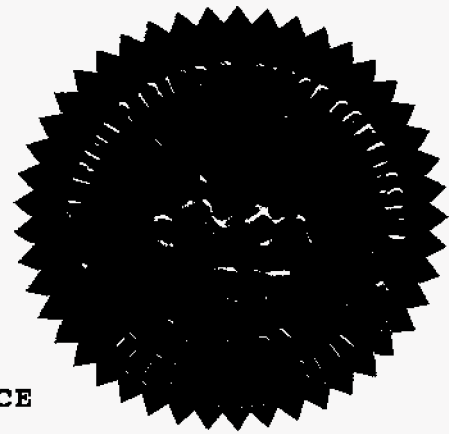


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of  
Consideration of BellSouth  
Telecommunications, Inc.'s  
entry into InterLATA  
services pursuant to Section:  
271 of the Federal  
Telecommunications Act of  
1996.  
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DOCKET NO. 960786-TL



PROCEEDINGS: STATUS CONFERENCE

BEFORE: COMMISSIONER JULIA L. JOHNSON

DATE: Wednesday, September 4, 1996

TIME: Commenced at 8:00 a.m.  
Concluded at 9:20 a.m.

REPORTED BY: JOY KELLY, CSR, RPR  
Chief, Bureau of Reporting  
Official Commission Reporter

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1 **IN ATTENDANCE:**

2 **MONICA BARONE**, FPSC, Division of Legal  
3 Services, 2540 Shumard Oak Boulevard, Tallahassee,  
4 Florida 32399-0870, Telephone No. (904) 413-6197,  
5 appearing on behalf of the **Commission Staff**.

6 **JOSEPH McGLOTHLIN**, McWhirter, Reeves, McGlothlin,  
7 Davidson & Bakas, 117 S. Gadsden Street, Tallahassee, Florida  
8 32301, Telephone (904) 222-2525, representing the **Florida**  
9 **Interexchange Carriers Association**, participating  
10 telephonically.

11 **PATRICK K. WIGGINS**, Wiggins & Villacorta,  
12 P.A., 501 East Tennessee Street, Suite B, Tallahassee,  
13 Florida, 32308, Telephone No. (904) 222-1534,  
14 appearing on behalf of **Intermedia Communications,**  
15 **Inc.**, participating telephonically.

16 **EVERETT BOYD**, Ervin Varn Jacobs & Ervin law  
17 firm, 305 S. Gadsden Street, Tallahassee, Florida,  
18 Telephone (904) 224-9135, appearing on behalf of  
19 **Sprint Communications Company, L.P.**, participating  
20 telephonically.

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1 **APPEARANCES CONTINUED:**

2                   **PHILIP CARVER** 150 West Flagler Street, Suite  
3 1910, Miami, Florida, Telephone (305) 347-5558, appearing on  
4 behalf of **BellSouth Telecommunications, Inc.**, participating  
5 telephonically.

6                   **MARTHA McMILLIN,,** 780 Johnson Ferry Road,  
7 Suite 700, Atlanta, Georgia 30342, Telephone No. (404)  
8 843-6375, appearing on behalf of **MCI**  
9 **Telecommunications Corporation**, participating  
10 telephonically.

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**P R O C E E D I N G S**

(Meeting convened at 8:15 a.m.)

**COMMISSIONER JOHNSON:** Good morning everyone. We're going to go ahead. This is Julia Johnson. I'm going to go ahead and take appearances at this time. And we are on the record.

**MR. CARVER:** Phil Carver, 150 West Flagler Street, Miami, Florida.

**MR. MCGLOTHLIN:** Joe McGlothlin representing the Florida Interexchange Carriers Association, 117 South Gadsden Street, Tallahassee, Florida.

**MS. McMILLIN:** Martha McMillin, MCI Telecommunications Corporation, 780 Johnson Ferry Road Atlanta, Georgia.

**MR. WIGGINS:** Patrick K. Wiggins, for Intermedia Communication, Inc, P. O. Box 1657 Tallahassee, Florida 32302.

**MR. BOYD:** Everett Boyd of the Ervin Varn law firm, 305 South Gadsden, Tallahassee 32301, Sprint Communications Limited Partnership.

**COMMISSIONER JOHNSON:** Any other parties on the line? (No response)

**MS. BARONE:** Monica Barone. Staff counsel. 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

1                   **COMMISSIONER JOHNSON:** Are there any  
2 preliminary matters before we take up the motions?  
3 Anything in addition to the motions? (No response.)  
4 Seeing none, I think it's FIXCA's Motion to Compel.

5                   **MR. CARVER:** Commissioner, I had one  
6 question, I guess you could say, to that format that I  
7 wanted ask --

8                   **COMMISSIONER JOHNSON:** Is this Phil.

9                   **MR. CARVER:** Yes, Phil Carver.

10                   The Motion to Compel has a lot of different  
11 subparts and I just wondered would you prefer to hear  
12 the motion and then the response on one part; the  
13 motion and response on the next, or would you prefer  
14 to hear one side on everything and then the other side  
15 on everything.

16                   **COMMISSIONER JOHNSON:** My personal  
17 preference would be motion and then response. I think  
18 it will flow better for the court reporter and just be  
19 better for my edification.

20                   **MR. CARVER:** Thank you.

21                   **MR. MCGLOTHLIN:** So I'm clear, Commissioner,  
22 you want the presentation on the entire motion  
23 followed by one complete response?

24                   **COMMISSIONER JOHNSON:** Excuse me?

25                   **MR. MCGLOTHLIN:** I'm not sure I understood

1 your preference. Do you want to take it section by  
2 section, motion/response?

3 **COMMISSIONER JOHNSON:** I prefer to take it  
4 section by section.

5 **MR. McGLOTHLIN:** All right. FIXCA filed a  
6 Motion to Compel answers to certain interrogatories in  
7 the first and second sets, and one request to produce  
8 documents. And the first section within the motion  
9 addresses Interrogatories 1, 2, 3, 5, 14, and request  
10 to produce Item 4.

11 Commissioner, I'm going to begin with some  
12 comments that while they belong to this section of the  
13 motion, are equally applicable to all of the argument.

14 My other comments support the first section  
15 of the motion but they are equally applicable to the  
16 other portions of the motion as well. I'd like to  
17 begin with a short background that will appear very  
18 basic but I believe will be useful to make a point  
19 that is needed.

20 This docket was opened in anticipation that  
21 BellSouth will file a petition asking the Commission  
22 to satisfy certain conditions precedent to its  
23 entering the intraLATA market.

24 An application filed pursuant to Section 271  
25 (b)1(a) of the '96 Act must prove, among other things,

1 that BellSouth entered one or more agreements  
2 specifying terms and conditions for access and  
3 interconnection; that it is actually providing access  
4 and interconnection to one or more competing providers  
5 of telephone exchange service. That those competitors  
6 are providing service to residential and business  
7 providers, and that they are doing so exclusively or  
8 predominantly over their own exchange service  
9 facilities.

10 In support of an application under that  
11 section, it's necessary that BellSouth show access and  
12 interconnection that meets 14 different substantive  
13 technical criteria.

14 In short, this case is about specific actual  
15 terms and conditions of agreements. It's about  
16 specific numerous technical criteria. It's about  
17 details of BellSouth's network as well as details of  
18 competitors' networks and more.

