exploring to
20 make sure that we take advantage of all our legal options
21 relative to the backbilling of this rate. But I'm not trying
22 to represent that we signed the agreement in bad faith or that
23 we did not know that it was an agreement for the backbilling on
24 this particular amendment.

25 COMMISSIONER DAVIDSON: Did ITC at the time it

1 negotiated the agreement in the 2002 amendment raise any
2 concerns or issues regarding the \$14 rate?

3 THE WITNESS: At the time we signed the September
4 agreement?

5 COMMISSIONER DAVIDSON: The September 2002 agreement
6 which references, according to Ms. White, the \$14 rate.

7 THE WITNESS: I don't recall the specific discussion
8 we had at the time. If we did not, the issue of the \$14 rate
9 and our concern about it is well known to both parties. So,
10 but I can't say that we raised a specific objection at that
11 point in time. I'm sure that, that we would have asked that
12 that language not be included, but that it was included as part
13 of the agreement to sign the amendment so that we could
14 continue to process orders.

15 COMMISSIONER DAVIDSON: Thank you.

16 MS. WHITE: Thank you.

17 BY MS. WHITE:

18 Q Let's move on to Issue 48, I mean, excuse me, 58,
19 which concerns unilateral amendments to the interconnection
20 agreement.

21 Now is it fair to say that DeltaCom's position is
22 that BellSouth should not be able to change certain documents
23 such as technical guides without DeltaCom's approval?

24 A Yes.

25 Q And is that any and all guides, no matter how big or

1 how small?

2 A Could --

3 Q Well, I believe I heard -- yeah. That was a very bad
4 question. Let me start over.

5 I believe I heard in your summary, you said any
6 significant changes, anything that was a significant change.
7 Did I hear that correctly?

8 A Yes. Are you looking at my testimony or are you --

9 Q Actually, yes. It's Page 28 of your direct I think
10 is where you talk about this issue. But for the -- 28 and 29.
11 But for the significant, I believe that was something you said
12 in your, in your summary. If I'm incorrect, just let me know.

13 A Yes. If you go to Page 29 of my testimony, it says,
14 "Any changes to that document that would have a material impact
15 on ITC^DeltaCom or cause ITC^DeltaCom to incur additional
16 expense must be mutually agreed to by the parties."

17 Q And is that what you would have meant by significant
18 in your summary?

19 A Yes.

20 Q Now under your proposal BellSouth would be required
21 to seek DeltaCom's permission and amend the agreement any time
22 a change was necessary; is that correct?

23 A Any change that had a significant impact on
24 ITC^DeltaCom.

25 Q Okay. And a significant impact is anything that is,

1 has a material impact on DeltaCom or causes DeltaCom to incur
2 additional expense; correct?

3 A Correct.

4 Q What if it causes DeltaCom to incur 50 cents of
5 additional expense? Should BellSouth get DeltaCom's approval?

6 A We have not, by way of our negotiations or otherwise,
7 established any threshold levels as far as expense or
8 operational difficulty is concerned. We're trying to address
9 in the ultimate analysis not every document that's referenced.
10 We've talked about this in some other hearings and we continue
11 to offer language back and forth as we continue the settlement
12 process.

13 But our concern, our position here is that BellSouth
14 should not be able to change those documents that they have
15 unilateral control over in ways that can have a material
16 negative impact on ITC^DeltaCom or in ways that materially
17 change the contract that we enter into. So that's, that's the
18 position that we've taken.

19 Q Well, what if, what if the change that BellSouth is
20 making has a material positive impact on DeltaCom? Do you
21 still want prior approval on an amendment to the agreement
22 before BellSouth can implement that change?

23 A I mean, obviously that's, that's a hypothetical. I'm
24 sure we would not be opposed to a change that had a positive
25 impact on both companies.

1 Q Now if other CLECs adopted this provision, then
2 BellSouth would have to go through the same process with them.
3 They would have to get their specific approval and amend their
4 agreement; isn't that correct?

5 A Well, I'm not sure whether or not BellSouth would
6 allow, under their current position on the adoption of language
7 from other agreements, adoption of this particular language.
8 But if they did, the other party would have the same protection
9 that ITC^DeltaCom would have.

10 Q Okay. And under that hypothetical, if other CLECs
11 adopted this provision and if BellSouth had to get specific
12 approval from each one of those CLECs and amend each one of
13 those agreements, isn't it possible that some CLECs might agree
14 with the change and some might not?

