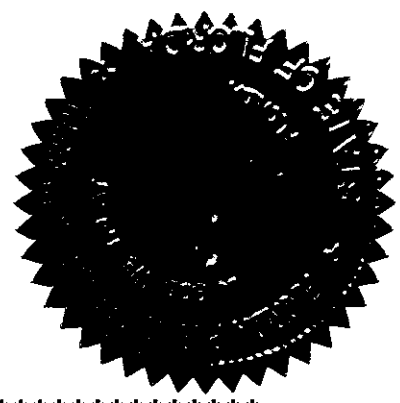


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 990750-TP

Petition by ITC^DeltaCom :
 Communications, Inc. d/b/a :
 ITC^DeltaCom for arbitration :
 of certain unresolved issues :
 in interconnection negotiations :
 between ITC^DeltaCom and :
 BellSouth Telecommunications, :
 Inc. :



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VOLUME 1

Pages 1 through 193

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER SUSAN F. CLARK
 COMMISSIONER E. LEON JACOBS, JR.

DATE: Wednesday, October 27, 1999

TIME: Commenced at 9:45 a.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
 FPSC Division of Records & Reporting
 Bureau Chief, Reporting

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10 **ITC^DeltaCom.**

11 **MICHAEL COGGIN** and **THOMAS B. ALEXANDER**,
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15 **Telecommunications, Inc.**

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19 appearing on behalf of the **Commission Staff.**

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P R O C E E D I N G S

(The hearing convened at 9:45 a.m.)

COMMISSIONER CLARK: Please read the notice.

MS. CALDWELL: Pursuant to notice this time and place were set for hearing in Docket 990750-TP, petition by ITC^DeltaCom Communications, Inc. doing business as ITC^DeltaCom for arbitration of certain unresolved issues and interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications.

COMMISSIONER CLARK: Take appearances.

MR. GOGGIN: Michael Goggin and Tom Alexander for BellSouth Telecommunications.

MR. BERTRON: Andy Bertron with Huey, Guilday & Tucker, ITC^DeltaCom.

MR. ADELMAN: David Adelman, the law firm of Sutherland, Asbill & Brennan for ITC^DeltaCom. With me today is Clay Jones, also from our firm.

MS. EDWARDS: Nanette Edwards, in-house counsel, ITC^DeltaCom.

MS. CALDWELL: Diana Caldwell, Florida Public Service Commission, on behalf of the Staff.

COMMISSIONER CLARK: That was Nanette Edwards.

MS. EDWARDS: Yes. N-A-N-E-T-T-E. Edwards, E-D-W-A-R-D-S.

1 **COMMISSIONER CLARK:** Thank you.

2 Ms. Caldwell, are there any preliminary
3 matters we need to take up?

4 **MS. CALDWELL:** Yes, ma'am. First of all is
5 the treatment of confidential information. Several
6 requests for confidential treatment of information has
7 been filed. Orders will be brought separately to the
8 Prehearing Officer for his consideration after the
9 hearing. In the meantime, I believe everyone
10 understands the information will be treated as
11 confidential during the hearing.

12 **COMMISSIONER CLARK:** We'll follow procedures
13 in the Prehearing Order for handling that.

14 **MS. CALDWELL:** That's correct.

15 The next thing is there is -- there are some
16 outstanding motions. The first one, BellSouth has an
17 outstanding Motion to Compel. Staff was expecting a
18 Notice of Withdrawal on that motion. ITC^DeltaCom had
19 an outstanding motion and they had filed their Notice
20 of Withdrawal of the ITC^DeltaCom Motion to Compel.
21 So we need to find out from BellSouth what they intend
22 to do with their Motion to Compel.

23 **COMMISSIONER CLARK:** Mr. Alexander.

24 **MR. ALEXANDER:** Good morning. Thank you.

25 We withdraw our Motion to Compel as well.

1 We have received information that the Commission has
2 gotten a copy of, a redacted version, and I also
3 received from Ms. Edwards a fax on Friday, I believe
4 it was, containing the other information that we
5 received on our agreement. So I believe we have now
6 got all that information. We withdraw our motion.

7 **MS. CALDWELL:** Okay. The next is the --
8 there's several things that we have to deal with. One
9 is there has been a motion for reconsideration of the
10 issues that were stricken in the prehearing. And in
11 addition to that, we need to deal with testimony that
12 needs to be stricken. So I don't know whether we
13 should address the motion first or whether we should
14 deal with theses -- whether we deal with striking the
15 testimony.

16 **COMMISSIONER CLARK:** Okay. There are two
17 motions on reconsideration, but there's the -- go
18 ahead.

19 **MS. CALDWELL:** There's one motion for
20 reconsideration.

21 **COMMISSIONER CLARK:** I'm sorry. And there's
22 another motion to strike testimony not related to the
23 motion to reconsider --

24 **MS. CALDWELL:** It's not a Motion to Strike
25 Testimony. It was ordered in the Prehearing Order

1 that the parties get together and provide us a list of
2 the testimony to be stricken. We have two lists that
3 the parties are working with. And I think what they'd
4 like to do is have some time -- since they just
5 received this this morning, have some time to go
6 through and reconcile the list and then would present
7 a list to us.

8 **COMMISSIONER CLARK:** I guess my question is,
9 is the testimony to be stricken based on the motion --
10 what was stricken as issues?

11 **MR. ALEXANDER:** Correct.

12 **MR. ADELMAN:** Maybe I can -- I think the
13 answer is yes. As you know, as part of the
14 prearbitration process, BellSouth asked that certain
15 issues be excluded. Commissioner Jacobs at the
16 prearbitration conference on October 11th granted
17 BellSouth's motion and directed the parties to
18 reconcile that with the prefiled testimony. The
19 parties have endeavored to do so by exchanging lists
20 of testimony which the parties, in their opinion,
21 believed needed to be stricken to comply with
22 Commissioner Jacobs' decision.

23 And the list, just in glancing at it -- we
24 just received our list from Bell this morning. Just
25 in glancing at it, it appears to have a good deal of

1 overlap, although there may be some areas where
2 ITC^DeltaCom submits testimony should not be stricken
3 and vice versa.

4 So, what I would suggest, and we had
5 discussed this morning this process, is we could go
6 forward and, perhaps, take time during the lunch hour
7 to compare the two proposals and determine whether
8 there's any material dispute.

9 **MR. ALEXANDER:** If I can just add, I believe
10 that's accurate, but in addition to the issues that
11 were struck, there were also a number of issues that
12 are reflected in the Prehearing Order that have been
13 resolved. And that's a good bit of the ones that we
14 found not to be on the DeltaCom list but I think we
15 can work through those. It's a combination of issues
16 that have been struck and those have been resolved to
17 be consistent with the Prehearing Order.

18 **COMMISSIONER CLARK:** So what I understand is
19 that we can sort of leave that pending, and you'll
20 work on it during lunch, the stricken testimony. So
21 maybe it makes sense to go to the Motion for
22 Reconsideration.

23 I have seen -- BellSouth, have you filed a
24 response to that?

25 **MR. GOGGIN:** No, we have not.

1 **COMMISSIONER CLARK:** Okay. Because I guess
2 I did see the motion -- so we should take up the
3 Motion for Reconsideration?

4 **MS. CALDWELL:** I believe that would be
5 appropriate at this time.

6 **COMMISSIONER CLARK:** Okay. Mr. Adelman.

7 **MR. ADELMAN:** Adelman, yes.

8 **COMMISSIONER CLARK:** Adelman. I'm sorry.

9 **MR. ADELMAN:** With my apologies to
10 Commissioner Jacobs who heard these arguments on
11 October 11th at great length, I'll try to be succinct.

12 **COMMISSIONER CLARK:** I have read your
13 motion.

14 **MR. ADELMAN:** I can either present this
15 directly or simply respond to questions if you'd
16 rather.

17 **COMMISSIONER CLARK:** All right. Let me ask
18 a question. I thought in some of the testimony there
19 was an indication that other states have arbitrated
20 performance standards; is that right?

21 **MR. ADELMAN:** We have had -- and to be clear
22 it is performance standards and guarantees -- we have,
23 in connection with these two companies in the past six
24 weeks or so, presented evidence in the state of
25 Louisiana to an Administrative Law Judge in that case

1 on this issue. She, to be clear, has simply taken the
2 issue under advisement and received evidence on that
3 condition.

4 We have presented the testimony in the state
5 of South Carolina to the full commission, and, indeed,
6 the state of South Carolina heard the testimony. And
7 I believe in response -- I don't have the South
8 Carolina order here -- has indicated there will be a
9 generic proceeding with regard to these issues.

10 **COMMISSIONER CLARK:** So to be clear, then
11 there is no commission who has yet found that they
12 have the authority to include -- as a result of
13 arbitration, include in those agreements performance
14 guarantees.

15 **MR. ADELMAN:** In the state of Louisiana it
16 was an Administrative Law Judge. In the state of
17 North Carolina, before that panel, they took the issue
18 under advisement and received evidence. I think the
19 answer is you're correct, there is no case where they
20 have taken the issue and made an affirmative finding
21 they have jurisdiction but rather received evidence.
22 Keep in mind, we're pretty early in this process and
23 we anticipate, and certainly are hopeful, that those
24 states will find they do, indeed, have jurisdiction.
25 They have received the evidence.

1 **COMMISSIONER CLARK:** Mr. Goggin, do you want
2 to respond to that?

3 **MR. GOGGIN:** Yes. First, Commissioners, I
4 guess I should apologize. We have not filed a written
5 response. We received this yesterday but we have
6 prepared, I guess, an oral response. It would include
7 what we might have written.

8 Our reaction to this, I guess, is that
9 there's nothing here in the Motion to Reconsider that
10 points to any bit of fact or law that the Prehearing
11 Officer failed to consider in hearing the original
12 motion. In fact, the arguments that are made here are
13 virtually the same as the ones that were made in the
14 motion.

15 In our view there are really two things that
16 go against considering these issues in Florida, and
17 the Commission has ruled on it repeatedly. The first
18 of which is that under (c) of 252, the arbitration --
19 the scope of the arbitration is limited in the respect
20 that this Commission is supposed to enforce the -- or
21 make sure that the arbitration result is consistent
22 with the requirements in Section 251. There certainly
23 is no requirement in Section 251 that an ILEC agreed
24 to liquidated damages or performance guarantees or
25 penalties, or whatever they may be called in any given

1 case. And the second reason is, of course, that this
2 Commission is a creature of state statute and does not
3 have the authority to award damages.

4 What they have asked for in the manner of
5 performance guarantees are different than damages in a
6 usual case because ordinarily there is some conduct
7 that occurs, and then someone asks for a determination
8 of whether damages should be awarded and the amount of
9 those damages after the conduct occurs.

10 With performance guarantees, what they are
11 asking you to do is determine, for a hypothetical
12 conduct which may occur in the future, whether damages
13 should be awarded, and if so, in what amount. It's a
14 prospective award of damages.

15 There are some legal citations in the brief
16 that they filed that they claim draw a distinction
17 between awarding damages for past conduct and awarding
18 prospective relief. But the prospective relief that's
19 discussed in those cases is injunctive relief; it's
20 not a prospective damage award.

21 In short, we believe the Commission has
22 decided this issue correctly and repeatedly decided
23 this issue correctly. We believe it was correctly
24 decided by the Prehearing Order. And we don't think
25 that the Motion for Reconsideration should be granted.

1 **COMMISSIONER JACOBS:** This is an interesting
2 question I hadn't thought of before. I can see your
3 argument with regard to an absolute liquidated damages
4 provision. What about standards for arbitration of
5 disputes, which is sort of what's being asked for in
6 the performance measures provision. Is that -- does
7 that fit within the limitation that you've described
8 on our jurisdiction with regard to damages?

9 **MR. GOGGIN:** We don't understand --

10 **COMMISSIONER JACOBS:** At prehearing, I
11 think, it was anticipated to be one and the same. But
12 I guess I'm beginning to see a bit of a difference,
13 which I don't know if there's any import -- but is
14 there a difference between the actual liquidated
15 damages and our ability to look at standards by which
16 the parties would award disputed performance?

17 **COMMISSIONER CLARK:** You know, I had the
18 same concern that maybe we need to revisit the policy,
19 our finding, that we were without jurisdiction on it.
20 But I guess what your ruling was was consistent with
21 what we have ruled in the past.

22 I guess -- and my concern is we are a
23 two-member panel, and we do have considerable
24 precedent, I think, on this issue. How many other
25 cases has this come up and we've ruled this way?

1 **MS. CALDWELL:** I don't have a specific count
2 of the number of cases. I don't think there's been a
3 case that we've had that we've ruled otherwise.

4 **COMMISSIONER CLARK:** And let me ask you
5 this: On the Motion for Reconsideration, in order for
6 it to be granted, it has to be shown to be some
7 mistake of law or fact?

8 **MS. CALDWELL:** Standard for review for
9 reconsideration is a mistake of law or fact and it
10 cannot be to reargue a case that was already heard.
11 And I think that, as BellSouth pointed out, this was
12 rearguing that which was heard already. So I think
13 on, say, the first prong, it would not meet the
14 criteria for consideration.

15 **COMMISSIONER CLARK:** Let me ask another
16 question --

17 **MR. ADELMAN:** Question --

18 **COMMISSIONER CLARK:** Just a minute.

19 We have generic proceeding, don't we, on
20 some of those -- some the things we thought probably
21 are going to be common to all arbitrations and we
22 ought to come up with a consistent policy -- I've just
23 forgotten what they are.

24 **COMMISSIONER JACOBS:** We do have a generic
25 but if I recall -- resolution of disputes was at issue

1 that was not included in that generic docket. Is that
2 the case?

3 **COMMISSIONER CLARK:** Well, it probably --
4 I'm just wondering if we can add something.

5 **COMMISSIONER JACOBS:** Because I asked that
6 question, could we add that in? Because I'm becoming
7 more concerned, as I stated in the prehearing
8 conference in this matter -- I'm becoming more and
9 more concerned that we go through all of the process
10 of arbitrating an agreement and we find ourselves back
11 on multiple complaints.

12 **COMMISSIONER CLARK:** Right. For
13 enforcement.

14 **COMMISSIONER JACOBS:** For enforcement.

15 Now, I asked for an issue -- a legal issue
16 on this docket that may -- it was the intent, it would
17 give the parties an avenue of argument. And
18 essentially the essence of the issue as I saw -- if
19 you guys had a different interpretation, please say
20 so -- but normally when this Commission issues an
21 Order, we have continuing jurisdiction as to the
22 enforcement of that Order. And the question becomes
23 does that jurisdiction apply in the instance where we
24 act as arbitrator for these arbitration agreements?
25 Or does it end at the instance where the parties on --

1 we essentially approve that arbitrated agreement.
2 Because if we do have continuing jurisdiction, then we
3 could open on our own motion or at the instance of a
4 party -- we could open an investigation as to the
5 ultimate completion of duties under that arbitrated
6 agreement.

7 Now, I think -- and I'm open to Staff on
8 this -- I don't know what the language in the Federal
9 Act, whether this addresses it or not. I had intended
10 to research this prior to today. But it would be
11 interesting to know whether or not we could come
12 back -- and this would be under the avenue -- because
13 the concern raised by the party is that -- and I went
14 back and looked at a proceeding. In fact, I think it
15 was an Order attached to one of -- to testimony in one
16 of you all's witnesses -- where it was a complaint
17 under an arbitration agreement. And that complaint
18 was filed in February of last year. And our Order
19 issued in November of last year. And that exactly
20 addresses -- frames, I should say the concern I have.

21 After we've done and approved an arbitrated
22 agreement and the parties come back with a dispute on
23 that agreement, it takes them a full year to resolve
24 that dispute. What does that say about our
25 jurisdiction to arbitrate the original agreement?

1 It's -- in my mind, it takes a great deal away from
2 our original authority to approve that arbitrated
3 agreement if it takes a year-plus for those terms to
4 be implemented.

5 And that is the essence of my concern as to
6 whether or not we could then come back in on a
7 continuing jurisdiction to look at the effectiveness
8 of the parties' efforts to complete that original
9 arbitrated agreement.

10 And I will be very interested in
11 understanding that. If the federal law precludes it,
12 then so be it. If our jurisdiction is limited, so be
13 it. But I think we need to understand that.

14 **MS. CALDWELL:** I think the distinction needs
15 for drawn between what is appropriate for arbitration,
16 if it's outlined in 251, and what is within the
17 Commission's jurisdiction.

18 We believe that performance measures or
19 these types of standards are not outside of our
20 jurisdiction. They're simply not something within --
21 that should be considered within an arbitration
22 proceeding. It's only when those performance measures
23 start awarding damages for nonperformance that we
24 believe we're starting to get outside of the
25 jurisdiction of the Commission.

1 Now, there's nothing to prohibit, if there's
2 not an ongoing proceeding, that the issue can be added
3 to a ongoing proceeding. There's nothing to prohibit
4 this Commission on its on motion to open up a generic
5 investigation to start looking at performance
6 measures. And that might be a good place to start.

7 **COMMISSIONER CLARK:** Yeah. I have real
8 concerns. I have to say I think there is merit to the
9 notion that simply having an avenue of complaint back
10 here for the enforcement of it, given the time lag in
11 us dealing with them is not a sufficient remedy. By
12 the same token, I don't think we can -- I don't think
13 it's appropriate for us to do it in this proceeding.

14 I don't think the standard for
15 reconsideration has been met, but we could reconsider
16 on our own motion and allow the testimony and allow
17 the issue to continue; have Staff research it. But I
18 really think the appropriate way is to do it -- is to
19 handle it generically.

20 **COMMISSIONER JACOBS:** I would agree.

21 **COMMISSIONER CLARK:** And part of that is
22 because I think it needs the consideration of the full
23 Commission.

24 **COMMISSIONER JACOBS:** I agree. In fact,
25 that's consistent with my sentiments earlier. I would

1 be more in favor of it being deliberated in a generic
2 docket.

3 **COMMISSIONER CLARK:** Mr. Adelman, that is
4 what -- did I get your name right now?

5 **MR. ADELMAN:** Yes. Thank you.

6 **COMMISSIONER CLARK:** That's what you said
7 has been done in South Carolina?

8 **MR. ADELMAN:** Well, no. There's no generic
9 proceeding regarding guarantees in South Carolina.
10 What the commission did was they considered our
11 arguments, did not find our arguments to be
12 compelling, and indicated in their Order -- indicated
13 in their Order that our Tier 2 and Tier 3 performance
14 guarantees might be considered in a generic
15 proceeding. There's no docket established or anything
16 like that. I would note --

17 **COMMISSIONER CLARK:** What's the Tier 1?

18 **MR. ADELMAN:** The Tier 1 is the waiver of
19 nonrecurring charges where there's nonperformance.

20 **COMMISSIONER CLARK:** They allowed that?

21 **MR. ADELMAN:** They did allow that in South
22 Carolina. They found our arguments to be persuasive
23 on that part of our proposal.

24 **MR. ALEXANDER:** I almost need to do this as
25 an objection. That's not a completely accurate

1 representation --

2 **COMMISSIONER CLARK:** I'll give you
3 opportunity.

4 **MR. ALEXANDER:** That would be fine.

5 **MR. ADELMAN:** That's our reading of the
6 Order. We believe they agreed with us on that issue.
7 The numbering was different in South Carolina or I
8 would give you the numbers.

9 **COMMISSIONER CLARK:** What about the
10 substance? Did they agree that on the first -- I
11 guess it's the first offense it's a nonrecurring --
12 you waive the nonrecurring?

13 **MR. ADELMAN:** Yes. That's our
14 interpretation of what the South Carolina Commission
15 did. I'm hearing now there might be a different
16 interpretation of that same order.

17 I would also note when you asked me the
18 question about "other states," I limited my answer to
19 the BellSouth. The states of Texas, California and
20 New York are also considering guarantees that we think
21 are similar to our proposals.

22 **COMMISSIONER CLARK:** They are considering it
23 but no one has yet found performance guarantees and
24 required them -- made them a part of arbitration and
25 required them in the agreements?

1 **MR. ADELMAN:** There are Section 252
2 agreements that have been approved in the state of
3 Texas and they include guarantees. So at least that
4 state, I believe, has taken the position that they can
5 approve such guarantees.

6 **COMMISSIONER CLARK:** Evidently the parties
7 agreed to them.

8 **MR. ADELMAN:** I think those were voluntarily
9 agreed-to guarantees. Correct.

10 **COMMISSIONER CLARK:** And that was
11 Southwestern Bell, whatever it's called now.

12 **MR. ADELMAN:** SPB and Southland.

13 **MS. EDWARDS:** Southside.

14 **MR. ADELMAN:** And there's reference in
15 Mr. Rozycki's testimony and documentation with regard
16 to that case.

17 **COMMISSIONER CLARK:** Mr. Alexander.

18 **MR. ALEXANDER:** Yes, thank you. I'll let
19 Mr. Goggin -- but I was in South Carolina and I have a
20 copy of the South Carolina Order. I just wanted to
21 clarify that the Order specifically states on Page 13
22 that the Commission rejects imposing any sort of
23 performance -- they put this in quote -- quote,
24 "performance guarantee" or penalty provision
25 associated with performance measures.

1 In a second issue related to -- specifically
2 related to should BellSouth be required to waive any
3 nonrecurring charges when it misses a due date? The
4 commission did rule -- and that's on Page 15 of the
5 South Carolina Order -- the commission directs the
6 party to include a provision in the Interconnection
7 Agreement that BellSouth should waive the nonrecurring
8 charges if BellSouth's assigned due date is missed as
9 a result of BellSouth's error.

10 So it's very limited. Mr. Adelman, I
11 believe, is representing that it granted the Tier 1.
12 It actually just granted a piece of what they've asked
13 for on Tier 1. It's when a due date is missed and
14 it's BellSouth's error is the only thing they granted
15 a waiver of the nonrecurring charge for.

16 **MR. ADELMAN:** That's our reading as well. I
17 apologize if my description was not precise enough.
18 That's what I consider to be our Tier 1 proposal.

19 **MR. GOGGIN:** I was going to say that the
20 notion of considering performance guarantees is
21 obviously, perhaps, going to be different from state
22 to state because the state's authority -- the state
23 commission's authority may differ from state to state
24 with respect to the damages issue.

25 **COMMISSIONER CLARK:** Hold up a minute. I

1 don't agree that it's going to be different. Because
2 I see it as a basic sort of separation of powers
3 issue. It's either a judicial function or it's not.
4 I think that's the argument; that the courts have it
5 as opposed to any executive or legislative body. Are
6 you saying there may be state laws that give
7 commissions the authority to award damages? Wouldn't
8 that violate --

9 **MR. GOGGIN:** I don't know. In fact,
10 apparently from what everyone can gather here, no
11 state has ever imposed performance guarantees in the
12 context of a 252 arbitration, so perhaps no.

13 **COMMISSIONER CLARK:** I would assume it's
14 fundamentally for the same reason; that it's a
15 judicial function.

16 **MR. GOGGIN:** I was just trying to get across
17 a point that to the extent that other states have
18 taken these issues up, their relevance may be limited
19 in terms of their interpretation of the Federal Act,
20 but to the extent that those decisions are based on
21 state law, this Commission is certainly better
22 situated to determine what the limits of its authority
23 under the Florida law are than would any of these
24 other state commissions.

25 With regard to the federal obligations, if

1 any, it seems to me that the generic approach makes a
2 great deal of sense, if for no other reason than a
3 patchwork of differing performance guarantees under
4 multiple arbitrations would seem to us to be more --
5 have more potential to be discriminatory. Whereas, a
6 generic proceeding to consider performance guarantees
7 that might apply with regard to all competitors
8 BellSouth serves would certainly appear to us to be
9 more nondiscriminatory.

10 **COMMISSIONER JACOBS:** So that we're clear,
11 the generic docket, is there a timetable on that that
12 we're aware of?

13 **MS. CALDWELL:** There is not. What I'm
14 saying is we could look at the generic dockets that
15 are open right now and look to see if there's an
16 appropriate place to include that as an issue. If
17 there's nothing there, there's nothing to prohibit us,
18 the Staff, from opening up -- the Commission to open
19 up its own generic docket on that particular issue.

20 **COMMISSIONER JACOBS:** It's my understanding
21 that there is or was a docket outstanding. And in
22 that docket there was a proposal to consider
23 alternative dispute resolution procedures. And the
24 Commission chose not to. What you're essentially
25 asking now is that we want to look to put that back

1 in, or at least something of that order -- back into
2 that docket. Is that still open or is there another
3 docket we're talking about?

4 **MS. CALDWELL:** First of all, I think that
5 had to do with expedited dispute resolution, not just
6 dispute resolution procedures. So I think it was a
7 difference there.

8 **COMMISSIONER JACOBS:** Okay.

9 **MS. CALDWELL:** As to putting it back, the
10 Staff can look into it to determine whether it --
11 something can go back into that docket or could then
12 bring something to the Commission to say it wouldn't
13 be appropriate for those dockets or that docket and
14 begin an investigation.

15 **COMMISSIONER JACOBS:** I'd like to know how
16 we work that. I don't want to be caught in a
17 procedural quagmire as well.

18 **COMMISSIONER CLARK:** I don't think it
19 matters. I think what we're saying is we want to see
20 this looked at generically, whether it goes in an
21 existing docket or a separate one --

22 **COMMISSIONER JACOBS:** Okay.

23 **COMMISSIONER CLARK:** -- whatever
24 administratively efficient is fine.

25 **COMMISSIONER JACOBS:** I don't care how

1 either, just want to make sure it gets clear.

2 **COMMISSIONER CLARK:** Now, I'm a little bit
3 confused as to -- on a motion to reconsider -- motion
4 of reconsideration of the Prehearing Officer's
5 decision when you have only a two-member panel, is it
6 the panel that votes on it? Or does the presiding
7 officer vote on it?

8 **MS. CALDWELL:** I would imagine it would be
9 the panel that would vote on it.

10 **COMMISSIONER CLARK:** All right. Is there a
11 motion on the motion for reconsideration?

12 **COMMISSIONER JACOBS:** We are -- as I
13 understand your sentiment is that we would grant it.

14 **COMMISSIONER CLARK:** No, not grant -- we
15 would not grant the Motion for Reconsideration.

16 **COMMISSIONER JACOBS:** In lieu of granting it
17 we would ask Staff to open --

18 **COMMISSIONER CLARK:** To look at it on a
19 generic basis, whether it's on an existing docket or
20 opening a docket. Certainly, I think you'll have to
21 do that in conjunction with the Chairman's Office.

22 But I think -- we've indicated a desire to
23 look at it a second time because of our concern with
24 the ability of enforcing -- bringing enforcement
25 actions under the Act and how real a remedy they are.

1 **COMMISSIONER JACOBS:** Okay. I move to deny
2 the motion consistent with our discussion.

3 **COMMISSIONER CLARK:** Okay. Show that as
4 being unanimous.

5 **MS. CALDWELL:** Each party has also filed
6 supplemental testimony and I don't think any of the
7 parties nor Staff have any objection to this as well.

8 Lastly --

9 **COMMISSIONER CLARK:** Let me just make
10 sure -- will the attorneys alert me to the fact that
11 there's supplemental testimony as to when it should be
12 taken up? What is it? Mr. Varner has filed it and --

13 **MR. ADELMAN:** Mr. Hyde for ITC^DeltaCom.

14 **COMMISSIONER CLARK:** Mr. Hyde, okay.

15 **MR. GOGGIN:** Commissioner Clark, I think
16 there are probably two sets of supplemental testimony
17 here. The first was as a result of discussions at the
18 prehearing conference, the parties were asked to
19 submit supplemental testimony regarding what we know
20 about the new Rule 319 coming up from the FCC and what
21 effect it may have on this proceeding. Of course, the
22 rule has not been issued yet, but I believe
23 supplemental testimony was filed on the basis of what
24 we could glean from the press release.

25 And the second batch of supplemental

1 testimony, if you will, is based on the discovery that
2 was provided by BellSouth to DeltaCom -- I guess it's
3 all about the discovery BellSouth provided to
4 DeltaCom -- in exchange for our agreement with respect
5 with the Motions to Compel, which is the reason for
6 its late arrival.

7 **COMMISSIONER CLARK:** Okay. So tell me what
8 supplemental testimony I should have. I have one for
9 Mr. Varner dated October 20th. I have one for -- I
10 guess it's Mr. Hyde and it's dated -- let's see, the
11 22nd of October. What else should I have?

12 **MR. ADELMAN:** I'll let BellSouth speak but I
13 think Mr. Varner filed two pieces of supplemental
14 testimony. You have everything from ITC^DeltaCom.

15 **MR. GOGGIN:** There's additional Supplemental
16 Testimony that was filed by Mr. Varner yesterday with
17 regard to the subject of the documents that were
18 produced by BellSouth under the Motion to Compel.

