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 1          BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 3                                           :
     In Re:  Petition by ITC^DeltaCom        :
 4   Communications, Inc., d/b/a             :DOCKET NO 99750-TP
     ITC^DeltaCom for arbitration of         :
 5   certain unresolved issues in            :
     interconnection negotiations            :
 6   between ITC^DeltaCom and                :
     BellSouth Telecommunications,           :
 7   Inc.                                    :
                                             :
 8   _____:

 9              SECOND DAY -- AFTERNOON SESSION

10                        VOLUME 5

11              Pages 589 through 781

12   PROCEEDINGS:           ARBITRATION

13   BEFORE:                COMMISSIONER SUSAN F. CLARK
                            COMMISSIONER E. LEON JACOBS
14
     DATE:                  Thursday, October 28, 1999
15
     TIME:                  Commenced at 9:30 a.m.
16
     PLACE:                 Betty Easley Conference
17                           Center, Room 152
                            4705 Esplanade Way
18
     REPORTED BY:           CATHY H. WEBSTER, RPR
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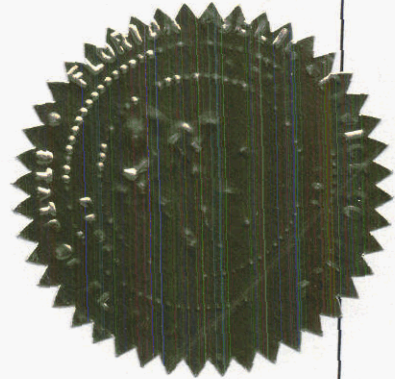
PROCEEDINGS

(Transcript follows in sequence from Volume 4.)

DON J. WOOD

having been called as a witness on behalf of

ITC^DeltaCom, and being duly sworn, continues his

testimony as follows:

CROSS EXAMINATION

BY MR. GOGGIN:

Q   Mr. Wood, I want to introduce myself, but, for

what it's worth, Mr. Wood and I were neighbors in

Atlanta.

A   And the neighborhood said to say hi to you.

Q   Well, tell them all hello for us; we miss them.

But, for the record, I'm Michael Goggin. And I

know that you've been asked a lot of questions in many

other proceedings before. But I'd like to start off by

asking you some questions about your background.

A   Yes, sir.

Q   You have a bachelor's degree from Emory

University in Finance; correct?

A   That's right.

Q   And a master's in Business Administration from

William and Mary?

A   Yes, specifically with concentrations in

microeconomics and finance.

1   Q   Do you have any background, educational

2 background in engineering?

3   A   I attended Georgia Tech as part of their

4 engineering school in mechanical engineering, worked for

5 Georgia Power in terms of power plant construction and

6 design, but I do not have an engineering degree.

7   Q   Okay. You said you've taken some economics,

8 but you wouldn't consider yourself a trained economist?

9   A   I use the term economist to refer to a Ph.D.,

10 and I do not have a Ph.D. I do have a master's degree.

11   Q   No law degree?

12   A   No.

13   Q   Okay. In your job history, which I believe is

14 in Exhibit 1, it might also be listed in your direct, you

15 indicated that you had worked for BellSouth. Can you

16 describe your job responsibilities there, please?

17   A   I can to some degree. BellSouth has continued

18 to place some restrictions on my ability to discuss

19 that. So, I'll try to stay within those confines.

20   Q   Let me see if I can do it through questions and

21 answers then.

22   A   All right.

23   Q   You've stated that you worked for BellSouth

24 Services, Incorporated?

25   A   Yes, I did.

     Q   In its pricing and economics and service cost
division?

     A   Yes. Service cost was a department within the
pricing economics division, I guess.

     Q   And your responsibilities included performing
cost analyses of new and existing services and preparing
documentation for filings with state regulatory
commissions and the FCC?

     A   And the FCC, yes.

     Q   And developing computer models for use by other
analysts; would these be cost analysts?

     A   Yes.

     Q   And performing special assembly cost studies?

     A   Yes.

     Q   So, would it be fair to characterize your
experience there as being related to cost studies?

     A   Sure.

     Q   Okay. Were you ever a customer service rep for
BellSouth?

     A   No.

     Q   Did you ever work in or manage a central office
while you were with BellSouth?

     A   I certainly did not manage a central office.
There were some activities that took me out of the
headquarters building and into a central office as part

1 of my costing responsibility.

2   Q   Your job responsibilities never required you to

3 report on a regular basis to a central office?

4   A   No, no. I was not operating a central office,

5 but I did have to understand the operations there in

6 order to perform the cost studies correctly, as any cost

7 analyst would have to.

8   Q   Were you ever involved in the development of

9 any of BellSouth operational support systems?

10   A   No.

11   Q   You mention that you have been in a central

12 office. Was it ever part of your job responsibility to

13 perform cut-overs?

14   A   No.

15   Q   Was it ever part of your job responsibility to

16 perform disconnections?

17   A   No.

18   Q   At MCI, your testimony indicates that your

19 responsibilities were -- I'll just summarize it as

20 regulatory policy and economic analysis; is that correct?

21   A   Yes.

22   Q   Were you ever a customer service rep for MCI?

23   A   No.

24   Q   Did you ever have any engineering or network

25 responsibilities at MCI?

1   A   Well, I had the same responsibilities in terms

2 of understanding the network, so that I could perform my

3 job. But, no, I was not an engineer at MCI.

4   Q   So, your MCI job, it will be fair to say,

5 utilized your education and experience in finance and

6 economics?

7   A   And my experience at BellSouth, yes.

8   Q   Which was primarily cost studies?

9   A   Yes. As you -- Well, you're a little new to

10 the regulatory piece of this business, but you'll

11 probably find that cost studies find their way into just

12 about every regulatory proceeding. So, yes.

13   Q   I understand that. Since you left MCI, you've

14 worked as a consultant?

15   A   I have.

16   Q   Okay. You have appeared in a number of

17 proceedings as a consultant since that time; right?

18   A   It is my belief that this is No. 167, but I

19 could be off by a few.

20   Q   Since you left MCI, have you been employed by

21 any telecommunications company?

22   A   Only as a consultant, not as an employee.

23   Q   Not as an employee?

24   A   No.

25   Q   Okay. Is DeltaCom an efficient competitor in

1 your estimation?

2   A   I hope they are. The market will certainly

3 determine that for them.

4   Q   You've mentioned the FCC's total elemental long

5 run incremental cost pricing rules or TELRIC.

6   A   I have.

7   Q   Does DeltaCom in your opinion deploy the most

8 efficient technology currently available in its network?

9   A   I don't know. The market will determine that.

10   Q   Were you present yesterday for Mr. Rozycki's

11 testimony?

12   A   I was here for a portion of it. I got probably

13 the second half, not the first half.

14   Q   Do you recall that in discussing DeltaCom's

15 strategy for deploying its facilities, that he indicated

16 that DeltaCom as a general rule wouldn't deploy

17 facilities like switches, for example, until they had a

18 critical mass of customers to justify that investment?

19   A   I was not here for that testimony. It

20 certainly sounds reasonable to me. Anybody who is going

21 to make a significant capital investment will obviously

22 want to do it rationally.

23   Q   So, an efficient competitor generally would not

24 incur such capital expenditures until it was rational to

25 do so?

          A   Well, I think they would look at where they --

the geographic area that they were looking to serve to

determine when it was feasible to place a switch there

versus looking at a remote serving arrangement where they

would serve it with a switch that was located some

distance away. And obviously there's a cross over. As

you have more customers, your back-hall charges get

higher, to the point that you would have a cross-over

point, and it would be beneficial to place a switch.

          Q   In your rebuttal testimony at page 15, I

believe it is, describing the technology that would be

employed in competitive markets, is this discussion in

the context of talking about what an efficient provider

would deploy using the most efficient technology

available for purposes of determining forward-looking

prices?

          A   Well, specifically in the context of OSS. But

I think the points I'm making here would apply more

broadly than just OSS. It would apply to any network

element.

          Q   In the examples you give at lines 3 through 6

regarding -- I guess it's actually 2 through 6 --

regarding Sprint's deployment of fiber, could you read

the sentence that begins on line 2 and ends on line 6?

          A   Sure. "For example, when Sprint began

1 advertising an all fiber long distance backbone with its,

2 quote, unquote, pin drop commercials, AT&T was forced to

3 convert its copper and microwave network to fiber at

4 substantial expense, even though continued use of its

5 existing network to provide long distance service would

6 have been the lower cost solution."

7   Q   So, for purposes of determining what

8 forward-looking prices might look like if the most

9 efficient technology were used, you can't necessarily

10 assume that that cost would be lower than the cost of the

11 equipment that's currently deployed?

12   A   Well, we're mixing two concepts here. The

13 sentence is actually in terms of quality demanded,

14 because fiber provides greater quality certainly than

15 microwave and also in most cases than copper. But the

16 statement with regard to lower costs refers here clearly

17 in the short run. It would have been much more

18 beneficial for AT&T in the short run, absent this market

19 pressure, to sit there on an existing primarily microwave

20 network, but also some copper in its backbone, and to

21 fully depreciate those assets.

22   But what happens in a competitive market is

23 that a new competitor like Sprint can come in, place a

24 new facility, which, and the point I'm making here, has

25 much better quality, and which long term is the low-cost

1 solution, which short term for an existing provider

2 involves writing down existing assets that may not be

3 fully depreciated and investing in the new technology,

4 which longer term is going to be a lower per unit cost,

5 but from an accounting standpoint of having to write down

6 the assets, it's not a pleasant thing to do but it's what

7 firms in competitive markets have to do.

8   That's in contrast with a firm like BellSouth

9 that has not had this type of market pressure and has not

10 made these kind of network changes in response to that

11 type of pressure.

12   Q   You've mentioned lower cost solution. And is

13 it your understanding, based on -- Is it your

14 understanding, or did this understanding inform your use

15 of the word "lower cost solution," that at the time

16 Sprint had deployed the fiber, that AT&T's copper

17 network, the continued use of the copper network to

18 provide long distance service would have been a lower

19 cost solution for AT&T than converting to fiber?

20   A   Only in the short run, in the sense that they

21 would have undepreciated assets on their books. I mean,

22 that's the whole point about why we can't go and perform

23 an economic cost study by looking at BellSouth existing

24 network. BellSouth didn't grow up subject to these types

25 of competitive pressures. When they had existing

1 facilities that could have been replaced by new

2 technology, they didn't have to do that. In a

3 competitive market, firms do have to do that. They do

4 have to write down the assets. And it makes a

5 difference, short term and long term, in their cost

6 structure. That's why we have to look at the constraints

7 of the area being served but not the constraints of the

8 embedded network when we do these TELRIC studies.

9   Q   I would like to move into the subject of the

10 OSS interfaces. How many times have you used BellSouth

11 LENS preordering interface?

12   A   Only on one occasion. That was during a

13 demonstration at MCI's headquarters in Atlanta.

14   Q   How long ago was that?

15   A   It's been a couple of years.

16   Q   What preordering information did you obtain;

17 can you recall?

18   A   What preordering information? It was purely a

19 test of the functionality of the system. BellSouth had

20 put it forth as a replacement for faxing paper orders

21 back and forth.

22   Q   So, you weren't actually using it in terms of

23 completing an order? You were just testing it?

24   A   We'll, we were testing to complete orders.

25   Q   How many times have you used the EDI ordering

1 interface?

2   A   Never.

3   Q   Have many times have you used the TAG

4 interface?

5   A   Never.

6   Q   How many times have you used TAFI or ECTA

7 interfaces for repair and maintenance?

8   A   Never.

9   Q   So, the statement in your direct testimony at

10 page 9 that it's a fact that the existing OSS employed by

11 BellSouth is not workable is not based on any firsthand

12 knowledge; is it?

13   A   In fact, I think, back on the same page, in my

14 rebuttal on page 15, I indicate that it's direct

15 testimony of Mr. Hyde and Mr. Thomas that can document

16 for you the shortcomings in the existing systems. My

17 testimony is specifically to the cost and the cost

18 recovery of those systems.

19   Whether or not those systems work or not don't

20 affect --

21   Q   But --

22   A   -- the point in my testimony of how they should

23 be costed and priced.

24   Q   Apart from what DeltaCom's people have told

25 you, you have no firsthand knowledge of whether

1 Bellsouth's OSS is workable or not; do you?

2   A   No, I'm relying on Mr. Thomas and Mr. Hyde.

3 And that really doesn't impact any of my conclusions in

4 my testimony.

5   Q   You concluded that BellSouth should not be

6 permitted to recover its costs associated with the

7 development of OSS interfaces that BellSouth provides for

8 ALECs. Are you aware that a federal court in Kentucky

9 recently upheld a determination by the Kentucky

10 Commission that an ILEC is entitled to recover such

11 costs?

12   A   I saw that.

13   Q   Have you read the decision?

14   A   I have.

15   Q   Are you aware of any provision in the

16 Telecommunications Act, the FCC rules or, for that

17 matter, the rules of any state commission, that indicates

18 that development costs for OSS interfaces used by ALECs

19 are not recoverable by ALECs?

20   A   Well, they're certainly not recoverable in the

21 manner that they've been costed and that the way it's

22 being proposed, pursuant to rules 51.505 and 51.511.

23 There is no getting around that.

24   Q   Can you point to anything specific in 51.505

25 that says that development costs for OSS interfaces

1 developed and used by ALECs cannot be recovered from

2 ALECs?

3   A   No.   What the rules say is that you cannot

4 charge for them pursuant to the way that Ms. Caldwell has

5 done her cost study and the way that BellSouth has

6 proposed to price those. As a matter of policy, the

7 correct policy thing for the Commission to do is say that

8 each company must develop its own interfaces, its own

9 OSS, and recover the cost of those itself.

10   But, if it intends to impose a cost -- and this

11 is the second option I offer in my testimony -- it must

12 do so pursuant to the UNE pricing, costing and pricing

13 rules. And BellSouth has not done that. In fact, it has

14 explicitly violated those rules.

15   Q   Is Rule 51.505 the forward-looking economic

16 cost rule?

17   A   It is the rule that refers to the requirement

18 that the total quantity be considered.

19   Q   Is the heading in the CFR for rule -- to be

20 completely precise, 47 CFR, Section 51.505 is headed

21 "Forward-Looking Economic Cost;" is it not?

22   A   It is.

23   Q   And you're basing your conclusion that

24 development costs are not recoverable from the ALECs on

25 your interpretation of this rule; is that correct?

1   A No. Let me try it again. The correct policy

2 thing to do is to require each LEC to recover its own --

3   Q I didn't ask you what the correct policy thing

4 was. I asked whether your conclusion --

5   A Well, I responded to your question --

6   Q -- was based on this rule. That's a yes or no

7 question.

8   COMMISSIONER CLARK: Mr. Goggin and Mr. Wood,

9 we can't take two people talking at once.

10   MR. GOGGIN: I'm sorry.

11   WITNESS WOOD: I've never taken the position

12 that he articulated in his question. So, I'm not really

13 sure how to answer it.

14   COMMISSIONER CLARK: All right. Ask your

15 question again.

16 BY MR. GOGGIN (Continuing):

17   Q Is your conclusion that development costs for

18 OSS interfaces incurred by ILECs are not recoverable from

19 the ALECs that use those interfaces based on your

20 interpretation of Rule 51.505?

21   A No, I've made no such conclusion. They are not

22 recoverable in the manner proposed by BellSouth because

23 of the requirements of 51.505 and 51.511.

24   Q Then you would concede that OSS development

25 costs are recoverable in some manner from ALECs, but not

 1 in the manner that BellSouth has proposed?

 2   A   I'm not suggesting that the FCC rules or the

 3 Act preclude the recovery. Certainly public policy

 4 does. But the FCC rules very clearly preclude the

 5 recovery of the costs as performed in Ms. Caldwell's cost

 6 study and as being proposed by BellSouth.

 7   Q   I would like to talk to you for a bit about UNE

 8 pricing now. In your rebuttal testimony at pages 23 and

 9 24 and at various other places in your testimony, and

10 indeed in your summary today, you've asserted that the

11 prices adopted by this Commission for UNEs are not

12 consistent with the FCC's TELRIC pricing rules; is that

13 correct?

14   A   There are some assumptions in the cost studies

15 relied on by this Commission that are not consistent.

16 And the Commission's Order I think is pretty clear that

17 says that what it's adopting complies with the Act and

18 with the rules that had not been vacated, but there was

19 no conclusion that the studies that the Commission relied

20 on, produced by BellSouth or any other LEC, complied with

21 the FCC rules now that have been reinstated, and that's,

22 in fact, the case.

23   Q   What are the rules that were reinstated and

24 when were they reinstated?

25   A   It's the Section 51 rules, .5 rules that we've

1   been talking about. And they were reinstated, I guess

2   technically by the Eighth Circuit, at the direction of

3   the Supreme Court, based on its ruling of --

4   Q   I will agree with you that they were

5   reinstated, but we're talking about the FCC's TELRIC

6   pricing rules?

7   A   Yes, we are.

8   Q   You testified at your deposition and in your

9   summary today that the geographic deaveraging rules also

10   had been reinstated. Do you believe they apply to today?

11   A   They have been reinstated. The FCC has issued

12   a temporary stay to allow its universal service efforts

13   to catch up with them. It's -- In terms of specifically

14   reconsidering whether three, a minimum of three zones is

15   appropriate, or whether perhaps two zones might be

16   appropriate.

17   Q   Are they in effect --

18   A   Specifically in the context of only for a

19   temporary period of time until the USF efforts at the FCC

20   catch up with the process.

21   Q   But the FCC ordered a stay of those rules?

22   A   Well, I think on its own motion, it stayed its

23   own rule for a temporary period of time, which is why I'm

24   not suggesting anything in this proceeding with regard to

25   geographic deaveraging. The Commission has a proceeding

1   open, as we speak, that's going to address that issue,

2   and I think that's the proper forum.

3   Q   In your deposition testimony, you stated that

4   but for the change in the law from the time that the UNE

5   prices were adopted by this Commission, namely making the

6   FCC's TELRIC pricing standards applicable, you wouldn't

7   recommend relitigating these rates; isn't that correct?

8   A   I'm not recommending relitigating anything.

9   What has changed since the rates that are in place were

10 adopted is the reinstatement of the rules. And it's

11 clear that, you know, whether any of us like it or not,

12 we're going to have to go back and look at some of these

13 in the context of those rules to see if they comply and

14 look at the underlying cost studies. And we're doing

15 some of that in the docket that's open now.

16   Q   Are you aware of any decision by the FCC, this

17 Commission, or the courts, that the rates established in

18 the UNE pricing docket, which was Docket No. 960833, the

19 April 1998 decision, or any other docket, for that

20 matter, are not consistent with the FCC's TELRIC's

21 pricing rules?

22   A   I don't think there has ever been any

23 litigation of that proceeding. There has been no

24 opportunity for an order. This Commission, its April

25 29th Order that I think that you're referring to, is

1 clear that the finding is based on the Act and the rules

2 that had not been vacated. So, the Commission was

3 explicit that it was only basing its conclusions on the

4 remaining rules.

5   Clearly, now that they've been reinstated,

6 we've got to take another look. But no one has litigated

7 that, so there's been no scenario that would create an

8 order.

9   Q   Is it your understanding that the UNE rates

10 that have been adopted by this Commission are predicated

11 on a TSLRIC pricing methodology?

12   A   That's a hard one. The Commission had in place

13 here a TSLRIC pricing methodology, which BellSouth and

14 other LECs purported to comply with. In terms of the

15 finer points of the distinctions between that and TELRIC,

16 we'd have to look at specific inputs.

17   My recollection of Ms. Caldwell's testimony in

18 the proceeding that we're talking about is that she

19 identified Bellsouth's studies as being consistent with

20 both, quote, unquote, TSLRIC and TELRIC. They certainly

21 were not consistent with previous versions of BellSouth

22 TSLRIC that had been, studies that had been provided to

23 this Commission.

24   Q   Leaving aside Bellsouth's --

25   A   But they were labeled as compliant -- My

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 1  recollection is they were labeled as compliant with
 2  TSLRIC and TELRIC.  Unfortunately, labeling them doesn't
 3  make that assertion quite true.
 4      Q    Leaving aside Bellsouth's cost studies, were
 5  the rates adopted by the Commission for UNEs consistent
 6  with TSLRIC pricing methodology as that term was defined
 7  by this Commission?
 8      A    No, I don't think they were.  And I don't think
 9  we can leave aside the studies because the conclusions in
10  the rates were based on those studies.
11      Q    So, it's your contention that the Commission
12  did not follow its own pricing methodology in
13  establishing the rates that it established?
14      A    No.
15      Q    It did not?
16      A    No, that's not my position.  My position is
17  that as we went through this proceeding, in both of its
18  phases, there were lots of labels put on a lot of cost
19  studies in terms of TSLRIC and TELRIC.  And there was a
20  lot of assertions in terms of compliance.
21           Bellsouth's definition of TSLRIC has evolved
22  over time.  There was a time ten years ago before this
23  Commission -- In fact, I was at BellSouth at that time
24  providing studies -- when TSLRIC was defined very
25  differently than what BellSouth did in the most recent
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1 case and labeled it TSLRIC.

2 Not surprisingly, ten years ago, the BellSouth

3 effort was to produce a cost that was very low because it

4 wasn't allowed to price below that cost. Now it had an

5 effort to make the cost very high, and it changed a lot

6 of key assumptions, called it the same methodology.

7 There was a lot of confusion on that in that proceeding.

8 And I don't think anyone would disagree that there was a

9 lot of confusion about those issues.

10 Q In the Commissions Order No. PSC-961579, which

11 was issued on December 31, 1996, in the 96 -- 960833

12 docket, the Commission stated that it believed that there

13 was no substantial difference between the TSLRIC cost of

14 a network element and a TELRIC cost of a network element;

15 isn't that correct?

16 A I recall that language, yes.

17 Q Do you contend that the, I'll call them

18 adjusted interim rates that you propose do not comply

19 with the FCC's TELRIC pricing rules?

20 A No, they are a clear and necessary step in the

21 right direction, but I'm not asserting that they will get

22 you there purely because I'm proposing them based on

23 adjustments to Bellsouth's cost study. And I don't

24 believe that you can take Bellsouth's cost study and

25 produce TELRIC cost and rates.

1   Q   DeltaCom hasn't submitted any cost studies in

2 this docket; isn't that correct?

3   A   That's correct. DeltaCom doesn't have 500

4 employees in its cost department either.

5   Q   Accordingly, the Commission doesn't have any

6 data before it to suggest what might be the most

7 efficient technology currently available for purposes of

8 deploying a network; does it?

9   A   No, which is why I'm not suggesting that the

10 Commission make any permanent conclusion's in this

11 proceeding, only to establish some interim rates, subject

12 to true-up. And it's looking in the subsequent

13 proceeding specifically with regard to applying some of

14 the TELRIC principles on geographic deaveraging and on

15 combinations. That's the appropriate forum for setting

16 permanent rates.

17   Q   You have submitted no data, nor has DeltaCom

18 submitted any data from which the Commission can conclude

19 that Bellsouth's rate should be adjusted upward or

20 downward, assuming that its current rates are not

21 compliant with the FCC's rules?

22   A   Well, I don't think you have current rates for

23 the proposed -- for the rates that I'm proposing as

24 interim rates here. You don't have a UNE loop rate in

25 Florida. You've got portions of the loop. You've got

distribution. You've not NIDs. What Ms. Caldwell produced in this proceeding is a loop, an end office to customer loop cost study, but it does not comply with TELRIC principles.

Q   You have appeared in nine states attacking Bellsouth's cost studies in establishing UNE rates. Have any of them followed your advice?

A   Yes.

Q   Which ones?

A   To various degrees, most of them have taken portions of my testimony and my recommendations. And I disagree with your choice of the word "attacking." I'm evaluating them as objectively as I can.

Q   To various degrees, BellSouth has agreed with some of the things that you've said in your testimony; isn't that correct?

A   Well, to much more limited degrees.

Q   Did South Carolina follow your advice in the recent arbitration, DeltaCom arbitration in that state?

A   No, they disagreed with most of DeltaCom's positions.

Q   I'd like to move on to collocation. You mentioned before that managing central offices are working on -- working in central offices was not part of your regular job responsibilities at either BellSouth or

1 MCI; correct?

2   A   That's right.

3   Q   Has it ever been your responsibility at either

4 company to handle the provisioning of collocation?

5   A   No, at the time I was employed by both

6 companies there was no such thing as collocation.

7   Q   I'd like you to turn, please, to your direct

8 testimony at page 12, lines 14 through 23. Actually, if

9 you can go back to line 12. Lines 12 and 13, you assert

10 that the FCC has set a deadline for achieving full

11 mechanism of OSS interfaces; is that correct?

12   A   Yes.

13   Q   You then cite a passage from the First Report

14 and Order on lines 14 through 23 in support of that

15 assertion. Could you please point me to the portions of

16 that cite in lines 14 to 23 where the words "mechanized"

17 or "automated" appear?

18   A   They probably don't. The FCC has been pretty

19 clear -- And, as you can tell by the date in this

20 passage, it didn't happen by January 1st, '97. The FCC

21 has been real clear in subsequent orders, what we refer

22 to as the Louisiana 271 No. 2 Order, which I think I

23 provided as a late-filed exhibit, pursuant to the staff's

24 request.

25   Q   Can you point to any ruling in that order that

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 1   requires BellSouth to fully mechanize its OSS?

 2        A    Well, we keep changing the words a little bit.

 3        Q    I think full mechanization, those are your

 4   words.

 5        A    Okay.    Actually, we can go to the press

 6   release for the 319 case, where the FCC defines OSS and

 7   define it consisting of preordering, ordering provision,

 8   maintenance, repair and billing functions supported by

 9   the incumbent LEC's databases and information.  So, it's

10   got to be a start-to-finish process.  I mean, by

11   definition, as the FCC defines the UNE, it starts with

12   preordering and goes through the entire process.

13        Q    Doesn't the Act require ILECs to provide

14   nondiscriminatory access to operation support systems?

15        A    Absolutely.

16        Q    Does that press release state anywhere that

17   that access has to be fully mechanized or automated?

18        A    I guess we're quibbling over a phrase that

19   really isn't germane to any of the points that I'm

20   making.  So, it may or may not be.  But that doesn't

21   affect the cost or the recovery of those costs in any of

22   the recommendations I make in my testimony.  The point is

23   you still have to comply.  You have to cost OSS as a UNE,

24   and you haven't done that.

25        Q    Are you conceding then that there is no
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1 requirement that OSS interfaces be fully mechanized?

2   A   No, I actually believe that there is, but I

3 can't point to it right here. I probably can look

4 through Louisiana 2 and find some language that's very

5 close to that, but it isn't germane to the ultimate point

6 of in order to recover any OSS costs, BellSouth bears the

7 burden very clearly under the FCC rules of producing a

8 cost study consistent with TELRIC principles as defined

9 in 51.505 and 51.511. And you simply haven't done that.

10   Q   With regard to -- I'm moving back to

11 collocation. You made some statements about the

12 differences between caged collocation and cageless

13 collocation and virtual collocation.

14   A   I have.

15   Q   First, with regard to virtual collocation, in

16 your testimony and in your deposition, you stated that it

17 was your understanding that the difference between

18 cageless and virtual, one difference between cageless and

19 virtual, is that in the cageless physical collocation

20 context, the ALEC owns the equipment?

21   A   Or bears the responsibility for the

22 maintenance. It may or may not own it in a virtual

23 environment, depending on the arrangement, but the clear

24 distinction is that the ALEC is responsible; has,

25 pursuant to the FCC order, full access to the equipment

1 and bears responsibility for maintenance.

2 In virtual collocation it doesn't have the full

3 access and, therefore, doesn't bear the ongoing

4 responsibility of maintaining the equipment.

5 Q In your testimony and in your deposition, you

6 indicated that it was your belief that in a virtual

7 collocation arrangement, the ILEC would purchase the

8 equipment for a nominal fee and that the ILEC owned the

9 equipment. That's not correct; is it?

10 A It's correct in quite a few situations with

11 virtual collocation. In fact, it's the original

12 arrangement that the FCC set up when it created the

13 opportunity for virtual collocation. But it's not the

14 only mechanism that's available.

15 What's clear is that the equipment, it's

16 either -- it can be purchased by an ALEC and leased for a

17 nominal fee to an ILEC; it can be purchased by an ILEC,

18 sold to the ALEC for a nominal fee.

19 The distinction here and what's always

20 consistently true is that the equipment is placed into

21 service within the existing equipment bays of the ILEC in

22 the central office. And the maintenance and

23 responsibility for that equipment, operating that

24 equipment, solely resides with the ILEC because the ALEC

25 doesn't have access to it. That's the only distinction

between virtual collocation and cageless collocation is

the maintenance responsibility. And it's purely a

function of the access to the equipment.

Q   Have you ever reviewed Bellsouth's FCC tariff

for virtual collocation?

A   Yes, I have.

Q   In part 20 of the BellSouth virtual expanded

interconnection tariff, there are regulations indicating

how this arrangement would work. Have you read those?

