

CONFIDENTIAL

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ERIC FOGLE - CONFIDENTIAL, FOR ATTORNEYS' EYES ONLY

040130-TP

BEFORE THE  
NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-772, Sub 8  
Docket No. P-913, Sub 5  
Docket No. P-989, Sub 3  
Docket No. P-824, Sub 6  
Docket No. P-1202, Sub 4

COPY

In the Matter of )  
 )  
Joint Petition NewSouth )  
Communications Corp., et al. for )  
Arbitration with BellSouth )  
Telecommunications, Inc. )

Raleigh, North Carolina  
Tuesday, June 29, 2004

Deposition of ERIC FOGLE,

a witness herein, called for  
examination by counsel for the Joint  
Petitioners, in the above-entitled action,  
pursuant to Notice, the witness being duly  
sworn by Nicole Ball Fleming, Court  
Reporter and Notary Public in and for the  
State of North Carolina, taken at the  
offices of Parker Poe Adams & Bernstein,  
150 Fayetteville Street Mall, Suite 1400,  
Raleigh, North Carolina, beginning at 9:06  
a.m., on Tuesday, June 29, 2004, such  
proceedings being taken stenographically  
by Nicole Ball Fleming.

DECLASSIFIED

NICOLE FLEMING & ASSOCIATES

TEL: (919)

This confidentiality request was filed by or  
for a "telco" for DN 04081-05. No ruling  
is required unless the material is subject to a  
request per 119.07, FS, or is admitted in the  
record per Rule 25-22.006(8)(b), FAC.

DOCUMENT NUMBER-DATE

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STIPULATIONS

Prior to examination of the witness,  
counsel for the parties stipulated and  
agreed as follows:

1. Said deposition shall be taken for  
the purpose of discovery or for use as  
evidence in the above-entitled action or  
for both purposes, as permitted by the  
applicable rules of civil procedure;

2. Any objections of any party hereto as  
to Notice of the taking of said deposition  
or as to the time and place thereof or as  
to the competency of the person before  
whom the same shall be taken are hereby  
waived;

3. Objection to questions and motions to  
strike answers need not be made during the  
taking of this deposition, but may be made  
for the first time during the progress of  
the trial of this case, or at any pretrial  
hearing held before the Judge for the  
purpose of ruling thereon or at any other  
hearing of said case at which said  
deposition might be used, except that an  
objection as to the form of a question  
must be made at the time such question is  
asked or objection is waived as to the  
form of the question;

4. That all formalities and requirements  
of the Statute with respect to any  
formalities not herein expressly waived  
are hereby waived, especially including  
the right to move for the rejection of  
this deposition before trial for any  
irregularities in the taking of the same,  
either in whole or in part or for any  
other cause;

5. That the sealed original transcript  
of this deposition shall be mailed  
first-class postage or hand-delivered to  
the party taking the deposition or its  
attorney for preservation and delivery to  
the Court, if and when necessary.



1 (DEPOSITION EXHIBIT NO. 1 WAS MARKED.)

2 ERIC FOGLE,  
3 having been duly sworn,  
4 testified as follows:

5 MS. JOYCE: This deposition will  
6 be conducted in accordance with the  
7 general stipulations as set forth in the  
8 Civil Rules of Procedure.

9 DIRECT EXAMINATION

10 BY MS. JOYCE:

11 Q. Please state your name and business  
12 address for the record.

13 A. My name is Eric Fogle. My business  
14 address is 675 West Peachtree Street in  
15 Atlanta, Georgia.

16 Q. Good morning. My name is Stephanie Joyce,  
17 and I am counsel for the following  
18 companies: NuVox, NewSouth, KMC, and  
19 Xspedius. Do you understand that they are  
20 petitioners in this action?

21 A. Yes, I do.

22 Q. And in North Carolina, they're called  
23 competitive local providers or CLPs. If I  
24 use that acronym, will that make sense?

25 A. Yes.

1 Q. And if I called them competitive local  
2 exchanges carriers or CLECs, would that  
3 make sense to you?

4 A. Yes, it would.

5 Q. Generally, I'm going to refer to these  
6 companies as Joint Petitioners. Will that  
7 make sense to you?

8 A. Yes, it will.

9 Q. Mr. Fogle, do you know why you're here  
10 today?

11 A. I believe I'm here to give a deposition.

12 Q. I'm handing you an exhibit that's been  
13 marked 1. Have you seen this document  
14 before?

15 A. Yes, I have.

16 Q. Can you tell me what it is?

17 A. It's a notice of deposition of Eric Fogle.

18 Q. Do you recall the first time you saw this  
19 document?

20 A. I believe I saw it in my e-mail last week.

21 Q. Now, I direct your attention to the bottom  
22 of the first page. It states that,  
23 pursuant to Rule 30(b)(6), the witness  
24 should be prepared to respond to questions  
25 related to all matters contained in the



1       witness' direct testimony that has been  
2       filed -- continuing to the next page --  
3       in the above-captioned case. Do you  
4       understand what that means?

5   A.   Yes, I do.

6   Q.   Mr. Fogle, have you been deposed before?

7   A.   Yes, I have.

8   Q.   Have you been deposed in connection with a  
9       Section 251 arbitration?

10   A.   I don't believe I have been deposed as a  
11       result of a 251 arbitration.

12   Q.   And were you deposed as a BellSouth  
13       employee?

14   A.   Yes.

15   Q.   And can you describe generally the nature  
16       of the actions for which you've been  
17       deposed previously?

18   A.   A number of cases that involved complaints  
19       by CLECs at the Georgia Public Service  
20       Commission and the Florida Public Service  
21       Commission relating to BellSouth's policy  
22       on providing DSL services in conjunction  
23       with CLEC voice services.

24   Q.   How many times have you been deposed  
25       before, roughly?

1 A. I believe four or five times.

2 Q. And I believe you understand the rules,  
3 but just in brief, you understand you've  
4 been sworn?

5 A. Yes, I do.

6 Q. You understand that the answers you give  
7 to me today could be used at a hearing as  
8 if you were present at that hearing?

9 A. Yes, I do.

10 Q. And you understand that the court reporter  
11 cannot record a nodding of the head, and  
12 so audible answers are appreciated?

13 A. Yes, I do.

14 Q. And are there any medications or is there  
15 any condition that would prevent you from  
16 answering the questions that I'm going to  
17 pose to you today?

18 A. No, there's not.

19 Q. And I would ask just for sake of clarity  
20 and our court reporter's ability to  
21 transcribe that you let me finish my  
22 questions before you give your answer.

23 A. Okay.

24 Q. I'm handing you a document that's been  
25 marked Exhibit 2.



1 (DEPOSITION EXHIBIT NO. 2 WAS MARKED.)

2 Q. Can you tell me what this document is?

3 A. Yes. It's direct testimony of Eric Fogle.

4 Q. And was this prepared for this case by  
5 yourself?

6 A. Yes, it was.

7 Q. And can you tell me what your title is at  
8 this time at BellSouth?

9 A. Yes. I'm director in BellSouth's  
10 interconnection operations organization.

11 Q. And what are your responsibilities as  
12 director?

13 A. My responsibilities are to work with  
14 BellSouth on developing its broadband and  
15 next generation technology policies as  
16 well as products, and at the same time  
17 support BellSouth in a number of  
18 regulatory and legal environments to  
19 advocate their position and to clarify  
20 technology issues and technical issues  
21 associated with those positions for the  
22 various commissions and -- both the FCC  
23 and state and public service commissions.

24 Q. And what kind of broadband policies have  
25 you assisted in developing?

1 A. Over the last several years, I've been  
2 involved with the development of the DSL  
3 services for BellSouth and have been  
4 working on the development of the  
5 technology and the product offerings and  
6 determining the complexities associated  
7 with offering those products at a very  
8 competitive environment and helping  
9 BellSouth develop those services and  
10 features and capabilities to be  
11 competitive in that marketplace.

12 Q. Are these policies that are used  
13 internally at BellSouth?

14 A. They're -- Essentially, I've helped build  
15 the business, and the business rules. And  
16 as a result of that, BellSouth takes  
17 positions to try to be competitive. And  
18 as a result, that has worked its way into,  
19 I guess you would say, policies or -- and  
20 methods and procedures for doing business  
21 that are used internally or -- and also  
22 positions that we've taken externally with  
23 public service commissions or with the  
24 FCC.

25 Q. And with whom does BellSouth compete, as



1       you've testified?

2   A.   In the area of broadband services,  
3       BellSouth competes against cable companies  
4       primarily.  Cable companies have developed  
5       cable broadband service and are the  
6       dominant players in that business base and  
7       have more subscribers than BellSouth or  
8       any of the DSL providers in that business.

9   Q.   Could you name the specific cable  
10       companies you're referring to?

11  A.   Comcast would be one.  I'm trying to think  
12       of some other names of cable companies in  
13       the Southeast.  I know Comcast is one of  
14       the largest.  I'm just drawing a blank  
15       unfortunately right now, but some of the  
16       others -- but there are a number of them.

17  Q.   Does BellSouth compete with these cable  
18       companies in the retail market?

19  A.   Yes.

20  Q.   And does BellSouth compete with any CLPs  
21       in the broadband retail market?

22  A.   Yes.

23  Q.   And which CLPs are those, to your  
24       knowledge?

25  A.   There are a number of CLPs that have their

1 own DSL services. One would be Florida  
2 Digital Networks. Another would be Covad  
3 Communications. I believe ITC DeltaCom  
4 and some others have some of their own  
5 broadband facilities that they're  
6 providing and competing against BellSouth  
7 in the retail space.

8 Q. And does BellSouth provide services to  
9 Florida Digital Network or Covad in  
10 connection with broadband services?

11 A. Yes.

12 Q. What are those services?

13 A. In relation to Covad, there's line sharing  
14 services that BellSouth provides that  
15 enables them to provide their broadband  
16 services. There are also unbundled  
17 network elements and other pieces of  
18 BellSouth's network that are made  
19 available to CLPs for the provision of  
20 their services.

21 Q. Which unbundled network elements are  
22 provided?

23 A. Loops.

24 Q. Anything else?

25 A. In some communities, I'm sure they use

1 collocation spaces. They probably use  
2 some cross connects. Other services are  
3 necessary to interconnect their network  
4 with our network or to use some of our  
5 facilities.

6 Q. Does BellSouth use similar facilities for  
7 its own DSL retail services?

8 A. Yes.

9 Q. Does it use loops?

10 A. Yes.

11 Q. Does it use cross connects?

12 A. Yes.

13 Q. Mr. Fogle, do you have any legal training?

14 A. No.

15 Q. Any paralegal training?

16 A. No.

17 Q. It states here that you have a Master of  
18 Science in electrical engineering degree.  
19 Do you have any other advanced degrees?

20 A. I have a Master's in Business  
21 Administration.

22 Q. I direct your attention to the first page  
23 of your testimony where it states that,  
24 for a number of years, you led the  
25 broadband marketing group within



1 BellSouth, continuing to the next page.

2 What were your responsibilities  
3 when you led the wholesale broadband  
4 marketing group?

5 A. My responsibility as the director of that  
6 organization was to develop the products  
7 that were offered to the wholesale ISPs,  
8 which is internet service providers, as  
9 well as have overall responsibility for  
10 the marketing and direction over the  
11 products and the underlying network  
12 oneness and development, BellSouth's DSL  
13 network. Help provide marketing,  
14 planning, and determination, location  
15 where DSLAMs, which are digital subscriber  
16 line access multiplexers --

17 Q. Is that D-S-L-A-Ms?

18 A. That is correct.

19 Where those would be deployed to  
20 optimize BellSouth's broadband footprint.

21 Q. You mentioned in your response that you  
22 also did marketing. Was this marketing on  
23 the wholesale customers of BellSouth?

24 A. Marketing, we termed it wholesale  
25 customers, but it is marketing to external

1       ISPs like AT -- AT&T would be one, but  
2       more like Earthlink, is one of our  
3       customers. AOL is one of our larger  
4       customers, as well as a couple of hundred  
5       smaller internet service providers.

6   Q. Did you ever market to a CLP such as  
7       Covad?

8   A. We've had several conversations and  
9       discussions with Covad about buying  
10      BellSouth's DSL services at wholesale.

11   Q. Would you term that incumbent marketing?

12   A. In the wholesale space, yes.

13   Q. And I direct your attention to page 2 of  
14      your testimony at the top where it states  
15      that formerly you were the director of  
16      wholesale broadband marketing, indeed the  
17      wholesale broadband marketing group.

18               Were your responsibilities in that  
19      position similar to the responsibilities  
20      you performed when you led the wholesale  
21      broadband marketing group?

22   A. That's the same position. I was director  
23      of that organization.

24   Q. And you've been a director of BellSouth's  
25      interconnection operations since June of

1 2003; is that correct?

2 A. That is correct.

3 Q. What role, if any, have you played in the  
4 negotiations of the interconnection  
5 agreement that is at issue in this case?

6 A. I've had very little involvement in direct  
7 negotiation of the interconnection  
8 agreement in this case.

9 Q. Did you ever participate on a telephone or  
10 a teleconference call in which  
11 negotiations took place?

12 A. Not in this particular case.

13 Q. Did you advise the persons who, on behalf  
14 of BellSouth, negotiated this  
15 interconnection agreement?

16 A. I have been asked my opinion on certain  
17 positions or on certain technical issues,  
18 provided that insight and perspective, but  
19 that's to a very limited degree.

20 Q. Can you tell me the persons to whom you've  
21 provided your opinions?

22 A. I've been asked by John Rasilli about  
23 positions and issues, technology issues,  
24 as well as Keith Milner in relation to  
25 BellSouth's DSL technology and evolution



1 as well as fiber technology and evolution.

2 Q. Anybody else?

3 A. Naugh, I believe that's it.

4 Q. Did you participate in compiling responses  
5 to the discovery questions that were asked  
6 by the Joint Petitioners to BellSouth?

7 A. Yes, I did.

8 Q. Can you tell me which issues these  
9 discovery questions addressed?

10 A. I don't recall right off the top of my  
11 head which issues, but there are a number  
12 of different issues that I cover in my  
13 testimony that I was also involved  
14 directly with the development of the  
15 discovery response.

16 Q. Were there any questions that do not  
17 relate an issue that you testified  
18 regarding -- that you participated in  
19 responding to?

20 MR. CULPEPPER: Object to the form  
21 of the question.

22 A. I'm not sure I understand the question.  
23 Could you maybe rephrase it for me?

24 Q. Were there any discovery questions that  
25 you participated in providing a response

1       that do not regard the issues you're  
2       testifying about --

3   A.   No.

4   Q.   -- in this testimony?

5   A.   Not that I'm aware of.

6   Q.   Did you review the written responses to  
7       interrogatories regarding the issues  
8       you're testifying about?

9   A.   I believe I reviewed most of them. I  
10       can't be certain I've reviewed all of  
11       them.

12   Q.   Did you compile the documents that were  
13       produced in response to requests for  
14       production that regard your issues?

15   A.   I compiled a certain -- a large number of  
16       them.

17   Q.   And did you review the production of  
18       documents regarding the questions that  
19       speak to your issues?

20   A.   Could you please repeat that for me?

21   Q.   Did you review what ended up to be the  
22       production to Joint Petitioners of  
23       documents responsive to request for  
24       production?

25   A.   I've reviewed probably most of the -- I

1       can't claim that I've reviewed all of  
2       them.

3       Q.   Have you ever participated in negotiations  
4       for prior arbitration under Section 251?

5       A.   I believe I have, yes.

6       Q.   And do you recall which CLPs were involved  
7       in those negotiations?

8       A.   I believe I've been involved in -- I know  
9       I've been involved in negotiations with  
10      Florida Digital Networks as well as  
11      Supra.   What I don't know is whether they  
12      were specifically 251 arbitration  
13      negotiations or not.   There were specific  
14      issues relating -- offering our DSL  
15      service in conjunction with their UNE  
16      services, and I was involved with the  
17      negotiation of the language associated  
18      with that.

19      Q.   Did you testify before any tribunal in  
20      connection with Florida Digital Networks  
21      or Supra's negotiations with BellSouth?

22      A.   I have testified before a tribunal in  
23      Supra -- in some of the Supra cases.

24      Q.   And why did you choose to write this  
25      testimony for this arbitration?



1 A. In my current role at BellSouth, I have  
2 developed a level of expertise in  
3 broadband issues as well as a lot of  
4 the -- and have been involved over the  
5 past several years with BellSouth's  
6 litigation of the DSL with UNE issues.

7 And as a result, I was determined  
8 to be -- I was probably the best and most  
9 knowledgeable witness to support  
10 BellSouth's position in this arbitration.

11 Q. Did anybody ask you to write it?

12 A. Yes.

13 Q. Without revealing the content of a  
14 privileged communication that you may have  
15 had with an attorney, can you tell me who  
16 asked you to write the testimony?

17 A. My boss, Keith Milner, asked me to write  
18 the testimony.

19 Q. Now, as I understand it, Mr. Milner is a  
20 senior director; is that correct?

21 A. That is correct.

22 Q. And he is your immediate supervisor?

23 A. Yes.

24 Q. Do you know who Mr. Miller's immediate  
25 supervisor is?

1 A. He works for a gentleman named Bill Stacy.

2 Q. To your knowledge, did anybody review your  
3 testimony before it was filed in this  
4 case?

5 A. Yes.

6 Q. Again, without revealing the content of a  
7 privileged communication, can you tell me  
8 which persons those were?

9 A. Folks who reviewed my testimony would be  
10 Keith Milner, Jerry Latham, Lynn Brewer,  
11 Tommy Williams, Jerry Johnson, Steve  
12 Harris, as well as some lawyers.

13 Q. Is that Lynn Brewer, B-r-e-w-e-r?

14 A. That's correct.

15 Q. Did you review the testimony that was  
16 written by any other witness in this case?

17 A. I have not.

18 Q. And, to your knowledge, did anybody make  
19 electronic edits to your draft document of  
20 the testimony?

21 A. Yes.

22 Q. And without revealing any privileged  
23 communication, can you tell me who those  
24 persons were?

25 A. I received electronic edits from all of

1       the same people: Lynn Brewer, Keith  
2       Milner, Jerry Johnson, Steve Harris, Jerry  
3       Latham, and Tommy Williams.

4   Q.   Are all of these persons employed in the  
5       interconnection services operations  
6       division of BellSouth?

7   A.   Some of them are interconnection  
8       operations. Others, I believe, are in a  
9       product management organization.

10   Q.   Would this be a product management  
11       organization that deals with CLPs?

12   A.   Yes.

13   Q.   Would these people also deal with  
14       BellSouth end user customers?

15   A.   Are you referring to retail end user  
16       customers?

17   Q.   Yes.

18   A.   No, they would not deal with retail end  
19       user customers.

20   Q.   And, Mr. Fogle, do you have an opinion as  
21       to whether BellSouth has an obligation to  
22       follow the orders of the state  
23       commissions?

24   A.   I do, and we should always follow the  
25       orders of -- meet our obligations with



1 the state commissions, and we always do.

2 Q. And, to your knowledge, is BellSouth  
3 prepared to comply with whatever order the  
4 North Carolina Utilities Commission orders  
5 in this case?

6 A. Yes.

7 Q. Do you believe that BellSouth has the  
8 discretion to determine which portions of  
9 an order it will comply with and which  
10 portions it will not comply with?

11 MR. CULPEPPER: Object to the form  
12 of the question.

13 Q. You have not been instructed not to  
14 answer, so....

15 A. I guess -- You said I've not been  
16 instructed to answer?

17 Q. To not -- You have not been instructed  
18 not to answer.

19 A. Not to answer. Okay.

20 Q. So, to the best of your knowledge --

21 A. Okay. I'm trying to make sure. I  
22 didn't -- not instructed to answer --  
23 not answer. I'm not sure what I'm  
24 supposed to do next.

25 MR. CULPEPPER: Can we read back

1 the question.

2 (THE COURT REPORTER READ BACK THE  
3 REQUESTED PORTION OF THE RECORD.)

4 A. I mean, I don't believe we have discretion  
5 to pick and choose orders that we comply  
6 with. I do believe that we have  
7 discretion to interpret orders and  
8 determine what is the proper method to  
9 comply with those orders.

10 Q. And who would make that interpretation?

11 A. It would depend on the order in terms of  
12 which areas it was involved in. We would  
13 bring together a number of different  
14 people who have expertise on the  
15 technology and the operations and -- as  
16 well as the services and the features and  
17 make a determination of how best to comply  
18 with the order.

19 It oftentimes involves a lot of  
20 expense, a lot of complicated rearranging  
21 of our products or services, our network  
22 technology. So it just takes a lot of  
23 people who know -- our experts on the  
24 services and technology to come together  
25 and figure out how best to comply.

1 Q. If the North Carolina Utility Commission  
2 in this case issued an order or a rule  
3 regarding DSL services, who would  
4 interpret that rule?

5 A. I would be involved with that as well as  
6 probably my boss, Keith Milner, and John  
7 Rasilli, a number of lawyers with  
8 BellSouth, as well as the product  
9 management organization for DSL.

10 Q. And if the North Carolina Utilities  
11 Commission issued a ruling regarding  
12 fiber-to-the-home groups, who would be  
13 involved in interpreting that rule?

14 A. Some of the same people: Myself, Keith  
15 Milner, and John Rasilli, as well as  
16 lawyers. And then we would probably  
17 involve science and technology as well as  
18 the product management groups that are  
19 responsible for the fiber department.

20 Q. And as a nonlawyer sitting here this  
21 morning, to the best of your knowledge, is  
22 BellSouth complying with the orders of  
23 state commissions that regard BellSouth's  
24 provision of DSL services?

25 A. Yes.



1 Q. Mr. Fogle, is it your position that CLPs  
2 must purchase the entire band width of a  
3 loop under applicable law?

4 A. Yes.

5 Q. And from where do you derive that  
6 position?

7 A. As I stated in my testimony, that the  
8 FCC's Triennial Review Order specifically  
9 has rejected other Joint Petitioners'  
10 efforts to separate upper -- band width in  
11 upper and lower bands. And in --  
12 paragraph 270 of the TRO was very specific  
13 on that issue.

14 Q. Is there any other applicable law that  
15 speaks to this issue?

16 A. I'm certain there's probably other earlier  
17 rules, other earlier laws that speak to  
18 line sharing, which is the issue of  
19 splitting the upper frequency and lower  
20 frequency spectrum from each other, but in  
21 terms of the most recent rules on that are  
22 the Triennial Review Order.

23 Q. I direct your attention to page 5 of your  
24 testimony.

25 A. Uh-huh.

1 Q. Lines 11 to 12 where you state that, even  
2 in those states where the state  
3 commissions have ordered BellSouth to  
4 continue to provide DSL service when  
5 BellSouth is no longer the voice  
6 provider. Which state commissions are you  
7 referring to in that statement?

8 A. The state commissions that have ordered  
9 BellSouth to continue to provide DSL  
10 services would be Florida, Georgia,  
11 Louisiana, and Kentucky.

12 Q. And, to your knowledge, are those orders  
13 still in effect?

14 A. Yes.

15 (DEPOSITION EXHIBIT NO. 3 WAS MARKED.)

16 Q. I'm going to hand you a large document  
17 that's been marked Exhibit 3. Do you  
18 recognize this document, Mr. Fogle?

19 A. Not yet. It appears to be an attachment  
20 to an interconnection agreement.

21 Q. Would you accept that this is an  
22 attachment to the interconnection  
23 agreement that is being litigated in this  
24 case?

25 A. Yes.

1 Q. I direct your attention to what is  
2 numbered as page 12, section number  
3 2.1.1.2. And if you see, there's an entry  
4 there that's marked with a field marker,  
5 customer short name version. And it  
6 states that a customer shall purchase the  
7 entire band width of the loop and --  
8 except as required herein or by applicable  
9 law. Do you see that the words "or by  
10 applicable law" are in bold?

11 A. Yes, I do.

12 Q. And do you understand that the words are  
13 in bold because they are presently in  
14 dispute between the Joint Petitioners and  
15 BellSouth?

16 A. Yes, I understand that.

17 Q. And do you know why BellSouth has objected  
18 to including the words "or by applicable  
19 law" in this section of the agreement?

20 A. I think it's ambiguous because our version  
21 of the language is consistent with  
22 applicable law.

23 Q. Would the orders of the Florida, Georgia,  
24 Louisiana, and Kentucky State Commissions  
25 apply to this provision, in your



1 opinion?

2 MR. CULPEPPER: Object to the form  
3 of the question.

4 Is this the most latest version of  
5 Attachment 2?

6 MS. JOYCE: To the best of my  
7 knowledge, it is.

8 MR. CULPEPPER: I didn't see a  
9 date on it.

10 MS. JOYCE: This is how it came to  
11 us, so I've just printed it from e-mail.  
12 It was an attachment.

13 MR. CULPEPPER: Okay.

14 A. This section of the interconnection  
15 agreement, to my knowledge, governs  
16 spectrum unbundling or loop unbundling  
17 where you have high frequency and low  
18 frequency portions of the loop. And it's  
19 a very different issue than what's  
20 affected -- or the state commissions have  
21 ruled about BellSouth continuing to  
22 provide DSL service with CLECs.

23 Q. If a state commission had ordered  
24 BellSouth -- and, indeed, Florida,  
25 Georgia, Louisiana, and Kentucky have done

1       so, according to your testimony, they've  
2       ordered BellSouth to continue to provide  
3       DSL services when BellSouth is no longer  
4       the voice provider, what does a technical  
5       configuration by which that would be  
6       implemented?

7               MR. CULPEPPER: Object to the form  
8       of the question.

9   Q.   How would BellSouth continue to provide  
10       DSL services when BellSouth is no longer  
11       the voice provider?

12   A.   It depends on the particular state and how  
13       the orders have been written. Each state  
14       has made their own set of rules or their  
15       own set of orders as to how we are to  
16       implement that particular case. In  
17       Florida, we provision our DSL service to  
18       the end user over a separate line. It's  
19       not actually on the same facility, so  
20       there's no issue in terms of sharing the  
21       frequency or sharing the spectrum on a  
22       particular loop.

23               In Georgia and Louisiana, we have  
24       been ordered to provide our DSL service  
25       directly on the same loop facility as the

1       UNE-P. As a result, we had to create  
2       specific interconnection language giving  
3       us the rights to place our services on the  
4       high frequency portion of the loop. And  
5       those were adopted by a number of CLECs in  
6       Georgia and Louisiana. And once those  
7       were adopted, then we placed our DSL  
8       services on the upper frequency portion of  
9       their loops.

10               And in Kentucky, they -- the  
11       Kentucky Health Service Commission gave us  
12       the option of providing our DSL service  
13       over a resold line and then have the  
14       resold line repriced or discounted to the  
15       UNE-P rate as an interim solution until we  
16       could get other systems and services in  
17       place. So we provide our DSL service over  
18       the resold line, not over the UNE.

19   Q.   Where BellSouth provides DSL over the same  
20       loop, which is a UNE-P or UNE loop --

21   A.   Uh-huh.

22   Q.   -- is it then unbundling the high  
23       frequency portion of that loop, in your  
24       opinion?

25   A.   We are required to have access to the high



1 frequency portion of that loop in order to  
2 provide our DSL services. We are not  
3 paying for that, nor is it being unbundled  
4 back to us, but we are getting access to  
5 that high frequency portion in order to  
6 provide our service.

7 Q. Is BellSouth unbundling the low frequency  
8 portion of that loop?

9 A. Not creating any new network elements that  
10 I'm aware of. The CLEC has still  
11 purchased the entire loop. They have just  
12 provided us access back to use a portion  
13 of the loop to provide our DSL service, as  
14 ordered by the commissions.

15 Q. So is it a fair assessment that BellSouth  
16 and the CLP are sharing that loop?

17 A. They are providing access to it -- us, so  
18 I guess you can say they're sharing it  
19 with us.

20 Q. And the provision I've directed your  
21 attention to, 2.1.1.2, to your knowledge,  
22 does this provision address only line  
23 sharing?

24 A. The section 2 is titled unbundled loops.  
25 So I imagine the overall section relates

1       to the rules and conditions of unbundling  
2       the entire loop.

3   Q.   Right. I have directed your attention  
4       specifically to the subpart that's marked  
5       2.1.1.2. Is this provision regarding only  
6       line sharing, in your opinion?

7   A.   Yes.

8   Q.   And are you familiar with the term line  
9       splitting?

10  A.   Yes.

11  Q.   Can you provide me your understanding of  
12       what line splitting is?

13  A.   Line splitting is where the one CLEC who  
14       has purchased the entire band width of the  
15       loop chooses to make available a portion  
16       of that loop to another CLEC for purposes  
17       of running DSL or data service.

18  Q.   And, in your opinion, does this provision  
19       that we're discussing regard line  
20       splitting?

21  A.   No, I don't believe it does.

22  Q.   If a CLP -- one of the Joint Petitioners  
23       who had executed an interconnection  
24       agreement with you in the form that's  
25       before you right now, can you identify

1 what portion of Attachment 2 they would  
2 invoke in order to perform line splitting?  
3 A. Of attachment to this entire document?  
4 Q. Subpart 2 regarding unbundled loops.  
5 A. Okay.  
6 Q. Unless you find another part that would be  
7 relevant.  
8 A. I'm not that familiar with this document,  
9 so it would be hard for me to claim what  
10 sections allow line splitting.  
11 (PAUSE.)  
12 A. I don't see anything in this subsection 2  
13 that specifically talks to line splitting.  
14 Q. All right. At page 4 of your testimony,  
15 sir, beginning at line 18, you have a  
16 passage that begins, even during the  
17 transition period, the FCC has made clear  
18 that CLPs are not buying a portion of the  
19 loop. What are you referring to when you  
20 say "transition period"?  
21 A. Transition period is the time frame that  
22 the FCC has indicated -- since they have  
23 determined that their CLECs are not  
24 impaired without access to line sharing,  
25 so there's a transition period with which



1       the -- the CLPs are required to find  
2       other services via line splitting or buy  
3       the entire -- buy a loop. So there's a  
4       transition period which allows them to  
5       transition their business plans during  
6       that time.

7   Q.   How long is the transition period?

8   A.   I believe it ends on October 1st, 2004.

9   Q.   And up -- And until that date, how would  
10       a CLP access less than the full band width  
11       of a loop?

12  A.   I'm not sure of your question. If you'd  
13       rephrase it possibly for me?

14  Q.   How would a CLP engage in line sharing up  
15       until the end of the transition period for  
16       an arrangement not presently in service  
17       today?

18  A.   Up until the transition period, then  
19       the -- until October 1st, 2004, I believe  
20       they can still order line sharing  
21       services. And then after October 1st,  
22       they can no longer order those services,  
23       and I believe there's a repricing over the  
24       next couple of years until they have to  
25       actually go ahead and purchase the entire

1 loop.

2 Q. And at lines 22 to 25, you have a quote  
3 from the FCC. And it states that, we  
4 require incumbent LECs, L-E-C-s, to  
5 provide access to the high frequency  
6 portion of the loop based on the criteria  
7 for presumed acceptability. Would that be  
8 an unbundled network element, a UNE,  
9 U-N-E?

10 A. No.

11 Q. How would you characterize that facility?

12 A. I would characterize it similar to how in  
13 the interconnection agreements that we  
14 have in place -- we've been ordered to  
15 provide our DSL service on the UNE-P of a  
16 CLEC or we've been given access to the  
17 high frequency portion for purpose of  
18 providing our DSL service, I would  
19 characterize it as just the reverse of  
20 that.

