BELLSOUTH

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February 20, 2004

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 BellSouth's *Best and Final Offers* Copies of the enclosed are being provided to counsel of record

Very truly yours,

Guy M Hicks

GMH ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*

Docket No. 03-00119

BELLSOUTH TELECOMMUNICATIONS, INC.'S
BEST AND FINAL OFFERS

BellSouth Telecommunications, Inc. ("BellSouth"), in accordance with the instructions of the Tennessee Regulatory Authority ("Authority" or "TRA") at the January 12, 2004 Agenda Conference, submits these Best and Final Offers on Issues 2, 26, 44/46, 47 and 62.

Issue 2: Access to Directory Listings

As background, the purpose of DeltaCom's request in Issue 2 is to enhance its ability to validate the accuracy of its white page listings. To provide such enhancement by means of a pure electronic feed will be extremely costly. BellSouth sent Accenture, its vendor, a request to develop a pure electronic feed solution, and the alternative has proven so complex that Accenture has not yet determined how this could be accomplished. Preliminary discussions with Accenture indicate that this solution will cost millions of dollars.

However, consistent with discussions with DeltaCom as recently as last week, BellSouth can develop a much less expensive and more practical alternative means of enhancing DeltaCom's ability to verify the accuracy of its white page listing. Following is a description and cost estimate for this solution.

As discussed during the arbitration proceeding, BellSouth does not have a product that extracts, by CLEC, listings from the Listing Information System ("LIST") database. BellSouth estimates the cost to develop a CLEC-specific LIST extract product to be $42,230.[1] In addition to this development cost, DeltaCom will be charged $.04 per listing for each listing extracted, which is consistent with existing BellSouth tariffs.[2]

This new product would provide a copy of the directory listings of DeltaCom customers and allow DeltaCom to review its customers' directory listings. To be clear, this is an extract product, not a real-time database; therefore, DeltaCom will not be able to edit real-time. DeltaCom will be able to verify the accuracy of its white page listings with this new extract product. DeltaCom can submit any changes or corrections to the listings through the local service request ("LSR") process that DeltaCom (and all CLECs) use on a daily basis.[3]

Issue 26: Market Rates for Non-UNE

The Authority requested the parties to provide a best and final offer regarding the rate for non-UNE (*i.e.*, market-based) switching as defined in FCC Rule 51.319(c)(2). BellSouth emphatically maintains that the Authority lacks the jurisdiction to consider or mandate the pricing of network elements that BellSouth will provide under §271 (not §251) of the 1996 Act. Indeed, according to the FCC, "Where there is no impairment under Section 251 and a network element is no longer subject to unbundling, we look to Section 271 and elsewhere in the Act

[1] Support for this developmental cost is shown on Attachment 1
[2] *See*, BellSouth's General Subscriber Services Tariffs A 38 2, A 38 1, and A 38 4
[3] Design parameters for this less expensive solution are set forth in Attachment 2

to determine the proper standard for evaluating the terms, conditions, and pricing under which a [Bell Operating Company] must provide the checklist network elements." *TRO* ¶656. The FCC subsequently determined that a checklist element that does not have to be unbundled – such as switching – is subject to the federal "just and reasonable" pricing standard set forth in Sections 201 and 202 of the Act.

Importantly, the jurisdiction to enforce Sections 201 and 202 of the Act is vested with the FCC, not with state public service commissions. The FCC, in ¶664 of the TRO, made this point abundantly clear, in reserving for itself jurisdiction to determine whether a rate for a checklist element that does not have to be unbundled is just and reasonable:

> Whether a particular checklist element's rate satisfies the just and reasonable standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, a BOC might satisfy the standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate.

Pursuant to FCC Rule 51.319(c)(2), BellSouth is not obligated to provide unbundled switching at TELRIC-based rates for CLECs to serve customers with

four or more lines in Density Zone 1 in the Nashville MSA.[4] However, BellSouth is required to provide switching pursuant to §271 of the 1996 Act. In satisfaction of this obligation, BellSouth offers a Wholesale Local Platform DS0 Service. This offering is priced as follows:[5] Zone 1 - $26.48; Zone 2 - $30 31, and Zone 3 - $35.32. Because this offering currently applies to enterprise customers who have four or more lines (in Density Zone 1 in the Nashville MSA), it is predominantly utilized by CLECs to serve business customers, not mass market (i.e., residence and small business) customers.[6] In fact, as of October 2003, BellSouth was billing market rates to twenty-four (24) CLECs for approximately 4,400 DS0 analog lines in Nashville.[7]

BellSouth's market rates are significantly lower than the cost a CLEC would incur for a comparable service obtained via resale, such as the BellSouth Business Choice Package Option 1,[8] which would be $72.61 including the multi-line business Subscriber Line Charge ("SLC") or Complete Choice for Business, Option

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[4] In order to avail itself of this exemption, BellSouth is required to (and does) offer Extended Enhanced Links ("EELs") to CLECs at TELRIC-based rates

[5] Rather than pricing each switching component on an individual element basis, BellSouth has chosen to offer a market-based rate that encompasses the port and the features, and also the TELRIC-based analog SL1 loop Additional charges for usage and ancillary services will apply.