19 This case is chocked full of the need for  
20 information, all of which BellSouth has accepted.

21 BellSouth will be required to prove that it  
22 has satisfied these criteria, and the parties  
23 including FIXCA, are entitled to gauge whether that  
24 support BellSouth's contention that its petition  
25 should be granted. In other words, meaningful

1 discovery is essential in this case, and I believe the  
2 Commission recognized that when it decided to open  
3 this docket prior to the filing of a petition by  
4 BellSouth. If information is not forthcoming through  
5 discovery in this phase of the proceeding, the purpose  
6 of the early opening will be defeated and the parties,  
7 including FIXCA, will be severely disadvantaged, and  
8 what will be an extremely difficult time frame in a  
9 very significant case. Just as BellSouth cannot avoid  
10 its burden of proof when it files a petition, cannot  
11 allow it to avoid its obligation to provide discovery,  
12 information through discovery.

13 Now, turning to the specific components of  
14 the first portion of the Motion to Compel. I said  
15 earlier that this case is about the things, specific  
16 agreements, and the extent to which those agreements  
17 satisfy criteria.

18 Interrogatory 1 asks BellSouth to identify  
19 each agreement between BellSouth and unaffiliated  
20 competing provider of the telephone exchange service  
21 upon which BellSouth intends to rely for support of an  
22 application for entry into the intraLATA market. 2, 3  
23 and 5 are built on that initial question and develop  
24 the type of factual information that is needed to  
25 assess whether BellSouth can pass muster when it files



1 a petition.

2           Item 2 asks BellSouth to identify the  
3 particular criteria of section 271(c)(2)(B) Items 1  
4 through 14. And BellSouth contends it has satisfied  
5 implementation of an agreement.

6           Then Item 3 asks BellSouth to describe in  
7 detail with respect to each of those criteria the  
8 arrangement, services, facilities, or means of access  
9 BellSouth is presently and actually providing in  
10 conjunction with each agreement that it identifies in  
11 Interrogatory 1. In addition, the interrogatory asks  
12 BellSouth to provide all current quantitative,  
13 qualitative, technical, and geographical data and all  
14 pricing information necessary to fully describe the  
15 present ability of BellSouth to provide each service  
16 arrangement or access; specific facilities being used  
17 to provide the access; the extent to which the  
18 services, arrangement, and/or access are presently  
19 being provided; and the terms on which they are being  
20 provided. All of this information, requested  
21 information, would be germane to an assessment of  
22 whether BellSouth has met the burden of proof  
23 associated with proceeding under (d)(1)(a).

24           Finally, Item 5 asks BellSouth to provide  
25 the information relative to each unaffiliated

1 competitive provider network, including the  
2 geographical area served, a description of  
3 competitors' telephone exchange facilities, the number  
4 of access lines served by each competitor, and so  
5 forth.

6           In response to Interrogatory 1, the basic  
7 bulk of information on which the others proceed,  
8 BellSouth gave this answer: "At the time BellSouth  
9 filed its petition in this proceeding, it will have  
10 met the requirements in Section 271(c)(1)(a). As of  
11 today, however, the Commission has not approved an  
12 agreement which BellSouth believes meets all of the  
13 requirements of Section 271 (d)(1)(a)."

14           Now, in my Motion to Compel, I first  
15 suggested that this answer is ambiguous. And if it is  
16 the position of BellSouth that it intends to satisfy  
17 (d)(1)(a) by means of a single agreement that  
18 satisfies all criteria, and that is not yet on the  
19 horizon, it should confirm that it's its intent and it  
20 should be held to it.

21           However, I don't think that's what it means.  
22 I have reason to believe that's not what it means  
23 after having read BellSouth's answers to Staff's  
24 interrogatories, which answers were provided I think  
25 about 11 days after BellSouth answered this one.

1           After saying that there's no single  
2 agreement on which BellSouth's belief meets all of the  
3 requirements in response to our interrogatories,  
4 BellSouth proceeded to say that our additional  
5 questions about individual criteria were not  
6 applicable. However, in response to questions from  
7 the Staff regarding whether BellSouth believes it has  
8 complied with the 14 criteria of Section 271, in  
9 individual responses, BellSouth, by my count,  
10 indicated that it believes it has complied with all 14  
11 with the single caveat that it is assessing the recent  
12 order of the FCC, but the statement is that it  
13 believes that it has complied with each of those 14  
14 criteria.

15           Now, the difference between the way FIXCA  
16 approached this need for information and the way Staff  
17 approached it is this: FIXCA started with the  
18 agreement and asked questions designed to proceed from  
19 the identification of agreement to the identification  
20 of the individual criteria. Staff started with  
21 individual criteria, then asked questions leading to  
22 the identification of the agreement.

23           In response to our questions, BellSouth said  
24 well, there's no agreement, so we can't even talk  
25 about criteria. Yet in response to Staff's questions,

1 BellSouth said it has met all 14 criteria, but it  
2 couldn't answer any in the affirmative without relying  
3 on an agreement. It identified the agreement with ICI  
4 among others as those that it believes complies.

5           So for that reason I believe that BellSouth  
6 does not propose to proceed in accordance with the  
7 answer it gave to our Interrogatory 1. Now, you may  
8 ask since BellSouth did identify some agreements in  
9 response to Staff's questions, are my questions  
10 necessary? My response is they absolutely are because  
11 this is just a starting point. Other questions that  
12 proceed from the identification of the agreement are  
13 necessary to flesh out the information that will  
14 determine -- that will help assess whether BellSouth  
15 can meet its burden of proof when it files its  
16 petition.

17           So for that reason we believe that the  
18 answer to Interrogatory 1 is evasive and unresponsive  
19 and if BellSouth should try to identify those  
20 agreements on which it intends to rely at this point,  
21 and then to provide full and complete answers to the  
22 additional interrogatories in Section 1.

23           With that I'll turn it over, Commissioner.

24           **COMMISSIONER JOHNSON:** Thank you very much.

25 Bell.

1           **MR. CARVER:** To begin with, I think we have  
2 to look at the actual language of FIXCA's  
3 Interrogatory 1. And by the way, I'm not going to  
4 make any certain opening statement, I'll just jump  
5 right into the specific items that we're here to talk  
6 about.

7           First of all, FIXCA asks whether we intend  
8 to assert, I suppose at some point in the future in  
9 this proceeding, that we've met the requirements of  
10 271(c)(1)(a). And then the interrogatory continued by  
11 asking "If the answer is yes, identify each agreement  
12 between BellSouth and an unaffiliated competing  
13 provider of telephone exchange service upon which  
14 BellSouth intends to rely in support of its  
15 contention."

16           Now, if there's a problem with our  
17 interrogatory answer, it's not that we didn't provide  
18 enough information; I think it's probably that we  
19 tried to provide too much. Because the short and  
20 simple answer to this question is we don't know. At  
21 this juncture we haven't made a determination as to  
22 what we're going to rely on. Again, maybe I should  
23 have said that. I certainly said that in my response  
24 to the Motion to Compel, maybe we should have just  
25 said that and left it at that point in the

1 interrogatory. But instead we went beyond that and we  
2 made the observation that at this point the Commission  
3 has not approved any particular agreement that we  
4 believe meets all of the criteria. And FIXCA knows  
5 perfectly well what the agreements are; once they are  
6 executed and completed, they are filed with the  
7 Commission and we request approval, so they have  
8 access to those agreements just as much as we do.

9           Again, the point, though, is at this  
10 juncture we don't know what we're going to rely on,  
11 and we don't know that any of them particularly will  
12 be utilized in any particular fashion when the 271  
13 proceeding begins.

