

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

JUNE 26, 2001

IN RE:

**PETITION FOR ARBITRATION OF ITC^DELTACOM
COMMUNICATIONS, INC. WITH BELL SOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO
THE TELECOMMUNICATIONS ACT OF 1996**

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**DOCKET NO.
99-00430**

ORDER ON RECONSIDERATION AND DENYING JOINT MOTION

This matter came before the Directors of the Tennessee Regulatory Authority ("Authority") acting as Arbitrators pursuant to 47 U.S.C. § 252 on May 1, 2001 for consideration of *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* filed by BellSouth Telecommunications, Inc. ("BellSouth") on August 28, 2000 and supplemented on March 12, 2001 by the filing of *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* and the *Joint Motion for the TRA to Approve the Parties Settlement Petition Issue 1(a)* filed by BellSouth and ITC^DeltaCom Communications, Inc. ("DeltaCom") on April 4, 2001.

I. Procedural Facts and History

On June 11, 1999, DeltaCom filed a petition requesting the Authority arbitrate its interconnection agreement with BellSouth. The petition contained seventy-three (73) issues, including sub-issues. The Directors accepted DeltaCom's petition for arbitration on June 29, 1999, appointed themselves as Arbitrators, and directed the General Counsel or his designee to serve as the Pre-Arbitration Officer. BellSouth responded to the petition on July 6, 1999. The

Pre-Arbitration Officer held a conference on August 4, 1999 for the purposes of clarifying the issues and setting a procedural schedule. As a result, the parties resolved many issues, leaving the following seventeen (17) issues open for resolution: 1(a), 2, 6(a), 2(a)(iv), 2(b)(ii), 2(b)(iii), 3(1), 3(2), 4(a), 5, 6(b), 6(c) 6(d), 7(b)(iv), 8(b), 8(e), and 8(f). The Authority heard testimony related to these issues at a three-day hearing held from November 1, 1999 until November 3, 1999.¹

On January 25, 2000, the Arbitrators proposed taking official notice of the ICG arbitration record,² which contains the final Texas Performance Plan ("Texas Plan") and late-filed exhibits outlining the differences between the Texas Plan and BellSouth's 1999 Service Quality Measurements ("1999 SQMs"). The Arbitrators gave the parties an opportunity to respond and none objected. Thereafter, the Arbitrators voted to take official notice of the ICG arbitration record.

The Arbitrators deliberated at a public meeting on April 4, 2000. In addition to various holdings, the Arbitrators adopted BellSouth's 1999 SQMs, with three (3) revisions, and added twenty-six (26) measurements from the Texas Plan. The Arbitrators also requested final best offers on issues 4(a), 5, 8(e) and portions of 1(a). DeltaCom filed final best offers as to issues 4(a), 5, and 8(e) on May 4, 2000, amended final best offers as to issues 4(a), 5, and 8(e) on May 12, 2000, and final best offers as to issue 1(a) on May 22, 2000. BellSouth filed final best offers as to issues 4(a), 5, and 8(e) on May 8, 2000, final best offers as to issue 1(a) on May 22, 2000, and a response to DeltaCom's final best offers on July 27, 2000. In addition, BellSouth filed

¹ Issue 6(c) was resolved during the hearing.

² *In re: Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00377.

BellSouth Telecommunications, Inc.'s Motion for Reconsideration on May 22, 2000 ("May 22, 2000 Motion") with the affidavit of David C. Coon attached in support of BellSouth's arguments. DeltaCom filed a response on June 8, 2000, and BellSouth filed a reply on July 26, 2000.

The Arbitrators addressed the May 22, 2000 Motion and final best offers immediately following the regularly scheduled August 1, 2000 Authority Conference. The Arbitrators first determined that the May 22, 2000 Motion was premature and dismissed the motion without prejudice. The Arbitrators next found that the parties failed to properly respond to issue 1(a) and ordered the resubmission of final best offers. Thereafter, the Arbitrators resolved issues 4(a), 5, and 8(e).³

On August 28, 2000, BellSouth filed *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* ("August 28, 2000 Motion"). The August 28, 2000 Motion addressed the following four issues: Issue 1(a), performance measures; Issue 2(b)(ii) and Issue 2(b)(iii), extended loops and loop/port combinations; Issue 3(d), reciprocal compensation for internet-bound traffic; and Issue 6(d), rates for cageless physical collocation. On September 8, 2000, DeltaCom filed the *Response of ITC^DeltaCom Communications, Inc. to BellSouth Telecommunications, Inc.'s Second Motion for Reconsideration and Clarification*. BellSouth filed a *Reply Memorandum in Support of BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* on December 29, 2000, and DeltaCom filed the *Response of ITC^DeltaCom Communications, Inc. to BellSouth Telecommunications, Inc.'s Reply Memorandum* on February 1, 2001.

