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Matilda Sanders

From: LoMonte, Frank D. [Frank.LoMonte@sablaw.com]
Sent: Tuesday, October 10, 2006 1:41 PM
To: Filings@psc.state.fl.us
Cc: Matilda Sanders
Subject: Docket No. 030137-TP, ITC Delta^Com and BellSouth's joint updated issues matrix
Attachments: Docket 030137 - Revised Matrix

Please find attached a copy of the parties' joint Issues Matrix, with a cover letter, in the above-referenced docket. This document is being re-filed per request of Staff so that the cover letter and matrix are scanned as a single document.

Please contact me directly if there are any questions. Thank you.

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<Docket 030137 - Revised Matrix>>

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October 10, 2006

VIA ELECTRONIC FILING

Mr. Adam J. Teitzman, Esq.
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 030137, *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*

Dear Mr. Teitzman:

Per request of Staff, please find attached the parties' updated matrix setting forth the status of outstanding and resolved issues in the above-referenced docket.

Please feel free to contact me if there are any questions regarding this filing.

Sincerely yours,



Frank D. LoMonte

cc: Andrew Shore, Esq.
D. Anthony Mastando, Esq.
David I. Adelman, Esq.

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**DELTACOM/BELLSOUTH
ARBITRATION ISSUES MATRIX
FLORIDA DOCKET NO. 030137-TP**

ISSUE NO.	ISSUE DESCRIPTION	DELTACOM POSITION	BELLSOUTH POSITION	ISSUE STATUS
1	<p>Term of the Agreement (GTC – Section 2.1;2.3 – 2.6):</p> <p>a) Should the parties continue to operate under the Commission-approved interconnection agreement pending the Commission’s ruling on the arbitration?</p> <p>b) If so, what should be the length of the term of the agreement resulting from this arbitration?</p>			Closed

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ISSUE NO.	ISSUE DESCRIPTION	DELTACOM POSITION	BELLSOUTH POSITION	ISSUE STATUS
2	<p>Directory Listings (GTC – Section 4; Attachment 6 – Section 2.2.2):</p> <p>a) Is BellSouth required to provide DeltaCom the same directory listing language it provides to AT&T?</p> <p>b) Is BellSouth required to provide an electronic feed of the directory listings of DeltaCom customers?</p> <p>c) Does DeltaCom have the right to review and edit its customers' directory listings?</p> <p>d) Should there be a credit or PMAP measure for accuracy of directory listings and, if so, what should the credit or PMAP measure?</p>	<p>a) Yes. DeltaCom should have access to its end user customer listings in a reasonable time prior to publication in the BellSouth Directory. BellSouth sends the listings to BAPCO and DeltaCom should be able to verify that they have been accurately submitted.</p> <p>b) Yes. ALECs' listings are commingled with BellSouth listings, but distinguished by the OCN. These should be extracted prior to book print for review. An electronic comparison of what was submitted versus what is being printed is in the best interest of both parties and will reduce customer dissatisfaction and confusion.</p> <p>c) Yes. Since DeltaCom is blind to the actions between BellSouth and BAPCO, and bears the financial responsibility to its end user, DeltaCom must be able to validate the accuracy of the listings.</p> <p>DeltaCom provides its end user customer listings to BellSouth for inclusion in the local phone directory. Transcript of September 3-5, 2003 Hearing, page 325.² Some of these listings must be manually keyed by BellSouth personnel. All iterations are not viewable by DeltaCom. (Id.) BellSouth then provides this information to its affiliate, BellSouth Advertising and Publishing Company ("BAPCO"). DeltaCom is seeking an electronic feed of these listings prior to publication so that it can ensure the accuracy of its customers' listings. BAPCO's website allows DeltaCom only to view a single listing at a time – and then only in the "top 100" directories in the region, which do not include a majority of Floridians. (T-326, 350).</p>	<p>a) Pursuant to 47 USC §252(i), DeltaCom can adopt rates, terms and conditions for network elements, services, and interconnection from an interconnection agreement filed and approved pursuant to 47 USC § 252, under the same terms and conditions as the original Interconnection Agreement. DeltaCom has not requested of BellSouth to adopt any language for directory listings from an agreement filed and approved by the Commission. To the extent DeltaCom adopts rates, terms and conditions for directory listings from an agreement filed and approved by this Commission, such an adoption would be incorporated into DeltaCom's agreement for the original terms of the adopted agreement (i.e., for the terms of the other CLEC's agreement). The language include in BellSouth's proposal should replace the adopted language when it expires.</p> <p>b) BellSouth is required to provide access to its directory assistance database and charges fees to do so in both its Agreement and its tariff. BellSouth is not required to provide an electronic feed of directory listings for DeltaCom customers.</p> <p>c) DeltaCom has the right to review and edit its customer's diversity listings through access to their customer service records. BellSouth Telecommunications, Inc. does not have a database through which review and edits of directory listings may be made.</p> <p>d) If an error occurs in a Directory Listing, DeltaCom can request a credit for any monies billed that are associated with the charge for said listing pursuant to BellSouth's General Subscriber Service Tariff. Further, the issue of PMAP measurements should not be addressed in an arbitration with an individual CLEC.</p>	Open as to subparts a), b), c)

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2		<p>BellSouth should be required to provide these listings electronically either by: (1) providing a list of only the DeltaCom customers; or (2) providing the entire electronic list subject to a strict protective agreement that limits DeltaCom's usage and access to such records for validation purposes only. BellSouth does not contend that compliance with DeltaCom's request is technically infeasible or precluded by law. (T-628-29).</p> <p>BellSouth attempts to distance itself from BAPCO and suggests that DeltaCom's recourse is only with its affiliate BAPCO. This argument fails because DeltaCom must provide its listings to BellSouth and does not provide them directly to BAPCO. The bottom line is that BellSouth is responsible for directory listing information. The Commission cannot ignore BellSouth's involvement in the process as urged by BellSouth. BellSouth is playing a shell game with DeltaCom, and the losers are Florida consumers whose listings suffer from an undisputed higher risk of inaccurate directory listings.</p> <p>Incredibly, companies who provide retail directory listings can obtain the full electronic version of directory listings through a tariffed offering to publishers. (T-371). Thus, the full set of listings with service provider information is available electronically from BellSouth to third party publishers. Instead of being willing to provide this information to DeltaCom as requested, BellSouth argues that DeltaCom should simply access individual Customer Service Records ("CSRs"). This argument is a red herring. BellSouth fails to mention that the CSR will not reflect any BellSouth-created omissions or corrections or alterations made by BAPCO. (T-326). DeltaCom's</p>		

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2		<p>experience with BellSouth in this regard is particularly confounding, given that another ILEC already provides an electronic feed of directory listings in the manner DeltaCom seeks. (T-370). It is not disputed that BellSouth's refusal to provide this data electronically increases the risk of inaccurate listings and consumer dissatisfaction.³</p> <p>In the parallel arbitration between the parties before the North Carolina Utilities Commission ("NCUC"), the NCUC Staff recommended that BellSouth be required to "take the necessary steps to ensure that BAPCO provides ITC with an electronic version of galley proofs." NCUC Staff Recommendation, NCUC Docket No. P-500, Sub 18, October 10, 2003 ("NCUC Staff Recommendation"), p. 8. The NCUC Staff also noted that the responsibility for providing directories to end users lies with BellSouth, and concluded, "[t]he fact that BellSouth chooses to contract with BAPCO to publish and distribute its directories should not absolve BellSouth of its obligations with regard to directories." <i>Id.</i> This reasoning is sound and should be followed by this Commission.</p> <p>² The transcript citation format hereinafter will be as follows: "(T-[page number])."</p> <p>³ DeltaCom is willing to pay a reasonable, cost-based rate to receive the listings electronically. BellSouth has often chided DeltaCom for not filing a New Business Request ("NBR") for electronic listings. In response, DeltaCom ultimately filed an NBR on July 29, 2003, only to have BellSouth deny it on August 21, 2003, reverting to its BAPCO shell game. The Commission should require that the listings be provided electronically until BellSouth produces a cost study and obtains Commission approval of a rate.</p>		