14           Now, two things: Mr. McGlothlin, I guess,  
15 is implying we're stonewalling him and giving answers  
16 to the Staff at the same time, but I think it's  
17 important to note that Staff asked a different  
18 question. They didn't ask us what we intended to rely  
19 on at some future point; they just simply asked us if  
20 there was an agreement out there somewhere that we  
21 thought met the particular requirements. If you look  
22 at our answer, it's still kind of vague because  
23 frankly we just don't know. I think the answer that  
24 we gave was the ICI agreement might meet the criteria,  
25 although we're really not sure given the recent FCC

1 orders, and there may be others.

2           So I think the pattern that you're seeing  
3 here with both our responses to FIXCA and our  
4 responses to the Staff is that at this juncture, we  
5 just don't know. And the bottom line is if we don't  
6 know something, I don't know how to clarify or qualify  
7 or expand on "we don't know."

8           One thing about this that I think is very  
9 interesting and very extraordinary, really, is I heard  
10 Mr. McGlothlin make a statement at some point that if  
11 we intend to rely on this agreement or if we intend to  
12 rely on that, or whatever, I think his comment was  
13 that we should confirm that and be held to it. So in  
14 effect, I guess what he's saying is at this juncture  
15 FIXCA wants to know what we're going to do at some  
16 point in future. We don't know what we're going to do  
17 at some point in the future. So in order to answer  
18 FIXCA's interrogatories, they want us to make a  
19 decision we haven't made and then be bound by it.  
20 Again, I think that's fairly extraordinary. I think  
21 when a party is asked interrogatories in discovery, if  
22 they have an answer, they should give them. If they  
23 have no answer, I think to say they don't know is  
24 adequate. And in fact, I think that's the only answer  
25 that in good faith can be given and that's exactly

1 what we have done. And that concludes my response.

2 **COMMISSIONER JOHNSON:** Any follow up?

3 **MR. McGLOTHLIN:** Very briefly.

4 Mr. Carver said his answer is he doesn't  
5 know. That's just not what was provided in response  
6 to the written interrogatory. And it was for that  
7 reason that I suggested that the answer was ambiguous  
8 and that BellSouth needed to clarify and confirm  
9 whether it meant what it said. If it meant what it  
10 said, it means it intends to rely on a single  
11 agreement and would comply with all criteria. That is  
12 nowhere in sight yet.

13 I believe that's not the case. Among other  
14 things in the answers to Staff's interrogatories, in  
15 response to Staff's Question 1C, BellSouth indicated  
16 that it interprets the law to enable it to satisfy the  
17 requirements of Section 271 by following tracks A and  
18 B and combination, which theory I disagree with, but  
19 it tends to belie the premise underlying the response  
20 to FIXCA's question.

21 I think it's somewhat disingenuous for  
22 BellSouth to identify agreements which it contends  
23 comply with the criteria of Section 271 in response to  
24 Staff's questions, and then say it simply doesn't know  
25 on what it is going to rely at the time it files its



1 petition.

2           Based upon the information available, we  
3 think BellSouth has an obligation to flesh out with  
4 respect to the individual competitors, with respect to  
5 the arrangements, contractual and physical, with  
6 respect to terms and conditions, with respect to the  
7 extent of which those arrangements have been  
8 implemented and the other information sought by the  
9 question so that the parties, including FIXCA, can  
10 utilize this period of time prior to the filing of the  
11 petition to assess BellSouth's situation and begin to  
12 prepare the case. If we had to wait until BellSouth  
13 had fully prepared its petition, there would be little  
14 use in having this early start.

15           **COMMISSIONER JOHNSON:** Thank you very much.  
16 The next series of items, I think it's Interrogatory  
17 Item No. 4.

18           **MR. McGLOTHLIN:** Yes. Interrogatory 4 asks  
19 this question "Describe in detail the technical and  
20 operational measures BellSouth has taken specifically  
21 to implement the competitive checklist of Section  
22 271(c)(2)(B) prior to the filing of BellSouth's  
23 petition in this docket. Include all changes made to  
24 the network, all features installed for the purpose;  
25 any capabilities added to its network and/or

1 provisioning system."

2           The answer was "BellSouth has not developed  
3 any operational measures specifically to implement  
4 Section 271(c)(2)(B). Any such operational measures  
5 have been undertaken to promote local competition as  
6 Congress intended, or to meet the requests of specific  
7 parties identified during negotiations."

8           As I state in the motion, FIXCA regards that  
9 answer as evasive and incomplete. This docket  
10 concerns BellSouth's application for authority to  
11 provide in-region intraLATA services. And while  
12 BellSouth is free to point out that the measures  
13 called for by the checklist are required by the Act in  
14 conjunction with its obligation to open its system, it  
15 cannot deny that they are also -- those measures are  
16 also pertinent to its application or its motion for  
17 entry into the intraLATA market.

18           Technically, I would be as free to construe  
19 the answer as commitment that BellSouth doesn't intend  
20 to pursue interLATA business. But that would be as  
21 strained and frivolous as the answer that BellSouth  
22 has given to the interrogatory. I believe that the  
23 thrust of the interrogatories is unmistakable and that  
24 BellSouth has an obligation to provide answers to  
25 flesh out the technical and operational measures it

1 has undertaken.

2           In its written response BellSouth said,  
3 well, if it understood that's what we were after, it  
4 would have complained that that would be burdensome  
5 thing. But these technical and operational measures  
6 are the stuff that this case is going to be made of,  
7 because they bear on whether, for instance, BellSouth  
8 has provided access and interconnection or quality  
9 equal to its own. It bears on whether BellSouth has  
10 provided elements of an unbundled basis as it must  
11 through law, and whether it has provided access and  
12 interconnection on reasonable terms and conditions.

13           There's no escaping the fact that this case  
14 is going to become one of complex technical  
15 information. A lot of information is needed to assess  
16 the condition and there's going to be some work  
17 involved and there's an obligation on BellSouth, we  
18 have all of the information to be forthcoming in  
19 discovery, and it has not done so with respect to  
20 Interrogatory 4.

21           **COMMISSIONER JOHNSON:** Thank you. Bell.

22           **MR. CARVER:** I think that we've answered in  
23 Interrogatory No. 4 the questions they ask. And,  
24 again, the question is to describe in detail the  
25 technical and operational measures BellSouth has taken

1 specifically to implement the competitive checklist.  
2 And our reponse to the question they asked is that we  
3 haven't taken any specific measures to meet 271.

4           What we have instead is a situation where  
5 particular parties have come to us and they've tried  
6 to negotiate arrangements and we've tried to negotiate  
7 also and in some instances we have been successful.  
8 There may have been some technical changes done to  
9 implement those particular agreements. That was not  
10 done specifically to meet 271, and again, that's what  
11 FIXCA asks.

12           I think, first of all, if I can take a bit  
13 of a detour here, I think this interrogatory is a good  
14 example of a continuing problem. FIXCA asked a  
15 question, we answer the question, and then they come  
16 back and say, well, what they asked was not really  
17 what they wanted to know; what they really wanted to  
18 know was something else. And then basically using the  
19 response we've given, they bootstrap that into a  
20 broader more detailed and generally more burdensome  
21 request, and then they act as if that was the original  
22 request. They did that previously with their third  
23 request to produce and their request that we produce  
24 every cost study in existence, and they've done a  
25 similar thing throughout these interrogatories.

