BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

IN THE MATTER OF:	)	
	)	
BellSouth Emergency Petition for	)	**WC Docket No. 04-245**
Declaratory Rule and Preemption	)	
of State Action	)	

OPPOSITION OF THE TENNESSEE REGULATORY AUTHORITY TO BELLSOUTH'S EMERGENCY PETITION

EXHIBITS

BOULT ▪ CUMMINGS
CONNERS ▪ BERRY PLC

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@boultcummings.com

RECEIVED
2003 AUG -4 PM 1:22
T.R.A. DOCKET ROOM

August 4, 2003

Deborah Taylor, Tate Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition for Arbitration of ITC DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996 Docket No. 03-00119*

Dear Chairman Tate:

Please accept for filing in the above-captioned proceeding the original and fourteen copies of Direct Testimony of the following on behalf of ITC^DeltaCom:

Joseph Gillan,
Don J. Wood
Mary Conquest
Jerry Watts
Steve Brownworth

I have enclosed an additional copy to be stamped "filed." I appreciate your assistance in this matter.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____
Henry Walker
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219
(615) 252-2363

HW/pp
Encl.

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103062-001
8/4/2003

EXHIBIT
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BEFORE THE
TENNESSEE REGULATORY AUTHORITY

In the Matter of:	§	
Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to Telecommunications Act of 1996	§ § § § § §	**Docket No. 03-00119**

DIRECT TESTIMONY OF
JOSEPH GILLAN
ON BEHALF OF
ITC^DELTACOM COMMUNICATIONS, INC.

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August 4, 2003

4,000% (non-recurring). When asked by ITC^DeltaCom to justify such absurd increases, BellSouth's response is that it cannot "locate anyone with knowledge" or "locate any workpapers or documents that may have existed or been used" to determine these prices. Not only should BellSouth be refused approval of these rates on a going-forward basis, but the Authority should also find that BellSouth may not apply these unjust and unreasonable rates in arrears.[3]

5. There is already an Authority-approved, just and reasonable rate for local switching in Tennessee – the current rate of $1.89 per port. This rate is now three-years old. The Georgia Commission most recently reviewed BellSouth's switching costs (which are essentially regional, and not state-specific) and determined that the current cost for unbundled local switching is $0.90 per port. As a result, the existing UNE port rate for unbundled local switching in Tennessee already produces excess margins nearly 100% above cost.

I recommend that the Authority reject BellSouth's proposed local switching rates (both recurring and non-recurring) for lines subject to the 3-Line Rule with a finding that these prices are unjust and unreasonable (and always have been). The existing UNE rates established by the Authority should remain in effect for all analog switch ports as the only rates that the Authority has determined are just and reasonable to date.[4] To the extent that BellSouth seeks to impose *different* just and reasonable rates on a particular network element, then it should be required to propose such rates in a separate proceeding (open to all CLECs), fully

---

[3] It is my understanding that BellSouth has only recently developed manual systems capable of billing these charges.

[4] Section 252(d)(1) of the Telecommunications Act of 1996 requires state commissions to establish rates for unbundled network elements that are "just and reasonable." Therefore, the cost-based UNE rates are defined as just and reasonable rates by the statute.

BELLSOUTH

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T.R.A. DOCKET ROOM

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

August 4, 2003

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
Docket No. 03-00119

Dear Chairman Tate:

Enclosed are the original and fourteen copies of direct testimony being filed on behalf of BellSouth by the following witnesses:

Kathy Blake	W. Keith Milner
Ronald M. Pate	John Ruscilli

The exhibit to Mr. Milner's testimony is proprietary and will be filed under separate cover pursuant to the Protective Order entered in this matter. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