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3	<p>Advance Notice of Changes to Resold Offerings (GTC – Section 20.3):</p> <p>a) May BellSouth provide advance notice of changes to resale offerings?</p> <p>b) Can DeltaCom continue to receive the advance notice of 45 days as long as BellSouth continues to provide such notice to other CLECs?</p>			Closed
4	<p>Tax Liability (GTC – Section 13.1):</p> <p>Should language covering tax liability be included in the interconnection agreement and, if so, should that language simply state that each party is responsible for its tax liability?</p>			Closed
5	<p>Access to Pending Order Information and Status of Order Information (Attachment 6 – Sections 1.5.1 and 4.3):</p> <p>a) Should BellSouth be required to provide the same amount of pending order service detail to DeltaCom that BellSouth provides to its retail representatives?</p> <p>b) Should BellSouth be required to provide information regarding the status of an order to DeltaCom to the same degree as that it provides to its retail representatives?</p>			Closed

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6	<p>Facility Check Information (Attachment 6 – Sections 1.7 and 4.4):</p> <p>Should BellSouth be required to provide to DeltaCom facility check information electronically in the same manner it does to BellSouth's retail operations?</p>			Closed
7	<p>Addition of Call Forwarding (Attachment 6 – Section 5.1.2):</p> <p>Should BellSouth be required to temporarily provide features on the same terms and conditions as that it provides to its retail customers?</p>			Closed
8	<p>Universal or Integrated Digital Loop Carrier ("UDLC/IDLC") Technology (Attachment 2 – Section 3.1):</p> <p>a) Should BellSouth be required to provide an unbundled loop using IDLC technology to DeltaCom which will allow DeltaCom to provide consumers the same quality of service (i.e., no additional analog to digital conversions) as that offered by BellSouth to its customers?</p> <p>b) What terms and conditions should apply with regard to UDLC?</p>			Closed

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9	<p>OSS Interfaces (Attachment 6 – Section 3.2):</p> <p>Should BellSouth be required to provide interfaces for OSS to DeltaCom which have functions equal to that provided by BellSouth to BellSouth's retail division?</p>	<p>Yes. It is a requirement of the Telecom Act that OSS be nondiscriminatory. BellSouth should provide all OSS functions in all areas at parity. It should not be allowed to provide more advantageous OSS to its retail centers than provided to DeltaCom.</p> <p>Contract language regarding OSS should be unambiguous. The Commission should order the parties to include the following language in the interconnection agreement:</p> <p style="padding-left: 40px;">BellSouth will provide to DeltaCom access to all functions for pre-order that are provided to the BellSouth retail groups. Systems may differ, but all functions will be at parity in all areas, i.e., operational hours, content performance. All mandated functions, i.e., facility checks, will be provided in the same timeframes in the same manner as provided to BellSouth retail centers.</p> <p>This language is clear and consistent with the law. BellSouth wants either no language or a vague reference to nondiscriminatory access. DeltaCom seeks more definition to avoid future disputes. Limiting the contract to general recitations of the Act is not particularly useful in governing the operations of the parties. One critical purpose of an interconnection agreement is to give application to the Act. Indeed, the parties are before the Commission in part because the language of the Act is not sufficiently precise to resolve certain operating issues.</p>	<p>The FCC and the nine state regulatory authorities for BellSouth's region have ruled in all of BellSouth's 271 applications that BellSouth provides nondiscriminatory access to its OSS for performing the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing. To the extent DeltaCom seeks some modification to BellSouth's regional OSS, the appropriate forum is the CCP - not an individual interconnect agreement arbitration. Further, BellSouth believes that the current language contained in the Interconnection Agreement Sections 1.2 and 3.2 adequately states what BellSouth provides regarding interfaces to OSS.</p>	Open

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9		<p>The language put forward by DeltaCom acknowledges that BellSouth should be required to provide interfaces for Operational Support Systems (“OSS”) that are equal to that enjoyed by BellSouth’s retail division. BellSouth takes the position that because the Commission gave it a favorable Section 271 recommendation, it should not have to include DeltaCom’s proposed language. BellSouth argues that because of the Section 271 cases, DeltaCom’s proposed language is “additional and unessential language on an already established point.” (T-481). Reliance on the 271 recommendations assumes the telecommunications industry is static. BellSouth must agree that systems change with new technology and different demands.</p> <p>BellSouth argues only that DeltaCom’s language is unnecessary – in other words, that the principles embodied in DeltaCom’s request are already covered by other sections of the interconnection agreement. Given BellSouth’s vehement opposition to language that it can attack only as superfluous, its objection is less than convincing. BellSouth has yet to state a substantive objection to the language proposed by DeltaCom. DeltaCom’s language will more explicitly ensure that DeltaCom will have access to the same OSS functions and information provided in the same timeframes and manner as those provided to BellSouth’s retail sales division. Parity and nondiscriminatory access demand no less.⁴</p> <p>⁴ In other states, BellSouth also has proffered a red herring argument that DeltaCom’s language seeks to allow access to functionalities BellSouth is not required to provide such as credit information. DeltaCom does not seek proprietary strategic marketing information from BellSouth and has said so clearly. Again, despite BellSouth’s opinion that DeltaCom’s language is “unnecessary,” the language is consistent with the law and will provide clarity and definition to the relationship between the parties.</p>		

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10	<p>Completion Notifier (Attachment 6 – Section 4.2):</p> <p>Should BellSouth be required to provide DeltaCom a completion notifier?</p>			Closed
11	<p>Access to UNEs (Attachment 2 – Sections 1.1, 1.4 and 1.10):</p> <p>a) Should the interconnection agreement specify that the rates, terms and conditions of the network elements and combinations of network elements are compliant with state and federal rules and regulations?</p> <p>b) Must all network elements be delivered to DeltaCom's collocation arrangement?</p> <p>c) What standards should apply to network elements?</p>	<p>Yes. Several states have retained authority to establish UNEs. The interconnection agreement must be approved by state commissions and therefore must be compliant with state orders and regulations. BellSouth again seeks only the minimum obligation.</p> <p>DeltaCom seeks inclusion of language that requires compliance with state law. A state law reference is particularly appropriate in Florida because of the pro-consumer laws and regulations adopted by the Florida legislature and this Commission. The Florida Legislature has found the competitive provision of telecommunications services, including local exchange services to be in the public interest and the commission is charged to promote competition. (§364.01, Florida Statutes). In the face of this important state authority, BellSouth's opposition to the simple request to include language requiring compliance with state law is dismissive of the Commission's authority, unsupported by any good policy, and hypocritical in light of BellSouth's reliance on state law with regard to other arbitration issues. (See discussion of Issue No. 62 – Back-billing, <i>infra</i>).</p>		The status concerning whether this item is open or closed is disputed by the parties but is subject to further discussion. Currently, DeltaCom believes the issue to be open, whereas BellSouth believes it closed.