A   That's correct. That's the VEIS tariff. I

think I was involved in that proceeding at the FCC.

Q   Paragraph 20.18 says that "The collocator

agrees to lease to BellSouth all the equipment and

support structure components required to provision and

maintain or repair BellSouth virtual expanded

interconnection on an ongoing basis for the nominal sum

of one dollar." Does that refresh your recollection as

to how the arrangement works?

A   Well, my recollection didn't need refreshing,

Mr. Goggin. I told you there were a couple of options

with regard to the acquisition of the equipment. The

first notice of proposed rulemaking from the FCC clearly

articulated the first of the options. And that was

followed by a number of ILECs. There are other options

that put the equipment in place for the exchange of

1 nominal fees, but the point here is at the end of day the

2 equipment is in place in the existing equipment bays of

3 the ILEC and it is controlled by, in a virtual

4 environment, the ILEC. There is no access by the ALEC.

5 And, therefore, maintenance responsibilities reside with

6 the ILEC.

7   The only difference between that arrangement

8 and cageless collocation is that the ALEC has explicitly

9 the right to access and maintain and operate the

10 equipment. It is still placed in exactly the same

11 configuration, in exactly the same equipment bays.

12   So, we're reached with a question in this

13 proceeding: BellSouth hasn't done a cageless collocation

14 cost study. How do we set a rate? Well, we set a rate

15 by looking at the rates for two forms of collocation.

16 One looks very much like cageless collocation. That's

17 virtual, except the rate is a little high because it

18 includes maintenance. One looks absolutely nothing like

19 cageless collocation. That's the existing physical

20 enclosed arrangements.

21   BellSouth says, well, until we do a cost study,

22 let's just take those physical rates. Well, that's

23 ridiculous. They look nothing like cageless collocation.

24   Q   Does this answer relate at all to the question

25 of whether BellSouth leases or owns virtual collocation

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 1  equipment?
 2          A     I certainly hope so.
 3          Q     With cageless collocation, would a collocator
 4  need to submit an application?
 5          A     Yes.
 6          Q     Has the Commission established rates for that?
 7          A     For the application fee for cageless?  Not that
 8  I'm aware of.
 9          Q     With cageless collocation, would an ALEC need
10  some amount of floor space?
11          A     Not designated to it, no.  It's simply the
12  floor that happens to be underneath your equipment bay,
13  which is holding up your --
14          Q     Is it your contention that BellSouth would not
15  be entitled to --
16              MR. JONES:  I'd like to let the witness finish
17  his answer, please.
18              COMMISSIONER CLARK:  Mr. Wood, were you
19  finished?
20              WITNESS WOOD:  No, ma'am.
21              MR. GOGGIN:  I apologize.
22              WITNESS WOOD:  Very briefly.  I mean, clearly
23  there's a floor-space issue.  The floor has to hold up
24  the equipment bay.  And that's true in a virtual
25  arrangement; that's true in a cageless arrangement.
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1   The fact that there is a few square feet of

2 floor space holding up the equipment bay is fundamentally

3 different in this arrangement than the 150-foot

4 increments for a physical collocation arrangement that

5 would be required. That's the only point.

6 BY MR. GOGGIN (Continuing):

7   Q   Has the Commission established a rate for floor

8 space?

9   A   I believe they have. I'm sorry; for an

10 enclosure or for virtual?

11   Q   For floor space, a per-square-foot charge for

12 floor space.

13   A   Well, it's going to be different, I think, for

14 each arrangement.

15   Q   I appreciate that the size may be different,

16 but is there a per-square-foot rate established?

17   A   I thought the rate was different, Mr. Goggin,

18 but I'll look and see.

19   There's a 4.25 per square foot under both

20 arrangements. The 4.25 under the virtual is the physical

21 space below the equipment bay. The 4.25 for the physical

22 relates specifically to the space construction interval

23 of 100 square feet or an additional 50 square feet. But

24 I will certainly agree with you that there is a floor

25 under both arrangements.

1   Q   Back to the application, can you identify what

2 differences there might be that would justify a

3 difference in rates between an application for caged

4 collocation and an application for cageless collocation?

5   A   Sure. An application for caged collocation,

6 the ILEC has to go and identify an isolated floor space

7 that would accommodate the construction of the cage

8 itself. So, you've got to have a minimum amount of

9 space. I think according to BellSouth, you've got to

10 have some spacing around that space for construction.

11 You've got to identify access to the area for

12 construction. You've got to identify capabilities for

13 taking power and HVAC to those areas. And then

14 ultimately you're going to have an assessment for

15 determining how the construction is going to be built and

16 you're going to be collecting bids for that.

17   So, it's a major project for physical. None of

18 that is required for virtual. In fact, it's explicitly

19 prohibited by the FCC advanced services order that

20 creates cageless collocation.

21   Q   Have you looked at the elements that are

22 included in the application fee rates that have been

23 established?

24   A   I'm sorry; I'm not sure what you're asking.

25   Q   I'm asking whether all of the things you just

1 listed are included in the application fee rates that

2 have been established?

3   A   If they are, that's a violation of the advance

4 services order.

5   Q   I didn't ask that.

6   A   I don't know. The advance services order is

7 very clear.

8   Q   You don't --

9   A   You cannot require cageless collocation to be

10 in an isolated space. You must include it within your

11 existing bays. And if you've got a rate that charges

12 people for BellSouth going out and identifying isolated

13 space, that's a direct violation of paragraph 40 and 42

14 of the advance services order.

15   Q   I didn't ask that. I asked whether you knew if

16 all those things that you just named are included in the

17 rate that is established for an application fee. I

18 believe your answer was I don't know.

19   A   And they shouldn't be. And, if they are, they

20 violate the FCC advance services order.

21   Q   So, the previous question, can you identify the

22 difference between the items that would be included in an

23 application, cost of an application fee for cageless and

24 the application fee that has been established, what is

25 the answer to that question?

         A   The answer to that question is exactly what I
gave you.   There are requirements --

         Q   No?

         A   No, that's not the answer to that question.

         MR. JONES: Please let the witness finish the
answer, if we can.

         A   Physical collocation and cageless collocation
are not the same thing.   They don't have the same
requirements.   They don't place the same requirements on
the ILEC.

         For physical collocation, you must identify
space; you must identify clearance around the space.   You
must identify capabilities for taking power and HVAC. You
must identify enclosure construction.   None of that is
required for cageless.   In fact, it's explicitly
prohibited for cageless.

         So, I do know the difference between what is
required.   If you're charging for physical collocation
when you provide a cageless arrangement, that's
inappropriate pursuant to this order.

         Q   I'm talking only about the fee that's been
established for applications and the elements covered by
that fee.   Can you identify any element included in the
rates for an application that what BellSouth is permitted
to charge to an applicant for physical collocation under

1 the current rates that would not be appropriate to charge

2 in the context of cageless collocation?

3   A   Every one of the things I just articulated to

4 you.

5   Q   Didn't you just tell me that you don't know

6 whether any of those are covered by the application;

7 right?

8   A   No, no, no.

9   COMMISSIONER CLARK: Hang on a minute. I'm

10 getting confused, Mr. Goggin, because you talk about a

11 fee and you talk about an application and then you talk

12 about the actual charges. You know, you may have

13 something on an application and you may have to write it

14 in the application. It may be something you ask for, but

15 it may not be something you charge a fee for. I'm

16 getting confused by your questions.

17   So, we're going to take a break. We're going

18 to take lunch. We'll come back at -- We'll come back at

19 quarter 'til 2:00.

20   And it's still my intention to go late tonight

21 in the hopes that we may finish.

22   (Luncheon recess.)

23   COMMISSIONER CLARK: We'll call the hearing

24 back to order.

25   Mr. Goggin.

1   MR. GOGGIN: Commissioners, Mr. Wood, I guess,

2 first, I would like to apologize for interrupting your

3 answers, and go on from there.

4   COMMISSIONER CLARK: Maybe you can just meet on

5 the corner in the neighborhood and resolve it.

6   MR. GOGGIN: This is very much like many of our

7 conversations.

8   MR. JONES: We didn't represent they were good

9 neighbors. I'm kidding.

10   MR. GOGGIN: Well, we thought so, but the other

11 neighbors didn't agree.

12   COMMISSIONER JACOBS: He said the fence

13 conversations are much more pleasant than this.

14   WITNESS WOOD: I would have to add that we were

15 good neighbors, but the rest of the neighborhood found us

16 on the boring side.

17   MR. GOGGIN: Bordering on annoying.

18   WITNESS WOOD: No, that was you, Mr. Goggin.

19   MR. GOGGIN: I'm a lawyer; that's my job.

20   CONTINUED CROSS EXAMINATION

21 BY MR. GOGGIN:

22   Q   We can go back to the line of questions that I

23 was attempting to clarify. And I may have asked some of

24 these questions before, but I'm going to try to set this

25 up in a way that may be clearer.

1   A CLEC who desires cageless collocation would

2   need to submit an application; correct?

3   A   It would.

4   Q   Has this Commission established a rate in

5   connection with applications for physical collocation?

6   A   For physical, yes; for cageless, no.

7   Q   Do you see a distinction between physical

8   collocation and cageless collocation?

9   A   Absolutely. It's everything that I've

10   described. Cageless collocation looks just like virtual

11   collocation. Caged physical collocation looks like an

12   enclosed isolated space, which by definition cageless can

13   neither be closed nor isolated.

14   Q   Do you have a copy of the advance services

15   order?

16   A   I do.

17   Q   For the record, that's FCC Docket No. 98-47 and

18   the order number is FCC 99-48. Please look at the last

19   part of paragraph 38 in that order and the last clause of

20   the last sentence, "Cageless collocation is defined as

21   physical collocation that does not require the use of

22   collocation cages."

23   A   That's correct. The ALEC owns the equipment;

24   therefore, it's quote, unquote, physical. But as

25   paragraphs -- the following paragraphs, the discussion

1 paragraphs that follow, 39 through 42, they describe

2 specifically what the FCC means by cageless, which is not

3 in an isolated space but within the existing equipment

4 bays.

5   Q   You would concede then that cageless

6 collocation is a form of physical collocation?

7   A   Well, as I said in my summary, that's the label

8 that's applied to both of them. And it's purely a

9 function of the fact that the ALEC is bringing the

10 equipment into the office, but it's not really useful in

11 terms of substance in determining what these things cost,

12 and from a cost standpoint, whether cageless looks more

13 like virtual or more like caged physical. Clearly,

14 cageless looks exactly like, from a cost standpoint,

15 virtual, except for the maintenance requirement.

16   Q   Going back to the application, you stated that

17 you understand the Commission has established a rate for

18 an application fee with respect to physical collocation

19 but only caged physical collocation. Would that be a

20 correct summary?

21   A   Yes. Because at the time the Commission issued

22 its order, there was no such thing as cageless

23 collocation.

24   Q   That rate was established subsequent to the

25 submission of certain cost studies by the participants in

1 that proceeding; is that correct?

2   A   They were.

3   Q   And in those cost studies the participants

4 identified a number of functions that they believed would

5 generate costs that could be recovered through an

6 application fee; is that correct?

7   A   Yes.

8   Q   In improving the application fee, did the

9 Commission identify the functions that generated the

10 costs that support the application fee?

11   A   I believe that that's discussed in the order. I

12 don't have that particular section tabbed, but certainly

13 it's part of the cost studies and it's part of the -- I

14 guess in Mr. Varner's exhibit, AJV-1, the $3,248

15 nonrecurring charge for an application fee for physical

16 caged collocation.

17   Q   Do you have any reason to believe that the

18 application fee approved by the Commission for physical

19 collocation caged should differ in any way from an

20 application fee charged for physical collocation that is

21 cageless?

22   A   Yes.

23   Q   Is that based upon any difference in your mind

24 regarding the functions that would be performed that

25 generate costs that are recovered by the application fee

1 in the context of caged versus cageless collocation?

2   A   Yes. First and foremost, it's the assessment

3 of space availability. And you certainly have to assess

4 for space for caged collocation at the time of an

5 application. According to the advance services order,

6 you cannot wait for an application in order to assess the

7 capability for a cageless arrangement.

8   And, in fact, paragraph 40 says, "We require

9 incumbent LECs to make each of the arrangements outlined

10 below available to competitors as soon as possible

11 without waiting until a competing carrier requests a

12 particular arrangement, so that competitors will have a

13 variety of collocation options from which to choose."

14   So, in order to comply with this paragraph,

15 BellSouth should be in a position of knowing today which

16 opportunities for cageless collocation exists in certain

17 space on certain equipment bays in certain central

18 offices. That shouldn't be any part of this process

19 going forward. You should have already done that.

20   That also goes into the issue of the

21 provisioning interval, how long should it take you.

22 Well, if you've complied with this order and you've

23 looked already, it shouldn't take you the same interval

24 as it does for caged collocation, where you have to go

25 out and find the floor space.

1   This is just a different -- I mean, they're

2 both labeled physical, but it's a fundamentally different

3 process. There's really not much in common other than

4 the label and the ownership of the equipment.

5   Q   Can you look at paragraph 58 of the advance

6 services order? Paragraph 58 requires an incumbent LEC

7 to submit a requesting carrier within ten days of the

8 submission of a request a report indicating the incumbent

9 LEC's available collocation space in a particular LEC

10 premises. Doesn't this indicate to you that at some

11 stage, perhaps before the application, the ILEC must

12 ascertain whether there is collocation space available?

13   A   Well, that's two different things. This order

14 talks about, including paragraph 58, more types of

15 collocation than just cageless collocation. The

16 requirement that BellSouth be proactive in assessing the

17 available space is here in paragraph 40, which

18 specifically applies to shared collocation and cageless

19 collocation.

20   When we get back here to 58, we're talking

21 about something that's broader than that. We're talking

22 about existing space for potentially caged, physical

23 caged collocation and, also, the sharing arrangements.

24   Certainly, you ought to respond within ten days

25 before an application by an ALEC for space available for

1 a caged collocation space, but that's not what I'm

2 talking about here. We're talking about cageless and you

3 have got a proactive requirement here in paragraph 40.

4   Q   Until the application is submitted, isn't it

5 possible for BellSouth to know what form of collocation

6 an ALEC will request?

7   A   No, but what is possible and what is

8 required -- and that's not what's required by paragraph

9 40. What is possible and what is required is for

10 BellSouth to know within its existing offices, within the

11 existing equipment bays, where the equipment would be

12 placed, where there is space available that would

13 accommodate ALEC equipment. That's something that your

14 central office personnel would know as part of managing

15 that office. It's part of the records of that office and

16 it's something that you proactively have to go out and

17 identify.

18   And you don't need to know -- You're assessing

19 space availability in the office for this form of

20 collocation. That's an entirely different process and

21 distinct from knowing what a particular ALEC might want.

22 You're looking at space availability for any ALEC that

23 may come to you and request this form of collocation, or

24 you should be looking for it.

25   Q   So, your contention that cageless collocation

1 would require an ILEC to permit a cageless collocator to

2 collocate within Bellsouth's, for example, existing bays?

3   A   Absolutely. That's what cageless collocation

4 is.

5   Q   In the advance service order, at paragraph 42,

6 doesn't the order state that an incumbent LEC may take

7 reasonable steps to protect its own equipment, such as

8 enclosing the equipment in its own cage?

9   A   You may on your own motion do that.

10   Q   Wouldn't that of necessity preclude the

11 placement of equipment in Bellsouth's --

12   A   Not at all. I think paragraph 42 is also very

13 explicit that you can't remove this ALEC equipment from

14 yours when it says that, "In addition, any incumbent LEC

15 must give competitors the option of collocating equipment

16 in any unused space within the incumbent's premises to

17 the extent technically feasible and may not require

18 competitors to collocate in a room or isolated space

19 separate from the incumbent's own equipment." So, you

20 explicitly can't do that.

21   Q   Would a physical cageless collocator -- Strike

22 that.

23   With cageless collocation, would an ALEC need

24 to cross connect its equipment?

25   A   Its own equipment?

1   Q   Right.

2   A   Well, you would either cross connect or not

3 cross connect your own equipment in that bay

4 independently of whether there was a cageless collocation

5 arrangement in the same bay. This doesn't -- The

6 presence of cageless collocation doesn't impact the

7 requirements on your own equipment in that bay.

8   Q   Has the Commission in the context of

9 establishing rates for physical collocation established a

10 rate for cross connecting?

11   A   There are cross connects for both virtual and

12 physical.

13   Q   Is there any reason why the rates for cross

14 connecting would differ in the case of caged versus

15 cageless collocation?

16   A   Yes. We're talking about equipment in a lineup

17 in an existing bay for cageless versus physically

18 isolated equipment in an isolated space with regard to

19 caged. There are different facilities requirements. I

20 mean, if nothing else, it's a longer cross connect.

21   But we're talking about an existing bay. It's

22 a big rack of iron in the central office. It's got a lot

23 of equipment that the slots are designed, the equipment

24 slides into it. That's what we're talking about with

25 cageless and virtual.

When we go to caged, we're talking about cross connecting in from across the floor within an enclosure that may be climate controlled. I mean, yes, they're substantially different.

COMMISSIONER JACOBS: Say that again now. For the cageless, you come in to a point that's designated for that?

WITNESS WOOD: Well, for cageless, you come into their existing equipment bays. In their central office there are rose of bays, either eight- or eleven-feet tall, that are designed so that you can place equipment into it in a modular basis. It plugs in right there.

Now, yes, you have to connect that equipment with a cross connect. But to say that that -- You know, connecting into something that's already built and designed for you to slide that piece of equipment in is the same as connecting when you've got to be located, you know, maybe on a different floor, maybe, you know, across the room inside your own structure; that's a very different connection.

COMMISSIONER JACOBS: Cross connects, are they pretty much determined by the type of switch that's in that office or is it determined by the kind of equipment that you're bringing in?

1   WITNESS WOOD: We're actually talking about the

2   wires that connect the ALEC's equipment to Bellsouth's

3   network. It's a cross connect for literally that

4   connection.

5   COMMISSIONER JACOBS: Okay. And that's pretty

6   standard.

7   WITNESS WOOD: But that connection may be

8   different -- in fact, it will be different -- in a

9   cageless arrangement or a virtual arrangement where

10   you're using their existing bays versus where you've got

11   to be, you know, located in isolated space.

12   And that's where -- You know, we keep going

13   back to paragraph 42. Forty-two says they can't isolate

14   them. And if that's true, and it clearly is true, then

15   these arrangements are going to be different. And

16   saying, well, we'll just cost and price this just like a

17   physical caged arrangement doesn't make any sense. The

18   two don't look alike.

19   COMMISSIONER JACOBS: Okay. Thank you.

20   BY MR. GOGGIN (Continuing):

21   Q   Have you reviewed the portion of the

22   Commission's order approving these rates that relates to

23   cross connect rates?

24   A   I'm sorry?

25   Q   Have you reviewed the portion of the

1   Commission's order which approves collocation rates that

2   refers to cross connect rates?

3   A   Yes.

4   Q   Can you identify specifically from that order

5   any different rate elements that would disappear in the

6   context of cageless collocation?

7   A   With regard to cross connect specifically, no,

8   I don't think the element disappears. I just think the

9   cost changes.

10   I mean, certainly there are elements that

11 would, you know, that would disappear, space preparation,

12 for example.

13   Q   I'm not talking about space preparation. I'm

14 talking about cross connects. Have you --

15   A   The cross connect element would not disappear.

16 I'm not suggesting that there aren't cross connects. Of

17 course, there are cross connects. What I'm suggesting is

18 that they may not be the same physical facilities if the

19 ALEC's equipment is in your own bay as they would be if

20 the ALEC equipment is in an isolated space. In fact, I

21 don't think they would be. And, therefore, the cost is

22 probably different.

23   I mean, that's part of the benefit of this

24 cageless arrangement is that it's much more efficient to

25 locate the equipment this way. It cost less.

1   Q   In a physical cageless collocation arrangement,

2   as you've described it, where does the collocator -- from

3   where does the collocator receive power?

4   A   From the power that's being brought into that

5   bay.

6   Q   And that power plant is owned by the ILEC,

7   typically; correct?

8   A   It would, yes. And we're not suggesting that

9   we wouldn't pay for power, but we're not going to pay for

10 power to be brought to the space the way that you would

11 in a caged environment where you've got to take power

12 over to an isolated space.

13   Your equipment is in these racks. It's

14 receiving power. You don't need to take a cable to the

15 space. Obviously, an ALEC should pay for the power it

16 uses, but that's a different question from whether it

17 should pay to have the capability for power taken to an

18 isolated space. This space isn't isolated; it already

19 has power.

20   Q   Do you concede that the equipment installed by

21 a physical collocator would generate heat and would

22 therefore require some air conditioning?

23   A   Yes. Same response. The air conditioning --

24 So does Bellsouth's equipment in that bay. And HVAC has

25 already been designed for that bay and it's already in

1 place for that bay.

2 It wouldn't be in place for an isolated space

3 in a caged environment. And, therefore, it's appropriate

4 for caged collocation to take HVAC to that space, but you

5 don't have to take it to your own space and your own

6 equipment; it's already there. And that's the space

7 we're talking about for cageless.

8 Again, these are all the benefits of cageless.

9 That's why this arrangement was created. It's more

10 efficient to place the equipment this way.

11 Q   Can you find any place in the advance services

12 order or elsewhere that indicates that a cageless

13 collocation always would be within the existing lineup of

14 the ILEC?

15 A   Well, it cannot be in an isolated space and it

16 cannot be separate from your own equipment. So, I don't

17 know where you're going to put it if it's not in your own

18 equipment bay without separating it from your equipment

19 or creating an isolated space. It has to be in your

20 bay. That's what this is.

21 Q   So, it's your inference, in other words?

22 A   Well, it doesn't take much of an inference. If

23 the language clearly says "may not require competitors to

24 collocate in a room or isolated space separate from the

25 incumbent's equipment," it doesn't take much of an

1 inference to know that we're talking about placement in

2 the area where the incumbent's equipment is.

3   And there is also a provision to allow

4 collocation in any unused space. So, if there is unused

5 space in a rack, they automatically have access to that

6 and the ability to use that space. So, I don't know how

7 you get around that.

8   Q   What if there were so many applications for

9 physical collocation that there was too much equipment to

10 fit within Bellsouth's existing space?

11   A   I think that is the one exception that they

12 give you to move it to an adjacent area.

13   Q   What if there were so many collocation

14 applications that the power required to run those

15 collocators' equipment was greater than the power

16 requirements of the central office?

17   A   Well, first of all, it's incredibly improbable,

18 because as this equipment has developed, its power

19 requirements have gone down dramatically, not up. So, if

20 your office has been in place any period of time, it's

21 simply a scenario that's not going to happen.

22   But any time -- There is a technical

23 feasibility exclusion here. You have two specific opt

24 outs: One is technical feasibility, which I think would

25 address your issue. I can't fathom it would happen, but

1 it could.

2 And the other is that you've got some security

3 rights. But only with those two exceptions, you've got

4 to allow collocation in any unused space, not isolated

5 from -- and it can't be isolated from your equipment.

6 Q What if there were so many physical cageless

7 collocators and the number of racks that they wanted to

8 put in was so great that the additional heat generated by

9 the equipment would require changes to the heating and

10 air conditioning plant in order to properly cool the

11 equipment?

12 A Well, I'll give you the same answer as on the

13 power. And I'll be glad to offer you this: If there is

14 such a scenario where in any given office you have so

15 much cageless collocation that for that entire office you

16 have exceeded your power capabilities or your HVAC

17 capabilities, then I think you would have a technical

18 feasibility opt out under this advance services order.

19 Those are incredibly extreme conditions. These buildings

20 were not designed -- I mean, they certainly were designed

21 with the placement of equipment in mind. The space is

22 there; the racks are there. When these frames, when

23 these racks are put into place, the power and HVAC

24 capability is put into place for those racks as if

25 they're full.

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 1          To then say, well, what if we build out so many
 2  more racks that we just can't generate enough power in
 3  this office, I think you've got a technical feasibility
 4  exclusion, but that would be a very extreme circumstance.
 5          Q    I think you testified before that you've never
 6  had a job which involved regular responsibilities in
 7  terms of working in or managing a central office;
 8  correct?
 9          A    That's right.
10          Q    And that you do not have an engineering degree;
11  correct?
12          A    That's right.
13          Q    Your testimony is being offered here today as
14  expert testimony; correct?
15          A    As a cost analyst, yes.  And I must, as any
16  cost analyst, including Ms. Caldwell, who is not an
17  engineer, also, you've got to understand the underlying
18  equipment; you've got to understand these characteristics
19  in order to do your cost studies correctly.  I don't
20  think you have to be an engineer to do a good cost study.
21  You certainly need to understand and apply that
22  information.
23          Q    Moving on to the interval; DeltaCom has
24  suggested a 30-day interval?
25          A    Yes.
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Q   What data do you provide to support that
interval?

A   The advance services order.

Q   How did you come up with 30 days as a
conclusion?

A   You need to respond to them and allow them
into -- What you're required to do in order to make
cageless collocation available is to respond to them that
space is available and to allow them into the building.
If you've complied with paragraph 40, which is to make
the arrangement available without waiting until you get a
request, then you'll know whether space is available. You
need zero time for that.

The time you actually need is the time to make
an appointment with the ALEC for someone to let them in
the door to the central office to put their equipment in
place.

I think 30 days is actually very, very generous
in that regard. I would have been much more -- I would
have been perfectly comfortable supporting a much shorter
provisioning interval for cageless collocation. Thirty
days is what DeltaCom was willing to live with.

Q   Are you aware as to whether the Florida
Commission has proposed an appropriate provisioning
interval?

         A   For cageless collocation, no, they haven't.

They've never considered cageless collocation. It didn't

exist when they looked at collocation the last time.

         Q   Just a couple more brief questions, I promise.

         A   No problem. I'm here all day.

         Q   In your deposition you were asked a question

based on the prehearing statement.

         A   Yes.

         Q   About the rates for ADSL compatible loops, in

particular, the recurring rates. At your deposition, the

rates that were listed in the prehearing order were

higher than the recurring rates that BellSouth has

proposed; isn't that correct?

         A   I thought what we were talking about at the

deposition was voice grade service level 1 and service

level 2.

         Q   You're probably correct.

         A   I don't think we were talking about ADSL.

         Q   Just, for the record, were those rates

subsequently proposed or corrected?

         A   Yes. The incorrect rates had been included in

the prehearing statement. The corrected rates I provided

in a late-filed exhibit to the staff.

         Q   And you are the sponsor of those rates?

         A   I am.

1   Q   When was the late-filed exhibit filed?

2   A   I don't know. I didn't file it. I just

3 provided the information to local counsel. I think staff

4 had requested about a week and I think we filed it about

5 that same time.

6   Q   If you could turn to your rebuttal testimony,

7 please.

8   A   Yes.

9   Q   At page 9.

10   A   Yes.

11   Q   Line 16 -- I'm in the direct myself. Line 16

12 on page 9, you quote from Dr. Taylor's testimony, which

13 you're rebutting here. Can you show me where in

14 Dr. Taylor's testimony this quote occurs?

15   A   I'm sorry, page -- I'm on page 9, line 16.

16   Q   I'm sorry, page 19, line 16.

17   A   Nineteen. I'm sorry; what's your question?

18   Q   Can you show -- This quote is incomplete. Can

19 you show me the passage in his direct testimony where

20 this quote appears?

21   A   I don't have the page marked. We can go

22 through and find it. This is his testimony from a number

23 of states.

24   Q   Did Dr. Taylor file any direct testimony in

25 this matter?

1 A No, I don't think he did. Not in this

2 proceeding. He has in other states.

3 Q So, this rebuttal testimony is offered in

4 rebuttal to what?

5 A The position that BellSouth has taken and,

6 specifically, Dr. Taylor has taken in three previous

7 proceedings, and turns out to be consistent in terms of

8 his arguments, if not the vast majority of his text, with

9 his rebuttal testimony here.

10 Q Would it not have been possible to include this

11 testimony in your direct?

12 MR. JONES: I'll object to vague. I'm not sure

13 what the question is asking.

14 MR. GOGGIN: Well, as a procedural matter

15 typically, a party's testimony is included in its direct

16 testimony. Rebuttal testimony is limited to offering

17 testimony that rebuts testimony filed by the other party

18 in its direct testimony.

19 This rebuttal testimony appears to be directed

20 at something that obviously was not filed as direct

21 testimony.

22 BY MR. GOGGIN (Continuing):

23 Q So, what I'm asking is whether there is some

24 reason why it could not have been included in the direct.

25 A Well, I was waiting on Dr. Taylor's direct,

1 which I assumed he would file here as he had in other

2 states. He didn't do that.

3   Q   Do you know whether Dr. Taylor --

4   A   But the issues had been raised by BellSouth and

5 the broader issue had been raised by Mr. Varner in his

6 direct. And so I addressed the argument and tried to tie

7 it back to the positions that BellSouth had taken

8 previously in direct testimony.

