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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

FIFTH DAY - AFTERNOON SESSION

VOLUME 21

PAGE 2231 through 2336

PROCEEDINGS: HEARING
BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA
DATE: Monday, September 8, 1997
TIME: Commenced at 12:15 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: NANCY S. METZKE, RPR, CCR

APPEARANCES:
(As heretofore noted.)

BUREAU OF REPORTING

RECEIVED 9-9-97

DOCUMENT NUMBER-DATE
09011 SEP-85

FPSC-RECORDS/REPORTING

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

2
3 (Transcript continues in sequence from Volume 20)

4
5 C. MICHAEL PFAU

6 Continues his testimony under oath from Volume 20:

7 CONTINUED CROSS EXAMINATION

8 BY MR. PELLEGRINI:

9 Q Okay. Same page at 13, lines 13 and 14, you make
10 the point that SPC assumes basically that the process is
11 stable; correct?

12 A That's correct.

13 Q Is it your position then that SPC might some day,
14 might some day be useful for performance measurement
15 comparison, that is, when some of the present kinks are
16 worked out, or is it always to be inapplicable?

17 A Well, I guess that given the vagueness of some
18 day and I might, I could agree with that. I would just
19 state that today there are better and simpler ways of
20 making a comparison that are much more direct than using
21 statistical process control. I would advocate using them
22 rather than statistical process control.

23 Q What might you envision needs to happen --

24 A Excuse me?

25 Q -- to make SPC a suitable methodology?

1 A Well, I could only give you a high level because
2 I think there are severe problems with it, but I think you
3 would have to have the situation be true that, again, the
4 processes are stable, meaning they have been used, they
5 demonstrate repeatable results, which you don't currently
6 necessarily see in the operation of the operation support
7 systems today for CLECs. You would need to have virtually
8 identical processes, meaning you don't have the CLEC order
9 fall out to a manual process and then get reinserted while
10 the BellSouth order falls or goes directly through. And
11 you would have to have a process whereby your upper and
12 lower control limits were set in a proper manner, which
13 from my discussions with the statisticians in our company
14 requires a sample in order to have stable upper control
15 limits that are of equivalent size among the parties; and
16 given that you have such a variety of sizes of CLECs, it
17 would seem that the mere fact that you would not be able to
18 take a reasonably sized sample on all those that your
19 control limits would be so wide that you would not pick up
20 meaningful variations in performance. So those are the
21 kinds of things that would have to be addressed.

22 Q Well, the criteria, as I understand it, you've
23 set forth are that, one, there needs to be stability in the
24 process, there needs to be identity in the processes, and
25 that the upper and lower control limits need to be set

1 properly on the basis of a suitable sample?

2 A Right, and also be set so that they will
3 efficiently detect nondiscrimination.

4 Q But my question is do you foresee these criteria
5 materializing in the reasonable future?

6 A I don't see it anytime soon, and by soon I would
7 say, you know, you are talking 6 to 12 months. As a for
8 instance, that BellSouth is obligated to institute new
9 interfaces for AT&T at the end of this year, certainly the
10 institution of those new interfaces would change the
11 process by which we use to access their OSS, so you
12 certainly couldn't begin to build that evidence of
13 stability until the end of this year; and I think Mr. Stacy
14 said it takes six to nine months of data to build a
15 historical track record. So given that, you're probably
16 talking about probably this time next year at the earliest
17 you would be able to make a demonstration like that.

18 Q So you agree that there is that potentiality in
19 SPC but I gather you're saying it's untimely?

20 A It's too far over the horizon unless BellSouth
21 wants to wait until September '98 to start its 271
22 applications because it's integral to making a
23 nondiscrimination demonstration, that comparison process.

24 Q So it's untimely in the context of the ALEC's
25 successful entry into the market?

1 A It would be untimely to use it for that.

2 Q I believe it's -- Are there superior methods to
3 SPC in your belief?

4 A I think there are more straightforward methods.
5 I think there are means where -- I have to be careful,
6 sometimes terms overlap. I think there are methodologies
7 for comparing average results or means which you can take a
8 very straightforward statistical test given you know the
9 variance and the number of data points, and you can compare
10 those two results and say with a specific level of
11 confidence whether or not those results are the same.
12 That's very simple to do. That doesn't require months and
13 months of data to make a comparison. You can do it with a
14 single month's result.

15 You can also make the same comparison to the
16 variability of the data as a comparison of variance
17 because, obviously, you not only want to make sure that the
18 particular month's results are the same, but you want to
19 make sure that there is no greater swings in the results
20 that customers would see compared between the two parties,
21 and that's why you test variance.

22 Q Turn to page 64, lines 6 through 10.

23 A Okay.

24 Q And there you're critical of the use of three
25 sigma deviations as being not restrictive enough to detect

1 discrimination; is that the case?

2 A That's correct.

3 Q What number of sigma deviations is adequate to
4 properly detect nondiscrimination?

5 A I would say, and this is off the top of my head,
6 that typically you would be looking for a 95% confidence
7 interval which would generally be a two-sigma deviation,
8 and here is where it's going to get a little technical, is
9 that it would be a one-sided test of variance or difference
10 rather than a two-sided. And by that I mean is when you
11 look at performance, you have good performance out of the
12 norm and bad performance out of the norm. The test that
13 the FCC prescribes for nondiscrimination is that it be no
14 worse than; so, therefore, it's a one-sided test. So I'd
15 say 95% confidence interval on a one-sided test to
16 difference.

17 Q On page 65 at lines 2 through 6, there you state
18 that in most cases a 95% confidence interval is used. What
19 in the first place do you mean by most cases?

20 A And I would say, and this is a real qualitative
21 statement, most instances in the business world when you
22 are talking about comparing things, people tend to
23 gravitate to the use of 95% confidence interval. I think
24 it's a balancing of being, between being overly restrictive
25 and overly permissive. It's just a, sort of a convention.

1 I can't point to any statistical information that would say
2 that's precisely the right answer.

3 Q Are you speaking here of the 95% confidence
4 interval in the context of the SPC methodology?

5 A Actually I was talking in the context of
6 comparing results where you are comparing the mean in a
7 one-sided test. When you are talking on the SPC, again,
8 that is a two-sided test and, you know, if I'm getting a
9 little too technical stop me; but again, when you look at a
10 two-sided test, it's more permissive than a single-sided
11 test; and I'm saying you should be using a 95% confidence
12 interval on a single-sided test which is not what SPC
13 employs.

14 Q On that same page, lines 14 -- well, 14 through
15 16 actually, there you express some concerns with the use
16 of three consecutive months of bad performance to trigger
17 investigation; is that correct?

18 A That's correct.

19 Q I believe it's your view that one, two months at
20 the maximum is more appropriate; is that correct?

21 A Certainly.

22 Q Even that seems to me problematic. Is even
23 shorter periods of time realistic, daily, weekly, that kind
24 of thing?

25 A Well, from a CLEC standpoint, you know, I would

1 like to get down to the minute or the second, but I think
2 you have to balance this on what is practical. I think
3 most systems that are in current use today tend to collect
4 data on a report month period. Provided there is prompt
5 action when discrimination is evident, say at the close of
6 the month, you can avoid, I'll say irreparable harm; but if
7 you have a situation where it takes three months to
8 demonstrate that there is a problem and then it takes an
9 indeterminate period after that, say another three months
10 to go to hearings and have an investigation, then you are
11 talking about customers for six months seeing bad
12 performance. And it doesn't matter what kind of excuses
13 you make to a customer after you have given them bad
14 performance, they remember it, and they will not take
15 service from you. So the key thing is, make a decision
16 after a month or two, don't let this drag out.

17 Q Just to be clear, are you saying that one month's
18 worth of bad performance is something that the CLEC can
19 manage, but that the damage -- if that should persist for
20 three months, the damage would be effectively irreparable?

21 A Well, I think it would depend on how many
22 measures were out and how bad the performance was.
23 Obviously, if you had a situation where none of our orders
24 were being processed for a month, that would be serious.
25 If we found, on the other hand, that it was taking on us an

1 average of one more day to get our services installed
2 compared to BellSouth, we might be able to work through
3 that for a month or two. It's a question of degree, but I
4 think, you know, to the extent that you can start action to
5 address non-parity performance after 30 days, that's better
6 than starting it after 60 or 90.

7 CHAIRMAN JOHNSON: Staff, how much more do you
8 have?

9 MR. PELLEGRINI: I'm sorry?

10 CHAIRMAN JOHNSON: How much more do you have?

11 MR. PELLEGRINI: Not very much, Chairman Johnson.
12 Perhaps about three or four more questions, five more
13 minutes maybe.

14 CHAIRMAN JOHNSON: Five more minutes? Okay. Go
15 ahead.

16 BY MR. PELLIGRINI:

17 Q Turn next to page 66 at the bottom, lines 25 and
18 following. Initially at lines 18 through 24.

19 A Okay.

20 Q There you state that one test that could be used
21 in monitoring nondiscriminatory performance is means
22 performance testing; is that correct?

23 A That's correct.

24 Q Is this a test that can be conducted using the
25 SPC methodology?

1 A Not directly the way SPC is employed.

2 Q You say not directly?

3 A Not directly, no. It's sort of buried down in
4 the detail, but it does not, it does not come directly out
5 of the process.

6 Q Is this a test that would be verifiable with the
7 95% confidence interval?

8 A The comparison of means?

9 Q Yes.

10 A Yes, it would be.

11 Q Further down on 66, at lines 25 and continuing on
12 to 67 through line 4, you state that another test that
13 could be used in monitoring nondiscrimination is
14 variability testing; is that correct?

15 A That's correct.

16 Q Again, I would expect that you would not see this
17 as a test that can be used within the SPC methodology?

18 A No, that is certainly not in the SPC methodology.

19 Q Would this variability testing be verifiable to
20 95% confidence interval?

21 A Yes, it would.

22 Q Turning back to page 11 of your deposition
23 transcript, at lines, the statement you make at lines 6
24 through 15. Here again this is a statement critical of the
25 use of target levels for comparison purposes; is that

1 correct?

2 A That's correct.

3 Q Is it possible for -- well, I believe this is
4 your earlier testimony, but let me just be certain. It is
5 possible for the performance levels of BellSouth and for an
6 ALEC to both be, within three sigma limits but yet in that
7 circumstance discrimination still may exist; is that
8 correct?

9 A I think that's correct, yes.

10 Q You say you think. Is --

11 A Well, the statement made here was directed to a
12 particular type of measure, not to the use of statistical
13 process control. I believe given that there are flaws in
14 applying statistical process control to a multi-carrier
15 environment would lead you to a reasonable conclusion that
16 you could not demonstrate that discrimination exists; so,
17 yes, I would say that, but it's not directly related to
18 this reference here.

19 Q Just a final question, Mr. Pfau, do you have
20 Exhibit WNS-C to Mr. Stacy's testimony available?

21 A I have both Mr. Stacy's direct and rebuttal.
22 Which one is that in?

23 Q Direct.

24 A And what was the --

25 Q Exhibit WNS-C.

1 A Okay.

2 Q What data do you understand is plotted in this
3 chart?

4 A The label says "Business Appointments Met." It
5 doesn't have a definition of what that means though.

6 Q Well, my question is this: In Mr. Stacy's cross
7 examination, I believe he stated that if average monthly
8 performances were added to this chart its usefulness would
9 be improved greatly?

10 A It may be improved greatly, but it wouldn't be
11 improved sufficiently to detect nondiscrimination.

12 Q Do you understand that average monthly
13 performance is plotted in this chart, or is something
14 else? What is being plotted?

15 A I would have assumed from looking at this chart,
16 and there is no explanation that really would validate what
17 I say, but I would assume that the diamonds there are
18 BellSouth's monthly results for the period from January of
19 '95 to, it looks like potentially April of '97; and then
20 there are four other points in squares that looks like it
21 should be an amalgamation of all the ALECs that were
22 operating in some unspecified geography in comparison to
23 BellSouth.

24 Q Well, if, in fact, what is being plotted here is
25 average monthly performance, would that make SPC a useful

1 tool for monitoring nondiscrimination?

2 A I don't think so because I've explained what I
3 think the problems are with SPC, but beyond that, percent
4 appointments met is particularly a target measure, so you
5 would be using a flawed comparison methodology to compare a
6 metric that can't demonstrate nondiscrimination.

7 Q Thank you, Mr. Pfau.

8 MR. PELLEGRINI: I have no further questions.

9 CHAIRMAN JOHNSON: We are going to take a break
10 until 1:30.

11 MR. PELLEGRINI: Chairman Johnson, do we need to
12 move exhibits?

13 CHAIRMAN JOHNSON: No, we haven't done redirect?

14 MR. PELLEGRINI: All right.

15 (LUNCH RECESS 12:35 TO 1:30)

16 CHAIRMAN JOHNSON: We're going to go back on the
17 record.

18 Mr. Melson, are there any preliminary matters
19 that you would like for us to address?

20 MR. MELSON: Yes, Commissioner Johnson. I've got
21 a scheduling matter. I've got Mr. Gulino and Mr. Martinez
22 here today. I understand from BellSouth that there is no
23 risk that they will be on the stand today. If we are not
24 going at all tomorrow, I would like to ask basically
25 permission to bring them back on Wednesday and let them go

1 about their business for the next day and a half.

2 CHAIRMAN JOHNSON: No, we aren't going to go
3 tomorrow, and we won't go any later than seven tonight, so
4 that will be fine, we'll call them then on Wednesday.

5 MR. MELSON: All right. Mr. Gulino, I would like
6 to make sure that he does get on on Wednesday.
7 Mr. Martinez we would take in the ordinary course. I'm
8 confident that Mr. Gulino would get on on Wednesday in any
9 event, but he has another commitment now on Thursday.

10 CHAIRMAN JOHNSON: Okay. We'll note that.

11 MR. MELSON: Thank you.

12 CHAIRMAN JOHNSON: Any other preliminary matters?
13 Then I think we are on redirect.

14 MS. RULE: Thank you.

15 REDIRECT EXAMINATION

16 BY MS. RULE:

17 Q Mr. Pfau, Mr. Ellenberg asked you a question
18 about the demonstration that was given to the Commission of
19 the LENS system --

20 COMMISSIONER DEASON: Ms. Rule, I'm sorry, I had
21 a couple of questions. It might be better if I ask mine
22 before you ask yours.

23 Obviously nondiscriminatory parity is not the
24 same as identical; would you agree with that?

25 MR. PFAU: That's correct. I mean in the

1 extreme, parity, you would like to have exact equality; but
2 I think from a practical matter that can't be the
3 expectation.

4 COMMISSIONER DEASON: Okay. How do we go about
5 ensuring reasonable parity without being overly burdensome
6 on the incumbent LEC to the extent that they are more
7 worried about not meeting a parity standard as opposed to
8 providing the best service they can to their incumbent
9 customers?

