

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
:
Consideration of BellSouth :
Telecommunications, Inc.'s entry :
into interLATA services pursuant :
to Section 271 of the Federal :
Telecommunications Act of 1996. :

DOCKET NO. 960786-TL



VOLUME 2

Pages 165 through 367

PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

DATE: Monday, November 3, 1997

TIME: Commenced at 9:10 a.m.
Concluded at 5:55 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way_
Tallahassee, Florida

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I N D E X

MISCELLANEOUS

1		
2		
3	ITEM	PAGE NO.
4	CERTIFICATE OF REPORTERS	367
5		
6	ISSUES	
7	ISSUE NO.	PAGE NO.
8	Issue No. 3	192
9	Issue No. 15	192
10	Issue No. 3A	192
11	Issue No. 15A	192
12	Issue No. 4	207
13	Issue No. 5	207
14	Issue No. 6	247
15	Issue No. 7	259
16	Issue No. 8	261
17	Issue No. 8	297
18	Issue No. 9	297
19	Issue No. 10	298
20	Issue No. 11	298
21	Issue No. 12	301
22	Issue No. 13	309
23	Issue No. 14	309
24	Issue No. 16	332
25	Issue No. 17	333
	Issue No. 18	333
	Issue No. 18A	333

P R O C E E D I N G S

1
2 (Transcript continues in sequence from
3 Volume 1.)

4 **CHAIRMAN JOHNSON:** We're going to go back on
5 the record. Issue 3, I think we are in the middle of
6 some discussions there. Staff, do you have any
7 preliminaries.

8 **MR. STAVANJA:** (Shaking head.)

9 **CHAIRMAN JOHNSON:** I thought you all were
10 taking a break to come back and discuss --

11 (Simultaneous conversation.)

12 **MS. BARONE:** Commissioners, one thing we
13 wanted to bring to your attention is that there is
14 some controversy over as to exactly what will be going
15 on in January, but we do intend on reviewing each of
16 the items that we have discussed today. Not
17 everything may be dealt with in January, but we do
18 intend on addressing all of your concerns that you've
19 raised today.

20 **CHAIRMAN JOHNSON:** Maybe not in January, but
21 in the near --

22 **MS. BARONE:** Yes, ma'am.

23 **COMMISSIONER GARCIA:** Clearly on this point
24 at least -- and I think we're on Problem 5. I might
25 have lost track somewhere along -- on Problem 5,

1 we'll -- and I guess the discussion, we sort of left
2 it off between myself and Chairman Johnson.

3 I think we have to address this. In any
4 filing that comes before us, this will be an issue
5 addressed. I just think we can't give a target. It's
6 not a moving target. It's simply as the law -- as we
7 perceive -- as the law is perceived to be at the time
8 it's filed.

9 MS. BARONE: Correct. And --

10 COMMISSIONER GARCIA: And I guess in that
11 case, then, you would be looking at the 8th Circuit
12 order, which we weren't looking at in this particular
13 case, right?

14 MS. BARONE: What we'll do is -- if this is
15 what the Commission would like to do -- I believe that
16 Staff has stated at the time this application was
17 filed, or petition was filed, there appeared to be an
18 inconsistency in the law, and we can make that note
19 within the order and not make a determination one way
20 or the other, and that way --

21 COMMISSIONER GARCIA: That way the company
22 knows that it has to address this point next time it
23 comes up and maybe the inconsistency won't be there;
24 and obviously the other parties can say that it's
25 still there and we'll re-discuss it at that time.

1 **CHAIRMAN JOHNSON:** And I guess we could also
2 deal with any arguments to the jurisdictional issue
3 then, too?

4 **MS. BARONE:** Yes, ma'am.

5 **CHAIRMAN JOHNSON:** That will be fine.
6 Commissioners, any other questions on the problem?

7 **COMMISSIONER CLARK:** But then we go into a
8 Unit E summary and then we come back to -- then would
9 go to OSS for -- okay. All right.

10 **COMMISSIONER DEASON:** Are we on OSS related
11 problems, then?

12 **CHAIRMAN JOHNSON:** Yes. I think -- no other
13 questions on UNE?

14 **COMMISSIONER CLARK:** But I do have one point
15 to make. There is a statement on Page 109 that says
16 at the top "Staff used 14 months to provision a
17 requesting UNE is a clear demonstration of
18 anticompetitive behavior." I don't think we can draw
19 that conclusion.

20 You know, that -- to me, that's a pretty
21 serious allegation, and you don't do that unless
22 you've had a full hearing and you've gone through a
23 process.

24 **COMMISSIONER GARCIA:** But I don't think --
25 we won't be addressing these issues in this way when

1 we put out this order, right?

2 **MS. BARONE:** I'm sorry. Commissioner
3 Garcia --

4 **COMMISSIONER GARCIA:** Following Commissioner
5 Clark's point, that we won't be addressing these
6 issues in this way when we come -- we will simply be
7 saying these met, these did not, and these are the
8 reasons that these did not meet the checklist, these
9 are the reasons why.

10 **MS. BARONE:** That's exactly correct. And
11 this statement will not be in the order.

12 **COMMISSIONER GARCIA:** Okay.

13 **COMMISSIONER DEASON:** And besides, that 14
14 months, that has to do with Problem 2, which we're
15 going to discuss further in Issue 5; is that right?

16 **MR. STAVANJA:** Yes, sir. And the point I
17 was making is that 14 months is an awful long time.
18 But I did state there that, you know, ICI did not come
19 to us, and so I'm not, you know, saying, you know,
20 BellSouth, this is anticompetitive behavior in the
21 manner that you see it.

22 I think that 14 months to provide an
23 unbundled network element is anticompetitive
24 behavior --

25 (Simultaneous conversation.)

1 **MR. STAVANJA:** -- but, you know, everybody
2 had -- ICI had, you know, all the time in the world to
3 contact this Commission and make a complaint and to
4 have us, or have this Commission address it; and
5 because they didn't, I wouldn't say -- criticize
6 BellSouth completely and say, you know, this is all
7 your fault. I don't want you to read that into it.

8 **CHAIRMAN JOHNSON:** I think we're onto OSS
9 related problems.

10 **COMMISSIONER DEASON:** Yeah. There are six
11 enumerated problems with the OSS. And I don't really
12 have any questions or problems with what Staff is
13 recommending. I think that this was one area of the
14 hearing where there were -- problems were identified,
15 they were documented, and I think that they do not
16 meet the parity standard. And we're not the one that
17 set the parity standard, but that is the standard.

18 And obviously, in my opinion, what Staff has
19 here shows that the OSS is not in parity, and I think
20 we have no alternative but to find that, and that
21 would be a reason for noncompliance.

22 I do think that we need to -- and I think
23 Staff's analysis of these issues do a good job in
24 specifying what the problem areas are, and I think
25 that hopefully this is something that can be refined

1 and perhaps corrected during now and the next 271
2 filing; and if they're not, well, then I think that
3 obviously the burden is on BellSouth to demonstrate
4 why parity in these areas is not appropriate and
5 cannot be reached. But I --

6 **COMMISSIONER CLARK:** Or why what they're
7 proposing is parity.

8 **COMMISSIONER DEASON:** Or why what they're
9 proposing is parity, but --

10 **COMMISSIONER GARCIA:** Although I found that
11 the evidence didn't put it out that way, and I think
12 Staff was correct in saying it wasn't. And I thought
13 that this, in particular, BellSouth should have
14 addressed. It didn't seem like that tough for them to
15 try to address these issues. And I think that that's
16 what was particularly bothersome about it. The
17 complexity of it wasn't that much, and the work that
18 had already put in, it just didn't require that much
19 more to make it -- bring it to parity.

20 **COMMISSIONER CLARK:** I think -- as I recall,
21 you have said with respect to each problem you've
22 identified what the solution is. Am I correct? And I
23 believe I concur in your analysis of what the solution
24 should be.

25 I do have a question on Page 122 where it

1 has to do with the last paragraph. You decline to
2 make a recommendation on the issue of provisioning
3 interval for an existing loop port combination. Does
4 this have to do with the other issue?

5 **MS. BARONE:** (Nodding head.)

6 **COMMISSIONER CLARK:** Okay.

7 **MR. STAVANJA:** Well, the provisioning was
8 handled in another -- in 3A, in Issue 3A. But because
9 this was dealing with a combination of elements and
10 that we had stated earlier that Staff wasn't going to
11 provide a recommendation on combinations, I just
12 wanted to bring it to your attention and leave it as a
13 no recommendation situation.

14 **CHAIRMAN JOHNSON:** Any other questions on
15 OSS related Problems 1 through 6?

16 **COMMISSIONER CLARK:** Let me just ask so I'm
17 clear. It seems to me that on Page 125, that's the --
18 the first paragraph is where you specifically state
19 what is deficient and what is required to make the OSS
20 compliant. Would that be true?

21 **MR. STAVANJA:** Yes.

22 **COMMISSIONER CLARK:** Okay.

23 **COMMISSIONER DEASON:** Are we now on ordering
24 and provisioning?

25 **CHAIRMAN JOHNSON:** Uh-huh. I think --

1 **MR. MUSSELWHITE:** Commissioners, I would
2 like to note that those same problems with the
3 preordering for UNEs is also applicable to resale as
4 well.

5 **CHAIRMAN JOHNSON:** Thank you.

6 **COMMISSIONER DEASON:** That's Issue 15,
7 right?

8 **MR. MUSSELWHITE:** Right.

9 **CHAIRMAN JOHNSON:** Preordering summary? Or
10 preordering. No other questions?