21 Q. Is it an access service?

22 A. The high frequency portion of the loop, is  
23 it an access service?

24 Q. As defined in this quote that you've  
25 included in your testimony?

1 A. No, I don't believe that it is.

2 Q. How would a CLEC order this arrangement  
3 that is discussed in this quote?

4 A. They would order it I believe using the  
5 same ordering methods that they've used  
6 historically that are already in place.

7 Q. What would you call that product at  
8 BellSouth?

9 A. I believe it's termed line -- it's called  
10 line sharing.

11 Q. And do you consider that a service or a  
12 product?

13 A. I would consider it a product.

14 Q. A wholesale product?

15 A. Yes.

16 Q. Do you know what the rates are for such a  
17 wholesale product when a CLP wants to  
18 access less than the full bandwidth of a  
19 loop?

20 A. I do not.

21 Q. Do you know where those rates are located?

22 A. I believe they're specified in the  
23 interconnection agreements. I know  
24 they're different from state to state  
25 depending on what rates have been



1       established, but I don't know what the  
2       actual rates are.

3       Q.   Do you know under what methodology those  
4       rates were derived?

5       A.   I'm not certain, no.

6       Q.   Are you familiar with the term total  
7       element long run incremental cost?

8       A.   Yes, I am.

9       Q.   Do you know whether those wholesale  
10       product rates are created in accordance  
11       with TELRIC?

12       A.   I would assume they are since they're  
13       historical derivation as a result of UNES  
14       that were unbundled network elements, but  
15       I was not involved in the development of  
16       those rates.

17       Q.   And, Mr. Fogle, what is your position as  
18       to when an order of the FCC becomes  
19       effective?

20       A.   On -- I'm not sure of your question.

21       Q.   As a general matter, do you have an  
22       understanding as to when an order  
23       promulgated by the FCC becomes effective  
24       as a matter of law?

25               MR. CULPEPPER:   Object to the form

1 of the question.

2 A. I mean, it's pretty clear usually that --  
3 I mean, they're issued on a particular day  
4 and they usually say in them when they're  
5 effective.

6 Q. If an order does not say in them when  
7 they're effective, is there no effective  
8 date?

9 MR. CULPEPPER: The same  
10 objection.

11 A. I'm not sure.

12 Q. At page 7 of your testimony, line 4 -- or  
13 beginning at line 3, there's a statement,  
14 regardless of whether or not they were  
15 deployed prior to the effective date of  
16 the TRO, even though no effective date is  
17 specified. So it's your position that the  
18 TRO has no specified date in it?

19 A. On this particular issue, which is  
20 effecting unbundling relief as applicable  
21 to fiber-to-the-home loops, the FCC  
22 specifically found there's no impairment  
23 and thus did not make a requirement for us  
24 to provide unbundling except in one  
25 specific situation where we're retiring



1 existing copper loops. And they did not  
2 specify that -- a particular date before  
3 or after or when, in their words, and so  
4 we're not looking for that either. It's  
5 just there's no impairment, regardless of  
6 when it was deployed. So we're making --  
7 taking the position that since there's no  
8 impairment, the FCC, since they didn't  
9 state a particular effective date on this  
10 particular order, there isn't one.

11 Q. All right. I think in your response you  
12 may have been saying two things.

13 A. Okay.

14 Q. My question was, the TRO has no specific  
15 effective date provided by the FCC, this  
16 order shall be effective on this day. Is  
17 that your position?

18 A. I'm not aware of where it might -- it may  
19 or may not say that somewhere else in the  
20 TRO.

21 Q. Are you also saying that with specific  
22 regard to fiber-to-the-home loops and the  
23 order -- the portion of the order dealing  
24 with that, if that portion of the order  
25 does not contain a date in it, these rules



1 are effective on this day?

2 A. That is correct.

3 Q. Also on page 7, further down on the page,  
4 lines 15 to 16, you state that the  
5 language of the Joint Petitioners have  
6 offered creates an obligation that the FCC  
7 did not intend. What do you mean by that  
8 statement?

9 A. Well, if the FCC intended to create an  
10 effective date, our position is they would  
11 have put that in their order.

12 Q. Are you familiar with the term greenfield  
13 loop?

14 A. Yes.

15 Q. And what is a greenfield loop?

16 A. A greenfield loop is -- or a loop that is  
17 placed into an area that is newly  
18 developed or being newly developed. It's  
19 an area that does not have  
20 telecommunications facilities prior to  
21 when they're being constructed.

22 Q. On what date would a loop have to be  
23 installed to be determined a greenfield  
24 loop?

25 A. A greenfield loop, it's a term that's used

1 in the industry for any loop that is being  
2 constructed in a new area, so it's  
3 depending on where you're sitting at the  
4 time. Like today, greenfield areas, as we  
5 would refer to them in BellSouth, are  
6 areas that are being constructed or  
7 developed now. New housing subdivisions,  
8 new apartment complexes, new office  
9 buildings, those would all be considered  
10 greenfields. There's no facilities  
11 available today because none have been  
12 constructed. Two months from now, some of  
13 that construction would complete and those  
14 areas would no longer be considered  
15 greenfield. And whatever areas are still  
16 under construction would be considered  
17 greenfield going forward. It's a term  
18 that's used essentially to describe areas  
19 of new construction.

20 Q. If a fiber-to-the-home loop had been  
21 installed the day after the TRO was  
22 released, would it be a greenfield loop,  
23 in your opinion?

24 A. Well, all loops start out as greenfield  
25 loops because -- I mean, greenfield is



1       just a term that describes an area of  
2       under new construction. So it's -- it is  
3       -- you know, it's -- newly deployed or  
4       greenfield just simply refers to what  
5       you're looking forward to and what you're  
6       doing in the future.

7   Q.   So the determination of whether a loop is  
8       a greenfield loop is not dependent on what  
9       date the TRO came out?

10               MR. CULPEPPER: Object to the form  
11       of the question.

12   A.   I'm not sure -- I mean, maybe you can  
13       rephrase the question for me. I'm not  
14       real clear on it, what you're asking.

15   Q.   If the TRO had never been released and  
16       didn't exist, would there be greenfield  
17       loops in BellSouth's network?

18   A.   Yes, there would be greenfield loops.  
19       We've been talking about greenfield loops  
20       for years. It's a term that's used inside  
21       BellSouth and in the industry for areas of  
22       new construction.

23   Q.   When does it become -- Exactly what  
24       moment in time does it become a brownfield  
25       loop?



1 A. Once service has all been turned up and  
2 the area is built out, it is no longer  
3 new.

4 Q. All right.

5 (DEPOSITION EXHIBIT NO. 4 WAS MARKED.)

6 Q. I'm handing you a document that's been  
7 marked Exhibit 4. Do you recognize this  
8 document?

9 A. No, I do not.

10 Q. Do you recognize the front page?

11 A. I don't believe I've ever seen it before,  
12 but it appears to be a report and order on  
13 remand and further notes of proposed rule  
14 making from the FCC.

15 Q. Would you accept that this is the front  
16 page of the TRO?

17 A. Yes, that would be...

18 Q. And because it's a voluminous document,  
19 I've only provided you with a portion of  
20 that order that's been printed from the  
21 FCC's website. And I direct your  
22 attention to the section that's -- begins  
23 on page 2 of the exhibit called FTTH  
24 loops.

25 MR. CULPEPPER: I don't have a

1 page 2.

2 MS. JOYCE: The second page.

3 MR. CULPEPPER: Okay.

4 MS. JOYCE: It's not marked 2, but  
5 it's page --

6 MR. CULPEPPER: Page 163?

7 MS. JOYCE: Yes.

8 MR. CULPEPPER: Okay.

9 Q. Did you review -- And if you need to take  
10 a moment, please do.

11 Did you review this section when  
12 you wrote your testimony regarding the  
13 issue we're discussing?

14 MR. CULPEPPER: Object to the  
15 question to the extent it's asking the  
16 deponent to disclose privileged  
17 information.

18 A. I did review this particular section prior  
19 to writing the testimony.

20 Q. Can you direct me to the portion of this  
21 section that supports your understanding  
22 of what is a greenfield loop in the FTTH  
23 context?

24 A. In the -- I guess the second sentence  
25 where they talk about, our conclusion



1 applies to FTTH loops deployed by  
2 incumbent LECs in both new construction  
3 and overbuild situations. The area where  
4 they're talking about new construction,  
5 that's an area that we commonly refer to  
6 in the industry as greenfield.

7 The next two sentences kind of  
8 elaborate on that sentence, the first of  
9 which they talk about our obligations in  
10 the overbuild situations. The second  
11 sentence refers to newly deployed or  
12 greenfield fiber loops which, again, is  
13 discussing or talking about the new  
14 construction portion of this rule.

15 Q. And is it your testimony that the term new  
16 construction is determined by the ILEC in  
17 how it views its build-out plans?

18 MR. CULPEPPER: Object to the form  
19 of the question.

20 A. I'm -- I'm not sure of your question.  
21 Could you maybe rephrase it for me?

22 Q. I guess to be somewhat glib, is a new  
23 construction anything that BellSouth says  
24 it is?

25 A. No. I mean, new construction -- it's



1        pretty apparent when a new construction  
2        would be. You drive by and you see  
3        bulldozers and buildings going up and  
4        there are areas that they start off as  
5        green fields and turn into housing  
6        developments, apartment complexes, office  
7        buildings, those types of things. That  
8        is, you know -- the greenfield area is  
9        completely an area of new construction.  
10       It requires -- We do a lot of work to  
11       build up facilities to those new  
12       locations, new construction areas.

13    Q.   So is it your testimony that the word  
14       greenfield refers to the fact that it's an  
15       open meadow with no construction on it yet  
16       and there are no buildings there?

17    A.   It's not necessarily an open meadow or no  
18       buildings. It is simply that there's new  
19       construction or new housing units or  
20       office units or areas in which there are  
21       no facilities built at present and someone  
22       has to make the investment to build  
23       facilities out to reach those potential  
24       customers. And so as a result, it's a  
25       greenfield application or greenfield

1 location in that there's nothing embedded,  
2 there's nothing existing there, no  
3 services -- no infrastructure available  
4 to offer services, so something new must  
5 be built to reach those customers.

6 Q. What is your understanding of what an  
7 overbuild is?

8 A. An overbuild situation is where we have  
9 existing infrastructure or existing  
10 telecommunications planned and we choose  
11 to come in and build new infrastructure or  
12 new plant on top of that existing  
13 infrastructure usually for the purposes of  
14 offering new services or to put in new  
15 technologies that are more cost effective  
16 for other reasons. But it's us  
17 reconditioning or rebuilding our  
18 infrastructure -- our existing  
19 infrastructure to upgrade with new  
20 technologies and new services.

21 Q. Is that rebuilding considered by you to be  
22 a greenfield?

23 A. No.

24 Q. Is it a brownfield?

25 A. It's -- Some people refer to it as



1 brownfield. It's more commonly referred  
2 to as overbuild.

3 Q. Do you believe that BellSouth has any  
4 obligation to provide a rebuilt facility  
5 of the type that you just characterized as  
6 an unbundled network element?

7 A. That's a fairly broad question. Are you  
8 referring to a particular -- like a  
9 fiber-to-the-home specifically or --

10 Q. Or with respect to the testimony you've  
11 just given about BellSouth rebuilding,  
12 what it typically calls overbuild.

13 A. Uh-huh.

14 Q. Is it your position that -- or do you  
15 have a position as to whether BellSouth  
16 has an obligation to provide overbuilt  
17 facilities to a CLP as a UNE?

18 A. In regards to fiber-to-the-home loops in  
19 particular where we have chosen to do an  
20 overbuild, there's existing copper  
21 infrastructure, and we've chosen to  
22 replace that with fiber-to-the-home. Our  
23 obligation is to continue to provide  
24 narrow band access to those locations so  
25 as to not reduce the available footprint



1 to CLECs. And that -- only in situations  
2 where we're doing an overbuild.

3 Q. All right.

4 (DEPOSITION EXHIBIT NO. 5 WAS MARKED.)

5 Q. I'm handing you a document that's been  
6 labeled Exhibit 5. Do you recognize this  
7 document?

8 A. Yes.

9 Q. Can you tell me what it is?

10 A. It's an FCC Tariff No. 1 specific to  
11 BellSouth's DSL service.

12 Q. Have you ever reviewed the provision that  
13 appears on this page before?

14 A. Yes.

15 Q. Can you direct me to the language on this  
16 page that would explain what kind of  
17 access a CLP or a CLEC could get to a loop  
18 that is in use by BellSouth for DSL  
19 services?

20 A. I don't believe that there's any language  
21 on this page that provides access to a  
22 CLEC to a loop that's being used by  
23 BellSouth.

24 Q. I'm now handing you a document that's been  
25 marked Exhibit 6.

1 (DEPOSITION EXHIBIT NO. 6 WAS MARKED.)

2 Q. Do you recognize this document? And I  
3 invite you to review it.

4 (PAUSE.)

5 A. Yes, I do.

6 Q. This is a response that BellSouth provided  
7 to the Joint Petitioners in response to  
8 their discovery questions; is that  
9 correct?

10 A. Yes, it is.

11 Q. And it's marked item number 2-15-1. Do  
12 you understand that to mean that these  
13 questions regard issue 2-15?

14 A. Yes, they do.

15 Q. I direct your attention to the page that's  
16 numbered 31 in this exhibit, but it's the  
17 third page of the exhibit.

18 A. Okay.

19 Q. And the question posed to BellSouth was,  
20 provide all documents regarding the  
21 proportion as a percentage of BellSouth  
22 loops that are fiber-to-the-home loops.

23 And at the bottom of the page,  
24 there are figures provided that as of  
25 December 31st, 2003, BellSouth has



1        deployed fiber-to-the-curb FTTC to 99,271  
2        living units in North Carolina. Do you  
3        see that?

4        A. Yes.

5        Q. Do you characterize those loops as  
6        greenfield loops or brownfield loops?

7        A. They would be brownfield.

8        Q. And in the previous sentence, it states,  
9        BellSouth currently has zero  
10       fiber-to-the-home loops deployed in North  
11       Carolina. Do you see that?

12       A. Yes, I do.

13       Q. And did you assist in providing this  
14       response to the Joint Petitioners?

15       A. Yes, I did.

16       Q. Do you know whether BellSouth is presently  
17       installing fiber-to-the-home loops in  
18       North Carolina?

19       A. I do not believe that we are.

20       Q. Are there any greenfield fiber-to-the-home  
21       loops -- deployed loops in North  
22       Carolina?

23       A. Unless there is a technology test that may  
24       be happening or some very small amount,  
25       that could be possible. Other than that,



1 we are not commercially deploying  
2 fiber-to-the-home in North Carolina at  
3 this time.

4 Q. Okay. Is it correct that there are not  
5 any brownfield fiber-to-the-home loops in  
6 North Carolina?

7 A. That is correct.

8 Q. And I direct your attention now to the  
9 first page of the exhibit, which also  
10 states that BellSouth currently has zero  
11 fiber-to-the-home loops deployed in  
12 Alabama. There are no brownfield  
13 fiber-to-the-home loops in Alabama at this  
14 time?

15 A. That's correct.

16 Q. Nor any greenfield fiber-to-the-home  
17 loops?

18 A. I don't believe we're commercially  
19 deploying it. Like I said, there may be  
20 some specific technology tests that are  
21 going on where individual loops may have  
22 been serviced, but there's been no  
23 commercial deployment.

24 Q. And as to fiber-to-the-curb loops, as  
25 indicated on this page, that has been

1        deployed in Alabama to 18,275 living  
2        units. Do you see that?

3        A. Yes.

4        Q. Are those all brownfield FTTC loops, in  
5        your opinion?

6        A. Yes.

7        Q. Can you tell me what the term living unit  
8        means?

9        A. It's a term that's used to describe  
10       generically a household; could be a  
11       apartment, could be a condominium, it  
12       could be a duplex or a residence. A  
13       residential living unit of some sort. It  
14       could be a stand-alone -- freestanding  
15       home.

16       Q. Can there be a fiber-to-the-home loop  
17       deployed to a business location?

18       A. I guess -- If you really -- nids and  
19       nats, you could say no, because it's not a  
20       home, but the fiber to the premise or  
21       fiber to the -- fiber could be deployed  
22       all the way to a business location.  
23       Sometimes this is referred to collectively  
24       as FTTX or fiber-to-the-something. But  
25       the same technology can be used to provide



1 services to businesses as we provide  
2 services to home.

3 Q. Could that acronym possibly be FTTB for  
4 business?

5 A. Could be. You also see FFTP, which is  
6 fiber-to-the-prem.

7 THE COURT REPORTER: Prem?

8 THE WITNESS: Prem as in short for  
9 premise.

10 Q. Are an FTTH loop and FFTP loop deployed to  
11 the same living units?

12 A. They could be. I mean, it's just --  
13 those are just different names for  
14 technologies that are being used. As --  
15 telecom, as you find out, there's lots of  
16 different acronyms for the same thing, and  
17 so there's one on line technology, which  
18 is essentially the concept taking the  
19 fiber all the way to the customer  
20 location. And so they call it lots of  
21 different things, but it's essentially  
22 taking fiber all the way into the home or  
23 a business or an office, whatever the case  
24 would be.

25 Q. Would you use the acronyms FTTH and FFTP



1 interchangeably?

2 A. I've seen them used a lot  
3 interchangeably. I have a tendency to be  
4 a bit of a purist in that  
5 fiber-to-the-home means that it goes to a  
6 house, fiber-to-the-premise would be going  
7 to a business. But the underlying  
8 technology would be the same.

9 Q. And an FTTC loop and an FTTP loop would  
10 not be the same things; is that correct?

11 A. They are incredibly close to each other in  
12 terms of what they are. Fiber-to-the-curb  
13 and fiber-to-the-home, the only difference  
14 is what the choice is for the last couple  
15 hundred feet, choice of technology for  
16 those last couple hundred feet from the  
17 curb to the house. Fiber -- There's no  
18 differences in the services that are  
19 available. There's no differences in  
20 capabilities offered between  
21 fiber-to-the-curb and fiber-to-the-home.  
22 The difference is just that the last few  
23 hundred feet is typically a copper or  
24 coaxial drop as opposed to a fiber drop  
25 that goes into the home.

1 Q. But as used in these acronyms --

2 A. Uh-huh.

3 Q. -- the curb is not the same as a premise?

4 A. No, it is not.

5 Q. Do you know whether BellSouth has any  
6 installed FTTH loops in any other of its  
7 states?

8 A. I believe we've been doing some technology  
9 trials where we have a very limited number  
10 with specifically chosen customers who are  
11 testing out some technologies, but I  
12 believe that is the limit. We have chosen  
13 to deploy fiber-to-the-curb as our chosen  
14 technology for fiber deployment as opposed  
15 to fiber-to-the-home.

16 Q. Would a trial loop of that kind be a  
17 brownfield loop, in your opinion?

18 A. I'm not even sure what -- it exists,  
19 therefore, by definition, it's  
20 brownfield. If it's already been -- If  
21 it didn't exist, by definition it would be  
22 greenfield. But in those particular  
23 cases, we're not even usually charging the  
24 end user for the services, we're just  
25 testing the technology. A lot of the



1 times it's an employee of the company,  
2 that type of thing. We're just typically  
3 trying to field trial, field test a  
4 particular technology by a particular  
5 vendor.

6 Q. So a trial is neither a greenfield nor a  
7 brownfield?

8 A. The legal designation of a trial would --  
9 I mean, it's usually not even -- it's  
10 something where we're -- we've got a  
11 technology group who has put some  
12 equipment in the network specifically to  
13 try to see how service is going to work  
14 for a particular end user. It's a -- what  
15 we call friendly end user, employee, that  
16 type of thing. So it's not one that any  
17 services would be typically available.  
18 It's not one where we are selling service  
19 or making it commercially available.  
20 We're simply trialing a technology. So I  
21 do know that we've got some -- a variety  
22 of trials out there that we're running at  
23 any given time for various different new  
24 technologies that are out there. So it  
25 would not surprise me if we had at least a



1       handful of fiber-to-the-home circuits in  
2       place in our network to trial customers.

3   Q.   Can you identify states in which these  
4       trial loops have been deployed?

5   A.   We typically do them in Georgia and  
6       Florida, more often in Georgia. But I  
7       don't know -- occasionally we make a  
8       decision to do it in some other place.

9   Q.   Assuming the trial loop stays  
10       installed --

11   A.   Uh-huh.

12   Q.   -- stays in the network, do you know  
13       whether BellSouth would provide a CLP  
14       access to it as a UNE?

15   A.   Trials will never stay in the network.  
16       After the trial is over, we take them down  
17       and the customer returns to their previous  
18       service. So the only reason they would  
19       stay is if we're still conducting some  
20       aspect of the trial.

21   Q.   And with regard to FTTC loops, the  
22       responses you and I have reviewed state  
23       that there are approximately 18,000 of  
24       those loops in Alabama and 99,000 FTTC  
25       loops in North Carolina. Can you estimate

1       how many FTTC loops there are deployed in  
2       Georgia?

3               MR. CULPEPPER: Out of an  
4       abundance of caution, I want to put an  
5       objection on the record, to the extent the  
6       line of questioning goes to testimony  
7       beyond the deponent's direct testimony in  
8       North Carolina. I anticipate this won't  
9       be an issue down the road, but I want to  
10      put it on the record.

11   A. I don't know the number in Georgia.

12   Q. I don't want you to speculate, but, in  
13      your expertise, could you ballpark it? Is  
14      it between 10,000 and 90,000?

15   A. I really don't know, to tell you the  
16      truth. It's -- It would depend on  
17      whether or not there's been a more  
18      aggressive deployment of fiber-to-the-curb  
19      in Georgia versus other states. And I  
20      don't know whether that's been the case or  
21      not. So it could be -- I couldn't  
22      speculate. It could be 10,000, it could  
23      be 90,000, it could be 200,000. I simply  
24      don't know.

25   Q. I don't want to ask you to speculate



1           then. That's not helpful.

2                    Could you answer that question for  
3           Florida, how many FTTC loops are installed  
4           in Florida?

5   A.   Unless it happens to be in this  
6           interrogatory, I don't know that answer  
7           either.

8   Q.   So then other than the responses that are  
9           before you here that you and I have  
10          discussed that have already been provided,  
11          you couldn't provide me with an estimate  
12          in any other BellSouth state of the number  
13          of installed FTTC loops?

14   A.   The last time I looked at this data was in  
15          the development of this response, and I've  
16          simply forgotten what the other states  
17          had. I just don't recall.

18                   MS. JOYCE: Would you like to take  
19           a break, or do you want to continue?

20                               (RECESS.)

21   BY MS. JOYCE:

22   Q.   Mr. Fogle, you understand that you're  
23          still under oath?

24   A.   Yes, I do.

25   Q.   Is it your position that the definition of



1 line conditioning is something that  
2 BellSouth would do to a loop for its own  
3 retail customers?

4 A. I don't believe the definition of line  
5 conditioning is limited to just what  
6 BellSouth could perform for itself.

7 Q. Does BellSouth perform line conditioning  
8 for its retail customers?

9 A. There are certain forms of line  
10 conditioning that we do perform for our  
11 retail customers.

12 Q. Do you perform it for customers receiving  
13 xDSL services?

14 A. Yes.

15 Q. Would you perform line conditioning for a  
16 customer served over a DS-1 loop?

17 A. I believe that there would probably be  
18 times when line conditioning would be  
19 necessary to be able to provide a DS-1.

20 Q. And so you would perform that line  
21 conditioning for your retail customer?

22 A. I believe so, yes.

23 Q. Do you have any understanding about  
24 whether the customer would be charged for  
25 that line conditioning?

1 A. I don't know.

2 Q. To your knowledge, does BellSouth perform  
3 line conditioning on DS-1 loops in use by  
4 a CLP?

5 A. I would assume that we do, but I wouldn't  
6 know any specifics around that.

7 Q. What might be involved in performing line  
8 conditioning?

9 A. Line conditioning is a broad term. It's  
10 used to -- just as it sounds, any kind of  
11 activity or work that is done to condition  
12 a line for use. It could involve removal  
13 of bridge taps, it could involve removal  
14 of load coils. Some people consider line  
15 and station transfers as line  
16 conditioning. Essentially, it's any kind  
17 of rearrangement or modification of the  
18 outside plant infrastructure to condition  
19 a line for use for a particular service.

20 Q. Why might it be necessary to remove a  
21 bridge tap from an xDSL loop?

22 A. Bridge tap essentially acts as a very  
23 large antenna. And as a result, it  
24 collects and picks up interference, and  
25 that interference degrades the DSL signal



1 and in some cases makes it unusable for  
2 the end user. So we remove bridge tap for  
3 xDSL customers to remove the interference  
4 so that their throughput speeds and the  
5 quality of service goes up.

6 Q. Would it ever be the case that there would  
7 be all bridge taps removed from an xDSL  
8 loop that is used by a BellSouth retail  
9 customer?

10 A. There could be cases where all bridge tap  
11 would be removed. It would depend on the  
12 engineering judgment at the time to --  
13 when they determine what bridge tap is in  
14 place and what potentially needs to be  
15 removed as to what they would do.  
16 Routinely for BellSouth's DSL's customers,  
17 we just simply don't qualify customers  
18 with excessive bridge taps for DSL  
19 service, so they're not able to order the  
20 service.

21 Q. What is your definition of excessive  
22 bridge tap?

23 A. An excessive bridge tape would be a bridge  
24 tap that is still on the loop facility as  
25 a result of some historical requirements



1 but is no longer needed and no longer has  
2 a design purpose, therefore it's  
3 considered excessive. It's more than is  
4 necessary. So you can then remove the  
5 excessive amounts of bridge tap to  
6 potentially facilitate providing DSL  
7 service.

8 Q. What design purpose might bridge tap serve  
9 in other contexts?

10 A. Bridge tap is something that telephone  
11 companies have been using for a long  
12 time. It is essentially a -- It's an  
13 outside plant arrangement technique where  
14 you -- any particular line facility is  
15 tapped or bridged to multiple end user  
16 locations so that when a particular end  
17 user moves into a home or orders phone  
18 service, we can use the same facility in  
19 one of multiple locations and it increases  
20 the efficiency of our outside plant  
21 infrastructure and its ability to serve  
22 voice services.

23 Q. And why might a load coil be removed from  
24 an xDSL loop?

25 A. A load coil, its purpose in the loop is to

1       remove high-frequency noise. It allows  
2       voice frequencies to pass through very  
3       easily. It essentially shorts out or  
4       shunts high-frequency noise, which the end  
5       user hears as static. On particularly  
6       long loops, they add load coils so that  
7       the end user has a higher-quality voice  
8       service. The problem with the load coil  
9       is that since it restricts or limits the  
10      high-frequency noise, it also restricts  
11      and limits the DSLs frequencies. So DSL  
12      service does not pass through or work  
13      through a load coil device. So it's a  
14      case where you would remove it when it  
15      doesn't effect the voice service. Doesn't  
16      negatively impact the voice service, you  
17      remove it to facilitate providing DSL  
18      service.

19    Q.    Would you remove a load coil from a loop  
20           in order to provide any other service?

21    A.    There could be load coils on loops that  
22           they're going to reuse those loops for  
23           other things, like DS-1s or other  
24           services, but -- I mean, the load coil's  
25           designed produce is to improve the quality



1 of the voice service. It impedes just  
2 about everything else.

3 Q. Is it possible a bridge tap could be  
4 present on a DS-1 line?

5 A. I don't know.

6 Q. Would the presence of a bridge tap impair  
7 other types of nonvoice telecommunication  
8 services besides DSL?

9 A. It could, yes.

10 Q. Can you think of what those services might  
11 be?

12 A. Any data service that has higher  
13 frequencies, bridge taps, again, act as an  
14 antenna and they will go -- they pull in  
15 high-frequency noise into the loop that  
16 could interfere with any type of data  
17 service.

18 Q. What is a line station transfer?

19 A. Line station transfer is where we have --  
20 an example would be a particular loop that  
21 feeds an end user customer that does not  
22 qualify for DSL. It has bridge tap, it  
23 has load coils, it has some impairments  
24 that don't allow DSL service. But there  
25 is another pair available in that same



1 cross box that does not have those  
2 impairments that could also be used to  
3 serve that end user's locations voice  
4 service. And so what we do is we take out  
5 the voice -- the pair that is impaired  
6 with the impairments and provision it to  
7 somebody else or take it out of service  
8 and we use the unimpaired line to provide  
9 the voice service and then the DSL service  
10 to the end user location. So we're  
11 conditioning the plant by changing the  
12 facility we use to provide the voice and  
13 the DSL service.

14 Q. Is that rearrangement, that transfer of  
15 loops done physically by touching each  
16 loop and repositioning it?

17 A. Yeah. It requires you to move jumpers and  
18 physically reconnect at a different  
19 facility.

20 Q. And if that type of rearrangement or  
21 transfer had been performed, would that  
22 work be recorded somewhere in BellSouth's  
23 systems?

24 A. Yeah, we'd have to record the different  
25 facility as being assigned or being used

1 to provide the service. It's a different  
2 facility now connects to the switch and  
3 connects to the end user's location, so  
4 we -- our loop facility assignment  
5 systems would have to record that change.

6 Q. Would that be the loop facility assignment  
7 control system?

8 A. That would be also known as LFACS, yes.

9 Q. What is a repeater as something that would  
10 occur on a loop?

11 A. A repeater is a piece of technology that  
12 essentially receives a degraded data  
13 signal, regenerates it, and sends it  
14 further down the line.

15 It would -- An analogy would be  
16 similar to how the Indians used to use  
17 smoke signals to communicate. I would  
18 send a smoke signal up. The guy down the  
19 road sees it. He sends his -- the same  
20 smoke signal up. The next guy down the  
21 road sees it, et cetera, et cetera. The  
22 repeater is just the high-tech version of  
23 the same thing. The signal we can send  
24 only goes so far through our copper line,  
25 therefore we have to repeat it to continue



1 to send it further down those same copper  
2 lines.

3 Q. So does a repeater improve the robustness  
4 of a voice signal?

5 A. Repeaters are typically used to provide  
6 data services, data signals.

7 Q. Is there any service that would be  
8 impaired if a repeater were present on a  
9 line?

10 A. Yeah. If a repeater were present, then it  
11 would interfere with DSL services.

12 Q. Are repeaters used on DS-1 loops?

13 A. I would say they are, yes.

14 Q. Are they used on DLC loops?

15 A. I would venture to say they probably are,  
16 yes.

17 Q. And do you know what a DAML is, D-A-M-L?

18 A. I don't know what the actual acronym  
19 stands for, but I do know what a DAML is,  
20 so...

21 Q. Please tell me what it is.

22 A. A DAML is a situation or an area where  
23 BellSouth or any other phone company has  
24 limited copper facilities, and so what  
25 they do is they derive a second access



1 line on the same copper facility. They  
2 put a piece of equipment at the end user's  
3 home or business at their network  
4 interface device as well as further up in  
5 the infrastructure so that both the first  
6 and the second lines ride on the same  
7 copper facility. In other words, they  
8 take the second voice signal and move it  
9 into the upper frequency portion of the  
10 line so they both ride the same voice --  
11 or the same copper facility.

12 Q. If I called that a line splitter, would I  
13 be incorrect?

14 A. Yes, you would be incorrect.

15 Q. Would a DAML impair data services over a  
16 line?

17 A. Yes, it does.

18 Q. Would that include data services other  
19 than DSL?

20 A. Yes, it would.

21 Q. Would a DAML possibly be used or in place  
22 on a DS-1 loop?

23 A. I would not think it would be used for  
24 DS-1, no.

25 Q. Would BellSouth provide data services over

1 a loop that had a repeater on it?