1           At this juncture I suppose that FIXCA has  
2 taken the original interrogatory, which I believe  
3 we've answered, and changed it into something else.  
4 I'm not quite sure at this point even what they have  
5 changed it into. They say simply that they want us to  
6 tell them every operational measure that we've taken  
7 to comply with the law. I don't know what that means.  
8 I don't know if that means they want to know every  
9 operational measure that complies -- or I should say  
10 that is necessary to implement the agreements that  
11 have been fully negotiated and executed, things that  
12 we've agreed to do in the ongoing process of  
13 negotiation that is not completed yet, things we have  
14 a general idea that we may need to do but no one's  
15 requested. I have no idea what sort of information  
16 they are asking for at this point, except that when  
17 they ask a specific question and we gave a specific  
18 answer, they said, no, that's not good enough. They  
19 want to know everything. And the problem is FIXCA  
20 continually fails to give specific interrogatories  
21 that ask what they want to know. At this juncture if  
22 they want to know something other than what they have  
23 asked, they need to submit a new interrogatory and we  
24 can respond to that one. The one that they have  
25 propounded, though, I think we've responded to

1 specifically and adequately. And at this point,  
2 again, I'm sort of at a loss to know what else they  
3 want.

4 But I think the burden is on them to ask  
5 what they want rather than to leave us to guess.

6 **COMMISSIONER JOHNSON:** FIXCA, any remarks?

7 **MR. MCGLOTHLIN:** Yes. Mr. Carver says he's  
8 at a loss to know what else we want. They haven't  
9 given us anything yet. The question says describe in  
10 detail the technical and operational measures  
11 BellSouth has taken, "has taken". And while we're  
12 geared to the competitive checklist, specifically to  
13 implement the competitive checklist. In their answer  
14 BellSouth says the measures -- the operational  
15 measures have been undertaken. But that suggests to  
16 me they have in mind certain specific operational  
17 measures and they know what they are, they just don't  
18 think that they need to respond to a question that  
19 speaks in terms of a competitive checklist.

20 But when they say that they have been  
21 undertaken to promote local competition that Congress  
22 intended, well, look what the items on the checklist  
23 involve. They involve the obligations that were  
24 imposed by earlier sections, that in total are  
25 designed to open BellSouth's network to competition.

1 So if you want to play with language, then I contend  
2 that measures undertaken to promote the local  
3 competition as Congress intended are those that are  
4 identified in the items of the checklist.

5 Mr. Carver says that there's a continuing  
6 problem with FIXCA's interrogatories, and while you've  
7 already ruled on the one he mentioned, I'd like to  
8 point out that we didn't ask for every cost study in  
9 the world. We asked for the most recent study in five  
10 categories that was performed prior to the passage of  
11 the '96 Act.

12 He says that we ask a question and then try  
13 to change the question; the opposite is true. In the  
14 response to our Interrogatory No. 1, BellSouth makes  
15 this statement. "In this interrogatory FIXCA requests  
16 that BellSouth state whether it intends to assert that  
17 it's met the requirements of Section 271(c)(1)(a), and  
18 if so to identify the agreement on which BellSouth  
19 intends to rely."

20 We didn't ask for the agreement, we asked  
21 for each agreement. So in their response to the  
22 motion, BellSouth has modified our request, try to  
23 align with its unresponsive answer. So I don't  
24 believe the interrogatories are the problem.

25 I think the information sought was clear and

1 was germane and bears upon the information needed to  
2 assess the forthcoming petition, and that BellSouth  
3 has simply evaded in answering in this regard.

4           **COMMISSIONER JOHNSON:** Okay. And a question  
5 for you. One of the statements that you made, I  
6 think, was that what you were asking for, although you  
7 did describe it in terms of the measures BellSouth has  
8 taken specifically to implement the competitive  
9 checklist of Section 271(c)(b)(2), you are stating  
10 that -- and I think I understand what you want but,  
11 you know, Bell is being quite clever here -- and they  
12 are suggesting that either it was too specific and if  
13 they are to answer what was asked as it is written  
14 here, they can't in good faith say they have done  
15 these things just to satisfy 271.

16           Now, you then go to their response where  
17 they provide any such operational measures that have  
18 been undertaken to promote -- any such operational  
19 measures that have been undertaken have been to  
20 promote local competition as Congress intended. How  
21 would you rephrase that to take it out of the 271  
22 reference and make it a more broad question that gets  
23 at promoting any measures that have been taken to  
24 promote local competition? How could you rephrase  
25 that in a way that won't be overly burdensome? I'm



1 just -- this is just for my edification, how could you  
2 more specifically state the question to get at the  
3 issue that you'd like to see?

4 **MR. McGLOTHLIN:** I think the crux of the  
5 situation is that BellSouth has seized on our use of  
6 the word "specifically."

7 **COMMISSIONER JOHNSON:** Sure. Exactly.

8 **MR. McGLOTHLIN:** If you would simply take  
9 the word "specifically" out of the question, then the  
10 basis on which they hang their hat and refuse to  
11 answer goes away. I don't think it's possible to  
12 separate the idea of local competition from the  
13 checklist. The checklist is a way of assessing  
14 whether local competition has been made available. So  
15 I don't think the objective should be to put one of  
16 the subjects in one corner and another subject in  
17 another corner or in separate questions. I think the  
18 situation simply is that BellSouth has grabbed onto  
19 the word "specifically" to try to change the meaning  
20 of the question in a way that common sense simply does  
21 not support.

22 **MR. CARVER:** Commissioner Johnson, could I  
23 respond, not so much to that, as to your question.

24 **COMMISSIONER JOHNSON:** Yeah. Sure.

25 **MR. CARVER:** I'm really not trying to be

1 clever. The fact is I just don't know what they want.  
2 What we have tried to do to promote competition is to  
3 enter into an agreement, so if FIXCA wants to talk  
4 about the agreement that's been executed and has been  
5 filed with the Commission and to ask us specific  
6 questions about those or what we've done to implement  
7 those, we can certainly answer that. The problem is  
8 at that juncture I don't know what is going to satisfy  
9 them. Mr. McGlothlin says that we say that we don't  
10 know how we're supposed to respond, that we haven't  
11 given them anything, that's true. We haven't given  
12 them anything because we don't know what they are  
13 asking for. And if the discovery in this matter so  
14 far is any indication, I assume that if I agree to  
15 provide information relating to completed agreements  
16 that have been executed, then FIXCA is going to  
17 respond that that's not adequate, that they want  
18 something else.

19           So at this point I would just like to know  
20 specifically what they want. Again, if they can tie  
21 it into particular agreements that have been completed  
22 and if they want to know what we have done to  
23 implement those agreements then certainly I can answer  
24 that. But again, you know, I would just like to have  
25 a question that I understand.

1           **COMMISSIONER JOHNSON:** Mr. Carver, I believe  
2 you're clever now, but I do agree with what you're  
3 saying there. That's what I was trying to get out how  
4 would you specifically provide and state the question  
5 so that you can be as responsive as possible and in a  
6 way that it won't be so broad and overly burdensome or  
7 that you still don't know what they want exactly.

8           So I am somewhat sympathetic with what  
9 you're suggesting here, and that to the extent that  
10 there was some more specificity, as opposed to just  
11 tying it to 271 that FIXCA could provide, I think  
12 that, too, would be helpful.

13           Do you have any more suggestions,  
14 Mr. McGlothlin?

15           **MR. MCGLOTHLIN:** I'm certainly willing to  
16 work on it, Commissioner. I would like to make a  
17 point, though, that in their answer they didn't say  
18 they didn't understand the question, they said that  
19 the operational measures were undertaken for a  
20 different reason. It isn't clear to me that the  
21 question is vague or overly broad.

22           **COMMISSIONER JOHNSON:** No. And I'm not  
23 suggesting that your question was vague and overly  
24 broad, but they answered your question. And then if  
25 it's like, if that's -- by having that word

1 "specifically" in there, in their answer that they  
2 stated here is a very direct answer to a very narrowly  
3 interpreted question. And what I was suggesting is  
4 that is there some way to change the tenor of the  
5 question to get the kind of response that you might  
6 need.