[6] The issue presented to the Authority in this proceeding involved only DeltaCom customers with four or more lines in Density Zone 1 in the Nashville MSA as defined in FCC Rule 51.319(c)(2) Based on the FCC's definition in the UNE Remand Order, a customer with four or more lines is considered to be an enterprise customer BellSouth also offers a Wholesale Local Platform DS0 Mass Market Service offering at the following rates. Zone 1 – $21.18; Zone 2 – $25 01, and Zone 3 – $30.02. Additional charges for usage and ancillary services will apply This offering could be used by CLECs to serve mass market (i.e., residence and small business) customers where switching is no longer required to be provided under §251 of the 1996 Act

[7] Seven months earlier, in March 2003, BellSouth was billing market rates (at the market rate in the respective CLEC Agreements) to eighteen (18) CLECs for approximately 3,500 DS0 analog lines in Nashville Throughout the region, as of October 2003, BellSouth was billing comparable market rates to a total of sixty-four (64) CLECs for approximately 74,000 DS0 analog lines

[8] Many CLECs opt for LATA-wide local calling in their Interconnection Agreements with BellSouth.

3, which would be $58.37 including the SLC. The fact that BellSouth has agreements with numerous CLECs that expressly include these market rates and the fact that CLECs are paying these market rates for DS0 analog lines, rather than serving these multi-line customers with DS1s, demonstrates, as a matter of law[9], that these rates are just and reasonable. The Authority should decline, based on a lack of jurisdiction or on the FCC's TRO, to impose non-market based rates or otherwise regulate these rates.

Alternatively, the Authority should provide the parties an additional thirty days to negotiate a rate satisfactory to both parties. If successful, this would eliminate the need for an appeal from any Authority order over the jurisdictional issue.

Issues 44/46: Busy Line Verification and Busy Line Verification Interrupt

There are two separate issues addressed in the Arbitrators' deliberation. First, the Arbitrators ordered BellSouth to include in the parties' interconnection agreement the rates, terms, and conditions for the establishment of trunk groups for operator services, emergency services, and intercept.[10] To clarify, BellSouth already includes rates, terms and conditions for such trunk groups in its interconnection agreements. BellSouth agrees to include these rates, terms and conditions in the DeltaCom interconnection agreement.

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[9] As noted above, the FCC determined that the just and reasonable rate standard is met by a BOC, such as BellSouth, demonstrating "that it has entered into arms-length arrangements with other, similarly situated purchasing carriers to provide the element at that rate." (TRO ¶664) *See also*, Hearing Transcript, at pp 533-536 regarding arms-length negotiations, and subsequent payment, of the market rates This evidence was undisputed

[10] *See* Transcript of January 12, 2004, at p 21-22

Second, the Arbitrators held in abeyance DeltaCom's request that BellSouth provide busy-line verification and busy-line intercept to DeltaCom. Recognizing that Bellsouth would incur costs to develop this new service for DeltaCom, the Arbitrators ordered BellSouth to submit an estimate of the costs associated with developing the new service.[11]

Before setting forth its good faith cost estimate, BellSouth provides the following explanatory information.

This issue involves the modification of an existing BellSouth retail service, Busy Line Verification/Interrupt (BLV/I), to allow BellSouth retail subscribers to conduct BLV/I on a facilities-based CLEC number. BellSouth's current retail service does not allow for this, because the BellSouth operator has no information on the 10 digit number for which the BellSouth end user is requesting BLV/I. For this reason, the BellSouth operator has to first key the number into the BellSouth verification network in every instance to determine if the number can be verified and/or interrupted. The BellSouth verification network will provide an indicator to the BellSouth operator if the number can not be verified or interrupted. The BellSouth operator would then advise the BellSouth end user the number can not be verified or interrupted.