11 Ordering and provisioning.

12 **COMMISSIONER DEASON:** Commissioners, the
13 only question I had dealt with what was identified as
14 Problem 6 and is entitled "Insufficient Capacity to
15 Meet Demand." I clearly recognize that this is a
16 problem area, but I don't think it's been demonstrated
17 that there is insufficient capacity. Perhaps at most
18 what could be said is that Bell didn't carry their
19 burden to show that there is sufficient capacity. And
20 maybe that's what Staff is recommending.

21 **MR. STAVANJA:** That's true. And it wasn't
22 clear, as we stated, Commissioner Deason; it's not
23 clear whether the number of orders that BellSouth
24 claims it can handle per day is a combination of
25 resale orders and UNE orders or what. It's just not

1 real clear, and we just don't know whether they can
2 meet that demand or not.

3 **COMMISSIONER DEASON:** But it is clear that
4 the capacity which BellSouth testifies that they have
5 in place is more than sufficient for the number of
6 orders they're currently processing.

7 **MR. MUSSELWHITE:** That's true.

8 **COMMISSIONER DEASON:** And much of the
9 finding that the capacity is insufficient has a great
10 deal to do with what the projected demand is going to
11 be, and right now we certainly haven't seen much
12 demand in residential, and I know it includes resale.
13 But I'm just having some difficulty.

14 If the finding is going to be that BellSouth
15 did not meet its burden to clearly demonstrate that
16 there is sufficient capacity, I might could live with
17 that, but I'm really uncomfortable about any type of
18 statement that clearly that the capacity is
19 insufficient, because I'm not sure that that is the
20 case.

21 There are other areas in this -- other
22 problems in this general area where I think that
23 BellSouth does not meet the criteria. So, I mean, I
24 think they're going to fail on ordering and
25 provisioning anyway, but on the capacity one, I'm

1 just -- I'm a little unsure, and if Staff wants to
2 give me feedback on that, I'd welcome it. But that's
3 the one that causes me some concern.

4 **COMMISSIONER CLARK:** I guess what you're --
5 we're using is sort of circumstantial evidence to make
6 this conclusion in the sense that there were errors
7 and that sort of thing. And I think that's probably
8 what we should say, is that it appears that it -- the
9 evidence doesn't demonstrate that it is -- there is
10 such capacity for these reasons. And I think we can
11 avoid saying "therefore, they have insufficient
12 capacity."

13 We can just say it hadn't been proven, and
14 certainly these indicators would suggest that there
15 isn't, but they have the opportunity in a later
16 proceeding to demonstrate sufficient capacity.

17 **COMMISSIONER DEASON:** I can live with that.

18 **CHAIRMAN JOHNSON:** I had a question on
19 Problem 8, Insufficient Testing and Test
20 Documentation. Your conclusion there, you were saying
21 that Staff believed that the manner in which BellSouth
22 performed its internal testing is insufficient to
23 demonstrate that its systems and processes are capable
24 of responding to an order placed by an ALEC in a
25 manner that is in parity. And you're requesting or

1 suggesting that they use end-to-end testing.

2 Explain that to me, and how is that
3 different from what they are currently doing and what
4 would end-to-end testing be. And it was probably more
5 mechanically I didn't understand what you were
6 suggesting they do.

7 **MR. MUSSELWHITE:** Commissioners, BellSouth
8 filed 86 binders of information that was their
9 end-to-end testing results, and we weren't suggesting
10 that they need to provide end-to-end testing
11 necessarily. We were saying that the testing that
12 they did provide us in those binders did not
13 demonstrate to us that they had -- that they could
14 actually provide all the items that they said they
15 could provide.

16 And the FCC has stated that although
17 end-to-end testing is one form of -- one way that they
18 can prove that they can provide these items, they
19 believe that carrier-to-carrier testing or testing
20 that involves third parties to verify the results are
21 a better way to prove that they can actually provide
22 the items that they said they can provide.

23 **CHAIRMAN JOHNSON:** So what are we
24 recommending? What kind of testing are we
25 recommending they --

1 **MR. STAVANJA:** Madam Chairman, end-to-end
2 testing, we're not saying that it's not any good.
3 It's okay to do end-to-end testing. We --

4 **CHAIRMAN JOHNSON:** And that's what they did,
5 but --

6 **MR. STAVANJA:** Right.

7 **CHAIRMAN JOHNSON:** -- it's the way they did
8 it?

9 **MR. STAVANJA:** That's what they did, but we
10 didn't like the way they did it. They didn't use the
11 system that an ALEC would use to make an order. They
12 didn't say, okay, let's use LENS or EDI and let's
13 process an order. Let's see how it flows through the
14 downstream systems. Let's see how the order comes out
15 and how our people will provision the order.

16 They put it in their own system and they ran
17 it through their own internal system, BellSouth's own;
18 and how can you say that the system they designed for
19 the ALECs is okay if that wasn't even tested?

20 **CHAIRMAN JOHNSON:** Okay.

21 **MR. STAVANJA:** And that's the problem here.

22 **COMMISSIONER CLARK:** Then your point is that
23 it's not -- is it the way they do the testing, or
24 propose to do the testing, or the documentation of it?

25 **MR. STAVANJA:** Well, one, they need to do it

1 over the ALEC's type system and then document how they
2 did it to show us that that's what they did as opposed
3 to running it through their own and saying, oh, it's
4 okay, and checking it.

5 **COMMISSIONER CLARK:** So then addressing the
6 problem on 8 would be that in order for them to
7 meet --

8 **MR. STAVANJA:** The end-to-end testing.

9 **COMMISSIONER CLARK:** -- the end-to-end
10 testing, they have to run the test as if it was an
11 ALEC ordering and run it through the same systems the
12 ALEC would use?

13 **MR. STAVANJA:** Yes.

14 **CHAIRMAN JOHNSON:** Actually said -- which I
15 wasn't reading this sentence. It was my misread. I
16 didn't understand that last qualifier, because you
17 said do the last end-to-end testing as if the ALEC was
18 placing the order, and that would rectify the problem.

19 **MR. STAVANJA:** Right.

20 **COMMISSIONER CLARK:** I got you.

21 **CHAIRMAN JOHNSON:** Any other questions in
22 that particular section or in ordering and -- there's
23 a summary. I guess we'd go on after the summary to
24 Maintenance and Repair.

25 **COMMISSIONER DEASON:** I have a problem -- I

1 mean, a question on Problem 2. Here again, this is a
2 question of capacity, and we're talking about the TAFI
3 system.

4 I read Staff's -- your two paragraphs you
5 have under Problem 2. You identify it as a problem.
6 I don't see where you state conclusively one way or
7 the other that this is a problem of such magnitude
8 that it should be reason for compliance. You state
9 the two cases, what AT&T said, and you state what
10 BellSouth said. You don't have a conclusion. What is
11 your position?

12 **MR. MUSSELWHITE:** Commissioners, I believe
13 the problem here is that BellSouth has not provided
14 the technical specifications to the ALECs so that they
15 can develop the electronic capability to have these
16 orders processed electronically.

17 Currently the ALECs have to get -- submit a
18 request and then reenter that information into their
19 own OSS systems when it --

20 **COMMISSIONER DEASON:** I think that probably
21 more pertains to Problem 1, and I understand your
22 rationale there and your explanation. My question
23 goes more to Problem 2.

24 You state that the interface lacks
25 sufficient capacity. I don't find in the actual text

1 of your analysis there where you actually make that
2 conclusion -- you state what AT&T says and you state
3 what BellSouth says. Is that your conclusion that
4 there is insufficient capacity within the TAFI system?

5 **MR. GREER:** Commissioners --

6 **COMMISSIONER DEASON:** Because I have a
7 problem making that leap that there is insufficient
8 capacity. We've got conflicting testimony, but I
9 didn't find that AT&T's testimony was particularly
10 persuasive that it was insufficient.

11 **MR. GREER:** Commissioners, I believe if you
12 look at the maintenance and repair summary about the
13 second or third sentence in, it says "In addition,
14 Staff believes that BellSouth must provide ALECs with
15 the ability to have all the ALECs' repair attendants
16 logged into TAFI at the same time."

17 If that's the case, in just looking at the
18 information in Problem 2, that they have a capacity of
19 195 simultaneous users, but AT&T has indicated that
20 they have several hundred repair attendants, and I --
21 that appears to be that they don't have sufficient
22 capacity to handle the repair attendants.

23 **COMMISSIONER DEASON:** Well, do we have
24 evidence as to what the simultaneous impact is going
25 to be when how many -- how much capacity you have to

1 have at any one simultaneous moment? I mean, it seems
2 to me you want adequate capacity, but this requirement
3 may that be there's going to be excess capacity, and
4 that's going to be additional cost to be borne by
5 somebody; you have an inefficient system. And we all
6 know that when there's an inefficiency, the customer
7 is the ultimate one that pays for it.

8 And I guess my bottom line question is, are
9 we imposing a standard which is going to result in
10 insufficiency and increased costs?

11 **MR. GREER:** We believe it's a parity issue
12 in that BellSouth service attendants don't have to log
13 into the system every time they want to do a repair or
14 maintenance report, and that should also flow into how
15 the ALECs have access to their repair operations.

16 Now, is it that AT&T should have several
17 hundred? I kind of question several hundred. But
18 there is some question, and there is no evidence, as
19 far as I know, as far as the projected number of
20 attendants that all the ALECs will have to come up
21 with a number, but I think they still have to provide
22 them this continuous on-line access to the --

23 **COMMISSIONER DEASON:** Well, that's more in
24 line with Problem 1, right, the on-line access? Is
25 that --

1 **MR. GREER:** Well, I think it's sufficient
2 capacity to have that on-line access. As it says in
3 the first sentence of Problem 2, it says, you know,
4 capacity to support 195 simultaneous users in
5 BellSouth. That means they have -- that at one time
6 you can have 195 users accessing the TAFI system.

7 And, you know, AT&T itself has said that
8 they have several hundred, and that's just AT&T. It's
9 not talking about all the other parties.

10 **COMMISSIONER DEASON:** But all several
11 hundred of those are going to be logged in at the same
12 time? I mean, do we have any evidence on what the
13 demand is going to be from AT&T at any given time just
14 because they had had -- they have many personnel?
15 Does that mean they're all going to be on the system
16 at the exact same time?

17 **MR. GREER:** And I don't think we do. I
18 guess we were taking it to mean that AT&T says they
19 have at least -- have several hundred.

20 Now, you're right. I kind of question
21 myself whether or not there's going to be several
22 hundred on at one time. But BellSouth's repair
23 service attendants have on-line access to that system
24 24 hours a day if they want to be on this system 24
25 hours a day, and so should the competitors.

1 **MR. MUSSELWHITE:** Commissioners, I would
2 point out, too, that these numbers are region-wide
3 numbers. There would be 195 users region wide.

4 **COMMISSIONER CLARK:** I thought the point
5 being that -- at least what I took away from this was
6 when BellSouth's service reps come in, they
7 immediately log onto the system so that they can be
8 prepared to answer for whoever calls, and that's
9 likely the way every other competitive LEC will do it.
10 They'll come into work and log on the system so
11 they're ready to make whatever repair --

12 **MR. GREER:** To take trouble reports from the
13 customer.

14 **COMMISSIONER CLARK:** Right. I think
15 Commissioner Deason is right, is that we need to be
16 efficient, but I have a concern about BellSouth having
17 to expend money on what will ultimately be idle
18 capacity.

19 I think that we may want to be careful in
20 this area in the sense that I think it's going to be a
21 matter of something that evolves, and eventually you
22 will figure out just how much you need. But to compel
23 them to say conclusively what they have is not
24 sufficient in that they need "X" amount may not be
25 appropriate to do at this time.

1 **COMMISSIONER DEASON:** I have no problem --

2 **COMMISSIONER CLARK:** I think it's clear that
3 they ought to be able to have the same access. If
4 BellSouth is on line, they're plugged in, they're
5 ready to go, then I think the other competitive ALECs
6 need that same access.

7 **MR. GREER:** And I think that's essentially
8 what we're trying to say.

9 **COMMISSIONER DEASON:** Well, I guess I have
10 no problem indicating that this is a potential problem
11 area that needs further analysis and that we can't
12 conclusively state that there is sufficient capacity
13 or insufficient capacity.

14 And what I would have a problem flat out is
15 making a finding that there's insufficient capacity in
16 saying that what we have to do is to ensure that there
17 is -- I don't want to be in a situation of perhaps
18 requiring excessive capacity just to meet whatever
19 standard we want to impose here and impose additional
20 costs and potential inefficiencies on the system. And
21 I don't think we have enough information to make that
22 determination as to what would meet a parity
23 requirement and be the most efficient way of doing
24 that. That's the concern I have.

25 Now, Staff doesn't have that concern at all,

1 that we're perhaps putting some inefficiencies --

2 **MR. GREER:** Well, we do have that concern
3 but -- and I think the arbitration proceedings we
4 spent a lot of time talking about, you know what --
5 some requirements that we didn't set pricing
6 structures for, access to some of these databases. We
7 didn't set those kind of pricing -- there were pricing
8 issues that we didn't establish in the arbitration
9 proceeding.

10 And if it requires additional capacity and
11 they charge -- you know, for each access to the system
12 they charge whatever they charge. And that would be
13 instead of the cost of that access being -- going to
14 the end users, it would go to the people that want the
15 access; and I don't see a problem with them doing
16 that.

17 But I mean this was just based on what we
18 had here that we thought, you know -- and I foresee
19 that 195 service attendants region wide, the BellSouth
20 nine states, that that's not enough. Now, what's the
21 magical number to make it enough? I would say
22 considerably more than 195, because BellSouth has
23 considerably more than 195.

24 **COMMISSIONER DEASON:** When it says 195, does
25 that mean people logged on capable of using the

1 system, or people actually using the system -- can you
2 have more than 195 logged on at any one time but not
3 actually using the system?

4 **MR. STAVANJA:** No. This is -- I think this
5 is ALEC log-ons, not BellSouth log-ons.

6 **COMMISSIONER DEASON:** Okay. Well, you keep
7 talking about the number of personnel that BellSouth
8 had and they're using the same system and there
9 doesn't seem to be enough capacity for both. What are
10 the numbers for BellSouth?

11 **MR. STAVANJA:** Well, I don't know the actual
12 numbers, but I know there's various repair service
13 centers and trouble-reporting systems in Florida and
14 there's -- you know, the last number I saw was, you
15 know several million trouble reports per quarter or
16 whatever region wide and, I mean, that takes a lot of
17 folks to put in. So --

18 **COMMISSIONER CLARK:** But the point you're
19 making is not that the same number of ports, if you
20 will, have to be available to the ALECs, but that the
21 appropriate number of their customer service
22 representatives that need to be logged in have the
23 ability to log in in the same way --

24 **MR. STAVANJA:** Yes.

25 **COMMISSIONER CLARK:** -- BellSouth does? And

1 I would imagine that number will change over time --

2 **MR. STAVANJA:** Sure. And --

3 **COMMISSIONER CLARK:** As you know, right now
4 I wouldn't say that AT&T needs the same number as
5 BellSouth --

6 **MR. STAVANJA:** No.

7 **COMMISSIONER CLARK:** But as ALECs gain more
8 and more of the market share, I would presume that
9 parity would require a greater number of ports, if you
10 will, for them to log onto.

11 So I think in any case, we wouldn't give a
12 number, but we would say that parity would require
13 that they have the same ability to be on line for
14 their service reps as BellSouth does.

15 **MR. STAVANJA:** I think that's our position,
16 yes.

17 **COMMISSIONER DEASON:** Your bottom line
18 position is that -- even though it speaks in terms of
19 capacity, your bottom line position is that you want
20 AT&T or any ALEC's personnel to have parity in access
21 to the system to enter in their trouble reports.

22 **MR. STAVANJA:** Yes. And Commissioner Clark
23 is right --

24 **COMMISSIONER DEASON:** And you're saying
25 BellSouth has not made that showing that there is

1 parity in that access to the system?

2 **MR. STAVANJA:** I don't think so, based on
3 the numbers, the limited numbers that we have seen;
4 and knowing that there's over 100 certificated ALECs
5 in Florida now, I tend to believe that 195 isn't
6 sufficient.

7 **COMMISSIONER CLARK:** Intuitively it doesn't
8 seem like it would be sufficient, but maybe it is.

9 **MR. STAVANJA:** It may be, and --

10 **COMMISSIONER CLARK:** For this point in time.

11 **MR. STAVANJA:** Yeah. And the projection --
12 we haven't seen any projections; and as we said, this
13 is 90 -- this is 195, BellSouth region, and I don't
14 have a clue what's going on in the other regions.

15 **COMMISSIONER DEASON:** Well, I think it's
16 clear this is an area we need more information with
17 the next 271 filing.

18 **MR. STAVANJA:** I don't disagree that we can
19 try to get some more information.

20 **CHAIRMAN JOHNSON:** Any other questions on
21 the OSS summary, or on the issue as a whole, Issue 3?

22 **COMMISSIONER CLARK:** Madam Chairman, I move
23 Staff on Issue 3 with the understanding that our
24 discussion has encompassed several areas that we think
25 need to be specified in terms of here's where we think

1 you're deficient, here's what you need to do to make
2 it sufficient, and what -- I mean, without -- do we
3 need to enumerate them?

4 **COMMISSIONER DEASON:** Well, I think we've
5 got a record here. I'm not sure we necessarily need
6 to go back item by item, but I do have, I guess,
7 hopefully a clarifying question on your motion.

8 Basically you're moving Staff's
9 recommendation with -- consistent with the discussion
10 and clarifications --

11 **COMMISSIONER CLARK:** Yes.

12 **COMMISSIONER DEASON:** -- we've tried to make
13 here during this discussion period. And I agree with
14 that. I'm just not sure exactly on Problem 1, under
15 UNes, the problem with there being no cost-based rates
16 and that we were -- BellSouth is relying on interim
17 rates to some extent. In your motion are you
18 indicating that that is a reason -- that is an area of
19 noncompliance in and of itself?

20 **COMMISSIONER CLARK:** Well, I thought the
21 discussion -- that the conclusion or the consensus was
22 that we would note that it's currently interim rates,
23 but that to the extent they re-file with rates that
24 are consistent with our actions taken to date, that
25 they would be considered to be compliant.

1 **COMMISSIONER DEASON:** I can second the
2 motion.

3 **CHAIRMAN JOHNSON:** There's a motion and a
4 second. Any further discussion?

5 **COMMISSIONER GARCIA:** I think we also
6 dropped Problem 2 under the UNE, right?

7 **MR. STAVANJA:** Right.

8 **COMMISSIONER GARCIA:** But we address that
9 later on in Issue --

10 **MR. STAVANJA:** Issue 5, I think.

11 **COMMISSIONER GARCIA:** 5, is it? What issue
12 is it?

13 **COMMISSIONER DEASON:** It's Issue 5. Now,
14 one further clarifying question: Does this also apply
15 to Issue 15, the motion?

16 **COMMISSIONER CLARK:** Which is 15?

17 **MR. MUSSELWHITE:** Resale.

18 **COMMISSIONER DEASON:** Many of the problems
19 in the analysis is identical.

20 **MR. MUSSELWHITE:** Yes, that's correct.

21 **COMMISSIONER CLARK:** Yeah. I would hope we
22 would make consistent decisions, but we can move 3 now
23 and then move 15A consistent with 3.

24 (Simultaneous discussion.)

25 **COMMISSIONER DEASON:** I thought we were

1 taking up 15 at the same time.

2 **COMMISSIONER CLARK:** All right. Then it
3 would apply to 15A, too.

4 **COMMISSIONER KIESLING:** 15.

5 **CHAIRMAN JOHNSON:** Just 15. There's a
6 motion on Issues 3 and 15.

7 **COMMISSIONER DEASON:** Second.

8 **CHAIRMAN JOHNSON:** And a second. Any
9 further discussion? Seeing none, show those approved
10 unanimately.

11 **MS. BARONE:** Commissioners if I may, I just
12 want to make sure for order purposes. I will make the
13 notes on your concerns about Problem 6 also regarding
14 BellSouth not -- didn't carry the burden to show that
15 there was sufficient capacity rather than saying
16 there's insufficient capacity, and I will also make
17 note of your concerns about the capacity on the TAFI
18 issue.

19 **CHAIRMAN JOHNSON:** Issue 3A.

20 **MR. AUDU:** Commissioners, Issues 3A and 15A
21 are derivative issues resulting from the Act's
22 nondiscriminatory requirement. They are listed the
23 provisioning of UNEs resale services and access to OSS
24 function. BellSouth has developed --

25 **CHAIRMAN JOHNSON:** So we're going to be

1 addressing 3A and 15A?

2 **MR. AUDU:** 3A and 15A will be discussed
3 concurrently. BellSouth has developed performance
4 standards and measurements. However, these
5 performance standards and measurements are not
6 adequate to monitor nondiscriminatory performance as
7 it relates to the UNEs resale services and access to
8 OSS functions.

9 As you have correctly noted, that we will be
10 discussing 3A and 15A together, and that means that we
11 will also be voting on that at the same time. Staff
12 is open for questions.

13 **CHAIRMAN JOHNSON:** Any questions,
14 Commissioners?

15 **COMMISSIONER DEASON:** As I understand the
16 Staff's bottom line recommendation, you think that the
17 performance standards which Bell proposes are
18 inadequate to detect a lack of parity?

19 **MR. AUDU:** Yes, sir.

20 **COMMISSIONER DEASON:** And that there needs
21 to be performance data comparing BellSouth's own
22 performance with what is provisioned to their
23 competitors so that there is a comparison to determine
24 if, in fact, there is parity?

25 **MR. AUDU:** That's correct.

1 **COMMISSIONER GARCIA:** I'm sorry. You
2 believe that what? See, the only problem I have with
3 this is that I didn't think you gave us a target of
4 where BellSouth should be.

5 **MR. AUDU:** The target is that -- I mean,
6 upon another filing for Section 271, it's necessary
7 that BellSouth provides empirical data that compares
8 its operational performance to that of an ALEC's
9 performance.

10 What has happened in this particular
11 proceeding is that there has not been such empirical
12 information, so it's difficult for Staff to say, yes,
13 there is parity in any form and shape.

14 **COMMISSIONER CLARK:** The bottom line on this
15 is that their performance standards -- or it's really
16 the measurement that we're concerned with, isn't it?

17 **MR. AUDU:** I mean, you have to be both. The
18 measurements and the actual, I mean, existence of
19 parity, I mean, it's a sequential problem. One is you
20 have to have the standards and then to go and come up
21 with the measurements. Thereafter, you will take the
22 measurements and then compare is there parity.

23 Now, with what -- I mean, BellSouth has
24 furnished us its performance standards and
25 measurements. It's been -- I mean, all intervenors

1 have argued it's not adequate, the performance
2 standards that BellSouth has furnished would not be
3 adequate to dictate, I mean, parity or discriminatory
4 treatment.

5 **COMMISSIONER CLARK:** I took this to mean,
6 yes, they've said they want to meet, say -- they'll
7 meet all -- they'll process and accomplish all, say,
8 service orders within 24 hours maybe 90% of the time,
9 and that might be their performance standards. And
10 you could agree that they're meeting that, but then
11 you find out the one from themselves is they're going
12 to do it in 12 hours 95% of the time. And your point
13 being that they have to be -- you have to be able to
14 see that the service is on par.

15 **MR. AUDU:** That's correct, and that's why --

16 **COMMISSIONER GARCIA:** What's the
17 recommendation for them to hit those points -- I
18 didn't -- perhaps I missed it, but I didn't feel that
19 it was in here.

20 **COMMISSIONER CLARK:** I'm confused --

21 **COMMISSIONER DEASON:** Bottom of Page 149
22 under Guidelines.

23 **COMMISSIONER CLARK:** Yeah. I just got
24 confused, I think.

25 **MR. AUDU:** What's happening is that

1 BellSouth, I mean, gave us target-based measures, and
2 target-based measures basically do not in any way lend
3 themselves to adequate comparison. And that's part of
4 the reason that Staff decided that the guidelines on
5 Page 149, the average installation intervals for both
6 resale and loops, I mean, those are discrete figures
7 that you can use to say, well, I mean, BellSouth
8 provides itself services within 12 hours, I mean, and
9 it provides AT&T within 15 hours, what is the problem.

10 You can go and examine those sort of
11 problems. If we say -- if we just let it, I mean,
12 hang on a 24-hour provision, we can say, yeah,
13 BellSouth provided itself within 24 hours, it provided
14 AT&T within 24 hours. We don't have an idea what is
15 the exact time.

16 So average installation intervals give us
17 the opportunity to then compare and see what exactly
18 is happening. Is there a discrepancy? If yes, let's
19 examine why -- the discrepancy is a system based
20 discrepancy or is it just human resource.

21 **CHAIRMAN JOHNSON:** So your recommendation is
22 to use the L-C-U-G benchmarks or whatever?

23 **MR. AUDU:** The --

24 **COMMISSIONER GARCIA:** But Staff doesn't even
25 adopt that. That's why I have the question --

1 **COMMISSIONER DEASON:** Well, it's just for an
2 interim --

3 (Simultaneous conversation.)

4 **COMMISSIONER GARCIA:** Right --

5 **MR. AUDU:** I mean, the use of the LCUG,
6 L-C-U-G, as you correctly named it, is basically to
7 say, I mean, these are benchmarks or metrics that we
8 believe is explicit enough to get us closer to where
9 we want. However, we went on and incorporated these
10 seven guidelines that are located in the Ameritec
11 order that the FCC put forth to also say that this
12 has, I think, discrete measures that the FCC has
13 already taken the pain to delineate.

14 **COMMISSIONER CLARK:** So in moving Issue 3A,
15 it would be that we would approve what Staff
16 recommends in the guidelines? That's your
17 recommendation?

18 **MR. AUDU:** The --

19 **COMMISSIONER GARCIA:** And does that include
20 the LCUG?

21 **MR. AUDU:** Yes. In effect, yes, the LCUG.

22 **COMMISSIONER CLARK:** I can move Staff --

23 **COMMISSIONER GARCIA:** Let me ask you, what
24 were the problems that BellSouth had with the LCUG?

25 **MR. AUDU:** One of the problems that

1 BellSouth had with the LCUG was the idea that it was
2 arbitrary. And I don't debate that to define that
3 even the intervenors made it very clear that the LCUG
4 was not based on any hard core evidence than their
5 experiences in dealing with the ILECs as IXCs, and
6 that part of the metrics of the LCUG was derived based
7 on interconnection agreements.

8 They had quite all right -- that's the
9 LCUG -- had gone ahead and made the ILECs to solicit
10 data, empirical data, that would have enabled them to
11 set realistic benchmarks, but since they could not get
12 it, they defaulted to the experiences of -- as IXCs
13 and to whatever what's provided in interconnection
14 agreements. So I could understand why BellSouth would
15 think that the LCUG -- I mean, metrics are arbitrary.

16 The second concern that BellSouth had with
17 the LCUG metrics was that there were too many in
18 quantity than what BellSouth was using to manage its
19 own operations. My concern with that is very simple.
20 There might be too many, but if that is what is
21 necessary to demonstrate nondiscrimination, then that
22 is what is required.

23 **COMMISSIONER GARCIA:** And too many are
24 encompassed in the seven data you ask for?

25 **MR. AUDU:** The too many, I mean, would be in

1 the LCUG that --

2 **COMMISSIONER GARCIA:** Right.

3 **MR. AUDU:** -- BellSouth was alleging that
4 the LCUG metrics are too many, basically.

5 **COMMISSIONER GARCIA:** But Staff is
6 requesting using these seven -- I guess, you'd call
7 them measurements?

8 **MR. AUDU:** What Staff is suggesting is that
9 the combination of the LCUG and these seven items -- I
10 mean, that BellSouth -- I mean, should take a look at
11 the LCUG and these seven items and see what within
12 that, the two sets of information, can be used to give
13 us the necessary information that next time they come
14 around they can actually prove parity. I mean, I'm
15 not in any way or Staff is not in any way putting on
16 and say, this -- do this, this, this and that.

17 **COMMISSIONER GARCIA:** Staff isn't saying
18 that you have to use the LCUG method, but what Staff
19 is saying that that's a starting point.

20 **MR. AUDU:** Yes. What Staff is saying is
21 that between the LCUG and the seven guidelines, that
22 that provides enough in point to say based on what
23 BellSouth has going, these are things that if you work
24 within these parameters to get the average
25 installation intervals and other things, we see

1 ourselves moving forward; but, also, just saying,
2 okay, what you have provided is not adequate; go away,
3 and come back with some other information.

4 **MS. SIMMONS:** Commissioners, if I could just
5 try to clarify a little bit here. I think the issue
6 really is whether or not the performance standards and
7 measures are adequate, those that BellSouth has
8 proposed; and we believe they are not, as Mr. Audu has
9 explained.

10 I think in terms of the guidelines, it's
11 really just that; it's guidance to the company. I
12 should point out that I think possibly there are other
13 ways it could be done. I think the heart of the
14 matter is to collect observations as far as
15 provisioning intervals for BellSouth vis-a-vis for
16 ALECs and to basically compare those profiles.

17 You need a statistically valid sample of
18 both and you need to provide -- compare the profiles.
19 Mr. Audu has suggested comparing the average
20 intervals. That would be one way to do it, but in a
21 broader sense really what you're trying to do is
22 compare the two profiles and see if there any
23 statistically significant differences between --

24 **COMMISSIONER GARCIA:** And get --

25 **MS. SIMMONS:** -- the provisioning intervals

1 for a LEC versus an ALEC.

2 **COMMISSIONER GARCIA:** And I don't disagree
3 with that, but what I worry is that we don't leave a
4 standard here. We don't leave them what exactly it is
5 we're looking for, and that's the only thing.

6 I'm trying to -- you know, you said -- he
7 speaks about averages. You say comparisons. And what
8 I want to do is give something definitive that the
9 company can point to and say we met this standard is
10 the LCUG and seven. I don't know if that's even more
11 than we should be requiring, or is it just meeting the
12 seven in the present system that it uses; it's enough.

13 **MR. AUDU:** What we are trying to say is that
14 it's not impossible that even within the LCUG that
15 you'll find some of these seven items already
16 referenced --

17 **COMMISSIONER GARCIA:** Right.

18 **MR. AUDU:** So that's possible that they
19 are -- I mean, some of this will already cancel out.
20 However, what we are trying to say is when they come
21 back another time, we want to make sure that we have
22 discrete --

23 **COMMISSIONER GARCIA:** Comparative --

24 **MR. AUDU:** -- I mean, discrete intervals
25 that could lend themselves to adequate comparison.

1 **COMMISSIONER GARCIA:** Okay. Well, I -- see,
2 I understand that, and that's exactly what we should
3 be talking about, not -- you know, if we put all this
4 together, this is in the range of what we're looking
5 for. If what we're looking for is discrete
6 information that can be used to service an adequate
7 comparison between an ALEC and the service it provides
8 itself, I think that's fine, and I think your seven
9 criterion allow for that.

10 **MS. SIMMONS:** Commissioner Garcia, I guess
11 my take is this would be that the seven -- we believe
12 the seven items would be appropriate. All I was
13 trying to do is not foreclose other ways of looking at
14 it.

15 **COMMISSIONER GARCIA:** I understand, but you
16 understand the problem I'm trying to address, that
17 there is always another way to look at it; and we
18 could be here forever. And there's the tendency that
19 when they show up with the seven and the LCUG, someone
20 says, "and you have to compare this," and that's not
21 there. And so what I want to do is simply have a
22 target that that information provided to us and
23 provided to the competitors is sufficient for the
24 competitors to have an understanding of what they're
25 receiving and for us to make a determination from that

1 information.

2 **MS. BARONE:** Commissioner Garcia, if I can
3 just state one thing here. I think the issue is more
4 narrow. This is performance standards so that we can
5 get a statistically valid comparison, and that's all
6 we're looking at. Then we find out whether there's
7 parity after we look at a statistically valid
8 comparison. We're just trying to give guidance.

9 **COMMISSIONER GARCIA:** Agreed. And I don't
10 disagree with that. I just want to make sure the way
11 you stated it is fine. What we're looking for -- and
12 I think that the guideline is sufficient in helping us
13 get to that issue, but I don't want us to need
14 something else when we get down the road because we've
15 looked at it from another angle, and that's the only
16 point I'm trying to make.

17 **MS. SIMMONS:** Yeah, I would agree with
18 Ms. Barone. I mean, the day is really the critical
19 part. And the only point I was trying to make is in
20 theory what you're doing is you're getting
21 statistically valid samples, one for BellSouth, one
22 for the ALECs, and obviously those profiles can be
23 compared in different ways.

24 Mr. Audu has suggested the average
25 installation intervals. I think that's a reasonable

1 way to do it. There are other ways that these two
2 profiles could be compared as well. That was the only
3 point I was making, but I think for --

4 **COMMISSIONER GARCIA:** Every time I think I'm
5 getting to a certain comfort level, you say there are
6 other ways --

7 **MS. SIMMONS:** Well, my only point is that
8 when you're comparing profiles, you can compare them
9 in different ways, and --

10 **COMMISSIONER GARCIA:** Absolutely.

11 **MS. SIMMONS:** -- I certainly think comparing
12 the averages will most likely suffice. I just -- I
13 think we -- no, I just wanted -- I think we should
14 bear in mind that this strictly is guidance. It
15 doesn't really affect the recommendation statement
16 per se. It's really guidance, and I just --

17 **COMMISSIONER GARCIA:** But that --

18 **MR. AUDU:** -- was trying not to be too
19 absolute about it, that's all.

20 **COMMISSIONER GARCIA:** No -- and I don't want
21 to narrow you down, but what I want to do is make sure
22 that within these guidelines if the company is able to
23 meet these guidelines, then we're able to get -- to
24 derive the information that we -- or arrive at the
25 information that we need to make our determination.

1 **COMMISSIONER CLARK:** Let me see if I can try
2 to state a motion. That on this issue the motion
3 would be that we find that they have not -- agree with
4 what's in the recommendation, and that in order to
5 provide them direction, we would we say that BellSouth
6 should provide performance measurements that are
7 clearly defined, permit comparison with BellSouth
8 retail operations, and are sufficiently disaggregated
9 to permit meaningful comparisons. Staff believes that
10 one way to do that is mean provisioning intervals, and
11 that they would do that by providing statistically
12 valid commercial usage data showing the seven issues.
13 Would that be correct?

14 **COMMISSIONER GARCIA:** I second that.

15 **MS. SIMMONS:** Yes.

16 **CHAIRMAN JOHNSON:** Motion and second. Any
17 further discussion?

18 **COMMISSIONER KIESLING:** Just so I'm clear,
19 that's a motion on both 3A and 15A?

20 **COMMISSIONER CLARK:** Yes.

21 **COMMISSIONER DEASON:** And before we take a
22 vote, I have one clarifying question. The last
23 paragraph of the analysis indicates that there are
24 some other concerns that were expressed by some
25 intervenors, primarily transport trunks and advance

1 data services. And basically Staff indicated that
2 this is an area where the parties need to get together
3 to resolve their differences and, hopefully, can come
4 up with some meaningful standards.

5 I take it, then, that we're indicating that
6 that should be the responsibility both on the
7 intervenors and BellSouth to try to do that, and that
8 this in and of itself is not a reason to find that
9 BellSouth is noncompliant, this is just an area where
10 we need more information. Am I characterizing that
11 correctly?

12 MR. AUDU: I believe so. What's happening
13 is that the present document of performance standards
14 and measurements that BellSouth had given did not
15 include measures that would monitor transport related
16 or data services. And what Staff is trying to say is
17 that these should be considerations in future
18 performance standards and measurements.

19 And I believe that the parties have engaged
20 in some form of negotiation to have come up with what
21 has currently been filed, and we believe that they
22 should carry that negotiation forward to consider
23 transport related and data services.

24 COMMISSIONER DEASON: So Staff is
25 acknowledging that we do need some type of measurement

1 criteria to get our hands on whether there is parity
2 in the provisioning of transport trunks and advance
3 data services.

4 MR. AUDU: That's correct.

5 COMMISSIONER CLARK: Okay. With that
6 clarification, I still move approval of 3A and 15A.

7 CHAIRMAN JOHNSON: Okay. There's a motion
8 and second. Any further discussion? Show it approved
9 unanimously with those clarifications.

10 COMMISSIONER CLARK: I can move Issue 4.

11 CHAIRMAN JOHNSON: Any questions on 4?

12 COMMISSIONER DEASON: Second.

13 CHAIRMAN JOHNSON: And a second. Any
14 further discussion? Seeing none, show it approved
15 unanimously.

16 CHAIRMAN JOHNSON: Issue 5.

17 MR. AUDU: Commissioners, Issue 5 addresses
18 BellSouth's ability to provision local loops as a
19 separate unbundled network element. BellSouth has not
20 provisioned all of the requested unbundled local
21 loops.

22 Of those that BellSouth has provisioned,
23 BellSouth has experienced significant problems in the
24 process. Staff believes that BellSouth has not made
25 this checklist item since BellSouth has not

1 demonstrated it can bill for the unbundled local loop.

2 Staff is open for questions.

3 **CHAIRMAN JOHNSON:** Any questions,

4 Commissioners?

5 **COMMISSIONER DEASON:** As I understand,

6 Staff's analysis on this issue that the primary

7 concern in and the primary reason why Staff is

8 recommending that this item be noncompliant is the

9 billing problem. Am I reading it correctly?

10 **MR. AUDU:** That doesn't come quite as -- I

11 mean, my recommendation didn't come quite as clear as

12 I would have wanted it. The billing problem is mostly

13 secondary.

14 I mean, what has come to be is that

15 BellSouth, I mean -- and the record does not clearly

16 demonstrate that the local loop is unbundled from

17 transport switching and other items. And so what

18 Staff has done is to default to billing to say, okay,

19 I mean, see -- there is nothing in the record to

20 demonstrate that this has been unbundled. Is there

21 any form of billing as a surrogate to say that, yes, I

22 mean, a local loop has been unbundled from other local

23 network elements. And so we've gone to use the

24 billing as mostly an acid test. If you provision it,

25 then you are most likely to bill for that, and that

1 has not been met.

2 **COMMISSIONER DEASON:** So what you're saying
3 is that to determine if the loops have been unbundled
4 and have been provided, the only way to really
5 ascertain that is to look at the billing, and the
6 billing is not clear as to whether it is being done
7 so, therefore, they failed to meet the criteria?

8 **MR. AUDU:** What I'm saying is that the ideal
9 would have been for the record to demonstrate that
10 they have provisioned unbundled loops. In the absence
11 of that, we defaulted to look into their billing
12 records. That also, has not, I mean, demonstrated
13 that they are provisioning unbundled local loops.

14 **COMMISSIONER DEASON:** Well, how do you want
15 the bill -- what do you want the bill to show?

16 **MR. AUDU:** The way the -- I mean, the way
17 checklist Item 4 is patterned is such that you have to
18 satisfy that the unbundled local loop is provisioned,
19 I mean, as a separate network element, not in
20 conjunction with another thing.

21 Now, what Staff, I mean, has come to
22 understand is that one of the best ways to do that is
23 to basically go on and say, okay, can -- I mean, can
24 they bill for it as just local loop? Was this local
25 loop in connection with a port or some other elements?

1 That was not demonstrated.

2 **MR. STAVANJA:** Commissioner Deason, to state
3 it another way, what I said in Issue 3 was BellSouth
4 hasn't demonstrated that it can generate mechanized
5 billing. What Mr. Audu is stating is that BellSouth
6 needed to demonstrate that it was providing an
7 unbundled loop.

8 And one way of demonstrating that was --
9 well, they can't provide a mechanized bill, but they
10 can provide manual bills; and if they wanted to
11 demonstrate that they could provide an unbundled loop
12 or any unbundled element, they clearly could have, you
13 know, processed even a manually generated bill and
14 showed on that bill that they provided that UNE. I
15 mean, absent that, I mean, I don't know how else they
16 would show us; whether they would go out and take a
17 picture and show that they --

18 **COMMISSIONER DEASON:** You know, you're
19 saying there's no record evidence that Bell is
20 providing unbundled local loops, and the only way they
21 could demonstrate that would be to show where they
22 have billed for it; whether it be manual or mechanized
23 to show that there have been bills rendered for those
24 unbundled loops, and we don't have that.

25 **MR. AUDU:** What's happening is that there is

1 discussion of BellSouth providing unbundled local
2 loops. However, when they come to bill for those
3 unbundled local loops, they have failed to bill for
4 those as UNEs.

5 I mean, one of the cases is the situation
6 with Intermedia whereby when they came to bill, they
7 billed it at tariff rates and turned around to apply
8 the credit. That does not show in any way that that's
9 a UNE.

10 COMMISSIONER DEASON: Yes, but --

11 COMMISSIONER GARCIA: Well, I mean --

12 (Simultaneous conversation.)

13 COMMISSIONER DEASON: If the bottom line is
14 correct, I mean, what if they start with a higher
15 number and give a discount, as long as the number is
16 correct? That's the difficulty I'm --

17 COMMISSIONER GARCIA: -- have they provided
18 the service that we're asking about, the answer is
19 yes. Why should the default be whether it was
20 billed -- I mean, we've already addressed the bill --
21 the creation of automatically billed services, but why
22 should the fact that it's in a bill be the proof that
23 that service is -- exists and going up?

24 MR. AUDU: The question is very simple.
25 When you go to -- and I hate to go this route -- when

1 you go to McDonald's to, I mean, order whatever, you
2 want to know that by the time you receive --

3 **COMMISSIONER GARCIA:** Now you're talking
4 about something we can talk about.

5 **MR. AUDU:** -- you get exactly what you want.

6 **COMMISSIONER CLARK:** You mean we can
7 understand.

8 **MR. AUDU:** When you go to order for a Big
9 Mac, you want to know that when you leave there you
10 are getting a Big Mac. You don't want to leave there,
11 I mean, with the bag closed and only go down the road
12 to find out, whoops, you've got something different.
13 And that's exactly what's happening here.

14 When it's billed at a tariff rate, there is
15 every reason to say that that is not completely at UNE
16 rates. When the credit --

17 **COMMISSIONER GARCIA:** But we can --

18 **MR. AUDU:** -- is applied -- I mean, it's
19 only saying that we are applying the credit to
20 recognize that we have an interconnection agreement
21 that calls for particular rates.

22 If for any reason, I mean, you went and --
23 you wanted only local loop, is it possible that the --
24 I mean, could they give it to you and charge it the
25 way they charge it? That is a question that we cannot

1 answer based on what we have in here.

2 **COMMISSIONER DEASON:** Well, it seems to me
3 that, I mean, you can go to McDonald's and they can
4 bill you for a Big Mac, and then when you open your
5 sack you've got a quarter pounder, and the proof is
6 when you start to take the bite and --

7 **COMMISSIONER CLARK:** I think that --

8 **COMMISSIONER DEASON:** -- if they're
9 provisioning unbundled elements -- and if they aren't
10 and there's a competitor depending on that and that
11 service is not being provided, they will know it, not
12 because of the bill, but because they're not getting
13 the service that they thought they contracted for.

14 **COMMISSIONER CLARK:** I thought the point was
15 that it's not the notion of getting a quarter pounder
16 when you ordered a Big Mac; it's you go in there and
17 you want a Big Mac, they bill you a for a value meal
18 and subtract the fries and the coke.

19 I thought that was your whole point, and
20 they ought to be -- I mean, then you've got to do some
21 math; and instead of saying, yeah, you paid 99 cents,
22 you look at it, well, it was \$3.29 but they subtracted
23 \$1.29 plus a penny, so I'm okay. I thought that's
24 what -- I honestly --

25 **COMMISSIONER GARCIA:** I'm not going to add

1 to this analogy anymore, but what I will tell you is
2 either way, you got what you paid for. You may not be
3 billed in a way, but that when you're eating a
4 Big Mac, you're eating a Big Mac. I mean, it's -- and
5 that's what I didn't understand about the argument.

6 In other words, when you bought a certain
7 service, or when you asked for a certain service from
8 the company and they gave you that service, as long as
9 they billed you in the end what that service was, that
10 service was provided.

11 **MR. AUDU:** The question is, would the ALEC
12 be able to turn around and bill his customer exactly
13 knowing what, I mean, those elements are costing him?

14 **COMMISSIONER GARCIA:** Yes, because the ALEC
15 in the end knows exactly what it asked for and what
16 its customer got and whether that had to be hand
17 generated, which I think is a cost that goes on to
18 BellSouth not to the ALEC. The service that it asks
19 for is what it's going to be billing.

20 **MR. GREER:** Commissioners, I'll try to make
21 it a little easier. BellSouth has indicated that they
22 have provided various unbundled elements in 5, 6, and
23 7, Issues 5, 6 and 7, and we tried to collect
24 information to verify whether or not the competitors
25 actually had those elements, unbundled loops,

1 transport and switching. And when we looked at the
2 information we tried to get to see whether or not they
3 actually had provided that, and it's unclear.

4 And so what we tried to do is look at a
5 second avenue to see whether or not they were
6 providing those things, and that was, did they issue a
7 bill for it; because I'm not for sure from the record
8 that there's evidence that shows and I can go and
9 pick, there's a loop, there's a loop, there's a port,
10 there's transport.

11 **COMMISSIONER GARCIA:** So you have doubts
12 that they're providing it?

13 **MR. GREER:** Well, I don't have any -- I
14 mean, as from the subpoenaed information and all that
15 information that we tried to collect from the
16 competitors, I can't go to that information and pick
17 out, that's a loop, that's a loop, and that's a loop.
18 Can't do it.

19 **COMMISSIONER GARCIA:** You can't pick it out
20 on paper, but we have testimony before us that they
21 are providing these services.

22 **MR. GREER:** You have BellSouth's testimony.

23 **COMMISSIONER GARCIA:** Right. The same way
24 that we have --

25 **MR. GREER:** But I have no competitors that

1 said, yeah, well, we've ordered loops --

2 (Simultaneous conversation.)

3 **COMMISSIONER GARCIA:** -- same testimony by
4 someone saying, I sent six letters, and BellSouth
5 said, I never got them. I mean -- and we put that
6 information down here.

7 What I'm saying to you is that if a customer
8 says that they provide -- if BellSouth says that they
9 have this, and we don't have any information to the
10 contrary, you're trying to get -- you're trying to
11 prove something --

12 **MR. GREER:** No. I'm going to BellSouth's
13 information that they provided us in a subpoenaed
14 information that says "Provide us the unbundled
15 network elements, loops, ports whatever," and try to
16 identify those actual things, that they actually have
17 somebody that they're providing loops, ports, that
18 shows that they're unbundled from those pieces as
19 required by Issues 5, 6 and 7. I don't have any of
20 that. And so we went the extra mile to see whether or
21 not there was some billing information that gave us
22 that, and we didn't see --

23 **COMMISSIONER DEASON:** I thought -- was it
24 Mr. Varner, I believe, testified as to the number of
25 unbundled loops they're provisioning and the number of

1 unbundled ports they're provisioning and --

2 **MR. GREER:** Sure did, and --

3 **UNIDENTIFIED SPEAKER:** That's right.

4 **MR. GREER:** -- we tried to verify that
5 information via the subpoenaed information and verify
6 it with the parties, and I cannot come and point to
7 you where a party says, yeah, you know, we have nine
8 ports or nine loops and you're right.

9 **COMMISSIONER GARCIA:** Stan, but I don't need
10 to see bills from McDonald's to know they sell
11 hamburgers. I mean --

12 **MR. GREER:** But I do need to be able to pick
13 out they're actually providing unbundled elements,
14 these specific unbundled elements, to get by Issues 5,
15 6 and 7.

16 **MS. SIRIANNI:** Commissioners, I think also
17 you need to look at -- some of this comes down to be a
18 pricing issue as to whether they're -- they could be
19 getting -- they could order a Big Mac and get -- not
20 get a Big Mac and not know the difference --

21 **UNIDENTIFIED SPEAKER:** I think because --

22 **MS. SIRIANNI:** -- or they could be getting
23 billed for resale and not know it, but they asked for
24 UNEs. So this comes down to kind of what we were
25 talking to earlier about the pricing issue, and

1 that's -- and that's what part of the problem is when
2 Mr. Audu said he -- the competing provider does not
3 know how to, in turn, bill its customer because it
4 does not know what it's going to get billed or to ask
5 for --

6 **COMMISSIONER DEASON:** Are you saying that
7 AT&T is not sophisticated enough to know when it
8 orders an unbundled loop --

9 **MS. SIRIANNI:** Not if --

10 **COMMISSIONER DEASON:** -- and it gets the
11 bill, that it doesn't know whether it is being billed
12 for an unbundled loop and whether the price is
13 correct?

14 **MS. SIRIANNI:** If they ordered UNEs that --
15 they ordered all the UNEs to be able to provision an
16 end user service, and they're able to give that end
17 user service, they don't know whether that is actually
18 going to be billed -- it could be resale, and it would
19 look the same way. It would look exactly --

20 **COMMISSIONER GARCIA:** But you don't think --

21 **MS. SIRIANNI:** -- the same. The end user
22 wouldn't know the difference. They're getting
23 service. Until they get that bill they --

24 **COMMISSIONER DEASON:** When you say end user,
25 you mean the customer or you mean AT&T?

1 **MS. SIRIANNI:** Well, when AT&T, then, in
2 turn, provides that service to the end user --

3 **COMMISSIONER DEASON:** The end user could
4 care less as long as they got dial tone and could make
5 a telephone call. But AT&T, if they're the one that
6 ordered it and paying for it, when they get the bill,
7 I think they're sophisticated enough they're going to
8 look at that bill and figure out whether they're being
9 billed for the correct number of unbundled loops that
10 they ordered and, hopefully, are having provisioned to
11 them.

12 **MR. AUDU:** Commissioner Deason --

13 **COMMISSIONER DEASON:** Perhaps I'm looking at
14 it too simplistically. I just -- I don't understand
15 what --

16 **MR. AUDU:** Part of the problem really comes
17 from the way the particular checklist item is
18 structured. When we talk of provisioning unbundled
19 local loop separate from every other network element,
20 if that is what a checklist item calls for, then that
21 is what has to be demonstrated. That has not been the
22 case in this situation. So we have -- I mean, had to
23 scrounge around to see how do we best make a
24 representation.

25 **COMMISSIONER DEASON:** We have testimony from

1 BellSouth saying we're provisioning it. Do we have
2 any testimony from any intervenor saying they ordered
3 something and they didn't provision it?

4 MR. AUDU: Yes.

5 COMMISSIONER DEASON: Okay. Other than the
6 14-month delay situation? I'm talking about a
7 situation where they ordered and were being billed for
8 it but they didn't get the service.

9 MR. AUDU: AT&T, I mean, testified that they
10 had ordered for -- for platform testing. They have
11 not received a bill today, so they don't know if
12 they're being provisioned or they are not.

13 COMMISSIONER GARCIA: But, see, but that's
14 another --

15 COMMISSIONER DEASON: Platform is another
16 issue, and I think I'll --

17 COMMISSIONER GARCIA: And what you're doing
18 is you're changing how you're trying to prove this.
19 You're trying to prove this in an ancillary way
20 because you didn't have any information there. But
21 what I'm hearing from you is that I didn't get a bill
22 and, therefore, it's not -- if it's not in the bill,
23 it didn't happen.

24 And what I'm saying to you is when AT&T
25 deals with a customer, okay, AT&T has a customer, and

1 the customer is Susan Clark. When AT&T does that deal
2 with that customer, they have a knowledge of what that
3 bill is going to be. They have the information of
4 what that bill is going to be, and that's information
5 that AT&T has between itself and the customer.

6 Likewise, when AT&T deals with Southern
7 Bell, it doesn't really matter what the bill says.
8 They have a relationship there, and whatever that
9 relationship is it may be that they're providing
10 unbundled or resale, but they came to an agreement on
11 a price. And trust me, AT&T is not going to pay a
12 penny more than it absolutely has to to keep that
13 customer's relationship with them profitable.

14 **MR. AUDU:** Commissioner Garcia, and that is
15 right. AT&T is sophisticated enough as a market
16 participant to do all of that -- however, for Staff
17 purposes to do all of that. However, for Staff
18 purposes, that is not the issue. I'm not supposed to
19 infer or to go about inferring what AT&T would do or
20 what capability AT&T has. I could do that for AT&T.
21 What about some other competitor that might not have
22 the same sophistication.

23 **COMMISSIONER GARCIA:** So you're telling me
24 that if we would have found in the evidence a bill
25 with Mr. Varner's handwriting on it saying "This is

1 unbundled," and then he wrote it out by hand, and if
2 you found that, then there would be proof of
3 unbundled?

4 **MR. AUDU:** If we found that, then we go to
5 the next step, because this Commission had requested
6 that all UNE billings be, I mean, CABS format, be
7 either billed on a CABS or they be CABS formatted. In
8 that case, we basically questioned the idea is that
9 mechanized or is that, I mean, manual.

10 **COMMISSIONER GARCIA:** Okay.

11 **MR. AUDU:** That also has not been done, so
12 it's not just a question of the fact that they have
13 not provided billing that demonstrated that local loop
14 has not been unbundled, but there is a question of the
15 fact that they have also not generated mechanized
16 billing that, I mean, is requested by even this
17 Commission.

18 **COMMISSIONER DEASON:** Well, I agree, and
19 that's a separate issue. We've already determined
20 there should be mechanized billings; it should be in
21 CABS format. So that's been decided. The question
22 now is, really, is BellSouth provisioning unbundled
23 local loops.

24 **MR. AUDU:** At this point in time, I mean,
25 it's hard for us to say. I mean, we can't answer that

1 because there's no record or information to make that
2 determination.

3 **COMMISSIONER KIESLING:** My problem with what
4 I'm hearing you say is that it seems to me there was
5 testimony in the record which was under oath that they
6 were doing it, and no intervenor came in and presented
7 something that said they weren't. And so it seems to
8 me there is adequate evidence in the record that they
9 are--

10 **MR. GREER:** Commissioner --

11 **COMMISSIONER KIESLING:** Without going behind
12 that and sort of on our own impeaching Mr. Varner's,
13 I mean, what we're saying is, he said it but we don't
14 believe it until we can independently prove it.

15 **MR. GREER:** Commissioner, he said there's so
16 many loops, and what -- the subpoenaed information
17 that we asked for that said, okay, who are receiving
18 these unbundled loops. And we said -- and you can't
19 pick out that to corroborate his evidence that there's
20 unbundled loops.

21 There may be unbundled loops to parties that
22 aren't even in the proceeding. I don't know. But we
23 tried to ask for the data to say, you know, who is
24 BellSouth providing unbundled loops to. And from the
25 subpoenaed information I can't pick out -- and this

1 was for parties and nonparties, and I can't pick out
2 from that that they -- to support his claim that
3 they're providing unbundled loops; just can't do it.

4 **COMMISSIONER CLARK:** Let me ask a question,
5 and it's in each of these discussions, and I guess I
6 didn't understand it, but maybe it's the crux of what
7 you're trying to say.

8 If you look on the first paragraph of each
9 Staff discussion, you say "This checklist item does
10 not seek to determine whether BellSouth provides
11 nondiscriminatory access to the unbundled local
12 switch; instead, it seeks to determine whether
13 BellSouth provisions local switching that is unbundled
14 from the local loop, local transport and other
15 services."

16 What you're saying is you can't tell -- they
17 must be providing it, but you can't tell if it's
18 unbundled. Is that your point?

19 **MR. AUDU:** Yes, ma'am.

20 **MR. GREER:** Well, what we're saying is, is
21 there's claims that they are providing it, but there's
22 no evidence to support that claim. And we tried to
23 ask for that.

24 **COMMISSIONER CLARK:** But it seems to me some
25 of the other witnesses corroborated that they were

1 providing it. It says that MCI's witness contends
2 that MCI ordered an unbundled loop and a switch port,
3 which BellSouth provided; however, they were billed
4 these services as a resale service.

5 **MR. GREER:** That's a combination switch and
6 port, can they do it separately.

7 **COMMISSIONER CLARK:** I see.

8 **MR. GREER:** There's nothing that shows me
9 they can do that.

10 **CHAIRMAN JOHNSON:** Say that again, Stan.
11 There's nothing to show --

12 **MR. GREER:** BellSouth can switch and loop, a
13 loop and a port combined, and they price that at
14 resale, and that's where that fight comes out. But
15 have they shown that they can provide an unbundled
16 loop by itself, there's nothing that shows me that
17 they can do that.

18 **CHAIRMAN JOHNSON:** Or that they have done
19 that.

20 **MR. GREER:** Or that they have done that.
21 Specifically an individual unbundled loop, here it is.
22 And I can't pick out of the subpoenaed stuff whether
23 or not they have or not, and that's kind of where
24 we're at.

25 **COMMISSIONER GARCIA:** I think -- I honestly

1 think you're trying to prove something that I don't
2 think we have to prove. I think clearly that the
3 evidence that we have before us is that they are doing
4 it. If the case is not, then I guess we can come
5 back -- they can come back and tell us that it's not
6 being done. But I just think the way you're trying to
7 prove it is almost -- it's almost absurd.

8 I'm not saying that it wouldn't be in some
9 last ditch effort if we had no testimony and we were
10 trying to prove it -- if we weren't able to get it in
11 that way, but I think Mr. Varner's testimony is
12 sufficient in the same way that other companies'
13 testimony has been sufficient on the complaints, and
14 we've taken them as such. And that it's on a billing
15 statement doesn't give me any more comfort level.