7           And I'm just throwing that out there, some  
8 things to think about. I may have enough information  
9 here to go ahead and rule on this, but I was just  
10 trying to make it clear for the parties if BellSouth  
11 is stating they still don't understand what you want,  
12 if I ask them to provide you what they don't  
13 understand, then that may not be that helpful. It may  
14 not get us to the answers we need in an expeditious  
15 manner. So I'm trying to get at least a meeting of  
16 the minds from all of the parties as to what did we  
17 really expect from this question? What would we like  
18 to see? So when I make a ruling, I can make sure that  
19 parties are receiving the information they need and  
20 parties understand the questions that are asked and  
21 what is being asked to be provided.

22           **MR. CARVER:** Commissioner, if I may, it's  
23 correct, I thought I understood the original question.  
24 I guess what I don't understand is the language in  
25 Mr. McGlothlin's Motion to Compel that they are really

1 after something else. At that juncture all I'm saying  
2 is they can describe specifically what it is really  
3 that they want to know; we'll try to answer it.

4 **COMMISSIONER JOHNSON:** Sure.

5 **MR. MCGLOTHLIN:** What we're after is not  
6 copies of agreements, what we're after are those  
7 technical, operational, physical measures, measures of  
8 business practices and routines that BellSouth has  
9 taken to implement those criteria of the -- that are  
10 contained in the checklist of Section 271. And I  
11 think when you look at the individual criteria that is  
12 the way of becoming specific with respect to each one  
13 of those. BellSouth may or may not have undertaken  
14 operational or technical measures designed to  
15 implement, for instance, access to poles, ducts  
16 conduits, rights-of-way, or local loop transmission,  
17 or local transport, or the other individual criteria  
18 contained in 1 through 14.

19 **MR. CARVER:** Unfortunately, with the  
20 deletion of the word "specifically" that's exactly the  
21 same thing the original interrogatory asked which is  
22 what we did to meet 271.

23 **MR. MCGLOTHLIN:** What is it about that  
24 question that is puzzling to you?

25 **MR. CARVER:** We have on this one for about

1 15 minutes. I think I've explained what is puzzling  
2 to me about it.

3 I mean obviously -- the subject here is  
4 agreements. Do you want to know something about the  
5 agreements? Do you want to know what we've done in  
6 response to the agreement? If so, could you give us a  
7 question that is answerable.

8 MR. MCGLOTHLIN: No.

9 MR. CARVER: Fine.

10 MR. MCGLOTHLIN: The subject is not limited  
11 to agreements.

12 MR. CARVER: Okay.

13 MR. MCGLOTHLIN: That seems to be  
14 BellSouth's problem. It wants to talk about copies of  
15 agreements but this is the point we made on the our  
16 first motion to compel, is that this is not supposed  
17 to be a paper proceeding. This is about networks and  
18 arrangements and facilities and features and access  
19 and those other aspects of operations and equipment  
20 that are necessary to take any agreement into the real  
21 world of business.

22 MS. McMILLIN: This is Martha McMillin. I  
23 just add, I mean BellSouth's answer seems to  
24 acknowledge that -- they say any such operational  
25 measures have been undertaken; it seems to indicate

1 that some operational and technical measures have been  
2 taken; that they have been undertaken to promote local  
3 competition, and you've got the link that the local  
4 competition links into the competitive checklist, so  
5 it seems we are headed down the path of how can we  
6 take that and formulate it, Phil, into a question that  
7 you can answer?

8           **MR. CARVER:** First of all, I'm going to  
9 object. Commissioner Johnson, I now have not only the  
10 party that has moved to compel making argument, I have  
11 other parties making argument also. I think it's  
12 Mr. McGlothlin's motion. I don't think other entities  
13 that have enjoined in that motion or that don't have  
14 anything to do with it should be arguing the motion.

15           **COMMISSIONER JOHNSON:** As to that point, we  
16 did decide we would try to limit the parties  
17 participating in responding and arguing the motion.  
18 However, they are giving FIXCA some latitude because  
19 we are appreciative of the fact that all of the  
20 parties that FIXCA represented have gotten together,  
21 collaborated and tried to help make this process work  
22 as expeditiously as possible by speaking through one  
23 person.

24           I think her question is a fair question. I  
25 don't feel like they are ganging up on you just yet,

1 so I'm going to allow the clarification and the  
2 question.

3 **MR. CARVER:** I'm sorry, I didn't really  
4 understand the question.

5 **MS. McMILLIN:** It seems like we're -- just  
6 trying to help us get a little bit closer to something  
7 here and I guess my question was in the BellSouth  
8 answer to the interrogatory, BellSouth states in the  
9 second sentence that "any such operational measures  
10 have been undertaken to promote local competition."  
11 And that statement suggests to me that there is some  
12 acknowledgement that there have been steps undertaken  
13 to implement technical and operational measures,  
14 promote local competition. And then we do have a link  
15 to promoting local competition; is linked to the  
16 competitive checklist.

17 So it seems like -- I guess my question for  
18 you is, is there a way we can take -- we seem to be  
19 headed down the right path. I'm just wondering if  
20 there is a way we can formulate an interrogatory in a  
21 fashion that would be comfortable to BellSouth,  
22 because we understand that your concern is that you  
23 are not saying you are doing these things just to meet  
24 271 requirements; that they are done for a variety of  
25 methods. And it just seems like there ought to be a



1 way to get this question phrased so you're comfortable  
2 answering it in a nonburdensome fashion.

3           **COMMISSIONER JOHNSON:** Well, I'm going to --  
4 unless there's some closing remarks on that I'm going  
5 to go ahead and continue on to Section 3. I have your  
6 comments and your arguments on this particular point.  
7 Any closing statements?

8           **MR. MCGLOTHLIN:** One quick observation and  
9 that is this: The problem is that FIXCA has to ask  
10 one question, then try to change the question. I  
11 think we have a different situation entirely. I think  
12 here it's clear that BellSouth answered the question  
13 in a way that acknowledges that there are operational  
14 measures but then suggests that we haven't asked them  
15 the right way, so it's not going to describe them to  
16 us. Now that we've cleared that up the answer has  
17 changed, in the course of argument, and BellSouth is  
18 saying they don't understand what we want and needs a  
19 different interrogatory. I just disagree entirely  
20 with that argument.

21           **COMMISSIONER JOHNSON:** Thank you. Section  
22 3.

23           **MR. MCGLOTHLIN:** Commissioner I'm not going  
24 to spend much time on Section 3.

25           **COMMISSIONER JOHNSON:** Sure.

1           **MR. McGLOTHLIN:** This and one other section  
2 I believe can be moved into a give category which  
3 simply is that BellSouth's answer, which is that the  
4 information is not readily available, is inefficient.  
5 There's no objection that it's unduly burdensome.  
6 BellSouth had the ability to provide the information  
7 and I believe they had an obligation to do so.

8           **COMMISSIONER JOHNSON:** Phil.

9           **MR. CARVER:** Actually that wasn't our entire  
10 response. The question was would we state the total  
11 number of loops, and then it breaks it out in  
12 substantive questions into business and residential on  
13 a LATA-by-LATA basis within Florida.

14           We don't keep that information on a  
15 LATA-by-LATA basis. So what we did, we provided it to  
16 FIXCA on an exchange-by-exchange basis and attached to  
17 our answer, looks like about three sheets, which list  
18 every exchange in our service area, the total number  
19 of resident lines per exchange, total number of  
20 business lines per exchange and the total number of  
21 lines aggregating the two. So we've given FIXCA not  
22 just what they've asked for, but considerably more  
23 detail than what they have asked for.