15 A Under your hypothetical, that's correct.

16 Q And under my hypothetical isn't it possible that
17 BellSouth might be required to offer multiple processes
18 depending on whether all CLECs agreed to a change?

19 A Well, that could be the case. There may be
20 situations where, depending on the part of the contract or the
21 document that we're talking about, where multiple processes are
22 feasible. But in general those issues or items that would have
23 a negative cost or operational impact on ITC^DeltaCom would
24 probably affect other similarly situated carriers.

25 Q But right now you don't have a quantification of what

1 a material negative impact or additional expense would be, do
2 you?

3 A I do not.

4 Q Now has DeltaCom ever filed a complaint with the
5 Commission, this Commission about any amendment that BellSouth
6 has made to a guide?

7 A We haven't filed a complaint with this Commission.
8 We have had circumstances between the companies where changes
9 to guides, or in one instance a specific guide, the
10 jurisdictional reporting guide, had a significant impact on our
11 operations and could have had a significant impact on our
12 expenses. This also affected other CLECs. By way of
13 negotiations it went on for over a year. We were able to
14 resolve that issue between ITC^DeltaCom and BellSouth.

15 So the -- as is the case with all the issues that
16 remain open between the companies, we have brought them to the
17 Commission because we have had experience that led us to have a
18 concern about that specific language.

19 Q Are you aware that BellSouth sends out carrier
20 notification letters advising CLECs of any, in advance of any
21 changes to the guides?

22 A I'm aware that BellSouth sends out carrier
23 notification letters. I'm not, I'm not aware that a carrier
24 notification letter is sent out on every occasion where a
25 document that's referenced, an off-contract document is

1 referenced it's changed.

2 Q And I assume that -- may I assume that DeltaCom reads
3 those carrier notification letters?

4 A We try to.

5 Q Let's move on to Issue 62, which I believe starts on
6 Page 38 of your direct testimony. And it's --

7 COMMISSIONER DEASON: Ms. White, we're going to take
8 a break at this time.

9 MS. WHITE: Sure. Take a break?

10 COMMISSIONER DEASON: We're going to recess for 15
11 minutes.

12 (Recess taken.)

13 COMMISSIONER DEASON: Call the hearing back to order.
14 Ms. White, you may continue.

15 MS. WHITE: Thank you.

16 BY MS. WHITE:

17 Q I believe we have reached Issue 62, which is Pages 38
18 and 39 of your direct testimony.

19 Is it fair to say that, excuse me, Dell --
20 BellSouth -- DeltaCom -- I'm trying to create a new company
21 here called DellSouth. DeltaCom's position is that if
22 BellSouth does not bill DeltaCom within 90 days, then DeltaCom
23 does not have to pay for that service; is that your position?

24 A That's correct.

25 Q And let's assume that BellSouth makes a mistake in

1 your favor. For example, let's assume that BellSouth
2 overbilled DeltaCom for more than 90 days. Under your
3 position, would BellSouth owe DeltaCom only for 90 days or for
4 more than 90 days?

5 A For an overbilling, is that what you're asking?

6 Q Yes.

7 A No. The backbilling applies to 90 days for rendering
8 a bill. Overbilling claims could go longer than that. We
9 would propose that those, that those requirements be
10 reciprocal, would apply to both companies. I believe that what
11 we're proposing is to a great extent consistent with what
12 BellSouth does on the special access billing side of the
13 business. We until recently had a 90-day billing period for
14 special access and a two-year period for claims for
15 overbilling. So we believe that the 90 days is reasonable.
16 The special access billing period was recently extended to six
17 months.

18 Q So it's your position that the 90 days is appropriate
19 for backbilling but not for overbilling?

20 A Correct.

21 Q Is that correct?

22 A That's correct.

23 Q Now are you familiar with the Commission's rule on
24 backbilling that allows companies to backbill their retail
25 customers for up to 12 months?

1 A Generally.

2 Q Does DeltaCom have a -- abide by that rule? Does it
3 try to backbill its retail customers for more than 90 days?
4 I'm sorry. That was two questions.

5 Does DeltaCom -- if DeltaCom discovers it has
6 underbilled a retail customer, how far back will it go to
7 backbill that customer?

8 A As a practice, as a company practice I don't believe
9 we go beyond 90 days in backbilling customers. Many of these
10 issues obviously in our circumstance are mitigated by the
11 competitive reality we have to deal with. Any customer that's
12 unhappy with our backbilling, our collection practices,
13 anything else related to the service we provide obviously can
14 go to another provider.