10 MR. PFAU: Well, I think one of the ways that you
11 can achieve that is with some of the statistical testing
12 that I suggested, meaning comparison of a mean, because
13 what that does is it allows you to have a band of
14 performance, that if the result is within that band, it's
15 considered to be the same result as the other result. So
16 it's not one of these that you have to be exactly the same
17 to three decimal places. So that's one way you'd do it.

18 The other way that you can help avoid defocusing
19 market activities is to use a variety of measures, not just
20 two, use a family of them; and then you can look across
21 them and see whether you get a consistent result from all
22 the measures as opposed to just focusing on one.

23 And what you may do is say, well, if I have 20
24 measures and there is a 5% probability due to random
25 variance that one of those will be out in any month, then

1 what you may do is say I will allow you up to one measure
2 to be in violation before I consider you to be having a
3 problem. But likewise, then you have to take into account
4 that the probability of it being out in consecutive months
5 is extremely low, so one of the parameters you might say is
6 you may have 5% of your measures have questionable results
7 in any one month, but none of those may repeat in a
8 subsequent month, otherwise there is beginning to be
9 evidence that it's a systematic problem.

10 COMMISSIONER DEASON: Thank you.

11 REDIRECT EXAMINATION

12 BY MS. RULE:

13 Q Back to the question about the LENS
14 demonstration. Can the Commission conclude from a
15 demonstration of interfaces offered only to CLECs whether
16 BellSouth's interfaces are discriminatory?

17 A No, I don't think you can, because what happens
18 in the case where you see just the demonstration of a CLEC
19 interface is you only see half of the story, and as I've
20 said before, you would -- in order to conclude whether
21 there is parity or not, you must see not only what the CLEC
22 experiences but what the ILEC, or in this case, BellSouth,
23 would experience in a similar situation; therefore, you
24 have no basis for comparison with the demonstration that
25 has been provided.

1 MS. RULE: No further questions. May Mr. Pfau be
2 excused?

3 CHAIRMAN JOHNSON: Exhibits.

4 MS. RULE: Move 69 and 70.

5 COMMISSIONER KIESLING: 68 and 69.

6 MS. RULE: Thank you.

7 CHAIRMAN JOHNSON: Show those admitted.

8 MS. CULPEPPER: Staff moves 71.

9 MR. ELLENBERG: BellSouth moves 70's.

10 CHAIRMAN JOHNSON: Show those two admitted
11 without objection.

12 Yes, sir, you're excused.

13 WITNESS PFAU: Thank you.

14 CHAIRMAN JOHNSON: Did Mr. Fal -- Is Falvey or
15 Falvy?

16 COMMISSIONER KIESLING: Falvey.

17 CHAIRMAN JOHNSON: Falvey. Have you been sworn?

18 WITNESS FALVEY: No.

19 (Whereupon, Witness Falvey was duly sworn by
20 Chairman Johnson)

21
22 Whereupon,

23 JAMES C. FALVEY

24 was called as a witness on behalf of ACSI and, after being
25 duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. HORTON:

3 Q State your name and address, please?

4 A James C. Falvey, American Communications
5 Services, Inc., 131 National Business Parkway, Suite 100,
6 Annapolis Junction, Maryland, 21108.7 Q And in this proceeding are you adopting the
8 prefiled direct testimony of Ms. Riley Murphy as your
9 direct testimony consisting of 29 pages?

10 A Yes, I am.

11 Q Are there any corrections to be made to this
12 direct testimony?13 A I have a few corrections. In the direct
14 testimony, page 15, line 8, the word "cites" should read
15 "cities." Page 15, line 19, the word "not" should read
16 "no."

17 COMMISSIONER CLARK: Wait, you're getting ahead.

18 WITNESS FALVEY: I'm sorry.

19 COMMISSIONER CLARK: I got the cities, but I
20 didn't get the next one.21 A Okay, page 15, line 19, the word "not" should be
22 "no." In the rebuttal testimony, page 2, line 13 the word
23 "complete" should be "complex."24 Q Mr. Falvey, if I were to ask you the questions in
25 your prefiled direct testimony, your answers would be the

1 same as filed?

2 A Yes.

3 Q And you are also adopting the prefiled rebuttal
4 testimony of Ms. Murphy consisting of four pages?

5 A That's correct.

6 Q You just gave us the correction in that
7 testimony. So if I were to ask you the questions in the
8 prefiled rebuttal, would your answers be the same?

9 A Yes.

10 MR. HORTON: Madam Chairman, I'd request that the
11 prefiled direct and rebuttal testimony be inserted in the
12 record as though read.

13 CHAIRMAN JOHNSON: They will be so inserted.

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1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS**
2 **ADDRESS.**

3 A. My name is James C. Falvey. I am Vice President — Regulatory Affairs, of
4 American Communications Services, Inc. (“ACSI”). My business address
5 is 131 National Business Parkway, Suite 100, Annapolis Junction, Maryland
6 20701.

7 **Q. PLEASE DESCRIBE YOUR BUSINESS EXPERIENCE AND**
8 **BACKGROUND.**

9 A. I joined ACSI in 1996 to serve as Vice President — Regulatory Affairs.
10 Prior to joining ACSI, I was in the private practice of law. Since joining
11 ACSI I have appeared on behalf of ACSI in several other states.

1 **Q. PLEASE BRIEFLY DESCRIBE THE OPERATIONS OF ACSI AND**
2 **ITS OPERATING SUBSIDIARIES.**

3 A. ACSI is a provider of integrated local voice and data communications
4 services to commercial customers primarily in mid-size metropolitan markets
5 in the south and southwest United States. ACSI is a rapidly growing ALEC,
6 supplying businesses with advanced telecommunications services through its
7 digital SONET-based fiber optic local networks.

8 ACSI is a Delaware corporation that is traded publicly on the
9 NASDAQ market under the symbol "ACNS." ACSI, through its operating
10 subsidiaries, including ACSI Local Switched Services, Inc., American
11 Communication Services of Jacksonville, Inc., and American
12 Communications Services of Tampa, Inc. already has constructed and is
13 successfully operating networks and offering dedicated services in many
14 states. At present, ACSI has 28 operational networks and an additional 8
15 networks under construction.

16 **Q. PLEASE DESCRIBE ACSI'S OPERATIONS IN FLORIDA.**

17 A. ACSI is currently offering local services in Jacksonville, Florida under a
18 resale agreement with BellSouth. ACSI has plans to extend services in other
19 BellSouth areas.

20 **Q. WHAT SERVICES DOES ACSI PROVIDE IN FLORIDA?**

1 A. ACSI currently provides, or is actively implementing plans to provide, a wide
2 range of telecommunications and data services, including dedicated and
3 private line, high-speed data service solutions, including IP switching and
4 managed services, local switched voice services, and Internet services.

5 **Q. HAS ACSI ENTERED INTO AN INTERCONNECTION**
6 **AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS INC.**
7 **(“BELLSOUTH”) IN FLORIDA?**

8 A. Yes. ACSI and BellSouth finalized an interconnection agreement which
9 provides for mutual traffic exchange and access to unbundled network
10 elements, including unbundled loops. The Florida Public Service
11 Commission (“Commission”) approved the ACSI/BellSouth Interconnection
12 Agreement (“ACSI Interconnection Agreement”) on December 12, 1996.
13 in Docket No. 960969-TP. ACSI and BellSouth also entered into a resale
14 agreement approved April 2, 1997.

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. The purpose of my testimony is to present ACSI’s response to BellSouth’s
17 Statement of Generally Available Terms and Conditions (“Statement”) and
18 BellSouth’s apparent position that it has met the requirements of the
19 competitive checklist contained in Section 271(c)(2)(b) of the
20 Communications Act of 1934, as amended (the “Act”). Although ACSI is
21 reselling local exchange service to a small number of customers in Florida as
22 are other providers under the Telecommunications Act of 1996, competition

1 from a reseller is not sufficient to constitute competition in the market nor is
2 it adequate to assess BellSouth's procedures in place for the implementation
3 of facilities-based competition for the purposes of Section 271.

4 ACSI has become a facilities-based provider of local exchange service
5 to a small number of business customers in isolated pockets in other states,
6 but it is not a facilities-based provider in Florida at this time. ACSI is a
7 facilities-based provider in Columbus, Georgia, Montgomery, and
8 Birmingham, Alabama, and Louisville, Kentucky and (as well as 4 other non
9 Bell areas) as such, has critical first-hand experience in dealing with
10 BellSouth in the local exchange markets. ACSI's experience demonstrates
11 that BellSouth still has great strides to make in opening the local markets to
12 competition before BellSouth's entry into in-region long distance service.
13 Based upon ACSI's experience, BellSouth's request to provide in-region
14 interLATA service is premature. The Commission should withhold support,
15 under its consulting role pursuant to Section 271 of the Act, for BellSouth's
16 anticipated FCC application to provide in-region interLATA service until
17 significant facilities-based competition has developed and the necessary
18 safeguards are in place to ensure that local competition will continue to
19 develop.

20 **Q. AS A THRESHOLD MATTER, WHAT STANDARD SHOULD THE**
21 **COMMISSION APPLY IN DETERMINING WHETHER**

1 **BELLSOUTH HAS FULFILLED THE REQUIREMENTS OF**
2 **SECTION 271 OF THE ACT?**

3 A. The Commission should not endorse BellSouth's compliance with Section
4 271 of the Act or reentry into the long distance market until actual, effective,
5 facilities-based competition exists in both the residential and business market
6 for local exchange services and exchange access services in the State of
7 Florida. This standard requires BellSouth not only to have entered into
8 interconnection agreements but also to have fully implemented such
9 agreements.

10 **Q. DO YOU BELIEVE THAT THE SO-CALLED TRACK B (Section**
11 **271(c)(1)(B)) IS APPROPRIATE?**

12 A. No. Despite various creative interpretations of Track B by RBOCs across the
13 country, the language of Section 271(c)(1)(B) is only available under certain
14 very limited circumstances which do not apply here. The plain language of
15 Section 271(c)(1)(B) states that BellSouth can pursue Track B if "no such
16 provider has requested the access and interconnection described in
17 subparagraph (A)"

18 Because ACSI and several other carriers have requested access and
19 interconnection, Track B simply does not apply. The development of actual,
20 effective facilities-based local competition must therefore be the measure of
21 BellSouth's entry into long distance under Track A. The Department of

1 Justice and the FCC have rejected BellSouth's interpretation of Track A and
2 Track B, and endorsed that of ACSI and other ALECs.

3 **Q. DOES ACSI OPPOSE BELL SOUTH'S REENTRY INTO THE**
4 **MARKET FOR IN-REGION INTERLATA SERVICES AT THIS**
5 **TIME?**

6 **A.** Yes. BellSouth has not complied with the requirements of the checklist and
7 BellSouth's reentry at this time could have devastating and irreversible
8 effects on the development of competition in local markets. Competition in
9 the markets for local exchange and exchange access services in Florida to the
10 extent it exists, is still nascent. Furthermore, network construction is a time-
11 consuming, complex and expensive undertaking.

12 Although ACSI is expanding its networks at a phenomenal pace, it
13 cannot possibly replicate the BellSouth network in the short term. BellSouth
14 built its ubiquitous local network over the course of a century with a
15 monopoly revenue stream derived from ratepayer dollars, while ALECs have
16 existed for only a few years and have been funded as competitive start-up
17 enterprises. Moreover, BellSouth's unreliable unbundled loop processes have
18 to date made it difficult for ACSI to serve customers not located on ACSI's
19 network.

20 The Commission should err on the side of caution in permitting
21 BellSouth's entry into in-region long distance. Once Section 271 approval

1 is granted, it will be impossible to revoke that approval without serious
2 disruptions to Florida consumers.

3 **Q. IS ACSI PROVIDING LOCAL SERVICES TO RESIDENTIAL**
4 **CUSTOMERS IN FLORIDA?**

5 A. No. From a business perspective, ACSI is unable to provide local service to
6 residential customers largely because BellSouth's pricing policies have
7 created a price squeeze that makes it economically infeasible to serve the
8 residential market. ACSI is technically able to provide residential services,
9 however.

10 **Q. WHAT IS IT ABOUT BELLSOUTH'S PRICING POLICIES THAT**
11 **EFFECTIVELY PRECLUDES ACSI FROM PROVIDING LOCAL**
12 **SERVICE TO RESIDENTIAL CUSTOMERS?**

13 A. In order to serve residential customers with its own facilities, ACSI must
14 purchase local loops and related facilities as unbundled network elements
15 from BellSouth. While ACSI will be able to overbuild and thereby replace
16 BellSouth's interoffice transport facilities, tandem switching, local switching
17 and signaling over time, there is no economical substitute for the ubiquitous
18 local loop constructed by BellSouth with a century-long monopoly revenue
19 stream. The out-of-pocket cost to ACSI of purchasing these loops from
20 BellSouth as unbundled network elements constitute a direct cost of service
21 to ACSI. ACSI has additional costs that it must bear in order provide end-to-

1 end service to the end user. ACSI must be able to recover its loop and other
2 costs in its retail pricing. Significantly, in order to compete, ACSI must also
3 offer service at rates competitive with those of BellSouth. Unfortunately,
4 BellSouth has demanded a price for unbundled loops and associated facilities
5 that exceeds the corresponding price charged by BellSouth for residential
6 retail local exchange services.

7 Specifically, ACSI must pay the following for unbundled network
8 elements: \$17.00 for 2-wire loops, \$0.30 for the cross connect, and \$1.15 per
9 loop for interim number portability. Thus, ACSI's total out-of-pocket cost
10 to BellSouth per line is \$18.45, even *before* ACSI pays for its own network
11 and overhead. In comparison, BellSouth's highest residential retail price is
12 \$10.65. Obviously, *since the BellSouth unbundled price to ACSI exceeds*
13 *BellSouth's residential prices*, ACSI -- or any other competitive carrier -- has
14 no prospect of providing service in the residential market at competitive rates.

15 **Q. WHAT WOULD HAVE TO HAPPEN TO OPEN THE RESIDENTIAL**
16 **MARKET IN FLORIDA TO LOCAL SERVICE?**

17 A. BellSouth would have to lower its prices for unbundled loops substantially.
18 ACSI believes that permanent, deaveraged cost-based rates are necessary in
19 order for ALECs to begin to consider offering facilities-based service in the
20 residential market. Once market participants have available cost-based
21 residential loop rates -- which necessarily include deaveraged unbundled loop

1 rates -- they can determine whether residential competition is economically
2 feasible.