19 **COMMISSIONER CLARK:** Commissioner Jacobs, do
20 you have that, do you know?

21 **COMMISSIONER JACOBS:** I was just looking.

22 **COMMISSIONER CLARK:** We probably should make
23 sure we've got a copy of that. I have another
24 question. Are we going to do direct and rebuttal at
25 the same time?

1 **MR. GOGGIN:** I believe we've agreed to put
2 all the witnesses up at once.

3 **MR. ADELMAN:** No objection.

4 **COMMISSIONER CLARK:** Okay.

5 Now, I do have a copy of Mr. Varner's
6 Supplemental Testimony, the one filed on the 26th,
7 so --

8 **COMMISSIONER CLARK:** Ms. Caldwell, what's
9 the next thing we need to take up?

10 **MS. CALDWELL:** The next thing are exhibits.
11 Staff has prepared an Official Recognition List.
12 Copies have been provided to all parties. The list
13 includes all Orders and Laws Staff intend to rely on
14 for the docket. Staff requests the list be marked for
15 identification as Staff Exhibit 1. The list includes
16 Florida Commission Orders, FCC Orders and Rules, FCC
17 Press Release, Other State Commission Orders, Court
18 Decisions and the Federal Act.

19 **COMMISSIONER CLARK:** The list -- the
20 Official Recognition List will be marked as Exhibit 1
21 and admitted into the record. Is there any objection
22 to any of the items for which official recognition was
23 requested?

24 **MR. ALEXANDER:** No objection from BellSouth.

25 **MR. ADELMAN:** No objection.

1 (Exhibit 1 marked for identification.)

2 **MS. CALDWELL:** Staff has also prepared a
3 list of stipulated exhibits which are responses to
4 discovery. Staff requests the exhibits be marked for
5 identification as follows:

6 We have Stipulation 1, deposition
7 transcripts and late-filed deposition exhibits of Don
8 Wood.

9 Stipulation 2, deposition transcripts and
10 late-filed deposition exhibits --

11 **COMMISSIONER CLARK:** Hang on a minute. Are
12 you going to want them labeled separately as exhibits
13 or as a composite exhibit?

14 **MS. CALDWELL:** We can -- it's your pleasure.
15 We can go either way.

16 **COMMISSIONER CLARK:** Why don't we name them
17 separately.

18 **MS. CALDWELL:** Okay.

19 **COMMISSIONER CLARK:** And to that end, I will
20 give the transcripts and late-filed deposition of Don
21 Wood will be Exhibit 2. What's your next exhibit?

22 **MS. CALDWELL:** Deposition transcript and
23 late-filed deposition exhibits of Thomas Hyde.

24 **COMMISSIONER CLARK:** That will be No. 3.

25 **MS. CALDWELL:** Deposition transcripts and

1 late-filed deposition exhibits of Michael Thomas.

2 **COMMISSIONER CLARK:** That will be 4.

3 **MS. CALDWELL:** Deposition transcripts and
4 late-filed deposition exhibits of Christopher Rozycki.

5 **COMMISSIONER CLARK:** That will be 5.

6 **MS. CALDWELL:** Deposition transcripts and
7 late-filed deposition exhibits of Daonne Caldwell.

8 **COMMISSIONER CLARK:** That will be 6.

9 **MS. CALDWELL:** Deposition transcript and
10 late-filed deposition exhibit of Keith Milner.

11 **COMMISSIONER CLARK:** Exhibit 7.

12 **MS. CALDWELL:** Deposition transcript and
13 late-filed deposition exhibits of Alfonso Varner.

14 **COMMISSIONER CLARK:** No. 8.

15 **MS. CALDWELL:** Deposition transcripts and
16 late-filed deposition exhibit of Ronald Pate.

17 **COMMISSIONER CLARK:** That will be No. 9.

18 **MS. CALDWELL:** ITC^DeltaCom First and Second
19 Set of Interrogatories and POD Responses to Staff.

20 **COMMISSIONER CLARK:** No. 10.

21 **MS. CALDWELL:** BellSouth's First and Second
22 Set of Interrogatories and POD Responses to Staff.

23 **COMMISSIONER CLARK:** That will be 11.

24 **MS. CALDWELL:** ITC^DeltaCom's response to
25 BellSouth's Interrogatory and POD.

1 **COMMISSIONER CLARK:** That will be 12.

2 **MS. CALDWELL:** And BellSouth's Response to
3 ITC^DeltaCom's Interrogatories and POD.

4 **COMMISSIONER CLARK:** That will be No. 13.
5 Is there any objection to these exhibits?

6 **MR. ADELMAN:** No objection.

7 **COMMISSIONER CLARK:** We'll show them all
8 admitted into the record, and that it's Exhibits 2
9 through 13.

10 (Exhibits 2 through 13 marked for
11 identification and received into evidence.)

12 **MS. CALDWELL:** And they are moved into the
13 record.

14 **COMMISSIONER CLARK:** They are.

15 **MS. CALDWELL:** Thank you.

16 That's all that Staff has for preliminary
17 matters.

18 It's been brought to my attention that
19 BellSouth would like to revise its order of witnesses.
20 And I think they can give us the order very quickly.
21 Staff does not have any objections to it. I don't
22 think ITC^DeltaCom had any objections as well.

23 **COMMISSIONER CLARK:** Mr. Alexander, what
24 will be the order of witness for BellSouth?

25 **MR. ALEXANDER:** The order presently is --

1 and I say presently because one of our witnesses is
2 still en route trying to get here, flight delays, and
3 I'll tell you about that in a second. But we propose
4 that Mr. Varner be our first witness, Dr. Taylor be
5 the second witness; Mr. Caldwell be the third;
6 Mr. Pate, Mr. Scollard and Mr. Milner. The latest
7 notice I had on Dr. Taylor is he's been stranded in
8 Charlotte and is still trying to get here and may not
9 get here until 3:45 p.m.

10 **COMMISSIONER CLARK:** Give me that again.

11 It's --

12 **MR. ALEXANDER:** Mr. Varner. Dr. Taylor,
13 Caldwell, Pate, Scollard and Milner.

14 **COMMISSIONER CLARK:** Mr. Coon?

15 **MR. ALEXANDER:** I was going to ask that
16 Mr. Coon be excused. He's here, but his issue is not
17 going to be taken up in the proceeding.

18 **COMMISSIONER CLARK:** His testimony will not
19 be proffered?

20 **MR. ALEXANDER:** Since the issue is not being
21 taken up, I think that's correct.

22 **MR. ADELMAN:** We have no objection in light
23 of the Commission's ruling.

24 **COMMISSIONER CLARK:** Okay. He'll be
25 excused.

1 **MR. ALEXANDER:** Thank you.

2 **MS. CALDWELL:** At this time there's no more
3 preliminary matters.

4 **COMMISSIONER CLARK:** BellSouth? Any more
5 preliminary matters?

6 **MR. GOGGIN:** None, Commissioners.

7 **COMMISSIONER CLARK:** ITC^DeltaCom?

8 **MR. ADELMAN:** Commissioner, there is one
9 issue. It relates to Issue No. 45. And I bring it up
10 now only because I think it's very much germane to the
11 discussion we had this morning with regard to
12 performance guarantees. This was an issue discussed
13 at the prearbitration conference.

14 It is our position, as you know, that
15 performance guarantees are appropriate for arbitration
16 but in light of the Commission's ruling, Commissioner
17 Jacob's ruling on October 11th, and your aformation as
18 a panel of that ruling, we believe that issue also
19 should be excluded from this arbitration. And if I
20 could -- I don't think this will be controversial --
21 read to you from Page 51 of the transcript for the
22 October 11 prearbitration conference. Mr. Goggin,
23 counsel for BellSouth, in referring to Issue 45 said
24 "This issue was proposed by DeltaCom, and to the
25 extent that they now wish to withdraw the issue, we

1 would not object to that." We believe this is an
2 issue of performance guarantees and would submit to
3 you that it should not be arbitrated based on the
4 Commission's previous ruling.

5 So we would, I think, offer something that a
6 lot of people in the room will look favorably upon and
7 that is that issue also be moved to whatever
8 performance guarantees provision -- excuse me,
9 performance guarantees proceeding the Commission
10 conducts and it need not be considered either.

11 **COMMISSIONER CLARK:** Mr. Alexander?
12 Mr. Goggin?

13 **MR. GOGGIN:** Commissioners, we would not
14 agree that this is a matter of performance guarantees.
15 We don't think that the analogy is entirely apt and,
16 therefore, we would not suggest that it be struck in
17 connection with the Motion to Strike that we filed.
18 On the other hand, this is an issue that they brought
19 up in their arbitration, and if they wish to
20 voluntarily withdraw it we would not object to that.

21 **COMMISSIONER CLARK:** All right. You don't
22 object to the voluntary withdrawal but you do not
23 agree with the basis on which it's being withdrawn. I
24 don't know that it matters, so we'll show it stricken
25 as an issue.

1 **MR. ADELMAN:** Thank you.

2 **COMMISSIONER CLARK:** Anything else? Any
3 other preliminary matters?

4 **MR. ADELMAN:** No, other than what I think
5 we'll work out during lunch which is syncing up the
6 stricken portions of the testify.

7 **COMMISSIONER CLARK:** Okay. Ms. Caldwell,
8 are we at the point that we should swear in the
9 witnesses?

10 **MS. CALDWELL:** Yes, we are.

11 **COMMISSIONER CLARK:** Will everyone who is
12 going to present testimony in this proceeding please
13 stand and raise your right hand.

14 (Witnesses sworn collectively.)

15 **COMMISSIONER CLARK:** Mr. Adelman, I think
16 you have the first witness.

17 **MR. ADELMAN:** Commissioner, we were hoping,
18 with the Commission's indulgence, to have a four- or
19 five-minute opening statement.

20 **COMMISSIONER CLARK:** I beg your pardon. Was
21 that discussed at the prehearing?

22 **COMMISSIONER JACOBS:** I don't recall a
23 discussion of opening statements.

24 **MR. ALEXANDER:** It wasn't discussed and
25 BellSouth would be willing to waive an opening

1 statement.

2 **COMMISSIONER CLARK:** Do you object to
3 Mr. Adelman giving one for DeltaCom?

4 **MR. ALEXANDER:** It may force me too. I was
5 hoping he would waive it.

6 **COMMISSIONER CLARK:** Sometimes if it's not
7 more than five minutes it kind of helps to set the
8 stage, so I will grant your request for five minutes.

9 **MR. ADELMAN:** Thank you. And Ms. Edwards
10 will give the opening.

11 **COMMISSIONER CLARK:** Go ahead, Ms. Edwards.

12 **MS. EDWARDS:** Good morning.

13 **COMMISSIONER CLARK:** You can stand up or sit
14 down, whatever you want to do; whatever is more
15 comfortable.

16 **MS. EDWARDS:** Okay. I'll sit.

17 Good morning. My name is Nanette Edwards.
18 I'm in-house counsel for ITC^DeltaCom and I appreciate
19 the opportunity to give a short opening statement for
20 our company.

21 ITC^DeltaCom is a facilities-based local and
22 long distance provider. And I'd like to take a moment
23 to just briefly describe who we are and what we do.

24 Right about now you should have a copy of
25 our network map being handed to you. This is not our

1 most recent copy, but is pretty close to where we are
2 today. We actually have 8,250 miles of fiber capacity
3 as opposed 8,100. And in Florida, it's not shown on
4 this map, but we've a DMS 500 switch planned for
5 Miami. As you can see from in map, ITC^DeltaCom has a
6 significant investment in the southeast region.

7 ITC^DeltaCom's headquarters is based in West
8 Point, Georgia. The management of our company is from
9 the independent local exchange arena. Most of our
10 management comes from small independent rural
11 telephone companies, such as Interstate Valley
12 Telephone in West Point, Georgia or Brindly Mountain
13 Telephone Company in Arab, Alabama.

14 We have approximately 1400 employees. We're
15 one of the largest purchasers of unbundled network
16 elements in the BellSouth region. Over the pass two
17 years we've rolled out our local services in seven of
18 the nine BellSouth states, including Florida.

19 As part of that roll out of service, we've
20 deployed or purchased from BellSouth approximately
21 2,500 extended loops. We have offices in Florida, and
22 we have -- originally began our roll out of services
23 in 1997. Prior to that we were primarily providing
24 long distance services. But, again, we have that
25 background of the independent local exchange carrier,

1 which our management has gathered from their
2 experience in that arena.

3 ITC^DeltaCom is a reluctant litigant. We
4 prefer not to come before the Commission. We prefer
5 to resolve our issues if we can. So that may be one
6 reason why you may not have actually heard of us
7 before now.

8 Our first Interconnection Agreement with
9 BellSouth, as an example, as a negotiated
10 Interconnection Agreement. It was voluntarily entered
11 into by both parties.

12 So why are we here today? The reason we're
13 here today is we obviously were unable to resolve
14 several issues. We went into the negotiations to
15 renew our existing contract, which was approved by
16 this Commission in 1997. And ITC^DeltaCom's
17 perspective was let's take what we've developed in our
18 first Interconnection Agreement and build upon that.
19 Let's take what we've learned over the past two years
20 and build upon that Interconnection Agreement.

21 And as you can see again from the network
22 map that I've handed to you, ITC^DeltaCom has made
23 significant investments based the rates, terms and
24 conditions that were approved in that existing
25 Interconnection Agreement. So to start all over or to

1 start with a brand-new agreement with brand-new terms,
2 rates and conditions creates a hardship on a small
3 company that's trying to roll out local services in a
4 competitive environment, especially when it's
5 purchasing those services from only one company:
6 BellSouth Telecommunications.

7 So against this backdrop, ITC^DeltaCom went
8 into the negotiations seeking to renew its existing
9 agreement. And as you heard this morning, the one
10 major change we had wanted was some commitment from
11 BellSouth as to the quality of service that
12 ITC^DeltaCom would receive under that new agreement.

13 Through the testimony of Thomas Hyde and
14 Michael Thomas, it's pretty clear that ITC^DeltaCom
15 believes it has received substandard service from
16 BellSouth over of the past two years. ITC^DeltaCom
17 has attempted to work through these issues with
18 BellSouth over a period of time, but going into this
19 new two-year agreement it is incumbent, it is
20 imperative that ITC^DeltaCom receive parity; receive
21 at least equal in quality service from BellSouth as to
22 that which it provides itself. And that is not
23 happening today.

24 And just to conclude with a brief overview
25 of our witnesses and what they will have to present to

1 you today, Christopher Rozycki is the Director of
2 Regulatory Affairs. He is going to focus now on
3 reciprocal compensation and some of the other policy
4 issues behind the contract language that ITC^DeltaCom
5 has proposed.

6 Michael Thomas, the Director of Information
7 Services, he is going to focus on the OSS related
8 issue; operational support systems. These are the --
9 this affects ITC^DeltaCom's ability to send and
10 receive orders from BellSouth. A very easy example
11 would be where ITC^DeltaCom submits a local service
12 order to BellSouth wanting to add call waiting to go
13 an existing customer's line.

14 Thomas Hyde is the Senior Manager, Industry
15 Relations. He comes to us from BellSouth
16 Telecommunications. And he also worked for NECA and
17 for MCI WorldCom, and has, I believe, testified before
18 this Commission before.

19 He's going to focus on mostly network
20 issues, NXX testing, extended loops; the one
21 meet-point billing issue that's left with regard to
22 whether or not ITC^DeltaCom is required to file
23 meet-point billing percentages with NECA, among other
24 issues.

25 And our last witness here today is Don Wood.

1 And I believe, again, Don Wood has testified before
2 this Commission previously in other matters. He is
3 going to focus mostly on cost issues, such as what is
4 the appropriate cost for cageless collocation? What
5 should be the appropriate cost for certain unbundled
6 network elements that ITC^DeltaCom desires to purchase
7 from BellSouth that are listed in our petition? And
8 there are a few other issues as well.

9 In conclusion, our case is about really two
10 things: Quality of service at on reasonable cost.

11 The issues that we've brought before you,
12 that we have not been enable to resolve, all deal with
13 what ITC^DeltaCom believes it needs to provide a
14 quality service product to its customers in Florida.

15 Thank you.

16 **COMMISSIONER CLARK:** Thank you, Ms. Edwards.
17 Mr. Alexander, Mr. Goggin, do you wish to make a
18 statement?

19 **MR. ALEXANDER:** Very briefly.

20 I think it's important to look back at why
21 the parties are here and how they got here.

22 The parties entered into, as Ms. Edwards,
23 reffered to, an Interconnection Agreement back on July
24 1st, 1997. Now, DeltaCom has taken the position that
25 they want to keep that agreement except they want to

1 pick up changes that they want. A lot has occurred.
2 BellSouth has gained a great deal of experience in
3 those two years, now almost two and a half years, in
4 local competition. So BellSouth did propose a new
5 agreement that it had been working on as it had
6 negotiated with literally hundreds of other ALECs and
7 felt that that would provide a better starting point.
8 And that's how the negotiation started off.

9 In July of 1998 both parties requested
10 prenegotiation under Section 251 and 252 of the Act,
11 and by agreement in January of 1999, the parties
12 agreed to formally treat that day as the start date
13 for those renegotiations. And fortunately for
14 BellSouth and DeltaCom were able to negotiate in good
15 faith toward a new agreement and the parties reached a
16 number of issues that they were able to resolve. But
17 as a result of continuing negotiations, DeltaCom did
18 file for arbitration in eight states, including
19 Florida, in June of 1999. DeltaCom's petition, as you
20 may recall, had 73 issues. BellSouth took its duties
21 under Sections 251 and 252 very seriously, and
22 continues to do so. I'm glad to report that of those
23 73 issues. We've resolved more than half of them
24 before we got here to this hearing today. Over forty
25 of those issues have been resolved. And, of course,

1 through the Commission's orders a number of other
2 issues have now been removed from this proceeding.

3 BellSouth -- I would have to refer to
4 ourselves as a reluctant litigant as well. It's our
5 desire, as is proof by the hundreds of agreements in
6 this state, as well as across our region -- I believe
7 close to 800 agreements with ALECs across our
8 region -- that we have been able to negotiate and
9 successfully have put in. We have been in front of
10 this Commission a limited number of times compared to
11 the vast number of agreements we have entered into for
12 arbitration. So we have conducted ourselves in good
13 faith in negotiating agreements, including with
14 DeltaCom.

15 I would like to add, too, that one of the
16 issues that's going to be highlighted -- and obviously
17 she mentioned that one of their witnesses, Christopher
18 Rozycki, is going to be talking about is the question
19 of the payment of reciprocal compensation for
20 ISP-bound traffic. That's not a new issue for this
21 Commission. You've heard complaint proceedings
22 regarding that and you now had probably, I think, two
23 arbitrations regarding that.

24 I just want to make a couple of points about
25 that and tell you that we have witnesses, obviously,

1 who will be addressing that issue. But that is an
2 extremely important issue for BellSouth in this
3 arbitration proceeding.

4 Neither the Act or the FCC's rules require a
5 finding that reciprocal compensation be applied to ISP
6 traffic. There are a couple of points that I think
7 are real clear based on the Act and the FCC's Orders.

8 The first is that reciprocal compensation
9 under Section 251(b) (5) and 252(d) (2) of the Act are
10 clearly set out that it's a cost recovery mechanism
11 associated with the transport and termination of calls
12 on one carrier's network for calls that originate on
13 another carrier's network. It's not a revenue-
14 generating source. It's not supposed to be something
15 that creates wild profits for an ALEC. It is a cost
16 recovery mechanism for a particular type of traffic.
17 And what is that particular type of traffic?

18 The FCC has clearly stated that reciprocal
19 compensation is only applicable for the transport and
20 termination of local telecommunications traffic. And
21 local calls are defined as being within a local
22 service area.

23 Finally, the third point is that calls made
24 to internet service providers, or ISPs, which the
25 Commission is well aware, they are a subset of

1 enhanced service providers; are not local calls. The
2 FCC stated in the February 26, 1999, Declaratory
3 Ruling at Footnote 87 that "ISP-bound traffic is
4 nonlocal interstate traffic. Specifically this
5 traffic is interstate switched access traffic. And
6 for these reasons BellSouth will present its case in
7 this proceeding showing that reciprocal comp is not
8 appropriate for ISP-bound traffic.

9 We have Mr. Varner and Dr. Taylor who will
10 address that issue. We also have other witnesses that
11 will address a number of the other remaining issues.
12 I believe it's in the thirty-something that we have
13 left. Ms. Caldwell will be presenting cost studies
14 for elements that this Commission has not previously
15 set a rate for; that DeltaCom has asked for a limited
16 number of UNES that there's not already a rate for.
17 And they've also asked for a limited number of UNES
18 for which the Commission did have a rate for.

19 We have got Mr. Pate and Mr. Scollard and
20 Mr. Milner will be testifying about other issues, the
21 network and the billing questions that will come up.

22 That's basically our case. BellSouth is
23 eager to put on its case but at the same time we were
24 a reluctant litigant as well. We wish that all issues
25 had been able to be negotiated but we realize we're

1 here before you to resolve those remaining disputed
2 issues.

3 Thank you.

4 **COMMISSIONER CLARK:** Mr. Adelman, we're
5 ready for your first witness. Ms. Edwards.

6 - - - - -

7 **CHRISTOPHER J. ROZYCKI**

8 was called as a witness on behalf of ITC^DeltaCom
9 Communications, Inc. and, having been duly sworn,
10 testified as follows:

11 **DIRECT EXAMINATION**

12 **BY MS. EDWARDS:**

13 **Q** Please state your name for the record.

14 **A** My name is Christopher J. Rozycki.

15 **Q** Did you cause to be filed prefiled Direct
16 Testimony in this case?

17 **A** Yes.

18 **Q** Did you have any corrections or changes to
19 that testimony?

20 **A** Yes, I did. Two changes. That's Direct
21 Testimony?

22 **Q** Yes.

23 **A** One change to Direct Testimony. On Page 27,
24 Line 17 you'll see the word "roll,", R-O-L-L; it
25 should be R-O-L-E.

1 **MR. ALEXANDER:** What was the line again?

2 **WITNESS ROZYCKI:** Page 27, Line 17.

3 **COMMISSIONER CLARK:** Let me ask another
4 question. Look on Page 10 and look at the question on
5 Line 9 and it refers to the South Carolina Public
6 Service Commission. Is that supposed to be "Florida"
7 or is that supposed to be "South Carolina"?

8 **WITNESS ROZYCKI:** Yes, that is, but I think
9 that's what's supposed to be stricken testimony. I
10 apologize for that.

11 **COMMISSIONER CLARK:** You probably should
12 tell me what's been stricken, then.

13 **MR. ADELMAN:** That's what we had hoped to
14 talk about a little bit at lunch. I think if I can
15 read -- try to read BellSouth's proposal and our
16 proposal at the same time with regard to Mr. Rozycki,
17 I think we'll have a agreement.

18 **COMMISSIONER CLARK:** How about if we do
19 this: We'll let Mr. Rozycki give his summary, and
20 then you can tell us what's come out of the testimony.
21 And maybe if you could do that in advance of each
22 witness's -- maybe if we have questions we'll discover
23 it was in stricken testimony.

24 (For the convenience of the record, Witness Rozycki's
25 Direct Testimony has been inserted here.)

Direct

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I. INTRODUCTION

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

A: My name is Christopher J. Rozycki. I am Director of Regulatory Affairs for ITC^DeltaCom Communications Inc., ("ITC^DeltaCom"). My business address is 700 Boulevard South, Suite 101, Huntsville, Alabama 35802.

Q: PLEASE DESCRIBE YOUR BUSINESS EXPERIENCE AND BACKGROUND.

A: I have over 25 years of experience in telecommunications and other regulated industries. Before joining ITC^DeltaCom in March 1998, I was employed by Hyperion Telecommunications, Inc. as Director of Regulatory Affairs. I directed all aspects of Hyperion's regulatory activity in twelve states and before the Federal Communications Commission ("FCC"). This included filing for a certificate to be a competitive local exchange carrier ("CLEC") in these states, and creating and/or amending over 40 state and federal tariffs for local, access, long distance, and dedicated services. I coordinated filings before the FCC and state commissions, including Virginia, Pennsylvania, New York, New Jersey, Vermont, Tennessee, Louisiana, and South Carolina.

Between 1983 and 1997, I was employed by AT&T. During my tenure there I held positions in Treasury/Finance (regulatory), Law & Government Affairs (docket management), Access Management (access-price negotiations), and Network Services Division (cost analysis of local infrastructure). While in Access Management, I testified before the Pennsylvania Public Utility Commission and the Delaware Public Service Commission on subjects like LEC-access pricing and regulation.

1 Before joining AT&T, I was a consumer advocate in Fairfax County, Virginia.
2 Between 1982 and 1983, I represented county ratepayers in electric, gas, and
3 telephone rate cases. I testified before the Virginia State Corporation Commission on
4 several occasions, generally on the subject of rate of return.

5 As a partner in an energy and regulatory consulting firm from 1979 to 1982,
6 my responsibilities included all of the firm's regulatory work for the Department of
7 Energy.

8 Early in my career I was employed as an economist for two public-utility
9 consulting firms that specialized in utility rate-case work on behalf of consumer
10 advocates and state commissions and as an economist for the U.S. Department of
11 Energy, where I evaluated the impact of energy-conservation regulations.

12 I hold a master's degree in Economics from George Mason University in
13 Fairfax, Virginia and a bachelor's degree in Economics from Georgetown University in
14 Washington, DC.

15

16 Q. WHAT ARE YOUR RESPONSIBILITIES AT ITC^DELTACOM?

17 A. As Director of Regulatory Affairs, I am responsible for all regulatory activities
18 of ITC^DeltaCom related to its local, long distance, and wholesale
19 telecommunications services. These activities include CLEC certification, monitoring
20 of dockets, the filing and maintenance of tariffs, customer complaints, interconnection
21 and traffic exchange agreements.

22

23

24

1 Q. HAVE YOU PROVIDED TESTIMONY IN OTHER REGULATORY PROCEEDINGS?

2 A. Yes. I have provided testimony on a variety of issues in Alabama, Georgia,
3 Mississippi, North Carolina, South Carolina, Virginia, Pennsylvania, Delaware, New
4 York, and Vermont.

5

6 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

7 A. My testimony will provide an overview to our case. ITC^DeltaCom's petition
8 for arbitration focuses on several key issues: ~~performance measures and~~
9 ~~performance measures~~ the functionality of Operational Support Systems ("OSS")
10 and OSS charges, parity, reciprocal compensation or payment for ISP traffic, price
11 and availability of individual unbundled network elements ("UNEs"), availability of
12 UNE combinations, physical collocation, and other general contract issues.

13

14 Q: HAVE ANY OF THE ISSUES INCLUDED IN YOUR ARBITRATION FILING BEEN
15 RESOLVED?

16 A: Yes. Attached as Exhibit CJR -1 is a summary of those issues, ITC^DeltaCom
17 believes are resolved as a result of negotiations with BellSouth. At the time of the
18 filing of this testimony, however, the Parties have not finalized their agreement in
19 writing. To be clear, ITC^DeltaCom reserves its right to arbitrate these issues should
20 there not be a meeting of the minds or should a dispute regarding the contract
21 language arise.

22

23 Q. DOES YOUR TESTIMONY ADDRESS ALL OF THE UNRESOLVED ISSUES
24 RESULTING FROM YOUR NEGOTIATIONS WITH BELLSOUTH?

1 A. No. There are a number of other issues addressed by witnesses sponsored
2 by ITC^DeltaCom in this case. Additionally, there are numerous issues which we will
3 not contest. We are not contesting every disagreement with BellSouth in an attempt
4 to reduce the open issues to a manageable number. This does not mean we agree
5 with BellSouth's position on these issues, and we reserve the right to keep these
6 issues open until the negotiations and arbitration are complete.

7

8 Q. PLEASE EXPLAIN WHY THERE ARE SO MANY UNRESOLVED ISSUES AFTER
9 OVER SIX MONTHS OF NEGOTIATIONS.

10 A. There are several reasons behind the list of unresolved issues that remain.
11 There are, however, two overriding reasons that I believe ITC^DeltaCom and
12 BellSouth have failed to mutually agree.

13 First, ITC^DeltaCom is primarily focused on providing its customers with the
14 best service available at the most reasonable price. If we were to agree to the terms
15 and conditions of the contract that BellSouth wants us to accept, we could not provide
16 the quality of service our customers have come to expect from ITC^DeltaCom, nor
17 could we come close to the service BellSouth is providing its own customers. In
18 essence we would be offering substandard service at premium prices, a guaranteed
19 formula for failure.