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11		<p>The interconnection agreement should specify that BellSouth's rates, terms, and conditions for network elements and combinations of network elements must be compliant with both state and federal rules and regulations. State commissions are given significant authority over interconnection agreements, as evidenced by the existence of this docket. As long as the decisions of this Commission are not inconsistent with, and do not frustrate the implementation of, Section 251 of the Act, they will not be preempted and will remain binding on BellSouth and DeltaCom.</p> <p>BellSouth will cite the Triennial Order language indicating that states cannot create new UNEs or re-establish UNEs that the FCC eliminated, and will argue that this makes state law irrelevant. <u>See</u> Triennial Order, ¶¶ 194-195. This is wrong for at least two reasons grounded in state law.⁵ First, Section 252(e)(3) of the Telecommunications Act clearly preserves states authority to establish or enforce other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. Furthermore, in several instances the TRO encourages state commissions to engage in arbitration hearings or other proceedings to ensure that unbundled network elements are available to competitive carriers. <u>See</u> Triennial Order, ¶¶ 385, 638. Second, state law still applies to govern the parties' relationship. This Commission has significant independent state authority over telecommunications services and federally mandated authority over the interconnection agreement even if certain limitations are placed on that authority by pronouncements of the FCC.</p>		

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11		<p>BellSouth's steadfast refusal to acknowledge the Commission's authority without any apparent justification is troubling to say the least. BellSouth's position also is hypocritical, as BellSouth makes an argument (albeit a flawed one) with regard to backbilling (Issue 62 -- <i>see infra</i>) that is entirely dependent upon state law. BellSouth's audacity was illustrated during the hearing:</p> <p>Q: I listened closely to your summary with regard to Issue 62, and you cited very specifically to the Florida rules with regard to backbilling, didn't you?</p> <p>A: Yes. The telecom rules. Yes, I did.</p> <p>Q: So in that case you're very glad to have the Florida PSC's rules control an issue between these parties --</p> <p>A: Yes.</p> <p>(T-629). The Commission should not countenance BellSouth's hypocrisy and should order that the interconnection agreement include language that requires compliance with Florida state law.</p>		
12	<p>Reciprocity of UNE Services and Conditions (Attachment 2 -- Section 1.3; Attachment 3 -- Section 1.3):</p> <p>Should the interconnection agreement refer to both BellSouth and DeltaCom tariffs?</p>			Closed

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ISSUE NO.	ISSUE DESCRIPTION	DELTACOM POSITION	BELLSOUTH POSITION	ISSUE STATUS
13	<p>Testing of UNEs (Attachment 6 – Section 4.6.23):</p> <p>a) Should BellSouth be required to provide UNE testing results to DeltaCom?</p> <p>b) Should the parties be required to perform cooperative requesting within two hours of a request from the other party?</p>			Closed
14	<p>Prohibition of Use of UNEs to Provide Wireless Service (Attachment 2 – Section 1.5):</p> <p>Should the interconnection agreement prohibit the use of UNEs to provide wireless telecommunications services?</p>			Closed
15	<p>DADAS (Attachment 2 – Section 13.6.1):</p> <p>Should the rates, terms and conditions for DADAS be included in the interconnection agreement?</p>			Closed
16	<p>Does Inside Wire Include Both Wire Owned and Controlled by BellSouth (Attachment 2 – Section 2.2.1):</p> <p>Should BellSouth be required to provide access to inside wire that is owned and/or controlled by BellSouth?</p>			Closed
17	<p>Provisioning and Cutovers (Attachment 2 – Section 3.7):</p> <p>What language should apply to provisioning and cutovers?</p>			Closed

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18	<p>Testing of NXXs. Call Forwarding Variable and Remote Access to Call Forwarding Variable (Attachment 2 – Section 9.2.5.1; Attachment 6 – Section XX):</p> <p>When testing NXXs, DeltaCom needs access to call forwarding, call forwarding variable and remote access to call forwarding variable. Currently there is language in Attachment 6 that allows DeltaCom to use call forwarding features to test whether NXXs are being correctly translated in the BellSouth network. BellSouth now wants to charge retail rates rather than cost-based rates. What rates should apply?</p>			Closed
19	<p>Unbundled Remote Call Forwarding (“URCF”) (Attachment 2 – Section 9.2.5.1.3):</p> <p>Should the interconnection agreement include language that URCF will not be used to forward calls to another URCF or “similar service”?</p>			Closed
20	<p>SS7 (Attachment 2 – Section 16.1.3.2):</p> <p>a) Should BellSouth provide the option of a high speed link for SS7?</p> <p>b) Should BellSouth meet DeltaCom at the central office in the DeltaCom serving wire center?</p>			Closed

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21	<p>Dark Fiber Availability (Attachment 2 – Section 8.1.1):</p> <p>Does BellSouth have to make available to DeltaCom dark fiber loops and transport at any technically feasible point?</p>			Closed pursuant to TRRO/COL.
22	<p>Dark Fiber Parity (Attachment 2 – Section 8.2.1):</p> <p>Whether BellSouth should provide dark fiber to DeltaCom under the same terms and conditions that it provides to itself?</p>			Closed
23	<p>Dark Fiber Holding Period (Attachment 2 – Section 8.2.4):</p> <p>Should BellSouth hold the dark fiber for DeltaCom after receiving a valid, error-free LSR?</p>			Closed
24	<p>Rate and Provision of Performance Data (Attachment 2 – Sections 9.1.4.15 and 11.3.2.3):</p> <p>a) What should be the rate for Performance Data that BellSouth provides to DeltaCom regarding customer line, traffic characteristics, and other information? BellSouth be required to provide performance data for end-user customer line, traffic characteristics and common (shared) transport?</p> <p>b) Should BellSouth be required to provide performance data for customer line, traffic characteristics and common (shared) transport?</p>			Closed

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25	<p>Provision of ADSL Where DeltaCom is the UNE-P Local Provider (Attachment 2 – Section 8.4):</p> <p>Should BellSouth continue providing an end-user with ADSL service where DeltaCom provides UNE-P local service to that same end user on the same line?</p>			Closed
26	<p>Local Switching – Line Cap and Other Restrictions (Attachment 2 – Sections 9.1.3.2 and 9.1.2):</p> <p>a) Is the line cap on local switching in certain designated MSAs only for a particular customer at a particular location?</p> <p>b) Should the Agreement include language that prevents BellSouth from imposing restrictions on DeltaCom’s use of local switching?</p> <p>c) Is BellSouth required to provide local switching at market rates where BellSouth is not required to provide local switching as a UNE? What should be the market rate?</p>			Closed pursuant to TRRO/ COL
27	<p>Treatment of Traffic Associated with Unbundled Local Switching but Using DeltaCom’s CIC (Attachment 2 – Section 9.1.7):</p> <p>Should calls originated by a DeltaCom end-user or BellSouth end-user and terminated to either DeltaCom or BellSouth be treated as local if the call originates and terminates within the LATA?</p>			Closed

