

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**DIRECT TESTIMONY OF**

**JERRY WATTS**

**On Behalf of**

**ITC^DeltaCom Communications, Inc.**

**DOCKET NO. 041269-TP**

**GENERIC PROCEEDING TO EXAMINE ISSUES RELATED TO BELLSOUTH'S  
OBLIGATION TO PROVIDE UNBUNDLED NETWORK ELEMENTS**

**August 16, 2005**

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FPSC-COMMISSION CLERK

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 Affairs  
3 for ITC^DeltaCom, Communications, Inc. d/b/a ITC^DeltaCom ("DeltaCom"). My  
4 business address is 7037 Old Madison Pike Huntsville, Alabama, 35806.

5

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

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

13

14 I have served as an officer or board member for several industry associations  
15 including the Alabama Mississippi Telephone Association, The Georgia  
16 Telephone Association, The Alabama Inter-Exchange Carriers Association, The  
17 Southeastern Competitive Carriers Association and The Georgia Center for  
18 Advanced Telecommunications Technology. I currently serve as President of  
19 The Competitive Carriers of the South, ("CompSouth"), a non-profit association of  
20 20 competitive telecommunications companies operating in the Southeast. I also  
21 serve as a board member of CompTel/ALTS. CompTel/ALTS is the leading  
22 industry association representing 350 competitive facilities-based  
23 telecommunications service providers, emerging VoIP providers, integrated

1 communications companies, and their supplier partners. CompTel/ALTS  
2 members are building and deploying packet and IP-based networks to provide  
3 competitive voice, data and video services in the U.S. and around the world. The  
4 association, based in Washington, D.C., includes companies of all sizes and  
5 profiles, from the largest next-generation network operators to small,  
6 entrepreneurial companies. I have previously presented testimony in Georgia.

7  
8 **Q: WHAT ARE YOUR RESPONSIBILITIES AT ITC^DELTACOM?**

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

15  
16 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

17 A: The purpose of my testimony is to provide DeltaCom's position on certain generic  
18 issues filed with the Commission by CompSouth and BellSouth and the non-  
19 generic issues identified in Deltacom's petition for mediation and dispute  
20 resolution. I will also discuss the status of DeltaCom's bilateral TRO/TRRO  
21 amendment negotiations with BellSouth and describe the process that allows  
22 DeltaCom to participate in the generic proceedings as well as two-party dispute  
23 resolution proceedings.

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**Q. WHY ARE YOU ADDRESSING ISSUES IN THE GENERIC DOCKET THAT WERE RAISED IN YOUR SEPARATE REQUEST FOR MEDIATION AND DISPUTE RESOLUTION?**

A. BellSouth filed a Motion to Dismiss DeltaCom's request for two-party mediation and dispute resolution. Since the Commission has not yet ruled on BellSouth's motion, Deltacom is addressing those issues in this testimony. Should the Commission deny BellSouth's Motion and go forward with a separate proceeding, DeltaCom can address its non-generic issues in that docket. My testimony addresses DeltaCom's dispute resolution rights under its existing interconnection agreement with BellSouth and why both generic and bilateral dispute resolution are needed to decide the issues that could not be resolved through negotiations.

**Q. WHAT IS THE PURPOSE OF THIS PROCEEDING AND WHAT OTHER ACTION WILL BE REQUIRED TO COMPLETE THE CHANGE OF LAW PROCESS RESULTING IN COMMISSION APPROVED INTERCONNECTION AGREEMENT AMENDMENTS THAT ARE COMPLIANT WITH THE TRO/TRRO?**

A. The purpose of the generic proceeding is to hear generic testimony for those issues identified on the issues list jointly filed by CompSouth and BellSouth. It was agreed that this process would include the approval by the Commission of

1 policies resulting in compliant language to be used in TRO/TRRO amendments  
2 that would subsequently be filed by BellSouth and each CLEC in accordance  
3 with the provisions in their respective interconnection agreements. Those  
4 amendments could also include other negotiated language and/or language  
5 arrived at through separate Commission dispute resolution.

