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December 17, 2004

Hon. Jean Stone, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Ⓢ TN REGULATORY AUTHORITY
DOCKET ROOM

**Re: *Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and ITC^DeltaCom Communications, Inc.***
Docket No.: 02-01203

***Enforcement of Interconnection Agreement between BellSouth
Telecommunications, Inc. and XO Tennessee, Inc***
Docket No.: 02-01204.

Dear Hearing Officer Stone::

XO Tennessee, Inc. ("XO") and ITC^DeltaCom Communications, Inc. ("DeltaCom") submit this letter in response to the December 10, 2004 letter to you from BellSouth Telecommunications, Inc. ("BellSouth").

As scheduled, BellSouth last week sent a letter to you, as Hearing Officer in this matter, providing additional information about BellSouth's request to conduct an audit of Extended Enhanced Loops ("EELs") converted from special access circuits by XO and ITC^DeltaCom.

As discussed by the parties during the last status conference, XO and DeltaCom have several concerns about the proposed audits. The carriers specifically questioned (1) whether the auditors would be "independent" in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA"); (2) whether the audit itself would be conducted in accordance with AICPA standards, including the design of the audit, the selection of an appropriate sample of lines to be tested, and the application of the concept of "materiality" in issuing an opinion letter. To insure that these concerns are addressed, the carriers asked that BellSouth provide the TRA with an affidavit from the auditor stating that the auditor met with the AICPA's standard for independence and that the auditor, not BellSouth, propose an audit methodology for the TRA to consider. Finally, the carriers requested that a TRA staff employee, someone experienced in conducting audits, be assigned to monitor these audits and be available to mediate disputes that may arise.

BellSouth's December 10 letter does not resolve or, in most cases, even address these concerns. BellSouth does provide an email (with the offer of a follow-up affidavit) from the president of American Consultants Alliance ("ACA"), an auditing firm. The email does not address the AICPA standards or state that ACA is an "independent" auditor as determined by those standards. The email states only that ACA is not affiliated with BellSouth or a BellSouth affiliate. This is not sufficient for the TRA to make a determination of whether ACA meets the AICPA's standards for independence.

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BellSouth next states that it is willing to use the accounting firm of Grant Thornton, LLP, instead of ACA. XO and DeltaCom agree that, if BellSouth uses Grant Thornton to conduct the audits, the carriers will not require an affidavit that Grant Thornton is an independent auditor, as judged by AICPA standards. The carriers will, however, still insist that the audit be conducted in accordance with all applicable AICPA standards, as required by the FCC,¹ including the independence standards.

BellSouth next refers to the engagement letter sent by BellSouth to ACA and filed with the TRA on August 2, 2004. The engagement letter states that the audit will be conducted in accordance with AICPA standards. The letter makes reference to an as yet undeveloped “audit plan,” “necessary records,” “data gathering” and “other tasks”— precisely the information that the carriers and the TRA have requested — but does not indicate that such information will be provided to the agency or the other carriers.

The FCC has explained that AICPA standards require “compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor’s judgment.” TRO, paragraph 626. For that reason, the carriers expressly requested that BellSouth file with the TRA a proposed methodology/procedure “designed by the independent auditor,” not by BellSouth and one which addresses the selection of a sample of lines and the concept of materiality. BellSouth has yet to respond directly to these issues.

BellSouth did file, along with the letter to ACA, an “audit methodology” designed by BellSouth, not by an independent auditor. Although the carriers await the filing of an audit plan prepared by the auditors, the carriers note the following specific objections.

BellSouth’s proposed audit methodology states that the auditors should request a sample of call detail records. But the carriers are not required to produce call detail records to support the carrier’s certification. The FCC’s Order in CC Docket No. 96-98 released June 2, 2000 states at Paragraph 32:

Records that demonstrate that a requesting carrier’s unbundled loop-transport combination is configured to provide local exchange service should be adequate to support the carrier’s certification without the need for extensive call detail records. We emphasize that an audit should not impose an undue financial burden on smaller requesting carriers and that the ILEC should verify compliance for these carriers using the records that the carriers keep in the ordinary course of business.

¹ “The independent auditor must perform its evaluation in accordance with the standards established by the [AICPA]” TRO, paragraph 626.

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Even though the BellSouth proposal states that BellSouth is requesting a sample of call records, the proposal also states that the auditors should examine every EEL circuit, rather than, as the FCC said, "a sample selected in accordance with the independent auditor's judgment." TRO, paragraph 626. In this case, the sample should be a random sample of circuits, not a random sample of records for every circuit. For that sample of circuits, the auditor should conduct a review of documentation such as (1) service provisioning records to show that the circuits were set up for local service; (2) retail billing records which would show that the customer was billed for local service and any regulatory fees associated with local service such as 911 and TRS were collected; or (3) any certification from the retail end user showing that XO/DeltaCom is the exclusive local provider (if applicable). Any of the three types of records should suffice. Not all are required.

Furthermore, in the case of XO, the audit should be limited to EELs converted after December 31, 2003, as XO and BellSouth have previously agreed to a settlement of UNE billing disputes through that date. The parties are presently discussing the scope of the settlement agreement, which is confidential, and its effect on this audit request. If the parties are unable to agree, XO will ask the Hearing Office to enter a protective order and, subsequent to the entry of the order, XO will file a copy of the settlement agreement with the TRA.

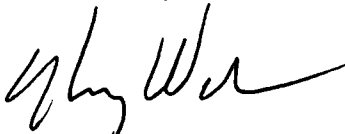
Finally, BellSouth's letter does not address the carriers' proposal that the TRA staff monitor the audits and be available to mediate disputes. The TRA staff includes CPAs who are experienced in conducting audits and in monitoring audits by outside firms. BellSouth cannot reasonably object to this request.

For these reasons, XO and ITC^DeltaCom request that the Hearing Officer require BellSouth to submit (1) additional information on the auditors' independence (if the auditors are not Grant Thornton) and (2) a specific audit plan, designed by the auditor, addressing the concerns raised by XO and DeltaCom. The carriers further ask that the Hearing Officer recommend that someone from the TRA staff be assigned to monitor the audit. The carriers agree with BellSouth that the Hearing Officer should, initially, resolve all of these issues, subject to review by the TRA Directors.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:



Henry Walker

HW/djc