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28	<p>Local Switching (Attachment 2 – Sections 9.1.3 through 9.1.63):</p> <p>Should the existing language regarding local switching and other issues be maintained?</p>			Closed
29	<p>AIN Triggers (Attachment 2 – Section 9.1.4.16):</p> <p>Should BellSouth offer AIN triggers on a stand-alone basis via DeltaCom’s interconnected STPs?</p>			Closed
30	<p>Provision of Combinations (Attachment 2 – Sections 1.3 and 1.7):</p> <p>a) Should BellSouth be required to provide combinations if they are technically feasible?</p> <p>b) Should BellSouth be required to provide DeltaCom the same conditions for network elements and combinations that BellSouth has provided to other carriers?</p> <p>c) What terms and conditions should apply to the provisions of combinations?</p>			Closed pursuant to TRRO/COL
31	<p>EELs (Attachment 2 – Sections 10.2 and 10.3):</p> <p>Are new EELs ordered by DeltaCom subject to local use restrictions?</p>			Closed pursuant to TRRO/COL

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32	Availability of EELs (Attachment 2): Should EELs be available everywhere?			Closed
33	Special Access Conversions to EELs (Attachment 2 – Section 10.3.1): Can DeltaCom provide a blanket certification that refers all three safe harbors for special access conversions?			Closed pursuant to TRRO/COL
34	Audits (Attachment 2): Should DeltaCom be required to reimburse BellSouth for the full cost of an audit?			Closed pursuant to TRRO/COL
35	Conversion of DS3 Special Access to EELs (Attachment 2): Should a “switch-as-is” non-recurring charge apply to conversions of special access DS3s to EELs as opposed to a non-recurring charge that is the sum of the elements? If so, what is the appropriate charge?			Closed
36	UNE/Special Access Combinations (Attachment 2 – Sections 10.7 and 10.9.1): a) Should DeltaCom be able to connect UNE loops to special access transport? b) Are special access services being combined with UNEs today?			Closed pursuant to TRRO/COL

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ISSUE NO.	ISSUE DESCRIPTION	DELTACOM POSITION	BELLSOUTH POSITION	ISSUE STATUS
37	<p>Conversion of a Special Access Loop to a UNE Loop that Terminates to DeltaCom's Collocation (Attachment 2):</p> <p>In some instances, DeltaCom has a Special Access loop that goes to DeltaCom's collocation. This is not a combination. The AT&T/BellSouth agreement provides that in such instances the special access loop can be converted to a UNE loop. DeltaCom has requested the same treatment.</p>			Closed pursuant to TRRO/COL
38	<p>Hours of UNE/LCSC Center (Attachment 2 – Section 2.2.2.3):</p> <p>a) Should BellSouth be required to maintain UNE/LCSC hours from 8 a.m. to 5 p.m. local time?</p> <p>Must BellSouth finish a cutover once started?</p>			Closed
39	<p>Definition and Treatment of Local Traffic and Tandem Switching (Attachment 3):</p> <p>a) Should local traffic be defined as any call that originates and terminates within the LATA, is originated by either a DeltaCom or BellSouth end-user, and is terminated to a DeltaCom or BellSouth end-user?</p> <p>b) Does DeltaCom's switch perform tandem switching?</p>			Closed

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40	<p>Point of Interconnection ("POI") (Attachment 3):</p> <p>a) Can a CLEC select only one POI per LATA?</p> <p>b) Should each party pay its own costs to reach that POI within the LATA?</p> <p>c) Should DeltaCom's existing POIs be grandfathered (i.e., not moved to an end office)?</p>			Closed
41	<p>Percent Local Facilities ("PLF") (Attachment 3):</p> <p>Should DeltaCom report a PLF?</p>			Closed.
42	<p>Audits of PIU/PLU (Attachment 3):</p> <p>Does a party have to pay for an audit if the reported factors are more than 20 percentage points overstated?</p>			Closed
43	<p>Trunk Group Service Request ("TGSR") (Attachment 3):</p> <p>Should both parties (not just DeltaCom) use the TGSR to order trunks?</p>			Closed

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44	<p>Establishment of Trunk Groups for Operator Services, Emergency Services, and Intercept (Attachment 3):</p> <p>Should the interconnection agreement set forth the rates, terms and conditions for the establishment of trunk groups for operator services, emergency services, and intercept?</p>	<p>Yes. DeltaCom has its own operator/DA center and must be able to interconnect its TOPS platform with BellSouth's. DeltaCom is connected today and this mutually benefits BellSouth's operator services center as well as DeltaCom. This interconnection helps protect consumers' safety.</p> <p>BellSouth should be required to interconnect with DeltaCom for the purpose of exchanging local traffic, including local operator traffic. This issue is one of public safety and ensuring that Florida consumers can utilize the telecommunications infrastructure to reach one another. There currently are two-way interconnection trunks in place between the parties, fully paid for by DeltaCom at tariffed access rates, and there is no technical reason the parties cannot provide Busy Line Verify ("BLV") and Busy Line Verify Interrupt ("BLVI") services to one another. DeltaCom is one of the few CLECs with its own operator service center. BellSouth's policy discriminates against facilities-based DeltaCom customers and presents serious safety concerns for Florida consumers trying to reach loved ones in times of potential emergency.</p> <p>BLV/BLVI services increase consumer safety. This is where an operator can check a line that is repeatedly busy to determine whether there is conversation on the line (BLV) and can even interrupt the call in an emergency (BLVI). (T-274, 631). BellSouth will perform this service for its own customers, but <i>only</i> if they are calling customers on the BellSouth network and <i>not</i> the DeltaCom network. (T-658-659). BellSouth admits it is technically feasible to perform these services in these</p>	<p>No. These services are no longer UNEs and are therefore provided under the access tariff, not the Agreement.</p>	Open

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44		<p>instances. (T-631, 660-661). BellSouth has admitted in other states that it currently offers operator center-to-operator center connections with some independent telephone companies. BellSouth's policy also negatively impacts other CLEC customers and DeltaCom UNE-P customers on BellSouth's network, who cannot have BellSouth operators perform BLV/BLVI services when calling DeltaCom facilities-based customers. (T-657-658).</p> <p>Moreover, BellSouth's decision to deny BLV/BLVI services to those who seek to check the lines of DeltaCom customers is not based on any technical limitation. BellSouth readily admitted that what DeltaCom seeks is technically feasible and that the trunks to perform these services are in place today. (T-631-632). When asked whether DeltaCom's request was legally prohibited or not, BellSouth agreed that it was not and referred to BellSouth's position in this case as "a business decision." (T-632). Indeed, when asked by Commissioner Deason whether BellSouth could simply transfer a BellSouth customer seeking BLV/BLVI services to the DeltaCom operator, BellSouth could only state that "[t]here probably technically could be a way to do that . . ." (T-661). BellSouth apparently does not want to provide these services to customers – at least when they want to reach DeltaCom customers – no matter how simple the solution.</p> <p>Once again, the law does not support BellSouth's intransigence. Section 251 of the Act requires all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. FCC Rule 51.305(a)(1) further provides that ILECs shall interconnect for the</p>		