³ On August 31, 2000, the Authority entered an Order memorializing the August 1, 2000 deliberations.

The Arbitrators deliberated all outstanding matters immediately following a regularly scheduled Authority Conference on February 6, 2001. The Arbitrators determined that they would hold the August 28, 2000 Motion in abeyance until the entry of a written, final order after which BellSouth could supplement or amend its August 28, 2000 Motion.⁴

BellSouth filed *BellSouth Telecommunications, Inc.'s Motion for Reconsideration and Clarification* on March 12, 2001 ("Supplement"). BellSouth attached as Attachments 1, 2, and 3 the following: "BellSouth Service Quality Measurement Plan (SQM) Tennessee Performance Metrics Measurement Descriptions Version 0.01" ("2000 SQMs"), "Liquidated Damages Table for Tier-1 Measures," "Remedy Payments for Tier-2 Measures," and "SEEM Remedy Procedures."

On March 16, 2001, DeltaCom filed the *Initial Response of ITC^DeltaCom Communications, Inc. to BellSouth Telecommunications Inc.'s Motion for Reconsideration and Clarification and Motion of ITC^DeltaCom Communications, Inc. for Leave to File Detailed Response and to File Reply Brief*. In its response, DeltaCom argued that the Arbitrators should deny the August 28, 2000 Motion and Supplement, but proposed two alternatives. First, DeltaCom requested that the Arbitrators provide it additional time to file a more detailed response and continue the matter until at least April 3, 2001. Second, DeltaCom proposed that, if the Arbitrators grant the August 28, 2000 Motion and Supplement and set the matter for further proceedings, the Arbitrators should provide additional time to allow DeltaCom to file a more detailed response.

At an arbitration meeting on March 20, 2001, the Arbitrators granted the August 28, 2000 Motion and Supplement and determined that deliberations as to the merits of the August 28,

⁴ See *Final Order of Arbitration Order*, p. 13-14 (Feb. 23, 2001).

2000 Motion and Supplement would occur at a later date.⁵ The Arbitrators requested that DeltaCom include in its response, to be filed on or before April 10, 2001, its position as to whether the Arbitrators should include in the evidentiary record the affidavit of David C. Coon as well as Attachments 1, 2, and 3 to the Supplement.⁶

On April 4, 2001, BellSouth and DeltaCom filed the *Joint Motion for the TRA to Approve the Parties Settlement Petition Issue 1(a)* ("Joint Motion"). In the Joint Motion, the parties stated that DeltaCom would not be filing anything in opposition to the Supplement. On April 20, 2001, BellSouth filed a letter in which it renewed its requests for reconsideration of Issue 1(a) and withdrew its requests for reconsideration of Issues 2(b)(ii) and 2(b)(iii), 3(d) and 6(d).

II. Deliberations and Conclusions

A. Joint Motion

Section 252(a) of the Telecommunications Act of 1996 permits carriers to negotiate interconnection agreements.⁷ Section 252(b) permits compulsory arbitration of any open issues at the request of either carrier.⁸ Section 252(e) requires that any agreement, whether negotiated or arbitrated, be submitted to the state commission for approval.⁹ In light of these provisions, the Arbitrators find that there is no need for the Arbitrators to specifically approve a settlement. The parties may resolve any issues at any time and the only approval necessary is the Authority's approval of all arbitrated and negotiated items contained within an interconnection agreement. Therefore, the Arbitrators unanimously voted to deny the Joint Motion.¹⁰ The parties may

⁵ See *Order Granting Motion for Reconsideration and Clarification and Setting Date for Filing a Response*, p. 3 (Apr. 25, 2001).

⁶ See *id.*

⁷ 47 U.S.C. § 252(a) (Supp. 2000).

⁸ See *id.* § 252(b).

⁹ See *id.* § 252(e).

¹⁰ Director Malone voted in agreement with the results only.

include their negotiated terms as to Issue 1(a) in the interconnection agreement submitted as a result of this arbitration for approval by the Directors of the Tennessee Regulatory Authority.