15 Q Let's talk about the payment due date for a minute.
16 Essentially -- and that's Issue 59. Essentially that issue
17 deals with whether the 30 days for payment begins when
18 BellSouth issues the bill or DeltaCom receives the bill; is
19 that right?

20 A No. It really has to do with what BellSouth
21 characterizes as the billing date. They have 20 some odd
22 billing cycles, each with a specific billing date.

23 The bill rendered date is the date at which the bill
24 is actually prepared and ready to be forwarded to the customer
25 either by mail or electronically. And that date, and this is

1 according to both ITC^DeltaCom and BellSouth, BellSouth admits
2 that date can be three to five days after the billing date. In
3 our experience sometimes it goes even further, seven days or
4 longer. What we're asking is that our 30 days begin with the
5 date we receive the bill. And in our case about
6 94 approximately percent of our billing is electronic, and
7 those bills are sent over on a direct connect system so that
8 BellSouth knows precisely when we receive the bill. And,
9 therefore, you know, it's administratively possible for them to
10 start the 30-day collection period or due date period on the
11 date we actually receive the bill.

12 Q And would you agree that this Commission has
13 performance measures in place to ensure that BellSouth provides
14 CLECs with timely and accurate billing?

15 A Yes.

16 Q And would you agree that there are penalties that
17 BellSouth incurs if they don't meet those measures?

18 A There are some performance measure penalties related
19 to billing. I think in the last year BellSouth maybe paid
20 ITC^DeltaCom \$1,600 in penalties in that regard. So, yes, I am
21 aware of those.

22 Q Has -- are you aware that the PSC looked at
23 BellSouth's billing practices in connection with BellSouth's
24 271 application?

25 A Yes, I am aware. And I think I say somewhere in my

1 testimony the performance measures are helpful in many
2 respects. We are asking for -- and relative to the performance
3 measures on billing, those performance measures would be in
4 conjunction with the current bill due date guidelines that
5 BellSouth has. What we're asking is that the Commission
6 consider changing the bill due date policy of BellSouth, again
7 so that we have 30, 30 days from the date we receive the bill.

8 And by the way, we began billing BellSouth on a
9 monthly basis January of this year. You know, out of the first
10 six months, BellSouth was late three months. Through our
11 dialogue on this issue relative to ITC^DeltaCom billing
12 BellSouth, BellSouth requested that we change the billing date,
13 which we did. They also requested that we give them a full 30
14 days from the date they received the bill for payment, which we
15 did. So we're not asking for something that we're not willing
16 to do in our reciprocal relationship.

17 Q DeltaCom is allowed to dispute its billing with
18 BellSouth even after 30 days from the bill date, isn't it?

19 A Yes.

20 Q And has BellSouth ever declined to grant DeltaCom a
21 reasonable extension request for the payment of undisputed
22 bills?

23 A I don't know.

24 Q Let's talk about deposits for a little while. Would
25 you agree that as a general rule it's reasonable for BellSouth

1 to try and protect its financial interest through the receipt
2 of a deposit?

3 A That rule is probably -- no. I think that rule is a
4 little too general. I think it's reasonable as a business
5 practice for BellSouth to try to mitigate its, its risk in a
6 way that is consistent with the position that BellSouth is in,
7 that is in a competitive industry in many respects. That's
8 been recognized by the fact that BellSouth is under price
9 regulation both at the federal and state level in most places.
10 And certainly the price regulation recognizes the increased
11 risk and awards, and rewards BellSouth in that they have the
12 opportunity to earn much higher rates of return than they would
13 under rate return regulation where you would expect them to
14 take a much tougher position on the deposit policy and other
15 issues.

16 Q Well, BellSouth is allowed to mitigate its risk with
17 regard to its retail customers in Florida by collecting a
18 deposit; isn't that correct?

19 A Yes.

20 Q And isn't -- doesn't DeltaCom have a tariff whereby
21 they collect deposits from their retail customers?

22 A We have provisions for deposits in our tariffs.

23 Q So isn't one way of mitigating the risk collecting a
24 deposit?

25 A It is. Again, when BellSouth is dealing with their

1 retail customers, certainly they're exposed to more competitive
2 circumstances than they are in dealing with their wholesale
3 customers. And we're talking about wholesale deposits here.

4 Part of the discovery that we obtained in this case
5 again, it seems to me, would send up a red flag that further
6 analysis is probably appropriate.