500333

EXHIBIT
2

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronic	Henry Walker, Esquire Boult, Cummings, et al. 414 Union Street, #1600 Nashville, TN 37219-8062 hwalker@boultcummings.com
[ ] Hand [ ] Mail [ ] Facsimile [ ] Overnight [X] Electronic	Nanette S. Edwards, Esquire ITC^DeltaCom 4092 South Memorial Parkway Huntsville, AL 35802 nedwards@itcdeltacom.com
[ ] Hand [X] Mail [ ] Facsimile [ ] Overnight	David Adelman, Esquire Charles B. Jones, III, Esquire Sutherland Asbill & Brennan 999 Peachtree Street, NE Atlanta, GA 30309

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF KATHY K. BLAKE

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 03-00119

AUGUST 4, 2003

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1981 with a Bachelor of Science degree in Business Management. After graduation I began employment with Southern Bell as a Supervisor in the Customer Services Organization in Miami, Florida. In 1982, I moved to Atlanta where I held various positions involving Staff Support, Product Management, Negotiations, and Market Management within the BellSouth Customer Services and Interconnection Services Organizations. In 1997, I moved into the State Regulatory Organization with various responsibilities for testimony preparation, witness

ultimately reflect in its written Triennial Review Order. In fact, it is unclear which issues will be addressed and resolved solely by the FCC and which issues will be relegated or delegated to state commissions to resolve. At the time the ruling body's (FCC or state commission) order becomes effective, the change of law provisions in the interconnection agreement will allow the interconnection agreement to be revised accordingly. In addition, BellSouth reserves the right to supplement its testimony following the issuance of the FCC's written Triennial Review Order.

Issue 26: Local Switching – Line Cap and Other Restrictions (Attachment 2 – Sections 10.1.3.2 and 10.1.2):

(a) Is the line cap on local switching in certain designated MSAs only for a particular customer at a particular location?

(b) Should the Agreement include language that prevents BellSouth from imposing restrictions on DeltaCom's use of local switching?

(c) Is BellSouth required to provide local switching at market rates where BellSouth is not required to provide local switching as a UNE? If so, what should be the market rate?

Q. WHAT IS BELLSOUTH'S POSITION ON THESE ISSUES?

A. (a) When a particular customer has four or more lines within a specific geographic area, even if those lines are spread over multiple locations, BellSouth is not obligated to provide unbundled local circuit switching as long as the other criteria in FCC Rule 51.319(c)(2) are met.

(b) No, the interconnection agreement should not include language that prevents BellSouth from imposing restrictions on DeltaCom's use of local switching. The current FCC rules impose restrictions on DeltaCom's use of local switching and set forth the specific criteria under which BellSouth can avail itself of the local switching exemption. These rules should continue to apply unless and until they are lawfully amended by the FCC. BellSouth reserves the right to supplement its testimony following the issuance of the FCC's written Triennial Review Order.

(c) BellSouth will provide local switching at market-based rates where BellSouth is not required to unbundle local switching. The appropriateness of BellSouth's rates for providing local switching where it is not required by the Telecommunications Act of 1996 ("the Act") or the FCC's Rules implementing the Act are not governed by §§ 251 or 252 of the Act and, accordingly, it is not appropriate to address this matter in an arbitration proceeding.

Q. HAS THE AUTHORITY PREVIOUSLY ADDRESSED THE APPLICATION OF THE LINE CAP ON LOCAL SWITCHING (ISSUE 26A)?

A. Yes. In its decision in the BellSouth/AT&T arbitration proceeding, the Authority voted to "permit BellSouth to aggregate lines provided to multiple locations of a single customer to determine compliance with FCC Rule

1 BEFORE THE TENNESSEE REGULATORY AUTHORITY

2

3 IN RE:)
)
4 PETITION FOR ARBITRATION OF) Docket No.
ITC DELTACOM COMMUNICATIONS,) 03-00119
5 INC., WITH BELLSOUTH)
TELECOMMUNICATIONS, INC.,)
6

7

8

9 ----------

10 TRANSCRIPT OF PROCEEDINGS

11 Wednesday, August 27, 2003

12 ----------

13 APPEARANCES:

14 For ITC DeltaCom: Mr. Henry Walker
Ms. Nanette Edwards
15 Mr. David Adelman
Mr. Clay Jones
16
For BellSouth: Mr. Guy Hicks
17 Ms. Joelle Phillips
Mr. E. Earl Edenfield
18
For TRA Staff: Mr. Carsie Mundy
19 Mr. Joe Werner