3 **Q. HAS ANY OTHER BELLSOUTH REGION COMMISSION FOUND**
4 **THAT PERMANENT COST-BASED RATES MUST BE**
5 **ESTABLISHED PRIOR TO SECTION 271 REENTRY?**

6 A. Yes. The Georgia Commission recently found that permanent cost-based
7 rates must be established before it could recommend that BellSouth should
8 be permitted to reenter the in-region long distance market. (See Georgia
9 Public Service Commission order rejecting BellSouth's Statement of
10 Generally Available Terms and Conditions, dated March 20, 1997, Docket
11 No. 7253-U).

12 **Q. DO CONDITIONS EXIST THAT ALSO PREVENT YOU FROM**
13 **COMPETING EFFECTIVELY IN THE BUSINESS MARKET?**

14 A. Yes. In addition to the limited reach of our network, which I discussed
15 previously, we have experienced considerable difficulty in implementing the
16 ACSI Interconnection Agreement in Georgia, Alabama, and Kentucky, as
17 well as other BellSouth states.

18 **Q. WHAT PROBLEMS HAS ACSI EXPERIENCED?**

19 A. ACSI's efforts to make competitive alternatives available to consumers have
20 been undermined by significant problems with the provisioning of unbundled
21 loops which have delayed, or precluded altogether, ACSI's attempt to bring

1 its services to market. This problem is sufficiently severe so that ACSI has
2 been forced to file two separate formal complaints against BellSouth, one
3 before the Georgia Public Service Commission (filed December 23, 1996;
4 refiled July 9, 1997; attached as Exhibit 1) and one before the Federal
5 Communications Commission (filed January 6, 1997; attached as Exhibit 2),
6 based on BellSouth's continuing failure to provide unbundled loops to ACSI
7 on a timely basis pursuant to the terms of the ACSI Interconnection
8 Agreement. These complaints are in addition to a complaint ACSI filed with
9 the FCC based upon BellSouth's discriminatory application of non-recurring
10 charges for access service rearrangements (attached as Exhibit 3).

11 The principal problem is the difficulty we have experienced in
12 obtaining unbundled loops, provisioned on a timely basis. Our customers
13 have experienced severe service disruptions as a result of BellSouth's
14 inability to cut over unbundled loops. This could potentially damage (and
15 has likely already damaged) ACSI's reputation as a provider of high quality
16 telecommunications services as well as its ability to market to new customers
17 in ACSI's markets.

18 **Q. PLEASE DESCRIBE THE PROBLEMS THAT YOU HAVE**
19 **EXPERIENCED IN BELL SOUTH'S PROVISIONING OF**
20 **UNBUNDLED LOOPS.**

1 A. In November and December 1996, ACSI submitted its initial orders for
2 unbundled loops in Columbus, Georgia. On these orders, BellSouth failed
3 to comply with the installation standards required by Section IV.D of the
4 ACSI Interconnection Agreement. Severe service disruptions resulted to
5 local exchange customers that had selected ACSI as their carrier.

6 On November 19 and 20, 1996, ACSI placed its first three orders for
7 unbundled loops in Columbus, Georgia, requesting cutover of the customers
8 to ACSI on November 27, 1996. The cutover of these customers involved
9 conversion of one or two POTS lines, the simplest possible cutover. Each of
10 the three orders included an order for SPNP. ACSI submitted each of these
11 orders in accordance with the process established in the ACSI
12 Interconnection Agreement and BellSouth guidelines. These orders were
13 confirmed by BellSouth on November 25 and 26, 1996. BellSouth's
14 processing of these orders completely failed to comply with the cutover
15 standards required by Section IV.D of the ACSI Interconnection Agreement.

16 In general, the processing of the orders was not coordinated between
17 ACSI and BellSouth, as the ACSI Interconnection Agreement contemplated,
18 because BellSouth *unilaterally* administered the cutover without contacting
19 ACSI. Moreover, BellSouth failed to install properly the unbundled loops
20 ACSI requested, and caused severe disruptions in service to the local
21 exchange customers that had selected ACSI as their carrier. Two of ACSI's

1 initial three customers were disconnected entirely for several hours. No
2 outgoing calls could be placed, and customers calling the number received an
3 intercept message indicating that the number no longer was in service.
4 Service was disconnected for these customers for 4-5 hours each, or
5 approximately 50 to 60 times longer than permitted under the ACSI
6 Interconnection Agreement. Even after the improper disconnection was
7 remedied and the intercept message was removed for these two customers,
8 BellSouth failed to implement SPNP as ordered by ACSI, causing further
9 delay and disruption to ACSI's first new customers. As a result, these
10 customers could not receive any incoming calls on their lines. As to the third
11 customer, his service was completely disconnected for the entire day of
12 Wednesday, November 27, 1996.

13 **Q. HOW DID ACSI REACT?**

14 **A.** On December 3, ACSI held back orders to protect its reputation. But for
15 BellSouth's provisioning problems, these orders would have been processed
16 on a timely basis. For example, by December 23, 1996, ACSI had received
17 customer orders for 113 access lines. Assuming a five day turnaround, these
18 113 access lines would have been cut over by December 28, 1996. In fact,
19 BellSouth had cut over far fewer lines by that date.

20 Each day of delay in having unbundled loops installed jeopardized
21 our ability to retain the customers we have, not to mention our ability to

1 attract new customers. Moreover, BellSouth's failure to process our orders
2 allowed BellSouth to retain customers that had signed up for ACSI service.

3 **Q. DOES THE ACSI INTERCONNECTION AGREEMENT INCLUDE**
4 **REQUIREMENTS FOR THE PROVISIONING OF UNBUNDLED**
5 **LOOPS?**

6 A. Yes. The ACSI Interconnection Agreement provides, among other things,
7 that BellSouth will: (1) provide mechanized order processing procedures
8 substantially similar to current procedures for the ordering of special access
9 services (Section IV.C.2); (2) install unbundled network elements in a time
10 frame equivalent to that which BellSouth provides for its own local exchange
11 services (Section IV.D.1.); (3) establish a seamless customer cutover process
12 in which ACSI and BellSouth will agree to a cutover time 48 hours in
13 advance, the conversion will occur within a designated 30 minute window,
14 and service to the customer will be interrupted for no longer than 5 minutes
15 (Section IV.D.2, D.3, D.6); and (4) coordinate implementation of Service
16 Provider Number Portability ("SPNP") to coincide with loop installation
17 (Section IV.D.8).

18 **Q. HOW DID BELLSOUTH'S PERFORMANCE IN PROVISIONING**
19 **THESE UNBUNDLED LOOPS IMPACT ACSI'S MARKETING OF**
20 **ITS SERVICES?**

1 A. ACSI customers routinely ask questions about ACSI's ability to deliver
2 service. While ACSI has been able to reassure customers and is signing up
3 new customers in multiple markets every day, BellSouth's provisioning
4 problems have not helped ACSI.

5 **Q. IS THE PROBLEM RESOLVED?**

6 A. No. As explained in the Georgia Complaint (Exhibit 1), the basic problem
7 is that BellSouth still cannot -- or will not-- install loops for ACSI at the same
8 intervals as they do for their own retail customers. In fact, BellSouth has yet
9 to provide satisfactory statistics as to what those intervals are. ACSI's
10 unbundled loop cutover intervals are still completely unsatisfactory. Cutover
11 intervals of over two hours are still routine occurrences. ACSI has also
12 experienced extensive outages across virtually all of its customers in
13 Columbus, Georgia due to a failure of BellSouth's number portability
14 systems. The prevalence of BellSouth system failures in Georgia, Alabama,
15 and Kentucky is completely unacceptable at this time. The Commission
16 should not recommend Section 271 approval until BellSouth's systems are
17 significantly improved, and facilities-based competition takes root in Florida.

18 **Q. IS BELLSOUTH CURRENTLY PROVISIONING THE SMALL**
19 **NUMBER OF LOOPS ORDERED BY ACSI IN GEORGIA?**

20 A. Yes. It is unclear, however, whether BellSouth's procedures are reliable and
21 capable of handling the increased volume of loops as ACSI and other ALECs

1 increase their marketing efforts. Although BellSouth has processed certain
2 new orders without incident in recent weeks, BellSouth's refusal to give
3 adequate assurances that it will be able to comply with the provisioning
4 standards set forth in the ACSI Interconnection Agreement makes it
5 impossible for ACSI to be confident that BellSouth has a reliable system in
6 place to unbundle the local loop. For example, in addition to further ACSI
7 volume in Columbus, BellSouth must handle loop orders from Montgomery,
8 Louisville, Birmingham, New Orleans and possibly additional ACSI ^{cities} eites by
9 year's end. BellSouth's regional ordering and provisioning systems must
10 also handle significant volumes of loop orders from other ALECs. Before
11 ACSI can effectively compete against BellSouth, it must be able to order and
12 have installed a significant volume of unbundled loops on a reliable basis.
13 To date, BellSouth has demonstrated no capability of handling high volumes
14 of access lines. Indeed, ACSI has every indication that BellSouth still has not
15 put systems into place for provisioning unbundled loops that by law should
16 have been in place months ago.

17 Additionally, ACSI has not requested loops in Florida. Because
18 BellSouth appears to have inadequate training, each new market appears to
19 be a fresh start for BellSouth, with little or ^{no} ~~not~~ notable improvement over the
20 last. Therefore, it is impossible to know if BellSouth's procedures for
21 provisioning loops will be reliable in Florida. Although ACSI is working

1 closely with BellSouth and hopes its processes will improve, ACSI's
2 experience in Georgia, Alabama, and Kentucky leads us to believe that
3 BellSouth's procedures are not reliable. Consequently, ACSI has no reason
4 to expect that BellSouth will be able to cut over scores of customers a day
5 once ACSI's services establish even a modest foothold in Florida. Under
6 these circumstances, the Commission's support for BellSouth's Section 271
7 Application would be premature.

8 **Q. DOES THE INTERCONNECTION AGREEMENT REQUIRE**
9 **ACCESS TO OSS?**

10 A. Yes, in Sections IV.C and IV.D of the ACSI Interconnection Agreement.
11 Given the initial difficulties with BellSouth's loop provisioning, ACSI
12 believes that BellSouth's electronic interfaces must be fully developed prior
13 to BellSouth's entry into the inregion interLATA market.

14 **Q. PLEASE EXPLAIN ACSI'S CURRENT ACCESS TO BELLSOUTH'S**
15 **OPERATIONAL SUPPORT SYSTEMS.**

16 A. ACSI is currently utilizing the BD-Telis (or EXACT) system, which was
17 designed for special access, to place orders. Only initial ordering of
18 unbundled loops is electronic at this time. ACSI submits an electronic order
19 to BellSouth, and BellSouth responds with an electronic firm order
20 confirmation. Other than that, processes such as pre-ordering, order tracking,
21 billing, and repair and maintenance are not yet electronic.

1 **Q. HAS ACSI REQUESTED BETTER OSS?**

2 A. Yes. Since ACSI began speaking with BellSouth at the operational level in
3 July 1996, ACSI has continually requested the best interfaces available. Only
4 recently has BellSouth offered an interface designed for local service. On
5 May 27, 1997, BellSouth visited ACSI to demonstrate the Local Exchange
6 Navigation System ("LENS"). It now appears that ACSI will not be able to
7 utilize this system until mid-August at the earliest. ACSI has already lost
8 customers across the BellSouth region on both resale and unbundled loops
9 due to BellSouth's inexcusable delay in implementing this system. As with
10 other critical interconnection arrangements, BellSouth must demonstrate
11 proven performance and not just paper promises in order for BellSouth to
12 meet the Section 271 checklist. ACSI recommends extensive experience
13 with live customer orders before this Commission passes judgment on LENS.
14 Mere testing cannot successfully emulate live orders and ACSI will provide
15 its analysis of LENS once it is up and running for a period of time.

16 **Q. ARE THERE ANY LIMITATIONS TO THIS SYSTEM OF WHICH**
17 **YOU ARE AWARE?**

18 A. Yes. There is at least one critical limitation that I am aware of at this time.
19 According to BellSouth, LENS cannot process unbundled loop orders at this
20 time. To the extent that facilities-based competition is one of the key
21 prerequisites to Section 271 approval, a positive Section 271

1 recommendation for BellSouth should not be considered at least until such
2 time as unbundled loops can be ordered and installed as quickly as the
3 equivalent BellSouth business services with which ACSI will compete when
4 it employs the unbundled loops.

5 **Q. IS LENS CURRENTLY FUNCTIONING FOR OTHER CARRIERS**
6 **AT THIS TIME?**

7 A. ACSI has heard in hearings in Louisiana that two publicly undisclosed
8 carriers are using or testing LENS at this time. This limited test does not
9 satisfy the Department of Justice's standard for OSS as described in its recent
10 brief to the FCC. Evaluation of the Department of Justice, In the Matter of
11 SBC Communications Inc. et al. Pursuant to Section 271 of the
12 Telecommunications Act of 1996 to Provide In-Region, InterLATA Services
13 in the State of Oklahoma, CC Docket No. 97-121, at 28-30. Furthermore, to
14 the extent that ACSI currently has significant numbers of backlogged resale
15 orders that are slowing the development of local competition, scalability
16 must be an integral part of the Commission's examination of BellSouth OSS.

17 **Q. HOW DOES THAT AFFECT YOUR ABILITY TO COMPETE**
18 **EFFECTIVELY WITH BELLSOUTH IN THE LOCAL MARKETS?**

19 a. It has the ability to greatly affect ACSI's ability to compete with BellSouth
20 in the local markets. In ACSI's experience in Georgia, the current electronic
21 fax/manual processes are extremely cumbersome and have caused ACSI to

1 lose customers across the region. In order to expand further, ACSI will have
2 to increase its volume of orders exponentially in the near future. Moreover,
3 large volume ALECs, such as MCI and AT&T, will soon be entering the
4 local market. Electronic bonding to BellSouth's OSS is absolutely critical to
5 support that growth. Without it, ACSI and other ALECs cannot hope to
6 garner significant market share. Interexchange carriers ("IXCs"), for
7 example, simply could not function if the ILECs refused to accept electronic
8 submissions of changes in customers' selections of their primary
9 interexchange carrier ("PIC"). The numbers are simply too great for manual
10 processing.