7 We found that in the case of their wholesale
8 customers they have deposit requests pending for about
9 78 percent of the customer base, and for retail customers they
10 have deposit requests pending for less than one-tenth of one
11 percent of the customer base.

12 Q Is DeltaCom willing to pay any deposit to BellSouth?

13 A Not at this time. We have had a dialogue with
14 BellSouth on the deposit issue for an extended period of time
15 that goes back prior to our reorganization, going back to, I
16 guess, March of 2002. BellSouth requested a substantial
17 deposit from ITC^DeltaCom. We challenged that request. We
18 still have a court case pending relative to that request. It
19 has not been collected.

20 In the meantime we've gone through a reorganization.
21 Our financial circumstances are substantially stronger than
22 they were when the request was made. We paid BellSouth before
23 the reorganization, during the reorganization and after the
24 reorganization, continued to pay all of our vendors. We didn't
25 default on any payments to any of our vendors through our

1 reorganization, so.

2 Q And by reorganization, that came about as a result of
3 filing for bankruptcy?

4 A A Chapter 11 filing.

5 Q Now there have been several companies over the last
6 couple of years, several telecom companies that have filed
7 bankruptcy; isn't that right?

8 A Yes.

9 Q And not every telecom company or every person or
10 every company that files for bankruptcy comes out of bankruptcy
11 successfully, does it?

12 A No.

13 Q And not every company that files for bankruptcy has a
14 good payment history, do they?

15 A Well, I'm sure that there are companies who go
16 through bankruptcy who do not have good payment histories. In
17 the case of ITC^DeltaCom we've got a close to 20-year
18 continuous payment history with BellSouth. And I don't know of
19 a lot of companies that have that kind of payment record.
20 That's the reason we've taken the position that payment history
21 should be certainly a primary determinant of whether or not a
22 deposit is collected. And --

23 Q But you would agree --

24 A I'm sorry. Go ahead.

25 Q I'm sorry. I didn't mean to interrupt you.

1 A Go ahead.

2 Q You would agree, wouldn't you though, that a good
3 payment history doesn't stop a company from declaring
4 bankruptcy, because that's what happened with DeltaCom, isn't
5 it?

6 A No. And the two -- I mean, common sense would tell
7 you that companies who are in, having financial problems might,
8 in fact, be companies that have problems with their payment
9 history.

10 What we're asking is, is that BellSouth recognize or
11 acknowledge the long-term business relationship that they have
12 had with ITC^DeltaCom of uninterrupted payment over an extended
13 period of time, including through our reorganization. Given
14 the circumstances in the telecom sector over the last couple or
15 three years, yes, a lot of companies have been through Chapter
16 11 filings. A lot of them have come out much stronger
17 financially than they went in.

18 Q And some of them have not, have they?

19 A That's -- certainly.

20 Q So your position is that because DeltaCom has had a
21 good payment history with BellSouth, which is a good thing, and
22 because DeltaCom was successful in coming out of bankruptcy,
23 that DeltaCom should not have to pay any deposit of any amount
24 to BellSouth for service; is that, is that accurate?

25 A Well, we -- that's not entirely accurate. I believe

1 you asked if BellSouth -- if ITC^DeltaCom would be willing to
2 or feels that a deposit would be appropriate at this point in
3 time.

4 We've offered a couple of things in my testimony.
5 One is parameters for determining whether a deposit should be
6 required, specific parameters. The other is, is that a
7 company's payment history should be a primary determinant in
8 that a company with an extended period of prompt payment should
9 not be required to pay a deposit.

10 I mean, we pay BellSouth in the range of about
11 \$8 million a month. We've been paying BellSouth for 20 years.
12 We've done it before, during and after a Chapter 11 filing.

13 I can't imagine that BellSouth would go to a retail
14 customer in the \$8 million a month range who have been paying
15 their bill for 20 years and ask for a deposit. So we don't
16 think a deposit is appropriate at this point in time. We're
17 also asking the Commission to adopt the language we have
18 proposed which we believe sets out reasonable deposit
19 parameters.

20 Q Well, using the reasonable deposit parameters that
21 you've just testified about, would DeltaCom pay a deposit to
22 BellSouth under those parameters?

23 A No.

24 Q What about -- is DeltaCom looking or would DeltaCom
25 be willing to pay in an accelerated or shorter time frame, to

1 pay their bills in an accelerated or shorter time frame?

2 A The accelerated bill payment proposal has to do with
3 the options that are available to a company, a CLEC.

4 MS. WHITE: I'm sorry for interrupting, but if the
5 witness could just say yes or no and then he'd explain, I'd
6 appreciate it.