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25 Reported By:
Carol A. Nichols, RDR, CRR, CCR

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1 what I thought was Director Tate's motion, which would
2 be to deny their motion and move forward but allow for
3 the parties to supplement by way of briefs or affidavit
4 or entertain any other creative, I think was the word
5 you used, manner or process in which the parties might
6 want to come in and provide you further information
7 directly on the TRO.
8 DIRECTOR JONES: So that we can be
9 completely clear, it's my understanding that with
10 respect to issue 26 that subparts B and C were resolved
11 and they've been removed from this arbitration.
12 MR. ADELMAN: I'm glad you brought that
13 up. They were not resolved, but we're trying to put
14 together a process for you, and we had initially said,
15 Well, we can just hold those out, but we don't want to
16 hold out all of issue 26 because we can't even agree to
17 hold that issue out. There is great dispute on issue
18 26, especially with record to a rate that BellSouth
19 wants to include in our contract.
20 And that contract will control the
21 relationship between these parties until some undefined,
22 indefinite time when you might make another decision
23 here. It's very important to us. It's an open issue,
24 and we need to present evidence to you and ask you to
25 decide the dispute between the parties, at a minimum,

1 controlling the interim period until there might be some
2 other decision.
3 DIRECTOR JONES: Let me ask it a
4 different way then. Are subparts B and C of issue 26 a
5 part of this arbitration?
6 MR. ADELMAN: We've agreed -- they're
7 in the petition. They're not resolved between the
8 parties, but as a result of the good work of your
9 hearing officer, we've agreed to carve those out, if you
10 will.
11 DIRECTOR JONES: Is that yes or no?
12 MR. ADELMAN: That is it depends, but
13 we do not intend to present evidence at this part of the
14 arbitration here, so it's not for this week. It is an
15 open issue between these parties. I just don't want you
16 to think we've settled those issues, and that's why I'm
17 reluctant to say yes or no. We have not settled those
18 issues.
19 DIRECTOR JONES: Well, we're sitting
20 here as the arbitrators, and my question goes to, are
21 those issues, those subparts, part of what we need to
22 arbitrate?
23 MR. ADELMAN: No.
24 MR. EDENFIELD: Let me jump in.
25 MR. ADELMAN: The answer is no.

1 MR. EDENFIELD: The answer to that
2 question is no. My understanding is that during this
3 discussion we've had over the last couple of days, those
4 two subparts of issue 26, DeltaCom agreed to defer those
5 to the triennial review proceeding. And that's why
6 they're not here. Now while they would have a position
7 on some issues and they would defer in others, I guess
8 we'll have to leave that.
9 MR. ADELMAN: I'll be glad to respond
10 to that because I think it requires a response. We
11 don't need terms and conditions on 26B and C to govern
12 us in the interim. We do on the other issues.
13 CHAIRMAN TATE: Could I rein us back in
14 for just a moment? I would suggest that we take a
15 recess and you-all discuss only what we originally began
16 discussing, and that was how -- if we were going to
17 proceed today and my motion and if you-all could come to
18 some agreement on that. We haven't even had the
19 prearbitration officer's report presented, nor accepted
20 that yet.
21 At this point all the issues that
22 you-all haven't agreed on are before us. So if we
23 could, why don't we take 15 minutes? Would that give
24 you-all sufficient time? And then let's come back and
25 let's deal with this preliminary motion to see if we're

1 moving forward.

2 DIRECTOR JONES: I'm sorry. On behalf

3 of Mr. Adelman, I don't believe the chairman's motion

4 suggested that we would hold in abeyance these TRO

5 issues indefinitely. In fact, that would not be my

6 expectation at all. So I just want you to keep that in

7 mind when we break.