11 **Q. HAS THE FCC INDICATED THAT ELECTRONIC INTERFACES**
12 **WILL BE SCRUTINIZED IN THE SECTION 271 APPROVAL**
13 **PROCESS?**

14 **A. Yes. FCC Chairman Reed Hundt has indicated that this issue is relevant to**
15 **the FCC's decision-making process. TR. Daily, Vol. 3, No. 30, February 13,**
16 **1997. The Department of Justice has likewise emphasized the critical**
17 **importance of electronic interfaces.**

18 **Q. CAN ACSI COMPETE EFFECTIVELY IF BELLSOUTH'S**
19 **STANDARD INSTALLATION INTERVALS EXCEED THOSE**
20 **WHICH BELLSOUTH AVERAGES FOR ITS OWN CUSTOMERS?**

1 A. No. Service quality is as or more important than price in the local market.
2 If an ILEC, such as BellSouth, can guarantee quicker installation, either by
3 longer standard intervals for ALECs or by expediting installation for its own
4 customers, then ALEC service will be viewed as inferior. BellSouth will use
5 such advantages to differentiate its product in the market. Notably, the
6 problem is even worse when, as has been the case in Georgia, Kentucky,
7 Alabama, and throughout the BellSouth region, ACSI is unable to meet
8 promised delivery dates due to BellSouth's inability or unwillingness to
9 perform consistent with the Telecommunications Act and under the ACSI
10 Interconnection Agreement. The fact that BellSouth can embarrass its
11 competitor in front of customers whenever it so chooses simply by dragging
12 its feet is a very disturbing feature of the emerging market structure for
13 competitive local exchange services. There is no significant, immediate,
14 enforceable penalty in place today to act as a competitive safeguard when
15 such incidents occur. I see no remedy for this inherently discriminatory
16 circumstance other than specified provisioning intervals and a strong
17 enforcement role by state and federal regulatory authorities.

18 **Q. HAVE YOU ASKED BELLSOUTH TO PROVIDE PARITY IN**
19 **INSTALLATION INTERVALS?**

20 A. Yes. ACSI has asked BellSouth to agree to specific installation intervals with
21 prescribed penalties for failure to meet them. BellSouth has refused.

1 Q. YOU TESTIFIED EARLIER THAT BELL SOUTH ALSO IS
2 ENGAGING IN ACTIVITIES THAT ARE IMPEDING ACSI'S
3 ABILITY TO COMPETE EFFECTIVELY IN THE MARKET FOR
4 LOCAL SERVICES. CAN YOU EXPLAIN?

5 A. ACSI is seeing an emerging pattern of BellSouth activities seemingly
6 intended to lock in existing BellSouth local customers and prevent new
7 entrants from freely competing for their business. For example, BellSouth
8 has been signing up business customers to multi-year contracts before
9 opening its local markets. These customers will not be available for ALEC
10 competition.

11 BellSouth has established entrances to all office buildings in the
12 downtown business districts while ACSI and other companies have had great
13 difficulty in gaining access to some buildings, either due to limited space or
14 requests for large sums of money to enter the building. ACSI would
15 encourage the Commission to implement rules to require nondiscriminatory
16 building access to all certificated local exchange providers requesting such
17 access.

18 BellSouth has also established an extremely troubling program that
19 appears intended to effectively lock ALECs out of major office buildings,
20 office parks, shopping centers and other similar locales. Specifically,
21 BellSouth is enticing property management companies to enter *exclusive*

1 marketing arrangements with BellSouth under which the property managers
2 are paid handsomely for promoting BellSouth's services to tenants of the
3 property, and for refusing to establish similar promotional agreements with
4 ALECs. BellSouth provided copies of its Letter Agreement for Property
5 Management Services in response to a hearing request in a Georgia
6 proceeding (Georgia PSC Docket 6863-U), copies of which are attached to
7 my testimony marked Exhibit 5.

8 Under the terms of BellSouth's standard form Property Management
9 Services Agreement, BellSouth obtains access -- free-of-charge -- to building
10 entrance conduits, equipment room space and riser/horizontal conduits for
11 placement of BellSouth equipment and other telecommunications facilities
12 needed to serve building tenants. The property manager also commits to
13 designate BellSouth as the local telecommunications "provider of choice" to
14 building tenants and to promote BellSouth as such. Many building tenants
15 may not understand that they could choose to order service from a ALEC
16 competitor. In return, BellSouth agrees to establish a "Credit Fund" which
17 the property manager can use itself or distribute to tenants. The Credit Fund
18 is usable to pay for selected BellSouth services (*i.e.*, seminars, non-recurring
19 installation charges, etc.).

20 This program has at least two anticompetitive effects, largely
21 attributable to the fact that this arrangement is expressly an *exclusive* one.

1 First, since BellSouth is given "free" (no cash payment) access to the
2 building conduit and riser, BellSouth is given an inherent cost advantage in
3 obtaining use of these essential bottleneck facilities. Second, since the
4 property manager must agree to promote BellSouth services exclusively in
5 order to be compensated, BellSouth has created an incentive for property
6 managers to refuse to cooperate with ACSI and other ALECs in promoting
7 services to building tenants.

8 The property manager is a critical gatekeeper in obtaining access to
9 business end users, and BellSouth has conspired with them in these instances
10 to prevent ACSI from obtaining unfettered access to building tenants.
11 Interestingly, BellSouth argued strenuously a few years ago that regulators
12 must prevent shared tenant service ("STS") providers from impeding their
13 access to end users in STS-controlled office buildings -- now, BellSouth itself
14 is engaging in the same activity about which it protested so vociferously.
15 The Commission should ensure that such arrangements have not been and are
16 not established in Florida.

17 **Q. DO YOU HAVE OTHER EXAMPLES OF ANTICOMPETITIVE**
18 **CONDUCT ON THE PART OF BELLSOUTH?**

19 **A. Yes.** Based on our experience in other states, BellSouth has been
20 aggressively promoting the use of customer-specific Contract Service
21 Arrangements ("CSAs") where it competes with ACSI for the business of a

1 specific business customer. While there is nothing inherently wrong with
2 CSAs, ACSI does not believe that, given the other competitive advantages of
3 BellSouth in the switched services market, that BellSouth should be
4 permitted to lock in customers to long term contracts at this time. ACSI is
5 principally concerned that BellSouth could engage in pricing below cost.
6 The Commission should implement a "fresh look" policy to ensure that all
7 Florida end users receive the benefits of choosing from competitive
8 providers. The Commission should also ensure that termination liability
9 provisions are not applied when a "fresh look" policy is implemented, or
10 when CSAs are resold by ALECs.

11 **Q. DO YOU HAVE MORE EXAMPLES OF BELLSOUTH'S**
12 **ANTICOMPETITIVE ACTIVITY?**

13 A. Yes. For example, in other states, BellSouth has been requiring sales agents
14 to sell BellSouth local services *exclusively*. Indeed, BellSouth's sales agency
15 agreements routinely prevent sales agents from selling ALEC services for a
16 year *after* their BellSouth contract is terminated. Thus, if a sales agent
17 wishes to market ACSI's services, the agent must terminate his or her
18 BellSouth representation and then forego selling ACSI services for at least
19 one year to satisfy the non-compete provisions of BellSouth's exclusive
20 agency agreement. Clearly, this deprives ACSI of access to an important
21 sales channel. BellSouth provided copies of its authorized Sales

1 Representative Agreements in response to a request made in a Georgia
2 proceeding (Georgia PSC Docket 6863-U), a copy of which is attached to my
3 testimony marked Exhibit 4.

4 **Q. IN ADDITION TO THESE EXAMPLES OF ANTICOMPETITIVE**
5 **CONDUCT ENCOUNTERED IN THE END-USER MARKET, HAVE**
6 **YOU HAD SIMILAR PROBLEMS WHEN COMPETING WITH**
7 **BELLSOUTH FOR CARRIER BUSINESS?**

8 A. Yes, particularly with reference to BellSouth's application of nonrecurring
9 reconfiguration charges ("RNRCs") to access channel termination ("ACTL")
10 moves. In fact, in February 1996, ACSI filed a Formal Complaint with the
11 FCC with reference to the grossly excessive RNRCs that BellSouth imposed
12 on IXCs, attempting to make an ACTL move to ACSI.

13 ACTL moves are required whenever an IXC agrees to switch all or
14 part of its direct trunked access transport services on a given route from the
15 BellSouth network to the network services offered by ALECs, such as ACSI.
16 ILECs typically require the payment of RNRCs to accomplish such ACTL
17 moves. Unfortunately, BellSouth's RNRCs are applied inconsistently and
18 have effectively shut ACSI, and all other CAPs, out of the customer facility
19 market in BellSouth territory.

20 In ACSI's experience, BellSouth has applied the RNRCs for ACTL
21 moves in a manner which prevents IXCs from switching to ACSI transport

1 services. As we explained in our Formal Complaint, which is appended
2 hereto as Exhibit 3 the charges imposed on IXCs are not reasonably related
3 to the direct costs incurred by BellSouth in making the ACTL move. Indeed,
4 they are inconsistent with the tariff rates included in BellSouth's interstate
5 access tariff. Even more troubling, the RNRCs imposed by BellSouth for
6 IXC access network reconfigurations to connect to ACSI services routinely
7 far exceed the reconfiguration charges imposed by BellSouth when an IXC
8 orders reconfigurations from one BellSouth service to another.

9 This circumstance presents prospective customers with three equally
10 unattractive choices: (1) not to reconfigure; (2) to reconfigure with BellSouth
11 so as to avoid or minimize the excessive RNRCs; or (3) to move to ACSI and
12 pay the RNRC costs or force ACSI to absorb such costs. Often, the only way
13 for ACSI to make a reasonable bid for the business of a potential access
14 customer, therefore, is to offer to pay for the significant and unreasonable
15 reconfiguration costs imposed by BellSouth. Unfortunately, this is almost
16 always infeasible. As a result, ACSI's efforts to convince otherwise ready,
17 willing and able access customers to switch from BellSouth transport services
18 have been stymied.

19 **Q. CAN YOU OFFER ANY SPECIFIC EXAMPLES OF WHEN**
20 **BELLSOUTH'S RNRCs HAVE BEEN A PROBLEM?**

1 A. Yes. In one instance, an IXC agreed to move thirteen (13) DS3 circuits from
2 BellSouth to ACSI. ACSI proceeded to prepare for the reconfiguration,
3 including the purchase of OC12 equipment to accommodate the rollover.
4 However, as a result of BellSouth's excessive RNRCs, ACSI lost this five-
5 year contract worth an expected \$500,000 in revenues.

6 **Q. WHAT IS THE RELATIONSHIP BETWEEN THE PROBLEMS ACSI**
7 **HAS EXPERIENCED AND BELL SOUTH'S DESIRE TO REENTER**
8 **THE MARKET FOR INTERLATA SERVICES?**

9 A. BellSouth's interest in obtaining permission to reenter the interLATA
10 services market constitutes the principal incentive BellSouth has to
11 interconnect with local competitors and to correct anticompetitive abuses.
12 ACSI's experience in other states has shown that even before BellSouth has
13 obtained its interLATA approvals, it has been unable to resist engaging in a
14 variety of activities designed to protect its current dominance in the
15 marketplace. Once BellSouth has passed through the turnstile and has been
16 authorized to reenter the market for interLATA services, it will be nearly
17 impossible to retract this authority. Thus, it is absolutely imperative to
18 ensure that BellSouth has fully complied with all of the requirements of
19 Section 271 of the Act, and that BellSouth is not hindering the development
20 of a competitive local market, before this Commission supports BellSouth's
21 FCC application for in-region interLATA service. The provision of

1 unbundled loops, OSS, and number portability are three deficiencies
2 preventing BellSouth from meeting the fourteen-point competitive checklist
3 of Section 271 of the Act. Regardless of the terms of BellSouth's Statement
4 of Generally Available Terms and Conditions ("SGAT"), ACSI's complaints
5 filed with the Georgia Commission and the FCC demonstrate that BellSouth
6 has not met these items. BellSouth should be denied reentry into the in-
7 region interLATA market on this basis alone. Furthermore, BellSouth's
8 attempts through various other practices to insulate its markets from
9 competition demonstrate that it is not in the public interest for BellSouth to
10 be allowed to reenter the interLATA market until it has implemented actual
11 and effective competition in its local markets.

12 **Q. SHOULD THE COMMISSION APPROVE BELLSOUTH'S SGAT?**

13 **A.** No. The SGAT does not include permanent cost-based rates and should not
14 be approved on that basis. This would be inconsistent with the approach of
15 the Georgia Commission. If the Commission believes that approval will
16 promote local competition, the SGAT should only be permitted to go into
17 effect with the explicit caveat that it does not meet the 14-point checklist.
18 This approach was taken by the Illinois Public Service Commission and is a
19 fallback alternative to the Georgia Commission's approach. Moreover
20 BellSouth has demonstrated across the region that its number portability and

1 unbundled loop elements are of highly inferior quality which renders them
2 noncompliant for purposes of the checklist.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A. Yes.**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**
2 **RECORD.**

3 A. My name is Riley M. Murphy. My business address is 131 National
4 Business Parkway, Suite 100, Annapolis Junction, Maryland 20701.

5 **Q. HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS**
6 **DOCKET?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 A. The purpose of my rebuttal testimony is to respond in a general way to the
10 testimony and specifically to some comments of Mr. Varner.

11 **Q. THE TESTIMONY OF THE WITNESSES FOR BELL SOUTH IS**
12 **ESSENTIALLY THAT BELL SOUTH HAS COMPLIED WITH THE**
13 **14 POINTS OF THE SECTION 271 CHECKLIST REQUIREMENTS.**
14 **DO YOU AGREE THAT BELL SOUTH HAS MET ALL 14 POINTS?**

15 A. No. While BellSouth submits that it has complied with all 14 points, ACSI's
16 experience with ordering service from BellSouth in Florida and other
17 BellSouth states demonstrates that BellSouth's process for provisioning
18 service to ALECs are defective in many respects. Specifically in Florida,
19 ACSI has been reselling local exchange service in Jacksonville since April
20 1997. During that time, ACSI has not had access to adequate OSS to handle
21 resale orders. The result has been significant delays in the provisioning of

1 service to ACSI customers. This constitutes a failure to meet points 2 and 14
2 of the checklist. Since BellSouth's programs are region-wide, I have no
3 reason to believe that we will not have the same problems in Florida.

4 **Q. IS THE IMPLEMENTATION OF LENS STILL EXPECTED IN LATE**
5 **JULY?**

6 A. No. ACSI now understands that it will not be able to use LENS for "live"
7 orders until mid-August. By late July, ACSI and BellSouth expect to have
8 completed a LAN-to-LAN interface that will permit ACSI to use the LENS
9 system. ACSI still has to have employees trained on the LENS system and
10 given the failings of LENS pointed out by larger ALECs, test the system
11 prior to issuing "live" orders.

12 **Q. WHAT ARE THE MOST SIGNIFICANT PROBLEMS WITH LENS?**

13 A. It cannot handle unbundled loop and most "^{complex}~~complete~~" resale orders.

14 **Q. HAS ACSI ACTED AS QUICKLY AS POSSIBLE TO IMPLEMENT**
15 **LENS?**

16 A. Yes. Although BellSouth claims to have made LENS available in late April,
17 there will always be an implementation period, particularly for the LAN-to-
18 LAN interconnection which ACSI requires for its customers.