7 THE WITNESS: I'm sorry.

8 MR. ADELMAN: Maybe if I could respond. He's trying
9 to explain his answer. Maybe she could repeat the question.
10 Not every question lends itself to an easy yes or no answer, as
11 Ms. White is aware.

12 COMMISSIONER DEASON: Ms. White, just repeat your
13 question.

14 BY MS. WHITE:

15 Q Is DeltaCom willing to pay BellSouth, willing to pay
16 their bills to BellSouth on an accelerated or shorter time
17 frame?

18 MR. ADELMAN: And I guess I'd object to the question
19 because it's vague and ambiguous. Is she talking about now,
20 was it a past period or is it a future period she's discussing?
21 And I think that's why Mr. Watts was giving an explanation in
22 response.

23 COMMISSIONER DEASON: Ms. White, could you clarify
24 the time frame?

25 BY MS. WHITE:

1 Q Under this new contract is BellSouth willing to, I
2 mean, excuse me, is DeltaCom willing to pay its bills to
3 BellSouth on an accelerated or shorter time frame?

4 A No, not under normal bill due date circumstances.
5 We're recommending and asking for quite the opposite in that
6 we're asking for a 30-day from date received bill due date.

7 The shortened time frame for making payments is one
8 of the options that we, that I speak to in my testimony
9 relative to options that would be available to a company, to us
10 if BellSouth, if it was determined that it was appropriate for
11 BellSouth to collect a deposit.

12 In lieu of the deposit one of the options could be
13 going to a shorter payment period. Some of these options, some
14 of these recommendations come out of the FCC policy order on
15 deposits that resulted after BellSouth had filed for new
16 language in their FCC tariffs and Verizon had and a number of
17 other ILECs.

18 We had an extended period of negotiation with
19 BellSouth. We, a group of CLECs that I participated in, had a
20 number of meetings with the FCC staff on this issue, and
21 ultimately an order was issued by the FCC.

22 The bottom line is the FCC said that they did not
23 believe that new deposit language was appropriate at this point
24 in time. But some of the suggestions in the order included the
25 suggestion of accelerated payments in lieu of a deposit. And

1 we have had discussions with BellSouth management relative to
2 accelerated payments as being one area that we could, that we
3 could explore. But what that basically means is if it was
4 determined that you were paying late or that you were having
5 difficulty paying, you would go to perhaps a 15-day payment
6 cycle rather than a 30-day payment cycle until you corrected
7 the problem of paying late. So that's the background for the
8 accelerated payment option.

9 Q I want you to assume with me that, that the
10 Commission adopts your position in this arbitration and says
11 that because of its good payment history, DeltaCom isn't
12 required to post a deposit. And assume with me that that
13 language is available for adoption by another CLEC. Do you
14 understand my hypothetical?

15 A Yes.

16 Q Now if it's available for adoption by another CLEC,
17 then it's possible, isn't it, that the, that a particular CLEC
18 who wants to adopt it may not have a good payment history with
19 BellSouth; isn't that true?

20 A That could be true.

21 Q And it's possible that a CLEC who might adopt this
22 language might not be in as strong a financial position as
23 DeltaCom; isn't that right?

24 A That's correct.

25 Q But the Telecom Act requires BellSouth to do business

1 with CLECs regardless of whether they're creditworthy or
2 whether they have good payment history or whether they're in
3 strong financial condition; isn't that correct?

4 A I don't -- obviously BellSouth as an ILEC has
5 interconnection requirements imposed on it by the Act. CLECs
6 also have interconnection requirements imposed on them by the
7 Act. I'm not familiar with language in the Act that deals with
8 the creditworthiness issue. But I would agree that BellSouth
9 is required to interconnect with other carriers.

10 Q Now DeltaCom's position is that the deposit, if
11 DeltaCom is required to post a deposit, that it should be
12 refunded after six months of prompt payment; is that correct?

13 A That's the proposal we've made. Yes.

14 Q And under your proposal if a CLEC's ability to pay
15 has deteriorated for six months but they've still been able to
16 pay their bill on time, then BellSouth would still be required
17 to refund the deposit; is that a fair statement?

18 A Under the prompt payment over six months, that is
19 correct. The, the problem we've had with the approach
20 BellSouth is trying to take is the, the ability for BellSouth
21 to establish a set of parameters or benchmarks unilaterally
22 arbitrarily and then apply them across the industry. The fact
23 that they're requesting deposits from almost 80 percent of
24 CLECs, I believe, is an indication of that.