24           Their response to that in their Motion to  
25 Compel is that to say we don't keep it on a LATA basis

1 isn't good enough and we should have to do it anyway.  
2 At this point we've provided them, again, with more  
3 information than they have asked for. And the only  
4 thing I can figure is they think we should take the  
5 exchange information and go through some sort of  
6 analysis on their behalf and regroup them according to  
7 LATAs and then provide it to them. I don't agree with  
8 that. We've given them more than they have asked for.  
9 If they want to take this information and aggregate it  
10 to see what falls into what LATA, they can do that as  
11 well as we can. At this point I think we've not only  
12 adequately answered the question, we've gone beyond  
13 what they have asked.

14 **COMMISSIONER JOHNSON:** FIXCA, any comments  
15 on that?

16 **MR. McGLOTHLIN:** No, Commissioners, I'm  
17 ready to move.

18 **COMMISSIONER JOHNSON:** Okay. Thank you.  
19 Section 4.

20 **MR. McGLOTHLIN:** Section 4 involves  
21 interrogatory items 15 and 16, which asks BellSouth  
22 whether it has refused to provide for -- whether it  
23 has limited network function, feature, service or  
24 arrangement that was requested by a competitive  
25 provider of telephone exchange service.

1           BellSouth's first answer is no, and then it  
2 says in so many words that "This is not to say that we  
3 haven't refused where it was not technically  
4 feasible."

5           For purposes of discovery, BellSouth is not  
6 entitled to be the arbiter of what is technically  
7 feasible or what it not. The question is intended to  
8 identify those situations which could bear on whether  
9 BellSouth has provided nondiscriminatory access to its  
10 network, or whether it has provided access or  
11 interconnection of a quality equal to its own.

12           And while BellSouth doesn't have to simply  
13 say that it is refused, it can suggest that it has a  
14 reason why it cannot simply refuse to provide those  
15 situations where a competitor asks for access or a  
16 feature and was given either nothing or less than it  
17 asked for without providing an explanation of that.

18           **MR. CARVER:** Here's the problem: We have  
19 two types of negotiating situations -- well, actually  
20 three types. We have -- no, I'll go back to two  
21 types. I think that capture it better. We have the  
22 ones that work out and we have the ones that don't  
23 work out.

24           Now to the extent ultimately that a  
25 negotiation doesn't work out with a party what has

1 happened so far is they have moved for arbitration  
2 pretty freely. We have four arbitration proceedings  
3 pending now. The largest is with AT&T which, of  
4 course, is a FIXCA member. The second largest is with  
5 MCI who is also a FIXCA member. I would suggest they  
6 can look at the contentions of AT&T and MCI and the  
7 contentions of us in those proceedings and see what  
8 they have asked for that we've not been able to  
9 provide. I think that lays it out very clearly.

10 Other than that, we have negotiations where  
11 things ultimately work out and the parties come to an  
12 agreement and whatever it is that we can provide and  
13 whatever it is that a party asks for, somehow comes to  
14 a common meeting.

15 In the process of those negotiations, there  
16 may be many positions that the parties take that are  
17 different than the way things ultimately end up. And  
18 if we were to answer FIXCA's questions literally, we  
19 would have to go through a successful negotiation  
20 with -- I don't know, ICI, Time Warner or anyone with  
21 whom we have a agreement and list absolutely  
22 everything they have asked for at any point that we  
23 weren't able to give them. Despite the fact that  
24 ultimately we were able to come to some sort of  
25 agreement. Not only is that burdensome, it's just

1 impossible. Records aren't kept during ongoing  
2 negotiations in such a way as to allow us to do that.  
3 So once again, I'm just not really sure what  
4 Mr. McGlothlin wants, because if he wants to know  
5 about the agreements where ultimately someone asks for  
6 something and they couldn't be accommodated in some  
7 way that ultimately satisfied them, all he has to do  
8 is look at the arbitration petitions that have  
9 principally been filed by the members of his  
10 organization. If he's asking for the other  
11 information, which is sort of incremental information  
12 about every step in the negotiations where things  
13 ultimately work out, then we just don't have that  
14 information and there's no way to provide it to him.  
15 So once again I'm at a loss to know what to give him.

16 **COMMISSIONER JOHNSON:** Any closing remarks?

17 **MR. MCGLOTHLIN:** Yes. BellSouth's answer  
18 was this "BellSouth has never refused to provide to  
19 anyone network functions, features, services or  
20 arrangements as provided for under the  
21 Telecommunications Act of 1996. This is not to say  
22 that requests have not be made for items not  
23 technically feasible, but BellSouth is not required  
24 to provide functions, features, services or  
25 arrangements that are the not technically feasible

1 under the Act." The answer suggests to me that  
2 BellSouth knows and is aware of situations where  
3 competitors have asked for access or a feature and  
4 have been given less than they wanted.

5 Bell's pattern is to provide no information  
6 and then when we've moved to compel, characterize our  
7 question as asking for extreme and burdensome  
8 information.

9 We are not asking for those along every step  
10 of the way. We're asking for those situations where a  
11 competitor asks for and ultimately receives less than  
12 or nothing in response to their request.

13 BellSouth's other pattern is to say, "Well,  
14 there are other ways you can get it. We don't want to  
15 be bothered." But they have an obligation to provide  
16 the information. And referring this to four  
17 arbitration files is not a sufficient answer. That's  
18 not the complete picture.

19 Although I will say that the petition of  
20 AT&T asking the Commission to arbitrate makes it clear  
21 very quickly that there are occasions on which  
22 BellSouth has refused to provide access or a network  
23 feature that has been requested. A very cursory  
24 review of that indicates that there are some eight or  
25 12 network elements that AT&T contends it requested

1 and it was refused.

2           So we don't think that -- in light of just  
3 that single pleading we don't think that the statement  
4 that BellSouth has never refused to provide to anyone  
5 network functions, features, etcetera, is a sufficient  
6 answer.

7           **MR. CARVER:** This is interesting. Now  
8 rather than arguing that he doesn't have the  
9 information, Mr. McGlothlin is arguing the  
10 information.

11           The AT&T petition obviously states their  
12 position. Our position is that when we have stated  
13 something is not technically feasible, it's because  
14 it's not technically feasible, and it should be no  
15 surprise to anyone that we don't agree with AT&T.  
16 That's why they filed the arbitration petition.

17           I really wish Mr. McGlothlin could give me  
18 some clarification, though, because in all of that he  
19 didn't state whether he is seeking information just  
20 about the negotiations that have broken down or  
21 whether he wants basically the information that  
22 doesn't exist about every incremental step of  
23 negotiations that were ultimately concluded.

24           **MR. MCGLOTHLIN:** I think I did say in  
25 response that I am not asking for the incremental



1 negotiations.

2 **MR. CARVER:** Okay. That's helpful.

3 **COMMISSIONER JOHNSON:** Mr. Carver, you were  
4 saying that's helpful. That's helpful -- is it now do  
5 you understand the question and can provide an answer  
6 or --

7 **MR. CARVER:** Maybe we can fine-tune it a  
8 little bit more. He's basically asking in every  
9 instance in which negotiations have broken down what  
10 were the technical sticking points, then, again, I  
11 think all of those negotiations have ended up in  
12 arbitration. And I think the pleadings give,  
13 unfortunately, about as succinct a rundown of what has  
14 occurred as possible. I say unfortunately because the  
15 pleadings are very, very voluminous. The question is  
16 will we go in and take AT&T's petition, MCI's and the  
17 other two parties within the arbitration and summarise  
18 our understanding of the points of contention, or at  
19 least the technical aspects -- yeah, I can do that.  
20 To the extent that's all in the court file, I'm not  
21 really sure what we're providing to FIXCA information  
22 that is readily available to them on the public  
23 record. But yes, that question would be answerable.