2 A. Yes.

3 Q. And would it provide data services over a  
4 loop that had a DAML on it?

5 A. Typically, no.

6 Q. Why would it choose to provide DSL over a  
7 loop that had a repeater on it?

8 A. You said data services. I was thinking of  
9 DS-1s.

10 Q. Yeah, I'm starting -- okay.

11 A. Okay. Sorry.

12 Q. Well, a data service over a DS-1, why  
13 would you still provide that type of  
14 service over a loop that had a repeater on  
15 it?

16 A. If the end user who wanted to buy DS-1  
17 from BellSouth was located more than, say,  
18 10 or 15 thousand feet from the central  
19 office, in order to provide that DS-1  
20 service all the way to that end user  
21 location, we would have to put a repeater  
22 in the line in order to reach that end  
23 user location.

24 Q. Would the repeater impair the data  
25 services?

1 A. It actually enhances it, improves it.

2 Q. But the repeater would impair DSL  
3 services?

4 A. It's not designed for DSL. It's designed  
5 to repeat a DS-1 or DS-3 signal. It's not  
6 designed for DSL, and so it would impair  
7 the DSL signal.

8 Q. Could a repeater be present on an xDSL  
9 capable loop?

10 A. There are some companies who choose to use  
11 repeaters that are designed to be used  
12 with xDSL technologies to repeat the DSL  
13 signal and provide it to further out  
14 loops. BellSouth does not choose to use  
15 repeaters with DSL.

16 Q. Is it a different type of repeater as  
17 between as DS-1 loop and an xDSL loop?

18 A. Yeah, the repeater has to be designed to  
19 function and repeat the particular  
20 technology that it's being asked to  
21 repeat, whether it be ATM, PERM relay,  
22 DS-1, ethernet, DSL, et cetera, so --  
23 they're -- even within DSL, there are  
24 xDSL, IDSL, ADSL, GI/SHDSL, BDSL, HDSL, so  
25 we could continue.



1 Q. To your knowledge, has BellSouth ever told  
2 one of its retail end user customers that  
3 they can't get BellSouth DSL service  
4 because their facility isn't qualified?

5 A. Yes. We tell them that all the time.

6 Q. Can you state a proportion of the time  
7 that that happens?

8 A. I think right now, approximately 75  
9 percent of BellSouth's end user loops  
10 qualify for DSL service, so 25 percent do  
11 not. So if any of those 25 percent try to  
12 order the service, we'll tell them they  
13 don't qualify.

14 Q. Could it be possible that a certain amount  
15 of line conditioning on that 25 percent  
16 proportion of the loops could enable the  
17 loop to carry DSL service?

18 A. Yes.

19 Q. Do you know why BellSouth chooses not to  
20 perform that line conditioning?

21 MR. CULPEPPER: Object to the form  
22 of the question.

23 A. In terms of what -- we choose to perform  
24 line conditioning or not perform line  
25 conditioning, we have done efforts in the

1 past where we've done programs where we've  
2 removed bridge taps or we removed DAMLs or  
3 we've removed load coils as a project.  
4 And then say this particular area would  
5 qualify for DSL services if we went  
6 through and removed the DAMLs and the  
7 bridge taps or load coils.

8 When we do those projects, it also  
9 opens up and frees those facilities for  
10 other CLP's DSL services. Those  
11 impairments are the same impairments for  
12 us as they are for the CLPs. So when we  
13 improve the plant, it helps both sides  
14 equally. That, in turn, creates a  
15 qualification database as to who  
16 qualifies, who does not qualify. We do  
17 not routinely take requests for DSL and  
18 then go out and trigger a line  
19 conditioning requirement with the  
20 exception of line station transfers, which  
21 those are the only line conditioning we  
22 will routinely do as a result of a DSL  
23 order to someone who would not -- their  
24 facilities are not currently qualified.  
25 Q. Do you have an understanding as to what



1       the term routine network modification  
2       means?

3   A.   I take the FCC -- and I'm paraphrasing a  
4       little bit. I know speak to it  
5       specifically in my testimony, but, you  
6       know, routine network modification is best  
7       seen as a network modification that  
8       BellSouth or other incumbent telephone  
9       companies routinely perform for their own  
10      retail customers.

11   Q.   What do you mean by the word "routinely"?

12   A.   Routinely, in my opinion, is a  
13       specific -- is a situation where you  
14       would do it more often than not or that  
15       you have a method and procedure that says  
16       this is how we would do this as in our  
17       day-to-day business.

18   Q.   Does BellSouth have methods and procedures  
19       regarding line conditioning?

20   A.   Yes.

21   Q.   Are they recorded or codified somewhere?

22   A.   I mean, line conditioning, again, is a  
23       very broad term, so there's -- we have  
24       outside plant engineering guidelines that  
25       we provide that talk about how to deploy



1 lines and whether or not you would include  
2 some of the repeaters or not. We also  
3 have guidelines that we use when we  
4 develop the algorithms and code for our  
5 loop qualification system. And then we  
6 have probably some Sprint documents that  
7 say -- simply to the fact that if a person  
8 doesn't qualify for DSL service, we're not  
9 going to do extreme or gargantuan steps to  
10 try to qualify them by doing a lot of line  
11 conditioning.

12 Q. Did you say Sprint documents?

13 A. No. We have probably some documentation.

14 Q. Some documents?

15 A. Yeah.

16 Q. What would be a gargantuan-type task that  
17 BellSouth would not perform under your --  
18 what you've testified?

19 A. There are situations where you can have  
20 multiple load coils on a loop that are --  
21 that serve a design purpose historically  
22 that, because of their location in the  
23 outside plant, they're buried.  
24 Potentially they are in manholes or other  
25 things. The physical job to remove them

1        would be very expensive, several hundred  
2        thousand dollars. And there's no way that  
3        we would undergo that expense for a  
4        customer that's going to pay us \$45 a  
5        month for service. So it's just --  
6        that's just simply -- we just simply  
7        can't qualify that customer because the  
8        rearrangement would be too expensive.

9        Q. Would BellSouth consider performing a line  
10       station transfer in that instance if it  
11       were possible?

12      A. If it were possible, yes.

13      Q. For the 25 percent roughly of BellSouth  
14       loops that don't qualify for DSL service,  
15       for example --

16      A. Uh-huh.

17      Q. -- would BellSouth consider performing a  
18       line station transfer?

19      A. Line station transfers, if one is  
20       available, that allows those loops to be  
21       qualified for service, so they fall into  
22       the 75-percent category.

23      Q. Who would determine whether a line  
24       station -- am I saying this correctly, is  
25       it line station transfer or line of

1 station?

2 A. Line and station line.

3 Q. Who would determine whether a line and  
4 station transfer is possible?

5 A. There is an -- actually an algorithm in  
6 our loop qualification system that reviews  
7 the loop facility assignment and control  
8 system, LFACS database, to determine if  
9 there are what are considered available  
10 copper or available facilities to support  
11 that end user location. That algorithm is  
12 what determines whether a line and station  
13 transfer is required.

14 Q. So, thus, could I characterize that as  
15 being an automated determination?

16 A. In our DSL system, yes, it's an automated  
17 determination.

18 Q. With regard to other loops, if a line and  
19 station transfer were possible, would that  
20 be recorded in the loop assignment control  
21 system?

22 A. Other loops meaning...

23 Q. For example, a DS-1 loop.

24 A. As far as I know, the entire loop facility  
25 assignment database is available to CLECs



1 and they can look at any potentially  
2 available loop to serve an end user, the  
3 same as we look at any potential available  
4 loop facility to serve the end user. I  
5 don't know what the parameters are, the  
6 designed parameters that would be required  
7 for a DS-1 loop or other types of loops.  
8 But I would assume CLECs as well as  
9 BellSouth are both looking at those  
10 facility assignments for facilities that  
11 meet that criteria.

12 Q. Do you have an understanding as to what  
13 the term designed loop means?

14 A. Uh-huh.

15 Q. And what does that refer to?

16 A. A designed loop is one that requires an  
17 engineer, typically, or an engineering  
18 assistant to go through and design the  
19 loop to provide the service. It  
20 requires -- It's essentially any kind of  
21 service that's a little more complex and  
22 requires some special circumstances with  
23 which to provide those services.

24 Q. Can a DS-1 loop be a designed loop?

25 A. I think so, but I'm not sure.

1 Q. Is an xDSL capable loop a designed loop?

2 A. Typically not.

3 Q. Do you have an understanding about where  
4 information is housed regarding a designed  
5 loop?

6 A. To my knowledge, all of our loop  
7 facilities are databased in our LFACS  
8 system, whether they're designed or  
9 nondesigned, so...

10 Q. Are you familiar with a database of  
11 BellSouth's called a work force  
12 administration database, WFA?

13 A. Yes.

14 Q. And do you know what's housed in that  
15 database?

16 A. I'm not so sure that it's a database,,  
17 although I guess it has a system -- it  
18 probably does have an associated  
19 database. But my understanding of work  
20 force administration is it's a ticketing  
21 system for job function, that it creates  
22 essentially jobs or products -- projects  
23 for individual -- well, work force people  
24 to perform.

25 Q. Do you have an understanding as to whether



1 the WFA is a separate system from LFACS?

2 A. It is separate.

3 Q. Do you know whether those two systems can  
4 share information directly between each  
5 other?

6 A. They probably have some interface between  
7 the two. They're used in different parts  
8 of the process, and LFACS is a loop  
9 facility assignment system, WFA is a work  
10 force administration system that helps  
11 with the provisioning of services. It's  
12 not a facility assignment database.

13 Q. So the WFA, am I correct, houses trouble  
14 ticket information regarding loops?

15 A. I don't believe it's trouble ticket  
16 information. It may include that, but  
17 it's predominantly used for provisioning  
18 services.

19 Q. Would the information in WFA, to your  
20 knowledge, appear in LFACS?

21 A. I don't know.

22 Q. Do you know whether CLPs have access to  
23 the WFA?

24 A. I don't know.

25 (DEPOSITION EXHIBIT NO. 7 WAS MARKED.)



1 Q. I'm handing you a document marked Exhibit  
2 7. Now, we've seen the top page of this  
3 exhibit before for Exhibit 4. This is the  
4 top page of the Triennial Review Order.  
5 Again, it's just a portion.

6 Do you see on the second page of  
7 this exhibit at the top labeled Appendix  
8 B, final rules?

9 A. Yes, I do.

10 Q. Would you accept these are the final rules  
11 that were adopted in the Triennial Review  
12 Order?

13 A. Subject to check, sure.

14 Q. Just for your further clarification, I've  
15 covered it up, but if you notice, the item  
16 number FCC 03-36 at the top --

17 A. Yes.

18 Q. -- that's the indicator of the order  
19 number.

20 A. Okay.

21 Q. And there can only be one order number for  
22 any order, so that's the way -- one way  
23 you can tell that the pages all belong  
24 together.

25 A. Okay.

1 Q. Please turn to the page of this exhibit  
2 that says 10 on the bottom. And I direct  
3 your attention to in the middle of the  
4 page, iii, line conditioning, and I ask  
5 you to review this rule and tell me, do  
6 you find the words routine network  
7 modification in this rule?

8 (PAUSE.)

9 MR. CULPEPPER: Object to the form  
10 of the question. It's reviewing the  
11 document.

12 (DISCUSSION OFF THE RECORD.)

13 A. Could you repeat your question for me  
14 again? This is apparently a long section,  
15 so I just want to make sure I answer your  
16 question.

17 Q. In the portion of the rule that begins  
18 iii, line conditioning, and going forward  
19 down to iiiv, maintenance and repair, in  
20 that section, do the words routine network  
21 modification appear?

22 A. No, I do not see those three words  
23 anywhere here.

24 Q. Are there circumstances under which  
25 BellSouth would remove a load coil if it



1 negatively effected DSL service?

2 A. There may be specific isolated  
3 circumstances where we would remove a load  
4 coil that affects DSL service. If --  
5 There is typical design parameters, which  
6 routine were normal for the network, is  
7 that load coils are put on the outside  
8 plant loop facilities at 18,000 feet and  
9 beyond. BellSouth stops qualifying DSL  
10 services at 18,000 feet. And the primary  
11 reason for that is because of the presence  
12 of load coils. So load coils routinely  
13 are typically -- disqualify the customer  
14 for DSL service. And so the two don't  
15 typically interchange.

16 What can happen is that there can  
17 be a load coil on the facility that's in  
18 error. There have been records where it  
19 -- indicating a load coil. We call those  
20 erroneous load coils. And in those  
21 isolated situations, we make a  
22 determination of whether it's more cost  
23 effective to remove the load coil or to go  
24 ahead and disqualify the service and tell  
25 the customer they can -- even though they



1 thought they could get DSL, they actually  
2 cannot.

3 Q. What's your understanding of the term cost  
4 effective, as you just used it?

5 A. Essentially, we look to see if the removal  
6 of the load coil is easy, something that  
7 can quickly be done. It's convenient,  
8 that type of thing. It's a local  
9 engineering judgment. It's -- Routinely,  
10 it's not easy. It's not something simple  
11 or -- can be done, so we often do not do  
12 it. Our normal response to the customers  
13 is that they cannot get DSL service even  
14 though we originally indicated they  
15 qualify.

16 Q. And what factor does cost -- financial  
17 cost to BellSouth play in that  
18 determination, in whether a load coil  
19 would be removed?

20 A. I'm trying to think through -- remember if  
21 there's any guidelines that were  
22 provided. Typically, local engineering  
23 judgment is going to be along the lines of  
24 if they could do something within a single  
25 day or as a part of a day, if it's a

1       single trip to remove the load coils. The  
2       problem with load coils is they're not  
3       located on one line. They're  
4       typically -- It's in a package, and so  
5       they'll affect multiple lines in a cable.  
6       And so you can't just go in and remove the  
7       one load coil for this one customer. You  
8       have to think through, if I remove all the  
9       load coils in this cable, what other  
10      customers are going to be impacted? So to  
11      that degree, almost always we determine we  
12      can't remove them. But we do let the  
13      engineers make that judgment, then if for  
14      some reason they realize that there was a  
15      mistake and they could easily do that, we  
16      give them the option of doing that.

17    Q.   Explain to me further what you meant by  
18       load coils occur in a package.

19    A.   It's -- What you have is it comes in  
20       a -- for the physical manifestation of a  
21       load coil, what they actually are is  
22       essentially a black box, for lack of a  
23       better term, that you connect multiple  
24       pairs through so the entire cable will be  
25       loaded or entire cable will be unloaded.



1        So the cable has a number of pairs  
2        associated with it. So when you talk  
3        about removing a load coil, you're  
4        typically removing it on an entire cable,  
5        which is multiple pairs, even though those  
6        pairs may end up going to a number of  
7        different places. And so that's why you  
8        have to determine if it serves a design  
9        purpose. It's not an individual device on  
10       an individual loop.

11    Q. Can you tell me typically how many pair  
12       would be in a cable?

13    A. I believe standard is about 25 pairs in a  
14       particular cable. And then they obviously  
15       have lots of cables that combine those  
16       complements, put them together. It just  
17       depends on the design of the particular  
18       cable.

19    Q. Would that cable service 25 then different  
20       locations?

21    A. It would service -- I mean, I've heard  
22       referred to as 25-pair complement, but  
23       that would serve 25 voice customers that  
24       could be all at the same location. They  
25       could all be 25 lines in this same



1 office. It could be 25 different houses  
2 or 25 different apartments.

3 Q. Would BellSouth remove a load coil from a  
4 DS-1 loop that was meant to carry data?

5 A. I believe if they wanted to use a facility  
6 that had a load coil they could remove, it  
7 probably would for a DS-1 loop. But,  
8 again, it would rely -- it would  
9 determine -- it would depend upon the  
10 relative cost of that removal.

11 Q. Do load coils only occur on copper loops?

12 A. Their design purpose is for long copper  
13 loops. The purpose is to improve the  
14 voice quality on long copper loops, so  
15 that is the loops that they have been  
16 deployed on historically. And so they  
17 may, because of reuse and other reasons,  
18 be on loops that are being used for other  
19 services besides voice, but the original  
20 design purpose was for voice services on  
21 long copper loops.

22 Q. Do load coils occur on fiber loops?

23 A. No.

24 Q. Do bridge taps occur on fiber loops?

25 A. No.

1 Q. If a BellSouth customer was served with a  
2 loop that had an erroneous load coil on  
3 it --

4 A. Uh-huh.

5 Q. -- would the customer be charged for the  
6 removal of that load coil?

7 A. To clarify a little bit, if there's an  
8 erroneous load coil, the DSL service  
9 wouldn't actually work until the load coil  
10 was removed. And so it's -- again, it's  
11 a judgment as to whether that is done in  
12 order to be able to start providing  
13 service. So they wouldn't have service  
14 and then see about the load coil. They  
15 would be ordering the service to see if  
16 they could get the service. But typically  
17 we do not charge the customers for -- the  
18 end user customer for that conditioning if  
19 we determine it's an error on our part.

20 Q. Do you have any other understanding as to  
21 whether BellSouth would charge a CLP for  
22 the removal of an erroneous load coil?

23 A. I don't know.

24 Q. I direct you to your testimony, page 11,  
25 marked as Exhibit 2, lines 19 to 21. And



1       it states here that BellSouth will remove  
2       load coils on loops and subloops that are  
3       greater than 18,000 feet in length at  
4       rates pursuant to BellSouth's special  
5       construction process contained in the FCC  
6       BellSouth Tariff No. 2. Do you see that?

7   A. Yes, I do.

8   Q. Have you ever viewed this section of  
9       BellSouth Tariff No. 2?

10  A. I have not.

11       (DEPOSITION EXHIBIT NO. 8 WAS MARKED.)

12  Q. I'm handing you a document that's quite  
13       voluminous. I only have two copies. If  
14       you need to take some extra time to review  
15       with your counsel, feel free.

16               Can you direct me to the section  
17       of this tariff -- do you have an  
18       understanding about where in this tariff  
19       would be the rate that BellSouth would  
20       charge to remove load coils on loops and  
21       subloops greater than 18,000 feet in  
22       length?

23  A. I could take some time, probably read this  
24       and find it. I don't know exactly what  
25       page it's located on now.



1 Q. Do you have an understanding about how  
2 much -- what those rates are sitting here  
3 today?

4 A. It's a special construction process, my  
5 understanding of that is you would request  
6 a particular construction job and there  
7 are rates governing the different  
8 functions, but an engineer would have to  
9 determine how much -- how many hours it  
10 would take, how much time it would take to  
11 do that kind of work, and come back with  
12 an estimate of what that special  
13 construction cost would be. And then, of  
14 course, the CLP would then say, go ahead  
15 or do not go ahead with the work.

16 Q. So would it then be a case-by-case basis  
17 how that rate would be set?

18 A. It's -- Removing the load coils is going  
19 to -- the cost is on a case-by-case  
20 basis, determines the location of the load  
21 coil, how many have to be removed, what  
22 the nature would be. That's why it  
23 requires an engineer to figure that out  
24 and determine what the actual cost would  
25 be associated with that.

1 Q. What are the nature of the costs  
2 associated with load coil removal?

3 A. First is identifying the load coil,  
4 identifying their location, identifying  
5 what services they are supporting, what  
6 impacts they have, which is the  
7 engineering and design work. The second  
8 piece would actually be physically going  
9 out with a construction crew and  
10 potentially digging up the load coils, if  
11 they're buried, or finding them on a  
12 pole. And then rewiring the loop  
13 facilities by, you know, potentially  
14 cutting out or removing the load coil and  
15 then reconnecting the loop facilities.  
16 And those all have to be coordinated with  
17 the underlying -- you've got obviously  
18 underlying voice services that are going  
19 through that facility that are available,  
20 so you have to coordinate that as well as  
21 you have to make sure that you're not  
22 negatively impacting the voice customers  
23 that are all impacted -- currently be  
24 serviced on that facility.

25 Q. Would labor costs be a portion of the



1 costs that BellSouth would incur?

2 A. Yes.

3 Q. Would it be the largest portion?

4 A. Yes, I believe labor would be the largest  
5 portion.

6 Q. And regarding the rates -- and  
7 understanding you don't know exactly what  
8 they are,, but do you have an  
9 understanding as to how those rates were  
10 derived for this Tariff No. 2?

11 A. I don't know how those rates were derived.

12 Q. Do you know whether they are in compliance  
13 with TELRIC?

14 A. I believe they're not derived from TELRIC.

15 Q. Please return to your testimony, page 12  
16 at lines 19 to 20. You state that  
17 BellSouth's offer to the CLPs exceeds its  
18 FCC requirements for line conditioning.  
19 What do you mean by that statement?

20 A. As I said earlier today, line conditioning  
21 is a very broad term, include a lot of  
22 different -- essentially functions that  
23 can perform to condition lines. There are  
24 some forms of line condition we're  
25 obligated to provide and some forms of



1 Q. Would the billing and collection of  
2 payment for those services need to be  
3 included in this separate agreement?

4 A. Yeah. The separate agreement would look  
5 just like any other commercial agreement  
6 between two companies in that it would  
7 include ordering information, what  
8 services are to be performed, what's  
9 expected of both parties, and then, of  
10 course, billing, and then they always  
11 require two to three pages of legal  
12 documentation to protect the two companies  
13 in that agreement.

14 Q. And in your time at BellSouth, have you  
15 ever negotiated a commercial contract with  
16 another telecommunications carrier?

17 A. Yes.

18 Q. And what type of service was covered in  
19 that contract?

20 A. Professional services. In this particular  
21 case, it was installation work.

22 Q. Was this contract then obligating  
23 BellSouth to send its personnel to go work  
24 somewhere in exchange for which it got  
25 paid?

1 A. That's correct.

2 Q. Were there any other types of agreements  
3 that you negotiated?

4 A. I have negotiated information service  
5 agreements. I'm trying to think. Those  
6 are the two, professional services and  
7 information services.

8 Q. How many such agreements did you  
9 negotiate, approximately?

10 A. Been involved in negotiations, probably in  
11 five or six different such agreements.

12 Q. And, to the best of your recollection, how  
13 long a time period was it from the  
14 beginning of the negotiations until the  
15 signing of the agreement?

16 A. It's varied by the customer in terms of --  
17 in the particular agreement, and there's  
18 sometimes been a number of issues. I  
19 believe the shortest is probably in the  
20 four to six week time frame, not  
21 full-time, but, you know, to work through,  
22 and the longest has been in the 12 to 18  
23 month time frame, again not full-time but  
24 just as we worked through the  
25 negotiations.



1 Q. So was it as long as a year in some  
2 instances?

3 A. Year, year-and-a-half, yes. Sometimes the  
4 other companies have extenuating  
5 circumstances that require them not to be  
6 able to negotiate for a while, so that  
7 causes time to pass.

8 Q. Did BellSouth perform any other requested  
9 work for these entities prior to the  
10 signing of the agreement?

11 A. No.

12 Q. Is it your understanding that BellSouth  
13 would not perform any bridge tap removal  
14 not covered in your bullets one, two,  
15 three prior to the signing of such an  
16 agreement?

17 MR. CULPEPPER: Object to the form  
18 of the question. What agreement are we  
19 talking about?

20 MS. JOYCE: The separate agreement  
21 that he's proposed would have to be done.

22 A. If a CLP wants a service to be performed  
23 prior to a separate agreement is  
24 available, they have options. Either some  
25 services can be performed as a result



1 they've been identified in this  
2 interconnection agreement, or -- and  
3 others are available via special  
4 construction through the FCC tariff. To  
5 the degree they want something additional  
6 to that, then we would not perform those  
7 additional services until we had an  
8 agreement in place to do that.

9 Q. Do you know which FCC tariff they could  
10 order out of?

11 A. Process construction processes as  
12 identified in FCC Tariff No. 2.

13 Q. This tariff?

14 A. Yes, that large one.

15 MS. JOYCE: Let's take a  
16 ten-minute break.

17 (RECESS.)

18 BY MS. JOYCE:

19 Q. We're back on the record. Mr. Fogle, do  
20 you have a position on what  
21 indemnification should be provided to  
22 BellSouth if two CLPs split a line within  
23 the BellSouth network?

24 A. The position that I have and BellSouth has  
25 is simply that since we're not a party to

1       those third-party agreements between a CLP  
2       and whoever else they're choosing to split  
3       a line with, we'd like to not -- we'd like  
4       to be indemnified for whatever those  
5       agreements are from any potential  
6       liabilities that would result in them. We  
7       don't have an opportunity to represent  
8       BellSouth's interests in those agreements,  
9       so we'd like to be indemnified from them.

10    Q.   And you'd like the Joint Petitioners to  
11       indemnify BellSouth?

12    A.   Yes.

13    Q.   Would you please turn to page 14 of your  
14       testimony? And at lines 14 to 16, you  
15       state that BellSouth is just simply  
16       requesting that its limitation of  
17       liabilities extend to third parties that  
18       the Joint Petitioners may enter into  
19       agreement within the process of  
20       establishing line splitting service. On  
21       line 15, should that be with in, two  
22       separate words? Just to clarify further  
23       what your meaning is.

24    A.   Yes.

25    Q.   Okay. It's your position that -- or



1 understanding that Joint Petitioners are,  
2 at this time, unwilling to indemnify  
3 BellSouth entirely?

4 A. That's my understanding, yes.

5 Q. Sitting here today, what is the level of  
6 indemnification that you think is  
7 appropriate when two CLP lines split in  
8 your network?

9 A. The level of indemnification between the  
10 CLPs or to BellSouth or --

11 Q. To BellSouth.

12 A. We're simply looking for the level of  
13 indemnification that we have with  
14 these -- with the CLPs that we negotiate  
15 with not be extended to the -- whoever  
16 they're negotiating with. I mean, we're  
17 not looking for additional -- we do not  
18 expect to assume or incur additional  
19 liability as a result of independent  
20 agreements that CLPs reach amongst  
21 themselves that we're not a party to. We  
22 just simply can't accept additional  
23 liability as a result of that.

24 Q. Would you, for example, think it  
25 appropriate that BellSouth be indemnified



1 for damages that arise out of one of those  
2 CLP actions as they perform line  
3 splitting?

4 A. Yes.

5 Q. And are you familiar with the term  
6 proximate cause?

7 A. No, I'm not.

8 Q. Could you please turn to page 15 of your  
9 testimony? And you state at lines 12 to  
10 17 essentially that the North Carolina  
11 Utilities Commission entered an order that  
12 required BellSouth to, quote, alter  
13 certain practices concerning its  
14 FastAccess internet service. It would  
15 effectively be ordering BellSouth to  
16 violate or alter the express terms of  
17 BellSouth's federal tariff. Do you see  
18 that?

19 A. Yes, I do.

20 Q. Well, is your position then that it is  
21 possible the Commission would enter an  
22 order that would require BellSouth to  
23 violate the law?

24 MR. CULPEPPER: Object to the form  
25 of the question.

1 A. I believe the Commission could put an  
2 order in that would require us to violate  
3 our tariffs. I don't know whether or not  
4 our tariffs carry the weight of law or  
5 not. I believe they are agreed to by the  
6 FCC.

7 Q. Do you know whether a failure to comport  
8 with a tariff provision is a violation of  
9 the law?

10 A. I believe that it is.

11 Q. Does BellSouth write its tariffs?

12 A. Yes, we do.

13 Q. From time to time, does BellSouth amend  
14 its tariffs?

15 A. Yes, we do.

16 Q. Has BellSouth ever amended its federal  
17 tariff regarding DSL --

18 A. Yes.

19 Q. -- transport services?

20 A. Yes, we have.

21 Q. Would BellSouth be unwilling to amend its  
22 federal DSL tariff in order to comply with  
23 an order of the North Carolina Utilities  
24 Commission?

25 MR. CULPEPPER: Object to the form

1 of the question.

2 A. I'm not sure. Can you rephrase that  
3 question for me?

4 Q. I'll state it in another version that  
5 might make more sense.

6 A. That would be fine.

7 Q. Would BellSouth amend its tariff in order  
8 to comport with an order of the state  
9 commission?

10 A. No, not a federal tariff.

11 Q. And why would that be the case?

12 A. It's a matter of jurisdiction. And state  
13 rules and state orders are altered  
14 best -- like you say, to comport with  
15 those rules is done through state tariffs  
16 and state-based interconnection agreements  
17 and other types of documents and rules and  
18 orders and laws and tariffs that are filed  
19 within those jurisdictions. It simply  
20 wouldn't make sense for us to allow states  
21 to make orders that require us to change  
22 our federal tariffs. The main reason  
23 behind that is that our federal tariff  
24 governs our actions in all nine states  
25 that we do business in. And we change our



1 federal tariff, it affects multiple  
2 states' outcome, not just the particular  
3 state that has given us this order.

4 Q. Is it ever the case that your federal  
5 tariff has provisions specific to  
6 individual states?

7 A. I believe it probably does in various  
8 places. There are some cases -- I know  
9 with pricing particularly, they specify  
10 particular marketplaces where we have  
11 what's called pricing flexibility. Those  
12 don't exist in all locations, all states.  
13 So I believe there are state-specific  
14 rules in some of our federal tariffs.

15 Q. And you've testified earlier that certain  
16 commissions have ordered BellSouth to  
17 continue to provide DSL over a loop that  
18 is in use by a CLP. Do you recall that?

19 A. That is correct.

20 Q. And do you know whether -- strike that.  
21 Do you know how BellSouth came  
22 into compliance with those orders?

23 A. Yes, I do.

24 Q. And how did it come into compliance?

25 A. In Florida, we were ordered to provide our

1 DSL service on a separate facility. So we  
2 developed a process to do that. The  
3 separate facility is purchased or put in  
4 place by BellSouth and does not violate  
5 our federal tariff. In Georgia and  
6 Louisiana -- well, I'll move -- actually,  
7 Kentucky is easier. You want to talk  
8 about next.

9 In Kentucky, we're doing our DSL  
10 service -- or we maintain our DSL service  
11 over a resold line. A resold line is, by  
12 definition, a telephone company provided  
13 exchange line facility. So, again, we're  
14 not in violation of our federal tariff.

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16 required to put our DSL service on the  
17 UNE-P facility, same UNE-P facility that  
18 the CLEC is using. That does violate our  
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21 address the fact that Georgia and  
22 Louisiana had entered an order that would  
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10      FCC regarding the possibility that  
11      BellSouth is out of compliance with its  
12      federal tariff as regards to the states of  
13      Georgia and Louisiana?

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16       provided DSL service on a retail basis  
17       over a UNE loop or a UNE-P facility in  
18       North Carolina?

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20       years ago, there was an ordering mistake  
21       or an edit that was missing in some of our  
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3       involved?

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5       approximately 700.

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7       accidental provisioning that you  
8       described, BellSouth was out of compliance  
9       with its federal tariff?

10  A.   Yes, we were.

11  Q.   Were any penalties imposed by the FCC as a  
12       result of that situation?

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15       remedy the situation?

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17       actually a three pronged approach. Our  
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19       provide as little disruption as possible  
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24 tariff and also to no longer be using the  
25 CLEC UNE facilities that we did not have

1 permission to use.

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6 Q. So cost was one factor in that  
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9 Q. At page 20 of your testimony, lines 1 and  
10 2, which continue over from line -- page  
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12 negotiate rates, terms, and conditions for  
13 providing -- provisioning this service  
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16 Q. Do you know whether those negotiations  
17 took place with a CLP?