25 We, you know, we believe that our circumstances and

1 our relationship with BellSouth are consistent with the
2 proposal that we've made for deposit language.

3 Q Now you've already testified that DeltaCom has a
4 tariff in Florida by which it can charge a deposit to its
5 retail customers; correct?

6 A BellSouth?

7 Q I'm sorry. DeltaCom.

8 A Yes.

9 Q And do you know whether that tariff allows for return
10 of the deposit after six months of prompt payment?

11 A I, I do not know. I have not reviewed those tariffs
12 in some time. Again, our policy, the position that we take
13 with our customers both on the collection and the refund of a
14 deposit, certainly is mitigated by the competitive
15 circumstances that we're in.

16 We, we know that if we make unreasonable requests or
17 we treat our customers in a way that they're unhappy with,
18 they're going to go do business with somebody else.

19 MS. WHITE: Commissioner, may I approach the witness?

20 COMMISSIONER DEASON: Yes.

21 BY MS. WHITE:

22 Q I'm handing out a copy of DeltaCom's tariff or,
23 excuse me, price list, the section on deposits, which is
24 Section 2.8.6. And I would ask the witness to look at Section
25 2.8.6.3 and let me know when he's had a chance to review that.

1 A I'm sorry. What did you want me to review?

2 Q 2.8.6.3. It's -- if you look up at the top
3 right-hand corner, it would be first revision Page 57, and it's
4 the second paragraph on that page.

5 (Pause.)

6 A I've read it.

7 Q So you would agree with me, wouldn't you, that
8 DeltaCom's deposit requirements for retail customers allow
9 DeltaCom to hold a residential customer's deposit for 24 months
10 and refund it then if the account is considered in good
11 standing by the company; is that right?

12 A That's what this language provides for. I think to
13 get a better sense of DeltaCom's business practices you'd have
14 to do further analysis on how many deposits we're collecting,
15 for what period of time they're being held. I haven't done
16 that. But, again, the competitive pressures we're under
17 certainly mitigate our ability to have unreasonable policies on
18 deposits.

19 Q So you don't know the percentage of time that
20 DeltaCom keeps its retail customers' deposits for 24 months and
21 the percentage of time it keeps the retail customers' deposits
22 for six months?

23 A I have, I have not done an analysis of that. No.

24 MS. WHITE: Thank you. I have nothing further for
25 this witness.

1 COMMISSIONER DEASON: Staff.

2 CROSS EXAMINATION

3 BY MR. TEITZMAN:

4 Q Just a few questions, Mr. Watts.

5 Mr. Watts, are you aware that the FCC is seeking
6 comments on whether it should change its current policy of
7 allowing competing carriers to pick and choose provisions
8 within an interconnection agreement?

9 A Generally, yes.

10 Q Are you aware that the FCC is also seeking comment
11 regarding whether the pick and choose rule should be replaced
12 with a requirement that a competitive carrier be limited to
13 accepting an interconnection agreement in its entirety?

14 A I have looked generally at notices and news, trade
15 news summaries of that NPRM. I am not familiar with the
16 details and I have not looked at that specific provision that
17 you just mentioned.

18 Q With respect to Issue 26C, do you believe that if the
19 Commission were to set new rates, the Commission should
20 consider separating zones with high and low UNE loop rates for
21 assessing impairment if the UNE loop rates vary substantially
22 across the State of Florida?

23 A Are you -- if I can clarify, you're referring to the
24 Commission's review and approval of a replacement rate, what
25 BellSouth refers to as a market rate?

1 Q That is correct.

2 A Well, in this case we're talking about switching, and
3 I don't think the port rate varies based on the zone. If, in
4 fact, it was a UNE rate that had been delisted and there were
5 underlying cost considerations, certainly I, we would support
6 the Commission taking into consideration all the inputs to the
7 just and reasonable determination.

8 Q This next question addresses Issue 59 regarding the
9 payment due dates.

10 In response to Interrogatory Number 25 of staff's
11 second set of interrogatories ITC stated that it would be
12 moving to a new system in October 2003 that will accept in
13 electronic format those few invoices not already received in
14 that manner. At that point would all BellSouth invoices then
15 be received electronically?

16 A It's my understanding they would be, except that I
17 guess there can always be a circumstance where for whatever
18 reason a manual invoice might be prepared. But as a practical
19 matter, yes, all of our invoices would be received
20 electronically.