20 Second, BellSouth has been quite uncompromising on even the most basic
21 elements of the agreement required for any CLEC to survive the rigors of competition,
22 much less succeed. To ensure that ITC^DeltaCom and its customers receive parity
23 of service, there are several basic or fundamental elements which must be
24 incorporated in our interconnection agreement. These include: ~~_____~~
25 ~~_____~~ (2) parity, (3) a fully functioning Operational Support
26 System, (4) proper availability and pricing of UNEs and collocation, and (5)

1 agreement by BellSouth that it will compensate ITC^DeltaCom for the use of and
2 access to ITC^DeltaCom's network.

3

4 Q. ARE THERE LESS TECHNICAL REASONS FOR THE NUMEROUS UNRESOLVED
5 ISSUES?

6 A. BellSouth opened these negotiations by presenting ITC^DeltaCom with its
7 "template" interconnection agreement. This agreement is very different from
8 ITC^DeltaCom's current interconnection agreement, and would be a giant step
9 backward for ITC^DeltaCom. Realizing this, ITC^DeltaCom proposed that the
10 starting point of negotiations should be its existing contract. BellSouth would not
11 agree, arguing that it could not effectively deal with hundreds of contracts, and was
12 looking to move companies like ITC^DeltaCom onto its "standard contract" with its
13 "standard language." This template contract had major disadvantages, but it also had
14 several small improvements to ITC^DeltaCom's existing contract. The one
15 improvement we sought to capture, was the overall organization or outline of the
16 template.

17

18 Q. HOW WOULD YOU CHARACTERIZE THE LANGUAGE IN THE BELLSOUTH
19 TEMPLATE?

20 A. Much of the language in the " template" is anti-competitive, denying
21 ITC^DeltaCom the parity that is required by the Telecommunications Act. Language
22 such as this makes it nearly impossible for ITC^DeltaCom to successfully compete
23 with BellSouth.

24

1 Q. HOW HAS YOUR EXPERIENCE IN THE MARKETPLACE AFFECTED YOUR
2 DECISION TO ARBITRATE?

3 A. Our decision to arbitrate is based on our experience in the marketplace with
4 BellSouth as our primary vendor of unbundled network elements. This experience
5 has taught us that BellSouth is either currently incapable of or unwilling to deliver
6 service equal to that which it gives itself. As a result, ITC^DeltaCom has vigorously
7 argued for language that will insure that BellSouth delivers service in a timely fashion,
8 and equal in quality to the service it provides itself. By contrast, BellSouth has
9 refused to accept language that would require it to provide service at parity with the
10 service it provides itself.

11

12 Q. PLEASE CHARACTERIZE BELLSOUTH'S NEGOTIATING PHILOSOPHY.

13 A. It appears that BellSouth is using a win-lose strategy, and is rarely seeking
14 common ground. ITC^DeltaCom was not treated as a customer or a buyer of
15 BellSouth network and services, but as a competitor. BellSouth presented much of its
16 language in an "Our way is the only way" fashion. BellSouth also repeatedly refused
17 to commit to any form of enforceable performance measures.

18

19 ~~II. PERFORMANCE MEASURES AND PERFORMANCE GUARANTEES~~

20

21 Q. WHY ARE PERFORMANCE MEASURES SUCH AN IMPORTANT REQUIREMENT
22 FOR ITC^DELTACOM?

23 A. Experience has shown ITC^DeltaCom that measures must be taken to
24 ensure that BellSouth provides high-quality wholesale service to its customer, i.e.

~~ITC^DeltaCom. Without performance measures and performance guarantees,~~

BellSouth is unlikely to provide service in the same manner that it provides itself. In fact, in some situations, BellSouth's service to ITC^DeltaCom fails to come close to the service it provides to itself. This is true for both the timeliness and the quality of the services and equipment that BellSouth provides to ITC^DeltaCom. These facts will be demonstrated in the testimony of Mr. Thomas Hyde and Mr. Thomas.

Furthermore, if BellSouth succeeds in its 271 application, then there must be "anti-backsliding measures" incorporated in our contract or we may never get the quality of service that we and our customers are entitled to under the provisions of the 1996 Telecommunications Act.

Q. WHY ARE ANTI-BACKSLIDING MEASURES NECESSARY?

A. BellSouth is a competitor with significant market power as well as a supplier of network services to ITC^DeltaCom. As a result, there are economic incentives that pressure BellSouth and its employees to provide better service to its own customers and subsidiaries than it provides to its competitor, ITC^DeltaCom. Today, BellSouth's incentive to perform in a competitively neutral manner is found in Section 271 of the Telecommunications Act, the opportunity to enter the long-distance market. Once BellSouth obtains 271 authority there is little to prevent it from discriminating in the service it provides its competitors.

To eliminate this possibility, anti-backsliding measures must be put in place. Anti-backsliding measures are requirements that would prevent BellSouth from acting in an anti-competitive manner in providing the network and services required by CLECs. These backsliding measures could be implemented in the form of regulations put in place by the FCC or state public utility commissions. In fostering a more competitive local telecommunications market, however, backsliding measures will be

1 far more effective as performance measures and guarantees such as those
2 introduced by ITC^DeltaCom in this interconnection agreement.

3
4 Q. IS THERE EVIDENCE THAT PERFORMANCE MEASURES SHOULD BE
5 INCORPORATED IN INTERCONNECTION AGREEMENTS?

6 A. Yes. Several states, including California and Texas, are in the process of
7 adopting performance measures with performance guarantees. Attached as exhibit
8 CJR -2 is the performance remedies section of the SBC and Southland amendment,
9 which has been filed with the Texas Public Utility Commission, and which will be
10 incorporated into ITC^DeltaCom's interconnection agreement with SBC. Finally,
11 BellSouth itself seems to have acknowledged that such measures are necessary by
12 proposing its own Self-Effectuating Enforcement Measures to the FCC on April 8,
13 1999. Attached as exhibit CJR-3 is the BellSouth proposed Self-Effectuating
14 Enforcement Measures. These proposed enforcement measures fall far short of the
15 truly useful measures proposed by ITC^DeltaCom, but they do indicate BellSouth's
16 willingness to work toward a solution. BellSouth, however, has refused to include its
17 FCC proposal in our contract.

18
19 Q. PLEASE EXPLAIN HOW ITC^DELTACOM'S PROPOSED PERFORMANCE
20 MEASURES AND PERFORMANCE GUARANTEES ARE STRUCTURED?

21 A. ITC^DeltaCom has structured its performance measures and performance
22 guarantees as a three-tiered system.

23 At the first level, BellSouth must meet specified performance benchmarks as
24 found in Exhibit A, Attachment 10 to our petition. These benchmarks have been
25 developed to closely match the services that BellSouth provides itself. Each of the 45

1 ~~performance measures has a specific performance guarantee associated with it.~~

2 Failure to meet the benchmark causes the terms of the guarantee to be invoked. In
3 some cases performance guarantees require refunds of nonrecurring charges. In
4 other cases, the performance guarantee indicates that it is a performance metric.
5 Performance metrics are included throughout the performance measures to ensure
6 parity of service.

7 The second level constitutes what we have labeled a "Specified Performance
8 Breach." A Specified Performance Breach occurs when BellSouth fails to meet a
9 single measurement for two consecutive months or twice during a quarter. Where a
10 Specified Performance Breach occurs, BellSouth shall be required to compensate
11 ITC^DeltaCom \$25,000 for each measurement BellSouth failed to meet.

12 The third level is defined as a "Breach-of-Contract." A Breach-of-Contract
13 occurs where BellSouth fails to meet a single measure five times during a six-month
14 period. The specific terms associated with a Breach-of-Contract may be found in
15 paragraph 25 of the general terms and conditions. A Breach-of-Contract results in
16 penalties in the amount of \$100,000 for each default for each day the breach or
17 default continues.

18

19 Q. THE DOLLAR AMOUNTS ASSOCIATED WITH A SPECIFIED PERFORMANCE
20 BREACH OR A BREACH-OF-CONTRACT APPEAR HIGH. DO YOU BELIEVE
21 THESE AMOUNTS ARE JUSTIFIED?

22 A. Yes. Not only are these levels appropriate, such levels may in fact be
23 necessary. BellSouth is an extremely large company with significant market power.
24 BellSouth has both the ability and the economic incentive to limit the ability of
25 ITC^DeltaCom to compete in the local market. Because ITC^DeltaCom depends
26 ~~entirely on BellSouth for its access to local customers within BellSouth territory.~~

1 ~~BellSouth's dominating market power must be controlled. The principal way to~~
2 ~~achieve this without placing significant regulatory requirements upon BellSouth is~~
3 ~~through effective performance measures in ITC^DeltaCom's interconnection~~
4 ~~agreement. The guarantees associated with Specified Performance Breaches or the~~
5 ~~damages arising from a Breach-of-Contract must be set high enough to discourage~~
6 ~~poor performance by BellSouth. Given the relative size of BellSouth, damages of~~
7 ~~\$100,000 are a small amount for BellSouth to pay.~~

8
9 Q. IF THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION WERE TO ADOPT
10 BELLSOUTH'S PROPOSED "SELF EFFECTUATING PERFORMANCE
11 MEASURES" WOULD THESE MEASURES BE SUFFICIENT TO INSURE PARITY?

12 A. No. BellSouth's proposal for self-effectuating enforcement measures
13 presented recently to the FCC fails in two critical areas. First, the performance
14 standards themselves do not guarantee that BellSouth will provide service to CLECs
15 equal to that which it provides itself. Second, without consequences for poor
16 performance, BellSouth has little incentive to deliver the services required by CLECs
17 to compete. Our own experience suggests yet another reason. BellSouth's
18 Operational Support Systems currently fall far short of providing a competitive
19 alternative to BellSouth's own internal OSS. This means that even if BellSouth were
20 to agree to performance measures, they simply cannot meet them, given the way
21 their OSS currently performs. As a result, BellSouth must be required to bring its
22 ~~OSS performance up to an acceptable competitive level.~~

23

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1 **III. PARITY**

2

3 Q. WHY IS PARITY SUCH AN IMPORTANT ISSUE FOR ITC^DELTA COM?

4 A. Parity is not just an important issue, it is at the heart of the
5 Telecommunications Act because it is vital to the survival of companies like
6 ITC^DeltaCom. In theory, parity should protect both ALECs and consumers. The
7 idea behind parity is that the service or network elements provided by the incumbent,
8 BellSouth, will be provided equally no matter who provides the consumer service.
9 Unless ITC^DeltaCom can service customers in BellSouth's territory using
10 BellSouth's network on an equal basis with BellSouth itself, then ITC^DeltaCom will
11 be unable to compete in the local market. Consumers will demand excellence from
12 ITC^DeltaCom, therefore, ITC^DeltaCom must demand excellence from BellSouth.
13 To achieve this level of performance without competitive alternatives, ITC^DeltaCom
14 must incorporate performance requirements into its interconnection agreement.
15 BellSouth has no incentive to agree with ITC^DeltaCom's performance measures or
16 other parity demands because ITC^DeltaCom has no alternative supplier to turn to.
17 Thus we must turn to the Commission for help. The authors of the
18 Telecommunications Act envisioned exactly this kind of competitive dilemma when
19 they crafted Sections 251 and 252.

20 Whether it is a fully functioning operational support system, interconnection to
21 BellSouth's network, tariff change notification, access to UNEs such as IDLC loops, or
22 equal treatment with White pages listings, ITC^DeltaCom must receive the same kind
23 of service and support that BellSouth provides to itself. Unfortunately, the service and
24 support that ITC^DeltaCom is receiving today is significantly less than that provided
25 by BellSouth to itself or its end-users. This places ITC^DeltaCom at a distinct

1 competitive disadvantage. Our services are being delivered at slower intervals and at
2 a lower quality than that which BellSouth provides.

3 ITC^DeltaCom's is already experiencing the repercussions of purchasing
4 UNEs at less than parity. In numerous instances the winback process for BellSouth
5 begins while the customer is waiting for their service to be turned up by
6 ITC^DeltaCom. The unreasonable delays caused by BellSouth forces customers to
7 wait for their service to be activated. This delay provides BellSouth with ample time --
8 too much time -- to approach the customer and attempt to win them back by offering
9 to get them back in service more quickly. This "window of opportunity" is made
10 possible by the disparity in provisioning that ITC^DeltaCom experiences. This is one
11 reason why parity is critical to opening BellSouth's network to the forces of
12 competition.

13

14

A. OPERATIONAL SUPPORT SYSTEMS

15 Q. IS ITC^DELTACOM HAVING PROBLEMS WITH THE OPERATIONAL SUPPORT
16 SYSTEMS PROVIDED BY BELLSOUTH?

17 A. Yes. ITC^DeltaCom witnesses Mike Thomas and Thomas Hyde will talk
18 extensively about the problems we are having. In addition the to specific problems
19 ITC^DeltaCom is having with BellSouth's OSS, there are more fundamental problems
20 at issue. For instance, BellSouth has indicated that for each order ITC^DeltaCom
21 places, it will be assessed an OSS charge. BellSouth has offered two options. The
22 first is a regional price of \$3.50 per OSS order. The second is for ITC^DeltaCom to
23 pay the state ordered rates for each OSS order. In Florida, the state has not ordered
24 a rate and has said each party should bear its own cost for OSS. While
25 ITC^DeltaCom sees this as an excellent solution, other states have set rates as high

1 as \$10.80 making the regional rate of \$3.50 somewhat attractive. ITC^DeltaCom
2 witness Don Wood will address the cost of OSS in his testimony.

3 ITC^DeltaCom believes the regional rate is still too high and thus
4 unacceptable to ITC^DeltaCom for several reasons. First, BellSouth's OSS currently
5 does not work. Today, ITC^DeltaCom orders frequently take more than 10 days from
6 the time we submit the order to BellSouth to the time the customer's service is up and
7 running. A BellSouth customer, in many instances, could order the same service
8 directly from BellSouth in 24 to 48 hours.

9 ~~Second, BellSouth has not committed to providing ITC^DeltaCom with the L&L Customer Service~~
10 ~~Report (CSR) to speed the provisioning process.~~ BellSouth has not committed to
11 providing ITC^DeltaCom a download of the RSAG database including updates.

12 Third, the prices that have been suggested, ranging from \$3.50 to nearly \$11,
13 are unacceptable and have no competitive analogy. Prices for similar kinds of
14 services are generally rolled into the price of the product or service. Competitive
15 firms may only recover these costs if they can do so while keeping the price of their
16 service competitive. In the case of BellSouth the closest thing to a competitive
17 analogy is BellSouth's own OSS. The BellSouth OSS is rolled into the price of their
18 service. Their customers are not assessed separate OSS charges. CLECs should
19 pay no more for OSS than BellSouth charges its own customers.

20 Fourth, ITC^DeltaCom did not request a separate system be constructed for
21 it. ITC^DeltaCom considers it acceptable to have direct access into BellSouth's
22 existing operational support systems. BellSouth chose to construct a separate
23 system for CLECs to use for preordering, ordering, provisioning, and maintenance.
24 This separate system will benefit all by bringing competitive choice to consumers.

25 Fifth, ITC^DeltaCom should not be required to pay for any system that it does
26 not use, nor should it be required to pay for any interface it does not use.

1 ~~listings before BellSouth sends its listings to the independent publishers is anti-~~
 2 competitive. While the Act may not expressly address the provision of White Page
 3 Listings to independent publishers, we believe the Act requires BellSouth provide
 4 ITC^DeltaCom's White Page Listings to the same publishers to which it provides its
 5 own.

7 **IV. ACCESS TO BELL SOUTH'S NETWORK**

9 **AUDITS**

10 Q. SECTION 2 OF THE LOCAL INTERCONNECTION ATTACHMENT 3 ADDRESSES
 11 AUDITS. ARE THE PARTIES IN AGREEMENT AS TO HOW AUDITS FOR LOCAL
 12 AND TOLL TRAFFIC WILL BE TREATED?

13 A. No. The parties disagree on who should pay for the audits. BellSouth
 14 believes that if the auditing Party finds errors in the records of the other party, that are
 15 equal to or greater than 20%, then the audited Party should pay for the audit.
 16 ITC^DeltaCom disagrees. It is our opinion that each Party should pay for their own
 17 audits regardless of the outcome. It is interesting to note that BellSouth is in favor of
 18 this "penalty" but refuses to consider providing credits or refunds (which it calls
 19 ~~penalties) of nonrecurring charges when it fails to deliver service to ITC^DeltaCom.~~

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~~BILLING~~

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A. PAYMENT AND BILLING ARRANGEMENTS

5

Q. IS THERE A BASIC DISAGREEMENT AS TO THE LEVEL OF DETAIL THAT BELL SOUTH PROVIDES ON ITS BILLS?

6

7

A. Yes. In Exhibit A, Attachment 7, Section 1.1, ITC^DeltaCom has requested the following language addressing the detail in bills submitted by BellSouth:

8

9

BellSouth will bill all unbundled network elements and associated services purchased by ITC^DeltaCom with sufficient billing detail to enable ITC^DeltaCom to reasonably audit such charges.

10

11

12

ITC^DeltaCom simply wants some basic details on its bill, such as an item, a quantity, and a price. This detail will allow ITC^DeltaCom to verify that it is being correctly billed. Without this basic billing detail, ITC^DeltaCom will be unable to reconcile its bill each month.

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In Section 1.9, ITC^DeltaCom again requests "sufficient identifying information such that ITC^DeltaCom may audit BellSouth bills." The issue here is essentially the same. ITC^DeltaCom requires that BellSouth provide billing detail including the item, the quantity, and the price associated with End User Common Line Charges. This is necessary because the prices vary depending on the type of resold line, and ITC^DeltaCom has encountered difficulties in reconciling its bill.

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~~B. Access Usage Data~~

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Q. PLEASE DESCRIBE THE ISSUE CONCERNING THE TIMELY DELIVERY OF
ACCESS USAGE DATA.

3

4

A. BellSouth is not willing to commit to delivering access usage data "in a timely manner." The language ITC^DeltaCom offered before filing our petition is as follows:

5

6

If access usage data is not processed and delivered by either Party in a timely manner such that the other Party is unable to bill the IXC, the responsible Party shall be liable for the amount of lost revenue.

7

8

9

The language offered is reciprocal so that each Party bears the same responsibility. Without this commitment, ITC^DeltaCom has no guarantee that the data will arrive in time for it to submit bills to its IXC customers for payment.

10

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VI. GENERAL CONTRACT LANGUAGE ISSUES

14

15

A. DISPUTE RESOLUTION

16

Q. DID THE PARTIES REACH AN IMPASSE REGARDING THE TERMS ASSOCIATED WITH DISPUTE RESOLUTION?

17

18

A. Yes. BellSouth has maintained that ITC^DeltaCom should raise all disputes with the state Public Service Commission for resolution.

19

20

1 Q. ~~DO YOU MEAN BELLSOUTH WOULD HAVE YOU BRING ISSUES SUCH AS~~
 2 DISPUTES INVOLVING INTELLECTUAL PROPERTY, FOR EXAMPLE, BEFORE
 3 THE STATE COMMISSION?

4 A. Yes. Many of the issues in this interconnection agreement are issues that, if
 5 disputed, would be best handled by the state PSC. Some, however, would need to
 6 be brought directly to the courts, while others might need to be brought before the
 7 FCC or some other regulatory agency. For instance, a dispute relating to the
 8 interpretation and/or application of local codes regarding franchise fees should not be
 9 handled by the state PSC, neither should disputes involving intellectual property be
 10 brought before the state PSC.

11
 12 Q. SHOULD ITC^DELTACOM BE ALLOWED THE RIGHT TO PURSUE ANY AND ALL
 13 LEGAL REMEDIES BEFORE ANY LEGAL OR REGULATORY AUTHORITY?

14 A. Yes. In fact, the language proposed by BellSouth is designed to deny
 15 ITC^DeltaCom the due process remedies afforded by law to ITC^DeltaCom.
 16 Moreover, it would unnecessarily tax the resources of this Commission.

17 Q. WERE THERE ANY OTHER PROBLEMS RELATED TO DISPUTE RESOLUTION?

18 A. Yes. ITC^DeltaCom has recommended the following language:
 19 The Party that does not prevail shall pay all reasonable costs of
 20 the arbitration or other formal complaint proceeding, including
 21 reasonable attorney's fees and other legal expenses of the
 22 ~~prevailing Party.~~

23
 24

1 Q. ~~WHAT WAS BELL SOUTH'S RESPONSE TO THIS PROPOSED LANGUAGE?~~

2 A. BellSouth does not agree with this "loser pays" proposal. This fact alone is
3 cause for concern. Since the enactment of the Telecommunications Act, BellSouth
4 has lost a number of cases before state commissions and the courts. If BellSouth
5 were made responsible for the legal expenses associated with these cases, then they
6 might begin to think twice about forcing CLECs to file complaints or other claims
7 against BellSouth. A "loser pays" clause would reduce the amount of litigation before
8 the Commission.

9

10 **B. LIMITATION OF LIABILITY**

11 Q. PLEASE EXPLAIN THE PARTIES DIFFERENCES AND ITC^DELTA COM'S
12 POSITION ON LIMITATION OF LIABILITY.

13 A. ITC^DeltaCom has argued that in situations of gross negligence or willful
14 misconduct, there shall be no limitation of liability. BellSouth has agreed conditionally
15 with the inclusion of the following language:

16 Willful misconduct as used in this Section shall not include either
17 Party's actions in reliance upon a reasonable interpretation of any
18 term of this Agreement, even if such interpretation is ultimately found
19 to be erroneous by a State Commission, the FCC or a court of
20 ~~competent jurisdiction.~~

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~~ITC^DeltaCom does not believe this language is necessary, but would accept it if the term "reasonable interpretation," is followed by the clause "as determined by a State Commission, the FCC or a court of competent jurisdiction."~~

C. PICK AND CHOOSE

Q. SHOULD THE PARTIES ADOPT THE FCC'S "PICK AND CHOOSE" RULES?

A. Yes. The rules of the FCC are fairly simple and straightforward. They allow a CLEC like ITC^DeltaCom to obtain an individual interconnection service, or network element arrangement contained in any agreement upon the same rates, terms, and conditions as those provided in the agreement. This means that if ITC^DeltaCom wishes to pick a single UNE from the interconnection agreement of another CLEC, then we can do so at the same rates, terms, and conditions. In our negotiations BellSouth has disputed this, and has attempted to place language in the agreement that would require other carriers to pick and choose entire attachments rather than ~~individual elements.~~

D. TAXES

Q. ARE THE PARTIES IN DISPUTE OVER LANGUAGE REGARDING THE RESPONSIBILITY FOR PAYMENT OF TAXES?

A. Yes, we have been unable to agree upon the language to be included. ITC^DeltaCom's current interconnection agreement contains no language regarding taxes. During the two years that the existing agreement has been in place, there have been no disputes over the payment of taxes. Yet, BellSouth's template

1 introduces extensive language to deal with a problem that does not exist. In the spirit
2 of compromise, ITC^DeltaCom proposed the following language:

3 Any Federal, state or local excise, license, sales, use or other taxes or
4 tax-like charges (excluding any taxes levied on income) resulting from
5 the performance of this Agreement shall be borne by the Party upon
6 which the obligation for payment is imposed under applicable law, even
7 if the obligation to collect and remit such taxes is placed upon the other
8 Party. Any such taxes shall be shown as separate items on applicable
9 billing documents between the Parties. The Party obligated to collect
10 and remit taxes shall do so unless the other Party provides such Party
11 with the required evidence of exemption. The Party obligated to pay any
12 such taxes may contest the same and shall be entitled to the benefit of
13 any refund or recovery. The Party obligated to collect and remit taxes
14 shall cooperate fully in any such contest by the other Party by providing,
15 records, testimony, and such additional information or assistance as
16 may reasonably be necessary to pursue the contest.

17 The language proposed by ITC^DeltaCom covers substantially the same
18 issues as BellSouth's language addresses using significantly fewer words. We see
19 no reason why BellSouth should not accept our proposed compromise language.

20

21

VII. RECIPROCAL COMPENSATION

22

23 Q. WHAT ARE THE DIFFERENCES BETWEEN ITC^DELTACOM AND BELLSOUTH
24 WITH RESPECT TO RECIPROCAL COMPENSATION?

1 A. There are essentially two areas in dispute between the Parties. They are the
2 price for reciprocal compensation, and the traffic to which reciprocal compensation
3 applies.

4

5 Q. PLEASE SUMMARIZE YOUR CONCERNS WITH THE BELL SOUTH PROPOSAL
6 FOR RECIPROCAL COMPENSATION.

7 A. BellSouth's proposal is difficult to describe because it is discriminatory and
8 contrary to the spirit of the Telecommunications Act. BellSouth's proposal
9 discriminates in three ways: (1) it denies ITC^DeltaCom the ability to recover its costs
10 for terminating local calls for BellSouth; (2) it grants BellSouth free access to our
11 network when sending ISP calls to us without reciprocating with an offer of equal
12 value; and (3) it requires ITC^DeltaCom to subsidize BellSouth's profit margins and
13 shareholders by providing below-cost service.

14

15 **A. RECIPROCAL COMPENSATION PRICING**

16 Q. DESCRIBE THE ISSUE.

17 A. ITC^DeltaCom has proposed continuing the current reciprocal compensation
18 rate found in the existing interconnection agreement, while BellSouth has proposed
19 elemental billing based on the state ordered rates for local transport, end office
20 switching, and tandem switching.

1 Q. ARE THERE ANY OTHER ISSUES?

2 A. Yes. BellSouth has proposed a different computation for ITC^DeltaCom's
3 transport rate, one which will not allow ITC^DeltaCom to recover its costs in the
4 same manner that BellSouth does. In essence, while BellSouth proposes that it be
5 allowed to recover its cost of terminating ITC^DeltaCom originated local calls, it would
6 have ITC^DeltaCom charge less than its cost of terminating BellSouth originated local
7 calls. Not only is BellSouth's proposal anti-competitive, it would have customers of
8 ITC^DeltaCom subsidize BellSouth.

9

10 Q. DO YOU MEAN THAT BELLSOUTH IS TRYING TO SET UP A SYSTEM OF
11 PRICING WHERE CUSTOMERS OF ITC^DELTACOM WOULD SUBSIDIZE
12 RESIDENTIAL CUSTOMERS OF BELLSOUTH?

13 A. No, I do not mean that. BellSouth is trying to establish a pricing scheme
14 where ITC^DeltaCom and its customers will subsidize the profit margins and the
15 stockholders of BellSouth.

16

17 Q. PLEASE EXPLAIN.

18 A. BellSouth's pricing scheme discriminates against ITC^DeltaCom and its
19 customers in several ways. First, it rewards BellSouth for its inefficiency, allowing it to
20 charge for each element it uses in terminating local calls, including actual transport.
21 Second, it penalizes ITC^DeltaCom by requiring that we use a formula for transport
22 designed to lower the charges to BellSouth and thereby denies ITC^DeltaCom full
23 recovery of its costs, and permits ITC^DeltaCom charge for only end office switching.

1 Q. WHY IS BELLSOUTH DENYING ITC^DELTACOM THE ABILITY TO RECOVER ITS
2 COSTS FOR TRANSPORT?

3 A. BellSouth pressed hard in its first round of negotiations with CLECs for high
4 reciprocal compensation rates when it thought that the balance of revenue would be
5 flowing its way. Now that it is possible that both the states and the FCC will rule that
6 some form of compensation is due to companies that handle ISP traffic, BellSouth is
7 pressing just as hard for unreasonably low compensation to CLECs. BellSouth has
8 proposed that ITC^DeltaCom be required to charge transport between
9 ITC^DeltaCom's point of presence located within the LATA to the V & H coordinates
10 of the ITC^DeltaCom terminating NPA/NXX in the same LATA. In essence, BellSouth
11 wants ITC^DeltaCom to charge a proxy transport based on the way BellSouth's
12 network is configured, not based on ITC^DeltaCom's actual transport. Just as
13 BellSouth charges for each and every component in its network that ITC^DeltaCom
14 uses, so should ITC^DeltaCom be able to charge BellSouth. Thus if BellSouth
15 wishes to charge ITC^DeltaCom for transport, end office switching, and tandem
16 switching on its terms, then so too should ITC^DeltaCom be able to charge BellSouth
17 for the same elements as they are configured in ITC^DeltaCom's network.

18

19 Q. YOU MENTIONED SWITCHING, WHAT IS THE PROBLEM WITH BELLSOUTH'S
20 PROPOSAL?

21 A. As with transport, BellSouth is trying to tilt the revenue scales its way. When
22 ITC^DeltaCom picks up local traffic at a BellSouth tandem, BellSouth will charge
23 ITC^DeltaCom for both tandem and end office switching. But when ITC^DeltaCom
24 handles calls for BellSouth, even though it may perform the same tandem and end
25 office switching functions in one switch, BellSouth proposes it should only pay the end
26 office rate.