24 **MR. McGLOTHLIN:** The questions was not  
25 limited to those that have proceeded to the point of

1 arbitration. There may have been other competitors  
2 who have asked for a particular function or feature  
3 and were either refused or provided something other  
4 than what they asked. That's why it's insufficient to  
5 refer to more pleadings.

6 **MR. CARVER:** We're back to ongoing  
7 negotiations. Because what frequently happens in  
8 negotiations, it's a fluid process; someone asks for  
9 something, if the answer is no they ask for something  
10 else. So if he's saying he only wants those  
11 situations where negotiations have ultimately broken  
12 down, if there have been arbitration petitions, that  
13 he wants all other negotiations where anything has  
14 been refused, then now he's broadened the  
15 interrogatory back to where it was originally and it's  
16 no clearer than it was to begin with.

17 **COMMISSIONER JOHNSON:** Okay. Let's go on to  
18 the next section. I think that's Interrogatory 17 and  
19 18.

20 **MR. McGLOTHLIN:** Yes, Commissioner, let me  
21 find my place here just a second. Interrogatory 17  
22 and 18 we ask BellSouth to provide a detailed  
23 description of procedures that were followed for  
24 ordering and provisioning requests from its long  
25 distance affiliate and of its business practices for

1 transacting business with the affiliate. The answer  
2 was "We'll do it the same way we're doing with other  
3 carriers."

4 I liken that to the answer in a previous  
5 interrogatory where BellSouth says, "Well, we didn't  
6 have to where it wasn't technically feasible."  
7 BellSouth wants to be the judge of whether a  
8 particular practice passes muster or not. We don't  
9 think it's asking too much for BellSouth to provide  
10 the description asked for so that we can gauge whether  
11 any particular nuance they might consider in the same  
12 practice with other carriers is in our estimation  
13 anywhere different.

14 **MR. CARVER:** It sounds like what Mr.  
15 McGlothlin should have sent me was a document request  
16 rather than an interrogatory, because here the  
17 interrogatory is what procedures do we have in place,  
18 or will we put in place, for ordering and provisioning  
19 by a long distance affiliate. And I thought the  
20 answer was pretty straight forward, which is the plan  
21 to deal with our long distance affiliate in precisely  
22 the same that we deal with IXCs. That's the plan.  
23 Now he says he wants us to go from that and give him  
24 specific details about every procedure we have come up  
25 with so far for ordering and provisioning -- or I

1 guess every one we haven't come with that we may come  
2 up with so that those can be compared to what we do  
3 with IXCs.

4           And I think, you know, it's kind of strange  
5 to ask us to enter through an interrogatory by  
6 characterizing practices so he can look at our  
7 characterization and compare it to something else and  
8 make some sort of a judgment.

9           Again, if FIXCA had asked us to produce any  
10 written procedures or standard practices that we have  
11 for ordering and provisioning from our long distance  
12 affiliate that would have been one thing. Frankly, I  
13 don't think there are any. But if there are that  
14 would have been one thing. But instead, we have been  
15 asked to -- what I read is they request for a  
16 characterization of how we deal with our long distance  
17 affiliate and our response is "In exactly the way as  
18 we do with the IXCs." As Mr. McGlothlin well knows,  
19 our practices and procedures for dealing with IXCs,  
20 particularly on ordering and provisioning, are fairly  
21 lengthy and FIXCA has seen it many times and they know  
22 what they are.

23           But again, to talk about what our plans are  
24 with our long distance affiliate, I think we've  
25 answered that question.

1           **MR. McGLOTHLIN:** Another example,  
2 Commissioner, of beginning with a straightforward  
3 interrogatory, asking for a detailed description of  
4 procedures, characterizing it as extreme and  
5 burdensome, they are asking us for things we haven't  
6 even thought of yet for the purpose of providing  
7 providing no information at all. With that I'll  
8 condition included.

9           **COMMISSIONER JOHNSON:** Okay. Let's go back  
10 to --

11           **MS. BARONE:** Interrogatory No. 4. Staff had  
12 some comments on that particular item. That was  
13 Section 2.

14           **MS. BARONE:** Joe and Phil, do you have that  
15 in front of you now?

16           **MR. CARVER:** I do, yes.

17           **MR. McGLOTHLIN:** Yes.

18           **MS. BARONE:** I have a question. Joe, if you  
19 were to reword that question to state something to  
20 this effect, would this get where you want to go: If  
21 you said -- BellSouth responded to Staff's  
22 interrogatory stating it believes that the ICI  
23 agreement, among other agreements, are in compliance  
24 with each of the points in the checklist. If you  
25 asked them to describe in detail the technical and

1 operational measures that BellSouth has taken to  
2 implement those procedures, those elements, and each  
3 of those agreements, would that get you where you want  
4 to go? First of all, asking them to identify the  
5 agreements in addition for ICI and then asking  
6 specifically for the operational measures they have  
7 taken to implement each of those points. Would that  
8 get you where you want to go, Joe? (Pause)

9 MR. MCGLOTHLIN: I'm thinking.

10 MR. CARVER: Can I say something while he's  
11 thinking?

12 COMMISSIONER JOHNSON: Sure.

13 MR. CARVER: The problem with that is I  
14 don't think we've made a determination. Again, when  
15 we responded to Staff's interrogatory we said that at  
16 one point we thought ICI complied. Now with the new  
17 FCC rules we're not sure anymore.

18 The problem is that if FIXCA asked us to  
19 identify every agreement that we currently believe  
20 complies and our answer is at this juncture we're not  
21 sure which comply and which doesn't, I assume they're  
22 not going to be happy with that answer.

23 MS. BARONE: Your answer you say that  
24 BellSouth believes that the agreement with ICI among  
25 others is in compliance. I would like to know

1 specifically why you believe it's in compliance, and  
2 if you have any operational measures that you've taken  
3 at this juncture, that would be helpful.

4           **MR. CARVER:** I can certainly answer that. I  
5 mean the language about "among others," I believe that  
6 was put there simply to indicate that we were not  
7 saying ICI is the only one, just at this juncture we  
8 haven't identified others. If we identified them I  
9 assume we would put them down also. But I mean if you  
10 want that question answered as to ICI, I think we can  
11 do that.

12           **MS. BARONE:** Because as you know, there will  
13 need to be certain measures taken place in order for  
14 service to be turned up, and I think that's where the  
15 question is leading.

16           **MR. CARVER:** The question is if we take ICI  
17 or anything else that we presently identify that we  
18 think likely meets the requirement, what have we done  
19 to implement those? Sure, I can answer that question.

20           **MS. BARONE:** Because it seems to me if  
21 you've taken any measures, any operational measures,  
22 and you're going to implement operational measures,  
23 then you already that. If you have already have  
24 something in place, I don't think you're going to take  
25 a complete opposite -- go in a complete opposite

1 direction at this point because of the FCC rules.

2           **MR. CARVER:** You're moving away from the FCC  
3 and more towards service; what have we done?

4           **MS. BARONE:** Yes, what have you done.

5           **MR. CARVER:** I understand. I don't know  
6 that is adequate to FIXCA but that makes sense to me  
7 and I can certainly answer that.