9   MR. GOGGIN: Mr. Wood, I have no more

10 questions. Thank you.

11   COMMISSIONER CLARK: Ms. Caldwell.

12   CROSS EXAMINATION

13 BY MS. CALDWELL:

14   Q   Good afternoon, Mr. Wood.

15   A   Good afternoon.

16   Q   I'm Diana Caldwell. You have testified earlier

17 in response to Mr. Goggin's questions about the advanced,

18 FCC's advance services order; is that correct?

19   A   Yes, ma'am.

20   Q   So, therefore, you're familiar with that order?

21   A   I am.

22   Q   All right. I'd like to ask you a few questions

23 regarding that order. Did that order require incumbent

24 LECs to make available alternative forms of physical

25 collocation, such as shared collocation cages and

1 cageless collocation?

2   A   Yes. It covered several opportunities,

3 including the sharing of caged collocation spaces and

4 also created the concept of cageless collocation.

5   Q   Thank you. In your deposition on page 79, you

6 state that the 99, or the FCC order requires that

7 BellSouth on a proactive basis go out and identify where

8 a cageless collocation arrangement can be placed in its

9 central offices; is that correct?

10   A   Yes. That's paragraph 40 that I was discussing

11 with Mr. Goggin, where they require that the LECs make

12 each of the arrangements available as soon as possible

13 and without waiting for a request for a particular

14 arrangement. So, they need to identify the capability to

15 provide the arrangements in each office.

16   Q   And I think, also, you quoted -- and it may

17 have been paragraph 40. I didn't catch the exact

18 paragraph. But you had quoted "We require incumbent LECs

19 to make each of the arrangements below available to

20 competitors as soon as possible without waiting until a

21 competing carrier requests a particular arrangement, so

22 that competitors will have a variety of collocation

23 options to choose from." Do you remember reading that?

24   A   Yes. That is actually the same sentence in

25 paragraph 40 that I was referring.

 1   Q   All right. Doesn't this really mean that

 2 incumbent LECs must make these alternative arrangements

 3 available to the CLECs to choose from but not go out and

 4 survey the floor space in every office and speculate on

 5 what requests they may receive?

 6   A   Well, they don't need to speculate at all on

 7 what request they'll receive. They need to determine

 8 their capability. And they don't need to survey the

 9 floor space because they have people who work in each of

10 these buildings as their daily job. I mean, Mr. Goggin

11 and I described the fact that that hasn't been my job,

12 but there are people whose job it is to work in these

13 areas. They know all the equipment. They know the space

14 that's available. They know what equipment is in that

15 space.

16   So, we're not talking about some task, some

17 burden of going out and identifying space. BellSouth

18 through the normal course of business knows what its

19 offices look like and what the space capabilities are.

20   I think this is actually quite clear that

21 they've got to make the capability available without

22 waiting for a request for any of these types.

23   Q   Would it be fair to characterize it that

24 BellSouth would have to maintain an inventory of what was

25 available?

A   It actually does maintain that information in terms of its capability for its own use in each office. I mean, BellSouth -- If BellSouth needs to put in a piece of equipment for its own use, it doesn't have to dispatch a bunch of people to go looking around for space. They know what they have available and what type of equipment could be placed in that space that's available. They have this information. They manage their network pretty well.

What they are required to do, I think pursuant to this requirement, is not wait for someone to come in and say we like cages, do you have a place to put it. They need to know that up front. They shouldn't be waiting 90 days to 130 days to make this capability available because they need to go out and look for the space. They should have looked already. And, in fact, they do look already because that's how they manage their operation.

Q   All right. Is it your opinion that BellSouth can predict every possible equipment configuration and combination, including power and HVAC requirements, that a CLEC might request before the CLEC places that order?

A   No. And, fortunately, they don't have to do that. What they have to know is they've got space available that has power and HVAC to it. And then

1 depending on what equipment might be needed to be placed,

2 it will take up some portion of that space.

3   So, they don't have to predict anything about

4 what the ALEC is going to ask for. All they have to do

5 is know what their capabilities are to provide these

6 arrangements. And that's the fundamental distinction I

7 was trying to make with Mr. Goggin. They don't have to

8 speculate on who is going to come and ask for what. All

9 they have to do is know what they can make available if

10 and when it's asked for. And that's not a burdensome

11 task. They really have that information already.

12   And, that way, when someone comes and asks for

13 one of these arrangements, they don't need that extended

14 period of time to tell them if they can provide it or

15 not. They'll know if they can provide it or not at the

16 time that it's asked.

17   That's why this sentence talks about making

18 these available, you know, as soon as possible. That's

19 the objective here.

20   Q   And then I think you testified earlier and also

21 in a deposition that once BellSouth received a request

22 for cageless collocation, it would take about, I think

23 you said about 30 minutes to process the paperwork to

24 match up what the CLEC was asking for with what they had?

25   A   Well, they already know what -- If they've

1 complied with this requirement, they already know what

2 they have. In fact, even before the advance -- Assuming

3 away the advance services order completely, they still

4 know what they have in terms of space in a central office

5 and capabilities to accommodate equipment in a central

6 office, because they're going to need to put equipment in

7 some of these areas from time to time; they know that

8 already.

9 What's required here, once they get a request,

10 if they've complied and they know where their space is,

11 is allowing the ALEC access to the space to place the

12 equipment. They've just got to -- When we're talking

13 about this provisioning interval, we're really talking

14 about the action required by BellSouth to let the ALEC in

15 the door to place the equipment. That's what this

16 interval is. That's all there is to it.

17 Q   Thank you. Do you interpret the advance

18 services order to allow that ITC^DeltaCom can collocate

19 equipment in existing bays without regard to Bellsouth's

20 forecasted growth?

21 A   There is not a forecasted growth requirement.

22 There is a technical feasibility requirement. So,

23 obviously -- And it goes to some of the examples

24 Mr. Goggin gave: If the building can't produce enough

25 power. And these buildings are designed to produce far

1 more power than they use now because the equipment just

2 uses less and less power. So, that's already in place.

3 Growth is not, typically not an issue in a

4 central office because the equipment is shrinking in

5 size. These offices were designed around big analog

6 switches, which take up -- they have a very large

7 footprint. They would take up this whole section of this

8 room. A No. 5 ESS takes up, you know, maybe half of the

9 Commissioner's bench.

10 There's really no serious issue with regard to

11 available space in a central office. The buildings were

12 built to accommodate equipment that was physically much

13 larger than the equipment that's being used today. Most

14 central offices that you walk through have a very large

15 amount, a significant amount of unused space today.

16 MS. CALDWELL: Thank you.

17 That's all the questions I have.

18 COMMISSIONER JACOBS: I believe you touched on

19 a point earlier regarding OSS?

20 WITNESS WOOD: Yes, sir.

21 COMMISSIONER JACOBS: And the costs and what

22 should be considered a marginal cost or not. First of

23 all, explain that point to me once again.

24 WITNESS WOOD: Okay. What the FCC rules

25 requires for any UNE, OSS included, is that when

1 BellSouth goes out and does a cost study, they have to

2 look at the total quantity demanded, the total number of

3 units, both retail and wholesale. In other words, when

4 BellSouth goes out and does a local loop study, they have

5 got to study the entire universe of loops, including the

6 ones they used to provide their retail service and ones

7 that might be offered as a UNE. They can't go out and

8 say, well, for this office I think we're going to

9 probably need to provide about 150 UNE loops, so we'll

10 design the physical facilities for 150 loops because that

11 would be really, really expensive. Loop costs are very

12 much a function of density. The more lines you have, the

13 less it cost per line to serve an area.

14   So, if they were to go out and do their loop

15 study that way, they would clearly violate the 51.505

16 rule, which says total quantity. And they would violate

17 the 51.511 rule, which says that if you're going to

18 determine costs per unit, you've got to consider the

19 retail and the wholesale units. And, in fact, that's how

20 they do their cost study. They look at the total

21 quantity of loops.

22   When they study switching, they look at the

23 total switching capacity. When they look at transport,

24 they look at total transport. When they look at

25 signalling, they look at total signalling.

When they look at OSS, they don't look at the total. They totally ignore the retail component and, instead, just focus on the wholesale.

Well, that's just as wrong as going out and trying to do a loop study based on 150 loops in a given geographic area rather than 15,000 or 150,000. And it makes the costs higher.

COMMISSIONER JACOBS: So, there is a component of costs that gets allocated now to the wholesale aspect of OSS that you argue should go some place else. What is that component and where should it go?

WITNESS WOOD: Well, what they've done is they've actually done wholesale only on what we call a stand-alone basis. And they can't do that because that is more expensive per unit than looking at the total, same as for any of the other UNEs.

What they need to do, if they're going to charge for OSS -- I don't think anybody should charge for OSS. I think everybody just ought to do it. But if they're going to charge for it and we're going to set a rate compliant with these rules, they've got to study an efficient forward-looking OSS system that can accommodate the total quantity, the retail and the wholesale, and then look at the total units, retail and wholesale, to determine a per unit cost. That's required for the rules

1 for OSS, just like it is for loops, switching, and

2 everything, and all the other UNEs.

3 If they were to go out and do a cost study of

4 that efficient system, retail and wholesale, and divide

5 those operations costs by total retail and wholesale

6 units, you would have a per unit cost that you could

7 develop a price from that would be compliant with the FCC

8 rules, but it would be a per unit cost that would be

9 dramatically lower than what Ms. Caldwell has done in her

10 study, where she just says, okay, we're just going to

11 look at the wholesale piece on a stand-alone basis. And

12 you just can't do it that way, for the same reason you

13 can't do loops that way.

14 COMMISSIONER JACOBS: Who's buying the retail

15 OSS service?

16 WITNESS WOOD: Any customer that buys a service

17 from BellSouth, who comes in and orders that.

18 COMMISSIONER JACOBS: I see. I see.

19 WITNESS WOOD: And same with DeltaCom. I mean,

20 DeltaCom has to have its system for its retail customers

21 and for wholesale customers. I mean, it's easy to forget

22 that -- You know, we talk about DeltaCom coming in and

23 taking BellSouth customers competitively. I think

24 BellSouth is probably going to want to try to win some of

25 those customers back over time. And, if they do, then

DeltaCom has to have the same system that BellSouth can

come to and order on a wholesale basis.

So, these things are mutually beneficial.

Everyone is going to need them. And everyone has them

for retail. Everyone is going to have to have them for

wholesale.

COMMISSIONER JACOBS: Okay. Thank you.

COMMISSIONER CLARK: I had a question on -- And

I guess really my question is is it still an issue? Is

there still an issue with the spaces that you've already

rented? It indicates that there is a verbal agreement.

I'm on -- sorry -- your direct testimony.

WITNESS WOOD: Yes. And I think there was -- I

think you're talking about subleasing space within an

existing --

COMMISSIONER CLARK: Right.

WITNESS WOOD: I believe that has been formally

resolved by the parties. At the time of my testimony, it

had been verbally agreed upon. I think it's been

formally resolved and withdrawn.

COMMISSIONER CLARK: Have you reached agreement

on security measures, too?

WITNESS WOOD: I believe that that also has

been agreed to, but Ms. Edwards needs to speak to it.

COMMISSIONER CLARK: But I guess --

1   MR. ADELMAN: We intended to strike the portion

2 of his testimony that related to security. If we missed

3 that, that was a separate issue.

4   COMMISSIONER CLARK: I thought I paid attention

5 when he said what was stricken.

6   MR. ADELMAN: It was our intent. If we missed

7 it, we'll --

8   WITNESS WOOD: Both of those issues were

9 originally in the direct because the agreements had not

10 been formalized, but it's my understanding that they

11 have. So, I don't think we need testimony on them.

12   MR. ADELMAN: For both of those issues,

13 Commissioner.

14   COMMISSIONER CLARK: Wonder why I didn't note

15 that.

16   Okay. Thank you.

17   MR. ADELMAN: What are the citations that

18 you're referring to in the testimony, so that we can be

19 clear?

20   COMMISSIONER CLARK: Page 22 of the direct; was

21 that one you gave us? Well, maybe it's -- No, look

22 at -- It's really on page 23. Did you --

23   MR. ADELMAN: The security should be struck.

24   MR. JONES: That's page -- of the direct

25 testimony, page --

1   COMMISSIONER CLARK: I guess my question is did

2 I just miss it and you had done --

3   MR. ADELMAN: You did not.

4   MR. JONES: The parties exchanged lists and

5 that just wasn't focused on. There wasn't a disagreement

6 or an agreement about it, but it should be struck.

7   COMMISSIONER CLARK: Okay. Well, my question

8 is the court reporter has got to have the testimony

9 right.

10   MR. ADELMAN: Well, certainly that's not an

11 issue that's stricken as a result of the Commission's

12 ruling. It's just something that has been resolved

13 between the parties. So, I don't think there is any

14 prejudice.

15   COMMISSIONER CLARK: If we leave the testimony

16 in; okay.

17   MR. JONES: Right.

18   MR. ADELMAN: I think it is administratively

19 easier to strike it and we will do so and provide it to

20 the court reporter, if you want to just read the citation

21 in.

22   COMMISSIONER CLARK: If you're sure that's it.

23   MR. ADELMAN: How about we circle back around

24 after a break?

25   COMMISSIONER CLARK: That sounds good.

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 1          Redirect.

 2          MR. JONES:  I just have one area with you,

 3   Mr. Wood.

 4                REDIRECT EXAMINATION

 5   BY MR. JONES:

 6      Q    Do you remember a discussion with Mr. Goggin

 7   about combinations of extended loops, et cetera?

 8      A    Yes.

 9      Q    And do you remember there was a discussion

10   about a critical mass of customers needed to economically

11   justify collocation in certain areas?

12      A    Well, I think we talked generally about the

13   critical mass that's needed for any large capital

14   investment in an area and the decision process that would

15   go behind that.

16      Q    Could you further clarify that point for the

17   benefit of the Commission?

18      A    Sure.  What we're talking about in any of these

19   areas is a large capital expenditure to go into an office

20   and put in collocation.  If DeltaCom can serve an office

21   without a collocation space, then that allows it to serve

22   offices in much broader geographic areas and, quite

23   frankly, allows it to extend its reach to some areas that

24   would be otherwise less desirable to serve, some lower

25   density areas, some more primarily residential areas.
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1   What they're faced with is a pretty standard

2 business decision: Do you go in and make a big

3 investment into an area before you develop your customer

4 base, or do you try to develop your customer base and

5 then make the investment. And it's kind of like a retail

6 operation. If you're going to try to develop a customer

7 base in a certain area, you may have a phone order system

8 or a catalog system first. And then once you develop a

9 customer base, you may decide to place a retail store.

10 That's not an unusual strategy.

11   DeltaCom is really in the same situation.

12 They've got to make their decisions on where to spend

13 their finite amount of capital on these collocation

14 spaces. If they can serve the area by extended loops

15 first to build a customer base, it makes a lot more

16 business sense for them to provide service to the area

17 initially at all and then, second, in order to make

18 rational decisions about where to spend their money and

19 put in their collocation.

20   I think not only are extended loops required by

21 the law; I think they are a very good mechanism for

22 allowing ALECs to extend their geographic reach and offer

23 service to customers that otherwise wouldn't have a

24 competitive alternative. And I think that's important.

25   MR. JONES: That's all I have, Commissioner.

1   COMMISSIONER CLARK: Thank you.

2   Do we have an exhibit?

3   MR. JONES: We do. We have one exhibit

4 attached to his direct testimony. And we'd move for its

5 admission.

6   COMMISSIONER CLARK: We will admit Exhibit 22

7 in the record without objection.

8   (Exhibit 22 received into evidence.)

9   COMMISSIONER CLARK: Thank you, Mr. Wood.

10   WITNESS WOOD: Thank you.

11   MR. JONES: That concludes the direct

12 presentation of ITC^DeltaCom's case.

13   COMMISSIONER CLARK: Thank you.

14   BellSouth.

15   MR. GOGGIN: If we could ask for just a

16 five-minute break. We have --

17   COMMISSIONER CLARK: We just had one,

18 Mr. Goggin.

19   MR. GOGGIN: We have gone back and forth with

20 the portions of testimony that should be redacted. I

21 think we're in a agreement, but I'm just not positive.

22   MR. ADELMAN: We can do it within a -- We don't

23 even need to take a break; maybe 30 seconds.

24   COMMISSIONER CLARK: We'll break until quarter

25 'til.

1   MR. GOGGIN: Okay. Thank you.

2   (Recess.)

3   COMMISSIONER CLARK: We're ready.

4   MR. ALEXANDER: Did I hear you say you were

5 ready?

6   COMMISSIONER CLARK: We are.

7   MR. ALEXANDER: BellSouth is ready to present

8 its case and call its first witness, Mr. Alphonso

9 Varner.

10 WHEREUPON,

11   ALPHONSO VARNER

12 was called as a witness on behalf of BellSouth and,

13 having been duly sworn, testified as follows:

14   DIRECT EXAMINATION

15 BY MR. ALEXANDER:

16   Q   Mr. Varner, would you please state your full

17 name and business address for the record, please, sir?

18   A   Yes, my name is Alphonso Varner. My business

19 address is 675 West Peachtree Street in Atlanta, Georgia.

20   Q   By whom are you employed and what is your

21 position and responsibilities?

22   A   BellSouth Telecommunications as Senior Director

23 for Regulatory.

24   Q   And are you the same Alphonso Varner that

25 caused to be prefiled direct testimony consisting of 73

1 pages with 8 exhibits on August 16th, 1999, in this

2 proceeding?

3   A   Yes.

4   Q   Mr. Varner, do you have any changes,

5 corrections or deletions to make to that direct

6 testimony?

7   A   Yes, I do.

8   Q   Could you go over those, please, sir?

9   A   Yes. The first one is on the exhibit, AJV-1,

10 page 2 of 3.

11   Q   Okay. And what will be your change on page 2

12 out of the 3?

13   A   The rate for recovery of incremental OSS cost

14 per SLR.

15   MR. ALEXANDER: Just a minute, Mr. Varner.

16   We need to hand out -- We have for convenience,

17 and we'll go over these lines. We have a strike-through

18 version of Mr. Varner's direct and rebuttal testimony.

19 We also have a revised Exhibit AJV-1 that he's going

20 over. And you will be able to see these changes.

21   COMMISSIONER CLARK: Go ahead.

22   MR. ALEXANDER: Okay.

23 BY MR. ALEXANDER (Continuing):

24   Q   Mr. Varner, was Exhibit AJV-1 revised after it

25 was prefiled with your direct testimony?

1   A   Yes, it was.

2   Q   Do you recall if it was revised on October

3   21st, 1999?

4   A   Yes.

5   Q   And what we've handed out today, do you have a

6   copy showing a date revised October 27th, 1999?

7   A   Yes.

8   Q   Can you go over those changes and the reason

9   for the revision?

10   A   Yes.   The first one was the one on page 2 of

11   3.   The column labeled "nonrecurring electronic" costs,

12   cost column, "nonrecurring electronic," said 6.78.   It

13   should be 6.63.

14   Q   And that would be -- I believe it's labeled on

15   the left-hand side line f.1.1; is that correct?

16   A   Yes.

17   Q   Okay.   Mr. Varner, was there another change?

18   A   Same line, under the rate column, "nonrecurring

19   electronic," should also be 6.63.

20   Q   Any other changes, Mr. Varner?

21   A   Not on that page.

22   The next change is really applicable to all of

23   the pages and it's the footnote at the bottom of the

24   page.

25   Q   What was changed about that footnote?

1   A   These two sentences were added: "Pursuant to

2 FPSC Order No. PSC 98-0604-FOFTP, dated April 28th, 1998,

3 costs for service order and service inquiry functions are

4 not included. These additional costs must be negotiated

5 between the parties."

6   Q   Okay. Are those the only changes to revised

7 Exhibit AJV-1 dated October 27th, 1999?

8   A   That's correct.

9   Q   Okay.

10   A   With regard to the testimony, there are two

11 changes in the testimony. At page -- or corrections,

12 rather. Page 64, starting at line 6, there is a sentence

13 that reads, "The rate that this Commission previously

14 approved is equivalent to the SL2 service." That

15 sentence should be struck.

16   Q   So, just delete the entire sentence starting on

17 line 6 that goes through line 7?

18   A   Yes.

19   Q   Just for clarity, so that everyone can follow,

20 would you read that sentence that is going to be deleted

21 again, please, sir?

22   A   "The rate that this Commission previously

23 approved is equivalent to the SL2 service."

24   Q   Are there any other changes, Mr. Varner, to

25 your prefiled direct testimony?

1   A   Yes. One more on page 66, starting at line 13,

2 says, "The rate approved by this Commission in its

3 December 31st, 1996, order is really the SL2 rate." That

4 sentence should also be stricken.

5   Q   Again, we're striking the sentence that starts

6 on line 13 with the word "the" and goes through line 15,

7 ends with the word "rate"?

8   A   That's correct.

9   Q   Any other changes to your prefiled direct?

10   A   No.

11   MR. ALEXANDER: Okay. At this time, I would

12 like to -- consistent with earlier procedure that's being

13 followed in this proceeding, go through the testimony.

14 And we've handed out struck-through pages, so it could go

15 fairly quickly, I hope. But I think we used the break

16 and made sure we were in agreement with DeltaCom's

17 counsel on this. But I'll go through it very quickly.

18   I think -- and this would include both issues

19 that have been struck by the Commission as well as issues

20 that have been resolved by the parties. Page 2, line 12,

21 strike the following issue numbers: 1, 2, and then skip

22 to 3(b)(6), 3(b)(7), 3(b)(9) have been struck; 14 and 16

23 are struck from line 12.

24   Line 13, we'd strike issue 18, 19, 20(b), 33,

25 35, and then strike 45 through 50, but write in 48. Of

1   the issues from 45 through 50, 48 remains.

2   I think the first, as a result of those issues

3   being deleted, the first change will be on 12(a), lines 2

4   through 6 will be deleted. And then beginning on line 1

5   at page 13 through line 4 of page 17 will all be struck.

6   Then skipping over to page 19, starting at line

7   10, through page 20, concluding on line 20, will be

8   struck.

9   And skipping to page 27, beginning on line 11.

10   COMMISSIONER CLARK: Mr. Alexander, do I -- I

11   sense that you have given us complete copies of both his

12   direct and rebuttal with those changes made.

13   MR. ALEXANDER: Yes.

14   COMMISSIONER CLARK: I'm not sure that we need

15   to go through them.

16   MR. ALEXANDER: The only one I would add --

17   That will be fine. That was the intended purpose. If

18   that will suffice for the court reporter and the record,

19   that will be fine with BellSouth.

20   COMMISSIONER CLARK: We'll just insert at the

21   appropriate time, we will use the revised copies for both

22   the direct testimony of Mr. Varner and his rebuttal

23   testimony as you have submitted it to us today.

24   MR. ALEXANDER: That will be fine.

25   The only thing I did find on page 69, we need

1 to also strike the statement of the issue. That's line

2 10 through 13. Issue 45 itself should come out.

3   I believe that will take care of it. I don't

4 believe that's on the copy that was handed out

5   MR. ADELMAN: I'm sorry; Commissioner, I missed

6 that last part.

7   COMMISSIONER CLARK: He just wants from

8 page 69, that the issue number needs to come out, the

9 issue as stated needs to come out. And that's line 10

10 through 13; is that right?

11   MR. ALEXANDER: Yes, because lines -- the

12 answer at lines 15 through 23 were struck. We just need

13 to strike the issue as well.

14   With that, I would ask that --

15 BY MR. ALEXANDER (Continuing):

16   Q   Mr. Varner, if I were to ask you the same

17 questions that appear in your prefiled direct testimony

18 as it's now been revised and struck, would your answers

19 be the same today?

20   A   Yes, they would.

21   MR. ALEXANDER: At this time I would ask that

22 the prefiled direct testimony as it's been struck and

23 revised this afternoon, as well as the revised Exhibit

24 AJV-1, dated October 27, 1999, be admitted in this

25 proceeding.

1   COMMISSIONER CLARK: Go ahead. Say that again,

2 I'm sorry.

3   MR. ALEXANDER: That's all right. I'm just

4 asking that Mr. Varner's direct, prefiled direct

5 testimony as it's been revised and struck through

6 pursuant to the Commission's proceedings here, including

7 exhibit, what we handed out just a little while ago,

8 Exhibit AJV-1, revised October 27, 1999, be admitted in

9 this proceeding.

10   COMMISSIONER CLARK: All right. We will insert

11 the direct testimony as revised in the record as though

12 read. And we will mark AJV-1 as revised here today as

13 Exhibit 23 and we'll identify it as Exhibit 23.

14   MR. ALEXANDER: Thank you.

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1   BELLSOUTH TELECOMMUNICATIONS, INC.

2   DIRECT TESTIMONY OF ALPHONSO J. VARNER

3   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4   DOCKET NO. 990750-TP

5   AUGUST 16, 1999

6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH

8   TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR

9   BUSINESS ADDRESS.

10

11 A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior

12   Director for State Regulatory for the nine-state BellSouth region. My business

13   address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND

16   EXPERIENCE.

17

18 A. I graduated from Florida State University in 1972 with a Bachelor of

19   Engineering Science degree in systems design engineering. I immediately

20   joined Southern Bell in the division of revenues organization with the

21   responsibility for preparation of all Florida investment separations studies for

22   division of revenues and for reviewing interstate settlements.

23

24   Subsequently, I accepted an assignment in the rates and tariffs organization

25   with responsibilities for administering selected rates and tariffs including

1   preparation of tariff filings. In January 1994, I was appointed Senior Director

2   of Pricing for the nine-state region. I was named Senior Director for

3   Regulatory Policy and Planning in August 1994, and I accepted my current

4   position as Senior Director of Regulatory in April 1997.

5

6   Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY?

7

8   A.   My testimony provides BellSouth's positions on numerous issues raised by

9   ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") in its Petition for

10   Arbitration filed with the Florida Public Service Commission ("Commission")

11   on June 11, 1999. Specifically, I respond to the following issues raised by

12   ITC^DeltaCom: ~~1, 2,~~ 3(a), 3(b)(2), ~~3(b)(6), 3(b)(7), 3(b)(9),~~ 6, 7, 8, 13, ~~14, 16,~~

13   ~~18, 19, 20(b),~~ 23, 24, ~~33, 35,~~ 38-43, ~~45-50.~~ _48_ I also address the ramifications of

14   recent court decisions as they specifically relate to ITC^DeltaCom Issues 7

15   [ITC^DeltaCom No.2(b)(ii)], 8 [ITC^DeltaCom No. 2(b)(iii)], and 23

16   [ITC^DeltaCom No. 3].

17

18   Q.   PLEASE SUMMARIZE HOW THE RECENT COURT DECISIONS

19   AFFECT THIS PROCEEDING.

20

21   A.   On June 10, 1999, the United States Court of Appeals for the Eighth Circuit

22   ("Eighth Circuit") issued an order in the *Iowa Utilities Board, et al.* case

23   reinstating many of the previously vacated Federal Communications

24   Commission's ("FCC") Rules. These Rules were originally issued in the

25   FCC's First Report and Order and Second Report and Order dated August 8,

2

1   1996 in CC Docket 96-98. In light of the Eighth Circuit's recent and past

2   decisions, along with the January 25, 1999 decision by the United States

3   Supreme Court, the status of the FCC's rules can be divided into several

4   categories as follows.

5

6   Even though the FCC's pricing Rules 51.501-51.515 (Pricing of Elements) and

7   51.701-51.717 (Reciprocal Compensation for Transport and Termination of

8   Local Telecommunications Traffic) have been reinstated, they must still be

9   reevaluated by the Eighth Circuit because the Eighth Circuit's earlier ruling

10   was based solely upon jurisdictional arguments and did not consider the

11   various challenges raised to these rules on their merits. Although these rules

12   are in effect while the Eighth Circuit revisits them, the final pricing rules will

13   not likely be known until the Eighth Circuit acts, which could be several

14   months in the future. In the interim, BellSouth is proposing prices that are

15   consistent with the FCC's pricing methodology and with this Commission's

16   arbitration decisions. BellSouth also proposes that those prices be modified

17   prospectively, if necessary, when the FCC issues its final rules.

18

19   The FCC's Unbundled Network Element ("UNE") Rule 51.319 (Specific

20   unbundling requirements) has been vacated after the Supreme Court's decision

21   in *Iowa Utilities Bd.* and is currently being readdressed by the FCC. Until that

22   time, there is no minimum list of UNEs that BellSouth is required to offer.

23   However, BellSouth agreed to continue providing "UNEs" as listed in the now

24   vacated Rule 51.319, until the new rulemaking is complete. However, this is a

25   voluntary commitment and does not technically make these items UNEs, nor

3

1   does this commitment apply to any combination of UNEs. Actual UNEs will

2   not be known until 51.319 is resolved. Because the required list of UNEs is

3   unknown, it would not be appropriate to require application of FCC rules to

4   "UNEs" offered under the interim commitment. When the FCC rules become

5   finalized, BellSouth should be permitted to modify the interim list of

6   capabilities to conform to the FCC's rules.