8 CHAIRMAN TATE: Yes. When I was saying

9 that, I wasn't suggesting a date. It wasn't like a date

10 way out there. It was just that I don't know what to

11 suggest. Do I suggest 30 plus five days and then that

12 date ends up being wrong as I find often occurs here?

13 So I was just trying to give us some parameter but

14 because we don't know a precise date, I did not mean in

15 any way -- and I'm glad that Director Jones said that.

16 So with that said, we'll be back at 10:15. Thank you.

17 (Recess taken.)

18 CHAIRMAN TATE: Thank you. We'll come

19 back to order regarding the arbitration proceeding. Mr.

20 Adelman?

21 MR. ADELMAN: Thank you, Madame

22 Director. We appreciate the opportunity to take that

23 break for a few minutes, and I think it was very

24 productive. The parties have worked cooperatively, as

25 we have in other states, and we have a proposal we'd

1 like to bring to you for your consideration. I'll try
2 to succinctly describe it.
3 The parties would like to proceed with
4 all the witnesses on all of the open issues, including
5 26B and C, based on the filings and the prefiled
6 testimony that has been made, so without consideration
7 of the triennial review order. In some instances,
8 witness made very general references in their prefiled
9 testimony to what was then an anticipated release of the
10 triennial review order.
11 And there is, I suppose, kind of a
12 gentleman's understanding that there may be some general
13 references, but those would never exceed the scope of
14 the reference in the prefiled testimony, that at the
15 conclusion of the evidentiary presentations over the
16 next couple of days, the parties would come to the three
17 of you and suggest a process for what might or might not
18 be a desire to supplement or add to the record, whether
19 it be through briefs, affidavits, as suggested, an
20 additional hearing, second phase of this hearing
21 perhaps, but we'd like to sort of see how it goes, and
22 we may or may not want to even suggest another phase
23 other than the traditional post-hearing briefs.
24 I don't know, Mr. Edenfield, if you
25 have anything you want to add to that description.

1 MR. EDENFIELD: I think that sums it up
2 exactly right.
3 CHAIRMAN TATE: Well, thank you all.
4 Do my fellow directors have questions?
5 DIRECTOR JONES: I have no objection to
6 that agreement.
7 DIRECTOR MILLER: Would you give me one
8 second? Madame Chairman, I'm in agreement that we
9 proceed as suggested by the parties.
10 CHAIRMAN TATE: I want to thank you all
11 very much, and I think that was a productive 15 or so
12 moments. So if that's the case, then we will move
13 ahead.
14 DIRECTOR JONES: Mr. Edenfield, based
15 on that agreement, is BellSouth withdrawing its motion?
16 MR. EDENFIELD: Yes, sir.
17 DIRECTOR JONES: Thank you, sir.
18 CHAIRMAN TATE: Rather than have the
19 prearbitration officer present anything, I think that we
20 would just accept his report as modified by the
21 agreement of the parties and our acceptance of that
22 agreement, if you-all would agree.
23 DIRECTOR JONES: I agree.
24 DIRECTOR MILLER: I agree.
25 CHAIRMAN TATE: And then I think I was

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:	)	
	)	
PETITION FOR ARBITRATION OF	)	DOCKET NO.
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WITH BELLSOUTH TELECOMMUNICATIONS,	)	
INC., PURSUANT TO THE	)	
TELECOMMUNICATIONS ACT OF 1996.	)	

TRANSCRIPT OF PROCEEDINGS

Monday, January 12, 2004

APPEARANCES:

For BellSouth: Mr. Guy M. Hicks
Mr. E. Earl Edenfield, Jr.
(by telephone)