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22 agreement that allowed us access to the  
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25 with the two to three CLECs, required to

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2 they went to an arbitration over the  
3 language that we then had to defend in an  
4 arbitration. So we've done it in those  
5 states where we've been required to  
6 continue to provide our DSL service.

7 Q. Were the negotiations conducted between  
8 BellSouth and a group of CLPs together?

9 A. No, individual CLECs or CLPs.

10 Q. Did BellSouth ever conduct these  
11 negotiations in states in which it had not  
12 been ordered to provide DSL over a UNE?

13 A. No, we have not.

14 Q. Did a CLEC in one of those states ever  
15 request negotiations for that purpose?

16 A. I wouldn't know.

17 Q. Do you know whether the North Carolina  
18 Utilities Commission has reviewed the  
19 issue of whether BellSouth should provide  
20 DSL over a UNE line?

21 A. Yes, I believe the North Carolina  
22 Utilities Commission has reviewed it.

23 Q. And what is your understanding of their  
24 position or ruling on that issue?

25 A. In our 271 proceedings, our 271 case, this

1 issue came up repeatedly and included  
2 North Carolina. And at that time, the  
3 commission quoted the Georgia/Louisiana  
4 FCC order that stated specifically --  
5 which stated specifically that the  
6 incumbent CLEC has no obligation to  
7 provide DSL service over the competitive  
8 CLEC lease facilities.

9 Q. Are you aware there is arbitration taking  
10 place between ATC, Deltacom, and BellSouth  
11 in North Carolina?

12 A. Yes.

13 Q. Do you know whether this issue is  
14 contained in that arbitration?

15 A. I believe that it is.

16 Q. Do you know why the North Carolina  
17 Commission is reviewing this issue again?

18 A. I do not.

19 Q. If in North Carolina the Joint Petitioners  
20 gave BellSouth permission to use their --  
21 these lines, their UNE lines to provide  
22 DSL service on a retail basis, do you know  
23 whether BellSouth would do so?

24 A. Not -- We would not do so unless ordered  
25 by the Commission.



1 Q. And if you could please turn again to your  
2 testimony at page 20 -- excuse me, page  
3 21, line 1. You use the term the  
4 Commission's consultative opinion to the  
5 FCC. What type of opinion are you  
6 referring to in that line?

7 A. This is an opinion that they entered in  
8 support of our 271 application.

9 Q. And it's your understanding that that is  
10 called a consultative opinion?

11 A. That's my understanding, yes.

12 Q. Did you participate in the 271 proceeding  
13 in North Carolina?

14 A. I believe I filed written testimony. I  
15 don't believe I actually appeared in front  
16 of the Commission.

17 Q. You appeared in front of --

18 A. I do not believe I appeared in front of  
19 the Commission, but I do believe I  
20 provided written testimony.

21 Q. At page 22 at line 17 to 22, you discuss  
22 an emergency petition with the FCC. When  
23 was that petition filed, to your  
24 knowledge?

25 A. I want to say last fall. I don't remember

1           that task?

2   A.   Yes.

3   Q.   Is there any reason that some further  
4       consent must be acquired from BellSouth  
5       prior to its complying with the order?

6   A.   I'm not sure of that question.   I'm not  
7       sure what you're referring to.

8   Q.   Well, I guess to be more clear -- this  
9       might speed things along.

10   A.   Uh-huh.

11   Q.   If you'd look at Attachment 2, which is  
12       marked as Exhibit 3.

13   A.   Okay.

14   Q.   Page 44.   Section 3.10.4.   This is a  
15       section that regards the issue that we're  
16       talking about.

17   A.   Yes.

18   Q.   And BellSouth's proposed language begins  
19       with a clause, to the extent required by  
20       applicable law.   Do you see that?

21   A.   Yes.

22   Q.   Do you know what that refers to?

23   A.   I think we're discussing the fact that  
24       there are potentially an applicable law  
25       that requires us to do the following.

1 Q. Would the billing and collection of  
2 payment for those services need to be  
3 included in this separate agreement?

4 A. Yeah. The separate agreement would look  
5 just like any other commercial agreement  
6 between two companies in that it would  
7 include ordering information, what  
8 services are to be performed, what's  
9 expected of both parties, and then, of  
10 course, billing, and then they always  
11 require two to three pages of legal  
12 documentation to protect the two companies  
13 in that agreement.

14 Q. And in your time at BellSouth, have you  
15 ever negotiated a commercial contract with  
16 another telecommunications carrier?

17 A. Yes.

18 Q. And what type of service was covered in  
19 that contract?

20 A. Professional services. In this particular  
21 case, it was installation work.

22 Q. Was this contract then obligating  
23 BellSouth to send its personnel to go work  
24 somewhere in exchange for which it got  
25 paid?



1 A. That's correct.

2 Q. Were there any other types of agreements  
3 that you negotiated?

4 A. I have negotiated information service  
5 agreements. I'm trying to think. Those  
6 are the two, professional services and  
7 information services.

8 Q. How many such agreements did you  
9 negotiate, approximately?

10 A. Been involved in negotiations, probably in  
11 five or six different such agreements.

12 Q. And, to the best of your recollection, how  
13 long a time period was it from the  
14 beginning of the negotiations until the  
15 signing of the agreement?

16 A. It's varied by the customer in terms of --  
17 in the particular agreement, and there's  
18 sometimes been a number of issues. I  
19 believe the shortest is probably in the  
20 four to six week time frame, not  
21 full-time, but, you know, to work through,  
22 and the longest has been in the 12 to 18  
23 month time frame, again not full-time but  
24 just as we worked through the  
25 negotiations.

1 Q. So was it as long as a year in some  
2 instances?

3 A. Year, year-and-a-half, yes. Sometimes the  
4 other companies have extenuating  
5 circumstances that require them not to be  
6 able to negotiate for a while, so that  
7 causes time to pass.

8 Q. Did BellSouth perform any other requested  
9 work for these entities prior to the  
10 signing of the agreement?

11 A. No.

12 Q. Is it your understanding that BellSouth  
13 would not perform any bridge tap removal  
14 not covered in your bullets one, two,  
15 three prior to the signing of such an  
16 agreement?

17 MR. CULPEPPER: Object to the form  
18 of the question. What agreement are we  
19 talking about?

20 MS. JOYCE: The separate agreement  
21 that he's proposed would have to be done.

22 A. If a CLP wants a service to be performed  
23 prior to a separate agreement is  
24 available, they have options. Either some  
25 services can be performed as a result

1       they've been identified in this  
2       interconnection agreement, or -- and  
3       others are available via special  
4       construction through the FCC tariff. To  
5       the degree they want something additional  
6       to that, then we would not perform those  
7       additional services until we had an  
8       agreement in place to do that.

9       Q. Do you know which FCC tariff they could  
10       order out of?

11      A. Process construction processes as  
12       identified in FCC Tariff No. 2.

13      Q. This tariff?

14      A. Yes, that large one.

15                   MS. JOYCE: Let's take a  
16       ten-minute break.

17                   (RECESS.)

18      BY MS. JOYCE:

19      Q. We're back on the record. Mr. Fogle, do  
20       you have a position on what  
21       indemnification should be provided to  
22       BellSouth if two CLPs split a line within  
23       the BellSouth network?

24      A. The position that I have and BellSouth has  
25       is simply that since we're not a party to



1       those third-party agreements between a CLP  
2       and whoever else they're choosing to split  
3       a line with, we'd like to not -- we'd like  
4       to be indemnified for whatever those  
5       agreements are from any potential  
6       liabilities that would result in them. We  
7       don't have an opportunity to represent  
8       BellSouth's interests in those agreements,  
9       so we'd like to be indemnified from them.

10    Q.   And you'd like the Joint Petitioners to  
11       indemnify BellSouth?

12    A.   Yes.

13    Q.   Would you please turn to page 14 of your  
14       testimony? And at lines 14 to 16, you  
15       state that BellSouth is just simply  
16       requesting that its limitation of  
17       liabilities extend to third parties that  
18       the Joint Petitioners may enter into  
19       agreement within the process of  
20       establishing line splitting service. On  
21       line 15, should that be with in, two  
22       separate words? Just to clarify further  
23       what your meaning is.

24    A.   Yes.

25    Q.   Okay. It's your position that -- or

1 understanding that Joint Petitioners are,  
2 at this time, unwilling to indemnify  
3 BellSouth entirely?

4 A. That's my understanding, yes.

5 Q. Sitting here today, what is the level of  
6 indemnification that you think is  
7 appropriate when two CLP lines split in  
8 your network?

9 A. The level of indemnification between the  
10 CLPs or to BellSouth or --

11 Q. To BellSouth.

12 A. We're simply looking for the level of  
13 indemnification that we have with  
14 these -- with the CLPs that we negotiate  
15 with not be extended to the -- whoever  
16 they're negotiating with. I mean, we're  
17 not looking for additional -- we do not  
18 expect to assume or incur additional  
19 liability as a result of independent  
20 agreements that CLPs reach amongst  
21 themselves that we're not a party to. We  
22 just simply can't accept additional  
23 liability as a result of that.

24 Q. Would you, for example, think it  
25 appropriate that BellSouth be indemnified

1 for damages that arise out of one of those  
2 CLP actions as they perform line  
3 splitting?

4 A. Yes.

5 Q. And are you familiar with the term  
6 proximate cause?

7 A. No, I'm not.

8 Q. Could you please turn to page 15 of your  
9 testimony? And you state at lines 12 to  
10 17 essentially that the North Carolina  
11 Utilities Commission entered an order that  
12 required BellSouth to, quote, alter  
13 certain practices concerning its  
14 FastAccess internet service. It would  
15 effectively be ordering BellSouth to  
16 violate or alter the express terms of  
17 BellSouth's federal tariff. Do you see  
18 that?

19 A. Yes, I do.

20 Q. Well, is your position then that it is  
21 possible the Commission would enter an  
22 order that would require BellSouth to  
23 violate the law?

24 MR. CULPEPPER: Object to the form  
25 of the question.



1 A. I believe the Commission could put an  
2 order in that would require us to violate  
3 our tariffs. I don't know whether or not  
4 our tariffs carry the weight of law or  
5 not. I believe they are agreed to by the  
6 FCC.

7 Q. Do you know whether a failure to comport  
8 with a tariff provision is a violation of  
9 the law?

10 A. I believe that it is.

11 Q. Does BellSouth write its tariffs?

12 A. Yes, we do.

13 Q. From time to time, does BellSouth amend  
14 its tariffs?

15 A. Yes, we do.

16 Q. Has BellSouth ever amended its federal  
17 tariff regarding DSL --

18 A. Yes.

19 Q. -- transport services?

20 A. Yes, we have.

21 Q. Would BellSouth be unwilling to amend its  
22 federal DSL tariff in order to comply with  
23 an order of the North Carolina Utilities  
24 Commission?

25 MR. CULPEPPER: Object to the form

1 of the question.

2 A. I'm not sure. Can you rephrase that  
3 question for me?

4 Q. I'll state it in another version that  
5 might make more sense.

6 A. That would be fine.

7 Q. Would BellSouth amend its tariff in order  
8 to comport with an order of the state  
9 commission?

10 A. No, not a federal tariff.

11 Q. And why would that be the case?

12 A. It's a matter of jurisdiction. And state  
13 rules and state orders are altered  
14 best -- like you say, to comport with  
15 those rules is done through state tariffs  
16 and state-based interconnection agreements  
17 and other types of documents and rules and  
18 orders and laws and tariffs that are filed  
19 within those jurisdictions. It simply  
20 wouldn't make sense for us to allow states  
21 to make orders that require us to change  
22 our federal tariffs. The main reason  
23 behind that is that our federal tariff  
24 governs our actions in all nine states  
25 that we do business in. And we change our

1 federal tariff, it affects multiple  
2 states' outcome, not just the particular  
3 state that has given us this order.

4 Q. Is it ever the case that your federal  
5 tariff has provisions specific to  
6 individual states?

7 A. I believe it probably does in various  
8 places. There are some cases -- I know  
9 with pricing particularly, they specify  
10 particular marketplaces where we have  
11 what's called pricing flexibility. Those  
12 don't exist in all locations, all states.  
13 So I believe there are state-specific  
14 rules in some of our federal tariffs.

15 Q. And you've testified earlier that certain  
16 commissions have ordered BellSouth to  
17 continue to provide DSL over a loop that  
18 is in use by a CLP. Do you recall that?

19 A. That is correct.

20 Q. And do you know whether -- strike that.

21 Do you know how BellSouth came  
22 into compliance with those orders?

23 A. Yes, I do.

24 Q. And how did it come into compliance?

25 A. In Florida, we were ordered to provide our



1 DSL service on a separate facility. So we  
2 developed a process to do that. The  
3 separate facility is purchased or put in  
4 place by BellSouth and does not violate  
5 our federal tariff. In Georgia and  
6 Louisiana -- well, I'll move -- actually,  
7 Kentucky is easier. You want to talk  
8 about next.

9 In Kentucky, we're doing our DSL  
10 service -- or we maintain our DSL service  
11 over a resold line. A resold line is, by  
12 definition, a telephone company provided  
13 exchange line facility. So, again, we're  
14 not in violation of our federal tariff.

15 In Louisiana and Georgia, we were  
16 required to put our DSL service on the  
17 UNE-P facility, same UNE-P facility that  
18 the CLEC is using. That does violate our  
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8   Q.   To your knowledge, have any BellSouth  
9       personnel been in communication with the  
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11       BellSouth is out of compliance with its  
12       federal tariff as regards to the states of  
13       Georgia and Louisiana?

14  A.   I don't know.

15  Q.   To your knowledge, has BellSouth ever  
16       provided DSL service on a retail basis  
17       over a UNE loop or a UNE-P facility in  
18       North Carolina?

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12       negotiate rates, terms, and conditions for  
13       providing -- provisioning this service  
14       with each CLP. Do you see that?

15   A.   Yes.

16   Q.   Do you know whether those negotiations  
17       took place with a CLP?

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19       provide our DSL service, we developed  
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6 continue to provide our DSL service.

7 Q. Were the negotiations conducted between  
8 BellSouth and a group of CLPs together?

9 A. No, individual CLECs or CLPs.

10 Q. Did BellSouth ever conduct these  
11 negotiations in states in which it had not  
12 been ordered to provide DSL over a UNE?

13 A. No, we have not.

14 Q. Did a CLEC in one of those states ever  
15 request negotiations for that purpose?

16 A. I wouldn't know.

17 Q. Do you know whether the North Carolina  
18 Utilities Commission has reviewed the  
19 issue of whether BellSouth should provide  
20 DSL over a UNE line?

21 A. Yes, I believe the North Carolina  
22 Utilities Commission has reviewed it.

23 Q. And what is your understanding of their  
24 position or ruling on that issue?

25 A. In our 271 proceedings, our 271 case, this

1 issue came up repeatedly and included  
2 North Carolina. And at that time, the  
3 commission quoted the Georgia/Louisiana  
4 FCC order that stated specifically --  
5 which stated specifically that the  
6 incumbent CLEC has no obligation to  
7 provide DSL service over the competitive  
8 CLEC lease facilities.

9 Q. Are you aware there is arbitration taking  
10 place between ATC, Deltacom, and BellSouth  
11 in North Carolina?

12 A. Yes.

13 Q. Do you know whether this issue is  
14 contained in that arbitration?

15 A. I believe that it is.

16 Q. Do you know why the North Carolina  
17 Commission is reviewing this issue again?

18 A. I do not.

19 Q. If in North Carolina the Joint Petitioners  
20 gave BellSouth permission to use their --  
21 these lines, their UNE lines to provide  
22 DSL service on a retail basis, do you know  
23 whether BellSouth would do so?

24 A. Not -- We would not do so unless ordered  
25 by the Commission.

1 Q. And if you could please turn again to your  
2 testimony at page 20 -- excuse me, page  
3 21, line 1. You use the term the  
4 Commission's consultative opinion to the  
5 FCC. What type of opinion are you  
6 referring to in that line?

7 A. This is an opinion that they entered in  
8 support of our 271 application.

9 Q. And it's your understanding that that is  
10 called a consultative opinion?

11 A. That's my understanding, yes.

12 Q. Did you participate in the 271 proceeding  
13 in North Carolina?

14 A. I believe I filed written testimony. I  
15 don't believe I actually appeared in front  
16 of the Commission.

17 Q. You appeared in front of --

18 A. I do not believe I appeared in front of  
19 the Commission, but I do believe I  
20 provided written testimony.

21 Q. At page 22 at line 17 to 22, you discuss  
22 an emergency petition with the FCC. When  
23 was that petition filed, to your  
24 knowledge?

25 A. I want to say last fall. I don't remember



1 the exact date.

2 Q. And what did the petition ask for?

3 A. Specifically it asked the FCC to address  
4 and declare once and for all whether we  
5 are or are not required to provide our DSL  
6 service over a UNE-P so that we would not  
7 have to litigate this issue over and over  
8 again in a number of different states, in  
9 a number of different arbitrations, and  
10 then have to deal with the subsequent  
11 appeals, so that's the reason for the  
12 emergency relief.

13 Q. And when you state at lines 20 to 22 that  
14 in response to this emergency petition,  
15 all current proceedings are being held in  
16 abeyance, awaiting the outcome of the  
17 FCC's determination on this issue, which  
18 current proceedings are you referring to?

19 A. I'm referring to the appeals. BellSouth  
20 has appealed the various orders in the  
21 four states that are associated with DSL  
22 with UNES. And those appeals have all  
23 been -- are being -- awaiting the  
24 outcome of the FCC's determination on this  
25 issue for directive.

1 Q. So these appeals were filed in Georgia,  
2 Louisiana, Kentucky, and Florida?

3 A. In the appropriate appellate jurisdictions  
4 for those, yes.

5 Q. And did you participate in the briefs that  
6 were written in those appeals?

7 A. I think I helped develop some of the  
8 factual bases for those briefs.

9 Q. And when were those briefs filed?

10 A. My recollection is at various times  
11 through last year, from early in the year  
12 through the end of the year. I don't know  
13 exactly when each of them individually  
14 were filed.

15 Q. Do you know when the initial request to  
16 appeal the orders were filed?

17 A. I do not. I know we put -- we did our  
18 request to appeal within the proper time  
19 frames that we were -- the proper windows  
20 we were allowed to appeal, but I don't  
21 remember exactly when those dates were.

22 Q. If a state commission were to order  
23 BellSouth to perform a task --

24 A. Uh-huh.

25 Q. -- would BellSouth endeavor to perform

1       that task?

2   A.   Yes.

3   Q.   Is there any reason that some further  
4       consent must be acquired from BellSouth  
5       prior to its complying with the order?

6   A.   I'm not sure of that question.   I'm not  
7       sure what you're referring to.

8   Q.   Well, I guess to be more clear -- this  
9       might speed things along.

10  A.   Uh-huh.

11  Q.   If you'd look at Attachment 2, which is  
12       marked as Exhibit 3.

13  A.   Okay.

14  Q.   Page 44.   Section 3.10.4.   This is a  
15       section that regards the issue that we're  
16       talking about.

17  A.   Yes.

18  Q.   And BellSouth's proposed language begins  
19       with a clause, to the extent required by  
20       applicable law.   Do you see that?

21  A.   Yes.

22  Q.   Do you know what that refers to?

23  A.   I think we're discussing the fact that  
24       there are potentially an applicable law  
25       that requires us to do the following.



1 Q. Where is that applicable law found?

2 A. In North Carolina, I don't believe there  
3 is an applicable law that requires us to  
4 provide our DSL service for FastAccess.

5 Q. So would it -- is it fair to say that  
6 applicable law, in your understanding,  
7 would be the orders from Georgia and  
8 Louisiana? Would those be a repository of  
9 applicable law for this section?

10 A. The only requirement that I'm aware of  
11 that -- legal requirement that we have  
12 had to -- or forced to -- or required to  
13 provide our DSL service, our FastAccess  
14 service to CLPs end users has been in  
15 Louisiana, Georgia, Florida, and Kentucky.

16 Q. So would those orders comprise the  
17 applicable law?

18 A. As it is today, yes.

19 Q. And then this section goes on to say that  
20 BellSouth shall provide its DSL service  
21 and FastAccess services. Are those two  
22 distinct services?

23 A. Yes, they were.

24 Q. What is DSL service?

25 A. DSL service is a term we use for the

1 wholesale DSL service, as we call it  
2 internally. But it's essentially the  
3 federally tariffed DSL service that's  
4 available to internet service providers.

5 Q. Is that service provided to CLPs on a  
6 wholesale basis?

7 A. It's provided to CLPs under the same terms  
8 and conditions that it's provided to  
9 anybody else subject to the federal  
10 tariff, so...

11 Q. Who is anybody else?

12 A. Anybody who meets the terms and conditions  
13 of -- of -- to have the ability to  
14 purchase services out of our federal  
15 tariff, we're required to provide services  
16 to them, whether they be a CLP, an  
17 interexchange carrier, an ISP, an end  
18 user. We can't discriminate who buys at  
19 the federal tariff level, so we have --  
20 all the above buy DSL services out of our  
21 federal tariff to use.

22 Q. So is it your understanding then that the  
23 DSL service is provided under the same  
24 terms and conditions to a CLP as to a  
25 retail end user?



1 A. To the degree a retail end user wants to  
2 buy DSL services out of a federal tariff,  
3 they can do that. It's not very common.  
4 It does happen. But ISPs, internet  
5 service providers, as well as CLPs all buy  
6 out of the same tariff at the same terms  
7 and conditions.

8 Q. Do you know the rates associated with the  
9 DSL service referenced in this?

10 A. It depends on which DSL service you're  
11 talking about, different rates for  
12 different services.

13 Q. And those are all in the tariff?

14 A. They're all specified in the tariff, that  
15 is correct.

16 Q. What is FastAccess service?

17 A. FastAccess service is a retail internet  
18 access service. It's an information  
19 service that's provided by BellSouth to  
20 retail end users, both consumers and small  
21 businesses and large businesses. It  
22 combines information in e-mail and all the  
23 internet protocol activity and support and  
24 help desk and uses the tariff or DSL  
25 transport service. It's tariffed with the



1 FCC as one of its inputs to create an  
2 information service that is sold to the  
3 end user. FastAccess is referred to kind  
4 of collectively as that group of services  
5 that are sold by retail to those end  
6 users.

7 Q. So is it your understanding that DSL  
8 service is, as the FCC uses the term, a  
9 telecommunication service?

10 A. Yes, that's my understanding.

11 Q. Would it be fair to say then that  
12 FastAccess takes that telecommunication  
13 service and adds what the FCC terms  
14 information services?

15 A. Yes.

16 Q. Are the rates different for DSL service  
17 and FastAccess service?

18 A. Yes.

19 Q. And they're all tariffed?

20 A. No. DSL services are tariffed.

21 FastAccess services are not tariffed.

22 Q. And why not?

23 A. Because their information service. By  
24 definition, there's no tariff requirement  
25 because it's a competitive marketplace.

1 Q. And then referring back to this  
2 provision. It goes on to say that these  
3 services we were discussing will be  
4 provided to a customer for use with UNE-P  
5 as loops. Do you have an understanding as  
6 to what that clause means?

7 A. I would venture to say that that's not the  
8 best written paragraph. I believe the  
9 issue there is that the different orders  
10 that we have right now between Georgia,  
11 Louisiana, Kentucky, and Florida all have  
12 different requirements as to how we must  
13 continue to provide our DSL services or  
14 our FastAccess. And some impact UNE-P,  
15 some impact UNE loops. I think they're  
16 simply trying to incorporate the language  
17 so that depending on what the applicable  
18 law is, we will comply.

19 Q. Could this clause mean that these services  
20 will be provided over UNE-P as if the  
21 UNE-P were a UNE loop?

22 A. I don't read it as that way.

23 Q. And then this section goes on to say that  
24 BellSouth will provide those two services  
25 pursuant to separately negotiated rates,

1 terms, and conditions. What would be  
2 examples of rates, terms, and conditions  
3 that would need to be separately  
4 negotiated?

5 A. To a degree, we're ordered to -- again, it  
6 comes back to the applicable law and  
7 what's ordered. We simply don't know what  
8 the North Carolina Utilities Commission is  
9 going to order. But if they were to order  
10 us to continue to provide our FastAccess  
11 service or some aspect of our FastAccess  
12 service, which is non-regulated, our  
13 prices and rates and terms and conditions  
14 of that are all subject to commercial  
15 agreements. To the degree we would offer  
16 those to the CLEC or the CLP, we'd have to  
17 negotiate that.

18 Q. If a CLP wanted to obtain DSL service --  
19 wholesale service, are there rates that  
20 would apply other than what's in your  
21 federal tariff?

22 A. No.

23 Q. Do you know what kinds of terms and  
24 conditions are included in your federal  
25 tariff for the wholesale DSL service?



1 A. Well, we have ordering terms and billing  
2 terms, provisioning terms, those types of  
3 things. We have expectations that our  
4 customers pay us for those services they  
5 order, that types of thing. Those are  
6 covered in the tariff.

7 Q. Are there liability terms in the tariff --  
8 in the DSL wholesale tariff?

9 A. Liability terms in terms of expressing  
10 liability between BellSouth and their  
11 customers?

12 Q. As between BellSouth and the CLP that's  
13 purchasing the DSL wholesale service.

14 A. I assume somewhere in the federal tariff  
15 there's a discussion of liability. I  
16 don't know exactly where it would be.

17 Q. So sitting here, as you read this  
18 language, can you think of any rates,  
19 terms, and conditions that would not be in  
20 the tariff that would govern when a CLP  
21 purchases DSL wholesale service from  
22 BellSouth?

23 A. All DSL wholesale services are tariffed,  
24 so those tariff rules would apply. Our  
25 tariff rates would apply.

1 Q. Now, you stated that in Georgia and  
2 Louisiana, BellSouth took the steps of  
3 establishing agreements with CLPs in order  
4 to comply with the orders of the Georgia  
5 and Louisiana commissions; is that  
6 correct?

7 A. That's correct.

8 Q. And do those agreements include terms and  
9 conditions that discuss how -- what the  
10 product is called for purposes of placing  
11 an order?

12 A. The terms and conditions that are in the  
13 interconnection agreement all have to do  
14 with access and meeting our obligation as  
15 required by law. One of the requirements  
16 is that we have access to the  
17 high-frequency portion of the loop, so we  
18 acquire in the interconnection agreement  
19 that the CLEC or CLP give us access to the  
20 high-frequency portion of the loop at no  
21 charge.

22 Q. And those terms and conditions are  
23 included in the interconnection agreement?

24 A. They are included in the interconnection  
25 agreements in Georgia and Louisiana and

1 Florida. I don't know if they are in  
2 Kentucky.

3 Q. And do those agreements have terms and  
4 conditions for how a CLP would order and  
5 obtain the service that you've been  
6 ordered to provide?

7 A. In this case, the orders are not for the  
8 CLP to order the DSL service or the  
9 FastAccess service. It's for BellSouth to  
10 continue to provide its DSL service or  
11 FastAccess service to an end user. So the  
12 CLP itself is not ordering that service.  
13 So there's no terms or conditions about  
14 how they would order the DSL or FastAccess  
15 service in the interconnection agreement.

16 Q. Are the methods and procedures by which  
17 BellSouth would provide DSL service to an  
18 end user under those circumstances  
19 different from state to state in the  
20 BellSouth region?

21 A. Yes.

22 Q. And in what respects are they different?

23 A. The rules or the orders that we have been  
24 ordered -- what we've been ordered to do  
25 in Florida is different than what has been



1 done in Georgia and Louisiana and  
2 Kentucky. So the process for implementing  
3 and complying with the order is  
4 different.

5 In Florida, we do -- we provide  
6 our DSL service -- actually, sorry. In  
7 Florida, we were specifically ordered to  
8 continue to provide our FastAccess  
9 service, so we provide that over a  
10 separate facility. We actually provision  
11 a new loop to the home to provide that  
12 service.

13 In Georgia and Louisiana, we're  
14 ordered to provide it on the same  
15 facility, so we facilitate paths on the  
16 same facility.

17 In Kentucky, we do it over a  
18 resold line and then reprice on a monthly  
19 basis the price of that resold line to be  
20 equivalent to a UNE-P.

21 So in each case, the process that  
22 we have to go through and the coordination  
23 we have to go through with the CLEC is  
24 different in -- as a result of the orders  
25 that we have received.

- 1 Q. But as a matter of what BellSouth is able  
2 to perform, regardless of what it's  
3 ordered to do, when a CLEC customer wants  
4 BellSouth DSL, would the means by which  
5 BellSouth provides DSL to that customer  
6 when that customer is a CLP voice  
7 customer --
- 8 A. Uh-huh.
- 9 Q. -- be different in one state as opposed to  
10 another?
- 11 A. Yes. I mean, the means we provide it in  
12 Florida is over a separate line. In  
13 Georgia and Louisiana, it's all the same  
14 facility as the UNE-P. In Kentucky, we  
15 provide it over a resold line.
- 16 Q. Is it technically feasible for BellSouth  
17 to provide DSL over a UNE-P in each of its  
18 states?
- 19 A. Yes.
- 20 Q. Is it technically feasible for BellSouth  
21 to provide DSL FastAccess over a separate  
22 loop in each of its states?
- 23 A. Yes.
- 24 Q. The agreements that were signed in Georgia  
25 and Louisiana with the CLPs, are they

1 state specific?

2 A. Yes, they are.

3 Q. Does BellSouth use the same OSS ordering  
4 systems in each of its states?

5 A. I believe, yes, we do.

6 Q. Do you know whether BellSouth has  
7 any 251 -- Section 251 interconnection  
8 agreements that include provisions that  
9 discuss whether CLP customers may obtain  
10 FastAccess?

11 A. I believe that language has been  
12 incorporated into interconnection  
13 agreements in Florida, Louisiana, and  
14 Georgia. I don't know what's been done in  
15 Kentucky, but all of those are under  
16 appeal by BellSouth.

17 Q. These were not region-wide Section 251  
18 agreements?

19 A. No.

20 Q. Has BellSouth ever considered implementing  
21 what it has been ordered to do in Georgia  
22 in any of its other states?

23 A. We have considered what -- over a UNE-P is  
24 in the general sense from product  
25 prospective, which is very similar to what



1 was ordered in Georgia, and projected that  
2 from a region-wide perspective. If we  
3 were to actually provide the Georgia  
4 solution in Florida, we would be in  
5 violation of the Florida law as well as  
6 the Kentucky law. So we don't really have  
7 the leeway of applying it everywhere  
8 because the rules that we were ordered to  
9 do are sufficiently different that one  
10 does not necessarily comply with the  
11 other.

12 Q. Did the Florida Commission order BellSouth  
13 not to provide DSL over a new line?

14 A. No, they did not.

15 Q. Did the Georgia Commission order BellSouth  
16 not to provide FastAccess service over a  
17 stand-alone loop?

18 A. I don't remember the exact wording of the  
19 language, but I don't believe we were  
20 given -- we were -- I believe we were  
21 required to provision our FastAccess  
22 service over the same facility.

23 Q. But were you ordered not to provide  
24 FastAccess over a stand-alone loop?

25 MR. CULPEPPER: Object to the form

1 of the question. It's been asked and  
2 answered, for one thing.

3 MS. JOYCE: His question  
4 wasn't -- His response wasn't  
5 responsive. He said what they are ordered  
6 to do, and I just simply asked -- maybe I  
7 could be more clear.

8 Q. Would the Georgia Commission preclude  
9 BellSouth from serving a CLP end user  
10 customer over a stand-alone loop for DSL  
11 service?