7

8   Even though the FCC's Rule 51.315(b) (Pre-existing combinations) has been

9   reinstated by the Eighth Circuit, it cannot be effectively applied until the FCC

10   reestablishes the UNE list in FCC Rule 51.319 that was vacated by the

11   Supreme Court. The minimum list of UNEs and criteria for establishing UNEs

12   will not be known until the FCC completes its proceeding on remand.

13   Consequently, the UNEs that must remain combined cannot be known until the

14   FCC completes its review of Rule 51.319.

15

16   Finally, the FCC's Rules 51.315(c) through 51.315(f) (incumbent local

17   exchange company ("ILEC") combination of UNEs) continue to be vacated.

18   The Eighth Circuit, however, is seeking comments on whether it should take

19   further action with respect to these rules. Since these rules are not in effect,

20   any action by this Commission requiring BellSouth to combine network

21   elements would be in direct conflict with the Telecommunications Act of 1996

22   ("Act").

23

24   After the FCC and the Eighth Circuit take further action in response to the

25   Supreme Court's decision, BellSouth's position on the issues raised in this

1   proceeding may be affected. As a result, BellSouth may need to modify some

2   of its positions in the months to come.

3

4   Q.   BRIEFLY DESCRIBE HOW THE SUPREME COURT ADDRESSED THE

5   FCC'S RULE 51.319 (SPECIFIC UNBUNDLING REQUIREMENTS).

6

7   A.   In striking down Rule 51.319 and the FCC's underlying standard, the Supreme

8   Court categorically rejected the FCC's notion of when an incumbent must

9   provide UNEs to ALECs under the FCC's "necessary" and "impair"

10   requirements. In interpreting those statutory terms, the Supreme Court stated

11   that the FCC's definition of an unbundled network element "cannot, consistent

12   with the statute, blind itself to the availability of elements outside the

13   incumbent's network." (525 U.S. __, 142 L. Ed. 2d 834, 855). Sup. Ct. Order,

14   at pg. 22) The Supreme Court also observed that the "assumption that any

15   increase in cost (or decrease in quality) imposed by denial of a network

16   element renders access to that element 'necessary' and causes the failure to

17   provide that element to 'impair' the entrant's ability to furnish its desired

18   services is simply not in accord with the ordinary and fair meaning of those

19   terms." (Id.) In plainer terms, this language means that "elements" that are

20   available from other sources, including elements that competitors can (and

21   often do) provide for themselves, do not have to be provided by ILECs as

22   UNEs under the Act.

23

24   Thus, there can be no requirement for BellSouth to provide any combinations

25   of a specific type or in a locality where there are ready alternatives to any of

1   the constituent network elements. This proscription applies even where those

2   alternatives may be somewhat more costly for the ALEC to obtain from

3   another supplier or by providing them for itself. The Supreme Court

4   anticipated precisely this kind of limitation on the availability of access to

5   network elements when it observed that "if Congress had wanted to give

6   blanket access to incumbents' networks on a basis as unrestricted as the

7   scheme the Federal Communications Commission has come up with, it would

8   not have included § 251(d)(2) in the statute at all." (525 U.S. __, 142 L. Ed. 2d

9   834, 856).

10

11   Q.   WHAT PROCESS IS BEING FOLLOWED TO IMPLEMENT NEW UNE

12   RULES?

13

14   A.   The FCC is holding further proceedings to determine what network elements

15   must be unbundled, in accordance with the Supreme Court's interpretation of

16   the necessary and impair test. In the interim, it would be inappropriate to

17   assume that the FCC will merely reissue the list of UNEs originally contained

18   in Rule 51.319. Determining what elements are essential will involve FCC

19   proceedings of some complexity. In fact, FCC Chairman William E. Kennard

20   acknowledged as much when he predicted: "We'll have to go back to the

21   drawing board." (New York Times, 1/26/99 at C4.)

22

23   This Commission presumably will have, and should have, a role in

24   implementing the "necessary" and "impair" standards. However, this

25   Commission's decisions should, as a practical matter, await the FCC's further

6

1   definition of those standards. Furthermore, even if this Commission eventually

2   is empowered to decide which elements must remain combined, there has been

3   no determination by the FCC as to exactly which elements those are.

4

5 Q.   WHAT IMPACT DOES THE EIGHTH CIRCUIT'S RULING HAVE ON

6   NETWORK ELEMENT COMBINATIONS?

7

8 A.   With respect to network element combinations, the Eighth Circuit's vacating of

9   the FCC's Rule 51.319 and 51.315(c)-(f) directly impacts the network

10   elements BellSouth is required to provide. In accordance with the FCC's Rule

11   51.315(a), BellSouth is obligated to provide unbundled network elements in a

12   manner that allows requesting telecommunications carriers to combine them in

13   order to provide a telecommunications service. Although requesting

14   telecommunications carriers may combine UNEs in any manner they choose,

15   BellSouth is not required to combine unbundled elements for those carriers.

16   The Eighth Circuit vacated the FCC's rules (§§ 51.315(c)-(f)) that purported to

17   impose such a requirement. The Eighth Circuit's decision vacating these rules

18   was not challenged by any party, and because those rules are not in effect,

19   BellSouth is not required to combine network elements. However, BellSouth

20   is willing to perform certain of these functions upon execution of a voluntary

21   commercial agreement that is not subject to the requirements of the Act.

22

23 Q.   WHAT IS BELLSOUTH'S POSITION WITH REGARD TO

24   COMBINATIONS OF ELEMENTS THAT ALREADY EXIST IN

25   BELLSOUTH'S NETWORK?

1

2   A.   Regarding the provision of combinations that already exist in the network,

3   there are no requirements that the Commission can implement until the FCC

4   establishes a list of UNEs, and the associated pricing rules, that ILECs must

5   offer. As discussed previously, it will not be established which UNEs

6   BellSouth is required to offer until the FCC reissues its UNE rules in

7   accordance with the Supreme Court's decision. Consequently, the UNEs that

8   must remain combined cannot be determined at this time. Likewise, the

9   pricing rules applicable to such combinations could be affected by the Eighth

10   Circuit's evaluation. Therefore, with regard to this issue, a final determination

11   of which UNEs must remain connected and functional, as well as the prices for

12   those combinations, will depend upon the outcome of further proceedings

13   before the FCC and the Courts.

14

15   The Supreme Court specifically recognized the linkage between Rule

16   51.315(b) and the list of UNEs. In its discussion of the legality of Rule

17   51.315(b), the Court stated: "As was the case for the all-elements rule, our

18   remand of Rule 319 [i.e., requiring application of the "necessary" and "impair"

19   standards] may render the incumbents' concern on this score academic." (525

20   U.S. __, 142 L. Ed. 2d 834, 858). This linkage should not be ignored by

21   requiring the provision of services which are allegedly pre-existing

22   combinations of UNEs before the UNEs themselves are defined.

23

24   BellSouth is cooperating during this interim period by making numerous

25   capabilities available to ALECs. It would be unreasonable to penalize

8

1   BellSouth for its cooperative efforts by invoking a combination requirement at

2   this time. For the reasons outlined above, BellSouth proposes that all requests

3   for combinations be negotiated between the parties until the FCC's final and

4   nonappealable pricing and UNE rules require different treatment. Should the

5   Commission decline to adopt BellSouth's proposal on the provision of

6   combinations while the final rules are still uncertain, the Commission should

7   allow BellSouth to assess combination charges in order to avoid arbitrage of

8   the tariffed service rates with the UNE rates. Such charges are permissible

9   under the Act and are necessary to retain sound pricing.

10

11   Q.   PLEASE FURTHER DESCRIBE WHY THE COMMISSION SHOULD

12   WAIT ON ACTION BY THE FCC BEFORE SPECIFYING WHICH UNE

13   COMBINATIONS MUST BE OFFERED.

14

15   A.   The impact of the Supreme Court's decision is such that, for the moment, no

16   one knows for certain exactly what network elements must be made available

17   to competing carriers. Even though the Eighth Circuit has simply reinstated

18   the FCC's Rule 51.315(b) prohibiting ILECs from separating already-

19   combined network elements before leasing them to competitors, that rule has

20   no meaning without a determination of what elements meet the "necessary"

21   and "impair" standards under the Act. The Supreme Court's vacating of FCC

22   Rule 51.319 was based on the FCC's failure to apply those standards in

23   deciding which UNEs were required. In short, there is no reasonable way for

24   this Commission to mandate combinations of network elements unless and

25   until it is clear what those elements are.

9

1

2   Q.   IS BELLSOUTH WILLING TO OFFER NETWORK ELEMENTS ON AN

3   UNBUNDLED BASIS BEFORE THE FCC READDRESSES RULE 51.319?

4

5   A.   Yes. BellSouth still has obligations under the Act that BellSouth will continue

6   to meet. BellSouth will continue to offer any individual UNE currently offered

7   until Rule 51.319 is resolved. However, BellSouth will not offer combinations

8   that replicate end user retail or access services at the sum of the UNE prices.

9   Such action would cannibalize revenue streams for other services. BellSouth

10   does not believe such action was intended by the Act, and BellSouth would

11   certainly not voluntarily provide such combinations at UNE prices. However,

12   as explained earlier, BellSouth is willing to provide combinations for certain

13   functions upon execution of a voluntary commercial agreement that is not

14   subject to the requirements of the Act.

15

16   Q.   WHAT HAS THIS COMMISSION PREVIOUSLY DECIDED IN REGARD

17   TO UNE PRICING?

18

19   A.   Rates for numerous UNEs included in the vacated Rule 51.319 were ordered

20   by this Commission in its December 31, 1996 Order No. PSC-96-1579-FOF-

21   TP, Docket Nos. 960833-TP, 960846-TP, and 960916-TP ("December 31,

22   1996 Order") and subsequently in its April 29, 1998 Order No. PSC-98-0604-

23   FOF-TP, Docket Nos. 960757-TP, 960833-TP, and 960846-TP ("April 29,

24   1998 Order"). In its December 31, 1996 Order, at page 22, this Commission

25   determined "that the appropriate cost methodology to determine the prices for

1   unbundled elements is an approximation of Total Service Long Run

2   Incremental Cost (TSLRIC)."

3

4   Then, on page 32, the Commission found that "BellSouth's cost studies are

5   appropriate because they approximate TSLRIC cost studies and reflect

6   BellSouth's efficient forward-looking costs." Finally, on page 33, the

7   Commission stated that "we find it appropriate to set permanent rates based on

8   BellSouth's TSLRIC cost studies. The rates cover BellSouth's TSLRIC costs

9   and provide some contribution toward joint and common costs."

10   Subsequently, in the April 29, 1998 Order, the Commission established

11   additional recurring and nonrecurring UNE rates, also covering BellSouth's

12   TSLRIC costs plus some contribution toward joint and common costs.

13

14 Q.   WHY DOES BELLSOUTH BELIEVE THAT THE RATES FOR UNEs

15   PREVIOUSLY ORDERED BY THIS COMMISSION ARE APPROPRIATE?

16

17 A.   BellSouth's cost studies are generic in that they determine the costs to

18   BellSouth of providing UNEs to any requesting carrier. These costs do not

19   vary, whether it is AT&T or ITC^DeltaCom which is requesting the element.

20   Therefore, the costs that this Commission has already used to establish rates

21   for AT&T, MCI, and other ALECs should be the same for ITC^DeltaCom or

22   for any other ALEC.

23

24   As previously discussed, the final requirements for pricing are unknown until

25   the Eighth Circuit makes its decision. For this interim period, the most

1   reasonable course is to continue to apply rates that this Commission has

2   already found to be just, reasonable, and cost-based as required by the Act.

3

4   Q. PLEASE EXPLAIN THE INFORMATION CONTAINED IN YOUR

5   EXHIBIT AJV-1.

6

7   A. Only the rates for those capabilities which ITC^DeltaCom expressly raised as

8   an issue in its Petition for Arbitration are included in Exhibit AJV-1 attached to

9   my testimony. The source of the rate is generally denoted by the date of the

10   Commission's Orders in the arbitration proceedings ("4/29/98 Order" or

11   "12/31/96 Order"). There are certain elements requested by ITC^DeltaCom in

12   its Petition, for which this Commission has not previously approved rates. The

13   term "Cost Study" is used to denote the rates that are being proposed for such

14   elements, based on the new cost studies that have been filed in this proceeding.

15

16   Finally, in order for BellSouth to meet the requirements of the FCC's recent

17   Advanced Services Order as it relates to the provision of collocation,

18   BellSouth will file with this Commission a complete cost study for Security

19   Access Systems that will be conducted using the cost methodology and inputs

20   specified by this Commission in its April 29, 1998 Order. In the meantime,

21   BellSouth proposes that the appropriate rate for Security Access Systems is the

22   rate for "Physical Collocation – Security Access System - New Access Card

23   Activation, per request – 5 cards", as approved by this Commission in its April

24   29, 1998 Order. This approved rate is included in Exhibit AJV-1, attached to

25   my testimony.

1

2   *Issue 1(a): Should BellSouth be required to comply with the performance measures*

3   *and guarantees for pre-ordering/ordering, resale, and unbundled network elements*

4   *("UNEs"), provisioning, maintenance, interim number portability and local number*

5   *portability, collocation, coordinated conversion and the bona fide request processes*

6   *as set forth fully in Attachment 10 of Exhibit A of this Petition?*

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1 Q. WHAT IS BELLSOUTH'S POSITION REGARDING ATTACHMENT 10

2   OF EXHIBIT A OF ITC^DELTACOM'S PETITION?

3

4 A. The provisions set forth in ITC^DeltaCom's Attachment 10 should not be

5   required. BellSouth has taken very seriously the FCC's request for "clear and

6   precise" measurements by which ALECs and regulators can confirm

7   nondiscriminatory provisioning of network facilities and services. Ameritech-

8   Michigan Order, 12 FCC Rcd at 20655-56, ¶ 209. Working with the State

9   Commissions and ALECs, BellSouth has developed a comprehensive set of

10   Service Quality Measurements ("SQMs") covering nine separate categories:

11   {1) access to OSS for pre-ordering and ordering; (2) ordering; (3)

12   provisioning; (4) maintenance and repair; (5) billing; (6) operator services and

13   directory assistance; (7) E911; (8) local interconnection trunk group blockage;

14   and (9) collocation. Rather than attempting to negotiate different performance

15   measurements in the various individual interconnection agreements for each

16   ALEC doing business in BellSouth's region, BellSouth is committed to

17   delivering the BellSouth SQMs equally to all ALECs.

18

19   These measurements, along with the raw data provided to ITC^DeltaCom,

20   would allow ITC^DeltaCom to monitor BellSouth's performance and to verify

21   that services are being provided at parity with BellSouth and with other

22   ALECs. BellSouth's SQMs are summarized in the following table:

23

13

TABLE A

BELLSOUTH
SERVICE QUALITY MEASUREMENTS

CATEGORY	MEASUREMENTS
Pre-Ordering and Ordering OSS	1. Average OSS Response Interval 2. OSS Interface Availability
Ordering	1. Percent Flow-through Service Requests 2. Percent Rejected Service Requests 3. Reject Interval 4. Firm Order Confirmation Timeliness 5. Speed of Answer in Ordering Center
Provisioning	1. Average Completion Interval 2. Order Completion Interval Distribution 3. Held Order Interval Distribution and Mean Interval 4. Percent Missed Installation Appointments 5. Percent Provisioning Troubles w/in 30 days 6. Coordinated Customer Conversions 7. Average Completion Notice Interval
Maintenance & Repair	1. OSS Interface Availability 2. Average OSS Response Interval 3. Average Answer Time – Repair 4. Missed Repair Appointments 5. Customer Trouble Report Rate 6. Maintenance Average Duration 7. Percent Repeat Troubles w/in 30 days 8. Out of Service >24 Hours
Billing	1. Invoice Accuracy 2. Invoice Timeliness 3. Usage Data Delivery Accuracy 4. Usage Data Delivery Timeliness and Completeness
Operator Services & Directory Assistance	1. Average Time to Answer 2. Percent Answered within "X" Seconds
E911	1. Timeliness 2. Accuracy
Trunk Group Performance	1. Comparative Trunk Group Service Summary 2. Trunk Group Service Report 3. Trunk Group Service Detail
Collocation	1. Average Response Time 2. Average Arrangement Time 3. Percentage of Due Dates Missed

2
3
4
5

1 Q. SHOULD BELLSOUTH BE REQUIRED TO PAY PENALTIES FOR

2   FAILURE TO MEET SERVICE QUALITY MEASUREMENTS?

3

4 A. No. ITC^DeltaCom apparently believes that performance measurements can

5   only be enforced through penalties. However, penalties are never appropriate

6   as a contractual remedy and should not be imposed by this Commission. The

7   issue of so called "guarantees", a.k.a. penalties or liquidated damages, is not an

8   appropriate issue for arbitration. Although I am not a lawyer, it is my

9   understanding that State Commissions lack the statutory authority to award or

10   order penalties or liquidated damages. Thus, this Commission has no authority

11   to award the relief ITC^DeltaCom seeks. Furthermore, this Commission has

12   already addressed this issue in its December 31, 1996 Order at pages 74-75,

13   where it stated as follows: "We conclude that we should limit our

14   consideration in this arbitration proceeding to the items enumerated to be

15   arbitrated in Sections 251 and 252 of the Act, and matters necessary to

16   implement those items. A liquidated damages provision does not meet that

17   standard. The Act does not require parties to include in their agreements any

18   particular method to resolve disputes. Further, it is not appropriate for us to

19   arbitrate a liquidated damages provision under state law. If we did, we would

20   be, in effect, awarding damages to one party for a breach of contract. We lack

21   the authority to award money damages. ... If we cannot award money

22   damages directly, we cannot do so indirectly by imposing a liquidated damages

23   arrangement on the parties."

24

15

1   Even if a guarantee, penalty or liquidated damage award could be arbitrated,

2   such award is completely unnecessary. State law and State and Federal

3   Commission procedures are available, and perfectly adequate, to address any

4   breach of contract situation should it arise. The SQMs that BellSouth has

5   proposed are fully enforceable through Commission complaints in the event of

6   BellSouth's failure to meet such measurements.

7

8   BellSouth is currently working with the FCC to finalize a BellSouth proposal

9   for self-effectuating enforcement measures. This is a voluntary proposal made

10   by BellSouth which would take effect on a state-by-state basis concurrent with

11   approval for BellSouth to enter into long distance in each state and subject to

12   acceptance by the FCC. This proposal should not, however, be interpreted in

13   any way as BellSouth's admission that either this Commission or the FCC has

14   the authority to impose self-executing penalties or liquidated damages without

15   BellSouth's voluntary agreement.

16

17   *Issue 2: [ITC^DeltaCom No. 1(b)] Should BellSouth be required to waive any*

18   *nonrecurring charges when it misses a due date?*

19

20   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

21

22   A.   A requirement obligating BellSouth to waive nonrecurring charges when it

23   misses a due date would be a penalty or liquidated damages provision. As

24   already discussed in 1(a) above, BellSouth cannot be required to commit to

25   such penalties or liquidated damages. Furthermore, from time to time, both

1   parties may have reasonable circumstances which might cause a delay in the

2   schedule. There is no mechanism in place to track all delays, and who is

3   responsible. Therefore, a provision for a waiver in any instance is not

4   appropriate to be included in the interconnection agreement.

5

6   *Issue 3(a): [ITC^DeltaCom No. 2] What is the definition of parity?*

7

8   Q.   WHAT IS BELLSOUTH'S RESPONSE TO THIS ISSUE?

9

10   A.   The FCC has defined parity to mean that UNEs are provided in a manner that

11   gives an efficient ALEC a meaningful opportunity to compete. BellSouth

12   believes that no further definition of "parity" is necessary.

13

14   *Issue 3(b): Pursuant to this definition, should BellSouth be required to provide the*

15   *following: (1) Operational Support Systems ("OSS"), (2) UNEs, (3) White Page*

16   *Listing, (4) Access to Numbering Resources, (5) [ITC^DeltaCom No. 2(a)(iv)] An*

17   *unbundled loop using Integrated Digital Loop Carrier (IDLC) technology, (6)*

18   *[ITC^DeltaCom No. 2(a)(v)] Interconnection, (7) [ITC^DeltaCom No. 2(a)(vii)]*

19   *Service intervals on winbacks, (8) [ITC^DeltaCom No. 2(b)(i)] Priority guidelines*

20   *for repair and maintenance and UNE provisioning; and (9) [ITC^DeltaCom No.*

21   *2(d)] White Page Listings to independent third party publishers?*

22

23   Q.   WHICH PARTS OF THE ABOVE ISSUE ARE YOU ADDRESSING?

24

17

1 A. My testimony addresses sub-parts (2), (6), (7) and (9). Sub-parts (1) and (3)

2 are addressed in the testimony of Ron Pate; sub-parts (4), (5), and (8) are

3 addressed in the testimony of Keith Milner. It is BellSouth's understanding

4 that sub-parts (6), (7) and (9) have been resolved by the parties; however,

5 BellSouth reserves the right to file testimony on these issues, should they be

6 further disputed.

7

8 *Issue 3(b)(2): [ITC^DeltaCom No. 2] Pursuant to the definition of parity, should*

9 *BellSouth be required to provide UNEs?*

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A. BellSouth is obligated, by the Act, to provide ITC^DeltaCom and any other

14 ALEC with nondiscriminatory access to unbundled network elements.

15 BellSouth complies with its obligations under the Act and FCC orders to

16 provide services to ALECs in a non-discriminatory manner. The Commission

17 should reject ITC^DeltaCom's apparent request to somehow have this

18 Commission impose an additional requirement, albeit totally unnecessary, on

19 BellSouth different than the express language of the Act or the FCC's rules.

20

21 Q. WHAT IS YOUR UNDERSTANDING OF ITC^DELTACOM'S CLAIM

22 THAT BELLSOUTH IS NOT OFFERING SERVICES AT PARITY?

23

24 A. ITC^DeltaCom is requesting implementation of an impossible circumstance,

25 not parity. ITC^DeltaCom wants to require BellSouth to provide UNEs to

1   ITC^DeltaCom on the same terms that BellSouth provides services to its retail

2   customers. This is impossible, because the provision of UNEs is not the same

3   as the provision of retail service. BellSouth does not provide UNEs to itself or

4   to its retail customers. Under these circumstances, the FCC has defined parity

5   to mean that UNEs are provided in a manner that gives an efficient ALEC a

6   meaningful opportunity to compete. This is the standard that should be

7   adopted, and the previously discussed SQM will document whether BellSouth

8   is meeting this standard.

9

10   *Issue 3(b)(6): [ITC^DeltaCom No. 2(a)(v)] Pursuant to the definition of parity,*

11   *should BellSouth be required to provide Interconnection?*

12

13   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

14

15   A.   It is BellSouth's understanding that this issue has been resolved by the parties.

16   However, BellSouth reserves the right to file testimony on this issue, should it

17   be further disputed.

18

19   *Issue 3(b)(7): [ITC^DeltaCom No. 2(a)(vii)] Pursuant to the definition of parity,*

20   *should BellSouth be required to provide service levels on winbacks?*

21

22   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

23

1   A.   It is BellSouth's understanding that this issue has been resolved by the parties.

2   However, BellSouth reserves the right to file testimony on this issue, should it

3   be further disputed.

4

5   *Issue 3(b)(9): [ITC^DeltaCom No. 2(d)] Pursuant to the definition of parity, should*

6   *BellSouth be required to provide White Page Listings to independent third party*

7   *publishers?*

8

9   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

10

11   A.   Under Section 222(e) of the Act, BellSouth (as well as all other carriers) is

12   required to provide White pages directory listings for customers of the other

13   carrier's telephone exchange service, and BellSouth does so. There is no

14   requirement that BellSouth provide ITC^DeltaCom's White Page Listings to

15   independent third party publishers. ITC^DeltaCom should provide its own

16   listings to third parties if it desires third parties to have them.

17

18   It is BellSouth's understanding that this issue has been resolved by the parties.

19   However, BellSouth reserves the right to file testimony on this issue, should it

20   be further disputed.

21

22   *Issue 6: [ITC^DeltaCom No. 2(a)(ii)] Should BellSouth be required to provide*

23   *changes to its business rules and guidelines regarding resale and UNEs at least 45*

24   *days in advance of such changes being implemented? If so, how?*

25

1 Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

2

3 A.   BellSouth should provide advance notice of changes in its business rules and

4   guidelines, but there is, and should be, no requirement that such notice be

5   given a specified number of days in advance. However, as a matter of

6   courtesy, BellSouth already posts changes to its business rules and guidelines

7   regarding resale and UNEs on an easily accessible web page. As a general

8   policy, BellSouth makes a good faith effort to post all OSS-related

9   notifications thirty (30) days prior to the implementation of the change or rule;

10   however, there may be circumstances in which the 30-day timeframe is not

11   met. BellSouth has no legal or mandated obligation to provide this notification

12   30 days in advance (or 45 days in advance). The current process is appropriate

13   because it strikes the balance between BellSouth's need for flexibility to

14   modify its processes and the ALEC's need to have advance notice of such

15   modification. A forty-five day advance notice requirement would

16   unnecessarily burden BellSouth's ability to change and improve its processes.

17   This requirement would prevent any changes from being implemented on less

18   than 45 day notice, even if it were practical and desirable to do so.

19

20   ITC^DeltaCom further requested that BellSouth provide two free seats in

21   training classes and a seat for each new hire. This request is entirely

22   unreasonable. Currently, BellSouth voluntarily offers one free seat for each

23   ALEC in OSS-related courses and will be implementing a web based training

24   system for certain courses in the fall. There is no obligation to do this. If an

25   ALEC determines that it needs additional "seats" in training classes, it is able

21

1   to register its employees in that class for a fee. Requiring BellSouth to provide

2   service at no charge is inappropriate.

3

4   *Issue 7: [ITC^DeltaCom No. 2(b)(ii)] Until the Commission makes a decision*

5   *regarding UNEs and UNE combinations, should BellSouth be required to continue*

6   *providing those UNEs and combinations that it is currently providing to*

7   *ITC^DeltaCom under the interconnection agreement previously approved by this*

8   *Commission?*

9

10   Q.   IS BELLSOUTH OBLIGATED TO CONTINUE PROVIDING

11   INDIVIDUAL UNEs THAT IT IS CURRENTLY PROVIDING TO

12   ITC^DELTACOM?

13

14   A.   BellSouth still has obligations under the Act to offer access to its network on

15   an unbundled basis. BellSouth's voluntary commitment to the FCC that, until

16   Rule 51.319 is resolved, BellSouth will continue to offer as a UNE any

17   individual network element currently offered as a UNE exceeds its obligations

18   under the Act. ITC^DeltaCom has asked for continued access to those UNEs

19   which it is using to provide service to customers today. BellSouth has agreed

20   to continue to provide any individual UNE currently offered, but under the

21   condition that the network elements offered may change once the FCC

22   completes its current proceeding and resolves Rule 51.319.

23

24   Q.   IS BELLSOUTH OBLIGATED TO COMBINE UNEs FOR ALECs?

25

1 A. No. It is BellSouth's understanding that ITC^DeltaCom wants BellSouth to

2   provide UNE combinations at the sum of the individual elements. BellSouth's

3   commitment to provide individual UNEs did not extend generally to UNE

4   combinations. As previously discussed, in October, 1997, the Eighth Circuit

5   court vacated the FCC's rules (§§51.315(c)-(f)) that attempted to impose a

6   requirement to combine UNEs. The Eighth Circuit's decision vacating these

7   rules was not challenged by any party before the Supreme Court. Because

8   those rules are not in effect, BellSouth is not required to combine network

9   elements on behalf of ALECs.

10

11 Q. NOTWITHSTANDING ITS LACK OF OBLIGATION, HAS BELLSOUTH

12   OFFERED TO PROVIDE CERTAIN COMBINATIONS OF NETWORK

13   ELEMENTS?

14

15 A. Yes. BellSouth is willing to combine certain elements upon execution of a

16   voluntary commercial agreement that is not subject to the Act. Although

17   BellSouth does not generally offer to combine network elements without a

18   voluntary commercial agreement, there are certain combinations that BellSouth

19   will provide without a commercial agreement. BellSouth provides the

20   following combinations of network elements at the sum of the UNE prices:

21   • Loop and cross connect

22   • Port and cross connect

23   • Port and common transport

24   • Port and cross connect and common transport

25   • Loop with loop channelization (inside central office)

23

1 • Loop and loop channelization (inside central office) and Cross

2 Connect

3

4 Although BellSouth is not required to combine UNEs, BellSouth has

5 voluntarily offered to provide the above specified combinations at the sum of

6 the UNE prices. Until Rule 51.319 is finalized, the list of UNEs that will be

7 required is still unknown. Requiring BellSouth to combine UNEs was not

8 intended by the Act, and BellSouth would certainly not voluntarily provide all

9 combinations at UNE prices. However, as explained earlier, BellSouth is

10 willing to provide combinations of certain functions upon execution of a

11 voluntary commercial agreement that is not subject to the requirements of the

12 Act.

13

14 Q. HOW HAS THIS COMMISSION ADDRESSED PRICING FOR

15 COMBINATIONS OF UNEs?

16

17 A. This Commission has stated in its December 31, 1996 Order, at page 37: "We

18 note that we are concerned with the FCC's interpretation of Section 251(c)(3)

19 of the Act. Specifically, we are concerned that the FCC's interpretation could

20 result in the resale rates we set being circumvented if the price of the same

21 service created by combining unbundled elements is lower." Further, this

22 Commission stated in its Order No. PSC-97-0298-FOF-TP, Final Order on

23 Motions for Reconsideration and Amending Order No. PSC-96-1579-FOF-TP,

24 dated March 19, 1997, page 8: "Nevertheless, we note that we would be very

25 concerned if recombining network elements to recreate a service could be used

1   to undercut the resale price of the service." This Commission has the same

2   concerns as BellSouth. Combinations of UNEs should not be permitted to

3   simply undercut resale rates.

