

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

**January 3, 2000**

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REGULATORY AUTH.  
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EXECUTIVE SECRETARY

**In Re:**

Petition for Arbitration of ITC^DeltaCom  
Communications, Inc. with BellSouth  
Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996

**Docket No. 99-00430**

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**SUPPLEMENTAL POST-HEARING BRIEF OF ITC^DELTACOM**

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ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") submits this Supplemental Post-Hearing Brief to address the Federal Communications Commission's ("FCC") *Third Report and Order* in Docket No. 98-147 and *Fourth Report and Order* in Docket No. 96-98 issued on December 9, 1999, with regard to performance guarantees. The FCC's December 9, 1999, pronouncements support ITC^DeltaCom's position that self-effectuating performance guarantees should be included in the interconnection agreement between ITC^DeltaCom and BellSouth Telecommunications, Inc. ("BellSouth") that is the subject of the above-referenced arbitration proceeding.

Self-effectuating performance guarantees will act as a powerful incentive to BellSouth to perform in accordance with the dictates of the Telecommunications Act of 1996. On December 9, 1999, the FCC stated that an incumbent local exchange carrier's ("ILEC") implementation of FCC rules designed to facilitate local competition "is likely to be pursued more quickly and diligently if the incumbent LECs have an incentive to comply with these rules, and if

compliance is swiftly enforced.” FCC Docket No. 98-147, *Third Report and Order*, Docket No. 96-98, *Fourth Report and Order*, p. 74, ¶ 171 (December 9, 1999). The FCC specifically stated that such an incentive should be in the form of penalties and self-effectuating performance guarantees included in the arbitration award:

**We encourage states to establish penalties for failure to meet provisioning intervals as part of any arbitration award.** The state could use the provisioning intervals it establishes as a measure to determine whether the incumbent LEC has failed to comply with its line sharing obligations. For instance, the states could impose penalties on the incumbent LEC each time an incumbent LEC fails to comply with its section 251(c)(3) unbundling obligations, even if the state has already taken action on prior violations by the same incumbent LEC, with respect to the same central office or the same competing carrier. **We encourage states to consider adoption of self-executing remedies to minimize litigation in this area.**

*Id.*, p. 76, ¶ 176 (emphasis added).

The FCC’s December 9, 1999, pronouncements are an unequivocal endorsement of ITC^DeltaCom’s position that self-effectuating performance guarantees should be included in its interconnection agreement with BellSouth. ITC^DeltaCom respectfully submits that the Tennessee Regulatory Authority (“TRA”) should follow the FCC’s guidelines elucidated in the pronouncements and include self-effectuating performance guarantees in the interconnection agreement between ITC^DeltaCom and BellSouth as an incentive for BellSouth to perform.

Despite strong urging by the TRA during the hearings, BellSouth refused to support a system of self-effectuating guarantees as part of the record in this proceeding. BellSouth did provide as a late-filed exhibit its most recent proposal to the FCC. Of course, that proposal has not withstood scrutiny in the hearing room and should not be adopted by the TRA in this case. Moreover, it is not even clear that BellSouth supports adoption by the TRA of its own

proposal to the FCC. The bottom line on this issue is clear. The interconnection agreement should include a system of performance guarantees, and Attachment 10 to the proposed interconnection agreement of ITC^DeltaCom (which was also an exhibit to witness Rozycki's testimony) is the only system that has withstood the scrutiny of the hearing room.

This 3rd day of January, 2000.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 3rd day of January, 2000, a true and correct copy of the foregoing was served by hand delivery, facsimile transmission, overnight delivery or U.S. Mail, first class postage prepaid, to the following:

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