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44		<p>“transmission and routing of telephone exchange traffic, exchange access traffic, or both.” Here, the parties have the facilities in place but BellSouth is impeding the ability of its customers and any other CLEC customers using the BellSouth network to interrupt or verify the busy line of a DeltaCom customer.</p> <p>Trunks between the BellSouth and DeltaCom operator centers have been in place for the last five years, and the interconnection agreements between the parties have described the associated rates, terms and conditions. (T-233, 274). Now, BellSouth seeks to remove this language from the interconnection agreement and require DeltaCom to order these services from BellSouth’s access tariff, which doesn’t even address local traffic. ³⁵ This is an unacceptable alternative for DeltaCom because DeltaCom already has its own operator center. (T-233). By simply referencing operator services in its access tariff, BellSouth effectively is refusing to provide BLV/BLVI services to its customers when they call DeltaCom customers. BellSouth discriminatorily refuses to provide BLV/BLVI services to customers who use BellSouth’s network when its customers happen to be calling customers on the DeltaCom network. ³⁵</p> <p>BellSouth’s policy further provides that if a BellSouth customer is trying to reach an DeltaCom customer and the line is perpetually busy, the only option is for that BellSouth customer to dial 911. Aside from the obvious disparity BellSouth’s proposal creates between BellSouth and DeltaCom customers, not all calls in which a BLV/BLVI might be performed merit a call to 911. As Mr. Brownworth for DeltaCom</p>		

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44		<p>aptly noted, “[w]e do not feel it is appropriate to send consumers to 911 to investigate busy signals.” (T-275). For example, if conversation is heard on the line, there might be no need to involve precious and limited emergency services. BellSouth’s policy thus encourages haphazard customer behavior with regard to 911 calls. Furthermore, what if there is an emergency, but it has occurred on the caller’s end? In that case, BellSouth’s policy prevents consumers from reaching loved ones – specifically, loved ones who are on the DeltaCom network – in times of concern and potential emergency. The Commission should not countenance this policy and should order BellSouth to take appropriate measures to secure the safety of Florida consumers.</p> <p>BellSouth has implied that DeltaCom’s request in this case is insincere because DeltaCom has not made its request to apply generally to the industry. Amazingly, BellSouth seems to criticize DeltaCom’s concerns over safety as <i>insufficiently broad</i>, since the result of this case would be only to ensure BLV/BLVI capability between the operator platforms of DeltaCom and BellSouth. Surely BellSouth does not suggest that it is willing to provide BLV/BLVI for all providers, but not for DeltaCom.</p> <p>This is a two-party Section 252 arbitration to determine interconnection agreement language and DeltaCom has appropriately not treated it as a generic docket. Moreover, very few CLECs are similar to DeltaCom because the vast majority do not have their own operator services platforms. (T-233). In any event, with regard to operator services issues and public safety, DeltaCom would gladly participate in a</p>		Open

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44		<p>generic Commission effort to interconnect all operator services platforms if the Commission deems such a proceeding appropriate. DeltaCom has no objection to applying operator services interconnection requirements on a statewide basis to improve public safety. To promote safety, for purposes of this case, the Commission should require BellSouth to interconnect operator platforms and provide BLV/BLVI services to their customers when they want to reach DeltaCom customers.³⁶</p> <p>³⁴ See Section 18 of BellSouth's Access Tariff (Operator Services), which only refers to inter-LATA services and IXCs. There are no references to local service or to CLECs.</p> <p>³⁵ To the extent BellSouth incurs costs in providing this service to customers calling a DeltaCom customer, it can recover such costs from the customers who ask for the service.</p> <p>³⁶ The NCUC Staff recently recommended in the North Carolina arbitration that DeltaCom's positions be adopted on both Issue 44 and 46. NCUC Staff Recommendation, pp. 21-23.</p>		Open
45	<p>Switched Access Charges Applicable to BellSouth (Attachment 3 – Section 9.2):</p> <p>Should DeltaCom be able to charge BellSouth switched access charges where BellSouth is the interexchange carrier?</p>			Closed

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46	<p>BLV/BLVI (Attachment 3):</p> <p>Is the lanaguage proposed by DeltaCom for BLV/BLVI ("Busy Line Verification") acceptable to BellSouth?</p>	<p>DeltaCom has proposed language that is in the parties' current interconnection agreement. Unlike other CLECs, DeltaCom has its own operator/DA center and must be able to interconnect with BellSouth. BellSouth provides BLV/BLVI when its customers call other BellSouth customers – just not when BellSouth customers call DeltaCom customers.</p> <p>See Issue 44 for further explanation of DeltaCom's position.</p>	<p>BellSouth will provide BLV/BLVI in a nondiscriminatory manner and at parity with how it provides such functionality to its retail customers.</p>	Open
47	<p>Compensation for the Use of DeltaCom's Collocation Space ("Reverse Collocation") (Attachment 4):</p> <p>Should BellSouth be required to compensate DeltaCom when BellSouth collocates in DeltaCom's collocation space? If so, should the same rates, terms and conditions apply to BellSouth that BellSouth applies to DeltaCom?</p>	<p>Yes. This is contained in existing agreement language. The rates, terms and conditions BellSouth applies to DeltaCom in this situation should be applied to BellSouth when it collocates in DeltaCom's collocation space. BellSouth uses DeltaCom's space to serve DeltaCom's competitors – all DeltaCom asks is to be compensated for this use.</p> <p>BellSouth admits that it uses DeltaCom collocation space to serve carriers who are competitors of DeltaCom. (T-632-633). Indeed, it is undisputed that BellSouth realizes significant revenue from such facilities. BellSouth does not even try to hide the fact that it reaps obvious benefits from the use of DeltaCom's collocation space:</p> <p>Q. And you would agree with me that BellSouth today has some equipment located on DeltaCom's premises in the State of Florida; correct?</p> <p>A. Yes. We -- I think there are seven or ten locations, depending on how you want to count them. There's one where we have three or four sets of equipment placed there, and I think that's counted twice, where we've been over the years providing special access services to either DeltaCom directly or to customers of DeltaCom.</p>	<p>BellSouth does not collocate in any DeltaCom premises, as the term "collocation" is defined by the Telecommunications Act of 1996; therefore, BellSouth does not need a collocation agreement and should not be forced to enter into a collocation agreement with DeltaCom. BellSouth has never collocated its equipment in DeltaCom's central offices for the purposes of collocation, nor does BellSouth have such an intention.</p>	Open

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47		<p>Q. And BellSouth uses that equipment or has the potential to use that equipment to provide services to telecommunications companies who compete with DeltaCom, you would agree with that; correct?</p> <p>A. Yes. The potential is there.</p> <p>Q. And BellSouth would charge those competitors of DeltaCom and thus realize revenue from that equipment that is BellSouth's equipment located on the premises of DeltaCom in Florida; correct?</p> <p>A. Yes. If it did that, it would.</p> <p>(T-632-633). BellSouth refuses to agree to a provision in the interconnection agreement that would require payment for this usage of DeltaCom's space. This is yet another example of BellSouth's unwillingness to accept reciprocal terms in the interconnection agreement. When DeltaCom places equipment in BellSouth's space, BellSouth charges for the space, space preparation, power requirements, cross-connect charges (where applicable), and rent on the use of space and power for DeltaCom equipment. (T-272). These rates for collocation were set by the Commission. Indeed, BellSouth argued strongly that these rates were too low. However, when BellSouth seeks to use DeltaCom's space, it expects to receive this space and associated services for no charge.</p>		Open