4

5   *Issue 8: [ITC^DeltaCom No. 2(b)(iii)] a) Should BellSouth be required to provide*

6   *to ITC^DeltaCom extended loops or the loop/port combination? b) If so, what*

7   *would the rates be?*

8

9   Q.   WHAT IS BELLSOUTH'S POSITION ON PROVISION OF EXTENDED

10   LOOPS?

11

12   A.   ITC^DeltaCom has requested what it terms an "extended loop" or a local loop

13   combined with dedicated transport. There is no question that an extended loop

14   would constitute a combination of a local loop and dedicated transport. Except

15   through voluntary agreements, BellSouth is not required to combine individual

16   UNEs such as the loop and dedicated transport. Such arrangements are not

17   subject to the Telecommunications Act. In addition, as stated earlier, there is

18   no reasonable way for this Commission to mandate provision of currently

19   combined network elements unless and until it is clear what those elements are.

20   This identification will not be known until the FCC reissues its UNE rules in

21   accordance with the Supreme Court's decision. Thus, this Commission should

22   not order that such an obligation be imposed in the interconnection agreement.

23

24   Moreover, pricing such combinations at UNE prices would be poor public

25   policy, as this Commission has already agreed. End user customers would be

25

1   required to subsidize these opportunities for price arbitrage when UNE

2   combinations replicate private line and/or special access services. However, as

3   previously stated, BellSouth is willing to combine certain network elements

4   upon execution of a voluntary commercial agreement that is not subject to the

5   requirements of the Act.

6

7 Q. WHAT IS BELLSOUTH'S POSITION REGARDING PROVISION OF

8   LOOP/PORT COMBINATIONS?

9

10 A. As previously discussed, BellSouth is not required to provide loop/port

11   combinations to ITC^DeltaCom, and such a requirement would be poor public

12   policy. Likewise, the combination of the local loop and the switch port as

13   requested by ITC^DeltaCom would replicate local exchange service and create

14   an opportunity for price arbitrage. However, as previously stated, BellSouth is

15   willing to perform certain functions upon execution of a voluntary commercial

16   agreement that is not subject to the requirements of the Act.

17

18 *Issue 13: [ITC^DeltaCom No. 2(c)(iii)]   Should SL1 orders without order*

19 *coordination be specified by BellSouth with an a.m. or p.m. designation?*

20

21 Q. IS BELLSOUTH WILLING TO SPECIFY AN A.M. OR P.M.

22   DESIGNATION ON SL1 ORDERS WITHOUT ORDER COORDINATION?

23

24 A. Not in every case. If access to the customer's premises is not required, or if

25   access is required but the customer is indifferent as to time of day, BellSouth

1   should not be required to designate A.M. or P.M. installation. From a business

2   management standpoint, BellSouth should not be required to tie up resources,

3   and incur additional costs, necessary to meet scheduling restrictions when the

4   customer is indifferent as to timing. However, if access to the customer's

5   premises is required, and the customer requests an A.M. or P.M. designation,

6   BellSouth is willing to comply. This treatment is comparable to the scheduling

7   that BellSouth offers its retail customers. BellSouth is willing to discuss

8   language which would distinguish requirements under the different situations

9   as explained above.

10

11   *Issue 14: [ITC^DeltaCom No. 2(c)(iv)]   Should the party responsible for delaying a*

12   *cutover also be responsible for the other party's reasonable labor costs?*

13

14   Q.   DOES BELLSOUTH AGREE WITH ITC^DELTACOM ON THIS ISSUE?

15

16   A.   No. When problems in loop cutovers arise, either party may have

17   circumstances, not necessarily within their control, that cause the cutover to be

18   delayed. To track costs and blame for each instance would be a burdensome

19   and unnecessary business practice. BellSouth has found, after investigating

20   such circumstances, that it is frequently unclear who is at fault; and, in many

21   cases, both parties contributed to the delay. A provision for payment of labor

22   costs by the party allegedly causing the delay should not be included in the

23   interconnection agreement.

24

1 *Issue 16: [ITC^DeltaCom No. 2(c)(vi)] Should each party be responsible for the*

2 *repair charges for troubles caused or originated outside of its network? If so,*

3 *should each party reimburse the other for any additional costs incurred for isolating*

4 *the trouble to the other's network?*

5

6 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

7

8 A. BellSouth has always maintained that the party responsible for repairs should

9 bear the costs associated with those repairs. In essence, when ITC^DeltaCom

10 purchases an unbundled loop from BellSouth, it is leasing "exclusive access"

11 to that element for a specified period of time, and the price ITC^DeltaCom

12 pays for the loop includes the cost of maintenance and repair. FCC First

13 Report and Order ¶ 258, CC Docket No. 96-98. To the extent the loop requires

14 maintenance or repair by BellSouth, there is no additional charge to

15 ITC^DeltaCom. However, ITC^DeltaCom should bear the responsibility for

16 repairs on its own facilities, whether owned or leased.

17

18 Further, ITC^DeltaCom asserts that "to the extent such trouble was caused by

19 a third party, BellSouth should seek reimbursement from such third party".

20 BellSouth's position is that if ITC^DeltaCom utilizes a portion of a third

21 party's network, then ITC^DeltaCom should bear the costs associated with

22 isolating any trouble with that third party. BellSouth should not incur the costs

23 associated with the repairs to a third party's network, particularly one engaged

24 by ITC^DeltaCom.

25

1   Q.   SHOULD ITC^DELTACOM BE RESPONSIBLE FOR LOCATING

2   TROUBLES WITHIN ITS FACILITIES, INCLUDING LOOPS LEASED

3   FROM BELLSOUTH?

4

5   A.   Yes. ITC^DeltaCom should be responsible for the initial trouble report

6   isolation and testing. When determined by ITC^DeltaCom that the trouble

7   resides in BellSouth's network, BellSouth will assume repair responsibilities

8   via a trouble report. BellSouth will perform necessary isolation/testing

9   functions, process, and resolve the maintenance condition.

10

11   If ITC^Deltacom reports a trouble on an SL1 loop and no trouble is found,

12   BellSouth will charge ITC^DeltaCom for any dispatching and testing (both

13   inside and outside the central office) required by BellSouth in order to confirm

14   the loop's working status. If a trouble is reported on an SL1 loop and it is

15   proven to be a BellSouth trouble, then BellSouth absorbs the costs associated

16   with the repair. For SL2 loops, if no trouble is found, BellSouth will charge

17   ITC^DeltaCom for any dispatching and testing performed outside the central

18   office. The rates charged for SL2 loops cover the costs of dispatching and

19   testing of troubles inside the central office.

20

21   Q.   SHOULD BELLSOUTH REIMBURSE ITC^DELTACOM FOR ANY

22   ADDITIONAL COSTS ITC^DELTACOM INCURS IN ISOLATING THE

23   TROUBLE TO BELLSOUTH'S NETWORK?

24

29

1   A.   No. Each party should be responsible for its own costs incurred in determining

2   the cause of trouble with respect to its own network. BellSouth should not

3   reimburse ITC^DeltaCom for any additional costs ITC^DeltaCom incurs in

4   isolating the trouble to BellSouth's network. Likewise, if a Bellsouth end user

5   experiences trouble calling an ITC^DeltaCom customer, BellSouth does not

6   bill ITC^DeltaCom for costs incurred to isolate a trouble to ITC^DeltaCom's

7   network.

8

9   *Issue 18: [ITC^DeltaCom No. 2(c)(ix)] If a customer orders a loop which requires*

10   *special construction charges be paid for by ITC^DeltaCom, and BellSouth reuses*

11   *the same facilities to provide service to the customer for itself or on behalf of*

12   *another CLEC, should BellSouth be required to refund to ITC^DeltaCom the*

13   *amount ITC^DeltaCom paid to BellSouth for Special Construction for that*

14   *customer?*

15

16   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

17

18   A.   It is BellSouth's understanding that this issue has been resolved; however,

19   BellSouth reserves the right to file testimony on this issue, should it be further

20   disputed.

21

22   *Issue 19: [ITC^DeltaCom No. 2(c)(x)] Under what conditions, if any, should*

23   *BellSouth be required to reimburse any costs incurred by ITC^DeltaCom to*

24   *accommodate modifications made by BellSouth to an order after sending a firm*

25   *order confirmation ("FOC")?*

1

2 Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

3

4 A.   BellSouth would have no reason to initiate an order modification after an FOC

5   has been sent. Therefore, ITC^DeltaCom's proposal should not be included in

6   the interconnection agreement.

7

8 *Issue 20: [ITC^Deltacom No. 2(c)(xiv)] (a) Should BellSouth be required to*

9 *coordinate with ITC^DeltaCom 48 hours prior to the due date of a UNE*

10 *conversion? (b) If BellSouth delays the scheduled cutover date, should BellSouth*

11 *be required to waive the applicable non-recurring charges? (c) Should BellSouth*

12 *be required to perform dial tone tests at least 48 hours prior to the scheduled cutover*

13 *date?*

14

15 Q.   WHICH PARTS OF THIS ISSUE ARE YOU ADDRESSING?

16

17 A.   My testimony addresses part (b) of this issue. Please see the testimony of Mr.

18   Keith Milner for responses to (a) and (c).

19

20 Q.   (b) WHAT IS BELLSOUTH'S POSITION REGARDING WAIVER OF THE

21   APPLICABLE NON-RECURRING CHARGES IF BELLSOUTH DELAYS

22   THE SCHEDULED CUTOVER DATE?

23

24 A.   BellSouth is not required under the Act or the FCC rules to waive non-

25   recurring charges in such a situation. Both parties may have reasonable

31

1   circumstances which might cause a delay in the schedule. There is no

2   mechanism in place to track all delays, and who is responsible. Therefore, a

3   provision for a waiver in any instance is not appropriate to be included in the

4   interconnection agreement. As referenced in BellSouth's response to Issue 1,

5   this Commission stated in its December 31, 1996 Order, "The Act does not

6   require parties to include in their agreements any particular method to resolve

7   disputes. Further, it is not appropriate for us to arbitrate a liquidated damages

8   provision under state law." (page 74)

9

10   *Issue 23: [ITC^Deltacom No. 3]   Should BellSouth be required to pay reciprocal*

11   *compensation to ITC^DeltaCom for all calls that are properly routed over local*

12   *trunks, including calls to Internet Service Providers (ISPs)?*

13

14   Q.   WHAT IS BELLSOUTH'S POSITION REGARDING APPLICABILITY OF

15   RECIPROCAL COMPENSATION TO "ALL CALLS THAT ARE

16   PROPERLY ROUTED OVER LOCAL TRUNKS"?

17

18   A.   Reciprocal compensation is applicable to local traffic, not necessarily to all

19   traffic routed over "local" trunks. Specifically, FCC Rule 51.701 defines local

20   traffic to which reciprocal compensation is applicable as "telecommunications

21   traffic between a LEC and a telecommunications carrier other than a CMRS

22   provider that originates and terminates within a local service area established

23   by the state commission". "Local" trunks may actually carry access, or toll,

24   traffic in addition to local traffic.

25

1 Q. WHAT IS BELLSOUTH'S POSITION ON THE APPLICABILITY OF

2 RECIPROCAL COMPENSATION TO ISP-BOUND TRAFFIC?

3

4 A. Reciprocal compensation is not applicable to ISP-bound traffic. BellSouth's

5 position is that payment of reciprocal compensation for ISP-bound traffic is

6 inconsistent with the law and is not sound public policy. Further, BellSouth

7 believes that carriers are entitled to be compensated appropriately based on the

8 use of their network to transport and deliver traffic.

9

10 Q. IS THERE ANY REASON FOR THIS COMMISSION TO ADDRESS THIS

11 ISSUE AT THIS TIME?

12

13 A. No. The FCC's recent Declaratory Ruling, FCC 99-38 in CC Docket Nos. 96-

14 98 and 99-68, released February 26, 1999 ("Declaratory Ruling"), clearly

15 established that the FCC has, will retain, and will exercise jurisdiction over this

16 traffic. As a practical matter, it appears fruitless for state commissions to deal

17 with this issue at this time. Although the FCC appears to temporarily give

18 states the authority to create an interim compensation arrangement until the

19 FCC establishes rules, the FCC's authority to confer this ability on the states is

20 being challenged in court. Consequently, states could find that they do not

21 have the authority to create even an interim compensation arrangement. Even

22 if the states do have the authority, such authority is valid only until the FCC

23 completes its rulemaking on the subject. Therefore, any effort devoted by this

24 Commission to establishing an interim compensation arrangement for ISP-

25 bound traffic would likely be wasted effort.

33

1

2 Q.   SHOULD THE COMMISSION ARBITRATE THIS ISSUE?

3

4 A.   No. BellSouth recommends this Commission not address this issue.

5   Compensation for ISP traffic is not subject to a Section 252 arbitration.

6   Reciprocal compensation in the Act is limited to "local traffic". As the FCC's

7   Declaratory Ruling makes clear, traffic to ISPs is interstate in nature. Thus, it

8   is not subsumed in the Act's reciprocal compensation obligations and should

9   not be arbitrated. Although the FCC's Declaratory Ruling attempts to

10   authorize states to arbitrate the issue of inter-carrier compensation for ISP-

11   bound traffic, the FCC cannot simply expand the scope of Section 252 to cover

12   such arbitrations. Consequently, compensation for such traffic is not subject to

13   arbitration under Section 252. Further, payment of such compensation is not a

14   requirement under Section 271.

15

16 Q.   PLEASE EXPLAIN YOUR STATEMENT THAT COMPENSATION FOR

17   TRAFFIC BETWEEN END USERS AND ISPs IS NOT SUBJECT TO

18   ARBITRATION UNDER SECTION 252.

19

20 A.   Only local traffic is subject to reciprocal compensation obligations. As

21   previously confirmed by the FCC's Declaratory Ruling, ISP-bound traffic is

22   jurisdictionally interstate; therefore, reciprocal compensation for ISP-bound

23   traffic under Section 251 is not applicable. Consequently, compensation for

24   such traffic is not subject to arbitration under Section 252. Further, payment of

25   such compensation is not a requirement under Section 271.

34

1

2 Q.   WHAT DOES BELLSOUTH RECOMMEND THIS COMMISSION DO

3   WITH RESPECT TO THE ISSUE OF RECIPROCAL COMPENSATION

4   FOR ISP-BOUND TRAFFIC?

5

6 A.   In the absence of a final ruling by the FCC, BellSouth proposes that the

7   Commission direct the parties to create a mechanism to track ISP-bound calls

8   originating on each parties' respective network on a going-forward basis.

9   Further, each party should agree to abide by the FCC's final and nonappealable

10   ruling on the issue of inter-carrier compensation for ISP calls. BellSouth

11   agrees to apply the intercarrier compensation mechanism established by a final

12   nonappealable order of the FCC retroactively from the date of the

13   Interconnection Agreement approved by this Commission, and the parties

14   would "true-up" any compensation that may be due for ISP-bound calls.

15

16 Q. HOW IS THE ISSUE THAT ITC^DELTACOM HAS RAISED DIFFERENT

17   FROM THE ISP ISSUES ALREADY ADDRESSED BY THIS

18   COMMISSION IN PREVIOUS PROCEEDINGS?

19

20 A. In previous proceedings, this Commission dealt with interpretation of language

21   in existing Interconnection Agreements. The issue at hand today deals with a

22   new Interconnection Agreement; therefore, any previous rulings on language

23   interpretation are irrelevant to this case. BellSouth notes, however, that its

24   position, which was confirmed by the FCC, has always been that calls to ISPs

1   were not local calls; thus, BellSouth never anticipated paying reciprocal

2   compensation on calls to ISPs.

3

4   Q.   HOW DO THE ACT AND THE FCC'S FIRST REPORT AND ORDER IN

5   CC DOCKET 96-98 ADDRESS RECIPROCAL COMPENSATION?

6

7   A.   Reciprocal compensation applies only when local traffic is terminated on either

8   party's network. One of the Act's basic interconnection rules is contained in

9   47 U.S.C. § 251(b)(5). That provision requires all local exchange carriers "to

10   establish reciprocal compensation arrangements for the transport and

11   termination of telecommunications." Section 251(b)(5)'s reciprocal

12   compensation duty arises, however, only in the case of local calls. In fact, in

13   its August 1996 Local Interconnection Order (CC Docket No. 96-98),

14   paragraph 1034, the FCC made it perfectly clear that reciprocal compensation

15   rules do not apply to interstate or interLATA traffic such as interexchange

16   traffic:

17

18   *We conclude that Section 251(b)(5), reciprocal compensation*

19   *obligation, should apply only to traffic that originates and terminates*

20   *within a local area assigned in the following paragraph. We find that*

21   *reciprocal compensation provisions of Section 251(b)(5) for transport*

22   *and termination of traffic do not apply to the transport and termination*

23   *of interstate or intrastate interexchange traffic.*

24

1   This interpretation is consistent with the Act, which establishes a reciprocal

2   compensation mechanism to encourage local competition.

3

4   Further, in Paragraph 1037 of that same Order, the FCC stated:

5

6   *We conclude that section 251(b)(5) obligations apply to all LECs in the*

7   *same state-defined local exchange areas, including neighboring*

8   *incumbent LECs that fit within this description.*

9

10   Therefore, since ISP-bound traffic is not local traffic it is not subject to the

11   reciprocal compensation obligations contained in Section 251 of the Act.

12

13 Q.   PLEASE FURTHER DISCUSS THE FCC'S RECENT (February 26, 1999)

14   DECLARATORY RULING.

15

16 A.   The FCC has once again confirmed that ISP-bound traffic is access service

17   subject to interstate jurisdiction and is not local traffic. In its Declaratory

18   Ruling, the FCC concluded that "ISP-bound traffic is non-local interstate

19   traffic." (fn 87)   The FCC noted in its decision that it traditionally has

20   determined the jurisdiction of calls by the end-to-end nature of the call. In

21   paragraph 12 of this same order, the FCC concluded "that the communications

22   at issue here do not terminate at the ISP's local server, as ALECs and ISPs

23   contend, but continue to the ultimate destination or destinations, specifically at

24   an Internet website that is often located in another state." Further, in paragraph

25   12 of its Declaratory Ruling, the FCC finds that "[a]s the Commission stated in

37

1 BellSouth MemoryCall, this Commission has jurisdiction over, and regulates

2 charges for, the local network when it is used in conjunction with the

3 origination and termination of interstate calls."

4

5 The FCC's decision makes plain that no part of an ISP-bound communication

6 terminates at the facilities of an ISP. Once it is understood that ISP-bound

7 traffic "terminates" only at distant websites, which are almost never in the

8 same exchange as the end-user, it is evident that these calls are not local.

9

10 Q. IS BELLSOUTH'S POSITION REGARDING JURISDICTION OF ISP

11   TRAFFIC CONSISTENT WITH THE FCC'S FINDINGS AND ORDERS?

12

13 A. Absolutely. BellSouth's position is supported by, and is consistent with, the

14   FCC's findings and Orders which state that for jurisdictional purposes, traffic

15   must be judged by its end-to end nature, and must not be judged by looking at

16   individual components of a call. Therefore, for purposes of determining

17   jurisdiction for ISP-bound traffic, the originating location and the final

18   termination must be looked at from end-to-end basis. BellSouth's position is

19   consistent with long-standing FCC precedent.

20

21 Q. PLEASE DESCRIBE IN MORE DETAIL THE TRAFFIC THAT IS

22   ELIGIBLE FOR RECIPROCAL COMPENSATION.

23

24 A. As I have previously stated, only local traffic is eligible for reciprocal

25   compensation. Exhibit AJV-2 to my testimony contains two diagrams. Both

1   of these diagrams illustrate local calls between end users. Diagram A

2   illustrates a typical local call where both ends of the call are handled by a

3   single carrier's network which, in this example, is an ILEC's network. In this

4   scenario, the ILEC receives a monthly fee from its end user to apply towards

5   the cost of that local call. For that payment, the ILEC provides the end user

6   with transport and termination of local calls throughout the local calling area.

7   End users typically do not pay for calls terminated to them. Importantly, in

8   this case, the end user is the ILEC's customer, which means that the end user

9   pays the ILEC revenue for the service.

10

11   By comparison, Diagram B illustrates a typical local call that is handled by two

12   carriers - one end of the call is handled by an ILEC, and an ALEC handles the

13   other end of the call. In this scenario, when the ILEC's end user makes a local

14   call to the ALEC's end user, the ILEC's end user is paying the ILEC the same

15   price for local exchange service as in Diagram A. The ILEC, however, is not

16   the provider of the entire network facilities used to transport and deliver the

17   local call. The ALEC is providing part of the facilities and is incurring a cost.

18   Since the end user is an ILEC customer, the ALEC has no one to charge for

19   that cost. As previously noted, end users do not typically pay for local calls

20   terminated to them, so the ALEC cannot be expected to charge its end user.

21   While the ILEC is receiving the same revenues as shown in Diagram A, its

22   costs are lower. Consequently, reciprocal compensation would be paid by the

23   ILEC to compensate the ALEC for terminating that local call over its network.

24   If the reciprocal compensation rate equals the ILECs cost, the ILEC is

25   indifferent to whether the ILEC or the ALEC completes the call.

1

2   Likewise, if an ALEC's end user completes a local call to an ILEC's end user,

3   the ALEC receives the payment for local exchange service from the end user,

4   and the ALEC pays the ILEC reciprocal compensation for the portion of the

5   ILEC's facilities used to terminate the local call. In accordance with the Act,

6   the purpose of reciprocal compensation is to ensure that each carrier involved

7   in carrying a local call is compensated for its portion of that call. The

8   following table contains a simple illustration of the application of reciprocal

9   compensation:

10

DIAGRAM A:	ILEC	ALEC
END USER REVENUE	$15	$0
SERVICE COST	($35)	$0
NET MARGIN	($20)	$0
DIAGRAM B:	ILEC	ALEC
END USER REVENUE	$15	$0
RECIPROCAL COMPENSATION	($2)	$2
SERVICE COST	($33)	($2)
NET MARGIN	($20)	$0

11

12   Q.   ARE ISP's CARRIERS?

13

14   A.   Yes. ISPs are carriers; hence, service provided to them is access service. This

15   simple fact eliminates any possible claim for reciprocal compensation. The

1   FCC has been very clear in its rulings that reciprocal compensation does not

2   apply on access service. Some cites from the FCC Declaratory Ruling clearly

3   establish this fact:

4   •   Paragraph 5: "Although the Commission has recognized that enhanced

5   service providers (ESPs), including ISPs, use interstate access services..."

6   •   Paragraph 5: "Thus, ESPs generally pay local business rates and

7   interstate subscriber line charges for their switched access connections..."

8   •   Paragraph 16: "The Commission traditionally has characterized the

9   link from an end user to an ESP as an interstate access service."

10   •   Paragraph 16: "That the Commission exempted ESPs from access

11   charges indicates its understanding that ESPs in fact use interstate access

12   service; otherwise, the exemption would not be necessary."

13   •   Paragraph 17: "The commission consistently has characterized ESPs as

14   'users of access service' but has treated them as end users for pricing

15   purposes."

16   (Emphasis added.)

17

18   Treating ISPs as carriers is not a recent creation of the FCC. From its

19   inception over 30 years ago, the FCC has regulated data carriers as interstate

20   carriers. These carriers were allowed to collect traffic at business rates. When

21   access charges were established in the early eighties, the FCC reconfirmed that

22   these carriers, i.e., ESPs/ISPs, were being provided access service, but

23   ESPs/ISPs received an exemption from regular access charges and were

24   allowed to continue collecting traffic for the price of business service.

25   Importantly, the FCC was clear that the service being provided was access

1   service, not local service. The business rate was simply the price charged for

2   the access service. This same arrangement was undisturbed by the Act and

3   was recently reconfirmed by the FCC in its Declaratory Ruling.

4

5   Q.   WHY IS THE FACT THAT ISPs ARE CARRIERS AND ARE

6   PURCHASING ACCESS SERVICE IMPORTANT?

7

8   A.   The fact that ISPs are carriers is important because carriers must pay the full

9   cost of the access service provided to them. The carrier, not the end user that

10   calls them, is the customer for access service. When an interexchange carrier

11   ("IXC") or an ISP purchases access service, it is the IXC or the ISP, not the

12   end user, who is the customer of the local exchange carrier ("LEC") for that

13   service. It is the IXC or the ISP who must pay the cost of the access service

14   provided to them. Since the IXC or the ISP (and not the end user) pays for

15   access service, the cost of the local network used to provide access service is

16   appropriately excluded from the cost of universal service. This arrangement is

17   based on the fact that the ISP or IXC is the retail provider of service to the end

18   user. The LEC provides an input (access service) that the ISP or IXC uses to

19   provide its retail service, e.g., internet or long distance service. Consequently,

20   the LEC's customer is the ISP or the IXC, not the end user; and the ISP or IXC

21   must pay the cost of the access service provided to them. The end user is a

22   customer of the ISP or IXC for calls directed to these carriers.

23

1　Q.　YOU STATE, AND THE FCC HAS CONFIRMED, THAT ISP-BOUND

2　　　　TRAFFIC IS JURISDICTIONALLY INTERSTATE. DOES THIS AFFECT

3　　　　THE ISP ACCESS CHARGE EXEMPTION?

4

5　A.　No. The FCC concluded in its Declaratory Ruling that its determination that

6　　　　ISP-bound traffic is interstate does not alter the current ISP exemption. ISPs

7　　　　continue to be permitted to access the public switched telecommunications

8　　　　network by paying basic business local exchange rates rather than by paying

9　　　　interstate switched access tariff rates. The FCC's decision to exempt ISPs

10　　　 from paying access charges for policy and political reasons in no way alters the

11　　　 fact that ISP-bound traffic is access traffic, not local traffic. The access charge

12　　　 exemption merely affects the price that an ISP pays for the access service. If

13　　　 the FCC had indeed concluded that ISP-bound traffic were local, there would

14　　　 be no need for the FCC to exempt that traffic from the access charge regime.

15　　　 Likewise, no decision regarding reciprocal compensation would affect this

16　　　 exemption.

17

18　　　 Exhibit AJV-3 attached to my testimony consists of two diagrams. Diagram C

19　　　 illustrates a typical interstate call originating on a LEC's network and delivered

20　　　 to an IXC's Point of Presence. As shown by this illustration, the LEC receives

21　　　 access charges from the IXC as compensation for use of the LEC's facilities to

22　　　 deliver the traffic to the IXC. The IXC bills the end user.

23

24　　　 Diagram D is different from Diagram C in only one respect. The IXC has been

25　　　 replaced by an ISP. The network used to transport ISP-bound traffic is exactly

1   the same network used to deliver traffic to IXCs. However, rather than

2   through receipt of normal switched access charges, the LEC is compensated

3   for the access service it provides to the ISP by the business rates it charges the

4   ISP. The important point is that both IXCs and ISPs receive the same service

5   and, although they are charged different prices, the prices they pay are

6   designed to cover the same costs. That cost is the full cost of providing service

7   to them.

8

9   Q.   WHAT DOES BELLSOUTH CONSIDER TO BE THE APPROPRIATE

10   COMPENSATION MECHANISM FOR ISP-BOUND TRAFFIC?

11

12   A.   In its Comments and Reply Comments to the FCC's Notice of Proposed

13   Rulemaking in CC Docket No. 99-68, In the Matter of Inter-Carrier

14   Compensation for ISP-Bound Traffic ("Inter-Carrier Compensation NPRM"),

15   BellSouth puts forth its proposal for the appropriate inter-carrier compensation

16   mechanism. (See Exhibit AJV-4) BellSouth's proposal is guided by and is

17   consistent with FCC precedent regarding inter-carrier compensation for jointly

18   provided interstate services. BellSouth's proposal recognizes, as does the

19   FCC, that the revenue source for ISP-bound traffic is derived from the service

20   provided to the ISP. (See In the Matter of Access Charge Reform, Price Cap

21   Performance Review for Local Exchange Carriers, Transport Rate Structure

22   and Pricing and End User Common Line Charges, CC Docket Nos. 96-262,94-

23   1, 91-213 and 95-72, First Report and Order,12 FCC Rcd 15982, 16133-16134

24   (1997)) Equally important, BellSouth's proposal ties the level of inter-carrier

1   compensation directly to the level of compensation that each carrier derives

2   from the jointly provided service.