1 Q. IS THERE A CORRECT OR BETTER WAY TO HANDLE THESE IMBALANCES IN
2 COSTS AND REVENUE FLOW?

3 A. Yes, I believe there is. A single negotiated rate can be crafted to insure that
4 neither party is disadvantaged with respect to the other. I will discuss this rate and its
5 development in more detail later in my testimony.

6

7 Q. HAS EITHER PARTY SHOWN ANY INTEREST IN COMPROMISING ITS INITIAL
8 POSITION, AND SETTLING THIS DISPUTE OVER RECIPROCAL
9 COMPENSATION?

10 A. Yes. ITC^DeltaCom offered to agree to a form of elemental billing, if
11 BellSouth would agree to pay reciprocal compensation for traffic to ISPs. BellSouth
12 has refused to show any interest in compromising its unreasonable position. Thus,
13 while ITC^DeltaCom has offered to reduce its initial compensation rate by
14 approximately 75%, BellSouth has not moved an inch.

15

16 Q. YOU HAVE INDICATED THAT A SINGLE RATE FOR RECIPROCAL
17 COMPENSATION IS A MORE EQUITABLE AND REASONED SOLUTION TO THE
18 CURRENT PRICING DILEMMA. WHAT DO YOU THINK THAT RATE SHOULD BE?

19 A. I believe the rate should be set at \$0.0045 for the two-year term of this
20 contract. Then the rate should be reduced by \$0.0005 per year until it reaches
21 BellSouth's TELRIC-based rates for transport and switching. At all times the rate
22 should be equal. This will help minimize BellSouth's gaming and arbitrage schemes.
23 It will also allow ITC^DeltaCom some time to fill its network, so that it gets closer to
24 recovering its cost by the time the rate reaches BellSouth's TELRIC-based rates.

1 Q. HOW DO YOU EXPLAIN OR RATIONALIZE THE RATE OF \$0.0045 WHEN
2 BELLSOUTH'S TELRIC COSTS ARE LOWER?

3 A. ITC^DeltaCom faces much higher costs than BellSouth. BellSouth is a multi-
4 billion dollar monopoly and as such, it has significant bargaining power that
5 ITC^DeltaCom does not possess. Thus, when BellSouth buys switches, fiber, or
6 electronics for its network, it is capable of negotiating much more favorable pricing
7 than ITC^DeltaCom. BellSouth can also go into the market and borrow capital at
8 much lower rates than ITC^DeltaCom. Finally, the BellSouth network is operating at
9 or near full capacity, while ITC^DeltaCom's network is operating at much lower
10 capacity. These factors give ITC^DeltaCom a much higher cost structure than that
11 faced by BellSouth. Since the costs faced by each firm are so different, it is
12 appropriate to compromise, to move to the middle ground when negotiating a rate for
13 the mutual exchange of traffic.

14

15 **B. RECIPROCAL COMPENSATION FOR ISP TRAFFIC**

16 Q. WHAT IS ITC^DELTACOM'S POSITION ON THE PAYMENT OF RECIPROCAL
17 COMPENSATION FOR BELLSOUTH CUSTOMER ORIGINATED CALLS TO ISPS?

18 A. I would rather start with a more basic question: What is ITC^DeltaCom's
19 position on compensation for all forms of traffic? ITC^DeltaCom believes in the
20 "calling party pays" concept. That is, the party or company responsible for originating
21 a call is responsible for the costs associated with that call. Thus, when an individual
22 makes a local call, they and their telecommunications carrier are responsible for the
23 costs associated with that call. Likewise, when an individual "calls" the Internet, they
24 and their telecommunications carrier are responsible for those costs too. If, for
25 instance, a BellSouth customer calls BellSouth.net, then that customer and BellSouth
26 are responsible for the cost of that call. The costs associated with the call are not the

1 responsibility of the receiver, BellSouth.net, nor are they the responsibility of the
2 receiving telecommunications carrier or network.

3

4 Q. WHEN THAT SAME BELLSOUTH CUSTOMER CALLS AN ISP CUSTOMER OF
5 ITC^DELTACOM, DOES THE COST RESPONSIBILITY CHANGE?

6 A. No. The responsibility of that call still belongs to the caller and BellSouth, and
7 as a result, BellSouth and its customer should pay for the call. This fundamental
8 concept of cost-causer responsibility helps to make markets work.

9 Consider a long distance call. We generally think of these calls as containing
10 three parts: the originating access part, the long distance part, and the terminating
11 access part. Each of the parts may be handled by a different carrier, but each carrier
12 is paid for their role in handling the call through a detailed compensation plan.
13 Additionally, each carrier is paid by the calling party, either directly or indirectly.

14 Calls to the Internet are similar in that there are multiple parts to each Internet
15 session. Assuming the call is initiated over standard phone lines, the initial part of the
16 call, its delivery to the Internet service provider or ISP, may be handled by one or
17 more carriers. Each of these carriers plays a ^{Role} ~~part~~ in delivering the call to its
18 destination, and as such, each should be compensated.

19

20 Q. SHOULD THE ISP BEAR SOME OF THE COSTS IN GETTING EACH CALL TO ITS
21 LOCATION?

22 A. Yes, and in fact it does. The ISP pays for its local phone line, just as any
23 user or receiver of telephone calls would.

24

1 Q. BESIDES THE PHONE LINE, SHOULD THE ISP BEAR SOME OF THE COST
2 ASSOCIATED WITH GETTING EACH CALL TO THE ISP'S LOCATION?

3 A. Not in my view. The phone system in this country has been set up so that the
4 calling party pays for the variable costs associated with each call, whether it is a local
5 call or a long distance call. There are, of course, exceptions, such as, collect calls,
6 800-type calls, and dedicated or private line services. This system has been very
7 successful.

8

9 Q. HAS BELLSOUTH PROPOSED A NEW METHOD OF COMPENSATING
10 ITC^DELTACOM FOR THE USE OF ITS NETWORK?

11 A. Not to my knowledge. BellSouth has simply refused to pay and refused to
12 negotiate a compensation method for calls to ISPs who are customers of CLECs.
13 They have argued that these calls are interstate and therefore not covered under our
14 agreement. In essence, BellSouth has told ITC^DeltaCom that we must provide them
15 free use of our network for all calls to the Internet.

16

17 Q. DOES THE ACT REQUIRE BELLSOUTH TO NEGOTIATE?

18 A. Yes, Section 251 (c)(1) requires BellSouth to negotiate in good faith. While
19 BellSouth has no economic incentive to cooperate or negotiate with CLECs,
20 ITC^DeltaCom has no choice but to negotiate. This places ITC^DeltaCom at an
21 extreme disadvantage when trying to establish or renegotiate an interconnection
22 agreement.

23 Consider the following situation. If BellSouth refuses to negotiate a fair price
24 for handling of their traffic to ISPs, then ITC^DeltaCom could refuse to deliver this

1 traffic for BellSouth. If ITC^DeltaCom chose not to deliver this traffic, then we would
2 lose our ISP customers – they would have no incentive to remain our customer if we
3 were unable or unwilling to deliver their traffic.

4 The threat of losing our ISP customers would force ITC^DeltaCom to deliver
5 BellSouth's traffic at no charge. Faced with the higher cost of serving these ISPs,
6 ITC^DeltaCom would be forced to raise its price. The increase in price could drive
7 these customers to seek other alternative local service providers. As ISPs look for
8 alternatives, they may find that no CLEC could provide them a better price. In the end
9 they would be driven back to BellSouth. The only way to offset this significant market
10 power is for regulators to either require BellSouth to negotiate a fair price, or to order
11 a mutually beneficial reciprocal compensation that applies to ISP and local traffic.

12

13 Q. DOES THE FACT THAT THE FCC RECENTLY DECLARED ISP TRAFFIC
14 JURISDICTIONALLY INTERSTATE MAKE RECIPROCAL COMPENSATION FOR
15 ISP TRAFFIC ILLEGAL?

16 A. No. In fact the FCC has indicated that until it proposes rules, the states are
17 free to determine whether to require reciprocal compensation for ISP-bound traffic.

18 The FCC states:

19 Nothing in this Declaratory Ruling precludes state commissions
20 from determining, pursuant to contractual principles or other legal
21 or equitable considerations, that reciprocal compensation is an
22 appropriate interim inter-carrier compensation rule pending
23 completion of the rulemaking we initiate below. ¹

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling, CC Docket No.96-98; CC Docket No. 99-68, ¶ 27 (February, 26, 1999).*

1 Therefore, this state commission should find that it is equitable to impose reciprocal
2 compensation as an appropriate interim inter-carrier compensation mechanism for the
3 recovery of costs associated with the delivery of ISP-bound traffic.

4 Q. PLEASE SUMMARIZE WHY THIS COMMISSION SHOULD REQUIRE
5 RECIPROCAL COMPENSATION FOR TRAFFIC ORIGINATED BY CUSTOMERS
6 OF BELLSOUTH THAT IS BOUND FOR ISP CUSTOMERS OF ITC^DELTACOM.

7 A. Section 251 of the Telecommunications Act of 1996 requires that BellSouth
8 negotiate in good faith. Calls from customers of BellSouth to ISP customers of
9 ITC^DeltaCom cause ITC^DeltaCom to incur significant costs. The Commission
10 should allow recovery of these costs through reciprocal compensation.

11

12 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

13 A. Yes it does. However, since the parties intend to continue negotiating after the
14 submission of my testimony, I reserve to modify and update my testimony in response
15 to issues raised by BellSouth.

EBTL

1 **Q: ARE YOU THE SAME CHRISTOPHER ROZYCKI THAT FILED DIRECT**
2 **TESTIMONY IN THIS PROCEEDING?**

3 **A:** Yes, I am.

4 **Q: WHAT IS YOUR PURPOSE IN TESTIFYING TODAY?**

5 **A:** The purpose of my testimony is to respond to a number of arguments
6 made by BellSouth's witnesses in response to ITC^DeltaCom's petition
7 for arbitration and related direct testimony. I would also like to clarify
8 ITC^DeltaCom's position and provide additional information on a number
9 of issues raised by BellSouth's witnesses in their direct testimony.

10 ~~Issue 1 – Should BellSouth be required to comply with the performance~~
11 ~~measures and guarantees for pre-ordering/ordering, resale and~~
12 ~~unbundled network elements (“UNEs”), provisioning, maintenance,~~
13 ~~interim number portability and local number portability, collocation,~~
14 ~~coordinated conversions and the bona fide request processes as set forth~~
15 ~~fully in Attachment 10 of Exhibit A to this Petition?~~

17 **Q: ON PAGES 14-18, MR. VARNER DISCUSSES ITC^DELTA COM'S PROPOSED**
18 **PERFORMANCE MEASURES. DO YOU AGREE THAT BELL SOUTH'S SERVICE**
19 **QUALITY MEASURES ARE ADEQUATE?**

20 **A:** No. While these measures are a start, they are not representative of
21 what ITC^DeltaCom or the industry needs to assure performance.
22 ITC^DeltaCom's Performance Measures and Performance Guarantees
23 were developed by adapting many months of industry negotiations in
24 ~~Texas. We believe our proposed Performance Measures and~~

1 ~~Guarantees more closely approximate industry consensus than those~~
2 proposed by BellSouth. It is critical that performance measures and
3 guarantees be implemented TODAY. Therefore, ITC^DeltaCom
4 proposes that the Commission incorporate ITC^DeltaCom's proposed
5 performance measures and guarantees into this interconnection
6 agreement.

7
8 **Q: MR. VARNER GOES ON TO ARGUE THAT "ITC^DELTA COM APPARENTLY**
9 **BELIEVES THAT PERFORMANCE MEASUREMENTS CAN ONLY BE ENFORCED**
10 **THROUGH PENALTIES." IS HIS CHARACTERIZATION CORRECT?**

11 **A:** No, it is not. In a regulated monopoly environment it is possible that
12 performance measurements can be enforced without penalties.
13 However, in an industry transitioning to competition, such as, local
14 telecommunications, we believe that self-executing performance
15 guarantees are the only effective and responsive means to achieving
16 and maintaining levels of service quality. The performance measures
17 and guarantees we proposed offer a simpler, faster and more effective
18 method of generating the kind of performance necessary to promote
19 competition. The protracted litigation envisioned by Mr. Varner and
20 BellSouth does not. Mr. Varner argues that "state law and
21 commission procedures" are adequate to address any breach of
22 contract situation that may arise. While the Commission certainly can
23 address a breach of contract situation, this often takes many months
24 ~~and in some cases years and great Commission and industry~~

1 ~~resources. ITC^DeltaCom could be forced to spend millions of dollars~~
2 ~~pursuing these complaints to compel adequate performance from~~
3 ~~BellSouth. Moreover, it rewards BellSouth and works a particular~~
4 ~~hardship on smaller companies such as ITC^DeltaCom. If this is the~~
5 ~~only alternative, then ITC^DeltaCom may have to file as many as fifty~~
6 ~~or more individual complaints in a two-month interval.¹~~

7
8 BellSouth's invitation to seek enforcement of the
9 interconnection agreement at the Commission rather than agreeing to
10 adequate performance measures and guarantees is inapposite to its
11 unwillingness to agree to a "loser pays" clause in the interconnection
12 agreement. I would add BellSouth would likely take the position that
13 the Commission is without jurisdiction to award damages. Finally, I
14 believe that BellSouth's suggestion that all cases of inadequate
15 performance be resolved at the Commission in separate complaints or
16 lawsuits is poor advice that, if accepted, will result in bad public policy.
17 Such a position wastes the Commission's limited resources.

18
19 **Q: HOW DO FLORIDA CONSUMERS BENEFIT FROM BELLSOUTH'S**
20 **POSITION THAT POOR PERFORMANCE MUST BE ADDRESSED**
21 **~~ON A CASE BY CASE BASIS BY THE COMMISSION?~~**

¹ ITC^DeltaCom has experienced numerous failed cutovers, and service quality problems attributable to BellSouth. See Hyde proprietary Exhibits TAH-1,2, and 3.

1 A: ~~They don't. Our complaints would do little to satisfy our customers~~
2 ~~who want results, competitive pricing and quality service now. Thus,~~
3 ~~the situation persists and customers are denied the ability to choose~~
4 ~~competitive alternatives for their telecommunications needs without~~
5 ~~being "penalized" by the roadblocks imposed by BellSouth. The~~
6 ~~Commission and the courts are simply not well-equipped to address~~
7 ~~the volume or respond quickly enough to resolve the complaints of~~
8 ~~CLECs and their end users. Likewise, CLECs are simply not able to~~
9 ~~expend the resources it would take to fight each and every~~
10 ~~performance failure or breach by BellSouth. For instance, BellSouth~~
11 ~~frequently fails to perform cutovers at the scheduled cutover time, and,~~
12 ~~in some cases, BellSouth fails to show up for the cutover at all.~~
13 ~~Further, ITC^DeltaCom's customers have, on numerous occasions,~~
14 ~~been taken out of service without notice or explanation. Such reckless~~
15 ~~acts by BellSouth frustrate customers and often cause them economic~~
16 ~~harm, and damage ITC^DeltaCom's reputation. For specific details of~~
17 ~~these BellSouth "bad acts," this Commission need only review the~~
18 ~~exhibits to Mr. Hyde's testimony.~~

19
20 **Q: PLEASE CLARIFY YOUR RECOMMENDATION.**

21 **A:** We believe, that the real answer to performance quality is to give
22 BellSouth a clear and measurable performance objective and strong
23 incentives to achieve that level of performance. The three tiers of self-
24 executing performance guarantees set forth in Attachment 10 to our

1 ~~proposed agreement provide such incentives. We are not alone in this~~
2 ~~belief. The Texas Public Service Commission staff has conducted an~~
3 ~~investigation of performance measures in the context of its ongoing~~
4 ~~Section 271 docket. Our position is not novel.² For example, on July 1,~~
5 ~~1999 an Administrative Law Judge (ALJ) of the California Public~~
6 ~~Utilities Commission (CPUC) issued a draft decision adopting 44~~
7 ~~performance measurements. Nearly all of these measures were~~
8 ~~agreed to by Pacific Bell and GTE California. The Commission should~~
9 ~~consider the CPUC order carefully.~~

10

11 **Q: DO YOU BELIEVE THAT MR. VARNER IS CORRECT IN HIS**
12 **ASSUMPTION THAT THIS COMMISSION LACKS AUTHORITY TO**
13 **ASSESS PENALTIES OR AWARD DAMAGES?**

14 **A:** No. This Commission certainly has authority to issue penalties as part of
15 its authority to regulate local service in the State of Florida. For example,
16 this Commission has approved BellSouth tariffs that contain late payment
17 penalties and interest. In addition, this Commission has the authority
18 under the 1996 Telecommunications Act to arbitrate the terms of this
19 agreement. Indeed, the Act creates a duty for the Commission to
20 arbitrate and decide the unresolved issues between the parties. Thus,
21 this Commission has all necessary authority to determine what should
22 ~~and should not be included in this agreement, and can easily require~~

² In addition to Texas and California, Pennsylvania, Michigan, New York, New Jersey, Vermont and Louisiana have investigated or adopted some form of ILEC performance measures and remedies.

1 ~~specific contract language that any penalty or award of damages must be~~
2 heard before court of competent jurisdiction.

3
4 I also note that Mr. Varner does not provide any specific authority for his
5 contention that this Commission does not have authority to issue
6 penalties or to include language that would require damages in the event
7 of specific or continued nonperformance.

8
9 **Q: MR. VARNER STATES THAT THE COMMISSION HAS ALREADY**
10 **ADDRESSED THIS ISSUE AND DETERMINED THAT AWARDED**
11 **LIQUIDATED DAMAGES IS NOT APPROPRIATE. PLEASE STATE**
12 **ITC^DELTA COM'S POSITION.**

13 **A:** As I stated earlier, enforcement mechanisms requiring performance must
14 be included in this agreement. Already, ITC^DeltaCom has experienced
15 problems with BellSouth repeatedly delaying cutovers and missing due
16 dates for service completion. If this Commission cannot award damages,
17 ITC^DeltaCom respectfully submits that it can issue penalties and require
18 refunds and credits under the authority this Commission exercises today.
19 Because ITC^DeltaCom's primary concern is ensuring performance not
20 in collecting damages, ITC^DeltaCom recommends that tiers two and
21 three of the performance measures and guarantees should be paid to the
22 State of Florida just like any other penalty. ITC^DeltaCom firmly believes
23 that tier one which credits or refunds ITC^DeltaCom for services
24 BellSouth has promised but failed to deliver is also within the authority

1 that this Commission currently exercises. Through the tariff process, this
2 Commission enforces penalties and requires credits and refunds to
3 consumers and interexchange carriers pursuant to BellSouth filed and
4 approved tariffs.

5
6 **Q: ARE PERFORMANCE GUARANTEES A NEW CONCEPT?**

7 **A:** No. Mr. Varner states that a guarantee is completely unnecessary and
8 state law and Commission procedures are available. What Mr. Varner
9 fails to mention is that BellSouth already offers performance guarantees
10 to both its access and retail customers. Today, ITC^DeltaCom, a
11 customer and competitor of BellSouth, is not offered similar performance
12 guarantees through its interconnection agreement. Clearly, BellSouth
13 considers performance guarantees and penalties appropriate in certain
14 circumstances, but not for its competing customer, ITC^DeltaCom.
15 Attached to my rebuttal testimony as Exhibit CJR-4 are tariff pages where
16 BellSouth currently provides customer guarantees.

17
18 **Q: ARE PERFORMANCE MEASURES AND ENFORCEMENT**
19 **MECHANISMS PARTICULARLY IMPORTANT AND NECESSARY FOR**
20 **ITC^DELTACOM?**

21 **A:** Yes. A facilities-based carrier such as ITC^DeltaCom is dependent upon
22 BellSouth for essential network elements. Preordering, ordering,
23 provisioning, billing, repair and maintenance of these leased facilities is

1 provided by BellSouth. ITC^DeltaCom is similarly dependent upon
2 BellSouth with respect to resold services. If BellSouth's performance on
3 any of these functions is in any way deficient, ITC^DeltaCom's customer
4 holds ITC^DeltaCom responsible. Thus, it is easy to understand why
5 BellSouth would prefer their proposed Service Quality Measurements or
6 no measures at all, to our proposed performance guarantees. Under
7 BellSouth's "proposed" Service Quality Measures, if BellSouth fails to
8 perform there are only occasional refunds of NRCs and there are no
9 predetermined consequences for repeated failures. There really is very
10 little risk to BellSouth if they fail to perform, but there is a significant cost
11 to the CLEC to file and litigate a complaint before the Commission. Most
12 importantly, however, the consumers of Florida will be better protected
13 and better served if solid performance measures and guarantees are put
14 in place.

15
16 **Q: DO THE FCC'S RULES SPEAK TO PERFORMANCE STANDARDS**
17 **AND ENFORCEMENT MECHANISMS?**

18 **A:** Yes. The Telecommunications Act of 1996 (the "Act") and FCC rules
19 require that incumbent local exchange companies provide
20 interconnection, access to unbundled network elements and resale at
21 parity to that which it provides to itself. See 47 U.S.C. § 251(c)(2)(C);
22 47 C.F.R. § 51-503(a)(3). Access to network elements must be
23 provided on a nondiscriminatory basis, and the level of access must be
24 equal in terms of "quality, accuracy, and timeliness." Application of

1 ~~Ameritech Michigan Pursuant to § 271 of the Communications Act of~~
2 ~~1934, as Amended, to Provide In-Region, InterLATA Services in~~
3 ~~Michigan, CC Docket 96-98, ¶ 139 Also, in its decision rejecting~~
4 ~~BellSouth's second Louisiana Section 271 application, the FCC cited~~
5 ~~the Louisiana Commission's requirement that BellSouth develop~~
6 ~~performance standards and, indeed, applauded the Louisiana~~
7 ~~Commission for taking these steps. In the Matter of Application of~~
8 ~~BellSouth Corporation, BellSouth Telecommunications, Inc., and~~
9 ~~BellSouth Long Distance, for Provisions of In-Region, InterLATA~~
10 ~~Services in Louisiana, CC Docket 98-121, ¶ 93. In addition, this~~
11 ~~Commission also has general supervisory authority over telephone~~
12 ~~companies.~~

13
14 **Q: HAS BELLSOUTH OFFERED PERFORMANCE GUARANTEES OR**
15 **ANY TYPE OF CREDIT OR REFUND FOR SERVICES NOT**
16 **DELIVERED OR PERFORMED SIMILAR TO THAT BELLSOUTH**
17 **CURRENTLY PROVIDES TO ITS RETAIL AND ACCESS**
18 **CUSTOMERS?**

19 **A:** No. BellSouth has not offered ITC^DeltaCom a comparable guarantee
20 to that which is currently contained in BellSouth's tariffs. BellSouth's
21 access tariff contains a Commitment Guarantee Program providing
22 credits should BellSouth fail to meet its installation or repair of services
23 (E2.4.16). BellSouth offers an "unconditional satisfaction guarantee" in
24 its general subscriber services tariff (A12.20.3). Why do retail

1 residential and business retail customer obtain credits for a "missed
2 installation or repair" (A2.17) pursuant to the Commitment Guarantee
3 Program and not CLECs? Surely ITC^DeltaCom (a wholesale
4 purchaser) deserves the same "Commitment Guarantee
5 ITC^DeltaCom simply wants assurance in its interconnection
6 agreement from BellSouth that it will issue credits or refunds if
7 BellSouth misses an installation or repair commitment. This is tier one
8 of the Performance Measures and Guarantees.

9 ITC^DeltaCom does not believe that BellSouth has successfully
10 negotiated with any CLEC to include any such guarantees in the
11 interconnection agreements. In the end, ITC^DeltaCom, a wholesale
12 purchaser of UNEs, is accorded less treatment than BellSouth's other
13 customers, retail and access.

14
15 **Q: MR. VARNER STATES THAT BELL SOUTH IS "WORKING WITH THE FCC TO**
16 **FINALIZE A BELL SOUTH PROPOSAL FOR SELF-EFFECTUATING ENFORCEMENT**
17 **MEASURES." DO YOU THINK THE COMMISSION SHOULD WAIT FOR THESE**
18 **"MEASURES?"**

19 **A:** No. ITC^DeltaCom is not a party to these discussions, so we have no
20 idea what the outcome might be. We believe that our approach, or
21 some variation of the performance guarantees proposed by
22 ITC^DeltaCom will prove to be far more effective than the BellSouth
23 proposed self-effectuating enforcement measures. In addition, as Mr.
24 Varner points out, BellSouth's self-effectuating enforcement measures

1 ~~would not be effective until BellSouth is granted interLATA authority by~~
 2 the FCC. Based on the performance ITC^DeltaCom, and other
 3 CLECs, receive from BellSouth today, the term of this agreement may
 4 have expired before BellSouth's FCC proposed enforcement
 5 measures go into effect. ITC^DeltaCom and its customers must have
 6 relief today, through specified performance measures and guarantees
 7 in the parties' interconnection agreement. Our approach will spur
 8 competition in Florida.

9
 10 Issue 2: Should BellSouth be required to waive any nonrecurring charges
 11 when it misses a due date?

12
 13 **Q: BELL SOUTH WITNESS VARNER INDICATES THAT A WAIVER OF NON-**
 14 **RECURRING CHARGES FOR A MISSED DUE DATE IS A "PENALTY OR**
 15 **LIQUIDATED DAMAGES PROVISION." [P. 16] WHAT IS YOUR RESPONSE?**

16 **A:** I disagree. It is a performance guarantee similar to that which
 17 BellSouth offers to its customers today out of its tariffs. Each time
 18 BellSouth schedules a due date with ITC^DeltaCom and the customer,
 19 it is critical that the due date be met. ITC^DeltaCom incurs cost for
 20 each scheduled event. If BellSouth fails to show up, which happens
 21 frequently, we incur the cost of our technician's time. The waiver of
 22 non-recurring charges is a way for ITC^DeltaCom to avoid penalties
 23 ~~resulting from BellSouth's inaction and non-performance. The~~

1 ~~customer may also have scheduled a technician or vendor to be on-~~
2 site during the event. The customer incurs the cost of the
3 technician/vendor time. In addition, to the real monetary costs
4 incurred by ITC^DeltaCom and its customer, the failure to complete
5 the work as scheduled causes the customer to lose confidence in the
6 ability of ITC^DeltaCom to effectively manage the customer's
7 telecommunications needs. This significantly damages the reputation
8 and good name ITC^DeltaCom has worked so hard to establish.
9 Conversely, without performance guarantees, BellSouth incurs no
10 costs associated with their failure to meet their commitment. Without
11 performance guarantees, BellSouth has both economic and
12 competitive incentives to miss scheduled due dates. These incentives
13 are offset somewhat by imposing a nonrecurring charge waiver on
14 BellSouth.

15 **Q: IS BELLSOUTH'S POSITION CONSISTENT?**

16 **A:** No. While Mr. Varner argues that a waiver of non-recurring charges for
17 a missed due date is a "penalty", BellSouth, in its self-effectuating
18 enforcement measures document agrees to refund "the Non-Recurring
19 Charge for all orders...where BellSouth missed the due date." I
20 attached BellSouth's Proposal for Self-Effectuating Enforcement
21 Measures as Exhibit CJR-3 to my direct testimony. In the same
22 document BellSouth refers to the waiver of nonrecurring charges as
23 "enforcement payments." According to BellSouth, when it fails to
24 meet one of its performance measures BellSouth will "compensate the

1 ~~GLEO based on the charges for a service BellSouth committed to~~
 2 ~~perform and then did not perform as specified." This document,~~
 3 ~~therefore, is contrary to Mr. Vannar's view that the performance~~
 4 ~~guarantees are a penalty. Additionally, in Tennessee, BellSouth filed a~~
 5 ~~brief in which it proposed to have certain charges waived for missed~~
 6 ~~due dates.~~

7

8 Issue 23 - Should BellSouth be required to pay reciprocal compensation to
9 ITC^DeltaCom for all calls that are properly routed over local trunks, including
10 calls to Internet Service Providers ("ISPs")?
11 Issue 24 – What should be the rate for reciprocal compensation?

12

13 **Q: HAVE THE PARTIES AGREED TO A RECIPROCAL COMPENSATION RATE?**

14 **A:** No.

15 **Q: WHERE DO THE PARTIES STAND ON THIS ISSUE?**

16 **A:** ITC^DeltaCom originally proposed the rate that is in our current
 17 agreement, \$.009 per minute of use. This is the rate approved by this
 18 Commission as compliant with Sections 251 and 252 of the Act. I have
 19 proposed a rate of \$0.0045 per MOU for the first year, with a reduction
 20 of \$0.0005 per MOU per year until the rate equals BellSouth's
 21 proposed elemental rate. As always, ITC^DeltaCom stands ready to
 22 negotiate a fair and equitable solution to this issue.