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47		<p>(T-583-584). BellSouth refuses to pay (even at rates it claimed to the Commission were too low) for use of DeltaCom's spaces.</p> <p>BellSouth agreed just prior to the last arbitration proceeding with DeltaCom to pay reverse collocation charges. (T-613). It turns out that DeltaCom didn't understand the agreement the same way that BellSouth did. As BellSouth witness Ruscilli noted in his rebuttal testimony, "BellSouth did so because it believed there to be no harm in signing the agreement, since BellSouth had no intention of electing to collocate its equipment, <i>as this term is defined by the Act</i>, in a DeltaCom central office for the purposes of interconnection or access to UNEs." (T-613) (emphasis added). This disingenuous word parsing <i>should not be rewarded</i>. Incredibly, as BellSouth defines collocation, it could never be collocated at DeltaCom's premises.³⁷ Why sign the agreement? BellSouth's tortured explanation is revealing.</p> <p>Whether DeltaCom has a duty to permit collocation of BellSouth equipment in its space is not the issue. The issue is reciprocity and whether BellSouth must compensate DeltaCom when it uses DeltaCom's space to serve DeltaCom's competitors. BellSouth correctly points out that it has located equipment in DeltaCom's Points of Presence ("POPs") for provisioning special and switched access services ordered by DeltaCom. (T-651). However, that is not the only activity of BellSouth with regard to the equipment it locates in DeltaCom's space. BellSouth can use this equipment to support products sold to other carriers, where DeltaCom is the interexchange provider and BellSouth is the local provider. (<i>id.</i>).</p>		

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47		<p>It also delivers BellSouth DS3s for BellSouth local-originated traffic on this equipment. (<i>Id.</i>) DeltaCom should not be forced to allow BellSouth to utilize excess capacity to benefit competitors of DeltaCom without reasonable compensation.</p> <p>In considering the use of BellSouth equipment in DeltaCom collocation space to serve other carriers, the NCUC Staff recently recognized the inequity of BellSouth's position:</p> <p>... [I]t does not appear that ITC is required to provide space without charge for the provision of either special or switched access to other parties or local interconnection. Such a requirement would be inequitable. Similarly, the Commission can see no justification for allowing BellSouth to avoid payment of collocation charges for equipment already located in ITC space or augments to that equipment. Moreover, just as BellSouth would require ITC to pay for collocation space if BellSouth designates its own space as a point of interconnection, BellSouth should compensate ITC when ITC designates its own space as a point of interconnection for the delivery of BellSouth's originated traffic. Therefore, the Commission finds that BellSouth should compensate ITC for collocation of BellSouth equipment in ITC space when the</p>		

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47		<p>equipment is used for local interconnection or the provision of switched or special access to carriers other than ITC.</p> <p>NCUC Staff Recommendation, p. 25. This Commission should adopt the same reasoning and order BellSouth to pay collocation charges where appropriate.</p> <p>The appropriate collocation rate is the Commission-ordered collocation rate, which BellSouth agrees is appropriate and reasonable. BellSouth's only defense appears to be that this issue is not "appropriate" for a Section 252 arbitration because of its legal argument about the duty to collocate. Independent of BellSouth's legal argument, the issue of compensation for use of DeltaCom's space is still an "unresolved issue" regarding the interconnection agreement between the two parties. The Commission should order BellSouth to pay to DeltaCom the Commission-ordered rate for collocation whenever BellSouth utilizes DeltaCom space for activities other than those requested by DeltaCom.</p> <p>Even if BellSouth's narrow view of the duty to collocate were correct, its refusal to pay DeltaCom for use of DeltaCom space to serve other carriers would not be justified under the Act. Further, if the rates, terms, and conditions for such interconnection services cannot be successfully negotiated between parties, the Commission "shall determine the reasonable rates, terms, or conditions for the interconnection services." The Commission has already established a rate for collocation and should apply it to BellSouth's use of DeltaCom space.</p>		

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47		<p>³⁷ BellSouth argues that only ILECs have a duty to permit collocation of other carriers' equipment in its locations, citing Section 251(c)(6) of the Act and emphasizing that the duty to provide physical collocation is "at the premises of the local exchange carrier." (47 U.S.C. § 251(c)(6)). However, "local exchange carrier" is defined in the Act as "any person that is engaged in the provision of telephone exchange service or exchange access" and thus is not limited to incumbents. 47 U.S.C. § 153(26). BellSouth also ignores the duty under Section 251(a)(1) of the Act of all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."</p>		
48	<p>Provision of Terminations in Excess of Capacity of Equipment (Attachment 4 – Section 5.1.4):</p> <p>Should BellSouth limit the number of terminations?</p>			Closed
49	<p>Requirement to Provide List of Entities with an Interest in DeltaCom's Collocation Equipment (Attachment 4 – Section 5.2):</p> <p>Must DeltaCom provide to BellSouth a list of those entities with a security interest in equipment in DeltaCom's collocation space?</p>			Closed
50	<p>Subsequent Application Fee and Application Modification (Attachment 4 – Section 6.3.1):</p> <p>Can BellSouth charge a subsequent application fee and/or other charges when no work is actually required?</p>			Closed

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51	<p>Reciprocity of Charges (OSS Charges, Expedite Charges, "Change in Service Provider or Disconnect Charges", and any other Charges) (Attachments 1, 5 and 6):</p> <p>a) Is DeltaCom entitled to assess charges to BellSouth for work performed on LSRs sent from BellSouth to DeltaCom (i.e., an OSS charge)?</p> <p>b) Should DeltaCom be able to assess against BellSouth a "Change in Service Provider" charge?</p> <p>c) Should DeltaCom be able to assess charges for work or performance for BellSouth?</p>			Closed
52	<p>Sharing of Cost of Facilities for Transit Traffic :</p> <p>a) Should BellSouth share 50% of the cost of the interoffice dedicated transport and local channel when BellSouth routes its originating local traffic over the transit trunk group?</p> <p>b) Should DeltaCom be compensated for common transport and compensation minutes for this traffic?</p>			Closed

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53	<p>Rates and Charges not Ordered by the Commission (All Rate Sheets; Attachment 6 – Section 6; Attachment 2 – Section 22.3.3):</p> <p>a) Should BellSouth be permitted to impose charges related to UNEs that have not been ordered by the Commission in its recent Order in the generic docket for setting UNE rates?</p> <p>c) Should BellSouth provide rate sheets for its contracts that specifically and separately identify those rates that have been approved by a Commission from those rates that BellSouth is proposing?</p>			Closed
54	<p>Reimburse Costs to Accommodate Modifications (Attachment 2 – Section 2.2.2.8):</p> <p>Can BellSouth impose a charge that has not been approved by the Commission for changes to an order after an FOC has been issued?</p>			Closed
55	<p>Resend of CFA Fee:</p> <p>Is the CFA fee reasonable and cost-based?</p>			Closed