Additionally, the advent of local number portability has made it more complicated to determine which switch and/or CLEC owns the number on which BLV/I has been requested (the target NPA-NXX). Therefore, the BellSouth operator must be provided with access to the BellSouth local number portability database

[11] *See* Transcript of January 12, 2004, at p 21, 25

from his or her workstation. A local number portability database query would then need to be made by the BellSouth operator to determine the CLEC owner of the number to be verified and/or interrupted. Next, an additional database would have to be created to identify all CLECs and their NPA-NXXs, along with their associated Toll Test Code ("TTC") for BellSouth operators to reach the CLEC's Operator Services Provider. New operator methods and procedures to inform the BellSouth operators how to handle BLV/I requests on CLEC numbers would have to be developed along with new network trunking provisioning, service ordering procedures and a mechanized billing solution to bill the CLECs and BellSouth end users for the service.

Each of these issues had to be considered in developing the following network descriptions, which address two proposed network configurations for providing BLV/I on CLEC numbers to BellSouth end users. Depending upon which company (BellSouth, CLEC or Other Operator Services Provider) provides dial tone and which company provides operator call processing service for the end user, the CLEC would have to order from BellSouth an outgoing verification trunk group or a 2-way Inward Operator trunk group from the CLEC switch or point of interface to the BellSouth point of interface (TOPS switch) in each BellSouth LATA to provide the BLV/I capability for BellSouth end users on CLEC numbers. The CLEC must also provide BellSouth with the TTC code to reach the CLEC Operator Services Provider. The network diagrams and associated call flows reflecting the two possible BLV/I network configurations are attached hereto as Attachment 3 and Attachment 4.

The costs BellSouth will incur to develop this capability (both Scenario 1 and 2) include:

1. Network provisioning - No incremental cost;

2. Mechanized billing solution to charge CLECs for Inward BLV/I - Cost estimate: $837,000 - $1,046,155;

3. Operator Services methods and procedures and training delivery - Cost estimate: $4,300;

4. CLEC NPA-NXX/TTC database development - Cost estimate: $13,500;

5. Service ordering procedures - No incremental cost.

6. Additional Operator Work Time - Cost estimate: $77,000

7. Operator position enhancement for LNP query - Cost estimate: $1,875

In addition to the total development costs (between $933,675 and $1,142,830)[12] of this retail service, BellSouth estimates that it would take approximately six to nine months to complete this project.

Issue 47: Reverse Collocation

BellSouth proposes the following compromise contract language for reverse collocation:

> BellSouth should not be required to pay collocation charges when such collocation is for the benefit of, and at the request of, DeltaCom. BellSouth should pay collocation charges when voluntarily collocating in a DeltaCom premise whereby BellSouth derives benefit from the collocation space. Consequently, the existing Points of presence ("POPs"), including, but not limited to NVSMTN30AMD and CHTHTNDNH00, as well as any other locations in which BellSouth has placed equipment, including any augments to the equipment

[12] BellSouth believes this to be a good estimate but, as with all substantial product development projects, there could be additional costs that BellSouth will incur, depending on the exact network configuration requested by DeltaCom

already placed at these sites, should be exempted from any future collocation agreement.

For any POPs or other DeltaCom locations that are established after the effective date of the new collocation agreement ("future sites"), BellSouth would agree to pay mutually negotiated collocation charges for BellSouth equipment located and used solely for the purposes of delivery of BellSouth's originated local interconnection traffic, and only if BellSouth voluntarily requests to place a point of interconnection ("POI") for BellSouth's originated local interconnection traffic in a particular POP or other DeltaCom location. In those instances in which DeltaCom requests that the DeltaCom POP or other location be designated as the POI for DeltaCom's originating traffic and where BellSouth must place equipment in order to receive this traffic, the POP or other location will NOT be deemed to be a location at which BellSouth has voluntarily chosen to place a POI for BellSouth's originated local interconnection traffic.

Further, if DeltaCom has the right under the new Interconnection Agreement to choose the POI for both Parties' originated traffic and DeltaCom chooses to have the POI for BellSouth's originated traffic at a DeltaCom POP or other location, then such POP or other location will NOT be deemed as a location at which BellSouth has voluntarily chosen to place a POI for BellSouth's originated local interconnection traffic. The provisions of BellSouth's tariffs would control if BellSouth locates equipment in DeltaCom's premises pursuant to such tariffs.

Issue 62: Backbilling

Relying on T.C.A. § 28-3-109, BellSouth argued during the arbitration hearing that the backbilling limitation should be six (6) years. BellSouth proposes the following compromise language regarding backbilling: "With the exception of charges for which BellSouth does not have billing capability yet developed and services for which either party relies on records from a third party for billing of charges, all charges under this Agreement shall be considered final two (2) years after such charges were either billed or should have been billed."