12 A. I don't recall if they specifically  
13 excluded that.

14 Q. Do you know whether the -- some or all of  
15 the CLPs with whom you signed agreements  
16 in Georgia and Louisiana to implement  
17 those state orders are present in the  
18 other BellSouth states?

19 A. Many of them have the -- presence in  
20 multiple states.

21 Q. And, to your knowledge, did any of those  
22 CLPs request that BellSouth implement that  
23 agreement in any other BellSouth state?

24 A. I don't know one way or the other if it's  
25 been requested.

1 Q. Did you participate in the negotiations by  
2 which those agreements were reached?

3 A. I participated in negotiations with FDN in  
4 Florida. I supported the negotiators in  
5 the Louisiana and the Georgia  
6 negotiations, but did not directly  
7 participate.

8 Q. And do you have an understanding, for  
9 example, for the FDN negotiation, what was  
10 the length of time that elapsed between  
11 the beginning of the negotiations and the  
12 signing of the agreement?

13 A. I think that particular agreement was  
14 negotiated in approximately two to three  
15 weeks.

16 Q. And do you have any understanding of the  
17 time frame that elapsed in Georgia?

18 A. I do not know.

19 Q. Do you know how long it took for those  
20 agreements to be negotiated in Louisiana?

21 A. I do not know.

22 MS. JOYCE: All right. I think we  
23 can break for lunch. Go off the record.

24 (LUNCH RECESS.)

25 BY MS. JOYCE:



1 Q. Hello, Mr. Fogle. You understand you're  
2 still under oath?

3 A. Yes, I do.

4 Q. All right. Now, I'd like to discuss with  
5 you the issue of what should the  
6 definition of cross connect be in the  
7 agreement that's at issue in this case.

8 Did you participate in the calls  
9 that negotiated this particular issue  
10 between the Joint Petitioners and  
11 BellSouth?

12 A. No, I did not.

13 Q. And did you consult with anybody at  
14 BellSouth who did participate in those  
15 calls?

16 A. Yes, I did.

17 Q. And who were those persons?

18 A. Lynn Brewer, B-r-e-w-e-r.

19 Q. And is she an attorney?

20 A. No, she's not.

21 Q. And did you discuss things with her  
22 verbally?

23 A. Yes.

24 Q. And did you provide her with anything  
25 written regarding the position or Issue

1 4-1?

2 A. I did not, no.

3 Q. And on what understanding, what basis did  
4 you write your testimony for Issue 4-1?

5 A. Developed this issue based on  
6 conversations with Lynn Brewer.

7 Q. Turn, please, to page 24 of your  
8 testimony. Beginning at line 5, you  
9 define a cross connect as a jumper on a  
10 frame (main distribution frame or  
11 intermediate distribution frame) or panel  
12 (digital service cross connect (DSX) or  
13 light guide cross connect -- cross  
14 connect (LGX) that is used to connect  
15 equipment and/or facility terminations  
16 together. Did you derive that definition?

17 A. No, I did not.

18 Q. And do you know whether that definition is  
19 the same as the definition the FCC may  
20 have provided for a cross connect?

21 A. I don't know.

22 Q. Have you reviewed the FCC's rules  
23 regarding what is a cross connect?

24 A. I have reviewed some of them.

25 Q. Do you recall reviewing the definition of



1 cross connect in any FCC order?

2 A. No, I do not.

3 (DEPOSITION EXHIBIT NO. 9 WAS MARKED.)

4 Q. I'm going to hand you a document marked  
5 Exhibit 9. Again, it's voluminous.

6 Again, I believe I just have two copies of  
7 that. And do you recognize this document?

8 A. It appears to be Attachment 4, Collocation  
9 from interconnection agreement.

10 Q. And would you accept that this is the  
11 attachment that's being negotiated in this  
12 case?

13 A. Yes, I will.

14 Q. And see that it indicates on the front  
15 5-23-04 draft. Do you understand that  
16 that means that this is a draft that was  
17 in place between the parties as of May  
18 23rd, 2004?

19 A. That would be my understanding, yes.

20 Q. Will you please turn to page -- what is  
21 numbered on the top as page 11. And do  
22 you see there Section 3.9. And there's a  
23 section that is designated for customer  
24 version of language?

25 A. Yes, I do.



1 Q. It states that a cross connection (cross  
2 connect) is a cabling scheme between  
3 cabling runs, subsystems, and equipment  
4 using patch cords or jumper wires that  
5 attach to connection hardware on each end,  
6 as described and defined by the FCC. Do  
7 you see that?

8 A. Yes, I do.

9 Q. Do you believe that definition is an  
10 appropriate definition for a cross  
11 connect?

12 A. For just a cross connect as a broad  
13 definition, yeah, that's an appropriate  
14 definition.

15 (DEPOSITION EXHIBIT NO. 10 WAS MARKED.)

16 Q. I'm handing you an exhibit that's been  
17 marked Exhibit 10.

18 MR. CULPEPPER: Thanks.

19 Q. Have you ever seen this document before?

20 A. No, I don't believe I have.

21 Q. Do you see the front page indicates this  
22 is an order from the Federal  
23 Communications Commission?

24 A. Yes, I do.

25 Q. And it was released August 8th, 2001, in a

1 docket entitled deployment of wireline  
2 services offering advanced  
3 telecommunications capability. Did you  
4 participate in the FCC rule making that  
5 resulted in this order?

6 A. No, I did not.

7 Q. Can you please turn to the second page of  
8 this exhibit and look at paragraph 58.  
9 And there's some quoted language in that  
10 paragraph.

11 A. Yes, I see that.

12 Q. Please compare that quoted language in  
13 this FCC order portion thereof and the  
14 language that appears in bold type on  
15 Exhibit 9 at Section 3.9.

16 MR. CULPEPPER: We are looking at  
17 paragraph 58; right?

18 MS. JOYCE: That's right.

19 MR. CULPEPPER: All right.

20 A. They appear to match pretty closely.

21 Q. Can you explain to me what the difference  
22 is between the quoted language in this FCC  
23 order and your definition of cross connect  
24 provided at page 24 of your testimony?

25 A. I believe our language is a little bit

1 more specific as to what types of  
2 equipment might be cross connected to.

3 Q. More specific in that it provides proper  
4 names such as main distribution frame or  
5 intermediate distribution frame as one of  
6 the points that a cross connect would  
7 connect to?

8 A. Yes.

9 Q. Do you know why those specific proper  
10 nouns have been placed into this  
11 definition that appears on page 24?

12 A. In the issues, as we have developed it --  
13 or as we understand it is that we're  
14 trying to do in the collocation section of  
15 the interconnection agreement is limit the  
16 cross connect language to a collocation  
17 cross connect and not just to a cross  
18 connect in general, as there are other  
19 types of cross connects that are subject  
20 to other jurisdictions and other  
21 agreements. So we're simply trying to  
22 make sure that we're making the definition  
23 of cross connect sufficiently narrow to  
24 only include collocation cross connects in  
25 this particular section of the agreement.



1 Q. Describe for me what is the facility that  
2 would be a cross connect that is not a  
3 collocation cross connect?

4 A. A co-carrier cross connect is not a  
5 collocation cross connect.

6 Q. What types of equipment facilities would a  
7 co-carrier cross connect connect?

8 A. A co-carrier cross connect would be a  
9 cross connect that's -- you can order out  
10 of FCC tariff that would -- essentially  
11 connects the collocation space of one  
12 carrier to the collocation space of  
13 another carrier or could also cross  
14 connect between exchange carriers or  
15 anybody else who needs to cross connect  
16 between carriers.

17 Q. So your testimony is that a -- may I call  
18 it a non-collocation cross connect, one  
19 type of that would be a connection between  
20 two collocated carriers?

21 A. My testimony would be that a  
22 non-collocation cross connect would be a  
23 co-carrier cross connect, which is -- has  
24 a different purpose and a different use as  
25 opposed to providing collocation

1 conductivity between BellSouth and the  
2 CLP.

3 Q. But a co-carrier cross connect would run  
4 between the facilities of two collocated  
5 carriers; is that correct?

6 A. That's my understanding, yes.

7 Q. Looking at Exhibit 10, the quoted language  
8 at page 58.

9 A. Okay.

10 Q. Would a co-carrier cross connect fall  
11 within this definition provided here?

12 A. Yes, it would.

13 Q. Is there another type of cross connection  
14 that is not a collocation cross  
15 connection?

16 A. There may be. I'm not aware of one that I  
17 could name at this moment.

18 Q. Is it your position that a co-carrier  
19 cross connect should not be provided to  
20 the Joint Petitioners?

21 A. I believe the co-carrier cross connects  
22 should be provided to the Joint  
23 Petitioners, and they're available to them  
24 subject to the FCC tariff that they're  
25 tariffed in.



1 Q. Is that a BellSouth tariff?

2 A. Yes.

3 Q. Do you know what the rates are for a  
4 co-carrier cross connect?

5 A. I do not.

6 Q. And do you know what rates would be  
7 applied to a collocation cross connect  
8 under Attachment 4?

9 A. I don't know them offhand, no.

10 Q. Do you know whether the rates for a  
11 co-carrier cross connect are developed in  
12 accordance with TELRIC?

13 A. I would assume that they're not.

14 Q. Do you know whether a collocation cross  
15 connect rate is developed in accordance  
16 with TELRIC?

17 A. I would assume that they are.

18 Q. Is it your position that different rates  
19 should indeed apply to these two different  
20 facilities?

21 A. I believe they have different purposes and  
22 they have different applications as well  
23 as different rules of law that apply to  
24 them, different jurisdiction, so it makes  
25 sense there would be potentially different



1 rates, but I don't know if the rates are  
2 actually different.

3 Q. What is the purpose of a co-carrier cross  
4 connection?

5 A. Co-carrier cross connection provides cross  
6 connects between two different carriers.  
7 It doesn't connect to the incumbent,  
8 BellSouth. One example would be if you  
9 needed to connect -- one CLP wanted to  
10 connect to their customers that have a  
11 service they provide to some equipment in  
12 another CLP's collocation space for a  
13 service that CLP provides. And so one  
14 method for doing that is the use of a  
15 co-carrier cross connect.

16 Q. And what is the purpose of a collocation  
17 cross connect?

18 A. Colocation cross connect is to connect the  
19 collocation space of the CLP with the  
20 services or bundled network elements that  
21 they're purchasing and using with  
22 BellSouth or the incumbent.

23 Q. Would telecommunications traffic pass over  
24 collocation cross connect?

25 A. Yes.

1 Q. Would telecommunications traffic pass over  
2 a co-carrier cross connect?

3 A. Probably, that -- yes.

4 Q. Is it your testimony that the principal  
5 difference between a co-carrier cross  
6 connect and a collocation cross connect is  
7 whether the facility attaches to BellSouth  
8 equipment?

9 A. No, because I believe in a co-carrier  
10 cross connect, some of our equipment is  
11 involved in providing that cross connect  
12 capability. I think the difference has to  
13 do with the service or the allocation  
14 that's being purchased or used in  
15 conjunction with the cross connect.

16 Q. What is a type of service that would be  
17 used in conjunction with a cross connect?

18 A. A collocation cross connect would be --  
19 services would be any kind of UNEs or  
20 other types of services, access services  
21 that -- I believe I even specify a couple  
22 of them in my testimony. I'll have to  
23 look to see exactly which ones I named.  
24 Unbundled loops, unbundled local  
25 switching, unbundled transport, unbundled

1       loop port combinations, et cetera.

2       Q.   Are you quoting from page 27 of your  
3       testimony?

4       A.   Yes, I am.

5       Q.   And a collocation cross connect, as  
6       described on this page, would, to the best  
7       of your knowledge, be priced in accordance  
8       with TELRIC?

9       A.   Yes.

10      Q.   What types of service would not be  
11      appropriately provided over a collocation  
12      cross connect?

13      A.   If BellSouth reached an agreement with a  
14      CLP to provide an information service or  
15      internet service or provide a non-251  
16      service, DSL, for example, the connection  
17      between BellSouth and that -- and a CLP  
18      would not be via collocation cross  
19      connect, it would be via some other type  
20      of cross connection.

21      Q.   In that instance, what would the end point  
22      be of the cross connect facility?

23      A.   It could be -- one end point would be  
24      BellSouth equipment by BellSouth services,  
25      the other end point would be the CLP's



1 equipment, which may or may not be  
2 collocated.

3 Q. Do CLPs sometimes provide DSL service to  
4 their end users over UNES?

5 A. Yes.

6 Q. Is a collocation cross connect the proper  
7 facility to be used for a CLP to gain  
8 access to UNES?

9 A. Yes.

10 Q. Okay. Describe the scenario under which  
11 an internet service would be provided by  
12 BellSouth to a CLP.

13 A. There could be a service where BellSouth  
14 has developed a wholesale internet access  
15 service or provided any number of  
16 information services, whether it be an  
17 e-mail hosting or web hosting or other  
18 types of services, that a CLP would choose  
19 to buy or use. Those are very competitive  
20 services that are available on the  
21 open-ended marketplace. BellSouth offers  
22 them as well as other -- many other  
23 competitors offer those type of  
24 internet-based services. So that's one  
25 situation where a CLP could be buying

1 information or internet service from  
2 BellSouth.

3 Q. On a retail basis?

4 A. Retail and wholesale. And information  
5 services is a bit -- because they're  
6 another carrier and not actually the end  
7 user, we would probably dub that as a  
8 wholesale service, but it would still be a  
9 non-regulated commercial agreement between  
10 the two companies.

11 Q. Why would it be a non-regulated service?

12 A. Because it's BellSouth providing the  
13 competitive information service to the CLP  
14 on commercially agreed to terms.

15 Q. If a CLP is collocated in a BellSouth  
16 central office, is there a facility that  
17 would permit them to access a leased mox?

18 A. I don't know.

19 Q. Is there a facility that would allow that  
20 collocated facility to access transport  
21 provided by another carrier who is not  
22 collocated in the office but had a  
23 presence in the office?

24 A. I don't know whether that would be a  
25 co-carrier cross connect or if that would

1 be -- I don't know.

2 Q. Are you familiar with the term local  
3 channel?

4 A. I have some limited knowledge of what a  
5 local channel is.

6 Q. Please describe what your knowledge is of  
7 that term.

8 A. It's actually way outside my expertise,  
9 but I'll see if I can bumble together some  
10 description of a local channel. It's  
11 always difficult when you've heard terms  
12 used so many times and you have to  
13 actually think of how to define it.

14 Q. If you need to define by example, that  
15 would be helpful.

16 A. My understanding -- very limited as it is  
17 in the local channel is a particular  
18 connection or single connection on what we  
19 would refer to as a channel bank, so I  
20 believe it's just kind of a common or a  
21 local vernacular for a type of  
22 connection.

23 Q. Do you know what it would connect with,  
24 what --

25 A. No, I would not.



1 Q. Do you have an understanding as to the  
2 rates that apply to a local channel?

3 A. No, I do not.

4 Q. Could a collocated CLP connect to entrance  
5 facilities owned by another  
6 telecommunications carrier?

7 A. I don't know.

8 Q. What types of conductivity is BellSouth  
9 prepared to offer to the CLPs to be  
10 connected to equipment within a central  
11 office where they are collocated?

12 A. What types of conductivity? I'm aware of  
13 two that we offer. One is a collocation  
14 cross connect and the other is a  
15 co-carrier cross connect. I also believe  
16 that the CLPs have the ability to do some  
17 of their own construction and run some of  
18 their own cables through some BellSouth  
19 territory that -- BellSouth areas, that  
20 type of thing. But the two services we  
21 offer that I'm aware of are co-carrier  
22 cross connects and collocation cross  
23 connects.

24 Q. Please turn back to Exhibit 9, what's  
25 numbered page 12 up at the top. And

1       please review Section 3.10. Do you see  
2       there's only one section provided here and  
3       there's no competing language, so that  
4       indicates that this particular provision  
5       has been settled at this time. Do you  
6       understand that?

7   A. Yes.

8   Q. It states that a co-carrier cross connect,  
9       which is abbreviated CCXC, are cross  
10      connects between customer and another  
11      collocated telecommunications carrier  
12      other than BellSouth. Do you see that?

13  A. Yes.

14  Q. Under this statement, would a CLP be  
15      permitted to obtain a CCXC to connect with  
16      a noncollocated telecommunications  
17      carrier?

18  A. I don't believe this language would allow  
19      them to do that.

20  Q. Does that statement at Section 3.10  
21      comport with what your understanding is of  
22      a co-carrier cross connect?

23  A. Yes.

24  Q. So just to make sure that I understand  
25      your position correctly. You stated that

1 a collocation cross connect should connect  
2 a collocated carrier to BellSouth  
3 equipment within a central office; is that  
4 correct?

5 A. No, to -- should connect a collocated  
6 carrier to the unbundled services, the  
7 unbundled transport, accommodations, et  
8 cetera that they're purchasing from  
9 BellSouth.

10 Q. Would that include terminating to a  
11 multidistribution frame?

12 A. I believe so, yes.

13 Q. And would that include terminating to an  
14 intermediate distribution frame?

15 A. Yes.

16 Q. Is there any other type of BellSouth  
17 terminating facility that the collocation  
18 cross connect could terminate to?

19 A. There probably are. I don't know if I can  
20 name them at this point.

21 Q. And would that equipment also include  
22 terminating to this DSX panel?

23 A. Yes.

24 Q. Or an LGX panel?

25 A. Yes.



1 Q. Are there any other types of panel that a  
2 collocation cross connect could terminate  
3 to?

4 A. There could be other types of panels out  
5 there that form the same function, that  
6 have a different, quote, unquote, specific  
7 or technical name. I wouldn't be able to  
8 name them right now.

9 Q. Do you know why only these specific types  
10 of frames and panels have been included in  
11 BellSouth's preferred definition of cross  
12 connect?

13 A. I believe it seems to be very specific  
14 about the types of panels, but, more  
15 importantly, the function that those  
16 perform -- those perform in our network.  
17 Just to be specific and that our  
18 definition of a cross connect is limited  
19 to a collocation cross connect.

20 Q. Are there types of collocation cross  
21 connects that would be excluded by this  
22 definition?

23 A. Not that I'm aware of.

24 Q. But you've testified that a collocation  
25 cross connect could terminate to a frame

1       that is not the main distribution frame or  
2       an intermediary distribution frame?

3    A.   My testimony is that there may be a  
4       particular type of frame that is called  
5       something different than one of those  
6       particular names that may exist on a  
7       network because it's been my familiarity,  
8       my experience in the years I've been  
9       working in telecom that everything has at  
10      least three names, so I don't want to  
11      exclude it. There may be something that's  
12      called the same function and performs the  
13      same capability that has a slightly  
14      different name, but our position on this  
15      issue is that collocation cross connect  
16      allows CLPs to collocate and to cross  
17      connect to the services they're purchasing  
18      from BellSouth and will make available the  
19      equipment necessary to do that.

20   Q.   If a CLP requested to obtain a facility  
21       that terminated on a frame, the frame was  
22       not identified by the proper name, main  
23       distribution frame or intermediary  
24       distribution frame, would you expect that  
25       the CLP would be able to obtain that

1 conductivity under Section 3.9?

2 A. Yes.

3 Q. And why would that be?

4 A. Because we're -- the collocation --  
5 purpose of a collocation cross connect is  
6 to provide cross connect to the unbundled  
7 services that you're purchasing from --  
8 the CLP is purchasing from BellSouth and  
9 which includes the equipment necessary to  
10 do that. I would not expect to run across  
11 a frame other than those two. Those are  
12 very generic terms for frames, but I will  
13 not put it past some local person to be  
14 calling it something different than the  
15 main distribution frame or the  
16 intermediate distribution frame. That  
17 doesn't mean we would not make that  
18 available.

19 Q. Is a frame a type of connection hardware?

20 A. Yes.

21 Q. Is a panel a type of connection hardware?

22 A. Yes.

23 Q. Do you believe that as you look at Section  
24 3.9, the BellSouth version of the  
25 definition of cross connect, that what's



1 provided in these parentheticals are  
2 intended to be examples, or are they  
3 intended to be a comprehensive list of the  
4 type of frame or panel that a cross  
5 connect could terminate to?

6 A. I believe that they are the predominant  
7 examples. I don't believe it's designed  
8 to be a comprehensive list. I'm sure if  
9 we sat two or three technical guys in  
10 here, they could come up with four or five  
11 more names for each of those types of  
12 things.

13 Q. Do you know whether this provision was  
14 explained to the Joint Petitioners during  
15 any negotiation call as being simply a  
16 list of examples that are not intended to  
17 be comprehensive?

18 MR. CULPEPPER: I object to the  
19 form of the question. I'm not sure that  
20 was his testimony.

21 A. I don't know.

22 Q. Is your testimony that a frame could exist  
23 that does not go by the name main  
24 distribution or intermediate distribution  
25 frame?

1 A. Yes, I believe it's very possible that one  
2 could exist that does not have those two  
3 names.

4 Q. And it could perform substantially the  
5 same function as an MD frame or an ID  
6 frame?

7 A. It could or could be a frame that we're  
8 using that could perform a completely  
9 different function.

10 Q. Further down in the provision at Section  
11 3.9, BellSouth's version of it, it states  
12 that a cross connect involving -- or,  
13 excuse me, involved in connecting  
14 equipment/facility terminations with  
15 equipment/facility terminations associated  
16 with a collocation arrangement either  
17 physical or virtual is ordered separately  
18 and is charged at the rates found in  
19 Attachment 2 or Attachment 4. Can you  
20 give me a concrete example of a cross  
21 connect that would fit this description?

22 A. There's a number of different types of  
23 cross connects. I think in my testimony  
24 on page 27, top of page 27 we talk  
25 about -- I reference 2-wire cross

1 connects, 4-wire cross connects, DS-1,  
2 DS-3, 2-fiber, and 4-fiber cross connects.

3 Q. Are those all types of collocation cross  
4 connects?

5 A. Yes.

6 Q. So this provision 3.9 under BellSouth's  
7 version is intended to discuss collocation  
8 cross connects?

9 A. Yes.

10 Q. Are you aware of whether the Joint  
11 Petitioners are collocated in BellSouth's  
12 central offices in North Carolina?

13 A. I don't know.

14 Q. Would you accept that they might be?

15 A. I would assume they are since they really  
16 care about this language.

17 Q. How would one of the petitioners connect  
18 from its collocated facilities to a  
19 carrier who is not collocated in a CO,  
20 central office, who's clearly not a  
21 BellSouth carrier in order to access  
22 facilities that are not considered UNEs?

23 A. I would assume they would use one of the  
24 other types of cross connects that are  
25 available to them. Obviously a



1 collocation cross connect would not be one  
2 of those. Either use co-carrier cross  
3 connect or some sort of a direct  
4 connection that they would put in  
5 themselves.

6 Q. So their choices, in your understanding,  
7 are between a cross connect -- strike  
8 that -- a collocation cross connect and a  
9 co-carrier; correct?

10 A. Or a direct connection.

11 Q. Assuming it's a facility that they wish to  
12 obtain from BellSouth, they have two  
13 choices; is that correct?

14 A. I believe that's correct, yes.

15 Q. Please turn the page of Exhibit 9 to  
16 Provision 3.11. And it states direct  
17 connect.

18 A. Uh-huh.

19 Q. Is this the type of direct connection that  
20 you mentioned a CLEC might provision for  
21 itself?

22 A. Yes, it is.

23 Q. And so this would be a facility, according  
24 to the language here, that connects  
25 between one customer's virtual and/or

1 physical collocation arrangement in the  
2 same premises; is that correct?

3 A. Yes.

4 Q. So is it fair to say then that a direct  
5 connect would only apply in this instance  
6 if the CLP were collocated in the CO?

7 A. Either virtually or physically, yes.

8 Q. Is there any other type of direct connect  
9 that this provision would encompass?

10 A. I don't know.

11 Q. Could a co-carrier cross connect be used  
12 by a collocated CLP to access the entrance  
13 facilities of a third-party carrier?

14 A. I don't know.

15 Q. Could a co-carrier cross connect be used  
16 by a collocated CLP to access a mux leased  
17 by a third-party carrier?

18 A. I don't know on that particular one,  
19 either.

20 (DEPOSITION EXHIBIT NO. 11 WAS MARKED.)

21 Q. I'm handing you a document that's been  
22 marked Exhibit 11. Can you tell me what  
23 this document is?

24 A. It appears to be a set of interrogatory  
25 responses that were given in the Alabama

1 Public Commission Service, Docket No.  
2 29242.

3 Q. Did you assist in preparing the response  
4 to this interrogatory?

5 A. I did not.

6 MR. CULPEPPER: And I just want to  
7 reiterate for the record, you know, prior  
8 to reaching an agreement with discovery,  
9 we'll object to the questioning to the  
10 extent it goes beyond North Carolina  
11 interrogatories. Go ahead.

12 Q. Please turn the page. And do you see that  
13 this document states at the top that it is  
14 a BellSouth response to Joint Petitioners  
15 in this case in North Carolina?

16 A. Yes, I do.

17 Q. Did you assist in putting together this  
18 response?

19 A. No, I did not.

20 Q. Let me ask you. The request asked  
21 BellSouth to identify facilities that are  
22 in use in the BellSouth serving wire  
23 center to connect CLP facilities to  
24 BellSouth facilities that are not  
25 considered cross connects, and that term



1 is in quotes, under BellSouth's proposed  
2 definition.

3 The response is that BellSouth is  
4 not aware of any configuration where CLP  
5 facilities are interconnected with  
6 BellSouth facilities without the use of  
7 cross connections. To your mind, does the  
8 use of the term cross connections in this  
9 response include collocation cross  
10 connections?

11 A. Yes.

12 Q. Does it include co-carrier cross  
13 connections?

14 A. Yes.

15 Q. Does it include direct connections?

16 A. I don't think you would include direct  
17 connections because -- I mean,  
18 specifically it's referring to where CLP  
19 facilities are interconnected with  
20 BellSouth facilities, which is the  
21 definition -- or the appropriate cross  
22 connect at that point would be a  
23 collocation cross connect. The term is  
24 used broadly in this response. I mean,  
25 cross connects are simply -- its general

1       sense are anything used to connect any two  
2       things, and I believe that's how it's used  
3       here, very, very broadly.

4   Q.   Are you aware of whether the FCC has held  
5       that CLPs are impaired without access to  
6       cross connects?

7               MR. CULPEPPER: I object to the  
8       form of the question.

9   A.   I'm not familiar with any of the specific  
10       rules and laws that the FCC has done or  
11       come to in regards to impairment in cross  
12       connects.

13   Q.   Is it your position that what BellSouth is  
14       offering the Joint Petitioners in this  
15       case in terms of cross connections is in  
16       compliance with FCC rules?

17   A.   Yes.

18       (DEPOSITION EXHIBIT NO. 12 WAS MARKED.)

19   Q.   I'm handing you a document that has been  
20       marked Exhibit 12. Again, we have the  
21       front page of the Triennial Review Order.  
22       And there are portions behind this front  
23       page. I direct your attention to the page  
24       that has been marked at the bottom 229.  
25       It's in the middle of the exhibit.

1                   Have you ever reviewed these  
2           paragraphs that appear at pages 229 to  
3           234?

4   A.   Yes, I have, but it has been quite awhile  
5       since I've looked at them.

6   Q.   I draw your attention to paragraph 373.  
7       It's on page 232.

8   A.   There are actually more footnotes than  
9       there are anything else.   Okay.

10   Q.   Do you recall whether you relied on this  
11       paragraph when you wrote your testimony  
12       for Issue 4-1?

13   A.   I don't recall whether I relied on this or  
14       not.

15   Q.   And I draw your attention to the final  
16       sentence of paragraph 373.   The FCC holds  
17       here that finally, for a collocated  
18       competing carrier to access the transport  
19       facilities terminated in the collocation  
20       of another carrier, a cross connect must  
21       be provisioned between collocation  
22       arrangements.   Do you see that?

23   A.   Yes, I do.

24   Q.   What type of cross connection do you  
25       believe the FCC is discussing in this



1 sentence?

2 A. I don't believe they're specifying what  
3 kind of cross connect, just simply that a  
4 cross connect must be provisioned between  
5 the arrangements.

6 MS. JOYCE: We've been going for  
7 about an hour. Would you like to take a  
8 break, Mr. Fogle?

9 THE WITNESS: Sure.

10 (RECESS.)

11 BY MS. JOYCE:

12 Q. Mr. Fogle, to your knowledge, has  
13 BellSouth ever terminated power to a CLP's  
14 facilities that were collocated on grounds  
15 of the privacy infringement committed by  
16 the CLP?

17 A. Not that I'm aware of.

18 Q. Has BellSouth ever terminated power to a  
19 CLP's facilities on the grounds of  
20 degradation?

21 A. Not that I'm aware of.

22 Q. Is it your position that the physical  
23 safety of a person is of the same  
24 importance as the integrity of BellSouth's  
25 equipment?

- 1 A. No. Obviously, physical safety of a  
2 person is more important than integrity of  
3 our equipment, but we still hold integrity  
4 of our equipment pretty high.
- 5 Q. All right. Please pick up attachment --  
6 or, excuse me, Exhibit 9 again, which is  
7 Attachment 4. And please turn to the page  
8 numbered at the top page 26. And I refer  
9 you to the section on this page which is  
10 5.21.2, the BellSouth version of this  
11 provision.
- 12 A. Okay.
- 13 Q. And it states that, except in the case of  
14 the deployment of an advanced service  
15 which significantly degrades the  
16 performance of other advanced services or  
17 additional voice band services, if a  
18 customer fails to commence curative action  
19 within 24 hours and exercise reasonable  
20 diligence to complete such action as soon  
21 as possible -- continues to say then and  
22 only in that event, then BellSouth may  
23 take such action as it deems necessary to  
24 eliminate such threat, including, without  
25 limitation, the interruption of electrical

1 power to customer's equipment. Do you see  
2 that?

3 A. Yes, I do.

4 Q. And do you understand that the language  
5 that appears in bold type regarding if  
6 customer fails to commence is in bold  
7 because it indicates language that is  
8 presently in dispute between the parties?

9 A. Yes.

10 Q. Can you tell me what problem -- what type  
11 of problem would the CLP need to address  
12 with curative action within 24 hours under  
13 this language?

14 A. There's a -- I mean, gosh, there's a  
15 number of different areas that this could  
16 be. One example would be with the advent  
17 of electronic equipment, digital  
18 equipment, special equipment designed to  
19 do their services, innovative services,  
20 computer processors getting faster. There  
21 is a number of issues of interference that  
22 can happen as a result of that equipment  
23 if that equipment happens to be faulty.  
24 If it's emitting high-frequency noise  
25 through the airways or transmitting



1 high-frequency noise on some of the  
2 connection points that it's using, that  
3 could cause interference with equipment  
4 either of BellSouth's or other carriers  
5 who are collocated in the same central  
6 office. It's referred to sometimes as  
7 equipment being noisy, making a lot of --  
8 setting off a lot of electromagnetic  
9 noises that interfere with equipment that  
10 is nearby.

11 Q. And so in the event that this equipment  
12 was noisy, under this language, is it  
13 correct that the petitioner, the CLP, must  
14 commence curative action within 24 hours  
15 and exercise reasonable diligence to  
16 complete such action as soon as possible  
17 in order to avoid BellSouth taking  
18 whatever action it deems necessary,  
19 including interruption of electrical  
20 power?

21 A. Yes.

22 Q. Would there need to be a threat of  
23 physical harm to a person arising out of  
24 that noisy equipment in order for this  
25 right of BellSouth to be triggered?