21 Q Okay. And my final question is going to address
22 Issue 63, the audit issue. Would the auditing language ITC
23 seeks to include in the interconnection agreement cause
24 duplication of review of BellSouth's billing records?

25 A No, I don't believe it would. We have similar audit

1 language in our contracts with Verizon and I believe with
2 Sprint. I believe that even BellSouth will acknowledge that
3 they continue to have significant problems within their billing
4 systems of various types. We're a very large customer of
5 BellSouth's, in the \$8 to \$10 million dollar a month range. We
6 get about 1,700 invoices per month over 20 some odd billing
7 periods. We feel that the ability to actually audit their
8 billing systems is something that's reasonable for a business
9 relationship of that magnitude.

10 MR. TEITZMAN: No further questions for Mr. Watts.

11 COMMISSIONER DEASON: Redirect?

12 MR. ADELMAN: Yes, briefly, Mr. Chairman.

13 REDIRECT EXAMINATION

14 BY MR. ADELMAN:

15 Q Mr. Watts, do you recall the questions from counsel
16 for BellSouth regarding Issue 11A? She referred you to Page 17
17 of your direct testimony.

18 A Yes.

19 Q Do you recall questions from members of the panel
20 with regard to language that is clear and language that could
21 be added addressing Issue 11A? Do you recall those questions?

22 A Yes.

23 Q Do you know whether the language that is excerpted on
24 Page 17 of your prefiled direct testimony, that is the language
25 that ITC^DeltaCom would like to add to the agreement being

1 arbitrated in this proceeding, is contained in the existing
2 interconnection agreement between ITC^DeltaCom and BellSouth?

3 A Yes, it is. And we'd like to adopt the same language
4 in the new contract.

5 Q With regard to Issue 59, counsel for staff just asked
6 you a few questions relating to electronic billing. Do you
7 remember that?

8 A Yes.

9 Q Currently what, approximately what percentage of the
10 bills that BellSouth transmits to ITC^DeltaCom are done so
11 electronically?

12 A The last review I made, I believe it was 94 percent.

13 Q And is it your -- do you know whether BellSouth is
14 able to determine the date on which ITC^DeltaCom receives a
15 bill that is transmitted by BellSouth to ITC^DeltaCom
16 electronically?

17 A Yes. I mean, the system we use between the companies
18 is such that BellSouth knows precisely when they transmit the
19 bill to ITC^DeltaCom and they know that the bill is received on
20 that date.

21 Q With regard to Issue 26, counsel for BellSouth and I
22 believe some members of the panel asked you whether you had
23 investigated whether unbundled switching is available from
24 companies other than BellSouth in BellSouth's service territory
25 in the State of Florida. Do you recall those questions?

1 A Yes.

2 Q Do you know whether -- have you found any company
3 other than BellSouth in the BellSouth territory in Florida that
4 makes unbundled switching available in a way that is suitable
5 for serving residential customers in Florida?

6 A No. It's common knowledge within the industry -- I'm
7 president of the largest CLEC association in the southeast,
8 CompSouth. We have 18 companies. We discuss these issues
9 monthly. I'm a member of the PACE Coalition, which is a
10 national UNE-P coalition. You may find exceptions in some
11 special circumstances, but for the mass market, business and
12 residential, analog switching supported by OSS so that you can
13 scale large numbers of customers into your customer base,
14 nobody provides that in this region except BellSouth. And I
15 can say that with absolute confidence. I know this issue is
16 going to be reviewed extensively in the impairment case here in
17 Florida and I look forward to that. But the assertion that
18 there are competitive options available to CLECs just isn't
19 true. Believe me, if there were competitive options available
20 to the CLECs, the CLECs would be doing business with other
21 companies other than BellSouth.

22 Q Thank you. Finally, with regard to Issue 60, the
23 deposit issue, counsel for BellSouth offered a hypothetical
24 where a CLEC other than ITC^DeltaCom could opt into language
25 that allowed for there not to be a deposit required where there

1 is a good payment history. Do you remember those questions?

2 A Yes.

3 Q Can you please describe for the Commission how
4 ITC^DeltaCom's proposal would work? And, in particular, would
5 a good payment history be required in order to trigger relief
6 from a deposit requirement?