For ITC DeltaCom: Mr. Henry Walker
Ms. Nanette S. Edwards

For TRA Staff: Mr. Carsie Mundy
Mr. Joe Werner
Ms. Darlene Standley

Reported By:
Cheryl Buckelew Smith, RPR

1 comments. We will move to Issue 26, local switching,
2 line cap, and other restrictions. I believe that the
3 language regarding the four-line carve out per customer
4 was previously addressed by this Authority in the AT&T
5 arbitration in which the Authority permitted BellSouth
6 to aggregate lines provided to multiple locations of a
7 single customer. Further, the TRO states that the
8 four-line carve out will continue at least until the
9 TRO proceeding is complete.
10 I believe the proposed language from
11 DeltaCom attempts to thwart prevailing rules. The FCC
12 rules, particularly in the TRO, specify how and when an
13 ILEC may restrict the use of local switching.
14 DeltaCom's proposed language does not reference state
15 or federal rules or proceedings.
16 I'm of the opinion that this docket
17 does not have enough information in order to determine
18 what an appropriate rate for switching should be. I do
19 believe that BellSouth's proposed rate of $14 is
20 arbitrary since BellSouth cannot support or justify
21 that rate as just and reasonable as required by FCC
22 rules. However, I cannot support a UNE rate as
23 advocated by DeltaCom since by law and in this instance
24 switching is not a UNE, and it would be not a rational
25 interpretation of the FCC rules to price non-UNE

1 network elements the same as UNEs at TELRIC.
2 I, therefore, would move that the
3 four-line carve out per customer should continue until
4 otherwise determined by the Authority in Docket
5 No. 03-00491 and reflect the previous ruling of this
6 Authority in the AT&T arbitration, Docket No. 00-00079.
7 The agreement should not include language that prevents
8 BellSouth from imposing restrictions on DeltaCom's use
9 of local switching. BellSouth is to provide local
10 switching at market rates where BellSouth is not
11 required to provide local switching as a UNE.
12 And BellSouth and DeltaCom should be
13 ordered to submit final best offers within 20 days --
14 actually, since I suggested two weeks previously, let
15 me change my motion to say within two weeks as to the
16 appropriate interim rate for analog switching when
17 BellSouth is not required to provide such switching as
18 a UNE at TELRIC rates.
19 DIRECTOR JONES: I agree with
20 everything in your motion with the exception of the
21 four-line carve out. In July of 2002, the FCC
22 clarified its own rule to identify that that four-line
23 carve out applies on a per location basis. That
24 Authority ruling in that docket was made prior to this
25 ruling by the FCC in DA 02-1731. But now that the FCC

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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	)	
PETITION FOR ARBITRATION OF	)	DOCKET NO.
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TRANSCRIPT OF PROCEEDINGS

Monday, January 12, 2004

APPEARANCES:

For BellSouth: Mr. Guy M. Hicks
Mr. E. Earl Edenfield, Jr.
(by telephone)

For ITC DeltaCom: Mr. Henry Walker
Ms. Nanette S. Edwards

For TRA Staff: Mr. Carsie Mundy
Mr. Joe Werner
Ms. Darlene Standley

Reported By:
Cheryl Buckelew Smith, RPR

1 DIRECTOR JONES: Well, let's see if we
2 can make it work first. Do you have any idea how long
3 that would take BellSouth, Mr. Hicks?
4 DIRECTOR MILLER: If we could have
5 both parties come forward.
6 DIRECTOR JONES: And Mr. Walker; I'm
7 sorry.
8 CHAIRMAN TATE: And please identify
9 yourselves for the record.
10 MR. HICKS: Guy Hicks on behalf of
11 BellSouth Telecommunications. Good afternoon.
12 Director Jones, I really don't. I can
13 find out probably pretty quickly how long it would take
14 to develop the information. But as I sit here today, I
15 really don't know. You're correct. In the brief we
16 did say that if the Authority's inclined to order
17 BellSouth to provide the service, that DeltaCom should
18 be required to pay for it including the cost required
19 for the manual intervention of the databases. So your
20 recollection is correct, but I can't give you a firm
21 answer this afternoon.
22 DIRECTOR JONES: Let me ask
23 Mr. Walker, after BellSouth develops its cost data, how
24 much time do you need to review that? Or if your
25 position is that the functionality already exists and