- 1 A. No, and I don't think that's the case.  
2 That would be physical harm, at least  
3 direct physical harm to the person. We  
4 take service quality really, really  
5 important. And especially if you think of  
6 the service that the CLP may be  
7 interfering with may be a 911 service or a  
8 residential phone service to an elderly  
9 person who needs access to 911 or other  
10 types of services that may at some point  
11 be necessary to support their life and  
12 they're relying on us to provide those  
13 services. And so if our service quality  
14 is being degraded by some piece of noisy  
15 equipment that's in the CLP's collocation  
16 cage, then, you know, we need to allow the  
17 local management to be -- once they've  
18 determined that is the cause  
19 beyond a reasonable doubt, to take the  
20 steps necessary to cure that, even if the  
21 CLP will not.
- 22 Q. If an elderly person needs access to 911  
23 and because of a CLP's noisy equipment 911  
24 is not available, would that pose  
25 immediate risk of physical harm to an

1 individual?

2 A. It could, yes.

3 Q. Could there be an instance where a noisy  
4 equipment did not pose such a threat to an  
5 individual?

6 A. It would depend on what it's interfering  
7 with, what services or capabilities or  
8 function or equipment that it's  
9 interfering with.

10 Q. But is it possible that noisy equipment  
11 would not pose any threat of danger to an  
12 individual?

13 A. Yes.

14 Q. Under this language, would a breach of  
15 customer privacy be a type of problem that  
16 must be addressed by curative action in  
17 order to avoid BellSouth's having to take  
18 action, including interrupting power?

19 A. I don't see anything in Section 5.21.2  
20 that discusses privacy, although I could  
21 be missing it because it's a long section.

22 Q. Please review section 5.21.2. Under  
23 BellSouth's version of interference or  
24 impairment, do you see a provision there  
25 related to compromising the privacy of



1       communications?

2       A.   You're referring to the second paragraph?

3       Q.   BellSouth's version of --

4       A.   Yes.

5       Q.   -- this provision.

6       A.   It starts with open to CLECs and then has  
7       BellSouth version.

8       Q.   Yes.

9       A.   Okay.  Again, I don't see anything that  
10       talks about customer privacy in this  
11       particular paragraph.

12      Q.   What do you believe the item that's  
13       enumerated 3 in this paragraph refers to,  
14       knowingly or unlawfully compromising the  
15       privacy of any communications routed  
16       through the premises?

17      A.   I don't have an Item No. 3 in this  
18       paragraph.

19      Q.   Are you looking at page 25?

20                 MR. CULPEPPER:  Part of his is --  
21       is highlighted.  It's difficult to read.  
22       I don't know whether that's the issue or  
23       not.

24      Q.   May I see your exhibit?

25      A.   Yeah.

1 Q. Oh, no, I -- you may have missed. I'd  
2 asked you to read page 25.

3 A. Oh, that would --

4 Q. It's 5.21.1.

5 A. Aha.

6 MR. CULPEPPER: Okay.

7 A. I've been on the wrong page before. I  
8 will be on the wrong page again. All  
9 right. Now, let's see if we can find it  
10 this time.

11 Okay. I now believe I'm looking  
12 at the language that you were wanting me  
13 to look at.

14 Q. All right. So in 5.21.1, there are four  
15 types of problems that CLPs are cautioned  
16 not to cause: Degradation or impairing  
17 service, endangering equipment and  
18 knowingly or unlawful compromise of  
19 privacy of communications or creating an  
20 unreasonable risk of injury or death.  
21 Would you agree with that assessment?

22 A. Yes.

23 Q. Now, if you turn back to section 5.21.2,  
24 could the knowing or unlawful compromising  
25 of communications privacy be among those

1 types of problems that, if not cured  
2 within 24 hours or a reasonable period,  
3 BellSouth could use as grounds to take  
4 action, including interrupting power?

5 A. I believe it would, yes.

6 Q. Again, I ask you to turn back to Provision  
7 5.21.1 on page 25. And look at the clause  
8 that's enumerated No. 1 where it states  
9 significantly degrades or impairs. Do you  
10 see that?

11 A. Yes.

12 Q. And do you see that the words or impairs  
13 are in bold?

14 A. Yes.

15 Q. And do you understand that this means this  
16 is language that remains in dispute as  
17 between the parties?

18 A. Yes.

19 Q. Now, please turn the page to look at  
20 Provision 5.21.2. Does the word impairs  
21 appear in that first sentence?

22 A. I don't see the word impairs in the  
23 BellSouth version of that language.

24 Q. And do you know why impairs would have  
25 been inserted into 5.21.1 but not into



1 5.21.2?

2 A. No, I don't know why.

3 Q. Is there a difference in your mind between  
4 something that degrades and something that  
5 impairs?

6 A. By my definition of those two words,  
7 something that degrades a service still  
8 makes it useful, but it's somehow less  
9 than it was before; whereas if something  
10 is impaired, it could include making it  
11 not function at all. So I would think  
12 that impairs is probably the stronger word  
13 than degrades.

14 Q. Do you think that under your assessment of  
15 what the word impairs means -- would  
16 something that impairs service be subject  
17 to the provisions of Section 5.21.2?

18 A. Yes.

19 Q. And why do you believe that?

20 A. I guess this is fairly straightforward.  
21 There's a lot of words here, pretty  
22 straightforward approach. You know,  
23 BellSouth is simply trying to protect the  
24 quality of its service, protect the assets  
25 it's deployed, its people, its customers.

1 We've got a lot of responsibilities to do  
2 that. And if -- you know, if -- we take  
3 that responsibility very, very seriously,  
4 and the last thing we would want to have  
5 someone -- if we simply had language that  
6 said significantly degrades and they said,  
7 we weren't degrading you, we were  
8 impairing you, that's not covered, then  
9 they -- over some caution, trying to be a  
10 little bit broader of what types of either  
11 impairments or degradations there could  
12 be.

13 Q. So is it your position that Joint  
14 Petitioners should read BellSouth's  
15 proposed language for 5.21.2 as if the  
16 word impairs appeared in it?

17 A. It's my understanding that the bold  
18 language is the language that we have  
19 proposed that you guys are -- you guys,  
20 being the CLPs -- the Joint Petitioners,  
21 my apology, are opposed to. So that  
22 should read as we proposed it.

23 Q. Right. But is the -- you've already  
24 testified the word impairs does not appear  
25 in BellSouth's proposed language for

1 5.21.2.

2 A. I don't --

3 Q. My question is, should the Joint  
4 Petitioners be reading this proposed  
5 language as if the word impairs appears  
6 there?

7 A. I apologize, I thought you were talking  
8 about the previous page. It would be  
9 cleaner to have that -- to have the same  
10 language in both paragraphs.

11 Q. Would you recommend that the word impairs  
12 be inserted into --

13 A. Yes --

14 Q. -- that section?

15 A. -- I would. Yeah.

16 Q. At page 37 of your testimony, lines 22 to  
17 25.

18 A. Which page is that, again?

19 Q. 37. It states that BellSouth would only  
20 consider interrupting or terminating a  
21 CLP's power in extremely rare and severe  
22 instance, such as if there was a  
23 substantial threat of damage to property  
24 or injury or death to any person in  
25 BellSouth's premises.



1                   Are there any other instances that  
2                   you would deem to be extremely rare and  
3                   severe?

4   A.   If the -- I mean, you can speculate  
5           probably all day long about different  
6           things.  If the CLP was engaged in some  
7           sort of fraudulent activity and -- or, I  
8           mean, there's just a number you could  
9           speculate that could potentially happen,  
10          although extremely rare, that could cause  
11          BellSouth to seek interruption or  
12          termination of the CLP's power to their  
13          service.

14   Q.   Do you know whether BellSouth has ever  
15          terminated power to a CLP on the grounds  
16          because the CLP was --

17   A.   No, I don't believe we've ever terminated  
18          a CLP's power.

19   Q.   Can you think of any other instances that  
20          would be deemed extremely rare and severe  
21          such that BellSouth would consider  
22          interrupting the power?

23   A.   Well, if the CLP's equipment was smoking,  
24          we would probably turn the power off to  
25          it.  If -- So, in other words, if it was

1       on fire. There are -- could be some  
2       other things it could be doing.

3               Again, I believe it's important to  
4       leave some leeway for local management to  
5       make a determination. What's  
6       beyond a reasonable doubt that a  
7       particular CLP's equipment is providing  
8       interference or is a risk to either  
9       BellSouth's equipment, personnel, services  
10      or other collocated CLPs, then they need  
11      to have the leeway, once proven  
12      beyond a reasonable doubt, to disconnect  
13      the power to help cure that if the CLP  
14      won't take action on their own.

15   Q.   On page 38 of your testimony, lines 1 to  
16       2, do you see that BellSouth would use its  
17       best efforts to provide immediate notice  
18       to the CLP prior to taking any action?

19   A.   Yes.

20   Q.   And you also say on page 32 of your  
21       testimony, line 17 to 18, BellSouth will  
22       provide notice to the CLP before taking  
23       the action, if possible. Were those two  
24       sentences intended to have the same  
25       meaning?

1 A. Yeah, I believe they have the same  
2 meaning.

3 Q. So BellSouth is willing to use best  
4 efforts to notify a CLP before turning off  
5 the power?

6 A. Yes.

7 Q. And that means that it will provide  
8 notice, if possible?

9 A. Yes.

10 Q. Can you tell me what lengths BellSouth  
11 would go to to provide that notice?

12 A. I imagine we would call, we would page, we  
13 would probably write letters, e-mails, may  
14 even walk over and talk to the people if  
15 it's collocation where we know the people  
16 personally. Could take any number of  
17 forms and actions. Obviously, it's  
18 something that's important, so I even  
19 expect to have senior management folks  
20 within BellSouth to contact their  
21 counterparts at the CLPs to discuss the  
22 issue, if action is not being taken on a  
23 local level.

24 Q. Are you aware that the term best efforts  
25 is often used in contracts with a specific



1 meaning?

2 A. Yes.

3 Q. And do you know what that meaning is?

4 A. My description of it is probably not the  
5 legal definition, is that we would exhaust  
6 ourselves attempting every means we know  
7 of to provide that communication and  
8 notice.

9 Q. And I'll draw your attention one last time  
10 to section 5.21.2 of Exhibit 9, which is  
11 the draft of Attachment 4.

12 A. Yes.

13 Q. And there is a statement after the  
14 highlighting, BellSouth will provide  
15 notice to customer prior to or if made  
16 impossible due to the nature of the threat  
17 imposed, as soon as possible after the  
18 taking of such action. Do you see that?

19 A. Yes.

20 Q. Do you know why the words best efforts  
21 don't appear in that sentence?

22 A. No, I don't.

23 Q. In your mind, should the words best  
24 efforts appear in that sentence?

25 A. I believe we would do our best efforts, so

1 I don't see any real reason why it would  
2 not appear in this sentence.

3 Q. Are you aware as to any position BellSouth  
4 has with respect to inserting the words  
5 best efforts into the terms that are  
6 included in the interconnection agreement?

7 A. I believe, generally speaking, we're  
8 hesitant because best effort means you're  
9 going to exhaust yourself to do whatever  
10 it is that you're saying you're going to  
11 do, so we're hesitant, as anybody would  
12 be, to put themselves to that obligation.

13 But in this particular situation,  
14 it's obviously an emergency of some sort,  
15 we are going to do exactly that, which is  
16 do everything we can to notify the CLP  
17 that their equipment is causing a  
18 significant problem and needs to be fixed  
19 as quickly as possible.

20 I mean, it would be inappropriate  
21 for us to send you an e-mail, never make a  
22 contact, and we would do multiple parallel  
23 paths of contact to make sure that the CLP  
24 was well aware of the situation before any  
25 action was taken.

1 Q. Is it your testimony that terminating  
2 power to a CLP's facilities is a serious  
3 action to be taken?

4 A. It's very serious. We would never take it  
5 lightly.

6 Q. Please turn to page 34 of your testimony.  
7 Lines 15 to 17. And it states that the  
8 CLP has the right to submit its dispute to  
9 the Commission and present evidence  
10 showing why it should not be required to  
11 clear the interference or impairment  
12 identified by BellSouth. Do you see that?

13 A. Which page, again?

14 Q. 34.

15 A. Sorry, I was, again, on the wrong page.

16 MR. CULPEPPER: Did you say lines  
17 14 through 17?

18 MS. JOYCE: That's right.

19 A. Yes, I see that.

20 Q. Would the CLP have the right to submit a  
21 dispute if BellSouth had notified it it  
22 was going to turn off its power?

23 A. Yes, I believe so.

24 Q. What would BellSouth do if a CLP had a  
25 complaint pending at the Commission that



1       in the complaint stated that BellSouth was  
2       going to terminate the CLP's power?

3   A.   I think it would depend on the nature of  
4       the interference.   If it was a minor  
5       interference or a lesser impairment of  
6       some sort that we've identified that we  
7       could tolerate for a while, we would  
8       probably let that complaint work its  
9       course out and the dispute work its way  
10      through the Commission in some sort of  
11      normal or potentially expedited fashion.

12                If it was truly an emergency  
13      situation that required very quick action  
14      in 24 to 48 hours, I believe we would  
15      probably ask the Commission to convene in  
16      some sort of an emergency hearing to hear  
17      the issue as quickly as possible,  
18      hopefully within 24 to 48 hours, to  
19      resolve if we are in the right or in the  
20      wrong.

21   Q.   So BellSouth would ask for that  
22       expeditious treatment?

23   A.   If we felt like we had time to wait to ask  
24       for that, we probably would.

25   Q.   Is the Commission the only tribunal that a

1 CLP should have a right to submit such a  
2 complaint?

3 A. There is probably applicable law that  
4 allows them to go to other appropriate  
5 jurisdictions for various complaints.

6 Q. Would they be able to go to a court of  
7 law?

8 A. I don't know necessarily whether they  
9 could or could not. I'm not familiar with  
10 the appropriate jurisdiction that would  
11 apply.

12 (DEPOSITION EXHIBIT NO. 13 WAS MARKED.)

13 Q. I'm handing you a document that's been  
14 marked Exhibit 13. Have you seen this  
15 document before?

16 A. I may have. Lots of contracts start off  
17 similar to this, so it looks familiar, but  
18 it may not be one that I've actually  
19 specifically seen.

20 Q. All right. Would you accept that this is  
21 the general terms and conditions section  
22 of the interconnection agreement that's in  
23 issue in this case?

24 A. Yes, I would accept that.

25 Q. Please turn to the second page of this

1 exhibit where section 13, resolution of  
2 disputes appears. And please review  
3 section 13.1 at the bottom of this page  
4 that's labeled BellSouth version, and  
5 review that language?

6 A. Uh-huh.

7 (PAUSE.)

8 MR. CULPEPPER: Now, this excerpt  
9 comes from the general terms and  
10 conditions section of the interconnection  
11 agreement that's in dispute; right?

12 MS. JOYCE: That's my  
13 understanding.

14 MR. CULPEPPER: Okay.

15 A. Okay. I've read that section. What was  
16 your question, again?

17 Q. Does this section under BellSouth's  
18 language include the right to go to a  
19 court of law?

20 MR. CULPEPPER: Object to the form  
21 of the question. What type of disputes  
22 are we talking about?

23 A. I'm not sure what rights this truly gives  
24 the CLPs in terms of who they can take a  
25 dispute to or even necessarily the nature



1       of the disputes. I'm not familiar with  
2       the general terms and conditions.

3   Q.   When you testified at page 34 regarding  
4       the CLP's right to submit a dispute, did  
5       you intend to refer to the resolution of  
6       disputes language in this section?

7   A.   Actually, I was referring more to the  
8       general fact the CLPs seemed to have the  
9       right to dispute whatever they want to  
10      with the Commission and can take just  
11      about any issue, whether it's part of this  
12      arbitration or part of 251 agreement or  
13      just a general complaint between BellSouth  
14      and the CLPs, that they continue to have  
15      that right and are often heard at  
16      Commissions. They act as an arbiter  
17      between CLPs and BellSouth in a number of  
18      areas, anyway.

19   Q.   Have you ever reviewed the general terms  
20       and conditions document that is in front  
21       of you in any form as regards BellSouth  
22       and the Joint Petitioners?

23   A.   I do not believe I have, no.

24   Q.   Do you believe that disputes regarding  
25       service degradation and impairment and the

1 possibility of power termination should be  
2 governed by the dispute resolution in the  
3 general terms and conditions?

4 A. To a point, yes. To the degree we can  
5 wait for a normal 60-day process or  
6 expedited 60-day process or even longer --  
7 I mean, these disputes and arbitrations  
8 can take months to resolve. My concern is  
9 oftentimes we're out -- there's a real  
10 word complication here in that services of  
11 one company is impacting or impairing or  
12 degrading the services of another company,  
13 which may even not be BellSouth. May also  
14 be impairing or degrading the services or  
15 the usefulness of a service for an end  
16 user. And in that real world situation  
17 where that is happening, sometimes it's  
18 important to be able to act and respond to  
19 cure those issues faster than the normal  
20 dispute resolution process would allow.

21 A good example of that would be if  
22 the CLP's equipment was on fire and we  
23 needed to disconnect the power to the  
24 equipment before the firemen went into  
25 that collocation area to spray water on



1 the equipment to put the fire out,  
2 everyone would consider it very reasonable  
3 for BellSouth to take that action.

4 On the other end, if there is a  
5 very, very minor infraction, that is not  
6 reasonable for BellSouth to disconnect the  
7 power, it would be appropriate for us to  
8 go through the dispute process, take three  
9 to six months, whatever the case would be,  
10 to resolve that.

11 The problem is finding that slice  
12 in the middle between what is reasonable  
13 and what is unreasonable. And in our  
14 view, that is largely a local management  
15 decision with the appropriate caution that  
16 if they believe it's a significant service  
17 degradation or an impairment that they be  
18 allowed to take action after we have done  
19 what we consider our best efforts to  
20 communicate to the CLP and allow them to  
21 resolve it. In essence, the local  
22 management needs to be in this together,  
23 all of us providing great service to all  
24 of our customers in a safe way. And  
25 sometimes those of us who sit in these



1 rooms need to take a step back, let them  
2 take action, and then sort it out.

3 Q. And who would decide where the CLP should  
4 submit a complaint?

5 A. I believe the CLPs would decide where they  
6 would submit a complaint.

7 Q. In your testimony just now, you mentioned  
8 that it could be the service of an entity  
9 other than BellSouth whose service is  
10 being degraded?

11 A. That is correct.

12 Q. Whose entity could that be?

13 A. It could be a third-party's CLP who's also  
14 collocated in the same building.

15 Q. Could it be a CLP that was not collocated  
16 in the same building?

17 A. It could be anybody who has services  
18 running through that facility either  
19 because they're collocated or not  
20 collocated.

21 Q. Could it be an interexchange carrier?

22 A. Could be.

23 Q. For any one CO, would you be able to  
24 identify for the Joint Petitioners which  
25 carrier's service runs through that CO?

1 A. I don't know.

2 Q. Could you please pick up Exhibit 9 again  
3 and look at the provision on what is  
4 marked as page 25, which is section 5.21.1  
5 of Attachment 4.

6 A. Okay. Page 25, I believe I am there.

7 Q. Okay. Item 1 in BellSouth's version that  
8 it has proposed for this section includes  
9 the words significantly degrades or  
10 impairs from the service provider's  
11 perspective. Who would be the service  
12 provider in that language?

13 A. It could be BellSouth. It could be one of  
14 BellSouth's customers. It could also  
15 be -- it's kind of -- service provider  
16 is kind of a global term for anybody  
17 providing a service.

18 Q. Would it include a collocated CLP?

19 A. Yes.

20 Q. Would it include an interexchange carrier?

21 A. Yes, it would.

22 Q. What would be the standard of care that  
23 would be associated with the service  
24 provider's perspective in terms of is  
25 there any objective standard that defines

1 when their perspective reasonably  
2 demonstrates that there's significant  
3 degradation or impairment of their  
4 service?

5 A. Well, most service providers determine  
6 there's a significant degradation or  
7 impairment when their end user customer is  
8 calling and saying their service is not  
9 working for them in some way.

10 Then at that point, they  
11 develop -- they start doing root cause  
12 analyses or troubleshoot the service and  
13 try to determine the cause of that. You  
14 know, usually the issues are resolvable.  
15 Sometimes they're not. On rare occasions,  
16 it could be because of noise or other  
17 kinds of issues from a nearby piece of  
18 equipment or from another service that  
19 someone else is providing.

20 Q. And if a service provider contacted  
21 BellSouth and said that, from their  
22 perspective, their service was being  
23 significantly degraded, would BellSouth  
24 perform any investigation related to their  
25 complaint?



1 A. Absolutely.

2 Q. Would BellSouth make its own determination  
3 as to whether their service is being  
4 significantly degraded?

5 A. Whether the service provider's service was  
6 being degraded?

7 Q. When the complaining service provider's  
8 service --

9 A. It would probably be very difficult for us  
10 to clarify what their -- how their  
11 service is behaving or performing because  
12 we wouldn't have any testing capabilities  
13 to do that. But I do believe we would be  
14 able to verify with them what they believe  
15 is the source of their degradation or the  
16 source of their impairment and assist with  
17 the technical analysis and the root cause  
18 analysis of that.

19 Q. Do you know whether -- when the CLP  
20 alleged to be creating this degradation is  
21 notified of the problem, would the CLP be  
22 told who the complainant party was?

23 A. In a real world situation, I would imagine  
24 if this was a serious impairment or  
25 degradation, there would be a conference

1 bridge established that it would have the  
2 service provider being impaired,  
3 BellSouth, and the CLP, all of them  
4 working together to resolve the issue.

5 If it's a service issue, that  
6 service provider is going to be want to be  
7 involved with the person who's causing  
8 that degradation or impairment. And if  
9 BellSouth can help facilitate that, they  
10 will -- or we will, I should say.

11 Q. Is it the case that the complaining  
12 service provider could be a customer of  
13 BellSouth?

14 A. Yes.

15 Q. And would information related to that  
16 customer be something to be held private,  
17 in your understanding?

18 A. When you say a customer, you're referring  
19 to a retail customer or a wholesale  
20 customer? What kind of customer are you  
21 referring to?

22 Q. Any kind of customer.

23 A. Any kind. I would venture there are  
24 probably aspects of the service that's  
25 being provided to that customer that could

1 be considered proprietary or private. I  
2 believe that the service provider that is  
3 of that customer, in their interest of  
4 having the significant degradation of the  
5 impairments stop, would be more than happy  
6 to work through those issues to resolve  
7 the issue. I mean, the issue is they  
8 wanted service to start working again or  
9 no longer be impaired. That's what takes  
10 paramount in that situation.

11 Q. If the complaining service provider  
12 requested that BellSouth not identify them  
13 to the allegedly offending CLP, would  
14 BellSouth honor that request?

15 A. I don't know why they'd request that, but  
16 we would probably try.

17 Q. Mr. Fogle, can you tell me what are the  
18 nature of the costs that BellSouth incurs  
19 when it prepares collocations based on a  
20 CLP?

21 A. The nature of the costs, there's  
22 obviously -- and I won't talk about the  
23 specific rate elements and pieces and  
24 parts of the actual -- how those get  
25 billed because I'm not familiar with



1 that. But to prepare any type of space,  
2 including collocation space, you have to,  
3 you know, physically clear the floor or  
4 make the space available. You have to  
5 bring power, service, and other  
6 communications or cross connect  
7 capabilities to that space. You have to  
8 account for the heating and ventilation,  
9 HVAC, requirements of the equipment that  
10 is going to be in that space, and  
11 essentially make it available to support  
12 whatever equipment is going to be in that  
13 space. Mostly it's infrastructure type of  
14 costs that are associated with that.

15 And those costs would include the  
16 engineering work associated with that as  
17 well as potentially construction work  
18 associated with bringing the power and the  
19 ventilation as well as other types of  
20 connections into that space.

21 Q. And is it your position that BellSouth is  
22 entitled to recover those costs?

23 A. Yes.

24 Q. And do you know how BellSouth ensures that  
25 it recovers those costs from a CLP?

- 1 A. I believe if we get involved with some  
2 fairly sensitive proceedings and establish  
3 the cost basis for collocation, discuss  
4 it, debate it, and I believe the  
5 commissioners then set the rates for  
6 collocation costs, collocation rates,  
7 which -- so that's probably the general  
8 process that's followed.
- 9 Q. Can collocation rates have two components,  
10 a non-recurring rate and a recurring rate?
- 11 A. It could, yes.
- 12 Q. What would a non-recurring rate -- how  
13 would that operate?
- 14 A. Well, I mean, I'm speculating just from my  
15 knowledge of non-recurring rates in  
16 general. Non-recurring rates typically  
17 are charges for things that happen one  
18 time at the initiation of service.
- 19 Q. And then how would a recurring rate be  
20 imposed?
- 21 A. We would -- recurring rate is for ongoing  
22 costs that occur month to month or on some  
23 sort of a periodic basis and then we bill  
24 based on those recurring costs for that  
25 recurring rate. And they tend to go for



1 the duration of whatever service is being  
2 ordered.

3 Q. With respect to Issue 4-3 that you've  
4 provided testimony on, do you understand  
5 what the nature of the Joint Petitioners'  
6 concern is regarding this issue?

7 A. I have to see which one 4-3 actually is.

8 Q. It starts at your page 38 in your  
9 testimony.

10 A. Okay. Thank you. Okay. Could you repeat  
11 your question for me, again?

12 Q. Do you understand what the nature of Joint  
13 Petitioners' concern is with regard to  
14 Issue 43 -- 4-3?

15 A. I honestly don't understand the Joint  
16 Petitioners' position. We're not  
17 interested in getting double paid for  
18 services we provided. I'm fairly sure the  
19 Joint Petitioners are also not interested  
20 in getting double billed for services  
21 provided. I think our issue in dispute is  
22 that the language that's been offered is  
23 vague and unclear and we just would like  
24 to have something that's a little more  
25 clear.



1 Q. Are you familiar with the rate structures  
2 imposed by the state commissions in  
3 BellSouth's region?

4 A. I have very limited knowledge of the rate  
5 structures that are imposed.

6 Q. Do you have any knowledge as to whether  
7 those rate structures have been changed in  
8 their composition over the last four  
9 years?

10 A. I can almost guarantee, because of their  
11 complexity, that they have changed at  
12 least somewhere in the past, over the last  
13 four years.

14 Q. Are you aware that in some states what  
15 used to be imposed as an NRC with regard  
16 to collocation for one reason or another  
17 was converted into a recurring cost that  
18 would be recovered over time via monthly  
19 or ongoing payments by a CLP? Are you  
20 aware of that situation?

21 A. I've had that explained to me, yes.

22 Q. And do you understand that some CLPs had  
23 actually been in service and had  
24 collocation based under the former regime  
25 where specific costs were passed through

1 to the CLP via the imposition of a  
2 non-recurring cost?

3 A. I believe that's very possible. I'm not  
4 aware of any specific examples of that.

5 Q. Do you believe it's possible that there  
6 are CLPs that have paid those  
7 non-recurring costs?

8 A. Yes.

9 Q. What then would be the result if a CLP had  
10 paid the non-recurring cost and then a  
11 state commission changed the rate  
12 structure such that the recurring costs  
13 were created to recover the same costs  
14 that initially were recovered in the  
15 non-recurring charge?

16 A. Well, I would hope that if a state  
17 commission changed the rules or the rate  
18 structures in that way, they would be  
19 insightful enough to give instruction on  
20 how to handle the transition.

21 Absent that, I would hope that we  
22 would be able to negotiate how to handle  
23 that transition. Again, our position is  
24 we're not interested in having the CLPs  
25 double pay for services. If they're

1 already paid, even if they're  
2 non-recurring or other methods or other  
3 procedures already paid and -- we're not  
4 interested in having them double pay. I  
5 think the issue is how do we make that  
6 actually happen as opposed to just talk  
7 about the fact that none of us want that  
8 to happen.

9 Q. You're familiar with the word  
10 grandfathered?

11 A. I'm familiar with it from other contract  
12 language that I've done in the past.

13 Q. What's your understanding of what  
14 grandfathered means?

15 A. A grandfathered rate -- as I've used it in  
16 the past, a grandfathered term would be a  
17 term that has a new interconnection  
18 agreement or a new commercial agreement,  
19 whatever the case would be, and there's no  
20 corresponding term associated with that  
21 either term or rate in the old agreement,  
22 but that because it was available then and  
23 there's an agreement between the two to  
24 continue to have -- two parties to  
25 continue to have it available, it is,



1 quote, unquote, grandfathered or  
2 essentially kind of the same terms and  
3 conditions that were available at the time  
4 of the previous agreement are carried  
5 forward through the current agreement.

6 Q. Could that be restated that a CLP would  
7 pay a rate other than what would currently  
8 be in place at the time?

9 A. If there's not a corresponding law or rule  
10 or requirement that would force them to do  
11 that and both parties were amenable to it,  
12 then that could mean that, yes.

13 Q. Regardless of what the law was --

14 A. Uh-huh.

15 Q. -- just the operation to grandfather a  
16 rate --

17 A. Uh-huh.

18 Q. -- I just want to make sure we're both  
19 speaking about the same thing.

20 A. Certainly.

21 Q. It would involve a CLP paying a rate that  
22 is something other than what is then in  
23 effect?

24 A. It could very well mean that. In essence,  
25 I don't usually see grandfathered rates in

1 contracts that I've worked on. There's  
2 typically grandfathered terms where a  
3 particular service we're offering was  
4 offered in a certain way or a  
5 configuration, we continue to offer that  
6 configuration. He would know our current  
7 products and services don't come in the  
8 same configuration anymore. That's simply  
9 because some customers simply like to buy  
10 the stuff they've been buying all along.  
11 The rates themselves typically have to be  
12 adjusted because, over time, changes  
13 happen. There's an increase in costs due  
14 to inflation. There's sometimes  
15 decreasing cost due to improvements in  
16 technology. Those have to be accounted  
17 for, and those often effect the rates. If  
18 there is a grandfathered rate, it would  
19 probably have to be reviewed as to whether  
20 it was -- whether both parties would find  
21 it agreeable and acceptable and allow it  
22 to continue.

23 Q. If a rate that is in effect today would,  
24 in effect, require a CLP to pay again for  
25 something it already paid for, would

1 grandfathered be appropriate in that  
2 instance?

3 A. Grandfather could be one way to  
4 potentially resolve that. Providing a  
5 credit would be another way to potentially  
6 resolve that. Again, it would be nice if  
7 the Commission, when they change the  
8 approaches, would actually provide  
9 guidance as to how to handle the  
10 transitions other than that they leave it  
11 up to us. It's being creative and finding  
12 a solution that both parties can agree to.

13 Q. If indeed the rate was grandfathered to  
14 avoid the double rate position, the  
15 purpose for grandfathered would be what,  
16 in your opinion?

17 A. Well, you could use grandfathered to avoid  
18 double payment. I don't know what other  
19 complexities that creates that might make  
20 that untenable. One would be trying to  
21 keep duplicate rate structures into the  
22 old billing one -- the old one and the new  
23 one, and billing systems don't like that.  
24 Another approach would be more applicable  
25 or easier to implement for either



1 BellSouth or the CLP.

2 Q. At page 38 of your testimony, lines 12 to  
3 15, you say, when rates have been  
4 grandfathered, the rates that would apply  
5 are those that were, in fact, prior to the  
6 effective date of this agreement or as  
7 otherwise specified within this  
8 agreement. There should be no other  
9 exceptions allowed for the application of  
10 grandfathered rates. So what do you  
11 mean? Do you allow for an exception to  
12 grandfather rates?