7 A Well, the good payment history would be a prime
8 determinant of whether or not a deposit could be collected. We
9 have also proposed a series of other benchmarks. We're hopeful
10 and we're still discussing this issue between the companies
11 that perhaps we might be able to resolve this issue. I don't
12 think BellSouth has contested in any of these cases that
13 ITC^DeltaCom has a long, never defaulted on payment to
14 BellSouth. If you look at our payment history, and I think
15 this is in the discovery, you know, we averaged paying invoices
16 nine days early over the year August 2002 to August 2003. I am
17 absolutely confident that we are not a company that BellSouth
18 should be collecting a deposit from. And I'd be more than
19 happy for that to be determined by a third-party looking at the
20 facts from both sides.

21 So we're seeking deposit parameters here that give
22 BellSouth adequate protection in terms of mitigating the risk,
23 at the same time that, that do not allow BellSouth to make
24 arbitrary decisions and demand deposits or require deposits
25 when they're not necessary.

1 Q Mr. Watts, still on Issue 60, if a CLEC that has a
2 poor payment history were to opt into the language being
3 proposed by ITC^DeltaCom, would BellSouth be able to collect a
4 deposit from that CLEC that has a poor payment history?

5 A Depending on the, how that CLEC matched up on the
6 additional parameters that we have suggested.

7 Q So is it your testimony --

8 A And our -- excuse me. Our parameters provide for
9 many of the alternatives that were suggested by and included in
10 the FCC, FCC's policy statement on deposits, that is advanced
11 payments and other, and other ways of dealing with payment
12 problems other than collecting deposits.

13 The FCC expressed concern about the discriminatory
14 use of deposits by ILECs in dealing with CLECs, and that's a
15 concern that we have. We don't want to be in a position where
16 BellSouth is able to leverage their position on perhaps another
17 important operational issue that we're engaged in by demanding
18 a deposit.

19 Q Mr. Watts, does ITC^DeltaCom bill BellSouth monthly
20 for services that ITC^DeltaCom provides to BellSouth?

21 A Yes.

22 Q And are those bills, are they large bills, are they
23 significant? What can you tell us about those bills?

24 A They're currently in the \$700,000 a month range,
25 which for ITC^DeltaCom is probably as significant or more

1 significant than the \$8 million a month that BellSouth bills
2 us.

3 Q Does ITC^DeltaCom ask that BellSouth provide a
4 deposit to ITC^DeltaCom?

5 A We haven't. That's the other issue that, that I
6 mention in my summary. The fact that BellSouth is unwilling
7 for their deposit parameters to be reciprocal I think speaks
8 for itself. Certainly BellSouth, positioned as they are with
9 the financial resources that they have, certainly if they're
10 not willing for those same deposit parameters to apply to them
11 that apply to the CLEC in their relationship, then, again, I
12 think that speaks for itself. But, no, we have not requested a
13 deposit from BellSouth.

14 Q Mr. Watts, still on Issue 60, you keep using the word
15 "parameters." Are you using that word interchangeably with the
16 word "standards," so this would be the standard that would be
17 applied under the contract for purposes of determining whether
18 and when a deposit would be required?

19 A Yes.

20 MR. ADELMAN: I have no further questions on
21 redirect, Mr. Chairman.

22 COMMISSIONER DEASON: Exhibits? I believe --

23 MR. ADELMAN: We would move --

24 COMMISSIONER DEASON: 6, 7 and 8?

25 MR. ADELMAN: We would move for the admission of

1 Exhibits 6, 7 and 8. And I would remind -- just for the
2 record, I would note that on Mr. Watts' Exhibit 3, which is
3 contained -- excuse me. JW-3, which is contained in Exhibit 6,
4 is a proprietary exhibit.

5 COMMISSIONER DEASON: Very well. Any objection?
6 Hearing no objection, show that Exhibits 6, 7 and 8 are
7 admitted.

8 (Exhibits 6, 7 and 8 admitted into the record.)

9 MS. WHITE: And, Commissioner Deason, I did not admit
10 any of my handouts into the record because they're all public
11 record.

12 COMMISSIONER DEASON: Very well. Thank you,
13 Mr. Watts.

14 THE WITNESS: Thank you.

15 COMMISSIONER DEASON: You may call your next witness.

16 MR. ADELMAN: Thank you, Mr. Chairman.

17 (Transcript continues in sequence with Volume 2.)
18
19
20
21
22
23
24
25

1 STATE OF FLORIDA)
2 COUNTY OF LEON)


CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

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

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

17 DATED THIS 16th day of September, 2003.

18
19
20
21
22
23
24
25

LINDA BOLES, RPR
FPSC Official Commissioner Reporter
(850) 413-6734