B. Affidavit of David C. Coon and Attachments 1, 2, and 3 to the Supplement

During the March 20, 2001 arbitration meeting, the Arbitrators requested that DeltaCom state its position on the issue of whether the Arbitrators should consider the affidavit of David C. Coon and Attachments 1, 2, and 3 to the Supplement when disposing of the August 28, 2000 Motion and Supplement. DeltaCom did not comment, but instead, submitted the Joint Motion. During the arbitration meeting of May 1, 2001, DeltaCom stated that it did not oppose including the affidavits and attachments in the evidentiary record.¹¹ Based on the foregoing, the Arbitrators voted unanimously to open the evidentiary record in this docket for the sole purpose of admitting into the evidentiary record the affidavit of David C. Coon, filed along with the May 22, 2000 Motion, and Attachments 1, 2, and 3 to the Supplement.

C. August 28, 2000 Motion and Supplement

In its August 28, 2000 Motion and Supplement, BellSouth argues that DeltaCom did not request the Texas Plan measurements. Additionally, BellSouth contends that some of the Texas Plan measurements adopted are duplicative and others are inapplicable to BellSouth's network.

The Arbitrators find that the Texas Plan measurements are properly before the Arbitrators for consideration as part of the evidentiary record. BellSouth itself notes that the Arbitrators took "official notice of the ICG arbitration record which did contain the Texas Plan."¹² Moreover, the Arbitrators took official notice of the ICG record during a public meeting and BellSouth did not object.¹³

¹¹ Transcript of Proceedings, p. 4 (May 1, 2001).

¹² August 28, 2000 Motion, p. 4 fn 2.

¹³ Transcript of Proceedings, p. 3 (Jan. 25, 2000).

The Arbitrators have reviewed the parties' filings and conclude that seven of the previously adopted measurements are duplicative and/or unnecessary. Therefore, the arbitrators voted unanimously to:

1. Replace "percent mechanized rejects returned within one hour of receipt in LASR" with BellSouth 2000 SQM "reject interval distribution and average reject interval."
2. Vacate previous ruling requiring the "percent busy in local service center" measurement.
3. Vacate previous ruling requiring the "percent busy in local operations center" measurement.
4. Replace "percent installations completed within industry guidelines for LNP with loop" with BellSouth 2000 SQM "percent missed installation appointments."
5. Replace "directory assistance average speed of answer" with BellSouth 2000 SQM "average speed to answer (DA)."
6. Replace "operator services speed of answer" with BellSouth 2000 SQM "average speed to answer (toll)."
7. Replace "percentage of premature disconnects (coordinated cutovers)" with BellSouth 2000 SQM "coordinated customer conversions."

D. Effect on Docket No. 01-00193

The Arbitrators' February 23, 2001 decision on performance measurements and enforcement mechanisms not only resolved Issue 1(a) in this docket, but also served as a starting point for Docket 01-00193, Generic Docket on Performance Measurements.¹⁴ It is anticipated that substantial evidence will be presented by all parties in the generic docket regarding how the performance measurements and enforcement mechanisms should be revised to address the concerns of all parties. To expedite this process, the Arbitrators voted unanimously to modify

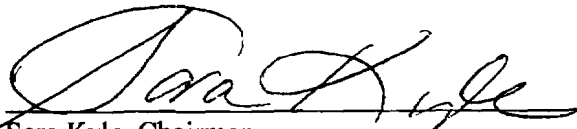
¹⁴ See *In re: AT&T Communications of the South Central States, Third Party Testing of BellSouth's Operational Support Systems*, Docket No. 99-00347, Transcript of Proceedings, p. 18 (Authority Conference Feb. 21, 2001).


their decision in Docket No. 01-00193 such that the starting point shall be the performance measurements and enforcement mechanisms adopted in Docket No. 99-00430 by order entered on February 23, 2001 as modified herein.

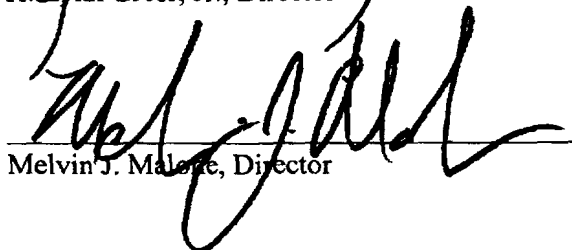
III. Ordered

The evidentiary record in this docket is opened for the sole purpose of admitting into the evidentiary record the affidavit of David C. Coon, filed along with the May 22, 2000 Motion, and Attachments 1, 2, and 3 to the Supplement. The *Final Order of Arbitration*, filed on February 23, 2000, is modified as set forth herein. The Joint Motion is denied. The decision of the Arbitrators as to Issue 1(a) contained in the *Final Order of Arbitration* and modified herein shall serve as the starting point for the proceedings in Docket No. 01-00193, Generic Docket on Performance Measurements.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS ARBITRATORS


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary