

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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February 6, 2006

T.R.A. DOCKET ROOM

IN RE: Enforcement of Interconnection)
Agreement between BellSouth)
Telecommunications, Inc. and)
ITC^DeltaCom Communications, Inc.)

Docket No.: 02-01203

**RESPONSE OF ITC^DELTACOM TO BELL SOUTH'S FILING REGARDING AUDITOR
AND AUDIT METHODOLOGY**

ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") submits the following response to the January 23, 2006, filing of BellSouth Telecommunications, Inc. ("BellSouth") regarding the selection of an auditor and the presentation of an audit methodology.

In sum, although the parties have agreed on the selection of Grant Thornton, LLP, as an independent auditor, BellSouth has not yet complied with the Authority's instructions to submit for the Authority's approval both a "letter of engagement" between BellSouth and Grant Thornton and a "proposed methodology/procedure for conducting [the] audit." See "Report and Recommendation of Pre-Hearing Officer," February 12, 2004, at 10-11 and "Order Approving Report and Recommendation," September 29, 2004, at 5. Instead, BellSouth states it is "finalizing" an engagement letter which the carrier will presumably file at a later date for the Authority's consideration. It is not clear whether BellSouth intends to file a proposed methodology for conducting the audit. BellSouth says that it will "defer to the professional judgment of its auditor with respect to all specific issues regarding the appropriate methodology to be used in this audit." BellSouth filing, at 1. Such "specific issues" presumably include "whether the audit should utilize a sampling of EELs [extended enhanced loops] or a sampling of data from each EEL," an issue identified by the Authority

as one that the agency should address when reviewing the auditor's proposed methodology.¹ "Order Approving Report and Recommendation," at 5. BellSouth has also not addressed in this filing the request of ITC^DeltaCom that a TRA staff member monitor the audit and be available to mediate any disputes which may arise. The Hearing Officer has not yet ruled on this request which is intended to ensure that the audit is conducted in a manner consistent with the TRA-approved methodology and does not become unnecessarily burdensome or intrusive.

Until BellSouth complies with the Authority's instructions and submits an engagement letter and a specific audit plan, ITC^DeltaCom cannot meaningfully respond to BellSouth's filing. Therefore, ITC^DeltaCom respectfully requests that BellSouth's complaint be dismissed without prejudice until BellSouth signals its readiness to proceed by filing a new complaint along with an engagement letter and audit plan.

This matter has been pending for more than three years. It has been continued many times at the request of both parties primarily because of ongoing negotiations between BellSouth and XO Tennessee, Inc. in Docket 02-01204. That docket was consolidated with this proceeding because of the similarity of the issues. BellSouth and XO eventually reached a settlement and Docket 02-01204 has now been closed.

In the meantime, the Authority's decision to limit the scope of BellSouth's proposed audit has substantially reduced the significance of BellSouth's original complaint, perhaps to the point where the results of an audit would be immaterial.

¹ The FCC requires that the auditor "must perform its evaluation" in accordance with AICPA standards "which typically include an examination of a sample selected in accordance with the auditor's independent judgment" and also incorporates the concept of materiality. See TRO, paragraph 626. These and other concerns about the proposed audit are set forth in more detail in a letter to the Hearing Officer from ITC^DeltaCom dated December 15, 2004, and are reiterated in the TRA's "Order Delegating Hearing Officer Authority to Dispose of Post-Hearing Issues," June 27, 2005. Those concerns underscore the importance of requiring BellSouth to submit a detailed audit plan, developed by the auditor and reflecting the auditor's independent judgment, to the Authority for the agency's review and approval.

BellSouth originally demanded an audit of all EELs leased by ITC^DeltaCom in Tennessee, both those EELs which had been converted from special access circuits and those ordered new. In answering BellSouth's complaint, ITC^DeltaCom noted that while the carrier had approximately fifty EELs in Tennessee, it had identified "only one EEL which was converted from a special access circuit." "Answer and Counter-Complaint of ITC^DeltaCom," filed December 5, 2002, at 6. ITC^DeltaCom further stated that the one converted EEL was being used by a customer who had signed a statement explaining that he had selected ITC^DeltaCom as his exclusive provider of local service. Id., at 7. The customer's statement, which was filed with the Authority, satisfies the FCC's rules concerning the proper use of EELs and effectively exempts that line from BellSouth's audit.

In response, BellSouth continued to argue that BellSouth was entitled to audit all EELs, not just converted EELs. Perhaps to emphasize the company's argument, BellSouth stated that its records indicated that ITC^DeltaCom had no converted EELs in Tennessee. "Response of BellSouth to Counter-Complaint of ITC^DeltaCom," January 6, 2003, at 2.

In her February 12, 2004, "Report and Recommendation," the Hearing Officer ruled that "based on the language in the interconnection agreements, audits should be limited to converted, rather than new, EELs." Id., at 9. This decision was affirmed by the Authority on September 29, 2004. Thus, if BellSouth had conducted an audit of ITC^DeltaCom's converted EELs at the time BellSouth filed this complaint, it is not clear if the auditors would have had anything to audit.

The record does not indicated how many, if any, converted EELs would be subject to an audit if the audit were conducted today. It seems likely, however, that any such audit would apply, at most, to only a handful of circuits. Under these circumstances, a dismissal without prejudice of BellSouth's complaint would allow the parties to consider whether further litigation over auditing a very small number of circuits is a wise use of the resources of the parties and the Authority.

For these reasons, ITC^DeltaCom respectfully requests that BellSouth's complaint be dismissed without prejudice. If BellSouth files a new complaint, the company should include an engagement letter with Grant Thornton, a specific methodology designed by Grant Thornton, which addresses the issues raised by the Authority and by Momentum, and BellSouth's estimate of the number of converted EELs, if any, which are subject to the audit. Until the TRA receives this information, there is no reason to proceed further with this matter. The docket should be closed.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

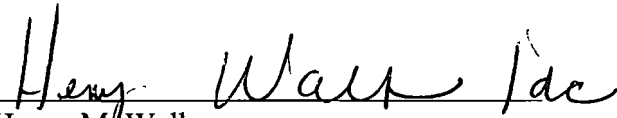
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

Guy Hicks
BellSouth Telecommunications, Inc.
333 Commerce Street
Nashville, TN 37201-3300

on this the 6th day of February 2006.


Henry M. Walker