23

1 **Q: WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?**

2 **A:** During negotiations BellSouth argued that no compensation was due
3 for ISP-bound traffic. Mr. Varner's testimony, however, puts forth a
4 brand new argument as to why BellSouth should not pay for using
5 ITC^DeltaCom's network. Mr. Varner's argument can be summarized
6 as follows:

- 7
- 8 • Paying reciprocal compensation for ISP-bound traffic is inconsistent
9 with the law and is not sound public policy;
 - 10 • The Commission's efforts to arbitrate this issue would be "fruitless"
11 and a "wasted effort" and therefore this issue should not be
12 addressed or arbitrated; and
 - 13 • ISPs are carriers and, therefore, ITC^DeltaCom should pay
14 BellSouth access on ISP-bound traffic.
- 15

16 **Q: DOES MR. VARNER ACCURATELY DESCRIBE HOW ITC^DELTACOM**
17 **PROVIDES SERVICE TO ISP CUSTOMERS?**

18 **A:** No. Once again, BellSouth is describing models and services that
19 ITC^DeltaCom does not provide. ITC^DeltaCom provides its ISP
20 customers local service in the form of local lines purchased from local
21 tariffs. ISPs buy these local lines or services in order to receive local
22 calls from end users.

23

24 **Q: MR. VARNER STATES THAT LOCAL TRUNKS MAY CARRY**
25 **ACCESS OR TOLL TRAFFIC. HOW IS ITC^DELTACOM'S**
26 **TRUNKING NETWORK ARRANGED?**

1 **A:** ITC^DeltaCom has two way trunk groups in Florida and local traffic
2 (including ISP traffic) is on one trunk group and all other traffic goes on
3 another trunk group.

4

5 **Q: MR. VARNER STATES ON PAGE 41 THAT ISPS ARE CARRIERS.**
6 **IS THIS TRUE?**

7 **A:** No. ISPs do not currently obtain certificates of authority to provide
8 telecommunications services in Florida nor are they regulated as
9 carriers by the FCC.

10

11 **Q: ARE YOU AWARE OF ANY DECISIONS BY THE FCC THAT**
12 **SPECIFICALLY STATE ISPS ARE CARRIERS?**

13 **A:** No. Although Mr. Varner states on page 41 that ISPs are carriers, he
14 does not provide the order or ruling to support this statement. After
15 much research, I found the following:

16

17 First, based on FCC rules, it is not appropriate to treat ISPs as
18 carriers. In the FCC's *Computer II Inquiry* (77 FCC 2 d 384, 387 –
19 released May 2, 1980), the FCC found that ESPs (of which ISPs are a
20 subset) are not common carriers within the meaning of Title II of the
21 Communications Act. This FCC decision was codified in FCC rule
22 64.702. Section 64.702 of the FCC rules provides:

23

1 [T]he term enhanced service shall refer to services offered over
 2 common carrier transmission facilities used in interstate
 3 communications which employ computer processing
 4 applications that act on the format, content, code, protocol or
 5 similar aspects of the subscriber's transmitted information;
 6 provide the subscriber additional, different or restructured
 7 information, or involve subscriber interaction with stored
 8 information. Enhanced services are not regulated under Title II
 9 of the Act. [emphasis added]
 10

11 Second, FCC regulations clearly specify that ISPs are to be treated as
 12 end users. The FCC's declaratory ruling at paragraph 15 specifically
 13 comments on the status of ISPs:

14 The Commission's treatment of ESP [enhanced service
 15 providers, of which ISPs are a subset] traffic dates from 1983
 16 when the Commission first adopted a different access regime
 17 for ESPs. Since then, the Commission has maintained the ESP
 18 exemption, pursuant to which it treats ESPs as end users under
 19 the access charge regime and permits them to purchase their
 20 links to the PSTN through intrastate local business tariffs rather
 21 than through interstate access tariffs. As such, the Commission
 22 discharged its interstate regulatory obligations through the
 23 applications of local business tariffs. Thus, although
 24 recognizing that it was interstate access, the Commission has
 25 treated ISP-bound traffic as though it were local. [emphasis
 26 added]
 27

28 Mr. Varner's characterization of ISPs as carriers rather than end users
 29 is incorrect and this nullifies his argument that ITC^DeltaCom should
 30 share revenues it receives from its ISP customers with BellSouth.

31

32 **Q: DO YOU AGREE WITH BELL SOUTH'S POSITION THAT RECIPROCAL**
 33 **COMPENSATION RATES ARE NOT APPLICABLE TO ISP BOUND TRAFFIC AND**
 34 **THAT THIS COMMISSION SHOULD NOT ADDRESS THIS ISSUE?**

1 **A:** No, I do not. The FCC's *Declaratory Ruling in C.C. Docket No. 96-98*
2 *and Notice of Proposed Rulemaking in CC Docket No. 99-68*
3 (hereafter "*Declaratory Ruling*"), provides to the states an enormous
4 responsibility to determine the proper compensation that carriers
5 should receive for this traffic until a national rule is established. The
6 following excerpt from paragraph 26 of the FCC's *Declaratory Ruling* is
7 dispositive:

8 Although reciprocal compensation is mandated under Section
9 251(b)(5) only for the transport and termination of local traffic,
10 neither the statute nor our rules prohibit a state commission from
11 concluding in an arbitration that reciprocal compensation is
12 appropriate in certain instances not addressed by section
13 251(b)(5), so long as there is no conflict with governing federal
14 law. A state commission's decision to impose reciprocal
15 compensation obligations in an arbitration proceeding – or a
16 subsequent state commission decision that those obligations
17 encompass ISP-bound traffic – does not conflict with any
18 Commission rule regarding ISP-bound traffic. *By the same token,*
19 *in the absence of governing federal law, state commissions also*
20 *are free not to require the payment of reciprocal compensation for*
21 *this traffic and to adopt another compensation mechanism.*
22 [footnotes omitted, emphasis added]
23

24 **Q:** **ARE THERE OTHER NOTEWORTHY SECTIONS WITHIN THE FCC DECLARATORY**
25 **RULING?**

26 **A:** Yes. In paragraph 29 the FCC states:
27

28 We acknowledge that, no matter what the payment arrangement,
29 LECs incur a cost when delivering traffic to an ISP that originates
30 on another LEC's network.
31

1 From these two paragraphs it is clear that while a state Commission is
2 "...free not to require the payment of reciprocal compensation for this
3 traffic...", if it chooses this path it must "adopt another compensation
4 mechanism." Thus, the FCC does not sanction simply ignoring the
5 issue.

6

7 **Q: HASN'T THE FCC SPECIFICALLY HELD THAT ISP-BOUND TRAFFIC IS**
8 **INTERSTATE IN NATURE?**

9 **A:** Yes. That is discussed in footnote number 87 in the FCC's
10 *Declaratory Ruling*. However, the issue of determining the appropriate
11 level of compensation for ISP bound traffic isn't simplified by this
12 finding. In its *Declaratory Ruling* the FCC makes it clear that in the
13 past it has treated ISP bound traffic as local in nature and as I
14 discussed earlier the FCC has left it to the State Commissions to
15 establish compensation mechanisms based upon this assumption in
16 the future.

17

18 **Q: WHY DO YOU STATE THAT RECIPROCAL COMPENSATION RATES MAY STILL BE**
19 **APPLICABLE TO ISP-BOUND TRAFFIC?**

20 **A:** The FCC has obviously left the state commissions to determine an
21 appropriate rate of compensation one LEC should pay another for ISP-
22 bound traffic. It appears that the FCC has given the state
23 commissions an option to either adopt the reciprocal compensation
24 rates that they have already put in place as reasonable payment for all

1 other types of local traffic, or, to construct another means of
 2 compensation specific to ISP-bound traffic. Hence, while ISP-bound
 3 traffic may no longer meet the legal definition of "local traffic" that the
 4 FCC has found appropriate for compensation under Section 251(b)(5)
 5 of the TA96, the FCC has given a strong indication that such reciprocal
 6 compensation rates are a good place to start when determining
 7 reasonable rates for ISP-bound traffic.

8

9 **Q: HAVE OTHER STATE COMMISSIONS MADE DECISIONS IN THIS RESPECT SINCE**
 10 **THE FCC ISSUED ITS DECLARATORY RULING?**

11 **A:** Yes. 16 states have issued decisions since the FCC's issuance of its
 12 Declaratory Ruling. Among those that have interpreted the FCC's
 13 Declaratory Ruling for purposes of governing interconnection
 14 agreements within their intra-state jurisdictions, the Maryland
 15 Commission provides the most reasoned reading to date of the FCC's
 16 intentions. In *Order No. 75280* at pages 16 and 17 the Maryland
 17 Commission finds as follows:

18

19 Thus, under the FCC's *ISP Order*, it is incumbent upon this
 20 Commission to determine an interim cost recovery methodology
 21 which may be used until the FCC completes its rulemaking on this
 22 issue and adopts a federal rule governing inter-carrier
 23 compensation arrangements.

24

25 In fact, according to the FCC, "State commissions are free to
 26 require reciprocal compensation for ISP-bound calls, or not require
 27 reciprocal compensation and **adopt another compensation**
 28 **mechanism**, bearing in mind that ISP/ESPs are exempt from
 29 paying access charges." This directive does not leave us the

1 option of providing for no compensation for ISP-bound calls. State
 2 commissions must either require reciprocal compensation or
 3 develop another compensation mechanism. To fail to provide for
 4 any compensation would violate the 1996 Act, which states:

5
 6 A State commission shall not consider the terms and
 7 conditions for reciprocal compensation to be just and
 8 reasonable unless such terms and conditions provide for
 9 the mutual and reciprocal recovery by each carrier of
 10 costs associated with the transport and termination on
 11 each carrier's network facilities of calls that originate on
 12 the network facilities of the other carrier. 47 USC §
 13 252(d)(2)(A).
 14

15 We are very concerned that the adoption of BA-MD'S position
 16 will result in CLECs receiving no compensation for terminating
 17 ISP-bound traffic. Such an effect will be detrimental to our
 18 efforts to encourage competition in Maryland. No one disputes
 19 that local exchange carriers incur costs to terminate the traffic of
 20 other carriers over their network. In the absence of finding that
 21 reciprocal compensation applies, a class of calls (ISP traffic) will
 22 exist for which there is no compensation. The reciprocal
 23 compensation rates established by our arbitration order and
 24 contained in the approved Statement of Generally Available
 25 Terms ("SGAT") reflect the costs of this termination. Until the
 26 FCC establishes an appropriate inter-carrier compensation
 27 mechanism for ISP-bound traffic, we find that it is in the public
 28 interest to require BA-MD to pay our arbitrated reciprocal
 29 compensation rates contained in the SGAT as an **interim**
 30 compensation mechanism. [footnotes omitted, emphasis in
 31 original]
 32
 33

34 **Q: MR. VARNER SUGGESTS IN HIS TESTIMONY ON PAGE 34 THAT**
 35 **"COMPENSATION FOR ISP BOUND TRAFFIC IS NOT SUBJECT TO A SECTION**
 36 **252 ARBITRATION." DO YOU AGREE?**

37 **A:** No, I do not and neither does the FCC. In footnote 87, found in
 38 paragraph 26 of the FCC's *Declaratory Ruling*, the FCC states as
 39 follows:

1 **As discussed, *supra*, in the absence of a federal rule, state**
2 **commissions have the authority under section 252 of the Act**
3 **to determine inter-carrier compensation for ISP-bound traffic.**

4 Moreover, in its *Notice of Proposed Rulemaking* included as a portion
5 of its *Declaratory Ruling*, the FCC tentatively concludes that even if the
6 FCC ultimately adopts a federal policy, states should still set inter-
7 carrier compensation rates for ISP-bound traffic:

8
9 **30. We tentatively conclude that, as a matter of federal**
10 **policy, the inter-carrier compensation for this interstate**
11 **telecommunications traffic [ISP-bound traffic] should be**
12 **governed prospectively by interconnection agreements**
13 **negotiated and arbitrated under sections 251 and 252 of the**
14 **Act. Resolution of failures to reach agreement on inter-**
15 **carrier compensation for interstate ISP-bound traffic then**
16 **would occur through arbitrations conducted by state**
17 **commissions, which are appealable to federal district courts.**

18
19 **Q: MR. VARNER BELIEVES THAT RECIPROCAL COMPENSATION FOR ISP-BOUND**
20 **TRAFFIC IS INCONSISTENT WITH SOUND PUBLIC POLICY. DO YOU AGREE?**

21 **A:** No, I do not. Good public policy and sound economic principles
22 require the Commission to reject BellSouth's proposal and find that
23 ITC^DeltaCom must be allowed to recover from BellSouth costs it
24 incurs for carrying BellSouth's traffic.

1 **Q:** DO YOU AGREE WITH BELLSOUTH'S POSITION THAT ITC^DELTA COM SHOULD
2 PAY BELLSOUTH FOR ORIGINATING CALLS FROM BELLSOUTH CUSTOMERS
3 WHICH ARE ULTIMATELY DELIVERED TO AN ISP SERVED BY ITC^DELTA COM?

4 **A:** No, I do not. BellSouth's position is switched access charges should
5 apply to traffic passed to ISP customers and that the switched access
6 charge regime is the proper framework within which to view ISP.³
7 Within the switched access charge framework, long distance carriers
8 compensate local exchange carriers both to originate and terminate
9 calls placed over their networks. In contrast to the switched access
10 regime, reciprocal compensation obligates the local exchange carrier
11 originating the call to compensate the carrier terminating the call for
12 carrying the traffic on its network. The switched access charge regime
13 is an old model that is currently being challenged in every state and is
14 being revised substantially by the FCC. If the Commission chooses to
15 view ISP bound traffic as part of the switched access regime, it will be
16 going in exactly the opposite direction of where the rest of the country,
17 including the FCC, is headed. That is, this Commission will be
18 embracing a structure that a growing number of states have found to
19 be significantly out-of-line with cost causation and in bad need of
20 repair.

21

³ See BellSouth's *Comments* to the FCC in C.C. Docket No. 99-68, pages 8-9, as well as Mr. Varner's testimony at pages 50-60 including Exhibit AJV-7.

1 More importantly, calls to an ISP customer do not resemble switched
2 access traffic, as they are not purchased as switched access traffic
3 and the FCC has already found that switched access charges do not
4 apply to such traffic. Hence, it is important that even if this
5 Commission decides that the reciprocal compensation rate paid for all
6 other local traffic is not applicable to ISP-bound traffic and that some
7 other rate should apply, it must find that the reciprocal compensation
8 *framework* (i.e. the originating carrier is responsible for costs
9 associated with carrying the call) is the proper framework within which
10 to establish reasonable rates for ISP-bound traffic. If any semblance
11 of economic cost causality is to remain in the local exchange
12 marketplace, BellSouth's proposal to charge CLEC's for carrying its
13 own traffic must not be adopted.

14

15 **Q: IS ITC^DELTA COM "ATTEMPTING TO AUGMENT THE REVENUES IT**
16 **RECEIVES FROM ITS ISP CUSTOMERS AT THE EXPENSE OF BELL SOUTH'S**
17 **END-USERS" AS BELL SOUTH CLAIMS?**

18 **A:** No. ITC^DeltaCom's ISP customers pay for the services they purchase
19 from ITC^DeltaCom. By making calls to the ISP customers of
20 ITC^DeltaCom, BellSouth's end users causes ITC^DeltaCom to incur
21 switching and transport expense not covered in the rates charged to
22 ISPs. ITC^DeltaCom requests that BellSouth compensate
23 ITC^DeltaCom for the use of those services through an appropriate,

1 mutually agreed upon per minute of use reciprocal compensation
2 mechanism.

3

4 **Q: IS THERE EVIDENCE THAT ITC^DELTA COM INTENDS TO SERVE NON-ISP**
5 **CUSTOMERS?**

6 **A:** Absolutely. First, ITC^DeltaCom has tariffs on file in each of the states
7 it operates for local residential and business service. Although the
8 number of customers ITC^DeltaCom has in this market are small when
9 compared to BellSouth, ITC^DeltaCom continues its efforts to attract
10 these customers and to grow.

11

12 Second, the Commission need look no further than the evidence
13 presented by ITC^DeltaCom in this case to determine that
14 ITC^DeltaCom is serious about providing a wide range of local
15 telecommunications services in Florida. Of the testimony filed by
16 ITC^DeltaCom, only a fraction comprises testimony dealing with the
17 reciprocal compensation issue. Other witnesses present testimony
18 dealing with charges for operations support systems, performance
19 benchmarks, parity and remedies. These issues are not specific to
20 ITC^DeltaCom's ability to serve ISP customers, but are **critical** to the
21 ability of ITC^DeltaCom to serve a wide range of customers.

22

23 **Q: ITC^DELTA COM'S LOCAL MARKET SHARE IS SMALL IN COMPARISON TO THAT**
24 **OF BELL SOUTH. IS THERE A REASON FOR THAT DISCREPANCY?**

1 **A:** Yes. First, ITC^DeltaCom has many hurdles to overcome as it enters
 2 the market including acquisition of adequate financing and
 3 development of name recognition among customers. Most
 4 importantly, ITC^DeltaCom must overcome the obstacles BellSouth
 5 presents as the two parties negotiate this interconnection agreement.
 6 Until these arbitration issues are resolved, ITC^DeltaCom can not
 7 make a determination as to whether aggressive market entry is
 8 warranted.

9

10 Issue 3: What is the definition of parity? Pursuant to this definition, should
 11 BellSouth be required to provide the following: (1) Operational Support
 12 Systems ("OSS"), (2) UNEs, ~~(3) White Page Listings~~, and (4) Access to
 13 Numbering Resources (5) An unbundled loop using Integrated Digital Loop
 14 Carrier (IDLC) technology; ~~(6) Interconnection, (7) Service intervals on~~
 15 ~~wirebacks, (8) Priority guidelines for repair and maintenance and UNE~~
 16 ~~provisioning, and (9) White Page Listings to independent third party~~
 17 ~~publishers?~~

18

19 **Q: MR. VARNER CLAIMS THAT BELL SOUTH IS ALREADY OBLIGATED, BY THE ACT**
 20 **AND FCC RULES TO PROVIDE ITC^DELTACOM AND ANY OTHER CLEC**
 21 **NONDISCRIMINATORY ACCESS TO TELECOMMUNICATIONS SERVICES,**
 22 **UNBUNDLED NETWORK ELEMENTS, AND INTERCONNECTION. IS THAT OBLIGATION**
 23 **SUFFICIENT PROTECTION FOR ITC^DELTACOM?**

1 **A:** No it is not. First of all, it simply makes good sense to include specific
2 language to enhance the parties' understanding of their commitments.
3 While Mr. Varner is correct that BellSouth is required by the
4 Telecommunications Act, FCC Rules and Orders, and State
5 Commission Orders to provide nondiscriminatory access and parity of
6 service to that which BellSouth provides to itself, its affiliates and
7 subsidiaries, and other requesting telecommunications providers,
8 ITC^DeltaCom simply wants specific contract language in the parties'
9 Interconnection Agreement to make clear the parties' obligations under
10 the law.

11

12 **Q: WHAT IS YOUR UNDERSTANDING OF MR. VARNER'S CLAIM THAT**
13 **BELLSOUTH IS OFFERING SERVICES AT PARITY?**

14 **A:** Mr. Varner quotes FCC Rule 51.311, which states: "the quality of an
15 unbundled network element, as well as the quality of the access to
16 such unbundled network element, that an incumbent LEC provides to
17 a requesting telecommunications carrier shall be at least equal in
18 quality to that which the incumbent LEC provides itself." Mr. Varner
19 then claims, "BellSouth complies with its obligations under the Act and
20 FCC Orders to provide services to CLECs in a nondiscriminatory
21 manner." As stated above, it is ITC^DeltaCom's position that clear and
22 explicit language must be included in our interconnection agreement
23 because we are not receiving service quality "at least equal in quality
24 to that which the incumbent LEC provides itself." This is extremely

1 troubling, because we often sell our new customer service that is very
2 similar or identical to the service it previously received from BellSouth.
3 Further, ITC^DeltaCom believes that BellSouth often takes apart the
4 customer's existing bundled elements and reassembles them in a
5 substandard manner. This is clearly not the intent of the "at least
6 equal in quality" clause quoted above. For example, with regard to
7 unbundled network elements, Mr. Varner claims that ITC^DeltaCom is
8 requesting "an impossible circumstance, not parity." BellSouth states
9 that it does not provide UNEs to itself or its retail customers, and thus,
10 BellSouth is not required to provide parity. Mr. Varner, however,
11 correctly states that BellSouth is required to provide UNEs in a manner
12 that allows ITC^DeltaCom a meaningful opportunity to compete. This
13 does not mean that BellSouth may provide substandard service to
14 ITC^DeltaCom. Unbundled Network Elements are simply pieces of the
15 network that BellSouth, just as ITC^DeltaCom, combines to make a
16 finished service. ITC^DeltaCom, in order to have a meaningful
17 opportunity to compete, should be able to purchase unbundled
18 network elements from BellSouth such that the individual elements are
19 equal to the quality of the same elements that are found in BellSouth's
20 retail services.

21

22 **Q: IN ADDITION TO THE FCC RULE CITED BY MR. VARNER IN HIS TESTIMONY,**
23 **HAS THE FCC FURTHER DEFINED PARITY?**

1 **A:** Yes. In its First Report and Order, released Aug. 8, 1996, the FCC
2 provided the following:

3 Accordingly, we conclude that the phrase
4 “nondiscriminatory access” in section 251(c)(3) means at
5 least two things: first, the quality of an unbundled
6 network element that an incumbent LEC provides, as
7 well as the access provided to that element, must be
8 equal between all carriers requesting access to that
9 element; second, where technically feasible, the access
10 and unbundled network element provided by an
11 incumbent LEC must be at least equal-in-quality to that
12 which the incumbent LEC provides to itself.⁴ [Para. 312]
13

14 The footnote to this passage is also enlightening:

15 “We note that providing access or elements of lesser
16 quality than that enjoyed by the incumbent LEC would
17 also constitute an “unjust” or “unreasonable” term or
18 condition.”⁵
19

20 This means that each time BellSouth delivers ITC^DeltaCom an
21 unbundled network element, such as a local loop, of lesser quality than it
22 provided itself in the process of providing service to the same end user, it
23 is in violation of the Act. Today, BellSouth provides ITC^DeltaCom with
24 numerous local loops that are not equal to those they provide to
25 themselves.
26

27 **Q: IS IT TRUE THAT THE FCC ALLOWS BELL SOUTH TO PROVIDE LOCAL LOOPS OF**
28 **LESSER QUALITY TO CLEC’S THAN IT PROVIDES TO ITSELF?**

⁴ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 ¶ 312 (August 8, 1996).

⁵ *Id.* at ¶ 312, footnote 676.

1 **A:** No. In fact, paragraph 313 of the first Report and Order the FCC
2 states:

3 We believe that Congress set forth a "nondiscriminatory
4 access" requirement in section 251(c)(3), rather than an
5 absolute equal-in-quality requirement, such as that set
6 forth in section 251(c)(2)(C), because, in rare
7 circumstances, it may be technically infeasible for
8 incumbent LECs to provide requesting carriers with
9 unbundled elements, and access to such elements, that
10 are equal-in-quality to what the incumbent LECs provide
11 themselves.⁶
12

13 In order for BellSouth to gain permission to provide local loops of
14 lesser quality to ITC^DeltaCom, BellSouth must prove to the state
15 commission that it is technically infeasible to provide access to
16 unbundled elements, or the unbundled elements themselves, at the
17 same level of quality that the incumbent LEC provides itself.

18

19 **Q: HAS BELLSOUTH MADE SUCH A SHOWING OF PROOF BEFORE THIS**
20 **COMMISSION?**

21 **A:** I am not aware of such a filing.

22

~~23 **Q:** ON PAGE 22, MR. VARNER STATES THAT YOU CLAIM THAT BELLSOUTH
24 ATTEMPTS TO WIN BACK CUSTOMERS PRIOR TO THE CUSTOMER'S SERVICE
25 BEING "TURNED UP" BY ITC^DELTA COM. DID YOU MAKE THIS CLAIM AND
26 DOES IT HAPPEN?~~

⁶ *Id.* at ¶ 313.

1 ~~A: ITC^DeltaCom is experiencing the repercussions of purchasing BLES~~
 2 ~~at less than parity. In numerous instances the winback process for~~
 3 ~~BellSouth begins while the customer is waiting for their service to be~~
 4 ~~turned up by ITC^DeltaCom. The unreasonable delays caused by~~
 5 ~~BellSouth forces customers to wait for their service to be activated.~~
 6 ~~This delay provides BellSouth with ample time –too much time – to~~
 7 ~~approach the customer and attempt to win them back by offering to get~~
 8 ~~them back in service more quickly. This “window of opportunity” is~~
 9 ~~made possible by the disparity in provisioning that ITC^DeltaCom~~
 10 ~~experiences.~~

11

12

Issue 38 What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?

13

14

15 **Q: ON PAGE 61 OF HIS TESTIMONY, VARNER STATES THAT OSS**
 16 **CHARGES SHOULD BE IMPOSED. PLEASE COMMENT.**

17 **A:** As stated in my direct testimony, BellSouth's OSS does not work – it
 18 simply does not provide ITC^DeltaCom or any CLEC with parity to the
 19 system access enjoyed by BellSouth. ITC^DeltaCom and many other
 20 CLECs are struggling to develop electronic interfaces to make the
 21 ordering process more efficient. ITC^DeltaCom has worked very hard to
 22 develop the capability on its side of the interfaces in order to send as
 23 many electronic orders as possible. I believe that BellSouth would agree

1 that it is, or at least should be, more efficient for ITC^DeltaCom to submit
2 electronic orders to BellSouth, and that it is, or should be, more efficient
3 for BellSouth to process CLEC orders electronically. Manually faxing
4 orders to BellSouth is simply not an efficient method to submit local
5 service requests. Further, ITC^DeltaCom and other CLECs do not have
6 an electronic alternative available for the submission of LSRs to
7 BellSouth. CLECs rely solely on the information, systems, databases and
8 interfaces that BellSouth controls. Thus, the CLECs electronic ordering
9 capabilities are dependent upon BellSouth, whether or not these systems
10 and interfaces provide nondiscriminatory access to BellSouth's OSS.
11 What is even more troubling with the small number of electronic orders
12 submitted to BellSouth, is the fact that ITC^DeltaCom has constantly
13 battled problems and experienced such poor results from the OSS
14 BellSouth has created for CLECs. Certainly BellSouth could not
15 electronically complete its millions of orders with such a poor OSS.

16

17 **Q: WHAT IS ITC^DELTACOM'S POSITION ON OSS CHARGES?**

18 **A:** The Telecommunications Act of 1996, FCC Orders and State
19 Commission Orders have all required BellSouth to provide non-
20 discriminatory access to BellSouth's OSS. In fact, the FCC ordered that
21 non-discriminatory access to OSS functions be provided to CLECs by
22 January 1, 1997. BellSouth could have modified its existing OSS
23 interfaces for use by CLECs to comply with the FCC Order. BellSouth
24 was not required to build separate systems for ITC^DeltaCom. This

1 undoubtedly would have been less costly, and would have provided
2 CLECs with direct, non-discriminatory access to BellSouth's OSS.
3 Instead, it is now third quarter 1999 and ITC^DeltaCom still does not
4 have parity of OSS. BellSouth continues to develop new interfaces to
5 provide "non-discriminatory access" to BellSouth's OSS, even though
6 BellSouth argues, and has unsuccessfully argued for several years, that
7 its current OSS interfaces provide non-discriminatory access to CLECs.
8 Two years ago BellSouth claimed that LENS and EDI provided
9 nondiscriminatory access, with EDI being the interface that BellSouth
10 relied upon as its "nondiscriminatory ordering interface." Now BellSouth
11 has developed yet another "non-discriminatory" interface, TAG. What's
12 next? Constantly building OSS interfaces is extremely burdensome to a
13 new entrant, especially when it is uncertain whether the "new" interface
14 will provide nondiscriminatory access. ITC^DeltaCom will spend millions
15 of dollars chasing a moving target – all the while we are receiving
16 substandard OSS. Further, BellSouth wants ITC^DeltaCom, and all
17 CLECs, to pay for every OSS interface that it builds, notwithstanding the
18 costs ITC^DeltaCom and all CLECs incur to build out their side of the
19 interfaces. This is nothing short of outrageous, and should be expressly
20 rejected by this Commission.

21

22 ~~Issue 45 Which party should be required to pay for the Percent Local~~
23 ~~Usage (PLU) and Percent Interstate Usage (PIU) audit, in the event such~~

1 ~~audit reveals that either party was found to have overstated the PLU or~~
2 ~~PIU by 20 percentage points or more?~~

3
4 **Q: WHAT IS ITC^DELTA COM'S RESPONSE TO BELL SOUTH'S POSITION ON THE**
5 **ISSUE OF WHO PAYS FOR AUDITS?**

6 **A:** ITC^DeltaCom agrees that the party requesting an audit should bear the
7 cost. ITC^DeltaCom, however, would point out that BellSouth's proposed
8 language contains a penalty provision. BellSouth's states that if the
9 "audit reveals that a CLEC has overstated the PLU/PIU percentages by
10 20 percentage points or more, that CLEC should pay for the audit."
11 BellSouth argues that the Commission is not allowed to approve the
12 performance guarantees ITC^DeltaCom has proposed in Attachment 10
13 (penalties according to BellSouth), but then, argues that it is totally
14 justified in demanding a penalty requirement when its auditors find an
15 error in ITC^DeltaCom's PLU/PIU percentage. Further, Mr. Varner claims
16 that this is "industry practice and custom." ITC^DeltaCom disagrees with
17 this claim. Our current agreement with BellSouth does not include such
18 language, nor does any other interconnection agreement that
19 ITC^DeltaCom has entered into with other ILECs.

20
21 Issue 46 – Should the losing party to an enforcement proceeding or
22 proceeding for breach of the interconnection agreement be required to
23 ~~pay the costs of litigation?~~

1 ~~Q: WOULD THIS PROVISION ENCOURAGE FORUM SHOPPING AS~~
2 ~~ARGUED BY MR. VARNER?~~

3 ~~A: No. First, the proposed language is in the Parties existing~~
4 ~~interconnection agreement so BellSouth has agreed to this language~~
5 ~~previously. It did not produce any forum shopping that we are aware of.~~
6 ~~Second, the purpose of this provision is to encourage parties to meet~~
7 ~~their commitments under this agreement. If either party fails to meet its~~
8 ~~commitments and the issue is adjudicated, the responsible party pays the~~
9 ~~price for not settling the dispute in addition to its failure to meet the terms~~
10 ~~of the agreement. This provision actually encourages parties to settle~~
11 ~~rather than face a negative decision. It is ironic that BellSouth is not~~
12 ~~arguing for this provision as it would be in BellSouth's best interest to~~
13 ~~defray the costs of its defense, assuming, of course, BellSouth prevailed.~~

14 ✓

15 Issue 48 – Should language covering tax liability should be included in
16 the interconnection agreement, and if so, whether that language should
17 simply state that each Party is responsible for its tax liability?

18
19 **Q: MR. VARNER STATES THAT THE CONTRACT SHOULD CLEARLY**
20 **DEFINE THE PARTIES OBLIGATIONS. DO YOU AGREE?**

21 **A:** Yes. Even though we did not have tax language in our last agreement
22 and have not had any problems on this issue, ITC^DeltaCom proposed
23 tax language as an alternative to the confusing and lengthy language

1 proposed by BellSouth. ITC^DeltaCom does not know why its proposed
2 language is not suitable. The language ITC^DeltaCom proposed comes
3 from its interconnection agreements with other ILECs. A careful reading
4 of BellSouth's language shows that it is, in places, inconsistent and
5 confusing. ITC^DeltaCom's position is simply that each Party should
6 comply with all applicable local, state and federal rules and regulations.

7
8 ~~Issue 49 - Should BellSouth be required to compensate ITC^DeltaCom~~
9 ~~for breach of material terms of the contract?~~

10
11 **Q: DOES THIS COMMISSION HAVE AUTHORITY TO IMPOSE**
12 **PENALTIES?**

13 **A:** Yes. As stated earlier in my testimony, I am not a lawyer but I believe that
14 this Commission does have all necessary authority to impose penalties
15 and does so today. However, if this Commission determines that it is not
16 appropriate to assess penalties or damages then I would point out that
17 this Commission can still arbitrate this issue just as it can arbitrate the
18 issue of whether tax language should be included in the agreement.
19 Thus, I disagree with Mr. Varner that this issue cannot be arbitrated just
20 ~~because the authority that would hear the dispute may not be this~~
21 ~~Commission but a court of a competent jurisdiction.~~

22

23

1 **Q: DOES THIS CONCLUDE YOUR TESTIMONY.**

2 **A:** Yes, however at this time the Parties positions continue to evolve as we
3 continue to negotiate with BellSouth and we receive responses to
4 discovery. To the extent my opinions are impacted by such
5 developments, I intend to supplement my testimony.

6

1 Q **(By Ms. Edwards)** Without -- Mr. Rozycki
2 have you prepared a summary of your testimony?

3 A Yes, I have.

4 Q Can you please give that summary at this
5 time?

6 A Yes.

7 Good morning members of the Commission. As
8 mentioned, my name as Chris Rozycki. Thank you for
9 allowing me and the members of the ITC^DeltaCom team
10 to appear before you.

11 As Director of Regulatory Affairs for
12 ITC^DeltaCom, I'm responsible for the overall
13 regulatory policy and decision-making for our company
14 in the ten states we offer local services.

15 For the better part of 25 years I have been
16 involved in government regulation. Early in my career
17 I assisted state PSC's in their policy-making and I
18 also worked as a consumer advocate in Virginia. Since
19 1984 I have been employed in the telecommunications
20 industry, first with AT&T and then with Hyperion for
21 about one year, which is now named Adelphia Business
22 Solutions, and now with ITC^DeltaCom.

23 In order to illustrate why ITC^DeltaCom has
24 decided to arbitrate in Florida, let me explain how we
25 arrived at this tough decision.

1 In January of 1999 we began our process of
2 renewing our Interconnection Agreement with BellSouth.
3 Our intent was primarily two-fold: First to tune up
4 the language in our existing agreement, keeping in
5 place many of the elements that made our existing
6 agreement a particularly good one, and second, to
7 correct some serious service quality problems that we
8 felt were there and needed treatment.

9 BellSouth, however, presented us with a
10 brand-new contract that looked extremely different
11 from our existing contract, and we spent the next six
12 arduous months negotiating that agreement, the result
13 of which I think we all can agree has been somewhat
14 disappointing.

15 Three of ITC^DeltaCom's witnesses,
16 Mr. Thomas Hyde, Mr. Mike Thomas and myself
17 participated in the negotiations on behalf of
18 ITC^DeltaCom. Additionally, our regulatory attorney,
19 Ms. Nanette Edwards, also participated in those
20 negotiations.

21 My testimony this morning will focus on why
22 BellSouth should pay reciprocal compensation to
23 ITC^DeltaCom for the delivery of ISP-bound traffic and
24 how much BellSouth should pay ITC^DeltaCom.

25 Our position, in a nutshell, is that

1 ITC^DeltaCom should be paid for delivering ISP-bound
2 traffic for BellSouth regardless of the jurisdictional
3 nature of that traffic. BellSouth, through its
4 Interconnection Agreement with ITC^DeltaCom, uses the
5 ITC^DeltaCom network for delivery of a small portion
6 of its customer-directed ISP-bound traffic.

7 Since ITC^DeltaCom uses exactly the same
8 facilities to deliver those calls as it does to
9 deliver any other local call, then it is appropriate
10 to charge exactly the same rate for the delivery of
11 either type of traffic.

12 Every time a customer of BellSouth calls an
13 ISP customer of ITC^DeltaCom, we incur costs by
14 providing service to BellSouth and its customers.
15 Today the only way that ITC^DeltaCom can recover those
16 costs is through reciprocal compensation.

17 This Commission is obligated by the FCC's
18 February 25th Declaratory Ruling to establish an
19 interim cost recovery mechanism until the FCC issues a
20 permanent ruling on compensation for the delivery of
21 ISP-bound traffic. If this Commission does not act in
22 this manner, you'll be allowing BellSouth the free use
23 of our network.

24 Our current Interconnection Agreement
25 requires the parties pay each other .9 cents per

1 minute of use for reciprocal compensation. We will,
2 of course, gladly agree to accept that rate in our
3 renewed agreement.

4 In my testimony I proposed a rate of
5 .0045 cents per minute of use. This is a 50%
6 reduction from our current rate of .9 cents. Our
7 proposal of .0045 would act as an interim rate until
8 the Commission, or the FCC, establishes a cost based
9 rate for reciprocal compensation in Florida.

10 In our negotiations we agreed to the concept
11 of elemental billing for reciprocal compensation so
12 long as BellSouth would allow us to charge, or include
13 in those charges, the tandem local interconnection
14 rate, which we are entitled to do by the rules
15 established by the FCC. And BellSouth -- and in
16 addition, BellSouth agreed to pay reciprocal
17 compensation for those calls to ISPs. BellSouth
18 during negotiations rejected our offer; rejected our
19 effort to close this issue. They even refused to
20 discuss this proposal. BellSouth was only interested
21 in using our network for free.

22 As a final comment, this Commission should
23 reject any notion of giving a huge company like
24 BellSouth either free use of any small ALEC network,
25 or worse yet, recreating the access charge regime for

1 ISP-bound traffic.

2 Thank you.

3 **COMMISSIONER CLARK:** I apologize,
4 Ms. Edwards. I may have sort of gotten ahead of
5 things.

6 I think -- how are we going to do this?
7 We're going to have the direct testimony and the
8 rebuttal at the same time. So does he also need to
9 cover his rebuttal in his summary, or has he
10 covered --

11 **MS. EDWARDS:** You've covered your direct and
12 rebuttal?

13 **WITNESS ROZYCKI:** Yes. I did cover direct
14 and rebuttal.

15 **MS. EDWARDS:** I think, as a housekeeping
16 matter, I'll go through his testimony now, those
17 portions that are stricken. And I guess at this point
18 I'll try and go through the ones that I have had an
19 opportunity to look through, BellSouth's versus ours,
20 and the ones that I agree with -- we agree with at
21 this moment. I'll go through and read those. And the
22 ones I have questions about I'll defer for later.

23 **COMMISSIONER CLARK:** I'm wondering if that
24 might not become cumbersome. Maybe we should go ahead
25 and take a break now and allow you to go through and

1 resolve what comes out, and so we do it all at the
2 same time, in the same place in the transcript. And
3 then we will insert -- at that time we'll come back
4 with Mr. Rozycki and put it -- insert it in the
5 record.

6 **MS. EDWARDS:** And the exhibits.

7 **COMMISSIONER CLARK:** We will also have a
8 summary. How long do you think you need? Let's just
9 worry about getting through DeltaCom's witnesses.

10 **MS. EDWARDS:** I think if I had maybe twenty
11 minutes or thirty minutes, maybe, for just Chris.

12 **MR. ADELMAN:** That's just for Mr. Rozycki.
13 If you want to go through all of our witnesses --

14 **COMMISSIONER CLARK:** Let me ask this
15 question: If we can do that for Mr. Rozycki and break
16 until 11:15, can somebody else be working on the
17 subsequent witnesses so we're prepared at the time
18 they get on the stand? Let me ask a question. I
19 don't think I see Mr. Wood.

20 **MS. EDWARDS:** He's going to be --

21 **MR. ADELMAN:** He'll be here in time for his
22 turn. He's the last witness in our queue.

23 **COMMISSIONER CLARK:** So why don't we take a
24 break until 11:15.

25 (Brief recess taken.)

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COMMISSIONER CLARK: Go back on the record.

Ms. Edwards, are you ready? I notice your witness isn't here but maybe we can go about getting the appropriate portion stricken. Here he is. Welcome back.

Q (By Ms. Edwards) Mr. Rozycki, do you have your Direct Testimony in front of you?

A Yes, I do.

MS. EDWARDS: Commissioner, in discussing the issue with BellSouth and the Staff attorney, I'm just going to go through and -- line-by-line through the issue --

COMMISSIONER CLARK: That will work.

MS. EDWARDS: -- through the items that have been stricken as a result of the Order.

On Page 3, beginning on Line 8 of the Direct Testimony, it says "performance measures and performance guarantees." That should be stricken. The sentence should then read "ITC^DeltaCom's petition for arbitration focuses on several key issues: The functionality of --" and so forth.

Page 4, Line 24, Item No. 1.

Page 6, Line 19.

COMMISSIONER CLARK: Ms. Edwards, just so

1 the record is clear, on Page 4 we'll strike "(1)
2 performance measures with guarantees."

3 **MS. EDWARDS:** It would say "Yes. These
4 include --"

5 **COMMISSIONER CLARK:** It would start with --

6 **MS. EDWARDS:** "Parity," yes.

7 Then beginning on Page 6, Line 19, where it
8 begins "performance measures and performance
9 guarantees," from there to Page 10, Line 22, DeltaCom
10 did not have this on its list but BellSouth did and
11 there's no dispute.

12 Page 13, Line 9, it should -- it says
13 "Second, we currently have no way to parse the LENS
14 customer service record." It should read "Second,
15 BellSouth has not committed to providing DeltaCom a
16 download of the RSAG database."

17 **COMMISSIONER CLARK:** So what should we
18 strike?

19 **MS. EDWARDS:** "We currently have no way to
20 parse the LENS customer service record (CSR) to speed
21 the preordering process and."

22 **COMMISSIONER CLARK:** Okay.

23 **MS. EDWARDS:** The next item is Page 14,
24 beginning at Line 6, continuing to Page 20, Line 15.
25 That should be struck.

1 Of course, that included the Issue No. 45
2 which I now understand is no longer in the case.

3 **COMMISSIONER CLARK:** That testimony covered
4 45, right?

5 **MS. EDWARDS:** Correct. And I believe that's
6 all with regard to the direct other than Exhibits 2
7 and 3 are also struck.

8 **COMMISSIONER CLARK:** Why don't we, at this
9 time, insert that Direct Testimony into the record
10 with those changes. Give me the exhibits that are
11 attached to the testimony.

12 **MS. EDWARDS:** There are actually three
13 exhibits attach to the testimony. Only one is
14 remaining and that's exhibit CJR-1.

15 **COMMISSIONER CLARK:** We'll mark that as
16 Exhibit 14 for identification. At the conclusion of
17 the testimony is usually when we move the exhibits
18 into the record, after the cross examination. So
19 we'll just at this point mark it as Exhibit 14.

20 (Exhibit 14 marked for identification.)

21 Should we turn to the rebuttal testimony?

22 **MS. EDWARDS:** Yes. I was going to wait --

23 **Q** **(By Ms. Edwards)** Mr. Rozycki you also have
24 your rebuttal testimony.

25 **A** Yes, I do.

1 Q All right. On the rebuttal testimony,
2 beginning on Page 1, Line 10 through Page 13, Line 6,
3 that should be struck in keeping with the Commission's
4 order.

5 **COMMISSIONER CLARK:** Okay.

6 **MS. EDWARDS:** The next one is Page 25,
7 beginning at Line 12, it has the number "(3) White
8 Page Listings." That should be struck.

9 **COMMISSIONER CLARK:** Okay.

10 **MS. EDWARDS:** Line 14, No. 6, and No. 7,
11 "Interconnection and Service Intervals on Winbacks"
12 respectively should be struck. And actually 8 and 9 as
13 well, so from Line 14 to Line 17.

14 **COMMISSIONER CLARK:** From No. 6 on Page 14
15 through Line 17. (sic)

16 **MS. EDWARDS:** Right. Sorry.

17 Wait a minute. I'm sorry. It's Page 25,
18 Line 14; 6, 7, 8 and 9, or alternatively Lines 14
19 through 17 should be struck

20 **COMMISSIONER CLARK:** But not all of Line 14.
21 You want to leave "Carrier."

22 **MS. EDWARDS:** Yes.

23 **COMMISSIONER CLARK:** "Carrier IDLC
24 technology" would be left on 14.

25 **MS. EDWARDS:** Yes, ma'am.

1 **COMMISSIONER CLARK:** Anything else?

2 **MS. EDWARDS:** Yes, ma'am. Page 29 beginning
3 at Line 23 to Page 30, ending at Line 10.

4 Again, Page 32, this is Issue 45, beginning
5 the Line 22, continuing to Page 34, ending at Line 13,
6 that should be struck.

7 And then last would be Page 35 beginning at
8 Line 8 going to Line 21, and then the exhibit number
9 CJR-4 would also be struck.

10 **COMMISSIONER CLARK:** Now, are there other
11 exhibits attached to the rebuttal testimony?

12 **MS. EDWARDS:** Just that one exhibit.

13 **COMMISSIONER CLARK:** Okay.

14 **MR. GOGGIN:** Excuse me, Commissioner. I
15 believe there was one passage that we agreed to
16 withdraw that she hadn't mentioned.

17 **COMMISSIONER CLARK:** What was that?

18 **MR. GOGGIN:** Page 33.

19 **COMMISSIONER CLARK:** I think she struck all
20 of Page 33.

21 **MR. GOGGIN:** Okay. I'm sorry.

22 **COMMISSIONER CLARK:** All right. We will
23 insert the rebuttal testimony as though read with
24 those exceptions noted. We will identify CJR-4 as
25 Exhibit 15.

1 **MS. CALDWELL:** CJR-4 was struck.

2 **COMMISSIONER CLARK:** Oh, it was? I'm sorry.

3 So there are no exhibits.

4 **MS. EDWARDS:** To the rebuttal testimony.

5 **COMMISSIONER CLARK:** I'm sorry. I think we
6 will probably break for lunch maybe after this
7 witness. And what we have done in the past is instead
8 of going through it orally, you can give us a sheet
9 for each witness.

10 And let me just make sure Joy, is that going
11 to be acceptable if you have that sheet that shows
12 what's stricken rather than going through this on the
13 record?

14 **MR. ALEXANDER:** Clark --

15 **COMMISSIONER CLARK:** Just yes or not. Shake
16 your head.

17 **THE REPORTER:** (Shakes head.)

18 **COMMISSIONER CLARK:** It will be fine.

19 **MR. ALEXANDER:** I was just going to suggest,
20 BellSouth has gone through and done this and made a
21 strike-out of those issues that are removed for each
22 of our witnesses' testimony. And rather than doing
23 this orally for us as well, we will hand that out and
24 you will have it already stricken as we were doing
25 here.

1 **COMMISSIONER CLARK:** And you make sure
2 Mr. Adelman and our Staff has copies of that.

3 **MR. ADELMAN:** Commissioner, we've done the
4 same. The concern is that there are areas of
5 disagreement. We will have to resolve those.

6 **COMMISSIONER CLARK:** I understand that. But
7 I hope you will resolve them at lunch.

8 **MR. ADELMAN:** We've done so. We brought it
9 for one so far.

10 **MR. GOGGIN:** We brought a Magic Marker but
11 no Wite-Out, so if we resolve them I guess we'll --

12 **MR. ALEXANDER:** I have some Wite-Out.

13 **COMMISSIONER CLARK:** I'm sure you'll find a
14 way to mechanically get it done right. So, we have
15 had the summary of both the direct and rebuttal.

16 **WITNESS ROZYCKI:** Yes.

17 **MS. EDWARDS:** I believe Mr. Rozycki had one
18 correction to his rebuttal testimony of the testimony
19 that's left. I'm sorry.

20 **WITNESS ROZYCKI:** Yes, I did.

21 On Page 25 of the rebuttal, Line 21, the
22 word "telecommunicationsmunication" doesn't exist.
23 Just delete the last "munication" of it.

24 **COMMISSIONER CLARK:** Okay. Any other
25 changes?

1 **WITNESS ROZYCKI:** That's all.

2 **MS. EDWARDS:** As you stated earlier, I guess
3 with the strike-through and with the corrections as
4 noted by Mr. Rozycki, if I asked you the same
5 questions that I've asked -- that are in this prefiled
6 testimony, would your answers be the same?

7 **WITNESS ROZYCKI:** Yes, they would.

8 **MS. EDWARDS:** At this time, I guess, I move
9 to have it entered.

10 **COMMISSIONER CLARK:** I did not follow the
11 correct procedures. It's been a while since I have
12 presided over these things. But yes, both -- he's
13 affirmed the content of both the Direct and Rebuttal
14 testimony so it will be inserted in the record as
15 though read.

16 **MS. EDWARDS:** At this time I tender the
17 witness for cross examination.

18 **COMMISSIONER CLARK:** Mr. Alexander or
19 Mr. Goggin.

20 **MR. ALEXANDER:** It's me. Thank you very
21 much.

22 **CROSS EXAMINATION**

23 **BY MR. ALEXANDER:**

24 **Q** Mr. Rozycki, it's still morning. Good
25 morning.

1 A Good morning.

2 Q I just want to confirm in your summary and
3 your testimony, you are currently the Director of
4 Regulatory Affairs and you have had that position
5 since March of 1998; is that correct?

6 A That is correct.

7 Q And your educational background is one of
8 economics, you hold a bachelors and masters degree in
9 economics; is that right?

10 A Yes.

11 Q And I'm assuming that since you came to
12 DeltaCom in March of 1998, and the Interconnection
13 Agreement that DeltaCom says it wants to keep was
14 entered into July of 1997, that you had no part in
15 that negotiation or discussions regarding that
16 agreement?

17 A Yes. The original contract, yes, that is
18 correct.

19 Q I want to turn your attention to one of the
20 few issues that are left in your testimony, the
21 Issue 3(a), discussion of definition of parity and
22 some subissues related to that.

23 Would you agree on the behalf of DeltaCom to
24 accept the FCC's definition of parity in the agreement
25 that this Commission is being asked to negotiate --

1 excuse me, to arbitrate, and other issues have been
2 negotiated -- when this Commission approves the
3 Interconnection Agreement between DeltaCom and
4 BellSouth, would DeltaCom be willing to include in
5 that agreement the definition that the FCC has said
6 about parity?

7 A Yes. I think what we've argued for is a
8 little bit more clarity and definition to that -- to
9 the FCC's definition and inclusion of that in our
10 contract.

11 Q And your understanding is that BellSouth has
12 offered to include that, the definition that the FCC
13 has said about parity in the Interconnection
14 Agreement?

15 A That is correct.

16 Q I want to ask you some further questions
17 about -- particularly you relate to on Pages 12
18 through 14 of your Direct, about parity, Issue 3(a),
19 and also Issue 38 that relates to that, because you
20 discuss it under the parity concept, which is parity
21 or OSS, operation support services, as well as cost
22 recovery or charges for OSS.

23 Now, if I understand your testimony correct,
24 with respect to parity and BellSouth's OSS charges,
25 Mr. Rozycki, you contend that neither the regional

1 rate that BellSouth offered of \$3.50 nor the TSLRIC
2 based rate BellSouth proposed for Florida, which I
3 think was about \$6.63, are acceptable to DeltaCom; is
4 that correct? Neither one of those two rates?

5 A That's correct. And I think that will be
6 addressed in more detail by Mr. Wood.

7 Q Well, it's in your testimony so I do have a
8 few questions, if that's all right with you?

9 A Yes.

10 Q On Page 12, Lines 23 through 24, you
11 specifically state that "In Florida, the state has not
12 ordered a rate," referring to OSS cost recovery, "and
13 has said each party should bear its own cost for OSS."
14 Do you see that, Mr. Rozycki?

15 A Yes.

16 Q Do you have a specific order that you're
17 referring to, particularly for that last statement;
18 that each party should bear its own cost?

19 A I do not, no, not with me. But that's the
20 way I understand the situation exists in Florida
21 today.

22 Q That was my next question. Do you
23 understand whether or not Florida has had a later
24 pronouncement about cost recovery for OSS?

25 A No, I do not.

1 Q And you do understand that BellSouth has
2 filed cost studies through Ms. Caldwell seeking a cost
3 based rate for its cost it incurred in developing OSS
4 interfaces specifically for use by ALECs; is that
5 correct?

6 A Yes.

7 Q And also on pages -- I think it's 13 through
8 14 you list a variety of reasons that you say that
9 DeltaCom rejects BellSouth's OSS rate proposals. And
10 one of those was that you currently have no way to
11 parse the LENS customer service records. And
12 "BellSouth is not committed to providing DeltaCom with
13 a download of the RSAG database including updates."
14 Do you see that? Is that one of the reasons?

15 A You're reading testimony that was stricken,
16 so I'm not sure how to deal with some of that.

17 **MR. ALEXANDER:** I didn't realize that
18 Page 13 had gotten struck.

19 **COMMISSIONER CLARK:** No, but some of the
20 language has.

21 **WITNESS ROZYCKI:** There was some correction
22 in exactly --

23 **MR. ALEXANDER:** All right. I apologize.
24 You are correct.

25 Q **(By Mr. Alexander)** My point was the

1 parsing for CSRs has been struck because that has been
2 resolved between the parties?

3 A Yes. My understanding would be yes.

4 Q And with respect to the part that remained
5 in your testimony on Page 13, you say BellSouth is not
6 committed to providing DeltaCom with a downloading of
7 the RSAG database including updates.

8 Mr. Rozycki, is it your understanding that
9 BellSouth has, in fact, committed to doing that with
10 DeltaCom; providing a download of the RSAG database
11 including providing updates. But the real issue is
12 how much DeltaCom is willing to have to pay for that,
13 having that type of information?

14 A I think that's a correct portrayal of the
15 situation right now.

16 We have been, I think, handed a letter by
17 BellSouth saying they would do that. It does contain
18 a cost. We've asked some questions about that cost.
19 We'd like to understand it better and think the cost
20 is quit high for what we're getting.

21 **COMMISSIONER CLARK:** Let me ask you a
22 question: Do you know whether -- have you been
23 downloading that information previous to the
24 agreement?

25 **WITNESS ROZYCKI:** The RSAG? We don't have

1 access to it.

2 **COMMISSIONER CLARK:** Do you know if anyone
3 else has?

4 **WITNESS ROZYCKI:** To the best of my
5 knowledge no, I don't know. I do know that MCI has
6 requested it and I don't know what their situation is.
7 I also understood -- and I think this is correct --
8 that MCI got a similar letter from BellSouth with a
9 different price, so --.

10 **COMMISSIONER CLARK:** Let me ask you this:
11 Was downloading the RSAG part of your original
12 arbitration? Not the one you're trying to negotiate
13 now, but your previous one. Do you know?

14 **MR. ROZYCKI:** No, I don't think it was.

15 **COMMISSIONER JACOBS:** You use EDI; is that
16 correct?

17 **WITNESS ROZYCKI:** We do today, yes.

18 **COMMISSIONER JACOBS:** Why did I get the
19 impression that you had RSAG and you didn't have MSAG.
20 You don't have either.

21 **WITNESS ROZYCKI:** I don't think we currently
22 have either. EDI, I don't think, gives you access to
23 either. We currently use LENS. Apparently there's
24 some limited access through TAG and I don't fully
25 understand how detailed that is.

1 **MS. EDWARDS:** I'm sorry. If I may, I
2 believe Mike Thomas covers these issues extensively in
3 detail, and I think in particular one of the questions
4 you asked, Commissioner, you might want to ask it of
5 Mr. Thomas.

6 **COMMISSIONER JACOBS:** Okay. Thank you.

7 **MR. ALEXANDER:** Should I continue?

8 **COMMISSIONER CLARK:** Uh-huh.

9 **Q** **(By Mr. Alexander)** Mr. Rozycki, just to be
10 clear, I think you've sort of taken care of this, but,
11 in fact, DeltaCom could have access to the download of
12 the RSAG if it were using the TAG interface; is that
13 correct? Telecommunications access gateway electronic
14 interface.

15 **A** No, that's not my understanding. I think
16 Mr. Thomas can address that more directly. But I
17 don't think we'll have access to a download of the
18 RSAGs.

19 **Q** Would you have direct access, is that your
20 understanding, to the RSAG database?

21 **A** I don't know enough about that to know if we
22 have direct access to the full RSAG.

23 **Q** Okay. I guess, just for clarity, you do
24 understand that BellSouth does provide -- and this is
25 not in the case -- but the MSAG database, since

1 Commissioner Jacobs asked about it?

2 A Yes.

3 Q Thank you.

4 On Page 14 of your -- at the top of your
5 direct testimony you indicate that BellSouth should be
6 reimbursed for the cost of developing this OSS, the
7 separate one for the ALECs. If BellSouth is to be
8 reimbursed, then the costs should be spread among all
9 telecommunications users within BellSouth's territory.
10 Do you see that?

11 A Yes, I do.

12 Q Are you contending that every person in
13 Florida -- I guess in or outside of BellSouth's
14 territory, if they have a telephone service, should be
15 basically subsidizing DeltaCom and other ALECs' entry
16 into the local market?

17 A No, I don't think it would involve any
18 subsidy. I think every consumer in Florida that uses
19 a telephone will benefit from the impact of the
20 Telecommunications Act; will benefit from access to
21 competitive alternatives. As part of that benefit we,
22 as competitors, have to have access to OSS, and we
23 think those costs should be shared by all who will
24 derive benefit.

25 Q You do recognize that BellSouth has its own

1 internal OSSs, right?

2 A Yes, I do.

3 Q And BellSouth has not asked DeltaCom to help
4 pay for those, has it?

5 A Not to my knowledge.

6 Q What we're talking about here are the
7 electronic interfaces that BellSouth developed
8 specifically for ALEC's use; is that right?

9 A That's correct.

10 Q And are you aware of whether or not any
11 other carriers have challenged this? I'm specifically
12 referring to a District Court decision in the state of
13 Kentucky where AT&T raised this similar issue with
14 arbitration with BellSouth there. Are you aware of
15 the decision?

16 A I am aware of that.

17 Q Am I correct that the District Court in
18 Kentucky found that because the electronic interfaces
19 will only benefit the CLECs, the ILECs like BellSouth
20 should not have to subsidize them -- and sort of
21 paraphrasing, there's absolutely nothing
22 discriminatory about that concept. Are you aware that
23 that's what in that ruling?

24 A I'm aware of that. I don't agree with it
25 but I'm aware of it.

1 Q And you don't know whether or not AT&T
2 appealed that further?

3 A No, I don't. I haven't followed that case
4 carefully.

5 Q Mr. Rozycki, your position about -- that
6 customers will benefit from ALEC entry into the local
7 exchange market is somewhat similar to the position
8 the FCC took with regard to local number portability;
9 is that right?

10 A Yes.

11 Q And you're aware that the FCC has not
12 ordered the state commissions, like Florida -- are
13 able to spread the cost that ILECs have incurred to
14 develop and implement OSS interfaces for ALECs over
15 all telecommunications carriers like it has for the
16 LNP costs?

17 A I'm sorry, I'm not sure. I lost track of
18 the question.

19 Q The FCC has not said, as it did for LNP cost
20 recovery, that the state commissions, or the FCC,
21 could take those costs and spread them over as a
22 line item on an end users' bill; is that right?

23 A Yes. The FCC has not said that.

24 Q And, in fact, there is no such authorization
25 for OSS cost recovery at all, is there? To spread

1 them over all end users and have a line item charge on
2 a bill?

3 **A** Not to date. I don't think the FCC ever
4 envisioned that it would cost as much as it's turning
5 out to cost.

6 **Q** Do you have any Order from the FCC that
7 reflects that statement you just made?

8 **A** No.

9 **Q** Okay. I want to turn your attention to the
10 one that's primarily in focus now, Issue 23, the
11 reciprocal compensation issue for internet service
12 provider-bound traffic and the rate for that. You've
13 got that in your testimony. In several pages it -- I
14 guess starting on Page 21.

15 Just so we're clear, DeltaCom is asking that
16 the Florida Commission require BellSouth to pay
17 reciprocal compensation on calls made to ISPs; is that
18 correct?

19 **A** Yes, that is correct.

20 **Q** And you cited in your summary, and it's in
21 your testimony, I believe, in the rebuttal, at Pages
22 11, and maybe a little bit -- well, I may be wrong
23 about the page. I think it may be Page 11 of your
24 direct, where you lay out the rate.

25 **A** I'm sorry, 11 of the rebuttal? Pardon me

1 just one minute. (Pause)

2 It is in your rebuttal at Page 13, about the
3 rate that you are proposing for reciprocal
4 compensation?

5 A Yes.

6 Q Okay. And that's the same rate you had the
7 Commission apply for calls made to ISPs?

8 A Yes, exactly.

9 Q And that rate is basically .0045, or close
10 to half a penny a minute per minute of use; is that
11 right?

12 A Yes. That's what we've proposed in my
13 testimony.

14 Q All right. And then you propose that that
15 be reduced by a fraction over a period of time, it
16 looks like line -- Page 13, Line 20, until the rate
17 equals BellSouth's proposed elemental rate; is that
18 correct?

19 A That is also correct.

20 Q So, in essence, you do agree with
21 BellSouth's elemental billing proposal for reciprocal
22 compensation, excluding the issue you raised earlier
23 about whether tandem and end office switching are
24 included?

25 A We don't disagree with that approach, yes.

1 Q And would you agree that since you have this
2 basically half a penny per minute of use, that
3 DeltaCom's proposed rate for reciprocal compensation
4 is based on a pure minute-of-use-type mechanism?

5 A Yes, it is.

6 Q Mr. Rozycki, I'm going to ask you a series
7 of questions. I'm going to do this, hopefully,
8 without asking for legal interpretations or having to
9 hand you FCC Orders and things. But if you need to
10 look at an Order, I'll be happy to show you one, but I
11 was trying to expedite it.

12 Would you agree that the FCC specifically
13 held in its February 26th, 1999, Declaratory Ruling
14 that ISP-bound traffic is nonlocal interstate access
15 traffic; that that's a holding in that Order?

16 A Yes, I agree with that. But I also -- as I
17 think I stated in my summary, I believe that one has
18 to read the entire order to get the full impact and
19 gain a full understanding of what the FCC has
20 indicated states should do.

21 Q But nothing in the FCC, in the entire order
22 as you reference, changes the fact that the FCC has
23 clearly held that calls made to ISPs is interstate
24 nonlocal traffic?

25 A That is correct. And nothing changes the

1 fact that they've said that reciprocal compensation
2 may be due for such traffic.

3 Q And would you agree that but for the access
4 charge exemption, that ISPs today would be paying
5 access charges for calls made to them?

6 A No, I don't agree with that. I would agree
7 that I think BellSouth and other ILECs have requested
8 that the FCC allow them to charge access to ISPs. But
9 since ISPs are not carriers, I don't know how the FCC
10 could have allowed BellSouth or any other ILEC to
11 charge access to them.

12 Q Do you agree that ISPs use interstate access
13 services but they pay local rates because the FCC has
14 exempted them?

15 A The FCC has said that -- really, in the
16 context of ILECs, in my opinion, that ISPs use
17 interstate access. We, today, sell the ISP customers
18 that we have local services. So it's -- the FCC has
19 said that. It's not clear to me what -- the FCC has
20 said that.

21 Q Have you read Paragraph 16 of the
22 Declaratory Ruling where the FCC discusses its Order
23 where it excluded and exempted ESPs and ISPs from
24 access charges, and that they essentially state that
25 the connection or the link between the end user to a

1 ESP, which includes ISPs as a subset, is an interstate
2 access service?

3 A Yes, I have.

4 Q And you are aware that they have exempted
5 them from those access charges and have allowed ISPs
6 and ESPs, enhanced service providers, to purchase
7 their interstate access service through local tariffs
8 because of an exemption the FCC specifically granted
9 to them?

10 A Yes. But I also would add -- and I think
11 the FCC has amplified on this -- that they -- and they
12 would agree that the ISPs are not carriers, and are,
13 in fact, therefore, exempt from regulation as
14 carriers. And given that, I don't think switched
15 access charges really should apply or make sense, and
16 that may be, in large part, why the FCC has exempted
17 them.

18 Q You are aware that the FCC has clearly
19 declared that it has jurisdiction over the traffic to
20 ISPs because, like I say, it's interstate rather than
21 intrastate?

22 A Yes. And it has also indicated that they
23 have, in essence, turned over jurisdiction, or the
24 issue of rates for that portion of the traffic that is
25 the intercarrier issue here, turned that issue over to

1 the states.

2 Q Now, Mr. Rozycki, isn't it a more accurate
3 representation that they have, on an interim basis,
4 said that states may look at this issue and decide the
5 mechanism that could be used for an intercarrier
6 compensation for this traffic, and that they, in fact,
7 have issued a Notice of Proposed Rulemaking, and are
8 deciding this issue themselves on a permanent basis?

9 A Yes. We think they are deciding this issue
10 and we're not sure where they are going to go with
11 this. They could, in fact, declare that states should
12 continue to regulate to determine what rates are
13 appropriate for intercarrier compensation.

14 They have been -- they've found it very
15 difficult to rule on these issues, and they have taken
16 quite a long time, and at several instances have
17 indicated we're coming out with Orders only for we, in
18 the industry, to find out that those orders are not
19 forthcoming.

20 Q Do you remember my original question to you?

21 A Yes.

22 Q What was it?

23 A Whether or not they have indicated in their
24 Order that the states should decide these issues on an
25 interim basis until the FCC decides.

1 Q And what was the answer to that question?

2 MS. EDWARDS: It's been answered. I'm going
3 to object. He did answer the question.

4 MR. ALEXANDER: I got a convoluted answer.
5 He can certainly expand on it, but I believe he should
6 give me a yes or no. I never did hear one way other
7 the other whether it was an interim basis or not.

8 COMMISSIONER CLARK: Well, he can answer yes
9 or no, but I would point out I think the difficulty
10 perhaps is not in the witness answering, it's perhaps
11 in what the FCC has created.

12 MR. ALEXANDER: I won't argue with that.

13 COMMISSIONER CLARK: And certainly there are
14 different presentations. But you do agree it appears
15 what the FCC has granted is for us to take some
16 interim step?

17 WITNESS ROZYCKI: Yes. Yeah, I'm not
18 arguing that.

19 Q (By Mr. Alexander) Okay. Mr. Rozycki,
20 will you also agree that the FCC has also specifically
21 held in its Declaratory Ruling in February of this
22 year that the reciprocal compensation requirements
23 under Section 251(b)(5) of the 1996 Act do not govern
24 intercarrier compensation for ISP-bound traffic?

25 A Yes, I do. And the FCC also adds that the

1 states are free to deal with this issue in the
2 arbitration of Interconnection Agreements.

3 Q Again, on an interim basis?

4 A Yes.

5 Q Okay. Thank you.

6 Are you also aware that the FCC has
7 expressly stated in its February 1999 Declaratory
8 Ruling that pure minute-of-use pricing structures are
9 not likely to reflect accurately how costs are
10 incurred for delivering ISP-bound traffic?

11 A Is your question that they've stated that?
12 Yes, I agree with that. They have stated that.

13 Q Mr. Rozycki, do you agree that the
14 reciprocal compensation is a cost recovery mechanism
15 as provided for in the Act, as I mentioned in my
16 opening under Sections 252(d)(2) and Section
17 251(b)(5), it's a cost recovery mechanism.

18 A It is a cost recovery mechanism.

19 Q Let's talk about the cost that DeltaCom is
20 trying to recover through using reciprocal
21 compensation for calls made to ISPs. Do you know what
22 DeltaCom's costs are for handling ISP-bound calls to
23 its network?

24 A We have not done a cost study so we do not
25 know the precise costs.

1 Q Would you agree that without accurate cost
2 studies, that the Florida Commission has no way of
3 really knowing if DeltaCom is recovering its cost for
4 handling ISP-bound calls?

5 A Repeat the question, I'm sorry.

6 Q Without an accurate cost study, this
7 Commission has no way of really knowing whether
8 DeltaCom is, in fact, recovering its cost for handling
9 ISP-bound calls?

10 A Well, I guess the answer to your question is
11 yes, but that's not the issue here.

12 ITC^DeltaCom is allowed by the Act and by
13 FCC rules to charge a rate that is equal to the rate
14 that BellSouth charges us for reciprocal compensation.
15 I think that's allowed in the -- in 51.711 of the CFR
16 where they establish the notion of a symmetrical
17 reciprocal compensation.

18 They also, in the CFR, indicate that we're
19 only -- we, ITC^DeltaCom -- are only required to
20 produce cost studies if we wish to charge a rate
21 different from that that BellSouth is charging us.

22 Q Mr. Rozycki, reference to the Code of
23 Federal Regulations at 47-51.311 -- I'm sorry, .711 is
24 for reciprocal compensation for cost recovery of local
25 calls; is that correct?

1 A Yes, it is. I think it's symmetrical
2 reciprocal compensation.

3 Q But, again, it is specifically in connection
4 with local traffic; is that correct?

5 A Yes, it is.

6 Q Okay. A follow-up question about the
7 absence of cost studies. Would you also agree that
8 without cost studies that this Commission has no way
9 of knowing whether DeltaCom is recovering more than
10 its cost for handling ISP calls?

11 A Without cost studies, yes, that would be
12 correct. But once again, without those cost studies I
13 think the FCC has indicated this would be the way to
14 do it; to charge symmetrical rates. And they have
15 also indicated in their February 25th or 26th --
16 whichever date you want to give it -- Order, the
17 Declaratory Ruling, that states are free to treat
18 ISP-directed traffic as other local traffic, and use
19 reciprocal compensation as a means for compensating
20 CLECs -- ALECs for carrying that traffic.

21 Q Mr. Rozycki, do you know whether or not
22 DeltaCom's rates that it charges to its ISP customers
23 here in Florida are above DeltaCom's cost since you
24 don't have cost studies?

25 A Well, I think your original question was

1 about cost studies for reciprocal compensation.

2 Q That's correct.

3 A We currently purchase most of the links that
4 we provide to ISPs from BellSouth. We have structured
5 our rates to recover those costs.

6 Q Do you know whether or not the rates that
7 you charge for your ISP customers are above DeltaCom's
8 costs?

9 A I believe they are. I've not done any study
10 so I do not know for a fact.

11 Q Okay. That was my next question.

12 A Well -- and to add, we're not in the
13 business of losing money, so we are trying to charge
14 rates that recover the costs.

15 Q It's not unheard of, Mr. Rozycki, if you're
16 making money off of a different line, such as through
17 reciprocal compensation, that the rates you may charge
18 a customer for another service may, in fact, be made
19 up through another line of revenue? Would that be
20 correct?

21 A I don't know how BellSouth charges its
22 services but that's not the way we're building our
23 services. We try to recover the cost of serving a
24 customer through the rates we charge that customer.

25 Q So do you know whether or not the prices

1 DeltaCom charges its ISP customers are the same,
2 higher, lower than the prices it charges to its
3 non-ISP customers for similar services?

4 A Well, again, I don't think the services that
5 we sell to ISPs are typically purchased by other
6 customers. What we're currently selling them are ISDN
7 PRI circuits. I don't know how many other customers
8 of ITC^DeltaCom purchase those kinds of circuits. I'm
9 not sure how to answer your question.

10 Q Well, does DeltaCom offer any special
11 incentives to attract ISP customers?

12 A Not that I know of.

13 Q Credits, refunds, rebates and the like?

14 A Not that I'm aware of.

15 Q Who would know that for DeltaCom?

16 A You would have to go to the group, our
17 wholesale services group that covers our business with
18 ISPs.

19 Q Would you be willing to provide us a
20 late-filed exhibit that indicates whether or not you
21 have any credits, refunds or rebates that you provide
22 to your ISP customers?

23 A I don't know how that would be relevant.

24 Q Well, my question was are you willing to
25 provide that?

1 **A** No.

2 **COMMISSIONER CLARK:** Ms. Edwards, do you
3 want to take that one over?

4 **MS. EDWARDS:** Yes, I think I do.

5 Actually, this was one of the -- I believe
6 one of the items on the Motion to Compel as an
7 interrogatory and request for production, and we
8 objected for the very reason that Mr. Rozycki just
9 mentioned.

10 It is DeltaCom's position that what we
11 charge our end users is not relevant to the issue of
12 the intercarrier compensation mechanism. And I would
13 also point out that it was my understanding in my
14 agreement with Mr. Alexander that that Motion to
15 Compel had been resolved, that issue. And that was
16 one of the issues in there. And we had objected and
17 we --

18 **COMMISSIONER CLARK:** Withdrew the request.
19 Mr. Alexander.

20 **MR. ALEXANDER:** That was a discovery request
21 and we're in a hearing and I'm asking the witness
22 live, under oath, questions about these issues for
23 purposes --

24 **COMMISSIONER CLARK:** It's my view you should
25 have pursued it as discovery rather than asking for it

1 now. I mean, you have withdrawn the request and it
2 was relied upon as a withdrawal of the request.

3 **MR. ALEXANDER:** We'll handle it that way.

4 **COMMISSIONER CLARK:** Okay.

5 **Q** (By Mr. Alexander) Mr. Rozycki, do you
6 contend that the rates that you charge your ISP
7 customers do not provide you any cost recovery for
8 handling calls made to them by BellSouth's end users
9 for handling ISP calls to those customers?

10 **A** Restate the question. I think I understood.
11 I want to make sure I'm following you.

12 **Q** On Page 23 of your Rebuttal Testimony you
13 contend that DeltaCom's incurring switching and
14 transport expense not covered in the rates to ISPs; is
15 that correct?

16 **A** Yes, that's correct.

17 **Q** Okay. And without evidence of DeltaCom's
18 cost to handle peak traffic, there's really no
19 evidence that you're not recovering those costs, is
20 there?

21 **A** I'm not -- I'm hesitating because I'm not
22 sure how to answer that question. Maybe it would be
23 helpful if we -- I think Dr. Taylor gives us a nice
24 example in his testimony, if I could turn to that. It
25 may be helpful in describing -- bear with me one

1 second.

2 Q I'm sure he'd appreciate you quoting him.

3 A Pardon?

4 Q I said I'm sure Dr. Taylor appreciates you
5 quoting him.

6 A I'm sure does. On Page 7 of Dr. Taylor's
7 testimony he provides us with a picture, his depiction
8 of how we view this. I'm not sure that it's -- our
9 view is different from the accurate view. But it
10 basically shows a link between an ISP and the ALEC end
11 office. That would be the service. The ISDN PRI
12 service that we sell our ISP customers.

13 He also shows that there's a link between
14 our end office and the ILEC end office, or the ILEC
15 tandem office where we pick up traffic that's directed
16 to us. That link in there he has correctly labeled as
17 reciprocal compensation.

18 We do not charge our ISP customers anything
19 for that link. In fact, we believe that that link is
20 most correctly charged, or the cost recovery process
21 or mechanism for that connection with BellSouth is
22 captured in the notion of reciprocal compensation. I
23 think the FCC has already indicated this in their
24 Declaratory Ruling that we spent so much time with
25 this morning.

1 They agree that this traffic that comes from
2 an ILEC subscriber over our interconnection features
3 to our ISPs causes us to incur costs, and because of
4 the way they have treated ISPs in this whole issue,
5 might, in fact, require us to recover those costs from
6 BellSouth.

7 So to get back to your question, and the
8 answer to that, we charge our ISPs for the service we
9 provide them. And that's the link from our end office
10 to the ISP; not for services that we do not provide
11 them that we do provide to BellSouth and its
12 customers.

13 Q Mr. Rozycki, are you aware of how ISPs do
14 business today? For example, they have an end user
15 that they charge most typically a flat rate monthly
16 charge?

17 A Oh, yes.

18 Q And, again, the FCC has said that the
19 services that these ISPs use is interstate access
20 services; is that correct? We've already talked about
21 that.

22 A Well -- yes.

23 Q And you are familiar with how, in the
24 interexchange world, an interexchange carrier uses
25 exchange access to supply its customer with a

1 connection to the local network; is that correct?

2 A Repeat that question? Yes, I think the --

3 Q Well, an IXC has an end user it charges for
4 using -- making a long distance call, correct?

5 A Yes, it does.

6 Q And it pays exchange access services to a
7 local carrier in order for their long distance
8 customer, who is also a customer of the local carrier,
9 to make a long distance call?

10 A That's correct. But you can't simply end
11 the discussion with it -- the exchange access issue.
12 You have to understand the full relationship, the
13 contractual relationship between that IXC and its
14 end-use customer and its contractual obligations to
15 the ILECs that provide it access, and the different
16 contractual obligations of the ISP to its end-use
17 customer, in this case the subscriber of BellSouth,
18 and its obligations, or lack thereof, to pay access
19 charges, which are not required, to BellSouth, and for
20 that matter, to ITC^DeltaCom.

21 The IXC has a specific contractual
22 relationship with its end-use customer. That was set
23 up in 1983. It's been established. As that
24 representative of the customer, if that customer has
25 problems with the service, the IXC, its

1 representative, handles those problems. That means
2 that if the customer making a long distance call has
3 some technical problem completing their call, its
4 representative, the IXC, will, in fact, deal with
5 those problems, including discerning whether those
6 problems exist on the ILEC, the originating or
7 terminating ILEC access facilities. The IPS, by
8 contrast has -- does not have the same contractual
9 obligations. When its customer -- the end user, the
10 ILEC subscriber, has a problem with the call between
11 the customer and the ISP, they will be directed by the
12 ISP to call their local telephone -- their local
13 telecommunications provider to find out what that
14 problem is. That ISP only is responsible for the
15 service that it has purchased and provides to the
16 customer out on the internet.

17 So I think there's a very, very different
18 relationship and that's what this is all about. And
19 why reciprocal compensation is appropriate here.

20 **Q** Mr. Rozycki, the interexchange carrier and
21 its end user have a relationship whereby that end
22 user, who also is a local subscriber, pays to make a
23 long distance call; is that correct?

24 **A** That is correct.

25 **Q** And in the case of an internet service

1 provider, it also has a relationship with its end user
2 whereby the customer, who is also a local customer,
3 pays for access to the internet to that ISP; is that
4 correct?

5 **A** No, that's incorrect. And that's the
6 fundamental difference.

7 When an end user makes a long distance call,
8 they pay for, in the price of that long distance call,
9 each and every technical link between their telephone
10 and the telephone they are calling at the other end,
11 or computer for that matter, when they use an IXC as
12 their carrier. When they buy a service from an ISP,
13 they don't pay that ISP for the dial tone line to the
14 BellSouth switch. They don't pay that ISP for
15 transport from BellSouth to the ALEC office. They
16 don't -- that is not part of what the ISP buys from
17 carriers or provides to its end-use customer. So no,
18 that's an incorrect characterization.

19 **Q** Well, now, Mr. Rozycki, I don't want to
20 belabor this point, but but for the fact that the FCC
21 has exempted ISPs from paying for access charges, the
22 relationship would be similar, would it not?

23 **A** No.

24 **Q** Today ISPs use interstate access services,
25 correct? The FCC has said that, haven't they?

1 A Yes, they do.

2 Q And today they do not pay interstate access
3 charges but rather pay a local business tariffed rate,
4 is that correct, because the FCC has said that?

5 A That is correct. And it's because they are
6 treated as end users, local end users.

7 Q The fact that they are paying a local
8 tariffed rate doesn't change the nature of the
9 service, does it? And the FCC held that in its
10 Declaratory Ruling, didn't it?

11 A Repeat that. I'm sorry.

12 Q The fact that they are paying for this
13 interstate access service does not change the nature
14 of the service from interstate access just because
15 they are paying a local tariffed rate, a local
16 business rate?

17 A They are not buying interstate access from
18 ITC^DeltaCom. They are buying an ISDN PRI.

19 Q Okay. Mr. Rozycki, BellSouth charges a
20 local business rate to an ISP, correct?

21 A That is my understanding, yes.

22 Q And they do not charge access charges
23 because the FCC has exempted that ISP from paying
24 those to the incumbent -- the local exchange carrier,
25 the ILEC?

1 A Yes.

2 Q In your opinion, Mr. Rozycki, do ILECs such
3 as BellSouth and ALECs such as DeltaCom have a similar
4 ability to compete for customers such as ISPs who
5 actually receive more call traffic than they
6 originate?

7 A Do we have a similar ability to compete for
8 ISPs? ITC^DeltaCom and BellSouth? Yes.

9 Q Do you agree that ILECs, incumbent LECs,
10 must serve all customers, while ALECs may actually
11 focus on serving ISPs, if they were so inclined; isn't
12 that correct?

13 A Yes, that is correct.

14 Q So it's not really similar, is it?

15 A I'm missing the point. It is similar when
16 you say that both ITC^DeltaCom and BellSouth can
17 similarly compete for ISPs, yes.

18 Q But DeltaCom can choose to market solely to
19 an ISP?

20 A Could but don't.

21 Q And is DeltaCom an ISP themselves?

22 A I'm sorry. Have we become -- no, we are not
23 an ISP.

24 Q Does DeltaCom own or is affiliated with a
25 ISP we do not own nor are we affiliated with an ISP.

1 Q Does DeltaCom plan to become an ISP or own
2 or become one?

3 A Not to the best of my knowledge.

4 Q You do agree that ALECs can become and own
5 ISPs, and some, in fact, do, correct?

6 A Yes, they can and have.

7 Q Mr. Rozycki, on Page 24 of your rebuttal you
8 state that there's evidence that DeltaCom intends to
9 serve non-ISP customers.

10 A Let me catch up with you, 24 of the
11 rebuttal. Yes, line?

12 Q 4 through 5. I think it's actually the
13 question.

14 A Yes. I see the question.

15 Q Okay. And today does DeltaCom have any
16 residential customers being served over its own
17 network here in Florida? Do you have facilities-based
18 residential customers?

19 A Today, not to my knowledge; only resale.

20 Q Okay. Would you agree that residential
21 customers are significant users of the internet?

22 A Yes, they certainly are.

23 Q They are going to create a lot of
24 inward-bound calls to ISPs, right?

25 A Yes, they will.

1 Q If reciprocal compensation is applicable to
2 ISP calls as you request here in this arbitration
3 proceeding, would DeltaCom's decision to pursue
4 residential customers be impacted in any way?

5 A No, I don't think so. We have developed
6 services, we offer services for residential users, but
7 that does not change the focus of our company.

8 Our company is focussed on primarily
9 business customers. So that's who we direct most of
10 our marketing to, if you want to call it that. But I
11 don't think it would change the way we look at
12 residential users.

13 Q How long have you been doing business in
14 Florida?

15 A I don't know the exact date we entered
16 Florida but I think we actually started turning up
17 customers -- I'm going to specu -- early in 1999.

18 Q And almost a year later you have no
19 residential customers being served over your own
20 network using your own facilities, or using leased
21 facilities from BellSouth? In other words, a
22 nonresale residential customer?

23 A Not yet, no, we do not. But I would add
24 that most of our customers in Florida are resale
25 customers.

1 We're in the process now of getting as many
2 customers as we can on to leased facilities from
3 BellSouth or on a UNE basis, and residential customers
4 will be no exception.

5 Q Assume with me the following facts,
6 Mr. Rozycki.

7 DeltaCom and BellSouth have a intercarrier
8 agreement in Florida and the reciprocal compensation
9 rate is nine-tenths of a penny per minute of use.
10 That's the current agreement, correct?

11 A That's correct.

12 Q And reciprocal compensation -- you win this
13 arbitration and it's being applied to ISP-bound calls
14 and a BellSouth residential customer calls up an ISP
15 customer of DeltaCom. Are you with me?

16 A Yes.

17 Q Okay. And in Florida are you aware that the
18 highest residential rate group is a charge of \$10.65;
19 I believe it's rate group 12. Will you accept that,
20 subject to check?

21 A Yes.

22 Q It's less than \$11?

23 A Yes.

24 Q Let's also assume that the BellSouth
25 customer is a subscriber on America On-Line, AOL,

1 and -- we'll pick on them -- and that this AOL
2 customer, as I mentioned earlier, is actually an
3 end-user customer of DeltaCom, right? Are you with me
4 so far?

5 **A** Yes.

6 **Q** And let's just say that BellSouth's local
7 customer, who happens to also be the end-user customer
8 of America On-Line, dials them up and makes a
9 connection and gets on the internet Friday morning,
10 leaves that connection open until Saturday morning;
11 basically a 24-hour period, right?

12 **A** Yes.

13 **Q** Okay. Would you agree that that one day's
14 usage, that BellSouth would be paying more money to
15 DeltaCom in reciprocal compensation that it receives
16 from its residential customer for providing that flat
17 rate residential service -- I'm not going to include
18 in there ancillary services like MemoryCall, or any
19 add-ons, but just the flat-rate service for providing
20 that connection. Because we don't know whether that
21 customer has any other service but dial tone in my any
22 example here. You have flat rate residential service.
23 Would BellSouth be paying to DeltaCom more than
24 BellSouth receives in its flat rate monthly service
25 from that end user?

1 **A** I agree with the mathematical calculations
2 that you performed without having exactly duplicated
3 them myself, but that's not the issue here. And we've
4 talked about this before in other cases.

5 But the issue here is not whether or not an
6 individual customer's use of the internet is -- and
7 their local service, their local dial tone rate covers
8 their use of the internet. The issue is whether the
9 entire revenue stream that BellSouth recovers from all
10 of its local users, in fact, would cover those users'
11 cost of internet access plus their local service. And
12 I'm not so sure that that's really proven out by
13 anything that you've indicated here.

14 **Q** Mr. Rozycki, you do agree that the FCC has
15 already determined, as a part of its Declaratory
16 Ruling, and the part of it that went -- we talked
17 about it earlier, the Notice of Proposed Rulemaking --
18 that the pure minute-of-use-type basis for doing this
19 intercarrier compensation may not accurately reflect
20 the costs that are incurred?