19 **Q. MR. VARNER SAYS THAT CUSTOMERS WILL BENEFIT FROM**
20 **BELLSOUTH'S ENTRY INTO THE IN-REGION INTEREXCHANGE**
21 **MARKET IMMEDIATELY AND THAT BELLSOUTH'S ENTRY**

1 **WILL LIKELY HASTEN DEVELOPMENT OF LOCAL**
2 **COMPETITION. DO YOU AGREE?**

3 A. No. In fact, probably every potential local competitor in Florida would also
4 disagree. The best way to hasten the development of local competition is to
5 continue to hold BellSouth's feet to the fire by holding off on a positive
6 section 271 recommendation. BellSouth has little incentive to cooperate with
7 potential competitors. Until there is effective competition in the residential
8 and business markets for local exchange service, BellSouth has not met the
9 statutory standard for entry into long distance. Moreover, any negligible
10 benefit of adding another major carrier in the long distance market is greatly
11 outweighed by the substantial detriment to the incipient local markets that
12 will result from BellSouth entry.

13 **Q. WHAT HAS ACSI'S EXPERIENCE IN OTHER STATES**
14 **DEMONSTRATED?**

15 A. Contrary to BellSouth's claims, BellSouth has not demonstrated that is has
16 developed adequate processes to ensure consistent quality service to ALECs
17 at parity with service to BellSouth's own end users. In particular,
18 BellSouth's unbundled loops (checklist points 2 and 4) and number
19 portability (checklist point 11) have caused significant disruptions to ACSI
20 service in every month in which ACSI has been in service. BellSouth clearly
21 needs more time to develop satisfactory processes. ACSI expects to initiate

1 switched service on a facilities basis before the end of the year. BellSouth
2 can then demonstrate in Florida that its systems are at parity.

3 **Q. HAS BELLSOUTH ATTEMPTED TO ERECT OTHER BARRIERS**
4 **TO ENTRY IN RECENT WEEKS?**

5 A. Yes. In Federal District Court in Chattanooga BellSouth has recently argued
6 that ALECs should pay a 5% franchise fee in Chattanooga , while BellSouth,
7 which has a preexisting franchise, pays nothing. City of Chattanooga,
8 Tennessee v. BellSouth Telecommunications, Inc., et al. This is flatly
9 inconsistent with Section 253(c) of the Telecommunications Act of 1996
10 which requires that such franchise fees be “competitively neutral” and
11 “nondiscriminatory.” The Chattanooga case will be an early precedent across
12 the BellSouth region and across the country. BellSouth’s position in this case
13 is indicative of its approach to opening its markets to competition from
14 ALECs.

15 **Q. DO YOU THINK THAT BELLSOUTH’S REQUEST IS**
16 **PREMATURE?**

17 A. Yes, I do. Again, until there is actual and effective competition I think their
18 entry is premature.

19 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

20 A. Yes, it does.

1 BY MR. HORTON:

2 Q Mr. Falvey, attached to the prefiled direct
3 testimony were five exhibits which have been premarked as
4 RMM-1 through 5. Are you familiar with those exhibits?

5 A Yes, I am.

6 Q Do you know of any corrections to be made to
7 those exhibits?

8 A No.

9 MR. HORTON: Madam chairman, Could we have those
10 marked?

11 CHAIRMAN JOHNSON: Exhibit 72.

12 BY MR. HORTON:

13 Q Mr. Falvey, have you prepared a summary of your
14 direct and rebuttal testimony?

15 A Yes, I have.

16 Q Go ahead.

17 COMMISSIONER KIESLING: I have just one question,
18 I also have, although it's only one page, I have something
19 that is listed as direct for James C. Falvey. Do you want
20 to deal with that? It's under a cover letter from you
21 saying it's the, to reflect the substitution of the --

22 MR. HORTON: That's strictly the cover sheet that
23 goes with the testimony and the first page. Since
24 Ms. Murphy -- to replace her, her qualifications and that.
25 We can mark that.

1 COMMISSIONER KIESLING: I mean if you want this
2 page in, I guess you've got to do something.

3 MR. HORTON: Well, I had inserted it in the
4 testimony. We have filed a substitute page, the cover
5 sheet and the first page. I guess could we have that
6 marked as an exhibit?

7 CHAIRMAN JOHNSON: Is this the one page?

8 MR. HORTON: It's actually two pages. It's a
9 cover sheet and then Page 1, replacement Page 1 for
10 Mr. Falvey which simply replaces his name and his business
11 experience for that of Ms. Murphy's.

12 CHAIRMAN JOHNSON: Could we -- can't we insert
13 this into the record as part of his testimony as though
14 read?

15 MR. HORTON: That was my intent.

16 CHAIRMAN JOHNSON: Okay. Then we'll -- And
17 it's correct and accurate?

18 WITNESS FALVEY: Yes.

19 CHAIRMAN JOHNSON: Then we'll insert it into the
20 record as though read.

21 MR. HORTON: Thank you.

22 BY MR. HORTON:

23 Q Go ahead with your summary.

24 A American Communications Services, Inc. has 28
25 operational networks for dedicated services throughout the

1 south and southwest. ACSI also has five switches
2 operational in BellSouth territory and nine switches
3 operational nationwide. ACSI will have two switches
4 operational here in Florida by year's end and 16 throughout
5 the country by year's end. ACSI does not provide long
6 distance service, and in fact, ACSI's sole interest in this
7 proceeding is ensuring that the proper arrangements will be
8 established to permit local competition in Florida.

9 ACSI has critical, first-hand experience serving
10 actual customers on a resale basis in eight BellSouth
11 states and facilities basis in four BellSouth states.
12 Based on this experience and specifically the chronic
13 debilitating problems that ACSI has experienced with
14 BellSouth services, ACSI believes that Section 271 approval
15 by this Commission is grossly premature at this time.

16 BellSouth has failed to meet at least five points
17 on the 14-point checklist in attempting to fully implement
18 its interconnection agreement with ACSI. The first one is
19 point 2, unbundled network elements, and specifically
20 unbundled OSS. In order to resell or provide
21 facilities-based service, ACSI must have access to
22 unbundled OSS. Currently, ACSI is using the EXACT system
23 to place unbundled loop orders but generally reverts to
24 phone and fax for resale orders which it has been placing
25 with BellSouth in Florida since April.

1 BellSouth has introduced a litany of interfaces,
2 none of which is currently capable of providing
3 nondiscriminatory access for ACSI. We have heard about
4 EXACT, LENS, EDI-PC is the latest, EC-lite, customized EDI.
5 None of these meets ACSI's needs on either a facilities
6 basis or a resale basis.

7 With respect to EXACT, while the initial order is
8 an electronic order, you quickly revert to manual and fax
9 ordering thereafter. EXACT also has no pre-ordering
10 capabilities.

11 With respect to LENS this is a system that is
12 just coming into use. ACSI is currently testing that
13 system, but that system can't handle unbundled loop orders
14 except by typing orders into the remarks section of the
15 system, which for all intents and purposes is, again, the
16 equivalent of reverting to phone or fax.

17 EDI-PC is a brand new software just introduced
18 that we just heard about within the last few weeks. We are
19 looking at it, but there are only a few carriers using it,
20 and we are not sure if that will meet our needs.

21 Customized EDI is, again, a system that is not in
22 place with any carrier as far as I know, costs hundreds of
23 thousands of dollars to implement, and while we are in the
24 process of implementing such a system, it is not currently
25 in place for ACSI at this time.

1 Many ACSI problems stem from inadequate OSS, and
2 so implementation of OSS is critical to ACSI. We, ACSI
3 does not believe that the BellSouth OSS offerings even
4 begin to meet the FCC's OSS standards as laid out in the
5 Ameritech order.

6 The second point is point 4, unbundled loops. I
7 think we've had probably more experience with unbundled
8 loops in the BellSouth region than any other company in the
9 country. Deaveraged unbundled loop rates are not available
10 in Florida today, which is a failing under the FCC's 271
11 standard. Furthermore, ACSI has experienced chronic
12 problems with its unbundled loops in Georgia, Alabama and
13 Kentucky. In particular in Georgia and Alabama, ACSI had
14 to suspend unbundled loop orders from BellSouth until the
15 unbundled loops were in a condition that ACSI could use
16 them to provide service to its customers.

17 Now in Georgia, ACSI was forced to file both an
18 FCC and a Georgia commission complaint that essential
19 problems were low volume, noise and static, lengthy
20 cut-over times, random disconnects and associated number
21 portability problems.

22 The next point would be point 5, unbundled
23 transport. We have had critical transport failures in
24 Kentucky and Alabama.

25 The next point is point 11, number portability.

1 Two issues, the coordinated cut-over of number portability,
2 it doesn't always happen when the loop gets cut over, so
3 the service is not available to ACSI's customers. And the
4 second number portability problem has been outages once the
5 customer is up and running which, again, have led to
6 customer defection from ACSI.

7 The final point is point 14, which is resale. We
8 are currently resaling in Jacksonville, beginning to
9 resell in Tampa and Miami. The installation intervals take
10 as long as 14 dyes for simple resale orders as long as 20
11 to 30 and sometimes, in some cases longer than 30 days for
12 complex orders.

13 ACSI believes that this is not consistent with
14 anyone's experience ordering business service from
15 BellSouth. ACSI would like to get additional information
16 as to the average intervals for BellSouth service to its
17 own end users but to date has been unable to do so.

18 In addition lost orders are common place. Orders
19 are often delayed in BellSouth provisioning, and to a large
20 extent we believe many of these resale problems also stem
21 from inadequate OSS. BellSouth must provide performance
22 standards, reporting and penalties to ensure that its
23 services are delivered in a consistent and timely manner.
24 BellSouth must implement processes and procedures
25 throughout the BellSouth region to ensure consistent

1 delivery of service to CLECs. What we have found is that
2 problems that originate with Sprint in Florida reoccur for
3 ACSI in Georgia, and then they crop up again for ACSI in
4 Alabama and Kentucky and so on, so there is no process
5 control.

6 If these steps are taken and if each of these
7 points can be corrected, local competition can begin to
8 develop in Florida. Until such time, ACSI strongly
9 encourages the Commission to reject the SGAT and Section
10 271 preapproval at this time.

11 Q Does that conclude your summary?

12 A Yes.

13 MR. HORTON: Mr. Falvey is available.

14 MS. BARONE: Madam Chairman, staff would like to
15 have its exhibit marked at this time before cross
16 examination begins, and it's been identified as JCF-1 which
17 consists of Mr. Falvey's deposition transcript and his
18 late-filed deposition exhibits. Staff would ask that this
19 exhibit be marked as Composite Exhibit Number 73.

20 CHAIRMAN JOHNSON: It will be so marked.

21 MS. BARONE: Thank you.

22 CHAIRMAN JOHNSON: There are no questions from
23 the other parties, are there?

24 (No response)

25 CHAIRMAN JOHNSON: Okay. Then Bell.

1 MR. RANKIN: Thank you, Chairman Johnson.

2 CROSS EXAMINATION

3 BY MR. RANKIN:

4 Q Ed Rankin on behalf of BST. Good afternoon,
5 Mr. Falvey.

6 A Good afternoon.

7 Q ACSI is currently providing resold local exchange
8 services to only business customers in Florida; is that
9 right?

10 A Yes.

11 Q And in the BellSouth territory, that's in
12 Jacksonville?

13 A No, not only Jacksonville, Jacksonville and
14 Miami.

15 Q Okay. When did you start reselling in Miami?

16 A It's a minimal amount, and I would have to go
17 back and look, but I'd say that our price list was filed
18 within the last month or so.

19 Q Okay. ACSI is not currently providing any
20 facilities-based local exchange service in Florida; is that
21 correct?

22 A That's correct.

23 Q And you expect to be in the facilities-base
24 business by the fourth quarter of this year; is that right?

25 A That's correct.

1 Q When you begin providing facilities-based
2 services, do you think your company's focus will remain on
3 serving the business market?

4 A Yes, and my hesitation stems from the fact that
5 there is a proceeding coming up this winter, and I was
6 thinking about the timing of when we'll get permanent loop
7 rates, and it is the lack of deaveraged loop rates that is
8 currently keeping us out of the residential market.

9 Q Does ACSI market to any residential customers on
10 a resold or facilities basis in any state where it does
11 business?

12 A No, and the residential loop rates have not been
13 deaveraged in any BellSouth state to date.

14 Q How about outside the BellSouth region, does ACSI
15 offer residence services outside the BellSouth region?

16 A No, and to my knowledge, the same deaverage loop
17 problem is prominent in our other regions, which are South
18 Western Bell, U.S. West, Bell Atlantic and so on.

19 Q Let's talk about the deaveraged issue for just a
20 moment. You state BellSouth must lower its prices for
21 unbundled loops and include deaveraged loop prices in your
22 direct testimony; is that right?

23 A That's correct.

24 Q Did ACSI request deaveraged loop rates in its
25 negotiations with BellSouth?

1 A Yes, we did.

2 Q And did the agreement you help negotiate -- I
3 assume you helped negotiate the agreement?

4 A Not really.

5 Q Okay. Did the agreement that your company
6 negotiate contain those deaveraged loops?

7 A No, despite repeated requests, we were forced to
8 accept an agreement that did not have deaveraged rates with
9 the hope that in the, what were then imminent arbitrations
10 deaveraged loop rates would result.

11 Q Where was that agreement reached in terms of the
12 deaveraged loop rates in the rest of the interconnection
13 agreement?

14 A I'm a little bit confused because it's a
15 multi-part question, but let me just try to answer it
16 anyway. There was an interconnection agreement that was
17 signed in July, and then there was an unbundled loop
18 amendment that was signed in Alabama in October, after we
19 had come to the arbitration here in Florida.

20 Q Okay. So was that -- was the agreement on the
21 unbundled loop rate reached on the eve of an arbitration in
22 Alabama?

23 A Yes.

24 Q Who negotiated that agreement with BellSouth on
25 behalf of ACSI?

1 A Primarily Richard Roberts and Bill Stipe. I was
2 in and out of the room as well, and it was in Alabama at
3 the time.

4 Q Okay. So you were present in Alabama when the
5 unbundled loop rate was negotiated?

6 A That's correct, but I had very little
7 participation in the interconnection negotiations, just to
8 clarify my previous answer, which is the bulk of our
9 agreement.

10 Q Does the term "deaveraged" appear in the pricing
11 provisions of the Telecommunications Act?

12 A No, but it does appear in Paragraph 292 of the
13 Ameritech order, and I believe that's what this proceeding
14 is all about, whether or not BellSouth is prepared to get
15 into long distance, and the FCC clearly intends to require
16 both TELRIC pricing and deaveraged unbundled loop rates.