3

4   Exhibit AJV-5 to my testimony consists of two diagrams illustrating the

5   consistency of compensating carriers for access traffic based on the revenue

6   that is derived from the jointly provided service. Diagram E illustrates a call

7   that originates on a LEC's network and is delivered to an IXC/ISP, and shows

8   that the IXC/ISP pays the LEC for access services to cover the cost of getting

9   the traffic to the IXC/ISP. Diagram F illustrates an IXC/ISP-bound call that

10   originates on a LEC's network and interconnects with another carrier's

11   network (ICO/ALEC) for routing of the call to the IXC/ISP. In this situation,

12   the IXC/ISP is the other carrier's customer. The revenue this other carrier

13   receives from the IXC/ISP for access services covers the cost of delivering the

14   traffic to the IXC/ISP.

15

16 Q.   PLEASE DESCRIBE HOW ITC^DELTACOM REQUESTS THAT IT BE

17   COMPENSATED FOR ISP-BOUND TRAFFIC.

18

19 A.   Exhibit AJV-6 to my testimony consists of a Diagram G which illustrates

20   ITC^DeltaCom's request that BellSouth pay reciprocal compensation for ISP-

21   bound traffic where the ISP is ITC^DeltaCom's customer. It is obvious from

22   this diagram that ITC^DeltaCom is simply attempting to augment the revenues

23   it receives from its ISP customer at the expense of BellSouth's end user

24   customers. In other words, paying ITC^DeltaCom reciprocal compensation for

25   ISP-bound traffic would result in BellSouth's end user customers subsidizing

1   ITC^DeltaCom's operations. Indeed, the FCC has recognized that the source

2   of revenue for transporting ISP-bound traffic is the access service charges that

3   ISPs pay. ITC^DeltaCom receives this payment from its ISP customers.

4   There is no legal or policy basis for ISPs to be subsidized simply because they

5   choose a different carrier to provide their access service.

6

7 Q. WHY IS AN INTER-CARRIER COMPENSATION ARRANGEMENT

8   APPROPRIATE FOR THE ACCESS SERVICE USED IN PROVISION OF

9   SERVICE OF AN ISP?

10

11 A. The interstate access connection that permits an ISP to communicate with its

12   subscribers falls within the scope of exchange access and, accordingly,

13   constitutes an access service as defined by the FCC:

14   *Access Service* includes services and facilities provided for the

15   origination or termination of <u>any</u> interstate or foreign

16   telecommunications. (47 CFR Ch. 1 §69.2(b)) (emphasis added)

17   The fact that the FCC has exempted enhanced service providers, including

18   ISPs, from paying interstate switched access charges does not alter the fact that

19   the connection an ISP obtains is an access connection. The FCC confirmed

20   this fact in its Declaratory Ruling, at paragraph 16: "The fact that ESPs are

21   exempt from access charges and purchase their PSTN links through local

22   tariffs, does not transform the nature of traffic routed to ESPs." Instead, the

23   exemption limits the compensation that a LEC in providing such a connection

24   can obtain from an ISP. Further, under the access charge exemption, the

25   compensation derived by a LEC providing the service to an ISP has been

46

1   limited to the rates and charges associated with business exchange services.

2   Nevertheless, the ISP's service involves interstate communications. The ISP

3   obtains access service that enables a communications path to be established by

4   its subscriber. The ISP, in turn, recovers the cost of the telecommunications

5   services it uses to deliver its service through charges it assesses on the

6   subscribers of the ISP's service.

7

8   Where two or more carriers are involved in establishing the communications

9   path between the ISP and the ISP's subscriber, the access service to the ISP is

10 jointly provided. Such jointly provided access arrangements are not new or

11 unique nor are the associated mechanisms to handle inter-carrier

12 compensation. The services ISPs obtain for access to their subscribers are

13 technically similar to the line side connections available under Feature Group

14 A. For such line side arrangements, the FCC has relied on revenue sharing

15 agreements for the purpose of inter-carrier compensation. The long history

16 and precedent regarding inter-carrier compensation for interstate services are

17 instructive and relevant to the FCC's determinations in this proceeding.

18

19 Q.   PLEASE EXPLAIN FURTHER WHY A SEPARATE SHARING PLAN IS

20   NEEDED FOR ACCESS SERVICE PROVIDED TO ISPs?

21

22 A.   The need for a separate sharing plan is created by the FCC's decree that the

23   price charged for access service provided to ISPs is the business exchange rate.

24   Unlike other switched access services, which are billed on a usage-sensitive

25   basis, ISPs typically purchase from the flat rate business exchange tariff.

47

1

2   Because non-ISP switched access service is billed on a usage-sensitive basis, it

3   is relatively easy for each carrier to be compensated for the portion of the

4   access service that it provides. Generally, there are two methods used for such

5   compensation. Under the first method, each carrier bills the IXC directly for

6   the portion of access service provided. For example, for originating access, the

7   originating LEC bills the IXC for the switching and for the portion of transport

8   that the originating LEC provides, and the terminating LEC bills the IXC for

9   the portion of transport that it provides. Under the second method, the

10   terminating LEC bills the IXC for all of the access service, and the originating

11   LEC bills the terminating LEC for the portion of access services that it

12   provides.

13

14   With ISP traffic, these methods are unworkable. Since the ISP is billed

15   business exchange service rates, only one LEC can bill the ISP. Also, since the

16   rate paid by the ISP is a flat rate charge designed for another service, i.e.,

17   business exchange service, there is no structural correlation between the cost

18   incurred by the LEC and the price paid by the ISP. However, the business

19   exchange rate paid by the ISP is the only source of revenue to cover any of the

20   costs incurred in provisioning access service to the ISP. Therefore, a plan to

21   share the access revenue paid by the ISP among all the carriers involved in

22   sending traffic to the ISP is needed.

23

24 Q.   DOESN'T BELLSOUTH COVER THE COST OF ORIGINATING TRAFFIC

25   TO ISPs FROM ITS OWN END USERS?

1

2   A.   No, nor would it be appropriate to do so. Again, ISPs purchase access

3   services, albeit at local business exchange rates. The local exchange rates paid

4   by end user customers were never intended to recover costs associated with

5   providing access service and were established long before the Internet became

6   popular.

7

8   Q.   YOU HAVE STATED THAT IT IS NOT APPROPRIATE FOR THE

9   COMMISSION TO ADDRESS ISP-BOUND TRAFFIC IN THE CONTEXT

10   OF SECTION 251 OF THE ACT. HOW SHOULD THE COMMISSION

11   ADDRESS ISP-BOUND TRAFFIC?

12

13   A.   If the Commission wishes to address this issue at all in the context of this

14   arbitration proceeding, it should be in the form of an interim compensation

15   mechanism for ISP-bound access traffic. As I have stated previously, only

16   local traffic is governed by Section 251 of the Act. ISP-bound traffic is not

17   local traffic but is instead access traffic under the jurisdiction of the FCC.

18   Therefore, the Commission could address ISP-bound traffic as access traffic by

19   establishing an inter-carrier compensation mechanism. Such a mechanism

20   would be interim until such time as the FCC completes its rulemaking

21   proceeding on inter-carrier compensation.

22

23   Q.   SHOULD THIS COMMISSION ADOPT AN INTERIM INTER-CARRIER

24   COMPENSATION MECHANISM PRIOR TO THE FCC COMPLETING ITS

25   RULEMAKING PROCEEDING, WHAT DOES BELLSOUTH PROPOSE

1   AS AN APPROPRIATE INTERIM MECHANISM?

2

3   A.   BellSouth proposes an interim flat-rated sharing mechanism that is based on

4   apportionment of revenues collected for the access service among the carriers

5   incurring costs to provide the service. The revenue to be apportioned among

6   carriers is the charge for the business exchange service that the ISP pays.

7   Typically, the ISP purchases Primary Rate ISDN ("PRI") service as the

8   business exchange product used to provide the access service. BellSouth

9   believes that, in the interim, a flat-rated compensation process is appropriate

10   since the revenues collected are based on flat-rated charges. Exhibit AJV-6

11   attached to this testimony is BellSouth's Proposed Interim ISP Inter-Carrier

12   Access Service Compensation Plan ("Interim Plan").

13

14   In describing BellSouth's Interim Plan, I use the term "Serving LEC" to refer

15   to a LEC that has an ISP as its customer and the term "Originating LEC" to

16   refer to a LEC whose end user customers originate traffic that is delivered to

17   the Serving LEC's network and is bound for an ISP. BellSouth's Interim Plan

18   takes into account the following facts:

19   1) Only the Serving LEC bills the ISP for access service. The ISP is

20   billed at rates established by the Serving LEC;

21   2) The FCC has limited the price for an ISP dial-up connection to the

22   equivalent business exchange service rate;

23   3) the Originating LEC incurs costs to carry ISP-bound traffic to the

24   Serving LEC;

25   4) the Originating LEC has no means to recover its costs directly from the

1   ISP (unless, of course, the Originating LEC and the Serving LEC are

2   one in the same); and

3   5) The Originating LEC must recover its costs, to the extent possible,

4   from the Serving LEC.

5

6   BellSouth's Interim Plan presumes that all LECs who serve ISPs will

7   participate in the plan. Otherwise, only those parties that will benefit will

8   participate – i.e., a LEC that originates more ISP-bound traffic than it

9   transports to an ISP will be a net receiver.

10

11 Q.   PLEASE DESCRIBE THE SPECIFICS OF BELLSOUTH'S INTERIM

12   PLAN.

13

14 A.   BellSouth's Interim Plan contains the following steps that are further described

15   in Exhibit AJV-7:

16   (1) Each Serving LEC will be responsible for identifying all minutes of use

17   ("MOUs") which are ISP-bound that each Originating LEC delivers to

18   the Serving LEC's network;

19   (2) each trunk (DS0-equivalent) will be assumed to carry 9,000 MOUs on

20   average per month (equates to 150 hours per trunk per month);

21   (3) based on ISP-bound MOUs identified by the Serving LEC and

22   provided to the Originating LEC, the Originating LEC will calculate

23   the quantity of DS1 facilities required to transport the Originating

24   LEC's ISP-bound traffic to the Serving LEC as follows:

25   **(ISP-bound MOUs / 9,000 MOUs per trunk / 24 trunks per DS1);**

1   (4) Serving LEC will advise Originating LECs of the average PRI rate

2   charged to ISPs. The Serving LEC can use either its tariffed rate or the

3   average rate actually charged to ISPs;

4   (5) Originating LEC calculates compensation due to it by the Serving LEC

5   as follows:

6   **(Quantity of DS1s x Serving LEC's PRI rate x sharing percentage)**;

7   (6) Originating LEC bills the Serving LEC on a quarterly basis; and

8   (7) The ISP-bound MOUs and the PRI rates as reported by the Serving

9   LEC are subject to audit by the Originating LEC(s). The amount of

10   compensation could be affected by results of an audit.

11

12   To the extent two parties have additional issues, contract negotiations between

13   the parties can determine other terms and conditions. For example, due to

14   technical capabilities, the two LECs may agree that the Originating LEC will

15   identify the ISP-bound minutes of use.

16

17 Q.   WHAT IS THE BASIS FOR USING 9,000 MOUs AS THE AVERAGE

18   MONTHLY USAGE PER TRUNK?

19

20 A.   Nine thousand (9,000) MOUs is a proxy that was used by the FCC for FGA

21   access before actual usage could be measured. Further, this average level of

22   usage has been used in other situations as a proxy for IXC usage.

23

24 Q.   WHAT SHARING PERCENTAGE DOES BELLSOUTH PROPOSE BE

25   APPLIED TO THE SERVING LEC'S REVENUES TO COMPENSATE

1   BELLSOUTH FOR ITS NETWORK USED TO CARRY ISP-BOUND

2   TRAFFIC?

3

4 A. BellSouth proposes a sharing percentage of 8.6% that will be applied to the

5   Serving LEC's ISP revenues to calculate the compensation due BellSouth

6   when BellSouth is an Originating LEC. Likewise, when BellSouth is the

7   Serving LEC, BellSouth proposes that a sharing percentage of 8.6% will be

8   applied by the Originating LEC(s) when calculating compensation BellSouth

9   owes.

10

11 Q. HOW DID BELLSOUTH DETERMINE THE SHARING PERCENTAGE IT

12   PROPOSES?

13

14 A. BellSouth's calculation of its sharing percentage is shown in Exhibit AJV-8

15   attached to this testimony. First, BellSouth considered that switching,

16   transport and loop costs are incurred to carry traffic from the Originating

17   LEC's end office to the ISP location. Since the Serving LEC incurs the loop

18   cost between its end office and the ISP location, the Serving LEC should retain

19   revenues to cover its loop cost. However, switching and transport costs are

20   jointly incurred by both the Originating LEC and the Serving LEC.

21

22   Therefore, BellSouth believes that an appropriate sharing percentage is

23   developed by determining the ratio of switching and transport costs to total

24   costs (switching, transport and loop), and then dividing that percentage by two

25   since each carrier bears a portion of the switching and transport cost. In order

53

1   to determine the ratio, BellSouth looked to the Benchmark Cost Proxy Model

2   ("BCPM") results filed in Florida in the Universal Service Fund proceedings.

3   The average, statewide voice grade loop, switching and transport capital costs

4   produced by BCPM are $14.62, $2.90 and $.14, respectively. Therefore, the

5   loop capital cost represents 82.8% of the total average statewide capital cost,

6   which means that the switching and transport capital costs represent 17.2% of

7   the total capital cost. Again, dividing the 17.2% by two in order to account for

8   the fact that both carriers incur switching and transport costs results in a

9   sharing percentage of 8.6%.

10

11   BellSouth also reviewed ARMIS data and determined that the relationship

12   between loop, switching and transport investment as reported in ARMIS is

13   very similar to the relationship calculated from the BCPM results. The

14   ARMIS data shows that, for 1998, in Florida, total loop investment was

15      $7,381,715,000, switching investment was $989,297,000 and transport

16   investment was $182,062,000 resulting in ratios of 86.30% for loop, 11.57%

17   for switching and 2.13% for transport which are close to the ratios that result

18   from the BCPM data.

19

20 Q.   DOES BELLSOUTH'S PROPOSED SHARING PERCENTAGE ONLY

21   APPLY TO TRAFFIC IT ORIGINATES TO A SERVING LEC?

22

23 A.   No. When BellSouth is the serving LEC and an ALEC's end users call an ISP

24   served by BellSouth, BellSouth should compensate the ALEC. BellSouth

25   proposes to use the same method and sharing percentage (8.6%) to compensate

1   the ALEC as it proposes for billing the ALEC.

2

3   Q.   WHAT IMPACT WOULD BELLSOUTH'S PROPOSAL HAVE ON AN

4   ALEC SUCH AS ITC^DELTACOM?

5

6   A.   BellSouth's proposal would have a very small impact. As an example, I will

7   assume that ITC^DeltaCom serves its ISP customers with PRI service which is

8   equivalent to a DS1 (24 DS0s). Further, I will assume that ITC^DeltaCom

9   charges its ISP customers a market-based rate of $850 per month per PRI. If

10   BellSouth as the Originating LEC generates 55 million ISP-bound MOUs per

11   month to ITC^DeltaCom, then the amount of monthly compensation that

12   BellSouth's proposal would result in ITC^DeltaCom owing to BellSouth is

13   calculated as follows:

14   55,000,000 / 9000 / 24 = 254.63 DS1s

15   254.63 DS1s x $850.00 x .086 = $18,613.45

16   At a PRI rate of $850, ITC^DeltaCom will collect $216,436 in revenue from

17   its ISP customer(s) just for the traffic originated by BellSouth. Total

18   compensation ITC^DeltaCom owes to BellSouth for the 55,000,000 MOUs

19   BellSouth originated to ITC^DeltaCom would be only $18,613.45.

20

21 Q.   HOW DOES YOUR PROPOSAL AFFECT THE RELATIVE COST

22   RECOVERY OF THE LECs INVOLVED IN PROVIDING THE ACCESS

23   SERVICE?

24

25 A.   Since the FCC has ordered that ISPs are to be provided service at business

1   exchange rates, the fact is that when the access service is provided by a single

2   LEC to the ISP, the rates it charges the ISP are typically not fully

3   compensatory. This situation arises because the ISP is being charged a flat rate

4   charge (which was intended for another service) for a high volume usage-

5   sensitive service. Under BellSouth's sharing proposal, each carrier should

6   recover roughly the same percentage of its costs. For example, if the carrier

7   would have recovered 50% of its costs if it served the ISP alone, the

8   underlying premise of this proposal is that each carrier should recover roughly

9   50% of its costs.

10

11   Q.   SHOULD THIS PLAN BE CONTINUED ONCE THE FCC ESTABLISHES

12   A USAGE-BASED COMPENSATION MECHANISM?

13

14   A.   Probably not. The need for this plan was created by the fact that ISPs currently

15   are allowed to pay business exchange rates for access service. Should the FCC

16   change the application of access charges to ISPs or establish a different

17   compensation mechanism, this plan should be re-evaluated.

18

19   Q.   IN LIGHT OF YOUR COMMENTS WHAT ACTION ARE YOU

20   RECOMMENDING TO THE FLORIDA PSC?

21

22   A.   The FCC has determined that ISP-bound traffic is interstate and has asserted

23   jurisdiction. This issue is not subject to arbitration under Section 252 of the

24   Act. Parties should be instructed to negotiate a revenue sharing arrangement

25   for this traffic just as has been done for jointly-provided access service since

1   divestiture. If those negotiations are not fruitful, however, they should be

2   referred to the FCC. Should, however, this Commission adopt an interim

3   inter-carrier compensation mechanism prior to the FCC completing its

4   rulemaking proceeding, BellSouth recommends the Commission adopt the

5   Interim Plan mechanism outlined above.

6

7   Q.   IS BELLSOUTH ECONOMICALLY INDIFFERENT TO PAYING

8   RECIPROCAL COMPENSATION ON ISP-BOUND TRAFFIC?

9

10 A.   No. Diagrams F and G described above should make clear that BellSouth is

11   not economically indifferent to paying reciprocal compensation on ISP calls

12   for the following reasons:

13

14   1) BellSouth is still incurring the cost to transport the call to the point

15   of interconnection with the ALEC,

16   2) The ALEC wants BellSouth to pay reciprocal compensation to

17   cover the ALEC's cost from the point of interconnection to the

18   ALEC's switch, and

19   3) the ISP, which is the only source of revenue to cover the costs in 1)

20   and 2) above, only pays the ALEC for access.

21

22   The ALEC receives the revenues from its ISP customer, yet ITC^DeltaCom

23   apparently believes it is appropriate for BellSouth to incur a portion of the

24   costs for providing the service without any reimbursement. This is exactly the

25   opposite of the situation depicted in Diagram B, which illustrates when

1   reciprocal compensation should apply. The ALEC should reimburse the

2   originating carrier (BellSouth) for its cost of transporting the ISP-bound call to

3   the ALEC point of interconnection. Instead, the ALEC wants the LEC to incur

4   even more of the costs without any compensation. This is a perversion of the

5   entire access charge system. There is no reason for this Commission to

6   sanction this economic legerdemain and reward ALECs by subsidizing ISPs at

7   the expense of the LEC's end users.

8

9   Q.   IF RECIPROCAL COMPENSATION IS NOT AUTHORIZED, WILL

10   ALECs BE UNCOMPENSATED FOR THE COSTS THEY INCUR TO

11   PROVIDE SERVICES TO ISPs?

12

13   A.   No. The ALECs' ISP customers compensate the ALECs for services that are

14   provided just like an ILEC's ISP customer compensates the ILEC. The

15   ALECs' request for reciprocal compensation on ISP-bound traffic simply

16   provides ALECs with unearned windfall revenues and further increases the

17   unreimbursed cost of the ILEC.

18

19   Q.   DOES LACK OF RECIPROCAL COMPENSATION ON ISP-BOUND

20   TRAFFIC DISTORT THE ATTRACTIVENESS OF ISPs AS ALEC

21   CUSTOMERS?

22

23   A.   No. Payment of reciprocal compensation would create the distortion. The table

24   below provides an illustrative example of this distortion.

25

58

1

	SERVING AN ISP AND RECEIVING RECIPROCAL COMPENSATION	SERVING AN ISP WITHOUT RECEIVING RECIPROCAL COMPENSATION
REVENUE FROM ISP FOR SERVICE	$600	$900
RECIPROCAL COMPENSATION REVENUE PAID	$300	$0
COST OF PROVIDING SERVICE TO ISP	($600)	($600)
NET MARGIN	$300	$300

2

3   This illustration shows that reciprocal compensation allows the ALEC to offer

4   lower prices to ISPs without reducing their net margins. Reciprocal

5   compensation subsidizes the prices the ALEC charges the ISP. When

6   reciprocal compensation is not paid on ISP-bound traffic, all parties are

7   competing on an equal footing for ISP customers. Hence, reciprocal

8   compensation should not be used to subsidize the service provided to the ISP.

9

10 Q.   IS BELLSOUTH ATTEMPTING TO AVOID PAYING RECIPROCAL

11   COMPENSATION ON UNBALANCED TRAFFIC?

12

13 A.   No. First, let me point out that BellSouth does not dispute payment of

14   reciprocal compensation on unbalanced traffic. Rather, BellSouth disputes

15   payment of reciprocal compensation on access traffic – i.e., ISP-bound traffic.

16   Second, I would point out that BellSouth has an obligation to serve any

17   customer, not simply to compete for the business of customers that generate

18   more inbound than outbound calling as ITC^DeltaCom does.

1

2 *Issue 24: [ITC^DeltaCom No. 3] What should be the rate for reciprocal*

3 *compensation?*

4

5 Q.   WHAT IS BELLSOUTH'S POSITION ON THE APPROPRIATE RATES

6   FOR RECIPROCAL COMPENSATION?

7

8 A.   As stated earlier, reciprocal compensation only applies to local traffic. This

9   Commission, in its April 29, 1998 Order, approved blended rates for reciprocal

10   compensation for end office switching and tandem switching. BellSouth's

11   position is that the appropriate rates for reciprocal compensation are the

12   elemental rates for end office switching, tandem switching, and common

13   transport that are used to transport and terminate the traffic. Elemental prices

14   are the appropriate rates to use because they will more closely match the costs

15   incurred to transport and terminate the traffic. Average rates would mean that

16   ALECs with longer than average transport pay less than cost, whereas others

17   pay more. This arrangement provides an incentive for an ALEC to maximize

18   BellSouth transport and minimize their own. Elemental prices are already in

19   place for the comparable UNEs, so there would be little, if any, additional

20   administrative costs to apply the elemental rates to reciprocal compensation

21   and ensure a closer match between rates and costs. These elemental rates are

22   included in Exhibit AJV-1, attached to my testimony.

23

24 *Issue 33: [ITC^Deltacom No. 3(l)] Should the parties establish escalation*

25 *procedures for ordering/provisioning problems?*

1

2 A.   It is BellSouth's understanding that this issue has been resolved by the parties.

3   However, BellSouth reserves the right to file testimony on this issue, should it

4   be further disputed.

5

6 *Issue 35: [ITC^Deltacom No. 3(o)] Should both parties be required to train their*

7 *technicians on the procedures contained in the interconnection agreement which*

8 *sets forth the manner in which each party must treat the other's customers?*

9

10 A.   It is BellSouth's understanding that this issue has been resolved by the parties.

11   However, BellSouth reserves the right to file testimony on this issue, should it

12   be further disputed.

13

14 *Issue 38: [ITC^DeltaCom No. 6(a)] What charges, if any, should BellSouth be*

15 *permitted to impose on ITC^DeltaCom for OSS?*

16

17 Q.   WHAT IS THE BASIS FOR BELLSOUTH'S CHARGING

18   ITC^DELTACOM FOR BELLSOUTH'S OPERATIONAL SUPPORT

19   SYSTEMS ("OSS")?

20

21 A.   BellSouth is entitled under the Act and the FCC's orders and rules to recover

22   its costs in providing access to OSS to ALECs. This issue has been addressed

23   in numerous forums. For example, in AT&T's appeal of the Kentucky

24   Commission's decisions on UNE cost rates (C.A. No. 97-79, 9/9/98), from

25   AT&T's arbitration proceeding, the U.S.D.C. for the Eastern District of

1   Kentucky expressly confirmed that BellSouth is entitled to recover its costs for

2   developing operations support systems. The Order at p. 16 states: "Because

3   the electronic interfaces will only benefit the ALECs, the ILECs, like

4   BellSouth, should not have to subsidize them. BellSouth has satisfied the

5   nondiscrimination prong by providing access to network elements that is

6   substantially equivalent to the access provided for itself. AT&T is the cost

7   causer, and it should be the one bearing all the costs; there is absolutely

8   nothing discriminatory about this concept."

9

10   This Commission declined to approve rates for OSS costs in its April 29, 1998

11   Order. Specifically, the Order states at p. 165: "We recognize that OSS costs,

12   manual and electronic, may be recoverable costs incurred by BellSouth. We

13   did not, however, contemplate in Order PSC-96-1579-FOF-TP that BellSouth

14   would file cost studies including OSS costs in these proceedings other than for

15   its legacy systems." The Commission, however, went on to say, at p. 165,

16   "We are cognizant that if ordering costs are excluded from the UNE rates set in

17   these proceedings, a CLEC may be stymied in placing UNE orders. Thus, we

18   strongly encourage the parties to negotiate in good faith to establish rates for

19   OSS functions." Consistent with this Commission's order, BellSouth is

20   requesting rates to be established for access to OSS.

21

22   Q.   WHAT IS THE APPROPRIATE RATE FOR OSS?

23

1　A.　The appropriate rate(s) are based on BellSouth's cost study filed with the

2　　　testimony of Daonne Caldwell. These rates are included in Exhibit AJV-1,

3　　　attached to my testimony.

4

5　*Issue 39: [ITC^Deltacom No. 6(b)] What are the appropriate recurring and non-*

6　*recurring rates and charges for: (a) two-wire ADSL/HDSL compatible loops, (b)*

7　*four wire ADSL/HDSL compatible loops, or (c) two-wire SL1 loops?*

8

9　Q　(a) WHAT DOES BELLSOUTH ASSERT ARE THE APPROPRIATE

10　　　RATES FOR TWO-WIRE ADSL COMPATIBLE AND TWO-WIRE HDSL

11　　　COMPATIBLE LOOPS?

12

13　A.　This Commission in its April 29, 1998 Order approved rates for two-wire

14　　　ADSL compatible loops and two-wire HDSL compatible loops. The approved

15　　　rates are the appropriate rates for these elements and are included in Exhibit

16　　　AJV-1, attached to my testimony.

17

18　Q　(b) WHAT DOES BELLSOUTH ASSERT ARE THE APPROPRIATE

19　　　RATES FOR FOUR-WIRE ADSL/HDSL COMPATIBLE LOOPS?

20

21　A.　This Commission in its April 29, 1998 Order approved rates for four-wire

22　　　HDSL compatible loops. ADSL functionality is not applicable to four-wire

23　　　loops. The approved rates are the appropriate rates for these elements and are

24　　　included in Exhibit AJV-1, attached to my testimony.

25

1 Q.   (c) WHAT ARE THE APPROPRIATE CHARGES FOR TWO-WIRE SL1

2   LOOPS?

3

4 A.   This Commission ordered a rate for a two-wire analog voice grade loop prior

5   to establishment of a distinction between Service Level 1 (SL1) and Service

6   Level 2 (SL2). ~~The rate that this Commission previously approved is~~

7   ~~equivalent to the SL2 service.~~ BellSouth is willing to offer an SL1 loop for a

8   separate rate in Florida, as it does in its other eight states. BellSouth is

9   proposing new rates for both SL1 and SL2 loops. The appropriate rates are

10   shown in Exhibit AJV-1, attached to my testimony, and are supported by cost

11   studies filed with the testimony of Daonne Caldwell.

12

13 Q.   PLEASE DISCUSS THE DIFFERENCE BETWEEN AN SL1 LOOP AND

14   AN SL2 LOOP.

15

16 A.   While both service level loops can be used for the provision of local exchange

17   service, SL1 would equate more to plain old telephone service ("POTS") and

18   SL2 would equate more to the unbundled loop currently approved and offered

19   to ALECs in Florida. An SL2 loop provides a Design Layout Record (DLR),

20   test access points (referred to as Switched Maintenance Access System

21   ["SMAS"]), ground start facilities, manual order coordination and/or repair of

22   loops provisioned with test points. An SL1 loop simply provides a

23   nondesigned loop suitable for POTS service. By offering a choice of these two

24   service levels, BellSouth believes it meets the provisioning requirements

25   desired by requesting carriers for two-wire analog unbundled loops.