1 they're already recovering, then, of course, you will
2 respond in that manner as well.
3 MR. WALKER: Henry Walker and Nanette
4 Edwards here on behalf of ITC DeltaCom.
5 Ten days, Director Jones, would be
6 sufficient for either response.
7 DIRECTOR JONES: Ten days after you
8 receive it from BellSouth?
9 MR. WALKER: Yes, sir.
10 DIRECTOR JONES: And not knowing when
11 BellSouth can have the information available, we can't
12 set a date here.
13 Mr. Hicks, is that information that
14 would be difficult to acquire from your client?
15 MR. HICKS: I really don't know,
16 Director Jones, but I can ask them right away as soon
17 as this afternoon and then submit a letter that would
18 be acceptable to the arbitrators proposing a time frame
19 and copy Ms. Edwards and Mr. Walker to see if they
20 would be agreeable.
21 DIRECTOR MILLER: How about I move
22 that we put this issue in abeyance and have the Chair
23 adopt a schedule after she's heard from the parties so
24 she can act on our behalves? So we will authorize her
25 to act on our behalf to setting up a schedule.

1 BEFORE THE TENNESSEE REGULATORY AUTHORITY

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4 IN RE:)
)
5 PETITION FOR ARBITRATION OF) Docket No.
ITC DELTACOM COMMUNICATIONS, INC.,) 03-00119
6 WITH BELLSOUTH TELECOMMUNICATIONS, INC.)

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TRANSCRIPT OF PROCEEDINGS

10

Monday, March 22, 2004

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APPEARANCES:

13

For BellSouth: Mr. Guy M. Hicks
14 Mr. E. Earl Edenfield,
(by telephone)

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For ITC DeltaCom: Mr. Henry Walker

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24 Reported By:
Christina M. Rhodes, RPR, CCR

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1 MR. EDENFIELD: Hello. This is Kip
2 Edenfield for BellSouth.
3 CHAIRMAN TATE: Thank you. I had just
4 invited the parties to come forward and identify
5 themselves for the record. I just had a question about
6 the March 22nd letter that we had received from
7 BellSouth and was not sure whether Mr. Hicks or you
8 would be addressing that.
9 And, Mr. Walker, if you would like to
10 identify yourself.
11 MR. WALKER: Henry Walker here on
12 behalf of ITC DeltaCom.
13 CHAIRMAN TATE: Is Ms. Edwards
14 participating?
15 MR. WALKER: She is available if we
16 need her for technical assistance.
17 CHAIRMAN TATE: I guess just as a
18 preliminary matter before we get started with the final
19 best offers, Mr. Hicks, BellSouth had filed a letter
20 requesting a brief delay in consideration of
21 Arbitration Issue No. 26 related to the market rate for
22 switching, and I just wondered if you had any comments
23 about that, and also to ask Mr. Walker if he had
24 anything he would like to say?
25 MR. HICKS: Thank you, Chairman Tate.

1 As we stated in our letter, we would respectfully ask
2 that the arbitrators just defer ruling on Issue 26
3 until the next conference because BellSouth is about to
4 announce, consistent with Chairman Powell's request, a
5 proposal that would be the basis for negotiations that
6 could impact this issue.
7 We don't want to delay things
8 unnecessarily but think that in light of all that's
9 happened with the TRO and the D.C. Circuit Court's
10 decision and Chairman Powell's request that carriers
11 try to commence negotiations on these issues, that that
12 be given some opportunity to work to see if something
13 can be worked out, which would mean that you would not
14 have to make a ruling on that issue if it could be
15 worked out.
16 CHAIRMAN TATE: Thank you.
17 Mr. Walker?
18 MR. WALKER: We filed a brief
19 response. I don't know if you had time to see it or
20 not. We're opposed to any further delay. The case has
21 been going on for more than a year. The hearings
22 themselves were conducted more than six months ago. We
23 think it's time to go ahead and make a decision on all
24 the remaining issues.
25 I would just like to make two points.