6  
7 **Q. DO YOU THINK SOME OF THE DELTACOM ISSUES ARE APPROPRIATE**  
8 **FOR A BILATERAL PROCEEDING?**

9 A. Yes. Deltacom has a clear contractual right to seek bilateral resolution of issues  
10 arising from changes in law. In addition to the need for strong policy calling for  
11 the parties to get resolution to many of these issues before the March 11, 2006  
12 deadline, the Commission approved interconnection agreement very clearly  
13 contemplates a bilateral process. Sections 16.4 and 11 of the agreement provide  
14 that parties are to negotiate for ninety-days after which either party may seek  
15 alternative dispute resolution from the Commission. This two-phase dispute  
16 resolution process recognizes the importance of bilateral resolution of  
17 disputed issues and promotes innovation.

18  
19 **Q. HAS DELTACOM SOUGHT THE MOST EFFICIENT PROCESS TO RESOLVE**  
20 **ITS ISSUES WITH BELLSOUTH?**

21  
22 A. Yes. During the early stage of discussions with BellSouth, DeltaCom  
23 recommended that the parties agree to a framework for the negotiations that

1 would accommodate deferral of certain issues to the generic proceedings, and  
2 separate dispute resolution of issues that were unique to the DeltaCom/BellSouth  
3 interconnection agreement. Moreover, DeltaCom proposed that the parties could  
4 resolve any issue through negotiations without dispute resolution proceedings  
5 conducted by the Commission. To the extent we resolved issues that were to be  
6 addressed in the anticipated cases, we agreed to use the settlement language  
7 rather than the language that might be determined in the generic docket. At no  
8 time during our discussions did the BellSouth negotiators object to the proposed  
9 framework or offer any alternative process.

10  
11 **Q. IS BELLSOUTH'S MOTION TO DISMISS DELTACOM'S REQUEST FOR**  
12 **MEDIATION AND DISPUTE RESOLUTION CONSISTENT WITH THIS**  
13 **PROCESS?**

14 A. No. BellSouth seeks to force all unresolved issues with DeltaCom into the  
15 generic docket even though some of the disputed issues are not appropriate for a  
16 generic process. As one of BellSouth's largest and oldest customers we have a  
17 long history of negotiating amendments that meet our individual business needs  
18 and are compliant with current law. In the present circumstance, we are seeking,  
19 as efficiently as possible, to resolve both the disputed TRO/TRRO issues  
20 identified for the generic and the remaining TRO/TRRO issues that are specific to  
21 the DeltaCom/BellSouth interconnection agreement.

22

1 Q: PLEASE PROVIDE SOME HISTORY LEADING TO THIS DOCKET AND THE  
2 DISPUTE RESOLUTION PROCEEDING SOUGHT IN ITC^DELTACOM'S  
3 PETITION?

4 A: The interconnection agreement contemplates a bilateral change of law process  
5 and BellSouth is currently engaged with Deltacom in that process for the  
6 TRO/TRRO requirements. In December of 2004, DeltaCom approached  
7 BellSouth with a request to begin negotiations so that we could reach agreement  
8 as soon as possible on a TRO/TRRO amendment. Our sense of urgency was  
9 driven by the need to begin the conversion of facilities consistent with the  
10 provisions of the TRO/TRRO. BellSouth responded that it was not practical to  
11 begin negotiations until after the FCC released its written order. On or about  
12 March 14, 2005, BellSouth sent a change of law request to begin negotiations  
13 thereby triggering the change of law process provided for in the  
14 DeltaCom/BellSouth interconnection agreement. BellSouth sent its template  
15 language to DeltaCom at approximately the same time. DeltaCom responded  
16 with its own version of template language using a combination of the previously  
17 negotiated/arbitrated DeltaCom/BellSouth interconnection agreement Attachment  
18 2 with appropriate changes related to the TRO/TRRO requirements. Over the  
19 course of the 90-day period, the parties exchanged draft versions of Attachment  
20 2 and participated in numerous negotiation sessions. While DeltaCom  
21 compromised and moved to certain BellSouth proposed language, BellSouth as  
22 of the date of this testimony has not agreed to any substantive language  
23 proposed by DeltaCom related to the TRO/TRRO. Because of the pending

1 March 11, 2006 deadline, DeltaCom sought early in the negotiations to reach an  
2 ***“interim transitional amendment”*** so that it could begin moving high capacity  
3 loops and transport that are in non-impaired areas. BellSouth rejected  
4 DeltaCom’s request saying it was unwilling to make any TRRO changes until the  
5 completion of the entire Change of Law process. At the end of the 90-day  
6 negotiation period, DeltaCom filed its Petition for Mediation and Dispute  
7 Resolution to break the impasse that had occurred with BellSouth. Based on  
8 experience in other negotiations, DeltaCom believes that the BellSouth  
9 negotiators were not authorized to agree to compromise language that was  
10 repeatedly offered in good faith by DeltaCom. A Commission-facilitated dispute  
11 resolution process could overcome that problem.

12  
13 From the beginning, DeltaCom has understood the urgency of transitioning our  
14 network to new service arrangements that are necessitated by the TRO/TRRO.  
15 DeltaCom believes that the FCC and this Commission expect both DeltaCom  
16 and BellSouth to undertake whatever processes are required to insure  
17 uninterrupted service to existing customers while protecting the interest of both  
18 companies. Faced with the upcoming March 11, 2006 deadline and  
19 understanding that the change of law process including the generic cases will  
20 likely not be completed by that date, DeltaCom sought dispute resolution  
21 reasoning that an interim compromise could be reached pending the final  
22 outcome of the generic cases. Regrettably, BellSouth has stated that it is  
23 unwilling to participate in a two-party mediation or dispute resolution process with



1 DeltaCom. BellSouth has taken the non-sensical position that they will continue  
2 negotiations with DeltaCom but will not participate in a non-binding mediation  
3 process. It is difficult to understand why a company engaged in good faith  
4 negotiations would refuse to even attempt mediation. This is especially  
5 mysterious because such Commission-facilitated settlement discussions have  
6 proven successful in the past.

7  
8 **Q: DOES YOUR TESTIMONY ADDRESS ITC^DELTACOM'S POSITION ON ALL**  
9 **UNRESOLVED ISSUES?**

10 **A:** No. I address our position on certain issues.

11  
12 **Steven Brownworth** will discuss:

- 13 • migration issues related to high capacity loop and transport and IDLC  
14 loops.

15  
16 **Mary Conquest** will discuss:

- 17 • bulk migration issues and trouble resolution.

18  
19 I will address the following issues in my testimony:

- 20  
21 • Tariffed Access Services to Collocation Sites
- 22 • Transitional Period for UNE-P (Merger/Acquisition)
- 23 • Non-TRO/TRRO Generic Issues and Bilateral Negotiation Issues

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**Q: HOW DOES YOUR TESTIMONY ON THESE ISSUES RELATE TO THE PETITION FOR ALTERNATIVE DISPUTE RESOLUTION?**

A: Our Petition represents the best way to expeditiously resolve the issues between BellSouth and DeltaCom. In the past, mediation with state regulatory authorities using their “good offices” to facilitate settlement has been effective. The Florida Commission staff has conducted pre-hearing activities that have been useful in resolving issues. In our last arbitration, by simply participating in the deposition of witnesses, the Florida staff caused issues to settle. I think if BellSouth is forced to confront some of the DeltaCom specific issues in the presence of an independent third-party mediator or facilitator (which could be the Florida staff) they will agree to a fair compromise on some of the issues of dispute.

However, as previously stated, BellSouth seems unwilling to even meet with DeltaCom in the presence of state regulators. For that reason, I present these issues in this formal process. Although I am doing so, I want to clear that DeltaCom has a contractual right to pursue the two-party dispute resolution and we will do so. The two-party process is particularly important for issues where ITC^DeltaCom has unique requirements or a distinct proposed solution.

**Q. ARE SOME OF THE ISSUES IN DISPUTE UNRELATED TO CHANGES IN LAW?**

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Yes. ITC^DeltaCom Petition Issues 20 and 27. For these issues BellSouth claims that these changes are not related to change of law. DeltaCom agrees. However, BellSouth, not DeltaCom, struck language related to these issues during the negotiations. To the extent BellSouth no longer seeks to strike or make changes to already approved language in the interconnection agreement, these issues are not in dispute. I would be pleased to leave the existing contract language place and move to other issues.

**Q: WHAT IS DELTACOM’S PROPOSED LANGUAGE TO INCORPORATE TRO/TRRO ORDERS FOR ATTACHMENT 2 ?**

A: Attached as Exhibit JW-1 is our proposed language for specific issues related to Attachment 2 and raised in our negotiations.

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

A: Our primary objective is to obtain a cost effective and efficient means of transitioning existing consumers (both government and private industry) without service interruption. Mr. Brownworth will discuss in more detail the changes that are necessary and the critical elements needed to make this transition. The issues addressed by Mr. Brownworth are the most critical to the migration of high capacity loops/transport.

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**Q: SHOULD BELLSOUTH BE REQUIRED TO DELIVER ANY TARIFFED SERVICES REQUESTED BY ITC^DELTACOM TO A COLLOCATION SITE?**

A: Yes. Any tariffed access service offered by BellSouth and ordered by ITC^DeltaCom should be available for delivery by BellSouth to ITC^DeltaCom's collocation sites or a third party collocation site. Language allowing this arrangement has been included in ITC^DeltaCom's past two interconnection agreements with BellSouth and approved by the Commission. BellSouth agreed to this language prior to the arbitration filing in February 2003. For that reason, ITC^DeltaCom did not raise this as an issue in the most recent arbitration case. We have been unable to determine why BellSouth seeks to strike this previously approved language. I am hopeful they will either clear that up in this case or agree no dispute exists.

**Q: PLEASE STATE WHETHER EMBEDDED BASE LIMITATIONS PROHIBIT CLECS FROM ADDING A LINE OR MERGING WITH ANOTHER COMPANY WHEN THE END USER CUSTOMER WAS RECEIVING SERVICE FROM A CLEC VIA UNE-P PRIOR TO MARCH 11, 2005? WHAT TERMS AND CONDITIONS SHOULD APPLY DURING AND AFTER THE TRANSITION PERIOD?**

A: Based on BellSouth's apparent interpretation of the TRRO, DeltaCom cannot add a line to an existing customer nor could it merge another CLEC into its customer base without losing the transitional pricing for the embedded base customers.

1 DeltaCom has proposed language at Exhibit JW-1 regarding the terms and  
2 conditions of the transition period as well as the process for transferring  
3 embedded UNE-P customers.

4 **Q: ARE THERE ANY ISSUES WHERE AGREEMENT MAY BE REACHED?**

5 A: Yes. Although BellSouth has resisted our request to mediate or otherwise let the  
6 Commission facilitate settlement, they have agreed to continue negotiations so  
7 there may be areas where the parties could agree. Based on BellSouth's Motion  
8 to Dismiss it appears that BellSouth is no longer seeking to change the language  
9 on hot cut intervals that was previously settled between the parties (Issue 20).  
10 Furthermore based on BellSouth's Motion to Dismiss it appears that BellSouth  
11 does not believe that Issue 27 (conversion of resold services to other services) is  
12 subject to change of law. In both cases the parties currently have language in  
13 Attachment 2 that BellSouth during negotiations sought to alter or strike. If  
14 BellSouth is no longer seeking to strike or alter this language, then the parties  
15 have no dispute on these issues. The current language remains.

16

17 **Q: SHOULD BELLSOUTH BE REQUIRED TO HONOR THE LANGUAGE**  
18 **AGREED UPON IN SETTLEMENT OF ITS ARBITRATION RELATING TO HOT**  
19 **CUTS?**

20 A: In an abundance of caution, ITC^DeltaCom includes this item because BellSouth  
21 has said that it seeks to revise language agreed upon in settlement of Arbitration.  
22 Language at Exhibit JW -1 should be ordered.

23

1 **Q: SHOULD ITC^DELTACOM BE PERMITTED TO CONVERT RESOLD**  
2 **SERVICES TO OTHER TYPES OF SERVICES?**

3 A: Yes. This language has been in the previously approved ITC^DeltaCom  
4 interconnection agreements. BellSouth did not raise any issues with this  
5 language prior to the filing of the Arbitration petition in February 2003.  
6 ITC^DeltaCom should be permitted to convert resold services to UNEs or  
7 combinations of UNEs. Language covering the issue can be found at Exhibit  
8 JW-1.

9  
10 **Q: ARE THERE ANY OTHER CHANGE OF LAW ISSUES NOT RELATED TO**  
11 **THE TRO/TRRO THAT HAVE BEEN RAISED?**

12 A: Yes. The Pick and Choose Order and the Core ISP Remand Order. However, I  
13 will focus on the Core ISP Remand decision. The Core ISP remand order states  
14 that the growth caps and new markets rule no longer applies. BellSouth takes the  
15 position that the template language in the interconnection agreement should not  
16 incorporate this FCC order and points to the fact that BellSouth has reached  
17 individual settlements with certain carriers. DeltaCom submits that each such  
18 specific negotiation should be between that carrier and BellSouth but that on a  
19 generic basis and certainly in a template agreement, the language offered in the  
20 template should be compliant with the most recent orders – including those  
21 orders that BellSouth disfavors. For the template agreement, DeltaCom  
22 recommends the language noted in Exhibit JW-1.

23 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

1 A: Yes.

Issue 5:

**[BST-Proposes to modify]** BellSouth shall, upon request of ITC^DeltaCom and to the extent technically feasible, provide to ITC^DeltaCom access to its unbundled network elements for the provision of ITC^DeltaCom's telecommunications service. **[BST-Proposes to delete-covered in commingling Section 1.10] At ITC^DeltaCom's option, access services may be ordered to the collocations space. [ITCD seeks to keep this sentence.]**

Issue 37:

*Should a CLEC merge its embedded customer base with ITCD prior to March 11, 2006, that CLEC's embedded customer base shall be included with ITCD's pursuant to the rates, terms and conditions contained herein. Additionally, BellSouth shall continue to provide the same features, functions, and quality of service for local switching for the embedded base of customers during the transition period.*

Issue 20:

Where facilities are available, BellSouth will install unbundled loops within a 5-7 business days interval. For orders of 14 or more unbundled loops, the installation will be handled on a project basis and the intervals will be set by the BellSouth project manager for that order. Said interval will be set in a reasonable manner and in accordance with any required extra work times. Some unbundled loops require a Service Inquiry (SI) to determine if facilities are available prior to issuing the order. The interval for the SI process is separate from the installation interval.

Issue 27:

**[BST seeks to strike]** To the extent BellSouth converts a resold service to unbundled network elements or combination of network elements for any telecommunications carrier, BellSouth shall make available to ITC^DeltaCom the same conversion for the same services and elements on the same terms and conditions and at the same rates, if any; provided, however that the rate for such conversion shall not exceed those rates set forth in **Exhibit D** to this Attachment *[pls. Explain strike]*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been served upon the following this 16th day of August, 2005, by U.S. Mail:

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