8           **MR. McGLOTHLIN:** To respond to you, Monica,  
9 I believe that your suggested phrasing of the question  
10 would overlap to the type of information that I think  
11 we're entitled to in response to those  
12 interrogatories, what we called Section 1, we asked  
13 BellSouth to describe with respect to each criteria  
14 the arrangement, services, facilities or means of  
15 access presently and actually providing and the  
16 quantitative technical geographical data and pricing  
17 information, and the specific facilities being used to  
18 provide the service, etcetera, etcetera.

19           I think that covered the same type of  
20 information that you're rephrasing of our  
21 interrogatory would pursue. I think there's some  
22 overlapping of this section and the one that we just  
23 concluded arguing about.

24           **MS. BARONE:** So are you saying my rewording  
25 doesn't get to the question that you specifically



1 raised?

2           **MR. MCGLOTHLIN:** I don't think it's  
3 identical. I think it's in the same neighborhood.

4           **COMMISSIONER JOHNSON:** What would be  
5 missing?

6           **MR. MCGLOTHLIN:** Let me turn back to 4.  
7 I think the problem I have is that it's  
8 limited to the ICI agreement, whereas this was  
9 designed to cover anything that is associated with the  
10 implementation of any 14 criteria.

11           **MR. CARVER:** See, that's really the problem.  
12 I mean, if the question was what technical or  
13 operational measures have we taken to implement  
14 agreements? we could answer that. But FIXCA instead  
15 is asking if it takes some sort of position we haven't  
16 formulated yet. They want us to go out and identify  
17 specific agreements and say "Yes, when we file our  
18 motion, our petition, at some point in the future,  
19 whenever that is, what we're going to argue is this."  
20 And they want all of that to be identified in advance.  
21 And the fact is we don't know. So I mean again,  
22 Monica, I think the language that you suggested works.  
23 I think we can certainly answer that question. What  
24 we can't do is predict the future. That's what we  
25 would have to do to answer FIXCA's interrogatory.

1           **MS. BARONE:** Are you stating, Phil, that the  
2 operational measures would be that different from  
3 company to company?

4           **MR. CARVER:** I'm saying we can take every  
5 agreement we've got and I think we can tell you what  
6 operational measures we've taken to implement those.

7           **MR. McGLOTHLIN:** Well, I think that's my  
8 question.

9           **MR. CARVER:** I'm not through. Some of them  
10 will differ from company to company, some of them are  
11 going to be the same from company to company but  
12 either way we can answer the question.

13                   What we can't answer is FIXCA's demand that  
14 we tell them now the position we're going to take in  
15 the future when we haven't formulated a position. I  
16 believe that's why Mr. McGlothlin persists in tying  
17 this back into 271, because he said earlier on that we  
18 should confirm our position and be bound by it. I  
19 mean he's trying to lock us into a position  
20 prematurely. And it's a position we haven't  
21 formulated, it's an answer we don't know and,  
22 therefore, I can't answer it. If we keep this on a  
23 level what have we done to implement agreements, I can  
24 answer that.

25           **MR. McGLOTHLIN:** I was about to say that if

1 the offer is to describe what has been done to  
2 implement agreements, meaning any agreements in which  
3 any of the criteria have been implemented, then I  
4 think we're talking about the same thing.

5 My problem with Monica's objection was that  
6 it seemed to be specific to a single agreement as we  
7 want to know what is happening across the board.

8 **MS. BARONE:** Joe, just to let you know that  
9 was not how I phrased it. I was including all  
10 agreements.

11 **MR. McGLOTHLIN:** Okay. I think FIXCA would  
12 be interested in seeing the answer to that question.

13 **COMMISSIONER JOHNSON:** Bell?

14 **MR. CARVER:** You know, again, if  
15 Mr. McGlothlin is no long trying to make a estoppel  
16 argument here but it ties into something the question  
17 is simply describe the operational measures they we're  
18 taking to implement the agreements we've entered into,  
19 yeah, I can answer that.

20 **COMMISSIONER JOHNSON:** Describe the  
21 technical and operational measures that you've taken  
22 to implement the agreements. And I understand your  
23 point with respect to the estopple argument, and I  
24 don't think that anyone is arguing that the  
25 information you provide somehow locks you in to not

1 having additional information, or -- information or  
2 additional technical and operational measures at some  
3 later point in time with some agreements that haven't  
4 been entered into at this point in time.

5 Mr. McGlothlin.

6           **MR. MCGLOTHLIN:** It was never my intent to  
7 lock Bell into anything. The idea of holding them to  
8 it was to point out that in a effort to give us no  
9 information, they have taken a position which I  
10 regarded as improbable, and if they were going to  
11 avoid responding to discovery, they ought to have to  
12 live with what they said on paper. That was more a  
13 rhetorical remark than any attempt on my part to say  
14 that they would be estopped in any way from putting  
15 the petition to get in what we want to.

16           What we're trying to gather here is the  
17 information that is available at this point.  
18 BellSouth seems to say it's struggling, it has a  
19 problem, doesn't know what it's going to do. But the  
20 other parties are faced with the problem of trying to  
21 get the information that is available. And I think  
22 that's -- rewording of that question perhaps is a  
23 pretty good compromise in terms of fleshing out what  
24 is available now.

25           **COMMISSIONER JOHNSON:** Okay. Any other

1 outstanding issues then?

2           Now, with respect to let's just look at the  
3 one interrogatory Item 4 and perhaps the rephrased  
4 question. Should we at this point in time  
5 determine -- but we're trying to work as expeditiously  
6 and as orderly as we can. Since we have some  
7 agreement at least on that item, I'll have to rule on  
8 some of the other items. Do we need some time line  
9 for responding? Monica, what do you suggest?  
10 Parties? I want to try to reach some agreement  
11 between all of you as to when we think, taking these  
12 item by item as we get them worked out when we could  
13 get some answers to these questions.

14           Staff is suggesting that you be given ten  
15 days to provide a response to that rephrased  
16 interrogatory Item 4. Bell, do you have any comments  
17 on that?

18           **MR. CARVER:** I can comply with ten days.  
19 That's not a problem.

20           **COMMISSIONER JOHNSON:** FIXCA, do you have a  
21 problem that?

22           **MR. McGLOTHLIN:** No.

23           **COMMISSIONER JOHNSON:** Okay. Very well. I  
24 think the other sections I'm going to have to try to  
25 rule on those. I don't think there are any others

1 that we can work out at this point in time. One  
2 second. (Pause)

3 With respect to the other issues we will  
4 endeavor to have a ruling out on Friday and a written  
5 order on Monday. And you'll hear from us in that  
6 regard by Friday. Any other issues?

7 **MR. McGLOTHLIN:** Not for FIXCA. Thank you,  
8 Commissioner.

9 **COMMISSIONER JOHNSON:** Thank you very much  
10 and this conference call is motion hearing is  
11 adjourned.

12 (Thereupon, the conference concluded at  
13 9:20 a.m.)

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1 STATE OF FLORIDA)  
2 COUNTY OF LEON )

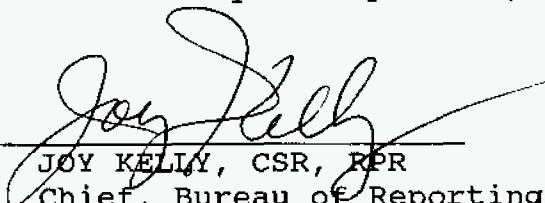
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3 I, JOY KELLY, CSR, RPR, Chief, Bureau of  
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Status Conference  
6 in Docket No. 960786-TL was heard by the Prehearing  
7 Officer at the time and place herein stated; it is  
8 further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript, consisting of 54 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 4th day of September, 1996.

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