1 BEFORE THE TENNESSEE REGULATORY AUTHORITY

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4 IN RE:)
)
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ITC DELTACOM COMMUNICATIONS, INC.,) 03-00119
6 WITH BELLSOUTH TELECOMMUNICATIONS, INC.)

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9

TRANSCRIPT OF PROCEEDINGS

10

Monday, April 12, 2004

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APPEARANCES:

13

For BellSouth: Ms. Joelle Phillips

14

For ITC DeltaCom: Mr. Henry Walker

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24 Reported By:
Christina M. Rhodes, RPR, CCR

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1 dynamic -- the pressure to settle is radically changed.
2 And we are currently trying to
3 negotiate exactly what you're set to rule on. We made
4 legal arguments already about whether the TRA or the
5 FCC has jurisdiction, about whether cost is an
6 appropriate thing to even think about when you set
7 something that's supposed to be a market rate, but
8 obviously -- and obviously we think we're right and
9 DeltaCom is wrong, but what we're really here today to
10 do is just simply offer another plea -- a practical
11 reality-based plea that you not release the pressure
12 yet and that you give us a chance to see what might
13 happen if we continue to negotiate. No matter who
14 wins, that pressure is going to be altered if a rate is
15 set by the Authority.
16 I think all of you have seen by now
17 the April 6th letter from Mr. Ackerman to the FCC. I
18 think we filed a copy of it. And if you needed any
19 better indication of what a unique situation we're in
20 right now, I think that letter is really a remarkable
21 thing when you think about corporate realities. Here
22 is a CEO who has led his company through years of
23 arduous, expensive, time-consuming regulatory effort at
24 the FCC and then a legal battle with the FCC all to
25 challenge rules that Mr. Ackerman has been very vocal

1 BEFORE THE TENNESSEE REGULATORY AUTHORITY

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4 IN RE:)
)
5 PETITION FOR ARBITRATION OF) Docket No.
ITC DELTACOM COMMUNICATIONS, INC.,) 03-00119
6 WITH BELLSOUTH TELECOMMUNICATIONS, INC.)

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TRANSCRIPT OF PROCEEDINGS

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Monday, April 12, 2004

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APPEARANCES:

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For BellSouth: Ms. Joelle Phillips

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For ITC DeltaCom: Mr. Henry Walker

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24 Reported By:
Christina M. Rhodes, RPR, CCR

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1 pick the first available conference after that date --
2 one way or the other a decision would be made -- if
3 that would be acceptable.
4 DIRECTOR MILLER: Can somebody check a
5 calendar?
6 MS. WOODRUFF: June 15th is a Tuesday.
7 CHAIRMAN TATE: Well, and we'll be at
8 SEARUC I know I think it's the week before that, so I'm
9 not sure if there's a conference that next Monday.
10 DIRECTOR MILLER: We don't have to do
11 it on a conference day, do we?
12 DIRECTOR JONES: No. We could do it
13 that week, sure.
14 CHAIRMAN TATE: If there's no problem,
15 then we'll just send out a notice.
16 DIRECTOR MILLER: No. Let's set a
17 date. Let's set a firm date. Let's take a five-minute
18 recess and get a calendar.
19 (Recess taken from 3:01 p.m.
20 to 3:04 p.m.)
21 CHAIRMAN TATE: We'll be back on the
22 record. Director Jones?
23 DIRECTOR JONES: I would move that we
24 defer a decision on Issue 26 on the final best offers
25 until 45 days after the 60-day stay of the D.C. court's

1 mandate, which will be June 15th, and that this
2 arbitration panel arbitrate this final issue on
3 June 21st after the Authority conference, and I so
4 move.
5 CHAIRMAN TATE: I second.
6 DIRECTOR MILLER: I vote aye, and
7 we'll also have a response from ITC DeltaCom to -- on
8 Monday of next week.
9 DIRECTOR JONES: Thank you. I agree
10 with that.
11 CHAIRMAN TATE: I would agree, and
12 we're adjourned. Thank you.
13 (Proceedings concluded at
14 3:06 p.m.)
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