13 A. Well, I guess I'm not sure where you're  
14 asking about applying an exception in  
15 terms of the -- maybe you could rephrase  
16 your question for me.

17 Q. What would be the exception to  
18 grandfathered rates you would find  
19 acceptable?

20 A. I mean, as I say here, I mean, there's --  
21 essentially there are rates that are in  
22 this agreement and there are rates that  
23 are not in this agreement. That's pretty  
24 much the entire universal rates that are  
25 out there. And those that are not in this

1 agreement, there are probably a subset of  
2 those that were in the prior agreement.  
3 And those are the ones that could  
4 potentially still apply and be, quote,  
5 unquote, grandfathered. The rates in the  
6 prior agreement that has expired, it's no  
7 longer valid and there will need to be  
8 some comments or some agreement that those  
9 rates are still valid in this sort of a  
10 grandfathered way.

11 Q. Would a permissible exception to  
12 grandfathered rates be to avoid double  
13 payment?

14 A. I don't think I agree with your statement  
15 in that I think you could use  
16 grandfathered rates. You could  
17 specifically allow for grandfathered rates  
18 in this agreement to avoid double  
19 payments. You specifically state these  
20 rates are being grandfathered to avoid  
21 double payments. I don't believe we would  
22 just automatically grandfather something  
23 without some sort of a written agreement  
24 to do so.

25 Q. But would the avoidance of double payment

1 be a permissible exception to  
2 grandfathered rates?

3 A. I guess I'm not understanding your  
4 question in that if we wanted to use  
5 grandfathered rates, then we would specify  
6 them within this agreement so then it  
7 would not fall into the other exceptions.  
8 I mean, if we -- maybe I'm not  
9 understanding your question, but when I  
10 state that there are no other exceptions  
11 allowed for application of grandfathered  
12 rates, it's just simply trying to say you  
13 can't go pick an interconnection agreement  
14 off the shelf that's six years old and  
15 say, I like this rate because it's  
16 grandfathered and make it so. That we  
17 need to -- if we're going to use  
18 grandfathered as a technique in any kind  
19 of rate approach, that we need to specify  
20 how we're doing it, why we're doing it.

21 Q. I understand what you said, but I'm not  
22 certain it responds to my question.

23 A. Okay.

24 Q. Would one permissible exception to  
25 grandfathered rates be to avoid double



1 payment?

2 A. I'm --

3 Q. Let me rephrase.

4 A. I apologize. I'm clearly not  
5 understanding your question.

6 Q. If a grandfathered rate would result in a  
7 double payment situation --

8 A. Yes.

9 Q. -- should an exception be made?

10 A. I believe we should find some method --  
11 some other method to avoid the double  
12 payment, whatever the case would be.

13 Q. Should another rate be chosen?

14 A. Another rate could be chosen, chose not to  
15 grandfather. Gosh, a credit could be  
16 applied. I mean, there's lots of options  
17 that are out there.

18 Q. Okay. At page 39 --

19 A. It's unfortunate because these things get  
20 so caught up in the vernacular. And  
21 there's so many things that we can sit  
22 down and work together and get creative  
23 and probably resolve this issue.

24 Q. I'm not feeling very creative right now.

25 Page 39 of your testimony. At

1 lines 17 to 22. This testimony states  
2 that if the Joint Petitioners provide  
3 BellSouth with documentation proving that  
4 they have been paid in full -- strike  
5 that -- that they have paid in full all of  
6 the individual case basis or non-recurring  
7 charges associated with the installation  
8 of preparation activities performed and  
9 billed by BellSouth for a particular  
10 collocation arrangement, then no  
11 additional installation or preparation  
12 fees will be billed for those collocation  
13 arrangements.

14 A. Yes.

15 Q. And that's your position of how the rates  
16 for collocation should work in this  
17 agreement?

18 A. Yes.

19 Q. And can you direct me to the portion of  
20 Attachment 4 that would permit the Joint  
21 Petitioners to make this presentation to  
22 BellSouth?

23 A. No. I mean, I probably could read  
24 Attachment 4. I may find something in  
25 there that helps in that area. This

1 language is just simply the way any two  
2 companies, when they have a dispute about  
3 how much someone's paid and what they  
4 still owe, resolves that. One company  
5 says, oh, okay, I'm sorry. I don't want  
6 to double bill you. Could you please  
7 provide me some documentation? And then  
8 you sit down and you sort it out. And  
9 that's pretty much what we're trying to do  
10 here.

11 Q. Do you know whether the Joint Petitioners  
12 in this case have already provided that  
13 kind of documentation to BellSouth?

14 A. I don't know.

15 Q. What would you expect BellSouth to do when  
16 it received that information from the  
17 Joint Petitioners?

18 A. I think we'd investigate our records to  
19 see if we concur with their assessment of  
20 what they have paid on a recurring basis  
21 and non-recurring basis. And once we've  
22 determined our assessment of that, we  
23 would then sit down with a number of folks  
24 to determine the proper approach, what  
25 would be the right way to resolve this to



1 help clinch the void, Joint Petitioners  
2 avoid double paying. It could be a  
3 credit. Like I said, it could be any  
4 number of things. Probably a very  
5 creative session to think of alternatives.

6 Q. How long do you think it would take to  
7 reach a resolution regarding that matter?

8 A. It would depend on the complexity of how  
9 many -- how detailed the records were,  
10 how many of the records there were. If  
11 there's only one or two, it could be  
12 relatively quick. If there were hundreds  
13 or thousands, it could take relatively --  
14 take longer. So it would just depend how  
15 much is involved to do it.

16 Q. What if the Joint Petitioners provided  
17 documentation that they had paid 50  
18 percent of all of the individual case  
19 basis or non-recurring charges, what  
20 should be the result then?

21 A. I think we'd have to review that on an  
22 individual basis. I mean, we'd have to  
23 look at whether they had paid, what they  
24 still owe, determine what's being  
25 recovered by the current rates versus what

1       has been -- had been recovered by  
2       previous rates and figure out what, in  
3       BellSouth's mind, is a fair resolution so  
4       the CLPs do not double pay for services.

5   Q.   Would a fair resolution perhaps be that  
6       they paid the other 50 percent of the  
7       non-recurring or individual case-based  
8       charges?

9   A.   Yes. I would venture to say if they only  
10       paid 50 percent, it's probably on 50  
11       percent of the locations, so we might have  
12       different rates that we'd apply for  
13       different locations. It would just depend  
14       on the nature of how much they had paid  
15       and in what way they had paid.

16   Q.   So would the resolution depend on whether  
17       the rates for collocation had changed from  
18       the time the original NRCs or individual  
19       case basis charges were imposed until the  
20       present?

21   A.   I think that would be one of the  
22       components that would have to be  
23       evaluated.

24   Q.   And if the rates at present were higher  
25       than the rates that were in effect when



1       the NRC or ICB price was imposed, what  
2       would the proper results be?

3    A.   I believe we'd have to go through and  
4       determine what the rate was at the  
5       applicable times of the agreements to  
6       determine what is owed for those  
7       appropriate times.  I've been involved in  
8       working on that with other customers where  
9       prices would go up and down and we'd have  
10      six months at one price, six months at a  
11      second price, another six months at a  
12      third price.  I mean, it's an Excel  
13      spreadsheet.  It's math exercise, but you  
14      work through what's there and you do it in  
15      an open and equitable manner.  You share  
16      the information back and forth between  
17      yourself and your customer and you solve  
18      out the issue and come up to as much as  
19      possible.

20                I have found in every case,  
21      though, the way to resolve this detail,  
22      get the individual records available.  
23      Both parties agree on the records.  They  
24      agree on what's at issue, and then they  
25      determine the appropriate resolution.



1 Q. Is it your position that the rates that  
2 were in effect at the time the NRC was  
3 imposed should govern the question of how  
4 much additional should be paid?

5 A. If -- I think the rates that were in  
6 effect at any given time should govern how  
7 much is owed for that given time. Prices  
8 change all the time. It would be no  
9 different than if you brought a car, took  
10 out a loan for a car and then came back  
11 three months later and said, my car is not  
12 worth as much, therefore, I don't owe you  
13 as much. You don't have the opportunity  
14 to do that. There was a rate at the time  
15 you made the purchase, and that's what's  
16 owed. So it's just -- I think that's --  
17 the rate at the time should govern what's  
18 owed for that particular service at that  
19 particular time.

20 Q. Would that apply regardless of whether the  
21 rate then applicable is lower than the  
22 rate typically applicable?

23 A. Yes.

24 Q. On page 40 of your testimony, beginning at  
25 line 8. You state that BellSouth has

1 proposed specific language in section  
2 8.11.1 that would discuss how BellSouth  
3 would assess grandfathered DC power  
4 charges. Do you see that?

5 A. Yes, I do.

6 Q. Could you please return to Exhibit 9?  
7 Look at the page numbered 45 at the top.  
8 And do you see where it says BellSouth  
9 version?

10 A. Yes.

11 Q. And that this is BellSouth's version of  
12 8.11.1?

13 A. Yes.

14 Q. That language begins in Tennessee. Do you  
15 see that?

16 A. Yes.

17 Q. Do you know what the significance is of  
18 this section beginning with the words in  
19 Tennessee?

20 A. Tennessee is the only state where  
21 BellSouth is currently offering a fused  
22 amped billing option for DC power.

23 Q. So this section would not apply in any  
24 other BellSouth state?

25 A. Yes.

1 Q. So then to revisit your testimony.

2 BellSouth has, in fact, proposed language  
3 to govern grandfathering of DC power rates  
4 in Tennessee; is that correct?

5 A. I mean, the issue of Tennessee is there  
6 are used amp and fused amp billing options  
7 in Tennessee. So, yes, we have proposed  
8 11.1 grandfathered rights for how we  
9 handle Tennessee.

10 Q. Have you proposed language to govern  
11 grandfathering of DC power rates for any  
12 other state?

13 A. Not that I'm aware of.

14 Q. Could a CLP use or draw power if its power  
15 cabling were not installed?

16 A. Not that I'm aware of, no. It would be  
17 neat if we could find a way though.

18 Q. What in your mind would be an  
19 appropriate -- strike that.

20 Is it your position that CLPs  
21 should pay recurring charges for power if  
22 they cannot use that power?

23 A. It would depend on the reasons for not  
24 being able to use that power. If a CLP  
25 has ordered power from BellSouth and we



1        have configured and made it available,  
2        ready, and turned it over to them, then  
3        they have simply not done their own wiring  
4        of the cable and we've dedicated a  
5        considerable amount of assets and a  
6        considerable amount of resources as well  
7        as having a portion of our BDFB dedicated  
8        to them and it's simply waiting for them,  
9        so at that -- in that case, they should  
10       definitely pay. If for some reason we're  
11       the cause for them not being able to use  
12       the power because we're late or something  
13       like that, then they should not. It just  
14       depends on the cause.

15    Q. But in either event, would the CLP be  
16       actually drawing power; is that correct?

17    A. That is correct.

18    Q. On page 42 of your testimony, you state  
19       that BellSouth would have made an  
20       investment in infrastructure that is  
21       necessary to convert commercial AC  
22       electricity to DC power. Do you see that?

23    A. Yes.

24    Q. Can you tell me what the financial cost of  
25       that investment would be?

1 A. It's going to vary greatly depending on  
2 how much power is needed and what level of  
3 equipment is necessary to make that  
4 happen. In order to power our electric  
5 equipment the same, whether it's BellSouth  
6 equipment or CLEC equipment, we have to  
7 bring electrical feed in from the electric  
8 utility. We then condition and support  
9 that with a standby generator. We then  
10 feed that through an AC to DC converter to  
11 make that into DC power. We support that  
12 DC power plant with strings of batteries,  
13 that's the end cable and distribute it  
14 throughout the office at various voltage  
15 levels to distribution ports, frames, et  
16 cetera. Then it's also cabled to either  
17 BellSouth's equipment or to CLEC  
18 collocated equipment for them to connect  
19 to. So we've -- that's going to vary. In  
20 some cases, it may be as simple as  
21 connecting a power cable from a BDFB to  
22 the collocations's space. In other cases  
23 the requested power need for the CLP may  
24 be more than we have available, so we have  
25 to invest in putting a new DC power plant



1       in there. In some cases the requested  
2       power load may actually be more than our  
3       standby AC generators are rated to carry,  
4       so we have a put an entire new standby AC  
5       power generator. And in the most extreme  
6       cases, it may be more than our electrical  
7       feed that we get from our utilities, so we  
8       may have to request an additional  
9       electrical feed from the utilities. All  
10      of those things are possible and could be  
11      triggered by any increase in power  
12      requirements in the central office  
13      location, whether it be from BellSouth  
14      equipment or a collocated CLP.

15   Q. And the cost that you've just outlined for  
16      me, would they be recovered from a CLP in  
17      a non-recurring charge?

18   A. They could be or it could also be covered  
19      in a recurring charge.

20   Q. And do you know how -- over what period  
21      of time the recurring charge is geared in  
22      order to fully recover the cost of that  
23      initial investment that you described?

24   A. I don't know.

25   Q. You don't know if it would take a year for



1 BellSouth to recoup its investment?

2 A. I'm not familiar with the cost of these  
3 that have been developed, the rates in the  
4 DC power side.

5 Q. Do you know whether cost studies have been  
6 developed?

7 A. I believe they have been, yes.

8 Q. Please turn to page 50 of your testimony.  
9 And at lines 11 through 14, you state that  
10 after you reviewed section 9.1.1 of  
11 Attachment 4, you've determined that the  
12 last sentence of something needs to be  
13 stricken in its entirety. The last  
14 sentence of what?

15 A. I believe it's the last sentence of  
16 section 9.1.1.

17 Q. All right. That appears at page 46 of  
18 Exhibit 9, if you want to take a look at  
19 it. Which sentence should be stricken?

20 A. I believe the last one. It's read as  
21 non-recurring charges for 48-volt DC power  
22 distribution will be based on the costs  
23 associated with collocation power plant  
24 investment and the associated  
25 infrastructure.

1 Q. Now, can you please look at section 9.1.2,  
2 which is on the next -- goes onto the  
3 next page.

4 A. Okay.

5 Q. Would that sentence regarding  
6 non-recurring charges also need to be  
7 stricken?

8 A. I don't know, to tell you the truth.

9 Q. The BellSouth language that we are  
10 reviewing begins, again, with the words  
11 Tennessee. Do you see that?

12 A. That's correct.

13 Q. In Tennessee, would it be appropriate for  
14 BellSouth to charge non-recurring charges?

15 A. I don't know what rate structure has been  
16 established by Tennessee Regulatory  
17 Authority, if they include non-recurring  
18 charges or not.

19 Q. All right. So I believe you testified  
20 that the initial investment that BellSouth  
21 makes to create power infrastructure in a  
22 collocation could be recovered through  
23 non-recurring rates?

24 A. It could be, yes.

25 Q. But it's your position now that it shall

1 not be done that way; is that correct?

2 A. I believe some of the commissions and our  
3 position, we only have recurring rates  
4 with power. I believe that is the case in  
5 Tennessee, but I'm not positive as to  
6 whether or not we have limited  
7 non-recurring rate. But as in the  
8 agreement, you can determine compensation  
9 for costs whether through not occurring or  
10 recurring rates.

11 Q. On page 45 of your testimony, if you could  
12 please turn to that page. Make the  
13 statement in lines 1 to 3 that when  
14 BellSouth provisions the collocation space  
15 in accordance with the CLP's  
16 specifications, it should be compensated  
17 when the space is turned over to the CLP  
18 for its use.

19 A. That is correct.

20 Q. Is it your position that it is only  
21 through the imposition of recurring costs  
22 for DC power that BellSouth would be  
23 compensated when the collocation space is  
24 turned over to the CLP?

25 MR. CULPEPPER: Object to the form



1 of the question.

2 A. This particular issue has to do with the  
3 commencement of DC power billing. I don't  
4 think it speaks nor am I trying to speak  
5 to other compensation for collocation  
6 space that might also be involved, so...

7 Q. So would you expect that BellSouth could  
8 have received compensation in a better  
9 form from the CLP when space is turned  
10 over?

11 A. I believe there's probably compensation  
12 for the actual collocation space. I'm not  
13 familiar with what rates they would be or  
14 how they would be assessed.

15 Q. At page 46 of your testimony, you discuss  
16 an order of the Florida Public Service  
17 Commission.

18 A. Yes.

19 Q. And at lines 13 and 14, it states that  
20 billing of monthly recurring charges  
21 should begin in the next billing cycle.

22 A. Yes.

23 Q. Do you see that?

24 A. Yes. This was in direct quotes from the  
25 Florida Public Service Commission.

- 1 Q. Yes, it appears --
- 2 A. Okay.
- 3 Q. -- at line 14 on page 46.
- 4 A. Yes.
- 5 Q. All right. I'm handing you a document
- 6 that I've marked Exhibit 14.
- 7 (DEPOSITION EXHIBIT NO. 14 WAS MARKED.)
- 8 Q. Do you recognize this document, Mr. Fogle?
- 9 A. No, I do not.
- 10 Q. I invite you to look at the date that's
- 11 been date stamped on the bottom of the
- 12 front page.
- 13 A. This is November 26th, 2003?
- 14 Q. And the top of the page before the Florida
- 15 Public Service Commission?
- 16 A. Yes.
- 17 Q. And on the Exhibit 14 it lists Docket
- 18 981834-TP?
- 19 A. Yes.
- 20 Q. And I invite you to look back at your cite
- 21 to the Florida Commission Order discussed
- 22 at page 46 in your testimony.
- 23 A. Yes.
- 24 Q. Could you accept that this is the order
- 25 that you were quoting from?

1 A. Yes.

2 Q. All right. Now, look at page 5, please,

3 of Exhibit 14. Page numbers are marked in

4 the top left-hand corner.

5 A. Okay. That's convenient.

6 Q. And the language on Exhibit 14, page 5,

7 that has the heading stipulated language,

8 do you see that?

9 A. Yes, I do.

10 Q. Is that the same language that you're

11 quoting at page 46 of your testimony?

12 A. Yes.

13 Q. Do you know what it means when parties

14 stipulate to language?

15 A. I believe it's a fancy term for agree.

16 Q. So is the language quoted at page 5 --

17 from page 5 of Exhibit 14 the

18 representation of an agreement?

19 A. Yes.

20 Q. Is it your position that the language that

21 appears on page 5 is the product of the

22 Florida Commission's review of the issue

23 as to when should billing of monthly

24 recurring charges begin?

25 MR. CULPEPPER: I object to the



1 form of the question.

2 A. I don't know if this was stipulated before  
3 they had a chance to review it or if it  
4 was stipulated during or after. So I  
5 don't know what the particular commissions  
6 -- I do know if it's stipulated language  
7 at least the CLECs and BellSouth agree to  
8 it.

9 Q. And can you tell me on pages 5 to 6, which  
10 is the language that you referred to on  
11 page 46 of your testimony, does that  
12 discuss recurring charges for power  
13 specifically?

14 A. I don't see any mention in here to power  
15 rates.

16 Q. Is it your position that the stipulation  
17 that appears in the Florida Commission  
18 order should apply in other BellSouth  
19 states?

20 A. No, I think it should apply in Florida.

21 MS. JOYCE: All right. We've been  
22 going quite awhile. I think we should  
23 break for about ten minutes. Go off the  
24 record.

25 (RECESS.)

1 BY MS. JOYCE:

2 Q. Mr. Fogle, you have not provided any  
3 testimony with regard to Issue 46; is that  
4 correct?

5 A. I don't remember which issue 46 was.

6 Q. If you look on page 46 to 47, that is the  
7 end of Issue 44.

8 A. Yeah.

9 Q. Do you see that?

10 A. It appears I did not offer any testimony  
11 on Issue 46.

12 Q. And why didn't you offer any testimony?

13 A. I don't even know what Issue 46 was, to  
14 tell you the truth. I don't remember. I  
15 should say I don't recall. But I imagine  
16 there's another witness that we determined  
17 was probably more qualified to provide a  
18 response to that particular issue, if it's  
19 still an issue in this proceeding.

20 Q. The Joint Petitioners' statement with  
21 respect to Issue 46 was what rates should  
22 apply for BellSouth supplying DC power.

23 A. Okay.

24 Q. I'm going to show you a document that I've  
25 marked Exhibit 15.

1 (DEPOSITION EXHIBIT NO. 15 WAS MARKED.)

2 A. Okay.

3 Q. Have you seen this document before, the  
4 front page of it, anyway?

5 A. Yes. I may have or may not have seen this  
6 particular document. I've seen some  
7 direct testimony of Kathy Blake associated  
8 with these arbitrations, but I don't know  
9 if I've seen this particular North  
10 Carolina version of this testimony.

11 Q. Do you see the header on page 1?

12 A. Yes.

13 Q. States she's testifying --

14 A. Uh-huh.

15 Q. -- in these same dockets in this case?

16 A. Yes.

17 Q. Okay. If you'd turn the page. It's  
18 actually page 3. I was trying to  
19 economize, but Ms. Blake States at line 13  
20 on page 3 that 46 is a resolved issue. Do  
21 you see that?

22 A. Yes, I do.

23 Q. Do you have an understanding as to whether  
24 Issue 46 is resolved?

25 A. I would sure hope so, if she's testifying



1 it is.

2 Q. Would you be surprised that Joint  
3 Petitioners' position is that 46 has not  
4 been resolved?

5 A. No, I'm not surprised.

6 Q. Did you review Joint Petitioners'  
7 testimony, the written testimony with  
8 respect to Issue 46 when you prepared your  
9 testimony in this case?

10 A. I did, but it's been quite awhile since I  
11 did that.

12 Q. All right. Can you please look at Exhibit  
13 9. Do you have a position as to what  
14 rates should apply to DC power in this  
15 interconnection agreement?

16 A. I haven't. Since I was under the  
17 presumption that 46 was closed or  
18 resolved, I haven't developed a position  
19 on that one issue in particular.

20 Q. All right. Well, if I could direct your  
21 attention to page 44. Again, numbers are  
22 on the top right.

23 A. Okay, I'm there.

24 Q. Would you except that sections 8.11 --  
25 8.11.1 and 8.11.2 are the sections that

1       are at issue and Issue 46?

2   A.   I don't know, to tell you the truth, what  
3       sections are at issue. It does appear  
4       these relate to DC power, which I think is  
5       the issue. There may be other sections.

6   Q.   Well, given that thus far we've been  
7       talking about collocation, can you please  
8       look at section 8.11, the BellSouth  
9       version, and explain to me what the  
10      language that is bolded means which  
11      states, recurring charges for negative  
12      48-volt DC power will be assessed per amp  
13      per month based upon the BellSouth's  
14      certified supplier engineered and  
15      installed power feed fused ampere  
16      capacity.

17   A.   Your question was asking me to explain the  
18      bolded language?

19   Q.   What does that mean?

20   A.   What does that mean? It means that the  
21      monthly recurring charges that BellSouth  
22      would be charging the CLP for DC power, in  
23      this case specifically minus 48-volt DC  
24      power, would be set based on their  
25      engineered and installed fused amp

1        capacity. And that comes back to what the  
2        CLP would request and that we would  
3        engineer and install in terms of how much  
4        fused amp capacity they would request.

5    Q.   So, again, to be clear --

6    A.   Uh-huh.

7    Q.   -- the clause engineered and installed  
8        power feed fused ampere capacity relates  
9        to the power capacity for negative 48-volt  
10       DC power that the CLP requests to be  
11       installed in its collocation space?

12   A.   I believe it's probably to their  
13       collocation space, but, yes, an example  
14       would be if a CLP ordered a hundred  
15       amperes of minus 48-volt DC power, that we  
16       would engineer a hundred ampere DC power  
17       feed and then we would install and fuse  
18       that specific ampere capacity to that CLEC  
19       collocation space.

20   Q.   What does it mean to engineer 4?

21   A.   As it comes about, I mean, we have power  
22       engineers who have a responsibility to  
23       determine what is the best method for  
24       delivering the requested ampere load that  
25       they've asked for the DC feed. So they'll



1       determine where to run the cables, what DC  
2       power plants they need to come from,  
3       determine, you know, a number of different  
4       technical parameters associated with that  
5       feed to make sure that it's appropriate  
6       and accurate and that it will be provided  
7       reliably. And then they provide those  
8       engineering documents off to the installer  
9       who then goes and installs that same power  
10      feed.

11   Q.   So would another word for engineered in  
12       this context be planned?

13   A.   Both planned, but also designed.

14   Q.   But engineered and installed are two  
15       separate acts?

16   A.   Yes.

17   Q.   To your knowledge, does this language in  
18       the BellSouth proposed version of this  
19       section reflect the order of any state  
20       commission with respect to how BellSouth  
21       should impose recurring charges?

22   A.   I believe reflecting the methodology that  
23       is currently in effect in North Carolina,  
24       which is a fused amp methodology for  
25       recurring rates.

1 MR. CULPEPPER: And we're looking  
2 at 8.1.1; right?

3 MS. JOYCE: Yes.

4 Q. Would this proposed language apply in all  
5 nine BellSouth states?

6 A. The bolded language would only apply in  
7 those states where they continue to use  
8 the fused amp capacity.

9 The very next sentence starts off  
10 with the two words in Tennessee, because  
11 Tennessee has a used amp methodology for  
12 appropriate -- for determining the rates,  
13 what is billed for DC power.

14 Q. I believe the language you're referring to  
15 states that in Tennessee, applicable rates  
16 shall vary depending on whether customer  
17 elects to be billed on a fused amp basis?

18 A. That is correct.

19 Q. So does that indicate in Tennessee a CLP  
20 can choose between fused amp recurring  
21 power charges and used amp?

22 A. Yes, they have their choice.

23 Q. If a CLP chose to do fused amp billing in  
24 Tennessee, would the bolded language that  
25 we've been discussing apply?



1 A. Yes.

2 Q. But the language in the next sentence that  
3 begins in Tennessee would apply only in  
4 Tennessee?

5 A. Yes.

6 (DEPOSITION EXHIBIT NO. 16 WAS MARKED.)

7 Q. Mr. Fogle, I'm handing you a document  
8 marked Exhibit 16. Do you recognize this  
9 document?

10 A. No, I do not.

11 Q. I direct your attention to your testimony,  
12 which is Exhibit 2, at page 51. Again,  
13 page 51, lines --

14 A. 51 of -- page 51 of my testimony?

15 Q. Of your testimony. And do you see at  
16 lines 13 and 14 you state that this  
17 Commission has already approved the fused  
18 amp billing methodology in the NC  
19 collocation order?

20 A. Yes.

21 Q. Is the document that I've handed you  
22 marked Exhibit 16 that order?

23 A. Yes, I believe that it is.

24 Q. Please turn to the last page of Exhibit  
25 16. And this is a portion of that order.



1 It's over 270 pages long. But the last  
2 page, which is marked No. 265, and do you  
3 see it says Commission Conclusions Rate  
4 Issue No. 4, DC power?

5 A. Yes.

6 Q. Is it from these conclusions that you  
7 derive your understanding that you  
8 testified to on page 51 in your testimony?

9 A. I did not review this particular section  
10 prior to my testimony, but had discussed  
11 it with those who had reviewed this in  
12 developing my reference to this particular  
13 testimony.

14 Q. Were the people you discussed it with  
15 attorneys?

16 A. No.

17 Q. With whom did you discuss this order?

18 A. Lynn Brewer.

19 Q. I direct your attention to clause 4, the  
20 very bottom of page 265 on this Exhibit  
21 16. And it states that the Commission  
22 finds it appropriate to require ILECs to  
23 charge power costs on a per fused amp  
24 basis. Do you see that?

25 A. Yes, I do.

1 Q. Is there anything in these clauses that  
2 would preclude BellSouth from  
3 providing -- strike that -- from charging  
4 power based on a used amp basis?

5 MR. CULPEPPER: I object to the  
6 form of the question.

7 A. In my reading of this for the first time,  
8 I mean, it appears they're requiring us to  
9 charge on a per fused amp basis. It  
10 doesn't give us any leeway to do any --  
11 apply any other method.

12 Q. Do you know on what grounds the North  
13 Carolina Commission reached that  
14 conclusion?

15 A. No, I do not.

16 Q. Is it your testimony that the North  
17 Carolina Commission rejected used amp  
18 billing?

19 A. I don't know whether they did or not.

20 Q. Please turn to the page marked 258 of  
21 Exhibit 16. And this exhibit is double  
22 side copied, so...

23 A. Okay. I'm there.

24 Q. Please review the second full paragraph  
25 that appears on that page.

1 (PAUSE.)

2 A. Okay.

3 Q. Are you finished?

4 A. Yes.

5 Q. In this paragraph, what's being discussed  
6 is a witness Caldwell, who appears to have  
7 been a BellSouth witness, explained that  
8 when fused amp billing is performed for  
9 collocation power --

10 A. Yes.

11 Q. -- that a factor of 67 percent would be  
12 assessed. So that the monthly -- the  
13 average monthly cost per kilowatt hour  
14 would be multiplied by 67 percent. And  
15 according to witness Caldwell, that  
16 operation would then ensure that the CLP  
17 is not overcharged. Do you see that?

18 A. Yes, I do see that.

19 Q. Do you have any reason to doubt that  
20 Witness Caldwell's math is correct in this  
21 instance?

22 A. I agree with the math.

23 Q. Do you know this person?

24 A. I don't know if I have met this person  
25 directly. I think I know of them. Lucy





1 Dale Caldwell is the person, but I'm not  
2 positive. Dale.

3 Q. We understand that that is his name.

4 A. Her.

5 Q. Her.

6 A. I was going to tell you I know the name,  
7 but I also did not know if it was a he or  
8 a she, so...

9 Q. Not important.

10 Would BellSouth, when it charges  
11 CLPs in North Carolina on a fused amp  
12 basis for power, would it always apply  
13 this same factor?

14 A. Could you repeat your question for me  
15 again?

16 Q. When BellSouth charges CLPs in North  
17 Carolina on a fused amp basis for  
18 collocation power, would it always use  
19 this factor?

20 A. I believe the answer to that would be yes,  
21 with a couple of caveats. In particular,  
22 this is a design factor that we use for DC  
23 power, so that the rated capacity and the  
24 fused capacity, we need to account for the  
25 fact that, you know, we -- just like in

1        your home circuit, if you need 5 amps of  
2        power on a particular leg in your home,  
3        you put in a 10 amp fuse or a 15 amp  
4        fuse. It's appropriate so that you're not  
5        always tripping that fuse or that circuit  
6        breaker.

7                So there's this similar  
8        overbuilding to allow for the peaks and  
9        variations that goes on. I would imagine  
10       if our design parameters were -- became  
11       more stringent or relaxed and changed from  
12       the 65 percent identified here, we would  
13       probably reflect that in our cost, which  
14       would then be reflected in our rates.

15    Q.    Do you know why Ms. Caldwell would assert  
16       to the North Carolina Commission that by  
17       assigning this 67 percent factor to the  
18       monthly cost would ensure that a CLP is  
19       not overcharged?

20    A.    I can't speak to what she was thinking,  
21       but I do know that if you have a 10 amp  
22       fuse or 100 amp fuse or 200 amp fuse, the  
23       rated power for that circuit is lower than  
24       that. And that's simply what is being  
25       factored for here is that just because you



1        have 100 amp circuit does not mean you're  
2        expecting to use 100 amps. You expect to  
3        use 67 percent of that 100 amps.