17 Q Mr. Falvey, since ACSI is not a facilities-based
18 provider of local service in Florida, I take it that ACSI
19 has not yet ordered any unbundled loops from BellSouth in
20 Florida; is that correct?

21 A In Florida that's correct.

22 Q Now are you physically collocated with BellSouth
23 in Jacksonville?

24 A We are virtually collocated with BellSouth in
25 Jacksonville which allows us to provide special access

1 services. There is some additional equipment that remains
2 to be collocated prior to the turn up of our switch which
3 should be within the next couple of months.

4 Q With respect to your collocation with BellSouth
5 in Florida, have you received what you've requested?

6 A To date we have received what we have requested.
7 The vast majority of our problems come after we turn up the
8 switch. Virtually -- in fact, every single one of the
9 problems that I listed, OSS, loops, transport, number
10 portability and resale are all post turn-up problems.
11 Resale, of course, is not a switched environment, but it is
12 problems that emanate when we begin providing service to
13 our customers relying on BellSouth inputs.

14 Q On page 5 of your testimony, your direct
15 testimony, if you'll turn there, please. You state -- Are
16 you there?

17 A Yes.

18 Q You state there that BellSouth shouldn't be
19 allowed into the long distance market until actual
20 effective facilities-based competition exists in both the
21 residence and business local exchange markets. Does your
22 view of effective competition include a market-share
23 analysis?

24 A I think the answer is yes, that market share is
25 relevant. I think the best way to explain our view is that

1 market share is one indices of what type of competition is
2 available. If you look in Paragraph 391 of the Ameritech
3 order, the FCC seems to agree that market share is
4 relevant. I think that there are a number of factors that
5 determine whether a market is open to competition. The HHI
6 is an index that has been used by the Department of Justice
7 for some time, and that takes into account a number of
8 factors, including market share, including but not limited
9 to market share.

10 Q Do you have a market-share percentage that you
11 would recommend to this Commission for judging when
12 effective competition is present?

13 A Well, I think the Department of Justice -- I
14 practiced antitrust law for three years, so I know a little
15 bit about this subject. The Department of Justice probably
16 knows a whole lot more. I'd say, you know, 20 to 25% is,
17 as I said, one indices of -- to me would be a sign of a
18 robust market, or what is beginning to be a robust market.
19 I mean if you look at AT&T, it has taken 13 years, since
20 1984, for them to get to the point where they are now.

21 Q Do you know how many access lines BellSouth
22 provides in the State of Florida?

23 A No, I don't.

24 Q Would you accept subject to check that it's in
25 excess of six million?

1 A Yes, subject to check.

2 Q And upon your 20% percentage of that, the lower
3 end of your recommendation would result in a 1.2 million
4 access lines lost to competition before BellSouth would be
5 deemed by ACSI to have met effective competition; is that
6 right?

7 A I mean I think that is one way of going about it,
8 that's correct. And I think the FCC has actually given the
9 RBOCs a big out in terms of this market-share analysis by
10 saying that. What we really want to make sure of is that
11 the inputs that the monopolist is providing to the new
12 entrant competitors are at a certain level of quality,
13 nondiscriminatory vis a vis BellSouth end users, and that
14 they continue to improve over time. And what is surprising
15 to me, despite repeated requests of ACSI and other
16 competitors, is that we are not getting anywhere on
17 performance standards with BellSouth, which would be the
18 main measure of how well those monopoly inputs are
19 provided.

20 Q On page 7 of your testimony, if you'll turn there
21 for a moment, please. You begin a discussion there where
22 you testify that ACSI is unable to provide local service to
23 residence customers because of a price squeeze that you say
24 has been placed on ACSI by BellSouth?

25 A What line is that on on page 7?

1 Q I believe it's line 5 through 8 there at the top
2 of the page.

3 A That's correct.

4 Q And I believe you describe the price squeeze in
5 your testimony, and I think you've already said so in your
6 summary, as the difference between your unbundled loop rate
7 and the BellSouth basic residential rate. Does that define
8 the price squeeze?

9 A Those are two aspects of the definition of the
10 price squeeze. I mean the reason I say that is that you
11 could have an unbundled loop that is \$16 and a basic rate
12 of \$17, but because any competitor is going to have to
13 provide additional inputs maybe that cost \$5, you would
14 still have a price squeeze.

15 Q Does the unbundled loop rate you refer to come
16 from the interconnection agreement ACSI negotiated with
17 BellSouth?

18 A That's correct, and I think one thing we left off
19 is that when we negotiated that agreement, both parties
20 knew that not only was there an arbitration imminent, but
21 we have an ironclad most-favored nations clause that would
22 allow us to get a better rate as soon as it became
23 available.

24 Q Turn to page -- to your deposition, please, page
25 9 and 10 there. Are you there?

1 A Yes.

2 Q The question kind of begins on page 9, but your
3 answer goes over on to page 10, but generally what you are
4 talking there, is you are answering a question regarding
5 the time it takes for BellSouth to provision an unbundled
6 loop; and I want to direct your attention to page 10, the
7 full paragraph there on line 11. Are you with me?

8 A Page 10, line 11, are you talking about the
9 paragraph beginning at line 6?

10 Q No, on page 10 of your deposition, the testimony
11 that starts on line 11, it says "The second type of
12 interval."

13 A Page 10. Sorry. Mr. Pfau left his deposition
14 exhibits up here.

15 Q Wrong deposition.

16 A So needless to say page 10, line 11 of his
17 deposition is not identical to page 10, line 11 of mine.
18 All set.

19 Q Are you there?

20 A Yes.

21 Q Do you recall that part of your deposition where
22 you were answering questions by staff there regarding
23 experiences that ACSI has had with provisioning of
24 unbundled loops?

25 A That's correct.

1 Q Okay. I wanted to direct your attention to
2 line -- actually it begins on line 13, the sentence there
3 that states, "And the last I heard, these intervals are in
4 the range of five to nine days," and you're referring to an
5 interval providing a loop. Continuing with the quote,
6 "Which we don't think achieves parity with the interval
7 that a BellSouth customer would get once -- when they place
8 an order with BellSouth for a new business line." Do you
9 see that testimony?

10 A Yes.

11 Q Is it your testimony that the processes BellSouth
12 follows to install an unbundled loop for ACSI are identical
13 to the process BellSouth follows to provide a new business
14 line to a customer?

15 A It's not my testimony. In fact, I mean the
16 genesis of what I'm talking about in terms of the
17 comparable intervals is Paragraph 4D1 of our
18 interconnection agreement, and if I could read it, I think
19 it will clarify. "Installation intervals must be
20 established to ensure that service can be established via
21 unbundled loops in an equivalent time frame as BellSouth
22 provides services to its own customers as measured from the
23 date upon which BellSouth receives the order to the date of
24 customer delivery." And our biggest problem is that we
25 can't seem to get any data as to what those intervals are

1 for BellSouth, but we suspect that it would be less than
2 five to nine days for a basic business line.

3 Q Do you know what processes occur between ACSI and
4 BellSouth in the provisioning of unbundled loop generally
5 speaking?

6 A I have some idea of what goes on, yes.

7 Q Can you tell me what generally happens based on
8 your knowledge of it?

9 A Well, I mean --

10 Q Just one unbundled loop, a customer calls up and
11 says, I would like an unbundled loop.

12 A I mean with the caveat that I'm not an engineer,
13 I'll tell you my general explanation. Our engineers, by
14 the way, are implementing or turning up our switch so that
15 they can bring local competition to Florida, so I didn't
16 fly them down here.

17 But basically we place an order, and at that
18 point we usually do it by this EXACT system, and then we
19 get a fax back that gives us some kind of a firm order
20 confirmation date as to when that loop will be installed.
21 And we -- at that point, when the date of the firm order
22 confirmation arrives, the various personnel from each
23 company get on the line and they provision the loop. The
24 vast majority of the work at that time takes place on the
25 BellSouth side because they are the one that has to pull

1 the jumper and basically take that loop and connect it,
2 what was once connected to a BellSouth switch, connect it
3 to an ACSI switch; and then there is a number portability
4 that has to be done, hopefully at the same time, so that
5 the customer is up and running and experiences minimal
6 downtime.

7 Q Now do you know whether any of that happens when
8 a new customer calls BellSouth and says I want one basic
9 business line installed in my office?

10 A No. I don't know exactly what goes on there. I
11 have talked to our engineers, including some that are 25
12 years in the Bell System, and we've talked about, for
13 example, if a customer wants to move from one location to
14 another, I think there is an analogy there. But frankly, I
15 think the question is misdirected given that our contract
16 says that your intervals must be established to ensure that
17 service can be established via unbundled loops in an
18 equivalent time frame as BellSouth provides services to its
19 own customers; so I guess I'd say you are barking up the
20 wrong tree.

21 Q Does BellSouth, to your knowledge, provide
22 unbundled loops to its own customers?

23 A No, but you do provide the equivalent end-user
24 services. If I order a two-wire analog loop, then that's
25 for basic business service and --

1 Q That was precisely --

2 A And so on and so forth.

3 Q I'm sorry, I didn't mean to cut you off. That
4 was precisely my question. I was trying to have you
5 compare for us that analogous service, the basic 1FB or 1B
6 business line to the unbundled loop that you say it is
7 equivalent to, and I think your testimony was you don't
8 know exactly how those processes lay down, isn't that
9 right, between what BellSouth does to install a basic
10 business line for one of its retail customers, vis-a-vis
11 what BellSouth has to do to provision that unbundled loop;
12 is that right?

13 A Well, I'm not an engineer. I've had lengthy
14 discussions -- I think the answer is, no, that is not
15 right.

16 Q Okay. Thank you.

17 A But I've had lengthy discussions with our
18 engineers who are in some cases 25 years in the Bell
19 System, many of them 20, 25 years with BellSouth; and so we
20 have looked at different types of comparisons and what you
21 do on your side and what needs to be done for a loop. And
22 the bottom line is, we don't know what your intervals are
23 for your end users, and we don't think you're meeting the
24 provision in our interconnection agreement.

25 Q Now with respect to the complaints ACSI has filed

1 against BellSouth earlier this year at the Georgia
2 commission and at the FCC, have those complaints been
3 resolved by those two bodies?

4 A No, they have not.

5 Q They are still pending?

6 A That's correct.

7 Q And has ACSI filed any complaints against
8 BellSouth here in Florida with respect to any services that
9 it has obtained from BellSouth here?

10 A No.

11 MR. RANKIN: I think that's all. Thank you,
12 Mr. Falvey.

13 CHAIRMAN JOHNSON: Staff.

14 CROSS EXAMINATION

15 BY MS. BARONE:

16 Q Good afternoon, Mr. Falvey.

17 A Good afternoon.

18 Q The first thing I would like to do is clarify for
19 the record what ACSI has and has not ordered, and I'm going
20 to go through a list and ask you. First, with respect to
21 subloop unbundling, has ACSI requested loop distribution
22 feeder?

23 A No, we have not.

24 Q With respect to loop cross connects, has ACSI
25 requested that?

1 A No. For each answer, what I would like to do, is
2 also tell you whether we intend to in the coming months.

3 Q Certainly.

4 A To help clarify.

5 Q Okay. First with respect to loop distribution
6 feeder.

7 A We have not yet ordered it. There may be some
8 cases where we would have like a remote SLC, and then we
9 would provision off of that remote SLC; and at that point
10 we would order some subloop unbundling, loop distribution
11 media.

12 Q Well, do you have a plan at this time to order
13 that within the next few months?

14 A Not that I know of.

15 COMMISSIONER CLARK: Mr. Falvey, what do you mean
16 by a remote SLC?

17 WITNESS FALVEY: I believe it's a subscriber line
18 carrier, and it's just something that allows you to
19 essentially -- in some sense unbundle the loop from further
20 out.

21 COMMISSIONER CLARK: It's an S-L-C, right?

22 WITNESS FALVEY: That's right. And typically --
23 you know, I guess one thing, you jump to sub loops, we will
24 order unbundled loops as a whole and we'll provision them
25 centrally from the central office.

1 BY MS. BARONE:

2 Q Mr. Falvey, when you do order the loop
3 distribution feeder, which interface would you use to do
4 that?

5 A Oh, currently we order our -- I mean --
6 Currently we order our unbundled loops using the EXACT
7 system.

8 Q You say currently. Are you looking into looking
9 at the other interfaces?

10 A Yes. We have set up a LAN-to-LAN interconnect in
11 order to put the LENS system into place. When we began to
12 put that into place, we were under the impression that we
13 could use that for unbundled loops. It's now come to our
14 attention, BellSouth now tells us that, well, in order to
15 order unbundled loops through LENS, you have to type your
16 message into the remarks section, just like typing onto a
17 faxed sheet of paper and send it in. So my guess is that
18 we won't really have a decent interface for loops until we
19 eventually implement an EDI system.

20 Q And when you say you won't have a decent system
21 for loops, are your comments also directed toward loop
22 cross connects and loop concentration systems?

23 A That's correct.

24 Q So are you -- Okay. Well, let's continue
25 through then.

1 A And frankly, I mean from what I have seen of
2 LENS, I don't think it's broken out into sub loops. The
3 LENS demo that I saw in Kentucky last week, it talked
4 about -- it had sections for unbundled loops, but I don't
5 recall seeing anything there about subloop unbundling. And
6 my company builds its own facilities, and we are primarily
7 interested in buying unbundled loops, but the BellSouth
8 systems I have seen so far don't do a very good job of
9 supporting electronically unbundled loop orders.

10 Q What do you mean?

11 A Well, let's start with the EXACT system. For
12 EXACT, like I said, we put an order in electronically, but
13 there is no pre-ordering. There is no order reject. In
14 other words, if I don't fill out the form properly, it
15 still goes through. There is no due date jeopardy. All
16 the things that typically come with an electronic interface
17 are not there on the EXACT system, and when I get a return
18 on that, it's not real time and it's not electronically.

19 Q What about LENS?

20 A With respect to LENS, as I said, in order to
21 order an unbundled loop on LENS, you have to type into the
22 remarks section. That to me is not progress. There is a
23 lot of complex orders that you can't order on LENS, so that
24 doesn't really meet our needs either.

25 Q All right. Well, let's move on to loop cross

1 connects, have you ordered that?

2 A No. We definitely will order loop cross
3 connects, it's fairly standard. Whenever you order an
4 unbundled loop, you also order a loop cross connect.

5 Q And again, will that be within the next few
6 months?

7 A That will be within a matter of months, I'd say
8 by the end of the year.

9 Q And your plan is to use which interface?

10 A Currently we are using EXACT interface. Even
11 once we put LENS into place, I'm not really sure -- I mean
12 the whole point of electronic interfaces is to eliminate
13 failure points, I think. And if we still have to type
14 something into the remarks section, we are no better off.
15 I think we'll probably still use EXACT until we get
16 something better in place.

17 Q With respect to loop concentration systems, have
18 you ordered that?

19 A By the way, all my answers have been in Florida.
20 And the answer is, no, but we will be ordering them. We
21 call it loop channelization. I don't know if that's --
22 That's the way it is written up in our interconnection
23 agreement.

24 Q And again, will that be within the next few
25 months?

1 A I would think so.

2 Q And you are ordering that through EXACT?

3 A I think we order that over the phone, to be
4 honest. The first time we ordered that, the BellSouth
5 personnel didn't know that they had given it to us in our
6 agreement, and if you'll pardon the pun, it really threw
7 them for a loop. It took them like three weeks to get back
8 to us about loop channelization and then further delays
9 after that, so this whole process on the BellSouth side is
10 really just being put into place.

11 Q Well, let's clarify for the record because I
12 think you just said that you hadn't ordered this in
13 Florida, but then you said when you just ordered it it
14 threw you for a loop, so I guess I'm thrown for a loop.

15 A Absolutely. That was definitely something we
16 ordered in other states. I mean if you limit your inquiry
17 to Florida, and maybe you'll have other questions about our
18 experience in other states, there is all sorts of activity
19 going on, you know, north of here in Georgia and west of
20 here in Alabama and in Kentucky. I've got a lot of
21 experience I would like to bring to the table; and in fact,
22 many of the exhibits that BellSouth has put in reflect
23 their experience, their OSS that has been provided to
24 carriers in other states.

25 Q Okay. Well, let's focus right now on Florida

1 specific. So you haven't ordered it in Florida, and you
2 have ordered it in other states and you have done that
3 through the phone. Now how do you plan on ordering it in
4 Florida?

5 A I imagine through the phone until we get -- you
6 know, over the phone, maybe by fax, until we get a better
7 system in place.

8 Q So you're not planning on ordering it through
9 EXACT or EDI or any of the interfaces?

10 A No.

11 Q And again, are you prepared to order this in the
12 next few months?

13 A Yes, as we see a need for it, we would order it
14 in Florida.

15 Q Have you ordered the network interface device?

16 A No, and again, I don't foresee a need to order
17 the NID. I think that would be something that we would
18 only order as part of a loop.

19 Q Now with respect to unbundled local transport,
20 has ACSI ordered dedicated transport?

21 A No, we have not ordered unbundled dedicated
22 transport.

23 Q And are you planning on doing so?

24 A We order in various types of interconnection
25 trunks, but we typically provide our own transport, so I

1 would say no.

2 Q What about common transport?

3 A No, for the same reasons.

4 Q No, you haven't, and no, you will not?

5 A That's correct.

6 Q What about tandem switching?

7 A No, we haven't. No, we are unlikely to because
8 we provide on our own switching.

9 Q And with respect to unbundled local switching,
10 have you ordered 2-wire and 4-wire analog ports?

11 A If I could back up, I want to make one caveat to
12 my previous answer. When I say, no, we are not currently
13 planning on doing it, that is all I mean by that; and the
14 reason is that this industry is rapidly changing. And AT&T
15 is breaking up the network into unbundled elements, and
16 there may come a time where we say, hey, you know, MCI and
17 AT&T are getting unbundled switching or unbundled transport
18 at such and such rate, and we are ordering these T1 trunks
19 over here, and the rate is much higher. So we are always
20 going to be looking at what types of unbundled elements are
21 available and reassessing the exact manner in which we want
22 to order something.

23 Q Now back to my other question. Your current
24 plans with respect to 2-wire and 4-wire analog ports, have
25 you ordered those, and are you planning on ordering -- or

1 are you planning on ordering those?

2 A No, and we don't intend to order ports, at least
3 on any large scale for the same reason that we provide our
4 own switching and, therefore, wouldn't have to buy ports
5 from BellSouth. There may be other locations eventually
6 where we just come up with some arrangement where we use
7 BellSouth ports.

8 Q What about 2-wire ISDN ports?

9 A Same answer. As long as we have a switch, we are
10 not likely to order it.

11 Q What about 4-wire ISDN DS-1 ports?

12 A Same answer. I think the principle focus would
13 be the loop equivalents of each of these, 2 and 4-wire
14 analog loops, 2-wire ISDN loops and so on.

15 Q What about 2-wire DID trunks?

16 A Unlikely to order the ports except in locations
17 where we don't have switching.

18 Q If you do order those in locations where you
19 don't have switches, which interface would you use?

20 A Today, either by phone or maybe the EXACT
21 system. I'm not sure.

22 Q Have you ordered signaling network elements such
23 as STP or SEPs?

24 A We haven't ordered them from BellSouth; we have
25 ordered them from another vendor.

1 Q Have you ordered AIN services?

2 A Same answer.

3 COMMISSIONER CLARK: I'm sorry. Go back to
4 the -- you haven't ordered it from BellSouth, but you have
5 ordered it from another vendor?

6 WITNESS FALVEY: That's correct. There is
7 competition, I guess you'd say, in that market, and we have
8 gone to a competitor to order. There are some systems that
9 other providers support.

10 COMMISSIONER CLARK: Okay.

11 WITNESS FALVEY: This is just, it's signaling and
12 AIN; it's not part of the ubiquitous network.

13 BY MS. BARONE:

14 Q Has ACSI requested access to any operation
15 support systems?

16 A Yes.

17 Q Which ones?

18 A I'm just trying to think back. We've sort of
19 asked for the best available throughout the time that we
20 have been talking to BellSouth, which is since July of
21 '96. We already had the EXACT system in place for special
22 access, so we have been using that. We just sort of
23 continued to use that and adapted that to work for loops.
24 We have asked for documentation on EDI, and we received a
25 large stack of paper on EDI. Nobody has put a customized

1 EDI system into place; we are working on that. It costs
2 hundreds of thousands of Dollars, you have to hire an
3 outside contractor. Eventually we will get a full-blown
4 EDI system in place.

5 LENS, we had a meeting in late May. We have been
6 putting in place a LAN-to-LAN interconnect since that
7 time. The LAN-to-LAN, as I understand it, is in place. We
8 are beginning to test some orders, but we haven't actually
9 started using the LENS system.

10 There is another interface called EDI-PC which we
11 heard about within the last few weeks. It's an
12 off-the-shelf software. We are going to look at it, but
13 I'm not sure we want to migrate through ten different
14 systems this year alone.

15 Q So your experience has been with EXACT. You are
16 going to have a LAN-to-LAN interface. Do you plan on --
17 And then you plan on testing that, the LENS system at that
18 point?

19 A That's right. The first time you said EXACT.
20 But then LENS, we have a LAN-to-LAN in place. As I
21 understand it, we are currently running some tests on that,
22 and eventually we will be doing live orders using the LENS
23 system. Again, it doesn't handle unbundled loops, which is
24 the core of our business. It doesn't handle a good number
25 of complex, types of complex orders.

1 Q Has ACSI tested another interface?

2 A I don't think we have, no.

3 Q Has ACSI ordered any conduits, poles, attachments
4 or rights of way?

5 A I don't know about in Florida. I know that we
6 have used BellSouth pole attachments in Alabama.

7 Q Could you provide a late-filed exhibit to let
8 staff know the status of requests for conduits, poles,
9 attachments and rights of way in Florida?

10 A Yes.

11 MS. BARONE: And Madam Chairman, staff would
12 request that that exhibit be marked as Exhibit 74.

13 COMMISSIONER DEASON: It will be late-filed 74.
14 Short title please.

15 MS. BARONE: Excuse me, I didn't notice that the
16 chairman wasn't here, Commissioner Deason. Thank you.

17 COMMISSIONER DEASON: Could I have a short title?

18 MS. BARONE: ACSI requests for conduits, poles
19 attachments or rights of way in Florida.

20 BY MS. BARONE:

21 Q Mr. Falvey, I believe you testified during your
22 deposition that ACSI is not providing local exchange
23 service to business or residential customers in Florida
24 using its collocation arrangement or any other UNEs; is
25 that correct?

1 A That is correct.

2 Q And is that still the case?

3 A That is still the case. We are providing access
4 services, minimal amount of access services off our
5 collocation that was completed this spring, but we need to
6 collocate further equipment and put other things in place
7 before we begin providing local exchange service to our own
8 facilities.

9 Q And to be clear, ACSI has ordered interconnection
10 with BellSouth in Florida; that's correct, isn't it?

11 A That is absolutely correct.

12 Q And ACSI currently has a virtual collocation
13 arrangement with BellSouth?

14 A That's correct.

15 Q And you're not currently providing local exchange
16 service via your interconnection arrangement to business or
17 residential customers in Florida, are you, or has that
18 changed?

19 A Could you repeat the question, I'm sorry? Are
20 you talking about facilities-based service?

21 Q You're not providing local exchange service via
22 your interconnection agreement to business or residential
23 customers in Florida yet, are you?

24 A No, technically our resale agreement is a
25 separate agreement, although it does incorporate the MFN

1 from our interconnection; so we are just providing resale
2 service is the short answer.

3 Q And with respect to the resale services that you
4 are providing in Florida, I would like to verify the
5 information that BellSouth has provided to ACSI. I don't
6 know if your attorney has a redacted copy of the ACI
7 specific information that would be in response to the
8 subpoena that was issued in this proceeding.

9 A I think -- I've seen it; I'm not sure I have it
10 with me.

11 Q What I'm going to ask you to do is verify the
12 numbers.

13 COMMISSIONER CLARK: Monica, what are we supposed
14 to be looking at?

15 A I've got it.

16 MS. BARONE: For your purposes, Commissioners,
17 this information is contained in what has been previously
18 identified as Staff's Exhibit Number 6, and the
19 confidential information will be under SUB-CON, and you
20 will be looking at pages 18 and 19 and following. So if
21 you will look in your confidential file folder, look for
22 the packet called SUB-CON. I'm going to be asking
23 questions that relate to the response to staff's second
24 interrogatories, Item Number 43, which begins on page 18 of
25 the exhibit that you have before you.

1 COMMISSIONER CLARK: Yeah. We issued a subpoena
2 for this?

3 MS. BARONE: Yes, ma'am.

4 MR. HORTON: Commissioner, might I check my copy
5 with Ms. Barone and make sure we are looking at the same
6 thing?

7 MS. BARONE: And just for the record, that is
8 contained in Exhibit Number 2, not 6. And just so the
9 Commissioners know and the record is clear, the witness has
10 a copy of only that information that pertains to ACSI.
11 Mr. Falvey has a redacted version.

12 BY MS. BARONE:

13 Q First, Mr. Falvey, I would like for you to verify
14 for me whether the resold services listed are those, what
15 ACSI has actually ordered. If you've ordered other things,
16 if you could let me know what you've ordered, but you don't
17 have to tell me how much you've ordered.

18 A I can't verify this in this format because it's
19 too cursory and, you know, it doesn't match up to what I
20 would have expected to see. I could provide you with some
21 numbers, for example, how many resale customers we have in
22 Florida today, how many access lines we have in Florida,
23 that kind of thing; but like I said, it just doesn't
24 correspond to this. I'm not saying that it's not what they
25 say it is, but I don't have enough information in front of

1 me to verify.

2 Q Okay. Could you provide me with a late-filed
3 exhibit that would not only identify what you're
4 describing, which is the number, but I would like to know
5 exactly what resold services you have ordered and how
6 many.

7 A Yes.

8 MS. BARONE: Madam chairman, staff would like to
9 have that -- oops, I thought she came back in.
10 Commissioner Deason, if I could have --

11 COMMISSIONER DEASON: It's okay.

12 COMMISSIONER GARCIA: It's his stunning good
13 looks that does that.

14 MS. WHITE: One more strike and you're out.

15 MS. BARONE: If I could have a late-filed,
16 identified as Late-filed Exhibit Number 75, and that will
17 be status of resale orders, ACSI's status of resale orders
18 in Florida.

19 COMMISSIONER DEASON: It will be identified as
20 Late-filed 75.

21 MS. BARONE: Thank you.

22 MR. HORTON: Commissioner Deason, just for the
23 record, that information is and has been treated
24 proprietary and confidential, so I would imagine that our
25 late-filed exhibit would be filed in the same manner.

1 COMMISSIONER DEASON: I assume when you file it
2 you'll request confidentiality.

3 MR. HORTON: I'm just making that point.

4 COMMISSIONER DEASON: Yes, sir.

5 MS. BARONE: And just to note, that the order
6 that was issued would cover this type of information; but
7 again, you are required to file your notice of intent.

8 BY MS. BARONE:

9 Q And yes, just to be sure, Mr. Falvey we would
10 like the number of access lines and all the information
11 that you describe.

12 A Okay.

13 Q Thank you. Mr. Falvey, is ACSI providing local
14 exchange service via resold services to business customers
15 and/or residential customers in Florida?

16 A To business customers.

17 Q In your --

18 A That includes resale, right?

19 Q That's just resale.

20 A Yes.

21 Q What do you mean? Are you communicating that you
22 are providing services other than through resale to
23 business customers?

24 A No. We are only providing resold service to
25 business customers today in Florida.

1 Q In your late-filed exhibit that you are going to
2 provide to us, would you also quantify the numbers for us
3 and how many business customers you have that you're
4 providing resold services to?

5 A Yes.

6 Q So that will be included in the Exhibit 75?

7 A Yes.

8 Q Thank you. With respect to the resold services,
9 have you experienced any problems with any resold service
10 once it's been provided to you from BellSouth?

11 A Yes, we have.

12 Q Would you, first of all, identify the resold
13 service that you've had a problem with and explain the
14 problem to me?

15 A We answered an interrogatory in the deposition
16 along these lines, and my answer at that time, like my
17 answer today, are some examples of the types of problems
18 that we've had. I think -- This is a customer of 82
19 access, I think those were just 82 business lines, but I
20 couldn't give you the exact breakdown. Basically, to make
21 a long story short, we got three separate cut-over times
22 for that resale customer, and each time the BellSouth
23 representative missed the appointed time; and as a result,
24 by Friday morning of the week when these three dates were
25 missed, the customer was livid and ready to switch back to

1 BellSouth. Finally, the BellSouth rep came along, and we
2 got the lines provisioned, and we managed to keep the
3 customer.

4 In fact, that raises one problem that we have
5 with some of the performance standards that we have seen
6 from BellSouth is they talk about due dates, but they don't
7 talk about the time, so they say due dates missed. Well,
8 particularly with unbundled loops, you know, if they say
9 they are coming at nine a.m. and they come at 5:30, we
10 don't have a happy customer; so it's not just due dates
11 missed, it's what time were you supposed to be there and
12 how late were you. That's just one example.