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56	<p>Cancellation Charges:</p> <p>a) May BellSouth charge a cancellation charge which has not been approved by the Commission?</p> <p>b) Are these costs already captured in the existing UNE approved rates?</p>	<p>a) No. Cancellation charges have not been approved by the Commission.</p> <p>b) The basis for a separate cost-based cancellation charge has not been established by BellSouth.</p> <p>BellSouth should not be permitted to impose or include in the interconnection agreement a "cancellation charge" which is not derived from factors supported by record evidence. BellSouth seeks to impose this cancellation charge despite the fact that BellSouth has made no cost study to support the factors that set such a rate. (T-186-188). BellSouth simply seeks to incorporate factors from its interstate access tariff or private line tariff. (T-187-188).</p> <p>The Commission has the jurisdiction to set UNE rates. BellSouth argues that its proposed rates are unrelated to UNEs, but in fact they relate to charges associated with ordering network elements. BellSouth slyly argues its proposed rates are "Commission-approved," but of course it means FCC-approved and is not referring to this Commission. Moreover, the Commission should be concerned about adopting a precedent that would authorize BellSouth to "in the context of an interconnection agreement . . . just reach out and grab FCC tariff terms and conditions . . ." (T-187). It will be virtually impossible for this Commission and competitive carriers like DeltaCom to know which of the thousands of filed rates at the FCC it needs to investigate and potentially challenge as not cost-based. The Commission should not allow BellSouth unchecked authority to incorporate FCC tariff rates not supported before and approved by this Commission.</p>	<p>a) BellSouth is entitled to recover its costs for the provision of UNEs. To the extent that a particular element has not been ordered by the Commission in a generic proceeding and BellSouth proposes such rate in the context of negotiating an interconnection agreement BellSouth should not be precluded from litigating the issue before the Commission in the arbitration. Section 252(c)(2) of the Act clearly requires resolution of rates issues in an arbitration proceeding.</p> <p>b) These costs are not already recovered in the existing UNE approved rates.</p>	Open

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56		<p>BellSouth claims it is using the nonrecurring ordering charge approved by this Commission and applying certain factors to it to determine the appropriate cancellation charge. However, the factors and percentages used by BellSouth still come from the FCC tariff and are based on a 1990 access filing with that Commission. (T-187). This means the FCC either accepted the filing without review, or even if the FCC reviewed the 1990 filing, it "approved" it based on an entirely different standard than this Commission uses with regard to UNE rates. (T-187-188). The reference chosen by BellSouth from that 1990 filing relates to a service that has very little to do with the work activities at issue in this docket. (T-188).</p> <p>Specifically, Section 5.4(B)(2) of BellSouth's FCC Access Tariff provides that if the customer cancels an Access Order on or after the Design Layout Report Date, a cancellation charge is determined using the critical dates in subsection 4(b). There are 12 critical dates and the percentages for each critical date are contained in Section 5.4(B)(4)(e). As explained by Mr. Wood, BellSouth is taking these factors to generate a cancellation charge for a "designed service or circuit" and the factors simply do not apply to a UNE. (T-188). It is noteworthy that there is no cancellation charge in BellSouth's General Subscribers' Tariff.</p>		

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56		<p>BellSouth is asking this Commission to approve a set of factors that will be used to generate a charge for UNE services that has not been analyzed by the Commission. (T-187-188). This Commission, BellSouth, and the CLECs just went through an extensive cost case in Docket No. 990649-TP. BellSouth had ample opportunity in that case to provide support for the cancellation charge it seeks to impose. To date, BellSouth has not provided any study to support its proposed factors. (T-192). For these many reasons, BellSouth should not be allowed to impose its unsupported, non-approved cancellation charge.</p> <p>³⁸ The NCUC Staff has recently agreed with DeltaCom in the parties' North Carolina arbitration, noting that BellSouth has "failed to make any showing that its cancellation charges are TELRIC-based as required for Section 251 pricing of unbundled network elements." NCUC Staff Recommendation, p. 27. The NCUC Staff thus recommended that "BellSouth may not assess a cancellation charge which has not been approved by this Commission." <u>Id.</u></p>		

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57	<p>Rates and Charges for Conversion of Customers from Special Access to UNE-based Service (Attachment 2 – Section 2.3.1.6):</p> <p>a) Should BellSouth be permitted to charge for DeltaCom conversions of customers from a special access loop to a UNE loop?</p> <p>b) Should the conversion be completed such that there is no disconnect and reconnect (i.e., no outage to the customer)?</p>			Closed pursuant to TRRO/ COL
58	<p>Unilateral Amendments to the Interconnection Agreement (Attachment 6 – Sections 1.8 and 1.13.2; Attachment 3):</p> <p>a) Should the Interconnection Agreement refer to BellSouth's website address to Guides such as the Jurisdictional Factor Guide?</p> <p>b) Should BellSouth be required to post rates that impact UNE services on its website?</p>			Closed
59	<p>Payment Due Date (Attachment 7 – Sections 1.4 and 1.4.1):</p> <p>Should the payment due date be thirty days from the receipt of the bill?</p>			Closed

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60	<p>Deposits (Attachment 7 – Section 1.11):</p> <p>a) Should the deposit language be reciprocal?</p> <p>b) Must a party return a deposit after generating a good payment history?</p>			Closed
61	<p>Method of Filing Billing Disputes (Attachment 7 – Section 3.2):</p> <p>Should BellSouth use the same form and procedure for submitting a billing dispute to DeltaCom that BellSouth imposes on DeltaCom?</p>			Closed
62	<p>Limitation on Back Billing (Attachment 7 – Section 3.5):</p> <p>What is the limit on back billing for undercharges?</p>	<p>Yes. The limit should be no longer than 90 days. Backbilling charges longer than 90 days is inappropriate and puts DeltaCom in an untenable position with its retail customers. Laws and rules regarding retail billing are not the appropriate analogy, and in fact support DeltaCom's position in this case</p> <p>The Commission does not have a rule or regulation regarding back-billing between carriers. Therefore, DeltaCom asks that this issue be addressed in the interconnection agreement. Back-billing for extended periods of time exposes both companies to the problem of not being able to establish accurate cost structures for the pricing of retail services. It also makes it more difficult for the party receiving the late charges to verify their accuracy, as some data needed to do so may no longer be readily available. As an example of this problem, DeltaCom received a notice on March 21, 2003 from BellSouth regarding backbilling for daily usage file ("DUF") records provided in <i>February of 2000</i>. (Ex. 6). The underbilled portion of the ODUF/ADUF records provided from February 2000 to November 2001 is \$550,000.</p>	<p>BellSouth's limitations for back billing are pursuant to the applicable state's statute of limitation.</p>	Open

**DELTACOM/BELLSOUTH
ARBITRATION ISSUES MATRIX
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ISSUE NO.	ISSUE DESCRIPTION	DELTACOM POSITION	BELLSOUTH POSITION	ISSUE STATUS
62		<p>This type of mistake should not be allowed to continue, as it creates obvious impediments to DeltaCom's ability to know its costs and compete with BellSouth on a retail basis.</p> <p>BellSouth argues for reference to Commission Rule 25-4.110(10) for retail customers, which states, "[w]here any undercharge in billing of a customer is the result of a company mistake, the company may not backbill in excess of 12 months." This argument should be rejected, especially in the context of intercarrier billing in the telecommunications industry.</p> <p>BellSouth implied two additional arguments through its cross-examination. The first is that DeltaCom is limited in its own backbilling to retail customers based on either tariff limitations or retail billing rules across the region. (T-122). Retail billing time periods are not an appropriate analogy. The issue in this arbitration regards wholesale billing between carriers, which actually can have a tremendous impact on accurate and timely billing to <i>retail</i> customers. Second, BellSouth asked the following question:</p> <p>[L]et's assume that BellSouth made a mistake in your favor. For example, let's assume that BellSouth overbilled DeltaCom for more than 90 days. Under your position, would BellSouth owe DeltaCom only for 90 days or for more than 90 days?</p>		Open

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62		<p>(T-120-121). BellSouth clearly misunderstands DeltaCom's position. In the case where BellSouth underbills, it is <i>BellSouth's</i> fault. DeltaCom asks in these cases that backbilling be limited to 90 days – and agrees to abide by the same rule with regard to its billing to BellSouth. Likewise, in the case described in the hypothetical question posed by BellSouth counsel (over-billing), it is yet again a <i>BellSouth</i> mistake, albeit an entirely different one. In neither case should the appropriate remedy be to punish the non-mistaken party. If BellSouth overbills DeltaCom, it should correct the mistake by providing a refund. DeltaCom agrees that it should abide by the same principle if it overbills BellSouth. BellSouth's analogy is faulty and a hollow attempt to distract the Commission from the real issue.⁴²</p> <p>DeltaCom asks the Commission to limit backbilling by 90 days to accomplish two very important public policy goals: (1) to provide incentive to BellSouth to clean up its frustrating and often inaccurate billing system; and (2) to ensure some stability and reasonable expectations between the parties regarding the costs of doing business. BellSouth's attempts to correct errors made several months or even years ago puts DeltaCom at a severe disadvantage in terms of planning and competition in the retail market.</p> <p>⁴² The NCUC Staff has recently recommended in the North Carolina arbitration that it is appropriate to limit backbilling to 90 days. NCUC Staff Recommendation, p. 36.</p>		Open

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ISSUE NO.	ISSUE DESCRIPTION	DELTACOM POSITION	BELLSOUTH POSITION	ISSUE STATUS
63	<p>Audits (Attachment 7):</p> <p>Is it appropriate to include language for audits of the parties' billing for services under the agreement?</p>	<p>Yes. DeltaCom offered the language from AT&T's Interconnection Agreement. BellSouth should provide the same treatment to DeltaCom it is willing to provide to AT&T.</p> <p>DeltaCom wants the right to audit the voluminous bills sent by BellSouth every month. DeltaCom has asked for the language in the AT&T/BellSouth interconnection agreement approved by the Commission, but BellSouth has refused to include this language based on its tortured view of the "pick and choose" rule. Aside from the "pick and choose" rule, DeltaCom wants the contractual right to audit BellSouth bills, effective for the full term of the interconnection agreement at issue in this case.</p> <p>BellSouth erroneously views this issue as simply a legal debate over the "pick and choose" rule in Section 252(i) of the Act. DeltaCom has requested the same language that BellSouth provides to AT&T regarding the right to audit BellSouth bills. However, BellSouth argues this language would only be effective as long as the AT&T agreement is in place. DeltaCom rejects this view of the "pick and choose" rule as unworkable. It would leave the BellSouth/DeltaCom interconnection agreement silent as to audit rights when the AT&T contract expires. Moreover, if the language is appropriate for inclusion in the AT&T agreement, it is appropriate for the DeltaCom agreement – for the full length of the DeltaCom agreement.⁴³</p>	<p>Adoptions pursuant to 47 USC § 252(i) are limited to network elements, services, and interconnection rates, terms and conditions and do not apply to other aspects of the Interconnection Agreement that are not required pursuant to Section 251. 47 USC § 252(i) only requires an ILEC to make available "any interconnection, service, or network element" under the same terms and conditions as the original Interconnection Agreement. Billing is not a Section 251 requirement subject to Section 252(i) and is, therefore, not subject to the pick and choose rule.</p>	Open

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63		<p>More important than a legal debate over the extent of BellSouth's "pick and choose" obligations, however, is the substantive underlying need for DeltaCom to have audit rights with regard to BellSouth's bills. DeltaCom receives approximately 1,700 invoices from BellSouth every month. (T-138). These are transmitted over 21 billing cycles and each invoice contains substantial amounts of data. Without the right to audit BellSouth, DeltaCom has no effective way of ensuring that the billing process on BellSouth's side is accurate and functioning properly. The issue is therefore very important with regard to an essential component of the parties' business relationship.</p> <p>Desperate to justify its discriminatory treatment of DeltaCom, BellSouth will argue that DeltaCom's request for audit rights is unnecessary given the Commission's performance measures and penalties regarding the accuracy of BellSouth's billing. This blasé attempt to dismiss DeltaCom's concerns misses the mark. BellSouth's compliance or non-compliance with billing accuracy standards has nothing to do with DeltaCom's issue in this case. Even if BellSouth meets the standards set by the Commission, that wouldn't provide DeltaCom with the information needed to <i>audit</i> BellSouth's invoices. DeltaCom wants to use its own resources to audit bills for accuracy, not simply observe as BellSouth either passes muster with regard to the billing standards or suffers financial penalties as a result of a failure to perform.</p>		

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63		<p>BellSouth refuses to act reasonably regarding audits, despite the fact that DeltaCom has agreed to allow BellSouth audit rights with regard to several other issues in the interconnection agreement. These include auditing systems regarding Percent Interstate Usage ("PIU"), Percent Local Usage ("PLU"), Percent Local Facilities ("PLF") and local percentage usage for EELs. DeltaCom has agreed with regard to all of these issues to afford auditing rights to BellSouth. (T-637-638). The Commission should order, for the full term of the agreement at issue in this case, that BellSouth be obligated to provide DeltaCom auditing rights identical to those provided to AT&T.</p> <p>⁴³ The NCUC Staff fully agreed with DeltaCom on this point in its Recommendation in the North Carolina arbitration. The NCUC rejected BellSouth's "pick and choose" ploy by simply recommending the inclusion of language in the DeltaCom interconnection agreement – for the term of that agreement – providing for the auditing of billing functions. NCUC Staff Recommendation, p. 37.</p>		
64	<p>ADUF:</p> <p>What terms and conditions should apply to ADUF?</p>			Closed pursuant to TRRO/ COL
65	<p>Notification of Changes to OSS and Changes of Business Rules/Practices (Attachment 6 – Sections 1 and 1.13.2):</p> <p>a) Should BellSouth provide notice via telephone or e-mail when there are going to be changes to OSS with less than 60 days advance notice?</p> <p>b) Must BellSouth be required to provide notice 60 days in advance of deployment of OSS changes that would impact DeltaCom?</p>			Closed

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66	<p>Testing of End-User Data (Attachment 6 – Section 1.3):</p> <p>Should BellSouth provide testing of DeltaCom end-user data to the same extent BellSouth does such testing of its own end user data?</p>			Closed
67	<p>Availability of OSS Systems (Attachment 6 – Section 3.3):</p> <p>May BellSouth shut down OSS systems during normal working hours (8 a.m. to 5 p.m.) without notice or consent from DeltaCom?</p>			Closed
68	<p>Provision of Customer Service Records:</p> <p>What requirements should apply to the provision of customer service records?</p>			Closed
69	<p>Inadvertent Transfer of Customers:</p> <p>Should there be a process to allow a carrier to return a customer to its preferred provider in situations where the customer was inadvertently transferred to either DeltaCom or BellSouth?</p>			Closed
70	<p>Reimbursement of Costs for Trouble Analysis and Error Resolution:</p> <p>Should BellSouth reimburse DeltaCom for DeltaCom's costs where BellSouth's errors require DeltaCom to do trouble analysis and error resolution?</p>			Closed
71	<p>Reciprocity of Porting Procedures:</p> <p>Should the parties utilize the same porting procedures?</p>			Closed