4        Q. Is there a risk of overcharging when DC  
5        collocation power is billed on a DC basis?

6        A. I guess it would depend on your definition  
7        of what is an overcharge.

8        Q. Is it possible a CLP would be charged for  
9        more power than it actually used in a  
10       given month?

11       A. If a CLP ordered a hundred amp circuit but  
12       only had a 10 amp drain so we were  
13       charging them on a fused amp basis for 67  
14       amps, then their -- fact that they  
15       overdesigned their service or didn't  
16       provide good engineering documents means  
17       they would be buying more power than  
18       they're using.

19       Q. And you attribute that error to the CLP?

20       A. If they requested a 67 amp feed, we did a  
21       hundred fused amp and they only get 10,  
22       then they obviously overrequested how much  
23       power they needed.

24       Q. Could it ever be the case that BellSouth  
25       would require a CLP to order far more

1 fused amp capacity then it intended to  
2 use?

3 MR. CULPEPPER: I'm going to  
4 object to the form of the question.

5 A. The only limitation I'm aware of is I  
6 think we require a 10 amp minimum.

7 Q. And I believe you stated that if a CLP had  
8 a hundred fused amps provisioned to its  
9 collocation facility, it would get charged  
10 out at 67 amps?

11 A. Yes.

12 Q. Why?

13 A. Well, sorry, I apologize, that's not  
14 exactly clear. The price for the 100 amp  
15 fused rate would take into account that  
16 only 67 amps were expected to be used.

17 Q. Why would 67 amps be expected to be used?

18 A. Because that's the rated factor that we  
19 use in our engineering guidelines.

20 Q. 67 percent is a factor in your engineering  
21 guidelines?

22 A. It's a protection device adjustment  
23 factor, I think is exactly what she calls  
24 it.

25 Q. Does it always apply?



1 A. In DC power, it's appropriate to have a  
2 rated load, which is the expected peak  
3 load, and then you overbuild or provide a  
4 fused amp capacity that is above that so  
5 that you're not constantly tripping the  
6 fuses. I mean, the purpose behind a fuse  
7 in electrical circuit is protection of  
8 both the equipment but also of the people  
9 in the building. The idea is if the  
10 equipment is starting to pull more  
11 electricity than the fuse is designed to  
12 pull, in other words, it starts pulling at  
13 a hundred amps or higher, then the fuse is  
14 designed to trip. Because the reason that  
15 is happening is because the piece of  
16 equipment has gone faulty. And so it's  
17 important for the fuse to cut the power to  
18 that piece of equipment because it's  
19 obviously developed some sort of a short.  
20 And so the engineering design parameters  
21 are to design the fuse to be at this case,  
22 one-and-a-half times the rated power of  
23 the circuit so that it provides adequate  
24 protection and safety for the employees,  
25 the personnel in the building, as well as



1 the equipment, yet it still doesn't become  
2 a nuisance and trip every time a  
3 particular piece of equipment has a peak  
4 load that gets close to that fused  
5 capacity.

6 Q. So BellSouth has their kind of technical  
7 standard that it applies where the fused  
8 amp capacity should be roughly a third  
9 more than the CLP expects to use for  
10 safety reasons?

11 MR. CULPEPPER: I object to the  
12 form of the question.

13 A. I don't believe it's specific to CLPs. I  
14 think it's specific to DC power feeds and  
15 how they're designed.

16 Q. And does that policy reflect some kind of  
17 publication by a panel of engineers or NEB  
18 guidelines or anybody, NEBS?

19 A. I don't know where it comes from.

20 Q. So is it your understanding that this  
21 guideline would apply in all BellSouth  
22 states?

23 A. There may be some local electrical code  
24 guidelines that will also govern that.  
25 It's been in my experience in the past

1       when I did power engineering work in  
2       engineering management, those types of  
3       thing in the power world, that there would  
4       be general rules. But, obviously, there's  
5       national electric code. There can also be  
6       state electrical code rules as well as  
7       local electrical code rules, and we have  
8       to comply with all of those. So it's a  
9       matter of what the local engineering  
10      guidelines would be. My expectation is  
11      this is probably the minimum conservative  
12      view of all of those potential rules that  
13      are out there.

14   Q.   What do you mean by "conservative"?

15   A.   It's probably -- and, again, I'm actually  
16       speculating, which I probably shouldn't  
17       do, but if there are some variations  
18       locally, this may be the most conservative  
19       of the variations, which benefits the CLEC  
20       the most.

21   Q.   It requires the least amount of  
22       overcapacity?

23   A.   That's correct. Actually, I apologize,  
24       it's the opposite of that. This would  
25       provide the maximum amount of capacity.



1 Q. The greatest safety measure?

2 A. Yes.

3 Q. Do you have any familiarity with what  
4 local electrical service guidelines could  
5 be in an individual state?

6 A. I'm not familiar with anything more  
7 recent. I do know that states, as well as  
8 local municipalities, have a tendency, if  
9 there's a particular disaster, quote,  
10 unquote, a fire or something like that,  
11 they sometimes want the local laws to try  
12 to prevent those onetime occurrences from  
13 happening again. I'm familiar with those  
14 issues as they cropped up seven or eight,  
15 nine years ago, my responsibility for some  
16 power engineering guidelines, and we used  
17 to have to incorporate those into our  
18 overall engineering practices.

19 Q. Would you expect those local guidelines to  
20 be more conservative or less conservative  
21 than the factors BellSouth uses?

22 A. My experience has been they would be less  
23 conservative, more safety perspective.  
24 This is a very strong protection device  
25 adjustment factor.



1 Q. I ask you to pick up Exhibit 9 again. And  
2 turn to page numbered 46, Provision 9.1.1.

3 A. Okay, I'm there.

4 Q. And in the BellSouth version of this  
5 language in bold appear the words based  
6 upon the engineered and installed power  
7 feed fused ampere capacity. Do you see  
8 that?

9 A. Yes.

10 Q. Is that another way of saying based upon  
11 the configuration ordered by the  
12 Commission?

13 A. No, I would not agree it's another way of  
14 saying that it's based upon another  
15 configuration based by the Commission.

16 Q. Would this language, in your mind, be  
17 consistent with the relevant orders of  
18 state commissions?

19 A. Yes.

20 Q. What is different about the verbiage that  
21 appears on this page from the verbiage  
22 that I proposed?

23 A. The --

24 Q. Which was in accordance or as configured  
25 in accordance with orders of the state

1 commission, what's different about those  
2 two?

3 A. The term based on engineered installed  
4 power feed, fused ampere capacity is  
5 describing the quantity of what's been  
6 ordered, engineered, and installed. So  
7 it's essentially saying, for lack of a  
8 better term, how many widgets have been  
9 ordered, how many widgets will be billed  
10 for. A portion of that term it says, you  
11 know, fused amper capacity is the part  
12 that's consistent with the applicable  
13 laws. But the engineered and installed  
14 power feed and the capacity aspect is just  
15 talking about the quantity that was  
16 purchased, and that's what will be  
17 assessed.

18 Q. At page 48 of your testimony, looking at  
19 line 7, you explain that the phrase  
20 engineered and installed power feed fused  
21 ampere capacity refers to the number of  
22 fused amps that will be billed in  
23 accordance with whatever the CLP had  
24 requested on its collocation application  
25 and confirmed in its BFFO. Do you see



1           that?

2   A.   Yes, I do.

3   Q.   Do you know what BFFO stands for?

4   A.   I believe it stands for bona fide firm  
5           order.

6   Q.   So does this testimony mean that -- that  
7           is the CLP would tell BellSouth how many  
8           fused amps should be installed?

9   A.   Yes.

10   Q.   And then further down the page, your  
11           testimony discusses a CLP's method of  
12           procedure, MOP?

13   A.   Yes.

14   Q.   And this is the document that the person  
15           or entity installing the power would  
16           follow when installing the fused amps; is  
17           that correct?

18   A.   Yes.

19   Q.   Have you ever participated on -- in any  
20           discussions relating to the dispute that  
21           remains between the parties as to section  
22           9.1.1 of this agreement or how DC power  
23           will be billed?

24   A.   You say engage in discussions.   With who?

25   Q.   With anyone at BellSouth.



1 A. Yes.

2 Q. Did you ever participate on a call in  
3 which the language that appears at page 48  
4 of your testimony was discussed?

5 A. I've had conversations specific to this  
6 language with both Lynn Brewer and also  
7 Bonnie King.

8 Q. Do you know whether this explanation has  
9 ever been provided to the Joint  
10 Petitioners during the course of  
11 negotiations?

12 A. I don't know.

13 Q. Do you know whether the CLPs had ever  
14 requested that such an explanation be  
15 given?

16 A. I don't know.

17 Q. Returning to Exhibit 9, Section 9.1.1,  
18 which is on page 46.

19 A. Okay.

20 Q. Do you see that for the -- essentially,  
21 the Joint Petitioners' proposed language,  
22 there's language in bold at the end of the  
23 provision that states as set by the  
24 Commission?

25 A. Okay.

1 Q. And you understand that this language is  
2 presently in dispute between the parties?

3 A. Yes.

4 Q. Why is this bold language -- language that  
5 is in bold unacceptable to BellSouth?

6 A. I don't know why this exact language is  
7 unacceptable. It could be that we're not  
8 attempting to recover non-recurring  
9 charges for 48-volt DC power. If that's  
10 the case, I'd strike the whole sentence.  
11 I don't know why those particular five  
12 words are unacceptable to BellSouth.

13 Q. Have you been ordered in all BellSouth  
14 states not to incur non-recurring charges  
15 for 48-volt DC power?

16 A. I don't know.

17 Q. Do you believe it could be the case that  
18 imposing such charges might violate an  
19 order of the state commission?

20 A. I don't know.

21 MR. CULPEPPER: Where is the  
22 section number we're looking at, 9 --

23 MS. JOYCE: .1.1.

24 MR. CULPEPPER: All right.

25 Q. At page 49 of your testimony beginning on



1 line 3, you state that BellSouth is  
2 puzzled as to why the Joint Petitioners  
3 are making certain allegations, the  
4 allegations having been reflected in the  
5 question as posed on page 48, which is  
6 that the language is vague,  
7 unintelligible. So 49, you say that  
8 BellSouth is puzzled as to why Petitioners  
9 are making these allegations when the  
10 language the Joint Petitioners are  
11 complaining about is exactly the language  
12 that that exists in the Joint Petitioners  
13 current language for Section 9.1.1, the  
14 attachment before you.

15 What language in the Joint  
16 Petitioner version of 9.1.1 is exactly the  
17 same language as what we're alleging to be  
18 vague?

19 A. Do you have a copy of the current  
20 interconnection attachment with 9.1.1? We  
21 could look and see what's the same between  
22 that version and what's being negotiated.

23 Q. To my knowledge, Attachment 9 is the most  
24 recent version of Attachment 4 or --  
25 excuse me, this version is the most recent



1 and that Section 9.1.1, as appears here on  
2 this page, is the most recent version.  
3 Were you addressing there should be  
4 different language?

5 A. Well, honestly, what I was addressing was  
6 just the Joint Petitioners' testimony that  
7 talked about our language as being so  
8 vague and unintelligible when we both have  
9 many of the same terms in our version  
10 versus your version. And, you know,  
11 provides Petitioners with more certainty  
12 as to payment obligations, was more of a  
13 comment that this is a lot of rhetoric  
14 because, quite honestly, I look at these  
15 two paragraphs, I consider them very  
16 close. Unfortunately, if the CLPs had  
17 known to call me and ask me what the  
18 definition of engineered and installed  
19 power feed fused ampere capacity was, I  
20 probably would have told them. Might have  
21 resolved some of these concerns. So I  
22 don't necessarily know why we can't  
23 resolve this issue.

24 So -- And so I think my testimony  
25 here is not so much -- is more of

1 response to the rhetoric on this issue.  
2 Our language is fairly close together. I  
3 don't believe our language is vague and  
4 unintelligible and leaves Petitioners with  
5 no certainty as to payment allegations.

6 Q. Do you know whether the CLPs have  
7 questioned that BellSouth's language in  
8 number 9.1.1 be explained here?

9 A. I don't know.

10 Q. Do you know if it ever was explained to  
11 them?

12 A. I would hope in the months that this has  
13 been discussed that it had been, but I  
14 really don't know if it has.

15 Q. Would you be surprised to know that in  
16 your testimony is the first time that this  
17 language has been explained to the Joint  
18 Petitioners?

19 A. Based on this conversation, no, I'm not  
20 surprised to find that out.

21 Q. So you've testified that BellSouth will  
22 provide a choice to CLPs as to whether  
23 they will use fused amps or used amps for  
24 DC power; is that correct?

25 A. We're going to comply -- My testimony



1       talked about the fact we're going to  
2       comply with what the North Carolina  
3       Utilities Commission says we should do in  
4       this particular case. I don't believe  
5       we're opposed to an used amp approach. I  
6       do know that a used amp or meter approach  
7       costs us more money to implement and to  
8       maintain. And as a result, we want to be  
9       compensated for our costs, and there are  
10      some rates that need to be set for some of  
11      those costs. And that -- obviously, that  
12      work needs to be done.

13               But in Tennessee, we've done the  
14      used amp approach as well as the fused amp  
15      approach. We can do that in other states  
16      if we need to. We just need to make sure  
17      that the appropriate costs are set and the  
18      rates are set and the work is done to make  
19      sure that we do it properly.

20      (DEPOSITION EXHIBIT NO. 17 WAS MARKED.)

21   Q. I'm handing you a document that's been  
22       marked Exhibit 17. Can you tell me what  
23       this document is?

24   A. Appears to be -- oh, it's the first page,  
25       it's interrogatory to the Alabama Public



1 Service Commission for Docket No. 29242.

2 MR. CULPEPPER: And I'll reiterate  
3 our objection to questions that go outside  
4 of responses we provided to North  
5 Carolina.

6 Q. Please turn to -- Toward the end of this  
7 document is a page that's marked 34 at the  
8 bottom.

9 A. Okay.

10 Q. And do you see the heading on this page  
11 states that this would indicate that this  
12 is a BellSouth response in North Carolina  
13 to Joint Petitioner interrogatory?

14 A. Yes.

15 Q. And it would be Item No. 4-8(B)3?

16 A. Yes.

17 MR. CULPEPPER: Page 34, okay.

18 Q. Did you assist in the production of the  
19 response that appears on this page?

20 A. No, I did not.

21 Q. You've testified that there are costs  
22 associated with BellSouth implementing a  
23 used amp billing system?

24 A. That is correct.

25 Q. Do you know what those costs are?

1 A. Yes, I do. Those costs would be involved  
2 in the labor and the contracting  
3 associated with bringing people to measure  
4 the -- and potentially provide the  
5 metering service for the used amps.

6 Q. Do you know the amount of those costs?

7 A. I don't know the amount of those costs,  
8 but depending on how the orders come out  
9 in terms of how often or the meter or  
10 complexity associated with that or where  
11 we're supposed to take the meters, and  
12 what kind of record keeping, documentation  
13 we have to provide could affect those  
14 costs.

15 Q. I direct your attention, again, to Exhibit  
16 17, the page marked 34. And you see the  
17 request asks BellSouth to provide all  
18 information about how BellSouth  
19 proportions the cost of provisioning DC  
20 power into infrastructure related and  
21 non-infrastructure related categories for  
22 recurring or non-recurring categories.

23 A. I see that.

24 Q. The response below states, subject to the  
25 objections that were lodged, BellSouth



1 does not have a specific TELRIC study for  
2 North Carolina for the provisioning of DC  
3 power. Do you see that?

4 A. Yes, I do.

5 Q. Does BellSouth have any cost study in  
6 North Carolina for the provisioning of DC  
7 power?

8 A. I don't know.

9 Q. Does it have a TELRIC study for  
10 provisioning DC power in any other state?

11 A. I don't know.

12 Q. And this response goes on to state that  
13 the cost of DC power is one component of  
14 element H.1.8 in a BellSouth TELRIC  
15 study. Do you see that?

16 A. Yes, I do.

17 (DEPOSITION EXHIBIT NO. 18 WAS MARKED.)

18 Q. Going to hand you a document that's been  
19 marked Exhibit 18.

20 MS. JOYCE: I'll note for the  
21 record that this is a portion of a cost  
22 study that was produced in electronic form  
23 to the Joint Petitioners.

24 BellSouth, do you want this  
25 treated as proprietary and confidential?



1 MR. MEZA: Yes, please.

2 MS. JOYCE: We'd like this  
3 transcript testimony marked as proprietary  
4 and confidential.

5 Q. Do you recognize this document?

6 A. No, I do not.

7 Q. Have you ever reviewed a cost study for  
8 BellSouth?

9 A. No, I have not.

10 Q. Have you ever created a cost study for  
11 BellSouth?

12 A. I have not.

13 Q. Please turn the page of this exhibit. Do  
14 you know whether the top of the page, the  
15 designation in the left-hand column, H.1.8  
16 it's entitled physical collocation, power  
17 per fused amp? Do you see that?

18 A. Yes, I do.

19 Q. Does that information correspond to the  
20 information identified in response to the  
21 interrogatory on page 34?

22 A. Yes.

23 Q. Element H.1.8 in BellSouth's TELRIC study?

24 A. Yes.

25 Q. It does correspond?

- 1 A. Yes.
- 2 Q. Can you tell me what the figures on this  
3 line mean?
- 4 A. The line that says H.1.8, physical  
5 collocation, power per fused amp, it says  
6 recurring, \$7.65. I don't know whether  
7 that's the cost or the rates or what it  
8 would be on this particular page.
- 9 Q. Do you notice that this document has Bates  
10 labels on it?
- 11 A. Yes, I do.
- 12 Q. CST, a bunch of numbers. Please turn to  
13 the page that's marked CST018581. And do  
14 you see there there's a matrix and there's  
15 a line item identified as H.1.8, physical  
16 collocation, power per fused amp?
- 17 A. Yes, I see that.
- 18 Q. And can you explain what is depicted in  
19 these numbers? There's -- The figure  
20 \$7.65 appears in a column entitled  
21 revised. And then as filed, September  
22 2000 states \$8.50 for the same line item,  
23 and there's a difference of 85 cents. Do  
24 you see that?
- 25 A. Yes, I do see that.



1 Q. Do you know what that is intended to  
2 represent?

3 A. Other than the same summary you just  
4 provided? It's revised number, a filed  
5 number, and it's simply trying to state  
6 the difference between those two.

7 Q. Do you have training as an economist?

8 A. No.

9 Q. Have you ever testified before any  
10 tribunal related to BellSouth's cost  
11 analysis for DC power?

12 A. I have not.

13 Q. Have you ever testified as to BellSouth's  
14 cost analysis for any -- anything related  
15 to local competition?

16 A. That's going to depend on your definition  
17 "related to local competition". I have  
18 provided -- in a couple of arbitrations or  
19 complaint cases associated with DSL and  
20 broadband, provided information in cost  
21 for the development of various  
22 capabilities that were being asked for.  
23 Also done -- Well, there's testimony that  
24 talked about the cost to deploy certain  
25 types of equipment or DSLAMs. But those



1        were not cost studies, they were estimates  
2        that I had provided based on my experience  
3        in the industry for the costs associated  
4        with those kind of service developments or  
5        software developments as well as the  
6        equipment developments.

7        Q.    Do you know which BellSouth employee or  
8        employees was responsible for creating  
9        this cost study?

10      A.    I do not.

11      Q.    Do you know which BellSouth employee or  
12      employees could interpret this cost study  
13      document?

14      A.    If I were looking for an interpretation, I  
15      would ask either Bernard Shell or Reg  
16      Starks.

17      Q.    Is that S-h-e-l-l?

18      A.    Yes.

19      Q.    Or Rich --

20      A.    Reg Starks.

21      Q.    S-t-a-r-k-s?

22      A.    Yes.

23      Q.    Do you know what purpose this cost study  
24      was provided to the North Carolina  
25      Commission?

1 A. I do not.

2 Q. To your knowledge, is BellSouth willing to  
3 offer CLPs a choice to use used amp  
4 billing in states other than Tennessee?

5 A. Yes, we're willing and able to do that and  
6 offer that as long as the rates are  
7 established and the procedures are  
8 established to properly do a fused amp --  
9 excuse me, a used amp approach.

10 Q. Have rates been established for used amp  
11 billing in Tennessee?

12 A. In Tennessee, yes.

13 Q. How are they established?

14 A. I don't know how they were established.

15 Q. You don't know whether they were imposed  
16 by the Tennessee Regulatory Authority?

17 A. I don't know if they were imposed. I  
18 don't know if we proposed them. I do  
19 imagine they were probably discussed  
20 pretty heavily at some point.

21 Q. Are you familiar with -- strike that.

22 What other terms and conditions  
23 would BellSouth need to negotiate with  
24 CLPs in other states in order to implement  
25 a used amp billing situation?



1 A. Our preference would be to have a similar  
2 process in all states. Florida and  
3 Tennessee differ in that Tennessee  
4 requires us to meter and then we bill.  
5 Based on what we measure in Florida, we  
6 bill based on what the CLP tells us  
7 they're using, and then we have the right  
8 to audit that and then reconcile the bills  
9 appropriately. Those procedures are  
10 different, different rules.

11 And so our preference would be to  
12 adopt a similar set of rules and, you  
13 know, have one set of rules and one set of  
14 procedures that we can kind of uniformly  
15 provide in every state. So I think our  
16 preference would be that, if North  
17 Carolina chooses to go down this path,  
18 that they will model it to Tennessee.

19 Q. Tennessee would be an appropriate model  
20 for used amp billing in North Carolina?

21 A. Yes.

22 Q. Would that be including the rate structure  
23 that was adopted in Tennessee?

24 A. I don't know if the rate structure would  
25 be applicable simply because there may be



1 different cost components in North  
2 Carolina than in Tennessee.

3 Q. You state at page 57 of your testimony  
4 that there are several components of what  
5 the CLP would need to pay for for the  
6 recurring charges for DC power. There  
7 would be an AC usage charge. And that's  
8 on line 10. Do you see that?

9 A. Yes.

10 Q. And does that relate to the amount of  
11 power used on a monthly basis by the CLP?

12 A. Yes. Yes, it is.

13 Q. And that there would be a minimum of 10  
14 amps that would be presumed to be used by  
15 the CLP?

16 A. Yes.

17 Q. And then further down at lines 14 to 15,  
18 it states that there is also a monthly  
19 recurring charge for power plant  
20 infrastructure investment. Do you see  
21 that?

22 A. That is correct.

23 Q. And does that reflect what we've discussed  
24 in terms of the work BellSouth would do to  
25 implement a power feed situation for a

1       collocated CLP?

2       A.   That would be, again, covering us for  
3       engineering and installation of the  
4       appropriate facilities and equipment  
5       necessary to provide the DC power.

6       Q.   And then beginning at line 17, you state,  
7       finally, BellSouth would bill the CLP a  
8       monthly recurring charge per site --  
9       further down -- to provide the clamp-on  
10      ammeter, a-m-m-e-t-e-r. Did I pronounce  
11      that correctly?

12      A.   No, it's actually ammeter.

13      Q.   Ammeter.

14      A.   Yes.

15      Q.   Or other large measurement device. Do you  
16      see that?

17      A.   Yes.

18      Q.   So BellSouth would want to charge a  
19      monthly basis to the CLP, the costs of  
20      this ammeter or some measurement device?

21      A.   Yes.

22      (DEPOSITION EXHIBIT NO. 19 WAS MARKED.)

23      Q.   Handing you a document that has been  
24      marked Exhibit 19. Do you recognize this  
25      document?

1 A. No, I do not.

2 Q. The front page indicates it's something  
3 that's regarded to the Tennessee  
4 Regulatory Authority. Do you understand  
5 that the Utilities Commission that would  
6 have jurisdiction over BellSouth regarding  
7 collocation?

8 A. Yes.

9 Q. And there's a title on the page, Order  
10 Denying Reconsideration, Granting  
11 Clarification, And Adopting WorldCom's  
12 Final Best Offer. Do you see that?

13 A. Yes, I do.

14 Q. Do you understand this is a type of order  
15 the Tennessee Regulatory Authority, or TRA  
16 for short, would have issued?

17 A. Yes.

18 Q. Please turn to what is marked as page 7 on  
19 the bottom. I don't know the source of  
20 the markings that are on this page.

21 A. I appreciate the highlighting. It makes  
22 it much easier to find the reference  
23 you're looking for.

24 Q. The end of the day. Got to be quick.

25 Do you see that the highlighted



1 language, it states that it's reasonable  
2 to conclude that WorldCom should pay the  
3 reasonable costs of monitoring actual DC  
4 consumption?

5 A. Yes, I do.

6 Q. And do you believe that the rate structure  
7 adopted in Tennessee is an appropriate  
8 rate structure for BellSouth to recover  
9 its costs?

10 A. I don't know whether the rate structure in  
11 Tennessee is appropriate to cover our  
12 costs. I do know that it has some  
13 non-recurring and recurring components  
14 associated with the activity in the work  
15 and the costs associated with doing the  
16 measuring and the metering. I don't know  
17 whether it covers our costs or not.

18 Q. Regarding the costs of providing  
19 a clamp-on ammeter--

20 A. Uh-huh.

21 Q. -- could a CLP provide that ammeter?

22 A. They could provide the actual device, but,  
23 obviously, we would be wanting to take the  
24 reading ourselves or hire a contractor to  
25 do the reading on our behalf.

1 Q. In your opinion, would it be unreasonable  
2 to conclude that WorldCom should pay the  
3 cost of monitoring DC consumption in any  
4 other state?

5 A. Could you repeat your question, again? I  
6 think I got caught up in the positives and  
7 negatives of it.

8 Q. The TRA states here, it is reasonable to  
9 conclude that WorldCom should pay  
10 reasonable costs.

11 A. Yes.

12 Q. Do you have any reason to doubt that that  
13 conclusion should apply in other states?

14 A. I think it's reasonable that whoever is  
15 causing us to go through additional steps,  
16 additional costs should be responsible for  
17 covering those costs.

18 Q. Are you aware of the rates, if any, that  
19 were proposed to the Joint Petitioners  
20 when negotiating the rates that will apply  
21 to DC power?

22 A. I'm not familiar with what was proposed to  
23 the Joint Commissioners.

24 Q. At page 45 -- excuse me, 54 of your  
25 testimony at line 6. What is your basis



1 for the statement that Joint Petitioners  
2 were unwilling to negotiate?

3 A. It's based on my conversations with Lynn  
4 Brewer, who was involved in the  
5 negotiation.

6 Q. Do you know whether the rates that were  
7 proposed to Joint Petitioners were  
8 accompanied by any cost support that  
9 explained why the rates were what they  
10 were?

11 A. I don't know.

12 Q. Is there any reason that BellSouth  
13 supplied AC power in a collocation site  
14 should be billed under a different method  
15 than BellSouth supplying DC power?

16 A. If -- I don't know of any reasons that we  
17 wouldn't use -- like I said -- and I  
18 think what you're looking for is a fused  
19 versus used amp approach on AC power as in  
20 addition to DC power. Again, it's one  
21 that escapes us because if you're an  
22 efficient designer, you're actually going  
23 to end up paying more to have us meter  
24 what you ask for.

25 But, you know, if the cost



1 structure is understood and the rates are  
2 established for, you know, doing that kind  
3 of work, we'll be happy to, you know, do  
4 that additional work on behalf of the  
5 CLPs, if necessary.

6 Q. So your position is BellSouth is willing  
7 to provide CLPs a choice in North Carolina  
8 to use used amp billing for AC power?

9 A. Again, I don't know why anyone would  
10 request that, but if -- you know, again,  
11 we're not fundamentally opposed to used  
12 amp approach. Our infrastructure is not  
13 designed to do it. It's a very manual  
14 approach that requires us to have  
15 significant costs associated with paying  
16 someone to do the metering. So if, you  
17 know, the CLPs are willing to cover the  
18 costs of the additional metering  
19 associated with AC used amp versus fused  
20 amp, then I don't understand why we would  
21 be opposed to do that. I don't think we  
22 would be.

23 Q. Has any state commission ordered BellSouth  
24 to provide a fused amp with option for AC  
25 power?

1 A. Yes. Have a fused amp billing power?

2 Q. I'll rephrase it.

3 A. Thank you.

4 Q. Has any state commission ordered BellSouth  
5 to provide a used amp billing option for  
6 AC power?

7 A. Not that I'm aware of.

8 MR. MEZA: Can we go off the  
9 record for a second?

10 (DISCUSSION OFF THE RECORD.)

11 Q. To your knowledge, has any CLP requested  
12 of BellSouth that it negotiate rate terms  
13 and conditions for using used amp billing  
14 for AC power?

15 A. No, I don't know of any requested used amp  
16 billing for AC power.

17 Q. Mr. Fogle, do you know what ruling, if  
18 any, the Georgia Commission has made with  
19 respect to whether used amp billing should  
20 be provided for DC power?

21 A. I believe Georgia has ordered that used  
22 amp billing be available. I do not  
23 believe they have set the rates for us to  
24 do that. So we're kind of awaiting the  
25 rates so we understand how much to bill



1       for before we can make a complete option  
2       available to CLPs.

3   Q.   Do you know whether BellSouth has provided  
4       cost study information be available to  
5       Georgia to assist in setting rates?

6   A.   I don't know if we have yet or not.

7   Q.   Do you know what ruling, if any, the  
8       Florida Commission has made with respect  
9       to whether BellSouth must provide a used  
10      amp billing method for DC power?

11  A.   The Florida Commission has ruled that we  
12      must provide used amp billing method  
13      saying approved -- or ruled a different  
14      method than is in Tennessee. Procedures  
15      are a little different. And, again, they  
16      also have not provided rates yet for the  
17      various pieces of that, so we're waiting  
18      for them to come back with the rates.

19  Q.   Is the rate structure -- Is the rate  
20      structure different or the rate amounts  
21      different?

22  A.   I don't know, to tell you the truth, if  
23      the structure is different. I know the  
24      work requested and the work -- undergoing  
25      work is different between Tennessee and



1 Florida. I would assume that would turn  
2 itself into the costs and also the rates.

3 MS. JOYCE: All right. Given that  
4 the parties are presently trying to work  
5 out an agreement but have not done so in  
6 terms of whether depositions will be taken  
7 in each state, I reserve the right to call  
8 you as a witness in any other state.

9 And to the extent that you may  
10 file additional testimony in the State of  
11 North Carolina regarding the issues we've  
12 spoken to today or BellSouth's positions  
13 change, I reserve the right to reopen your  
14 deposition to discuss those changes with  
15 you.

16 THE WITNESS: Okay.

17 MS. JOYCE: I thank you for  
18 coming, and the deposition is concluded.

19 MR. CULPEPPER: No questions.

20 (THE DEPOSITION CONCLUDED AT 5:11 P.M.)  
21  
22  
23  
24  
25

ERRATA SHEET

Case name: In the Matter of  
 Joint Petition NewSouth  
 Communications for  
 Arbitration with BellSouth

Deponent: Eric Fogle

Date: \_\_\_\_\_

PAGE	LINE	READS	SHOULD READ
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NICOLE FLEMING & ASSOCIATES

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SIGNATURE

I, Eric Fogle, do hereby state under oath  
that I have read the above and foregoing  
deposition in its entirety and that the  
same is a full, true and correct  
transcript of my testimony.

Signature is subject to corrections on  
attached errata sheet, if any.

\_\_\_\_\_  
Eric Fogle

State of \_\_\_\_\_

County of \_\_\_\_\_

Sworn to and subscribed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_