1

2   *Issue 40: ITC^Deltacom No. 6(b)] a) Should BellSouth be required to provide: (1)*

3   *two-wire SL2 loops or (2) two-wire SL2 loop Order Coordination for Specified*

4   *Conversion Time? b) If so, what are the appropriate recurring and non-recurring*

5   *rates and charges?*

6

7   Q.   (a)(1) WHAT IS BELLSOUTH'S POSITION REGARDING PROVISION

8   OF TWO-WIRE SL2 LOOPS?

9

10 A.   BellSouth is willing to provide two-wire SL2 loops.

11

12 Q.   (a)(2) WHAT IS BELLSOUTH'S POSITION REGARDING PROVISION

13   OF TWO-WIRE SL2 LOOP ORDER COORDINATION FOR SPECIFIED

14   CONVERSION TIME?

15

16 A.   The option of order coordination for specified conversion time is offered on

17   SL2 loops. This option allows an ITC^DeltaCom to request a specific

18   conversion time and BellSouth will make every effort to accommodate the

19   request. Such a charge would be appropriate in a situation where the requested

20   time was during a period when the serving central office involved was not

21   manned. The charge covers the cost to provide coverage at that office to

22   complete the cutover work. If the ITC^DeltaCom desires a cutover time

23   outside of normal working hours, then overtime rates may also apply. A

24   specified order conversion charge would only apply to the first loop on the

25   order. Therefore, whether there is one loop or 10 loops on the order, a single

65

1   charge for specified conversion time would be applied.

2

3   Following is a chart that demonstrates the options available to an ALEC for a

4   2-wire unbundled loop provisioned as SL1 or SL2:

5

UNBUNDLED 2-WIRE LOOPS		
Characteristic	SL1	SL2
Basic loop capable of local service	Yes	Yes

Order coordination (with other orders)
  - Mechanized (potential for .25 to 1
    hour outage)
  - Mechanized plus manual (potential
    outage less than .25 hour)
  - Specified Conversion Time
	Yes
	
	Optional
	
	No
		No
		
		Yes
		
		Optional

Test Points (SMAS)	No	Yes
Design Layout Record	No	Yes

6

7 Q.   (b) WHAT ARE THE APPROPRIATE RECURRING AND NON-

8   RECURRING RATES AND CHARGES FOR TWO-WIRE SL2 LOOPS

9   AND TWO-WIRE SL2 LOOP ORDER COORDINATION FOR SPECIFIED

10   CONVERSION TIME?

11

12 A.   As stated above, this Commission ordered a rate for a two-wire analog voice

13   grade loop prior to establishment of a distinction between SL1 and SL2. ~~The~~

14   ~~rate approved by this Commission in its December 31, 1996 Order is really the~~

15   ~~SL2 rate~~. To reflect the differences between two-wire SL1 and SL2 loops,

16   BellSouth is proposing here the recurring and nonrecurring rates for each type

17   of loop as shown on Exhibit AJV-1, attached to my testimony. These rates are

18   supported by cost studies filed with the testimony of Daonne Caldwell.

19

1   The rate for two-wire SL2 loop order coordination for specified conversion

2   time is also included in Exhibit AJV-1 attached to my testimony, and is

3   supported by a cost study filed with the testimony of Daonne Caldwell. In

4   addition, Exhibit AJV-1 includes appropriate disconnect rates for two-wire

5   SL1 loops and for two-wire SL2 loops, as supported by cost studies filed by

6   Ms. Caldwell.

7

8   *Issue 41: [ITC^DeltaCom No. 6(c)]   Should BellSouth be permitted to charge*

9   *ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs*

10   *associated with such disconnection?*

11

12   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

13

14   A.   If there are any instances when BellSouth does <u>not</u> incur any costs associated

15   with a disconnection, BellSouth should not charge ITC^DeltaCom for the

16   disconnection. However, BellSouth is entitled to recover its costs incurred to

17   disconnect the service.

18

19   *Issue 42: [ITC^DeltaCom No. 6(d)]   What should be the appropriate recurring and*

20   *non-recurring charges for cageless and shared collocation in light of the recent*

21   *FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket*

22   *No. CC 98-147?*

23

24   Q.   HAS BELLSOUTH PROPOSED RATES FOR COLLOCATION THAT ARE

25   IN COMPLIANCE WITH THE FCC'S ADVANCED SERVICES ORDER?

1   A.   Yes. The rates BellSouth proposes for collocation are contained in Exhibit

2   AJV-1 attached to my testimony. Rates for many of the collocation elements

3   were approved by the Commission in its April 29, 1998 Orders (Cost Ref. #

4   H.1.1 - H.1.19). To order cageless and shared collocation, ITC^DeltaCom

5   would simply order the amount of floor space necessary for their collocation

6   arrangement. Whether they then elect to enclose or share the arrangement is

7   up to them. The floor space rate has already been approved by this

8   Commission and is still appropriate for caged, cageless or shared collocation.

9

10   In order for BellSouth to meet the requirements of the FCC's recent Advanced

11   Services Order as it relates to the provision of collocation, it is necessary for

12   BellSouth to offer rates for Security Access Systems. BellSouth will file with

13   this Commission a complete cost study for Security Access Systems that will

14   be conducted using the cost methodology and inputs specified by this

15   Commission in its April 29, 1998 Order. In the meantime, BellSouth proposes

16   a single interim rate approved by the Florida Public Service Commission in its

17   April 29, 1998 Order for "Physical Collocation – Security Access System –

18   New Access Card Activation, per request – 5 cards". This approved rate is

19   included on Exhibit AJV-1.

20

21   *Issue 43: [ITC^DeltaCom No. 6(e)] Should BellSouth be permitted to charge for*

22   *ITC^DeltaCom for conversions of customers from resale to unbundled network*

23   *elements? If so, what is the appropriate charge?*

24

25   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

1   A.   An ALEC cannot convert resale service to unbundled network elements;

2   resale would have to be converted to a combination of UNEs. By definition,

3   this combination of UNEs replicates a retail service, since the service was

4   previously resold. As previously discussed, BellSouth is not obligated to

5   combine UNEs and will not be obligated to offer UNE combinations until Rule

6   319 is complete. As this Commission has already recognized, UNE

7   combinations that replicate resale should be priced at resale rates. This

8   practice is currently permitted and should continue.

9

10   *Issue 45: [ITC^DeltaCom No. 7(b)(iv)] Which party should be required to pay for*

11   *the Percent Local Usage (PLU) and Percent Interstate Usage (PIU) audit in the*

12   *event such audit reveals that either party was found to have overstated the PLU or*

13   *PIU by 20 percentage points or more?*

14

15   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

16

17   A.   Generally, BellSouth's position is that the party requesting an audit pays for it

18   if no substantial irregularities are identified. If the audit reveals that the ALEC

19   has accurately reflected PLU/PIU percentages, BellSouth will pay for the

20   audit. However, if an audit reveals that an ALEC has overstated PLU/PIU

21   percentages by 20 percentage points or more, that ALEC should pay for the

22   audit. BellSouth's position on this issue is backed by BellSouth's standard

23   agreement and industry practice and custom.

24

1   *Issue 46: [ITC^DeltaCom No. 8(b)]   Should the losing party to an enforcement*

2   *proceeding or proceeding for breach of the interconnection agreement be required*

3   *to pay the costs of such litigation?*

4

5   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

6

7   A.   BellSouth's position is that the inclusion of a "loser pays" provision would

8   have a chilling effect on both parties to the extent that even meritorious claims

9   would not be filed. The Act is not yet four years old and clearly represents an

10   evolving area of rulings, and complaints to regulatory commissions will be

11   brought by various parties seeking clarification as issues emerge. Often there

12   is no clear "winner" or "loser", thus further complicating the use of a "loser

13   pays" clause. A negative provision like "loser pays" should not be included in

14   the Agreement. BellSouth will agree to appropriate language regarding

15   jurisdictional issues that would allow the parties to seek damages under the

16   Agreement from the courts since that would be a matter outside the

17   Commission's jurisdiction. As stated above in Issue 8(a), the parties should

18   determine at the time they enter the interconnection agreement where disputes

19   will be resolved. This is standard contract language and for good reason. It

20   gives certainty as to how and where disputes will be resolved and it helps

21   prevent the potential for "forum shopping" as well as the potential for

22   inconsistent decisions under the agreement.

23

24   *Issue 47: [ITC^DeltaCom No. 8(c)] What should be the appropriate standard for*

25   *limitation of liability under the Interconnection agreement?*

1

2 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

3

4 A. BellSouth understands that this issue has been resolved. However, BellSouth

5 reserves its right to provide testimony on this issue should further dispute arise.

6

7 *Issue 48: [ITC^DeltaCom No. 8(e)] Should language covering tax liability should*

8 *be included in the interconnection agreement, and if so, whether that language*

9 *should simply state that each Party is responsible for its tax liability.*

10

11 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

12

13 A. BellSouth asserts that this issue is not appropriate for arbitration proceedings.

14 BellSouth has proposed language for the interconnection agreement based

15 upon BellSouth's experiences with tax matters and liability issues in

16 connection with the parties' obligations under interconnection agreements. A

17 variety of taxes are imposed upon telecommunications carriers, both directly

18 and indirectly (collect from end-users and other carriers). As would be

19 expected, problems and disputes over the application and validity of these

20 taxes will and do occur. The interconnection agreement should clearly define

21 the respective rights and duties for each party in the handling of such tax issues

22 so that they can be resolved fairly and quickly.

23

24 *Issue 49: [ITC^DeltaCom No. 8(f)] Should BellSouth be required to compensate*

25 *ITC^DeltaCom for breach of material terms of the contract?*

1

2   Q.   WHAT IS BELLSOUTH'S POSITION REGARDING COMPENSATION

3   FOR BREACH OF MATERIAL TERMS OF THE CONTRACT?

4

5   A.   The issue of compensation for breach of contract, penalties or liquidated

6   damages is not appropriate for arbitration. This Commission has already stated

7   that it lacks the statutory authority to award or order monetary damages or

8   financial penalties. Even if a penalty or liquidated damage award could be

9   arbitrated, it is completely unnecessary. Florida law and Federal and State

10   Commission procedures are available, and perfectly adequate, to address any

11   breach of contract situation should it arise.

12

13   *Issue 50: [ITC^DeltaCom No. 5] Should the parties continue operating under*

14   *existing local interconnection arrangements?*

15

16   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

17

18   A.   Negotiations take place in order to incorporate new language and terms into an

19   interconnection agreement based on new situations, governing law, processes,

20   and technologies. Furthermore, this is not an arbitratable issue due to the fact

21   that there is no contract language attached to this issue. As stated in

22   ITC^DeltaCom's position on this issue, the current arrangement has "worked

23   well" for the past two years. However, ITC^DeltaCom's petition seems to

24   infer otherwise. In order to ensure that ITC^DeltaCom and BellSouth have the

25   most beneficial agreement for both parties, a new agreement needs to be

1   effected. To the extent that ITC^DeltaCom has concerns with "existing local

2   interconnection arrangements", it is required to clearly state any areas of

3   dispute in its petition so that BellSouth can reasonably respond.

4

5   *Issue 9: [ITC^DeltaCom No. 2(b)(iv)] Should BellSouth be required to provide*

6   *UNE testing results to ITC^DeltaCom? If so, how?*

7

8   Q.   WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

9

10   A.   It is BellSouth's understanding that this issue has been resolved by the parties.

11   However, BellSouth reserves the right to file testimony on this issue, should it

12   be further disputed.

13

14   Q.   DOES THIS CONCLUDE YOUR TESTIMONY?

15

16   A.   Yes.

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1 BY MR. ALEXANDER (Continuing):

2   Q   Mr. Varner, did you also cause to be

3 prefiled --

4   MR. ALEXANDER: I'm sorry.

5   In addition to the exhibit I mentioned, I do

6 want to include the prefiled exhibits that were also

7 attached to Mr. Varner's direct testimony.

8   I'm just asking for the addition -- Mr. Varner

9 had attached to his direct testimony eight exhibits. The

10 AJV-1 which we just revised on October 27 was just one of

11 those eight. And I would also ask that the other

12 exhibits attached to Mr. Varner's direct testimony be

13 admitted in this proceeding.

14   COMMISSIONER CLARK: Okay. AJV-1 through 8 as

15 revised here today will be identified as Composite

16 Exhibit 23. And we'll deal with moving it into the

17 record after he's been through cross examination and

18 redirect.

19   MR. ALEXANDER: Thank you.

20   (Composite Exhibit 23 marked for

21 identification.)

22 BY MR. ALEXANDER (Continuing):

23   Q   Mr. Varner, did you also cause to be prefiled

24 on October 20th, 1999, supplemental direct testimony?

25   A   Yes.

1   Q   Did that consist of four pages with no

2 exhibits?

3   A   Yes, that's correct.

4   Q   Mr. Varner, if I were to ask -- Do you have any

5 changes, corrections or deletions to make to that

6 testimony?

7   A   No.

8   Q   If I were to ask you the same questions as they

9 appear in your prefiled supplemental direct testimony,

10 would your answers be the same today?

11   A   That's correct.

12   MR. ALEXANDER: I would ask for the admission

13 of Mr. Varner's supplemental direct testimony.

14   COMMISSIONER CLARK: It will be inserted in the

15 record as though read.

16   MR. ALEXANDER: Thank you.

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ORIGINAL 746

1   BELLSOUTH TELECOMMUNICATIONS, INC.

2   SUPPLEMENTAL DIRECT TESTIMONY OF ALPHONSO J. VARNER

3   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4   DOCKET NO. 990750-TP

5   OCTOBER 20, 1999

6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH

8   TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS

9   ADDRESS.

10

11 A. My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director

12   for State Regulatory for the nine-state BellSouth region. My business address is

13   675 West Peachtree Street, Atlanta, Georgia, 30375.

14

15 Q. ARE YOU THE SAME ALPHONSO VARNER WHO FILED DIRECT AND

16   REBUTTAL TESTIMONY IN THIS PROCEEDING?

17

18 A. Yes.

19

20 Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?

21

22 A. This supplemental testimony provides a brief discussion of the effect the FCC's

23   September 15, 1999 ruling has on this arbitration based on the FCC's press

24   release.

25

1

1 Q.   WHAT IS THE STATUS OF THE FCC's 319 RULING?   **747**

2

3 A.   On September 15, the FCC adopted rules on unbundling of network elements;

4   however, the FCC has not yet released its Order. Therefore, BellSouth is

5   surmising the impact this ruling will have on this arbitration from the FCC's press

6   release. BellSouth reserves the right to further supplement this testimony based

7   on actual wording of the FCC's Order, once the Order is released.

8

9 Q.   BASED ON THE RECENT ACTION BY THE FCC, IS BELLSOUTH

10   OBLIGATED TO COMBINE UNEs FOR ALECs?

11

12 A.   No. BellSouth is not obligated to combine UNEs. The FCC's rules that attempted

13   to require BellSouth to combine UNEs were vacated by the Eighth Circuit Court

14   of Appeals and were not challenged before the United States Supreme Court.

15   Therefore, those rules are still vacated even though the Eighth Circuit is

16   reevaluating them. Further, the press release makes clear that the FCC's Order

17   will not obligate BellSouth to provide combinations of UNEs. To provide

18   Enhanced Extended Loops ("EELs") as requested by ITC^DeltaCom, BellSouth

19   would have to combine UNEs, an activity that BellSouth is not required to do.

20

21 Q.   HOW DOES THE FCC'S 319 RULING AFFECT THIS ARBITRATION?

22

23 A.   The press release indicates that the FCC's Order will specify the UNEs that

24   BellSouth must offer, as well as the conditions under which ALECs can use those

25   UNEs. As a result, the Order will determine the extent to which there are

2

1   currently combined UNEs in BellSouth's network that ALECs can order.

2   Whatever action this Commission takes in this arbitration must be consistent with

3   the FCC's Order.

4

5   Q.   IS THE ENHANCED EXTENDED LOOP A UNE?

6

7   A.   No. In its press release, the FCC stated that EELs would not be included on the

8   UNE list. Apparently, the FCC considered whether EELs should be on the list of

9   UNEs and decided EELs should not be a network element.

10

11 Q.   TO WHAT EXTENT CAN ALECs REPLACE SPECIAL ACCESS SERVICE

12   WITH DEDICATED TRANSPORT?

13

14 A.   The FCC decided to initiate a Notice of Proposed Rulemaking to address whether

15   dedicated transport can be used as a substitute for special access under any

16   circumstances. By "circumstances" I am referring to whether dedicated transport,

17   when used alone or as part of a pre-existing combination, can be used as a

18   substitute for special access. It does not appear that either of these questions will

19   be answered in the FCC's 319 Order. That Order may, however, address what

20   BellSouth is obligated to do until the FCC completes its rulemaking. At this time,

21   it is unclear whether ITC^DeltaCom can use dedicated transport, either alone or

22   as a part of the EEL, in the manner they have requested.

23

24 Q.   IS IT CLEAR FROM THE FCC'S PRESS RELEASE WHAT CURRENTLY

25   COMBINED UNEs BELLSOUTH MUST OFFER?

1

2 A.   No. The press release does not define "currently combined." However, based on

3   the FCC's action, BellSouth believes that "currently combined" means that the

4   combination of UNEs must already be in existence providing service to a

5   BellSouth end user. If BellSouth's interpretation is correct, then there are no

6   currently combined UNEs that constitute the EEL.

7

8 Q.   WHAT DOES BELLSOUTH PROPOSE THE COMMISSION DO IN THIS

9   ARBITRATION?

10

11 A.   Given the current environment, BellSouth recommends that this Commission

12   simply rule that EELs must be provided as UNEs only to the extent required by

13   law. The FCC and the courts are the only bodies that can resolve the question

14   regarding obligations to provide the EEL. With respect to this arbitration, it does

15   not appear that BellSouth is obligated to provide EELs as requested by

16   ITC^DeltaCom. Until these questions are resolved, the prudent course of action

17   is to obligate BellSouth to provide EELs in accordance with the FCC's and the

18   court's decisions.

19

20 Q.   DOES THAT CONCLUDE YOUR TESTIMONY?

21

22 A.   Yes.

23

24

25   JB2562

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 1  BY MR. ALEXANDER (Continuing):

 2      Q    Mr. Varner, did you also cause to be prefiled

 3  rebuttal testimony in this proceeding consisting of 23

 4  pages with no exhibits?  And I believe that was prefiled

 5  on September 13th, 1999.

 6      A    That's correct.

 7      Q    Do you have any changes, corrections or

 8  additions to make to your rebuttal testimony as prefiled?

 9      A    Yes, there's one.

10      Q    What is that change?

11      A    At page 20, line 4, the word -- strike the word

12  "service inquiry."  And at line 5, strike the word

13  "service order."

14      Q    Again, that was, for the record, on line 4, you

15  just struck two words at the end of that sentence?

16      A    Yes.

17      Q    "Service inquiry."  And at the front of line 5,

18  the sentence there, "service order;" is that correct?

19      A    That's correct.

20      Q    Do you have any other changes to make to your

21  prefiled supplemental -- excuse me -- prefiled rebuttal

22  testimony?