WHEREFORE, BellSouth respectfully requests that the Authority adopt BellSouth's *Best and Final Offers* on each of the issues.

Respectfully submitted,

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ATTACHMENT 1

The estimate with hours converted to dollars:	
Accenture Expense - 30.87 hours	$4,445.28
Taxes	$111.13
Expense Total -	**$4,556.41**
Accenture Softcap - 255.24 hours	$36,754.56
Taxes	$918.86
Softcap Total -	**$37,673.42**
Total	$42,229.84

ATTACHMENT 2

The development costs and per listing charge for this new extract product assume the following design parameters:

1. The extract will be a one-time occurrence. No routine updates are required, but a new extract may be requested at any time by the customer. These extracts will enable DeltaCom to compare, for accuracy, the listings in their database against the information contained in the BellSouth LIST database.

2. The extract is based on AECN and/or RESH It is not anticipated to provide an extract by service type, e.g. UEP vs. LNP. This is consistent with DeltaCom's request for a product that extracts listings by CLEC (which are identified by their AECN or RESH codes).

3. Output is via cartridge tape, CD, or print.

4. A User Guide will be created and provided to customer.

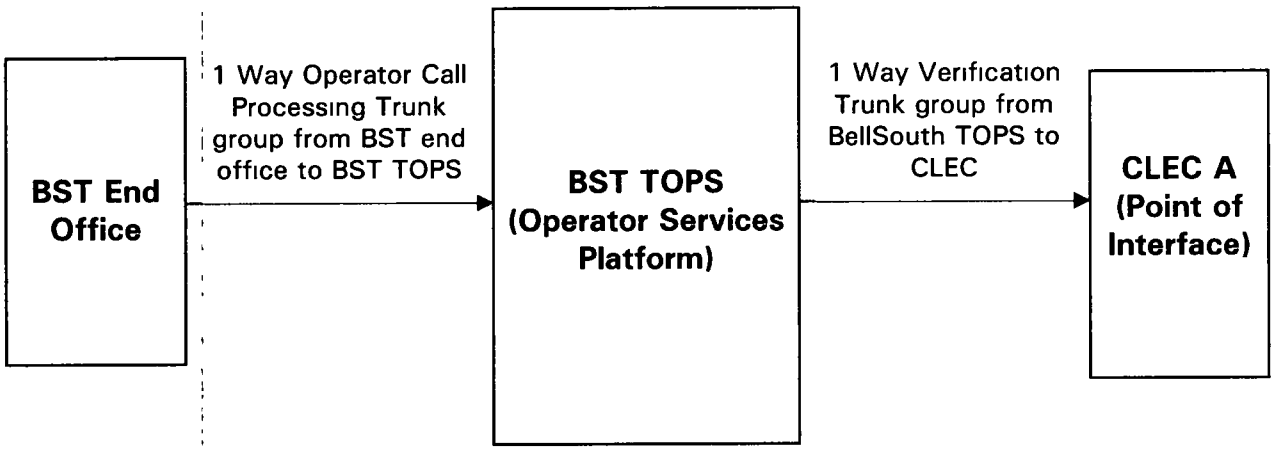
With this new product, the following data fields will be provided: (1) 10 digit Account Number and ALI code; (2) Business/Residence Indicator; (3) NP/NL; (4) OCLS; (5) Straight-line, caption set, SLU set indicator; (6) AECN/RESH; (7) Listed Name; (8) Listed Address, if present; (9) YPH; (10) SIC; (11) Telephone Number; and. (12) Note if a foreign listing.

There are a number of issues concerning the flow of information between BellSouth and BAPCO that are relevant to this new product. For instance, the information flow from BellSouth to BAPCO is one-way. As with any other directory publisher, any changes made to subscriber information by the publisher are not communicated back to BellSouth. The LSR process is in place for CLECs to initiate changes with BellSouth.

In addition, galleys provided by BAPCO, or its representative, to DeltaCom may or may not require corrections prior to publishing. Any changes made to a galley and provided back to BAPCO would not automatically generate changes in the BellSouth LIST database. DeltaCom is responsible for notifying BellSouth, via the LSR process, of any permanent changes DeltaCom wants in the BellSouth LIST database.