13 Another example is a resale megalink customer
14 with 24 lines. Again, the problem, they lost the order.
15 I'm sorry, they lost -- The order to change the long
16 distance carrier is like a PIC change on a resale megalink
17 customer. Finally, they did change it, but the customer
18 had 24 lines off of the megalink, and they only picked one
19 of the 24 lines; so the customer after waiting and waiting
20 and waiting, then had to go through a second round of
21 problems to get the other 23 picked to its chosen long
22 distance carrier.

23 A lot of these issues, frankly, I think with
24 decent electronic interfaces you would just fill in the
25 right blank and zap it off and it would get zapped right

1 back to you. So a good portion of our problems on the
2 resale and facilities side I think would be improved with
3 better OSS.

4 The third example is a customer that could not
5 get caller ID, again, after weeks and weeks of trying and,
6 you know, eventually I think they got it; but that should
7 be a routine transaction.

8 Q You consider those isolated cases, or a pattern?

9 A Those are just indicative of the types of
10 problems that we've had.

11 Q Are those three different types of problems, or
12 are they all related to the same type of problem?

13 A Well, again, I think improved OSS would help in
14 all cases, but I think they are indicative of a lack of
15 process and procedure on the BellSouth side. Every order
16 seems to be worked like it's a brand new day, and if you
17 put the proper procedures into place and have the proper
18 training of your staff, of your personnel, then it should
19 be -- everything should be a lot more routine.

20 I mean, you know, as a side light, you know, one
21 of the problems that I'm faced with is that BellSouth has
22 put this case on that says that we are perfect, for all
23 intents and purposes. Our field people would not recognize
24 the 271 case, they wouldn't be able to name the carrier
25 behind the 271 case; so there is just this huge divide

1 between the case that they have put on and what I hear
2 everyday from our general managers and sales people in the
3 field.

4 Q Mr. Falvey, are these the only three examples
5 that you have?

6 A Those are the only three that I have today. I
7 have been in four states in the last month, and I try and
8 put together as good a case as I can, but there are a whole
9 lot more behind this.

10 Q A whole lot more in the region or in Florida?

11 A In Florida.

12 Q That you're specifically aware of right now?

13 A That I have heard about over the course of the
14 last three months. We started reselling in April. I have
15 talked to our GM in Jacksonville a number of times, and
16 each time I talk to her she has a number of examples. I
17 might be at a break in the Kentucky hearing or something
18 else when I hear these things, and I did my best to
19 document a few of them. Our biggest -- we'll have bigger
20 problems when we turn up our unbundled loops.

21 Q Mr. Falvey, ACSI filed for arbitration in
22 Florida, but then withdrew its request for arbitration,
23 isn't that correct?

24 A That's correct.

25 MS. BARONE: Thank you. That's all I have.

1 MR. RANKIN: Madam chairman, Ed Rankin.

2 CHAIRMAN JOHNSON: Commissioners, any questions?

3 MR. RANKIN: I'm sorry.

4 COMMISSIONER CLARK: I do have some questions.

5 MR. RANKIN: I was just going to ask permission
6 at some point, and after the Commissioners ask their
7 question, to ask just a few follow-ups on a question that
8 staff asked relative to these recent problems.

9 CHAIRMAN JOHNSON: Sure.

10 COMMISSIONER CLARK: Mr. Falvey, I wanted to ask
11 you some questions from your rebuttal and your direct.
12 Let's just start with your rebuttal, I guess, and it's on
13 the last page, page 4.

14 WITNESS FALVEY: Okay.

15 COMMISSIONER CLARK: And you refer us to a case
16 filed in federal district court regarding BellSouth.

17 WITNESS FALVEY: Yes.

18 COMMISSIONER CLARK: From the style of the case,
19 it looks like BellSouth has refused to pay a franchise fee,
20 and the city is asking for that franchise fee. I guess
21 what I really want to know is BellSouth's position is that
22 everybody else should pay it and we shouldn't pay it, or
23 are they simply fighting paying it themselves?

24 WITNESS FALVEY: Really the former. This is a
25 case where we came into town, and the city told us, You

1 have to pay a 5% franchise fee. MCI and BellSouth had
2 preexisting franchises that exempted them. So the city
3 said -- threw up their hands, they didn't know what to do,
4 because under the Telecom Act they have to treat everyone
5 the same; but frankly, they wanted to get more money out of
6 everyone, so they filed a declaratory judgment. And at
7 some point the city made it clear that if they couldn't get
8 5% out of MCI and BellSouth, they didn't feel like it would
9 be fair to charge the new entrant, ACSI, the same 5%.

10 Well, in the midst of all these 271 proceedings
11 in a quiet courtroom in Chattanooga, the BellSouth attorney
12 stood up before me and actually argued that even though the
13 city wasn't being aggressive enough in charging
14 discriminatory fees against new entrants, BellSouth
15 believed that if companies are not similarly situated,
16 then, to paraphrase their attorneys, then you can charge a
17 discriminatory franchise fee.

18 There are a number of activities going on that
19 are not directed to the 14 points that I think have a
20 devastating effect on a company's entry into the
21 marketplace.

22 COMMISSIONER CLARK: Well, let's just -- I would
23 like to ask you questions about this.

24 WITNESS FALVEY: Good.

25 COMMISSIONER CLARK: I still didn't understand.

1 Have they gone into court and said everyone else should say
2 it except us, or are they simply saying that we shouldn't
3 have to pay the fee?

4 WITNESS FALVEY: The city brought everyone else
5 into court and asked the court to determine what it could
6 do vis-a-vis these different companies, and in the face of
7 that action by the city, while the city had conceded that
8 it would only be fair --

9 COMMISSIONER CLARK: You are getting ready to
10 give me the same answer.

11 WITNESS FALVEY: Okay.

12 COMMISSIONER CLARK: Look at line 5 and 6.

13 WITNESS FALVEY: Yes.

14 COMMISSIONER CLARK: Did BellSouth recently argue
15 that ALECs should pay the 5% fee and they should not? Did
16 they make that specific argument?

17 WITNESS FALVEY: Yes.

18 COMMISSIONER CLARK: And they said -- and you're
19 one of the ALECs they said should pay the fee?

20 WITNESS FALVEY: I mean did -- In those exact
21 words?

22 COMMISSIONER CLARK: Yes.

23 WITNESS FALVEY: What they said was that the city
24 should aggressively pursue -- be more aggressive in
25 pursuing its right to charge one fee to ACSI and another

1 fee to BellSouth, 5% of gross revenues to ACSI and nothing
2 to BellSouth. I mean I don't want to --

3 COMMISSIONER CLARK: I guess I'm confused. Did
4 they argue that ALECs should pay the 5% fee but they should
5 not?

6 WITNESS FALVEY: Yes, and I'd be happy to
7 provide the transcript from that proceeding to sort of
8 provide more background.

9 COMMISSIONER CLARK: Okay. And then on your
10 direct testimony, page 5, you raise the concern about using
11 CSAs to lock in customers and then further prohibition in a
12 sales agreement to later market another's product.

13 WITNESS FALVEY: That's correct.

14 COMMISSIONER CLARK: All right. And I take it
15 that is part of your concern that other things are going on
16 in the market. Now is it your testimony that these three
17 things should be, or can be the basis under which we
18 recommend that they not get permission to do in region
19 interLATA?

20 WITNESS FALVEY: I may be stepping on a land mine
21 here given the history of this issue in Florida from what I
22 understand, but I would say by all means. The FCC --
23 Because this Commission is much closer to the ground and
24 understands what is going on in Florida a lot better, the
25 FCC would very much like you to comment on what other

1 aspects of this market, what other barriers to entry are
2 out there that make it difficult for a company to get into
3 the marketplace. We just --

4 COMMISSIONER CLARK: And that should be a
5 recommendation under 271? Suppose they met the checklist,
6 they met the requirements, we would be in a position to
7 say, but given that, there are some anti-competitive
8 activities they are engaged in, and for those reasons we
9 would recommend that you not --

10 WITNESS FALVEY: Exactly.

11 COMMISSIONER CLARK: Okay.

12 WITNESS FALVEY: I mean let me give you just sort
13 of an extreme example, that they meet the 14-point
14 checklist, everyone is interconnected, but they have been
15 filing their contract service arrangements with this
16 Commission for the past ten years, and someone has gone and
17 taken a look and done a study of those contract service
18 arrangements, and what they conclude is that X percentage
19 of the market is locked up in contract service
20 arrangements. We could have the best interconnection
21 arrangements in the world. If all the customers are locked
22 up in CSAs, it's not going to do us any good.

23 We went to lease some property in Boca Raton for
24 a new office which is in a large office park that used to
25 be occupied by IBM, is now open to other companies. The

1 property manager told us that not only could we not bring
2 our facilities into that office park, but TCG, which has a
3 network that runs nearby the office park, also could not
4 bring their facilities into the office park because they
5 had a preexisting contract with BellSouth which gave
6 BellSouth exclusive access to the office park. It happens
7 to be served out of two central offices, which is, for
8 reasons I won't go into, makes it a very attractive place
9 to be for high tech. companies.

10 COMMISSIONER CLARK: But it's your testimony that
11 under 271 we could suggest to the FCC that they be denied
12 authority to do in-region interLATA long distance on the
13 basis of too many CSAs or exclusive sales agency
14 requirements?

15 WITNESS FALVEY: Yes.

16 COMMISSIONER CLARK: Okay.

17 WITNESS FALVEY: Certainly. I mean it could be a
18 contributing factor, that they haven't met three points and
19 we've got some other issues.

20 COMMISSIONER CLARK: Well, can you give me a cite
21 in 271 that is the basis for us? Can we rely on that in
22 making that kind of suggestion to the FCC?

23 WITNESS FALVEY: I guess the public interest
24 standard. The Commission has to determine what the public
25 interest is, and in the Ameritech order, they have asked

1 you to give them as much feedback as possible in order for
2 them to make a proper recommendation.

3 COMMISSIONER CLARK: Okay. Are there any other
4 mechanisms in the 1996 Act that would address this kind
5 of -- give some remedy for this kind of alleged
6 anti-competitive activity, or are you just sort of left to
7 antitrust type --

8 WITNESS FALVEY: In some cases we are left to
9 antitrust. The City of Chattanooga case is under Section
10 253 of the Act, but certainly this whole building access
11 issue has been a real problem for this industry; and that
12 one is very much left out there for us to find our best
13 remedy for. So some of them I think are potential
14 antitrust lawsuits, and some of them may have some other
15 cover. But the way I look at this whole 271 process is
16 that BellSouth should be on their best behavior right now;
17 and if this is what they are doing on their best behavior,
18 then I'm not looking forward to next year or the year after
19 when the 271 barrier comes down.

20 COMMISSIONER CLARK: Okay. Thanks.

21 MR. RANKIN: Thank you, madam chairman.

22 CROSS EXAMINATION

23 BY MR. RANKIN:

24 Q Mr. Falvey, in response to a question by staff,
25 you mentioned a situation about a customer of ACSI's that

1 had 82 access lines?

2 A That's correct.

3 Q I believe you described that scenario in your
4 Late-filed Exhibit Number 3. Can you get that out? I just
5 have a few questions for you on it.

6 A Sure. Okay.

7 Q First, who relayed this information to you?

8 A It was a couple of different people in the
9 company.

10 Q Okay. Who would those people be?

11 A The general manager in Jacksonville and a fellow
12 by the name of Jeff Carroll.

13 Q Okay. And do you know the name of the general
14 manager?

15 A Her name is Stacy Dupree.

16 Q Okay. First, I just want to clarify one thing.
17 You mention documentation on 82 access lines, but isn't it
18 true, and I think you relate this in the first paragraph of
19 this, this incident involved five lines for resale, not 82
20 lines?

21 A Well, unfortunately, you know, we pretty
22 definitely would have lost all 82. The customer was
23 absolutely livid.

24 Q Okay. Well, that is not really responsive to my
25 question. The incident in question involved the

1 provisioning of five new lines for resale, not 82 new lines
2 for resale; is that right?

3 A That's correct, and that's what the answer --
4 that's what this paragraph says.

5 Q Okay. Thank you.

6 Now do you know Bill Williams?

7 A Yes.

8 Q And who is Bill Williams?

9 A I actually just spoke with him recently prior to
10 this hearing. I think he is an ops. manager, in other
11 words, he is kind of a network guy in the Jacksonville
12 office.

13 Q Okay. He is with ACSI in Jacksonville?

14 A Yes.

15 Q Have you spoken with Mr. Williams about this
16 situation?

17 A I don't think I have. I did speak to him about
18 exactly what kind of arrangements we have in place in
19 Jacksonville in order to be able to respond better to some
20 of staff's questions.

21 Q Have you spoken to the customer about how they
22 felt about this situation?

23 A No, typically I don't speak to the customer. I
24 think that the sales reps usually have a relationship with
25 the customer, and basically, in many cases our sales rep

1 has been living the situation for a period of weeks or
2 days, and that's how I get my information.

3 Q And then one last question for you, do you know
4 whether in Florida, ACSI can resell CSAs?

5 A Typical BellSouth response -- I'm sorry,
6 BellSouth state commission on that has said that you can
7 resell them on a forward-going basis, which means anyone
8 who is currently locked up remains locked up; and then on a
9 going-forward basis, you could resell them. I don't know
10 whether it's at a discount or not. In many BellSouth
11 states it's not at the discount. So if you don't get the
12 discount then, you know, there is no point in even looking
13 at it.

14 Q So specifically in Florida, do you not know
15 whether ACSI can resell CSAs?

16 A I suspect what I just said is the arrangement,
17 but I don't know for certain.

18 Q But you don't know?

19 A I don't have the order in front of me.

20 MR. RANKIN: Okay. Thank you, sir.

21 CHAIRMAN JOHNSON: Redirect, or commissioners,
22 any other follow up to that?

23 (NO RESPONSE)

24 CHAIRMAN JOHNSON: Redirect.

25 MR. HORTON: No, no redirect.

1 CHAIRMAN JOHNSON: Exhibits.

2 MR. HORTON: ACSI would move Exhibit 72.

3 MS. BARONE: Staff moves 73.

4 CHAIRMAN JOHNSON: Show 72 and 73 admitted
5 without objection.

6 MR. HORTON: May Mr. Falvey be excused?

7 CHAIRMAN JOHNSON: 74 and 75 are late-fileds?

8 MS. BARONE: Yes, ma'am.

9 CHAIRMAN JOHNSON: Okay.

10 MR. HORTON: I'm sorry, may Mr. Falvey be
11 excused?

12 CHAIRMAN JOHNSON: Yes, sir, you may be excused.

13 MR. HORTON: Thank you.

14 (Transcript continued in sequence in Volume 22)

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