23      A    No, I do not.

24      Q    If I were to ask you the same questions as

25  appear in your rebuttal testimony, would your answers be
```

1 the same today?

2   A   Yes.

3   MR. ALEXANDER: I would ask the admission of

4 Mr. Varner's rebuttal testimony.

5   COMMISSIONER CLARK: His rebuttal testimony as

6 revised today and on the stand will be inserted in the

7 record as though read.

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1   BELLSOUTH TELECOMMUNICATIONS, INC.

2   REBUTTAL TESTIMONY OF ALPHONSO J. VARNER

3   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4   DOCKET NO. 990750-TP

5   SEPTEMBER 13, 1999

6

7 Q.   PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH

8   TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR

9   BUSINESS ADDRESS.

10

11 A.   My name is Alphonso J. Varner. I am employed by BellSouth as Senior

12   Director for State Regulatory for the nine-state BellSouth region. My business

13   address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q.   HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

16

17 A.   Yes. I filed direct testimony and eight exhibits on August 16, 1999.

18

19 Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY?

20

21 A.   My rebuttal testimony addresses the direct testimony filed with the Florida

22   Public Service Commission on August 16, 1999 by ITC^DeltaCom witnesses

23   Christopher Rozycki, Thomas Hyde and Don Wood. My rebuttal testimony

24   addresses comments related to ITC^DeltaCom Issues: ~~1(a),~~ 2, 2(b)(iii), ~~2(c)(x),~~

25   3, ~~5,~~ 6(a), 6(b), 6(c), 6(d), ~~and 7(b)(iv).~~

1   Q.   ARE THERE ANY GENERAL COMMENTS YOU HAVE CONCERNING

2   ITC^DELTACOM'S TESTIMONY FILED IN THIS PROCEEDING?

3

4   A.   Yes, I have several general comments concerning the testimony of

5   ITC^DeltaCom's witnesses. First, I take exception to the implication that

6   BellSouth has not negotiated in good faith. BellSouth negotiates

7   interconnection agreements on a daily basis and has, in fact, entered into more

8   than 800 agreements with various ALECs, the vast majority of which have

9   been finalized without resorting to arbitration. Second, BellSouth's proposal

10   to ITC^DeltaCom of a standard agreement should not be viewed as a "giant

11   step backward" as Mr. Rozycki complains. Obviously, negotiation of

12   interconnection agreements is an evolving process, and BellSouth strives to

13   streamline that process to the advantage of both BellSouth and the ALECs.

14   Since BellSouth's standard agreement is continuously being modified to reflect

15   changes in the law, recent state commission decisions, and the parties'

16   experience in the local market, I fail to see how ITC^DeltaCom's initial

17   agreement (that was negotiated two years ago) would be a better starting point.

18   Further, BellSouth's standard agreement promotes parity among ALECs.

19   While BellSouth recognizes that each ALEC is different, there are cost

20   advantages to standardizing agreements as much as possible.

21

22   Mr. Rozycki's testimony alleges that if ITC^DeltaCom were to accept

23   BellSouth's standard agreement, ITC^DeltaCom would not be able to provide

24   quality service to its customers and would not be able to provide service at

25   parity with BellSouth. This allegation is completely false. Several ALECs

2

1   across BellSouth's region have entered into BellSouth's standard agreement or

2   some variation thereof and are competing successfully in the marketplace. As

3   I previously stated, BellSouth's standard agreement is designed to promote

4   parity.

5

6   Q.   IN SEVERAL INSTANCES ITC^DELTACOM HAS MADE VAGUE

7   ALLEGATIONS REGARDING PROBLEMS THAT BELLSOUTH HAS

8   CAUSED ITC^DELTACOM. PLEASE COMMENT.

9

10   A.   In several instances, ITC^DeltaCom has made vague allegations regarding

11   problems that BellSouth has caused ITC^DeltaCom. For example, Mr. Hyde

12   (pages 3-4) states: "BellSouth's continued refusal to provide any type of parity

13   … will result in a competitive advantage for BellSouth and stifle the

14   development of competition." Mr. Rozycki characterizes BellSouth's

15   negotiating philosophy with the statement (page 6): "It appears that BellSouth

16   is using a win-lose strategy, and is rarely seeking common ground." Mr.

17   Rozycki states (page 12): "This "window of opportunity" [for BellSouth to

18   winback customers] is made possible by the disparity in provisioning that

19   ITC^DeltaCom experiences." ITC^DeltaCom's witnesses have not provided

20   sufficient details to substantiate their claims, nor for BellSouth to investigate

21   the situations to which they are referring. Without such details, BellSouth has

22   no way to respond to these vague accusations. Likewise, this Commission has

23   no basis for making an assessment of ITC^DeltaCom's claims.

24

25   It is BellSouth's policy and intent to provide high quality, nondiscriminatory

1   treatment to our ALEC customers. Whenever there are instances where

2   ITC^DeltaCom believes BellSouth has failed to meet its responsibilities, it is

3   incumbent upon ITC^DeltaCom to provide prompt, complete information for

4   BellSouth to investigate such instances.

5

6   Q.   MR. ROZYCKI HAS ATTACHED TO HIS TESTIMONY AS EXHIBIT

7   CJR-3 WHAT HE STATES IS BELLSOUTH'S PROPOSAL TO THE FCC

8   REGARDING SELF-EFFECTUATING ENFORCEMENT MEASURES,

9   AND STATES (PAGE 8) THAT BELLSOUTH HAS REFUSED TO

10   INCLUDE ITS FCC PROPOSAL IN THE ITC^DELTACOM CONTRACT.

11   WHAT IS YOUR RESPONSE?

12

13 A.   Penalties are not appropriate as a contractual remedy and should not be

14   imposed by this Commission. This Commission has already addressed the

15   issue of penalties or liquidated damages in its December 31, 1996 Order in

16   Docket Nos. 960833-TP, 960846-TP, and 960916-TP, in which it concluded

17   that: "The Act does not require parties to include in their agreements any

18   particular method to resolve disputes. Further, it is not appropriate for us to

19   arbitrate a liquidated damages provision under state law." (page 74) Based on

20   this prior ruling in those dockets, the Commission has found that it is without

21   jurisdiction to arbitrate issues on damages. Thus, ITC^DeltaCom's request for

22   penalties or damages should be denied.

23

24   Mr. Rozycki's Exhibit CJR-3 is BellSouth's proposal to the FCC as of March,

25   1999. As stated in my direct testimony, BellSouth is still working with the

4

1   FCC to finalize a BellSouth proposal for self-effectuating enforcement

2   measures. Before any such proposal would be offered to an ALEC in a given

3   state, such proposal would first have to be accepted by the FCC, and would

4   only take effect on a state-by-state basis concurrent with approval for

5   BellSouth to enter into the long distance market in that state. To date, none of

6   these triggering events has occurred.

7

8 Q.   MR. ROZYCKI ALSO DISCUSSES THE IMPORTANCE OF

9   PERFORMANCE MEASURES, IN ADDITION TO "PENALTIES" OR

10   GUARANTEES (PAGES 6-9). WHAT IS BELLSOUTH'S POSITION

11   REGARDING PERFORMANCE MEASURES?

12

13 A.   While BellSouth does not believe "penalties" or "guarantees" should be

14   incorporated into an interconnection agreement, as stated above, BellSouth has

15   offered to include the same performance measurements in the ITC^DeltaCom

16   agreement that it offers in Attachment 9 to BellSouth's standard

17   interconnection agreement. It is important to recognize that the performance

18   measures proposed by BellSouth have been developed with State Commission

19   and ALEC input. These measures have been adopted by numerous ALECs and

20   approved by this Commission in ALEC interconnection agreements. It is not

21   practical or reasonable to implement different performance measures for each

22   ALEC. Please see the Rebuttal Testimony of Mr. David Coon for further

23   discussion of performance measures.

24

25 Q.   MR. ROZYCKI DISCUSSES THE ISSUE OF PARITY AT LENGTH ON

5

1   PAGES 11-12 OF HIS TESTIMONY. DOES BELLSOUTH HAVE A

2   PROBLEM WITH THE LANGUAGE ITC^DELTACOM IS REQUESTING

3   REGARDING BELLSOUTH'S PARITY OBLIGATIONS?

4

5   A.   Yes. The proposed agreement already contains parity provisions that BellSouth

6   has agreed to include: GTC 3.1 and the first sentence of GTC 3.2. However,

7   the second sentence of GTC 3.2 as proposed by ITC^DeltaCom states:

8   "BellSouth will provide ITC^DeltaCom with pre-ordering, ordering,

9   maintenance and trouble reporting and daily usage data functionality equal to

10   or <u>greater than</u> that which BellSouth provides to its own end users."(emphasis

11   added) Absolutely nothing in the Act or the FCC's rules requires a "greater

12   than" standard. In fact, FCC Rule 51.305(a)(4) which addressed superior

13   quality interconnection was vacated by the Eighth Circuit and was not

14   challenged by any party; therefore, that rule remains vacated. The language

15   proposed by ITC^DeltaCom in Att. 2-2.3.1.4-.5 and Att. 6-1.1 goes beyond the

16   parity requirements of the Act and FCC orders, and BellSouth cannot agree to

17   include this language in the agreement.

18

19   Q.   IN HIS DISCUSSION OF PARITY, MR. HYDE STATES (PAGE 3):

20   "...ITC^DELTACOM REQUESTED THAT BELLSOUTH AGREE TO

21   PROVIDE UNES AT PARITY WITH BELLSOUTH'S RETAIL SERVICES.

22   ...BELLSOUTH SERVICES ARE MADE UP OF COMBINED UNES."

23   HOW DO YOU RESPOND?

24

25   A.   As stated in my direct testimony, the provision of UNEs is not the same as the

1   provision of retail services. BellSouth does not provide UNEs to itself or to its

2   retail customers. UNEs are made available to an ALEC in such a way that the

3   ALEC may either combine those UNEs with the ALEC's other facilities or

4   combine those UNEs with other UNEs acquired from BellSouth. This means

5   that there must be provisions made for giving the ALEC access to the

6   individual UNEs. By comparison, BellSouth does not need such special

7   provisions since BellSouth does not provide UNEs to itself. Therefore, Mr.

8   Hyde's assertion that BellSouth's provision of UNEs to ALECs should be at

9   parity with BellSouth's retail services is incorrect.

10

11   Q.   IN HIS DISCUSSION OF THE IMPORTANCE OF PARITY, MR.

12   ROZYCKI (p. 12) CLAIMS THAT BELLSOUTH ATTEMPTS TO WIN

13   BACK CUSTOMERS PRIOR TO THE CUSTOMER'S SERVICE BEING

14   "TURNED UP" BY ITC^DELTACOM. PLEASE COMMENT.

15

16   A.   This is another instance of ITC^DeltaCom making vague accusations without

17   sufficient details for BellSouth to determine exactly what the situation is.

18   ITC^DeltaCom appears to imply that there are instances in which a customer

19   requests that he be switched to ITC^DeltaCom, and then is out of service

20   before being connected to ITC^DeltaCom's network. Mr. Rozycki's statement

21   that "[t]he delay provides BellSouth with ample time – too much time – to

22   approach the customer and attempt to win them back by offering to get them

23   back in service more quickly" does not make sense. The customer is already

24   being served by BellSouth; his service would not be disconnected until the

25   cutover to ITC^DeltaCom occurs. Therefore, it is difficult to understand

7

1   ITC^DeltaCom's complaint.

2

3   Further, it is BellSouth's policy not to attempt to winback customers prior to

4   their service being switched. The BellSouth business unit accepting ALEC

5   orders does not furnish such information to BellSouth's retail unit, which

6   would be the source of contacts to "winback" customers. When a BellSouth

7   end user switches to a competitor, BellSouth mails a notification letter to the

8   end user _after_ the end user's service is converted from BellSouth to the

9   competitor. The letter advises the end user that his/her request to switch local

10   service has been completed and that BellSouth hopes to have the opportunity

11   to serve the customer in the future. BellSouth's intention is threefold: 1) to end

12   its business relationship with the customer on a positive note, 2) to notify its

13   former customer that a change of service provider has been made and 3) to

14   provide a contact number if the customer has any questions. Further, the

15   notification letter serves as a reasonable safeguard that slamming (switching a

16   customer's telephone service to a different company without his/her

17   knowledge or permission) of the end user has not occurred.

18

19   Q.   MR. WOOD STATES (p.4) THAT ALECs MUST BE ABLE TO EASILY

20   AND RELIABLY ORDER UNES AND COMBINATIONS OF THOSE

21   UNES INCLUDING THOSE THAT INCLUDE LOCAL SWITCHING.

22   PLEASE RESPOND.

23

24   A.   BellSouth provides ALECs with reasonable access to individual UNEs in a

25   nondiscriminatory manner. With respect to combinations, the FCC's rule

1   requiring ILECs to combine UNEs for ALECs was vacated by the Eighth

2   Circuit Court and was not challenged before the Supreme Court. Those rules

3   (51.315(c-f)) remain vacated today. The FCC's rule 51.315(b) that prohibits

4   ILECs from separating currently combined elements is in effect. However, as

5   noted in my direct testimony, until the FCC completes its 319 proceeding,

6   there is no required set of UNEs that must be made available either

7   individually or on a currently combined basis. BellSouth has agreed to

8   continue to offer any individual UNE currently offered until Rule 51.319 is

9   resolved.

10

11 With respect to Mr. Wood's reference to combinations involving local

12 switching, BellSouth's position is that the local switching function will not

13 meet the necessary and impair tests required by the 1996 Act when the FCC

14 completes its proceeding. Given the reach of a switch, the amount of ALEC

15 switch deployment and the ease of entry and expansion, there are numerous

16 alternative sources for ITC^DeltaCom to obtain switching. As BellSouth

17 noted in its Comments before the FCC in the Rule 319 Proceeding, because

18 switch manufacturers are targeting smaller ALECs, an ALEC can purchase a

19 switch for as little as $100,000. Long distance and wireless switches can be

20 upgraded to perform local switching functions, and the approximately 2,500

21 wireless switches owned by carriers other than the Bell companies and GTE

22 can substitute for wireline switches. Additionally, manufacturers can provide

23 remote switches that extend the reach of host switches plus all features to

24 distances of 500 to 600 miles. Finally, switch installation intervals are now in

25 terms of weeks or months, not years.

1

2   For switching in urban areas, ALECs have demonstrated that they can

3   successfully deploy switches and self-provision switching services. Further,

4   ALEC competitive opportunities would not be impaired without mandatory

5   unbundling of switching in those areas. Regarding rural areas, BellSouth

6   suggests in its Comments that the FCC view evidence of specific ALEC

7   impairment against the relative ease with which switching facilities can be

8   extended to or be installed in those rural areas. It is for these reasons that

9   BellSouth believes that local switching does not meet the necessary and impair

10   test.

11

12 Q.   MR HYDE (PAGE 9) STATES THAT BELLSOUTH HAS PROVIDED

13   ITC^DELTACOM WITH EXTENDED LOOPS BUT IS REFUSING TO

14   CONTINUE SUCH PROVISIONING. PLEASE RESPOND.

15

16 A.   BellSouth never intended to provide ITC^DeltaCom with extended loops.

17   Apparently, ITC^DeltaCom first ordered channelized special access (a tariffed

18   service), and then ordered UNE loops to be terminated to the special access

19   facility. This is what ITC^DeltaCom is referring to as "extended loops". The

20   Account Team provided these extended loops based on a misinterpretation of

21   the interconnection agreement by BellSouth's Contract Group. BellSouth is

22   under no obligation, either by the contract or by the Act or the FCC's Rules, to

23   combine UNEs with BellSouth's retail services. By the time BellSouth

24   discovered its mistake, BellSouth had already provisioned a number of

25   extended loop orders for ITC^DeltaCom. To avoid a complete disruption of

1   ITC^DeltaCom's service (which would potentially affect ITC^DeltaCom's end

2   users), BellSouth reached a verbal agreement with ITC^DeltaCom earlier this

3   year that BellSouth would continue provisioning these extended loops to

4   ITC^DeltaCom until such time as ITC^DeltaCom could establish collocation

5   arrangements in the related central offices. In order to bring these service

6   arrangements into compliance, ITC^DeltaCom submitted over fifty additional

7   collocation applications in May, 1999. These applications are in the process of

8   being implemented. Further, when these collocation arrangements are

9   completed, BellSouth's provisioning of extended loops to ITC^DeltaCom will

10   be curtailed, and existing extended loops will be converted. Further, any

11   requests for these "extended loops" by ITC^DeltaCom involving other central

12   offices, outside the verbal agreement, are not and will not be processed by

13   BellSouth.

14

15   Q.   MR. HYDE (PAGE 23) ELABORATES ON ITC^DELTACOM'S CLAIM

16   THAT BELLSOUTH MODIFIES ITC^DELTACOM'S ORDERS AFTER

17   ISSUING A FIRM ORDER CONFIRMATION ("FOC"). PLEASE

18   RESPOND.

19

20   A.   Mr. Hyde's discussion is related to a modification of a due date. Delays in

21   cutovers are addressed in Issue 2(c)(iv). A delayed due date is different from a

22   modification of the terms of an order. In light of further clarification recently

23   provided by ITC^DeltaCom, BellSouth understands that ITC^DeltaCom is

24   seeking reimbursement of some undefined costs when ITC^DeltaCom has

25   submitted an order pursuant to BellSouth's business rules, but those rules have

1   been modified or changed, either before or after ITC^DeltaCom has submitted

2   its order and the order is rejected for noncompliance with those business rules.

3   BellSouth can foresee numerous problems should this Commission grant

4   ITC^DeltaCom's request. For example, when ITC^DeltaCom has advance

5   notice of the rule change, and still submits orders without effecting the change,

6   BellSouth is not responsible for the order being rejected. Both parties would

7   be faced with problems including how and on what basis will the triggering

8   event or circumstance be determined in order to recover any such costs.

9   Equally difficult would be how and on what basis the alleged costs would be

10 determined or calculated. Therefore, ITC^DeltaCom's proposal invites the

11 parties and this Commission to enter a regulatory quagmire without any benefit

12 and should be rejected.

13

14 Q. AT PAGE 23 OF HIS TESTIMONY, MR. ROZYCKI CLAIMS THAT THE

15   RATES BELLSOUTH PROPOSES FOR TERMINATION OF CALLS WILL

16   NOT ALLOW ITC^DELTACOM TO RECOVER ITS COSTS OF

17   TERMINATING BELLSOUTH ORIGINATED LOCAL CALLS. PLEASE

18   RESPOND.

19

20 A. In accordance with FCC Rule 51.711 (Symmetrical reciprocal compensation),

21   this Commission may establish asymmetrical rates for transport and

22   termination of local telecommunications traffic only if the ALEC proves to the

23   Commission that the costs of efficiently configured and operated systems

24   justify a different compensation rate. The ALEC must present cost studies,

25   using the forward-looking economic cost-based pricing methodology, which

1   reflect that its costs exceed the costs incurred by the ILEC, and, consequently,

2   that a higher rate is justified. ITC^DeltaCom has not provided any such

3   studies. Accordingly, it is appropriate to utilize symmetrical rates as proposed

4   by BellSouth.

5

6 Q. ON PAGE 24, MR. ROZYCKI ASSERTS THAT ITC^DELTACOM

7   SHOULD BE ABLE TO CHARGE BELLSOUTH FOR TANDEM

8   SWITCHING. PLEASE COMMENT.

9

10 A. If a call is not handled by a switch on a tandem basis, it is not appropriate to

11   pay reciprocal compensation for the tandem switching function. BellSouth

12   will pay the tandem interconnection rate only if ITC^DeltaCom is performing

13   both the tandem and end office switching functions on the call. A tandem

14   switch connects one trunk to another trunk and is an intermediate switch or

15   connection between an originating call location and the final destination of the

16   call. An end office switch connects a line to a trunk enabling the subscriber to

17   originate or terminate a call. If ITC^DeltaCom's switch is an end-office

18   switch, then it is handling calls that originate from or terminate to customers

19   served by that local switch, and thus ITC^DeltaCom's switch is not providing

20   the tandem function. ITC^DeltaCom is seeking to be compensated for the cost

21   of equipment it does not own and for functionality it does not provide, which

22   the Commission should not allow. ITC^DeltaCom should be compensated for

23   tandem switching only when it performs a tandem switching function.

24

25 Q. HAS THIS COMMISSION RULED PREVIOUSLY ON THE ISSUE OF

1   TANDEM SWITCHING COMPENSATION WHEN TANDEN SWITCHING

2   IS NOT PERFORMED?

3

4 A.   Yes. In Order No. PSC-97-0297-FOF-TP, Docket 962120-TP, dated March

5   14, 1997, this Commission concluded at pages 10-11: "We find that the Act

6   does not intend for carriers such as MCI to be compensated for a function they

7   do not perform. Even though MCI argues that its network performs

8   "equivalent functionalities" as Sprint in terminating a call, MCI has not proven

9   that it actually deploys both tandem and end office switches in its network. If

10   these functions are not actually performed, then there cannot be a cost and a

11   charge associated with them. Upon consideration, we therefore conclude that

12   MCI is not entitled to compensation for transport and tandem switching unless

13   it actually performs each function." Similarly, Order No. PSC-96-1532-FOF-

14   TP, Docket No. 960838-TP, dated December 16, 1996, states at page 4: "The

15   evidence in the record does not support MFS' position that its switch provides

16   the transport element; and the Act does not contemplate that the compensation

17   for transporting and terminating local traffic should be symmetrical when one

18   party does not actually use the network facility for which it seeks

19   compensation. Accordingly, we hold that MFS should not charge Sprint for

20   transport because MFS does not actually perform this function." The FCC's

21   rules were in effect when both of these decisions were rendered, and

22   reinstatement of the FCC's rules does not alter the correctness of the

23   Commission's conclusions. This Commission should reach a similar

24   conclusion in this proceeding.

25

1   Q.   ON PAGE 24 OF HIS TESTIMONY, MR. HYDE STATES: "IN ORDER TO

2   PRESERVE THESE [UNRESOLVED] ISSUES, ITC^DELTACOM

3   GENERICALLY REQUESTED THE SAME INTERCONNECTION

4   LANGUAGE THAT IS IN OUR CURRENT AGREEMENT AS PART OF

5   ISSUE 5." HOW DO YOU RESPOND?

6

7   A.   ITC^DeltaCom's request for an extension of the current Interconnection

8   Agreement is inappropriate, and BellSouth is opposed to any amendment to

9   such effect. Section XVII(C) of the current Interconnection Agreement

10   between the parties clearly provides that upon expiration of the agreement (i.e.,

11   June 30, 1999), the parties will continue to operate in accordance with the

12   terms of such agreement until such time as a new interconnection agreement

13   becomes effective. When the new interconnection agreement becomes

14   effective, the terms of the new agreement shall be applied retroactively to the

15   date of expiration of the prior agreement. It appears that ITC^DeltaCom's

16   request to extend the expiration date of the current agreement is merely an

17   attempt to avoid application of the terms and conditions of the new agreement

18   to the period between June 30, 1999, and the date the new agreement becomes

19   effective. Further, ITC^DeltaCom's request appears to be an attempt to

20   modify the terms of an expired agreement. Since the current Interconnection

21   Agreement between the parties clearly addresses the circumstances about

22   which ITC^DeltaCom is concerned, no extension of the term of the current

23   Interconnection Agreement is needed.

24

1 Q. MR. HYDE (PAGES 25-26) PROPOSES THAT ITC^DELTACOM ENTER

2   INTO A BINDING FORECAST WITH BELLSOUTH AS PART OF THE

3   INTERCONNECTION AGREEMENT. WHAT IS YOUR

4   UNDERSTANDING OF ITC^DELTACOM'S REQUEST?

5

6 A. First, binding forecasts are not an issue previously specified in

7   ITC^DeltaCom's Petition. In addition, only §251 issues are appropriate for

8   arbitration, and binding forecasts are not required under §251. Therefore, this

9   issue is not subject to arbitration. Nonetheless, I am providing BellSouth's

10   position in response to ITC^DeltaCom's request. The binding forecast

11   arrangement proposed by ITC^DeltaCom would presumably guarantee

12   ITC^DeltaCom a certain level of capacity on BellSouth's network.

13   Additionally, ITC^DeltaCom would reimburse BellSouth's costs even if the

14   capacity were not actually used by ITC^DeltaCom.

15

16 Q. WHAT IS BELLSOUTH'S POSITION REGARDING BINDING

17   FORECASTS?

18

19 A. Although not required under the Act or by FCC rules, BellSouth is currently

20   analyzing the possibility of providing a service whereby BellSouth commits to

21   provisioning the necessary network buildout and support when an ALEC

22   agrees to enter into a binding forecast of its traffic requirements. While

23   BellSouth has not yet completed the analysis needed to determine if this is a

24   feasible offering, BellSouth is willing to discuss the specifics of such an

25   arrangement with ITC^DeltaCom outside of this arbitration, since the issue is

16

1   ~~not a part of this proceeding and not required under the Act.~~

2

3   Q.   ON PAGES 8-19 OF HIS TESTIMONY, MR. WOOD DISCUSSES THE

4   RELEVANCE OF OPERATIONS SUPPORT SYSTEM COSTS AND

5   CRITICIZES BELLSOUTH'S METHODOLOGY. PLEASE COMMENT.

6

7   A.   As explained in my direct testimony, this Commission has already addressed

8   the validity of the OSS costs in its April 29, 1998 Order No. PSC-98-0604-

9   FOF-TP, Docket Nos. 960757-TP, 960833-TP, and 960846-TP ("April 29

10   1998 Order"). Although this Commission declined to approve rates in its April

11   29, 1998 Order, the Commission strongly encouraged the parties to negotiate

12   in good faith to establish rates for OSS functions. BellSouth has offered a

13   Florida specific rate as supported by the cost study filed with the direct

14   testimony of Ms. Daonne Caldwell, which is consistent with the methodology

15   approved by this Commission. In addition, BellSouth has offered

16   ITC^DeltaCom a regional OSS rate proposal. This proposal represents a

17   voluntarily negotiated regional rate, which is only applicable if ITC^DeltaCom

18   agrees to the rate on a regional basis. See the Rebuttal Testimony of Ms.

19   Daonne Caldwell for further discussion of BellSouth's position regarding OSS

20   costs.

21

22 Q.   MR. HYDE, ON PAGE 11, STATES: "IN FLORIDA, BELLSOUTH HAS

23   NOT YET MADE THE SL1 AVAILABLE, SO THERE IS NO

24   ALTERNATIVE FOR VOICE GRADE UNE SERVICE OTHER THAN THE

25   MORE EXPENSIVE DESIGNED SL2 EQUIVALENT." PLEASE

1   RESPOND.

2

3   A.   Mr. Hyde contradicts himself by stating that, in states other than Florida,

4   ITC^DeltaCom chooses to use SL2; whereas, in Florida he complains that

5   "BellSouth has not yet made the SL1 available, so there is no alternative for

6   voice grade UNE service other than the more expensive SL2 equivalent." As

7   explained in my direct testimony, this Commission ordered a rate for a two-

8   wire analog voice grade loop prior to establishment of a distinction between

9   Service Level 1 (SL1) and Service Level 2 (SL2). BellSouth is willing to offer

10   an SL1 loop, and has filed a cost study, consistent with this Commission's

11   approved methodology, with the direct testimony of Ms. Daonne Caldwell

12   supporting new rates for both SL1 and SL2 .

13

14   Q.   AT PAGES 14-15 OF HIS TESTIMONY, MR. HYDE COMPARES

15   BELLSOUTH'S NONRECURRING CHARGE FOR ADSL WHOLESALE

16   SERVICE TO BELLSOUTH'S NONRECURRING CHARGE FOR ADSL

17   COMPATIBLE LOOPS AND CLAIMS THAT THE UNE RATE IS

18   EXCESSIVE. PLEASE RESPOND.

19

20   A.   First, let me explain the difference in BellSouth's ADSL Wholesale Service

21   and the ADSL-compatible loop. BellSouth's ADSL service, contained in

22   BellSouth's FCC Tariff No. 1, is a non-designed interstate transport service

23   which is an overlay to the customer's existing service, i.e., basic residence or

24   business local exchange service, which the customer orders and pays for

25   separately. ADSL service provides the ability to offer high-speed data service

18

1   over the same line that is used to provide an existing end user's basic local

2   exchange service. BellSouth's ADSL service is offered on a wholesale basis

3   typically to Internet Service Providers ("ISPs"). These ISPs in turn resell the

4   service to end users and charge the end users for the high speed data access.

5   For example, BellSouth.net has one ADSL service option for which it charges

6     $59.95 per month plus an installation charge of $199.00. The end user obtains

7   voice grade basic local exchange service, vertical features, and access to toll

8   services from BellSouth or from a reseller of BellSouth's basic local service.

9

10   By comparison, an ADSL-compatible loop is a connection from the BellSouth

11   wire center to the end user's premises that is technically capable of providing

12   both ADSL and basic local exchange service. This loop is an unbundled

13   capability sold to an ALEC. The ALEC generally installs equipment in

14   BellSouth's central office to provide the voice and data service over this loop.

15   An ALEC utilizing an ADSL-compatible loop would provide its end user with

16   basic local exchange service, vertical features, access to toll service, and

17   ADSL service. It is also important to note that an ALEC's purchase of an

18   ADSL-compatible loop ensures that the loop will remain ADSL compatible.

19   With BellSouth's ADSL tariffed service, there is a possibility that certain

20   network reconfigurations could cause the line to lose its ability to support

21   ADSL service.

22

23 Q.   PLEASE COMMENT ON MR. HYDE'S COMPARISON OF THE RATES

24   FOR THE ADSL SERVICE AND AN ADSL-COMPATIBLE LOOP.

25

1 A.   The $100 installation charge to which Mr. Hyde refers is for <u>overlaying</u> ADSL

2   tariffed service onto the customer's facility. That charge does not represent

3   installation of a physical facility. The cost-based non-recurring price for the

4   ADSL-compatible loop recovers the costs associated with ~~service inquiry,~~

5   ~~service order,~~ engineering, connect and test and travel activities incurred in

6   establishing a facility. Because ADSL-compatible loops are designed, they

7   require production of a Design Layout Record (DLR) as well as involvement

8   of special services work groups. ADSL service does not generally require a

9   premises visit unless the Network Interface Device ("NID") needs to be

10   replaced. By comparison, the ADSL compatible loop offering <u>always requires</u>

11   <u>a designed physical loop facility</u> and <u>always requires dispatch of a BellSouth</u>

12   <u>technician to the customer's premises.</u>

13

14   ITC^DeltaCom has inappropriately attempted to represent one rate element of

15   BellSouth's ADSL tariff offering as an exact substitute for the non-recurring

16   installation rate for an ADSL-compatible loop. This is an apples to oranges

17   comparison. Based on the information presented above, BellSouth requests

18   that the Commission determine that the Commission-approved cost-based

19   rates, specified in the Commission's April 29, 1998 Order, for ADSL-

20   compatible loops are just and reasonable. These rates are contained in Exhibit

21   AJV-1, attached to my direct testimony.

22

23 Q.   ON PAGE 26, MR. WOOD STATES THAT "… IT IS STANDARD

24   PRACTICE FOR A LEC TO CHARGE FOR SERVICE DISCONNECTION

25   AT THE TIME SERVICE IS INSTALLED BECAUSE OF CONCERN

1 may be performed by the same technician, on the same visit, the work

2 activities are separate functions. The costs for each activity are included in

3 separate cost studies for disconnect charges, and for installation charges.

4 Therefore, there is no double charge as Mr. Wood alleges. See the testimony

5 of Ms. Daonne Caldwell for further discussion on this point.

6

7 Q. ON PAGE 20 OF HIS TESTIMONY, MR. WOOD STATES THAT THERE

8 ARE NO COST STUDIES THAT CAN BE USED FOR CAGELESS

9 COLLOCATION. IS THIS TRUE?

10

11 A. No. BellSouth's physical collocation rates, as established by this Commission

12 in its April 29, 1998 Order, appropriately apply to physical collocation whether

13 an arrangement is enclosed (caged) or unenclosed (cageless). Rates have been

14 established for floor space on a per square foot basis and for power on a per

15 amp basis. Cross-connect charges apply on a per connection basis, and

16 entrance cable installation charges apply only if the ALEC requests such

17 installation. Thus, because BellSouth structured the physical collocation

18 elements in such a manner, rates for all of the piece parts required for cageless

19 collocation have been approved by this Commission.

20

21 Q. ON PAGE 15 OF HIS TESTIMONY, MR. ROZYCKI CLAIMS THAT

22 BELLSOUTH'S POSITION REGARDING PLU/PIU AUDITS IS THE

23 SAME AS ASSERTING A PENALTY. HOW DO YOU RESPOND?

24

25 A. BellSouth's position is that, if a BellSouth requested audit reveals that an

1   ALEC has overstated PLU/PIU percentages by 20 percentage points or more,

2   that ALEC should pay for the audit; otherwise, BellSouth will pay for the

3   audit. Numerous interconnection agreements filed with this Commission

4   include a similar provision regarding PIU/PLU audits. Clearly, this is not akin

5   to a penalty or liquidated damages provision in that BellSouth is only seeking

6   to recover its costs actually incurred in conducting the audit, not punitive

7   damages. An ALEC such as ITC^DeltaCom has advance notice of an audit,

8   which gives the ALEC an opportunity to review its records, correct the

9   PLU/PIU percentage, if necessary, and thereby avoid a possible assessment for

10   BellSouth's costs of conducting the audit.

11

12   Q.   DOES THIS CONCLUDE YOUR TESTMONY?

13

14   A.   Yes.

15

16   176395

17

18

19

20

23

1   BY MR. ALEXANDER (Continuing):

2   Q   Mr. Varner, did you also cause to be prefiled

3   on October 26th, 1999, in this proceeding supplemental

4   rebuttal testimony consisting of four pages with no

5   exhibits?

6   A   Yes.

7   Q   Do you have any changes, corrections or

8   deletions to make to that testimony?

9   A   No, I do not.

10   Q   If I were to ask you the same questions that

11   appear in your supplemental rebuttal testimony, would

12   your answers be the same today?

13   A   Yes, they would.

14   MR. ALEXANDER: At this time I'd like to move

15   the admission of Mr. Varner's supplemental rebuttal

16   testimony as well.

17   COMMISSIONER CLARK: It will be inserted into

18   the record as though read.

19   MR. ALEXANDER: Thank you.

20

21

22

23

24

25

1   BELLSOUTH TELECOMMUNICATIONS, INC.

2   SUPPLEMENTAL REBUTTAL TESTIMONY OF ALPHONSO J. VARNER

3   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4   DOCKET NO. 990750-TP

5   OCTOBER 26, 1999

6

7   Q.   PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH

8   TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS

9   ADDRESS.

10

11   A.   My name is Alphonso J. Varner. I am employed by BellSouth as Senior Director

12   for State Regulatory for the nine-state BellSouth region. My business address is

13   675 West Peachtree Street, Atlanta, Georgia, 30375.

14

15   Q.   ARE YOU THE SAME ALPHONSO VARNER WHO FILED DIRECT AND

16   REBUTTAL TESTIMONY IN THIS PROCEEDING?

17

18   A.   Yes.

19

20   Q.   WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL

21   TESTIMONY?

22

23   A.   My supplemental rebuttal testimony responds to issues raised by ITC^DeltaCom's

24   witness Thomas Hyde in his Supplemental Rebuttal testimony filed October 22,

25   1999.

1 Q.   HOW DOES MR. HYDE'S SUPPLEMENTAL REBUTTAL TESTIMONY

2   AFFECT THE ISSUES IN THIS CASE?

3

4 A.   Mr. Hyde's supplemental rebuttal testimony is irrelevant to the issues in this case.

5   The issue as addressed in ITC^DeltaCom's Petition for Arbitration is the rate that

6   BellSouth charges ITC^DeltaCom for ADSL-compatible loops. Nothing in Mr.

7   Hyde's testimony refutes that the price this Commission has already approved for

8   ADSL-compatible loops is appropriate.

9

10 Q.   ARE MR. HYDE'S CONCLUSIONS RESULTING FROM HIS COMPARISON

11   OF BELLSOUTH'S NONRECURRING CHARGES FOR ITS ADSL

12   TARIFFED SERVICE OFFERING VERSUS ITS ADSL-COMPATIBLE UNE

13   LOOP OFFERING MEANINGFUL?

14

15 A.   No. Mr. Hyde only addresses a portion of the charges for BellSouth's tariffed

16   ADSL service. As I discussed in my rebuttal testimony, the tariffed ADSL

17   service and the ADSL-compatible UNE are two completely different offerings.

18   Mr. Hyde attempts to use the nonrecurring charge for the tariffed ADSL service

19   offering as his support for that same charge applying to the ADSL-compatible

20   UNE loop. Aside from the fact that the two offerings are completely different, his

21   comparison is simply misleading.

22

23   For example, he attempts to justify his proposed ADSL-compatible UNE loop

24   nonrecurring rate by comparing it to BellSouth's tariffed nonrecurring rate for its

25   ADSL service. However, he ignores the fact that the tariffed ADSL service has a

1   recurring charge of $45 per month in addition to the recurring charge for the

2   underlying local exchange service. In order to get the $50 nonrecurring rate, the

3   customer must agree to pay these recurring charges. Mr. Hyde wants to have a

4   nonrecurring rate of approximately $50 for the ADSL-compatible UNE loop;

5   however, he fails to propose a specific rate to replace the monthly recurring rate

6   of $15.81 previously approved by this Commission. His arbitrary mixing of rate

7   elements provides no justification for his claim that the prices this Commission

8   has already approved for ADSL-compatible loops are inappropriate.

9

10   Q.   MR. HYDE ALLEGES THAT BELLSOUTH'S TARIFFED ADSL SERVICE

11   RATES "RAISE A BARRIER TO COMPETITIVE ENTRY AND ESTABLISH

12   A 'PRICE SQUEEZE'" WHEN COMPARED TO THE ADSL-COMPATIBLE

13   UNE LOOP RATES. PLEASE RESPOND.

14

15   A.   Mr. Hyde is incorrect. First, the ADSL-compatible UNE loop is priced at

16   TSLRIC. The tariffed ADSL service is priced to provide contribution over the

17   service's incremental cost. As I discussed above, the tariffed ADSL service has a

18        $50 nonrecurring rate and a $45 recurring monthly rate. The contribution from

19   the monthly rate is substantial; however, Mr. Hyde chose to ignore this fact and

20   focus only on the nonrecurring rates. Even if the tariffed ADSL service and the

21   ADSL-compatible UNE loop were the same service, Mr. Hyde's conclusion

22   would be erroneous. It is inconceivable that he could claim that an offering

23   priced at cost is priced too high to compete against a service priced well above

24   cost.

25

3

1   Q.   DOES THAT CONCLUDE YOUR TESTIMONY?

2

3   A.   Yes.

4

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1   (Whereupon, the transcript is continued in

2 Volume 6 without omissions.)

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