ATTACHMENT 3

Scenario 1: BellSouth provides Operator Call Processing on Behalf of the Facilities Based CLEC

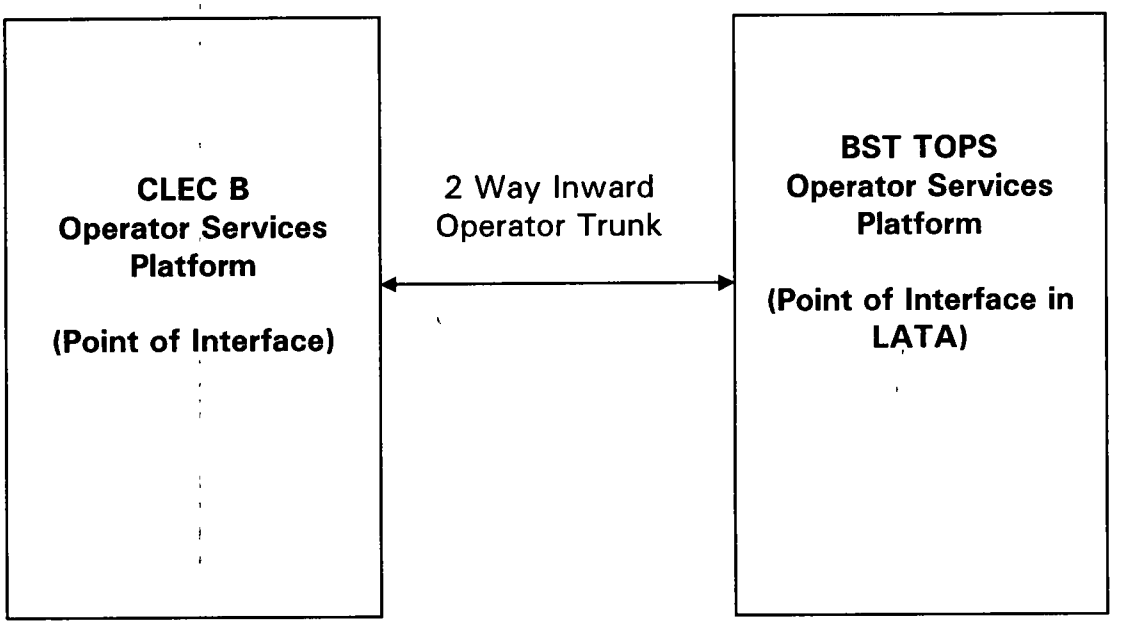


Call Flow for Scenario 1:

1. BST end user dials 0- and reaches a BellSouth operator providing BellSouth services.
2. BST end user requests BLV/I for CLEC A or BellSouth number.
3. BST operator accesses the BST verification network and performs the BLV/I request for the BST end user on CLEC A number.
4. BST verification network returns a valid indicator to the BST operator and processes the call the CLEC verification network.
5. The BST operator reports the condition of the number to the BST end user.

ATTACHMENT 4

Scenario 2: Facilities Based CLEC or other Operator Services Provider Provides Operator Call Processing for the CLEC



Call flow for Scenario 2:

1. The BST end user dials 0-.
2. The BST end office routes the call to TOPS, the BST Operator Services Platform.
3. The BST end user requests BLV/I from the operator and provides the operator with the target number (i.e., the number to be verified).
4. The operator accesses the BST verification network and initiates the BLV/I request for the target number.
5. The BST verification network returns the following information to the operator workstation screen:
   a. Vacant code – NPA
   b. Non verifiable number
   c. Valid – The system routes the number for verification
6. The "non verifiable number indicator" is the trigger that lets the BST operator know that the BLV/I request should be handed off to the CLEC B operator to perform the BLV/I function.

7. The BST operator then uses a special function key on his or her workstation to access and query the Local Number Portability (LNP) database to determine if the target number is ported out.
8. The LRN (NPA-NXX) of the owning company is returned to the operator workstation screen if the target number is ported. The 10 digit original number is returned when the number is not ported.
9. The BST operator will then access a database that contains the NPA-NXX, Name and Terminating Toll Center (TTC) code of the CLEC B operator services provider. The operator will use the LRN from the LNP database query or the NPA-NXX of the original 10 digit target number to determine the TTC code to route the call to the appropriate CLEC Operator Services Provider for busy line verification and interruption.
10. The BST operator routes the BST end user BLV/I request over the 2 way inward operator trunk group to the CLEC B operator using the NPA-TTC-121, where the 121 is the appropriate operator special dial code for busy line verification.
11. The BST operator then makes a verbal request to the CLEC B operator to initiate a BLV/I on the target number.
12. The CLEC B operator enters the target number and performs the BLV/I request.
13. The CLEC B operator informs the BST operator the condition of the number.
14. The BST operator informs the BST end user the condition of the number.

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[X] Electronic

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