21 **A** It may not, yes. And I think, once again,
22 it's been discussed in other proceedings that as the
23 hold times for these calls lengthens, and we -- when I
24 say "these calls," I mean local calls plus calls to
25 the internet. That may change the average cost

1 characteristic of calls. Calls may decrease from the
2 .3 cents, or whatever local interconnection is set at
3 in Florida, to .25 cents, or something like that.
4 There's the possibility that longer hold times will
5 change the cost characteristic of calls.

6 Q Well, as a basic premise, just using that
7 24-hour cycle, it would be a little over \$14 at the
8 nine-tenths of a penny rate versus the 10.65 BellSouth
9 has -- you were asking about the math.

10 A Yeah. But that's an accident. I mean,
11 somebody left their internet up all night. There are
12 internet services -- Mindspring, I think, is one --
13 that will automatically turn that internet --
14 discontinue that interconnection to the internet if
15 the user has not been involved, input data within a
16 certain amount of time. I don't know the precise time
17 but it's some twenty or thirty minutes. I mean, there
18 are lots of ways to avoid that accident, that
19 aberration, that exception from occurring, but that is
20 the exception.

21 Q Well, do you think it's an aberration for an
22 end user, a residential end user, to get on the
23 internet a couple hours a day every other day in a
24 one-month period?

25 A Yes. I also agree that those end users, you

1 know, are likely -- if they are spending several hours
2 a day, several -- more than that per week on the
3 internet, they are spending 90, 95, maybe 99% of their
4 time waiting for the internet to respond to them.
5 Those consumers would love to have faster access to
6 the internet. And that's what's coming: Cable
7 access, wireless access, access over DSL circuits that
8 BellSouth may provide. When those customers get off
9 their voice grade connection to the internet and have
10 those options available, and can go to something else,
11 they won't be on the voice network trying to connect
12 to the internet for hours at a time. They'll get
13 their data in minutes. And oh, by the way, I think
14 that ends the reciprocal compensation problem.
15 Because these are all dedicated forms of access. They
16 can literally turn their computer on and leave it up
17 all day and it will cost BellSouth nothing.

18 Q Well, let's talk about that. How long is
19 the agreement that this Commission to this arbitration
20 will have a term for?

21 A Two years.

22 Q A two-year contract. Do you think that this
23 end to reciprocal comp, for this technology change,
24 faster access is going to occur during these next two
25 year?

1 **A** I think if AT&T, Sprint and the others have
2 their way, yes, it could change dramatically within
3 those two years.

4 **Q** Is it going to be at the front end or the
5 back end of those two years?

6 **A** Pardon?

7 **Q** The front end or the back end of those two
8 years.

9 **COMMISSIONER CLARK:** The court reporter can
10 only record one person at a time.

11 **MR. ALEXANDER:** I'm sorry. I thought he had
12 finished.

13 **Q** **(By Mr. Alexander)** I was just asking,
14 since you're talking about this advanced technology
15 and you think that, oh, by the way, that will solve
16 the reciprocal compensation for ISP traffic problem,
17 are you predicting this will occur during the front
18 end of this agreement or the back end of the
19 agreement?

20 **A** It will occur over time.

21 **Q** But today that's not the situation?

22 **A** You mean these services are not available?
23 No, they are available.

24 **Q** For the vast majority of customers that
25 would be using those services today in the reciprocal

1 compensation issue for ISP-bound traffic will not be
2 resolved through this technology change today; is that
3 right?

4 A Not today. But one of the big issues is how
5 fast BellSouth will roll out its DSL services and make
6 those services available to customers; give them that
7 option that gets them off the voice network and on to
8 something that will not generate reciprocal
9 compensation.

10 Q Mr. Rozycki, if an ILEC such as BellSouth
11 must pay reciprocal compensation for ISP-bound
12 traffic, how is BellSouth going to recover its cost?

13 A I'm sorry, what costs?

14 Q How is BellSouth going to recover its cost
15 for paying potentially more to DeltaCom on a
16 reciprocal compensation basis for ISP calls than it
17 recovers from its own end user? How is BellSouth
18 going to recover those costs?

19 A Well, I don't agree that its costs are more
20 than it's recovering from its end users.

21 Q Would you agree, Mr. Rozycki, that the
22 current local rates were not designed to cover these
23 additional costs, that is handling ISP-bound traffic?

24 A No, I don't agree. I mean, they weren't
25 designed -- I don't know the particulars of when the

1 last time BellSouth came into Florida and asked for
2 local rate changes, but likely the internet was not an
3 issue in that rate case.

4 I don't know today, with the many changes
5 that BellSouth has built into its network, whether we
6 could argue that those rates recover those costs or
7 not. I simply don't know. And I don't know how this
8 Commission would know absent a full blown cost study
9 of BellSouth to determine that.

10 Q Would you agree that under the facts I
11 described to you, that for that -- just a one 24-hour
12 period, or basically two hours every other day, thirty
13 hours a month, something like that, that local rates
14 could be impacted by the fact that BellSouth may be
15 paying more to DeltaCom, the reciprocal compensation,
16 than it receives from its local customer?

17 A No, I really don't agree with that. Because
18 I believe there's plenty of revenue coming into
19 BellSouth that is labeled "local revenue" that will
20 adequately cover that.

21 Again, I don't think one will know until a
22 cost study is performed. And my last reading of
23 BellSouth's Quarterly Report would indicate that
24 you're doing very well.

25 Q Mr. Rozycki, basically you're saying that

1 BellSouth should use its ancillary services or other
2 services, even toll services for local toll, to
3 subsidize providing local service because it's paying
4 more in reciprocal compensation than it receives in
5 the local service rate?

6 **A** Well, I agree that those rates were set the
7 way they were to recover local costs. And I believe
8 that this is a local cost.

9 **Q** Do you believe that they were set
10 envisioning reciprocal compensation payments for
11 ISP-bound calls?

12 **A** No, they were not. But once again, not
13 knowing what the costs are today as to the rates, I
14 don't know what we can make of that.

15 **Q** When you talk about not knowing the cost,
16 you're also talking about the fact that DeltaCom does
17 not know its cost for handling ISP-bound calls; is
18 that right?

19 **A** Again, we do not know precisely those costs.
20 We have not done a cost study.

21 **Q** Is it possible for DeltaCom to track calls
22 made from BellSouth end users to DeltaCom's ISP end
23 users?

24 **A** Not today, we're not set up to do that.

25 **Q** You do know your NXXs -- in other words, the

1 code assigned to a switch for a particular telephone
2 number for your own ISP customers?

3 A That's correct.

4 Q You could separate out on bills non-ISP
5 traffic from ISP traffic; isn't that correct?

6 A We could by telephone number.

7 Q So you could develop a way -- you may not
8 have one in place today -- but you could develop a way
9 to track these calls?

10 A We could.

11 Q Mr. Rozycki, on Page 19 of your Rebuttal
12 Testimony you refer to the FCC's Declaratory Ruling in
13 February of 1999?

14 A Yes.

15 Q And make some statements regarding -- let me
16 make sure I'm there as well -- decisions by other
17 state commissions. And you specifically quote from,
18 on Pages 19 through 20, a decision by the Maryland
19 Commission that came out after February of 1999; is
20 that correct?

21 A Yes.

22 Q All right. Isn't it a fact that that
23 Maryland decision had its genesis in a complaint case
24 rather than an arbitration case?

25 A Yes, I think that's correct.

1 Q You are aware that it's actually a more
2 recent -- and I know you filed your rebuttal testimony
3 on September 13th, but there's been a more recent
4 decision by a state commission in an arbitration
5 proceeding right here in the BellSouth region
6 regarding whether or not reciprocal compensation
7 should be paid for ISP-bound traffic; isn't that
8 correct?

9 A Yes.

10 Q And that is the South Carolina decision
11 involving DeltaCom and BellSouth?

12 A Yes.

13 Q Do you know what South Carolina ruled about
14 this issue?

15 A They ruled that reciprocal compensation for
16 this traffic would not be appropriate at this time, I
17 think. I don't know the exact words.

18 **MR. ALEXANDER:** I would like to show the
19 witness the Order from South Carolina, if I may. I
20 actually have copies. I would like to have that -- I
21 believe, he will recognize the Order, like to have
22 that -- if I can hand it out, marked as an exhibit in
23 this proceeding.

24 **COMMISSIONER CLARK:** That would be fine.

25 (Pause)

1 **Q** **(By Mr. Alexander)** Mr. Rozycki, let me
2 first ask you, you do recognize this Order as being
3 the decision -- in fact, it's styled -- another first
4 page, Order on Arbitration. It's in Docket 199-9259-C
5 Order No. 19999-690 it's from the DeltaCom/BellSouth
6 arbitration proceeding.

7 **A** Yes, I do.

8 **Q** Cited October 4th, 1999?

9 **A** Yes.

10 **Q** Turning to Page 64 of that Order do you see
11 in the first full paragraph the -- I guess it's the
12 last phrase of that, first sentence, "the Commission
13 finds that reciprocal compensation should not apply
14 for ISP-bound traffic."

15 **A** Yes, I do.

16 **Q** And they, in fact, say that several times on
17 Page 64, do they not?

18 **A** Yes.

19 **Q** And does the Commission in South Carolina,
20 on this same page, at the bottom of that first full
21 paragraph, indicate that it looked at that issue and
22 found that the Act does not impose an obligation on
23 parties to pay reciprocal compensation for ISP-bound
24 traffic? Do you see that, Mr. Rozycki?

25 **A** Yes, I do.

1 **Q** Okay. And this would be a more current
2 pronouncement than the Maryland decision?

3 **A** It doesn't make it more correct, but yes.

4 **MR. ALEXANDER:** Commissioner Clark, I would
5 like to have the October 4, 1999, Order on the
6 arbitration involving BellSouth and DeltaCom marked as
7 an exhibit in this proceeding. It may, in fact, be in
8 Staff's stipulated exhibits.

9 **MS. CALDWELL:** Yes, it is. It's under
10 "Other State Commission Orders." We do have it listed
11 as --

12 **COMMISSIONER CLARK:** Then we've already
13 taken official notice of it.

14 **MR. ALEXANDER:** Yes, I'm sorry.

15 **Q** **(By Mr. Alexander)** Mr. Rozycki, I do have
16 another couple of questions, and we're almost done
17 because I notice it's almost 12:30.

18 You are aware that BellSouth has proposed
19 alternatives for an intercarrier compensation
20 mechanism other than reciprocal compensation?

21 **A** Yes, I am aware.

22 **Q** And discussed in those alternatives, in your
23 opinion is bill and keep an alternative for an interim
24 intercarrier -- interim intercarrier compensation
25 mechanism for ISP-bound traffic until the FCC decides

1 this matter?

2 **A** It's an alternative that makes sense in
3 situations where companies are exchanging roughly
4 equal amounts of traffic.

5 **Q** You don't have any reason to believe that
6 the Florida Commission is without jurisdiction to
7 order bill and keep as that mechanism for interim
8 intercarrier compensation for ISP traffic, do you?

9 **A** No, I don't believe they are without
10 jurisdiction, but I don't think it would capture the
11 essence or the real intent of the FCC's order, which
12 focussed on the costs associated with our delivering
13 this traffic for BellSouth, and the fact that we
14 should be reimbursed in some way for that cost.

15 So bill and keep, I would argue, is not an
16 appropriate way of dealing with this at this time.

17 **COMMISSIONER CLARK:** Mr. Rozycki, do you
18 know what we do with respect to reciprocal
19 compensation for the termination of local traffic now?
20 Isn't it bill and keep except that there's a
21 difference, like a 20% difference. I seem to remember
22 we did do something like that bill and keep that said
23 if it was significantly -- somebody was significantly
24 terminating more traffic or --

25 **WITNESS ROZYCKI:** I'm not sure if there is a

1 specific order in Florida addressing that. It was my
2 understanding -- and I -- I have been known to be
3 wrong on this -- but that those issues were resolved
4 based on the individual language in the
5 Interconnection Agreement between BellSouth and
6 another carrier. I think as I understand in the
7 MediaOne case recently that the Commission ruled that
8 the existing contract would be in effect until --
9 going forward until the FCC rules on this issue. Now,
10 what exactly is in their existing contract and at what
11 rate, I don't know. But there are some carriers who
12 have those kinds of provisions. Our existing
13 agreement does not have such a provision. It simply
14 says that we will pay each other for local traffic.

15 **COMMISSIONER CLARK:** Okay.

16 **MR. ALEXANDER:** Mr. Rozycki, thank you very
17 much. Commissioner Clark, I have no further
18 questions.

19 **COMMISSIONER CLARK:** Staff, how much do you
20 have?

21 **MS. CALDWELL:** I don't have very much at all
22 I think we can finish up.

23 **CROSS EXAMINATION**

24 **BY MS. CALDWELL:**

25 **Q** Mr. Rozycki, are you familiar with the FCC's

1 Order? It's called the Ameritech Order from the FCC?

2 A I've not read it.

3 Q All right. Are you familiar with the
4 definition of "parity" that the FCC came up with in
5 that -- that they used -- they defined parity in that
6 Order. Are you familiar with that definition?

7 A Is that the one where we'd be given an
8 opportunity to -- an opportunity to compete?

9 Q Well, let me --

10 A I'm not sure of the exact language.

11 Q What I'd like to do is get your expression
12 of specific terms in it. And I can either provide you
13 with a copy of the Order, if you need to. Let me read
14 the definition out and then if you'd like to see it --

15 A Sure.

16 Q The FCC concluded in that "For those OOS
17 functions provided to competing carriers that are
18 analogous to OSS functions, that a Bell operating
19 company provides to itself in connection with retail
20 service offerings, the Bell operating company must
21 provide access to competing carriers that are equal to
22 the level of access that the Bell operating company
23 provides to itself, its customers or its affiliates in
24 terms of quality, accuracy and timeliness."

25 My question to you would be what would be

1 your understanding of the term "analogous" used in
2 this paragraph?

3 A Could you just read it again now that I know
4 the word you're focussing on.

5 Q Right. Let me also, for your --

6 A Sure.

7 Q We'd also like to ask you what you
8 understand the term "retail service offerings," what
9 that term would include?

10 A Okay.

11 Q All right. "For those OSS functions
12 provided to competing carriers that are analgous to
13 OSS functions that a Bell operating company provides
14 to itself in connection with retail service offerings,
15 the Bell operating company must provide access to
16 competing carriers that are equal to a level of access
17 that the Bell operating company provides to itself,
18 its customers or its affiliates in terms of quality,
19 accuracy and timeliness." And, again, my question was
20 what is your understanding of the term "analogous" as
21 referred to in this paragraph?

22 A Well, analogous refers to OSS. And it would
23 be our contention that the current OSS functionality
24 that we're being provided today is not analogous
25 because it does not provide us the same capabilities

1 that, say, the current BellSouth platform, OSS
2 platform allows them.

3 For instance, they can -- they, the order-
4 takers at BellSouth -- can, as they are entering an
5 order, have those orders corrected real-time. Today
6 the LENS product that we buy from BellSouth does not
7 allow us to do that. We have to submit the order in a
8 batch process and it is returned to us with an
9 identification of an error. And that -- Mike Thomas
10 will testify on that more clearly. But that can take
11 a long time. So that is not analogous.

12 Again, I don't think LENS gives us access to
13 the full information that's located in the RSAG
14 database. I know that BellSouth will argue, "Well,
15 we've updated that. We've now gone to something
16 called TAG." But we're using LENS today and it will
17 take us time to get to TAG, and get there. And we
18 don't know if TAG provides us with exactly the same
19 access to information that -- that BellSouth has in
20 its own OSS systems.

21 Q All right. As used in this paragraph, what
22 do you understand the term "retail service offerings"
23 to include?

24 A Well, I would think that they were referring
25 to either those services we buy, called resale;

1 whether we simply purchase an existing service of
2 BellSouth and brand it as our own and resell it to a
3 customer, or whether we buy UNEs, bundle them
4 together, and provide our own retail services that are
5 similar to those of BellSouth. Either one.

6 Q From that answer, you seem to indicate that
7 the term "retail service offerings" would include some
8 UNE-like elements?

9 A Yes.

10 Q Would you provide some examples of such
11 UNE-like elements?

12 A The main UNE-like element that we purchase
13 is the loop.

14 Q Can you think of any other examples?

15 A Well, there's been the argument before the
16 FCC that switching is involved. Let's see. What are
17 the others? Transport -- they are escaping me right
18 now, but I know there are several other primary
19 elements.

20 Q All right, Mr. Rozycki, that's all I have.
21 Thank you very much.

22 COMMISSIONER CLARK: Commissioner Jacobs.

23 COMMISSIONER JACOBS: Briefly. Earlier, I
24 think, from questioning you indicated that there is --
25 the essence of exchange services -- or access

1 services, I'm sorry -- are what are used by the ISP
2 customer of yours. Was that what I understood?

3 **WITNESS ROZYCKI:** Well, what we sell to an
4 ISP is in essence a local loop.

5 **COMMISSIONER JACOBS:** Okay.

6 **WITNESS ROZYCKI:** The same as we would sell
7 to any other end use local customer. And that local
8 loop gives that ISP the ability to receive in-coming
9 calls, which is really all ISPs care about. They
10 don't make outgoing calls on those. But there is the
11 exchange of information over that line. And that line
12 links the ISP, its server, to our switch or our end
13 office.

14 **COMMISSIONER JACOBS:** Now, if you're not the
15 person who would answer this, and I can defer to the
16 person who would be -- what is the extended loop?
17 What is the difference between that and the extended
18 loop that I keep hearing about?

19 **MR. ROZYCKI:** I think the best person to
20 answer that would be Mr. Hyde.

21 **COMMISSIONER JACOBS:** Okay. That would be
22 fine.

23 **COMMISSIONER CLARK:** I just have one
24 question. Is there anything in -- I guess it is the
25 Act or maybe the FCC rules that gives directions on

1 how to recover OSS costs, as I think was indicated
2 that FCC has indicated how the local number
3 portability would be recovered. But is there anything
4 that gives us guidance on the OSS cost?

5 **WITNESS ROZYCKI:** You know, I haven't looked
6 for that so I don't know the answer. There might be
7 but I don't know.

8 **COMMISSIONER CLARK:** Okay.

9 **MS. EDWARDS:** Commissioner, if you'd like,
10 we can certainly do some research and either include
11 that in our brief or --

12 **COMMISSIONER CLARK:** Yeah, that would be
13 helpful.

14 **MS. EDWARDS:** -- as a late-filed exhibit.

15 **COMMISSIONER CLARK:** Any further questions
16 for Mr. Rozycki? Any redirect?

17 **MS. EDWARDS:** Yes. I have some questions.
18 I don't know if you want to go through now or break
19 for lunch.

20 **COMMISSIONER CLARK:** I hope they are not too
21 long.

22 **MS. EDWARDS:** Okay.

23 **REDIRECT EXAMINATION**

24 **BY MS. EDWARDS:**

25 **Q** Mr. Rozycki, you were asked by opposing

1 counsel for BellSouth about OSS charges?

2 A Yes.

3 Q Do you know if there was another arbitration
4 involving OSS, what the OSS charges should be in
5 Florida?

6 A No, I do not know if there was.

7 Q Has another state commission looked at the
8 OSS charge issue and determined that those OSS charges
9 should be spread over all end users?

10 A I think there has been but I cannot recall
11 who.

12 Q Would the state of Tennessee -- could it be
13 the state of Tennessee?

14 A Yes, it could be. I honestly do not recall
15 which state.

16 Q You were asked, I think, one particular
17 question about the OSS charge that's been offered to
18 DeltaCom. What was BellSouth's original proposal for
19 ITC^DeltaCom to pay OSS charges?

20 A Well -- and I'm going on recollection here.
21 My understanding is the original proposal was the
22 state-ordered rates. And somewhere during the
23 negotiations process BellSouth brought forth what we
24 thought was a new approach to that, offering us a
25 region-wide rate of \$3.50 per OSS. Now, this was

1 dramatically different from the Florida rate, which I
2 have been informed is around 6, and, say, the Alabama
3 rate which is around \$11. And it's not clear to me
4 that if the Florida rate at \$6 is cost based and the
5 Alabama rate at \$11 is cost based, how they can
6 recover their so-called costs at \$3.50. I'm lost in
7 that math.

8 Q Is it ITC^DeltaCom's policy position that
9 charges should be applied in a nondiscriminatory
10 manner?

11 A Yes.

12 Q Just in your opinion do you believe that a
13 regional rate that differs from a state-specific rate
14 could result in discriminatory pricing?

15 A Well, not only could it result in
16 discriminatory pricing, it flies in the face of what
17 BellSouth has argued are its so-called quote/unquote
18 "TELRIC costs" in any individual state.

19 If TELRIC costs are \$11 in Alabama, \$6 in
20 Florida, yet they can still recover their costs -- I'm
21 not sure how we're doing this with 3.50. Again, I
22 don't know how the math is done with that. Clearly,
23 though, it would be given this -- to ITC^DeltaCom's
24 advantage to take the \$3.50 rate since we're a
25 region-wide carrier, and that would place another

1 smaller carrier serving only Florida, or a portion of
2 Florida, at a distinct disadvantage if they were not
3 offered the regional rate because they only serve a
4 small area in Florida, and, therefore, had to pay \$6
5 and change for their OSS.

6 Q Does ITC^DeltaCom incur costs for developing
7 its OSS systems?

8 A Yes, we do.

9 Q In fact, hasn't ITC^DeltaCom -- let me ask
10 it this way: Has ITC^DeltaCom implemented LENS?

11 A Yes, we have.

12 Q Has ITC^DeltaCom implemented EDI?

13 A Yes, we have.

14 Q Has ITC^DeltaCom implemented several
15 versions of EDI?

16 A Yes.

17 Q Has ITC^DeltaCom now been presented by
18 BellSouth with yet another OSS interface called TAG?

19 A Yes, we have.

20 Q So this -- is it your opinion that this OSS
21 development charge continually evolves?

22 A So far. So far it has not only been a
23 continuing evolution, but what we think is somewhat of
24 a moving target.

25 Periodically we are offered yet a new better

1 way to have access to BellSouth's systems. That's a
2 good thing. But I think it adds additional costs.
3 And each one is touted as being the end-all and be-all
4 in terms of access to their OSS and providing us the
5 kind of access that we need.

6 But each time that changes are made, we also
7 have to make changes. And Mr. Thomas can talk about
8 that. But we must incur costs in adapting our OSS
9 systems to meet those systems of BellSouth.

10 Q Just a minute ago you had said that it is a
11 good thing for BellSouth to continually develop and
12 upgrade its OSS offerings to CLECs.

13 Is it your understanding that the LENS EDI
14 interfaces that were available prior to the Louisiana
15 II Order were determined to not provide
16 nondiscriminatory access, or did not provide
17 nondiscriminatory access to OSS?

18 A Yes. And, in fact, I would guess that
19 BellSouth only developed TAG because EDI and LENS
20 together wouldn't work as a nondiscriminatory access
21 to OSS.

22 Q Yet ITC^DeltaCom -- yet BellSouth -- is it
23 your understanding that BellSouth requires
24 ITC^DeltaCom to pay for the development of LENS, EDI
25 and TAG?

1 **A** Yes, regardless of whether we use them.

2 **MR. ALEXANDER:** Commissioner Clark, I have
3 been fairly, I think, restrained in not objecting to
4 leading. She is on redirect and it's been one
5 scenario after another that can be -- get a yes or no
6 out of her witness.

7 **MS. EDWARDS:** I have no further questions on
8 OSS. I'll move on.

9 **Q** **(By Ms. Edwards)** Reciprocal compensation.

10 **COMMISSIONER CLARK:** Ms. Edwards, I think he
11 is correct, there have been some leading questions,
12 and it would be better if you didn't lead your
13 witness.

14 **MS. EDWARDS:** Yes, Commissioner.

15 **Q** **(By Ms. Edwards)** Has any other state -- or
16 has any state issued a ruling regarding reciprocal
17 compensation on an ongoing basis for ISP traffic?

18 **A** I don't recall all the states that have. I
19 think several have. There have been roughly 16 final
20 orders by Commissions since the FCC's Declaratory
21 Ruling. But in Alabama, for instance, there is a
22 Hearing Examiner's report that's come out. Basically
23 a recommended decision that would require reciprocal
24 compensation be paid for ISP traffic at a specified
25 rate. And that rate was roughly equal to the rate I

1 mentioned here earlier -- the sum of the elemental
2 billing rates that we talked about at the tandem
3 level. So it comes in around three and a half cents,
4 as I recall, which is close to what the tandem
5 interconnection rate is in Florida which is at 3.25 --
6 .325 cents. I'm sorry. Sorry.

7 Q Based on the discussions that were in the
8 questions that you had earlier on with the MediaOne
9 case, based on your understanding of that outcome of
10 that case, would ITC^DeltaCom be satisfied on an
11 interim basis with the same outcome here?

12 A I think, as I indicated in my summary, we'd
13 be more than happy to continue to get .9 cents a
14 minute for each and every minute that's delivered to
15 our network. So yes.

16 MS. EDWARDS: I'd like just a second to look
17 over my notes, but I think I'm just about done.
18 (Pause)

19 Q (By Ms. Edwards) Mr. Rozycki, I believe
20 Mr. Alexander asked you a series of questions about
21 the types of customers that ITC^DeltaCom has,
22 residential versus business.

23 A Yes, he did.

24 Q What type of customers does ITC^DeltaCom
25 market its services to?

1 A Mostly small to medium sized businesses. We
2 do market to ISPs. I did a calculation and I think
3 our ISPs are less than 1% of our total customer base
4 in Florida for instance. So we have a very small
5 percentage of our customers who are ISPs.

6 Q Can you provide a typical example of a small
7 business customer that ITC^DeltaCom would serve?

8 A Well, there's a pretty wide range, but we
9 have been known to provide service to hospitals,
10 hospices, doctor's offices; gets right down to little
11 gas stations and that sort of thing. Anywhere from
12 two- and three-line customers to much larger
13 customers. Typically, I think, our average customer
14 is on the six to seven lines per customer, so
15 relatively small. We'd love it to be bigger, but it
16 is what it is. So --.

17 Q Does ITC^DeltaCom have facilities-based
18 business customers in Florida?

19 A Yes, we do. As I mentioned earlier in
20 response to a question from Mr. Alexander, we have a
21 small but growing number of customers that we are
22 switching over from resale to facilities-based. We're
23 doing that as quickly as we can.

24 **COMMISSIONER CLARK:** When you say
25 facilities-based, is part of it the facilities you

1 purchase as UNEs?

2 **WITNESS ROZYCKI:** Yes. ITC^DeltaCom has --
3 there are a number of CLECs, ALECs out there. Each of
4 them has their own particular way of developing local
5 services. Many today do nothing but resale. I would
6 venture a guess that of the 800 that BellSouth has
7 Interconnection Agreements with most of those are
8 resale type of competitors.

9 The second type -- and I've actually worked
10 for one so I know quit well how they operate -- are
11 those that are literally developing their own SONET
12 rings in a particular area, and dropping fiber into
13 business offices, large -- you know, the tall
14 buildings, that sort of thing; multidwelling
15 residences.

16 Those companies try to get as many customers
17 as possible on their own network that is owned and
18 operated by them, with their own local loops to the
19 customer. And in our case, we, and a number of
20 others, are trying to get the customers first through
21 resale, then we migrate those customers over to an
22 UNE-based product. We do not have many customers on
23 our own -- our own facilities. We do have a few.

24 **COMMISSIONER CLARK:** Completely your own.

25 **WITNESS ROZYCKI:** Completely our own, yes.

1 We have a small number of those. But our network is
2 not quite designed to get at those. At some point in
3 time we may achieve the size, the critical mass, where
4 we decide it's now time to go in and put that SONET
5 ring in and replace those UNE customers with our own
6 fiber, or whatever the current technology is at the
7 time. but we're not there yet. We've taken a
8 different tack on this.

9 **MS. EDWARDS:** I have no other questions.

10 **COMMISSIONER CLARK:** Okay. I think we have
11 one exhibit. And I take it you move that into the
12 record.

13 **MS. EDWARDS:** Yes.

14 **COMMISSIONER CLARK:** Is there any objection?

15 **MS. CALDWELL:** No.

16 **COMMISSIONER CLARK:** Then Exhibit 14 will be
17 admitted in the record.

18 **COMMISSIONER CLARK:** Mr. Rozycki, you are
19 excused.

20 (Witness Rozycki excused.)

21 **COMMISSIONER CLARK:** We will take a break
22 for lunch. Let me ask you, how long are you going to
23 need to get the -- get a list of the things that
24 should be stricken?

25 **MR. ADELMAN:** Are you talking about the

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