16 **MR. STAVANJA:** Commissioner Clark, to go
17 back to your example that you just stated about the
18 port, the loop and port that was ordered, and I think
19 it was MCI, or whoever, was billed resale, one of the
20 problems with that is that here you've got a bill for
21 resale and there's a credit on there for some UNEs,
22 but what we don't know is whether MCI or whoever
23 received complete basic local service, because to get
24 at resale you get everything.

25 Now, did they get everything, or did they

1 just get the loop and the port? We don't know if MCI
2 had operator services, also. We don't know if they
3 had directory assistance, also. We don't know what
4 they got. All we know is there's a bill for resale
5 and they credited some UNES. We're not sure what they
6 had. We don't know if they got exactly what they
7 asked for.

8 **COMMISSIONER GARCIA:** Let me change -- we'll
9 move away from that, okay?

10 I want to rent a car from Avis. I go in. I
11 got an economy car, and when I get there they give me
12 a Cadillac. They're charging me for the economy car.
13 What do I care? I mean, what does AT&T care if they
14 left with the Cadillac, as long as they are still
15 getting what they need for their customer? And that's
16 a distinction that I don't think we're addressing
17 here.

18 I'm not arguing with you that it's very
19 possible that they may not have the billing system,
20 but had we had Mr. Varner -- and we've already
21 addressed that. I don't remember which issue item.
22 But the truth is that the customer must be getting
23 some service that that IXC or ALEC has provisioned --
24 or purchased from BellSouth, correct?

25 I mean, if they're receiving the service,

1 they're getting something from BellSouth, and if
2 they're getting what they -- if they're paying AT&T or
3 whichever ALEC it must be, it must be a service that
4 meets their expectation, and whichever way that's
5 billed, I think it ends up the same way.

6 I mean, they may not be getting -- they may
7 be getting directory assistance and a whole series of
8 things that they didn't contract for, but as long as
9 they're not being charged for it, does it matter?

10 **MS. BARONE:** Commissioner, if I might
11 interject something here, I think Staff's view on this
12 is that you can't really tell if it's a UNE or if it's
13 resale. That's the bottom line. I think that they --

14 **COMMISSIONER GARCIA:** Monica, stop right --
15 that's exactly my point. They can't tell, but they
16 know precisely what they came into agreement with AT&T
17 about.

18 In other words, I, as AT&T, know
19 specifically what I sold Susan Clark, and I know
20 specifically what I agreed to sell to Susan Clark with
21 Southern Bell. That Southern Bell may give her resold
22 service, unbundled service, as long as it meets my
23 expectations as a purchaser of that service with
24 BellSouth, I don't care how it's billed. I know what
25 I'm going to pay AT&T. Susan Clark knows what she's

1 going to pay me, and the relationship of the bill that
2 I got from Southern Bell to AT&T I don't think
3 determines whether that service is going on or not.

4 Anyway, I think I've beat this to death. I
5 don't -- I think we're missing the point of what the
6 service is and what the customer is getting, and as
7 long as the customer is getting what they're supposed
8 to get, whichever way it's billed they're still
9 getting it.

10 **CHAIRMAN JOHNSON:** But it's -- and I thought
11 I understood this issue before we started on the
12 discussion. And maybe I didn't, so Staff can help me
13 through this.

14 If the companies are saying that they're
15 ordering unbundled network elements but they're being
16 billed as if it was a resold R-1 or B-1 service, then
17 shouldn't we treat it as if it was an R-1 or B-1
18 service as opposed to looking at it --

19 **COMMISSIONER GARCIA:** No, because I think --
20 and correct me Staff if I'm wrong -- they were -- on
21 the bill that they specifically discussed, they were
22 credited the amount of what the bill should have been.

23 **CHAIRMAN JOHNSON:** They were given the --
24 explain that. How did the billing come out?

25 **MR. AUDU:** Basically what happened was that

1 the particular element that was requested was billed
2 at tariff rates. Then they were credited what was
3 supposed to be over the agreed interconnected UNE
4 rate. Now --

5 **CHAIRMAN JOHNSON:** Okay. I didn't
6 understand that. Tell me that one more time.

7 **MR. AUDU:** Okay. What's basically happening
8 is it's as though you had requested local loop for
9 your B-1, and BellSouth went in its books, in its
10 tariff books, and said, okay, B-1 tariffs, I mean, is
11 costing us -- I mean, we are billing it for this much.
12 And they turn around and say, okay, the
13 interconnection agreement says we have to give you B-1
14 at 50% discount so we were crediting you 50%.

15 **CHAIRMAN JOHNSON:** They're just doing the
16 resale rate, right?

17 **MR. AUDU:** Yes. Well, I mean, they just --
18 they created the difference. Whether it was a resale
19 difference or an interconnection difference was not
20 quite delineated, and that's where the question comes.
21 But even more so is the idea that this issue
22 demonstrates the ability, BellSouth's, the actual
23 action, the ability to provision unbundled local loop
24 as an entity or as a separate network element,
25 BellSouth's; the actual action of provisioning as -- I

1 mean, as --

2 **COMMISSIONER GARCIA:** You wouldn't argue
3 that they're providing it -- in that case -- I'm
4 trying to remember -- it was MCI, right, in that case
5 that we're talking about, that there was a credit back
6 to that account --

7 **MR. AUDU:** Yes.

8 (Simultaneous conversation.)

9 **COMMISSIONER GARCIA:** There they were
10 providing it.

11 **MR. AUDU:** They were providing it as a
12 combination, but could they have shown and could
13 BellSouth have proven that they could provide it as a
14 separate element, just unbundled loop, and that's why
15 we defaulted to the billing to see did they bill it as
16 a combination or did they bill it as a local loop and
17 a port differently.

18 **CHAIRMAN JOHNSON:** And you couldn't find --

19 **MR. AUDU:** We could not --

20 **CHAIRMAN JOHNSON:** -- the separate rated
21 billing?

22 **MR. AUDU:** No, ma'am.

23 **COMMISSIONER GARCIA:** But you found the
24 credit for it.

25 **MR. AUDU:** I mean, we have their testimony

1 to say they were credited.

2 COMMISSIONER GARCIA: From MCI.

3 MR. AUDU: Yes, sir.

4 COMMISSIONER GARCIA: Do you understand --

5 CHAIRMAN JOHNSON: No. I'm not

6 understanding this credit thing at all.

7 MR. AUDU: Basically what happened is that

8 MCI said --

9 COMMISSIONER GARCIA: They billed for -- let
10 me try. They billed MCI resale. MCI hadn't purchased
11 resale. MCI had purchased unbundled -- correct me
12 where I'm wrong -- had purchased unbundled. They
13 billed them for resale. MCI then told BellSouth that
14 this is not what I purchased, I purchased unbundled.
15 You're billing me at the tariffed resale rate. So MCI
16 credited that amount.

17 MR. AUDU: No. I mean, in other words,
18 BellSouth is the one that gave the credit.

19 COMMISSIONER GARCIA: Okay. Right.

20 MR. AUDU: In that case then, it's --

21 COMMISSIONER GARCIA: Right.

22 MR. AUDU: -- questionable is that a UNE or
23 is that resale, because you bill -- if you bill MCI
24 or -- at tariff rates and then turn around and apply
25 the credit --

1 **COMMISSIONER GARCIA:** Because they were
2 wrong.

3 **MR. AUDU:** Because you didn't use the
4 appropriate billing rate to start with.

5 **CHAIRMAN JOHNSON:** I still don't understand
6 that. Try it one more time for me, John. It's not
7 you, it's me. When they -- using the MCI example,
8 they billed at the tariff, whatever, R-1 or B-1 rate.
9 And then what did the -- well, they started off
10 charging that, but what would the credit reflect?
11 What was the purpose of the credit?

12 **MR. AUDU:** That's a good one. What's
13 happening is that MCI requested transport -- I mean,
14 transport loop -- local loop and, I believe, a port, a
15 combination, and they were billed tariff rates for
16 whatever they had requested. All right. And
17 BellSouth turned around and applied a credit, and the
18 credit was supposedly to reflect whatever present
19 agreement they had between them of what this is
20 supposed to --

21 **COMMISSIONER GARCIA:** Of what those
22 unbundled services should have come to.

23 **MR. AUDU:** Yes. Now, the question is this:
24 I mean, if it was -- if it had only been a loop that
25 MCI had requested and this whole transaction had taken

1 place we would say, yes, they provided the loop; but
2 that isn't what happened.

3 They requested a combination of a loop and a
4 port, and the bill did not reflect separate elements
5 as UNE because they requested them as UNEs. And so
6 even with that, we cannot say, okay, BellSouth has
7 demonstrated they can provision a loop as a separate
8 network element and bill for it as a separate network
9 element.

10 **CHAIRMAN JOHNSON:** You weren't able to find
11 in any of the -- with any of the companies where there
12 was separate billing for the separate elements?

13 **MR. AUDU:** We've not been able to find that.

14 **COMMISSIONER GARCIA:** You weren't able to
15 find a bill, but there's no testimony -- there's
16 testimony from companies that they're clearly getting
17 unbundled --

18 **MR. AUDU:** That they're getting unbundled
19 loops in combination with other things.

20 **COMMISSIONER GARCIA:** Right.

21 **CHAIRMAN JOHNSON:** That they're getting --
22 (Simultaneous conversation.)

23 **MR. AUDU:** But not as --

24 **COMMISSIONER GARCIA:** But they are getting
25 unbundled loops.

1 **CHAIRMAN JOHNSON:** They're getting --

2 **MR. AUDU:** As they're getting unbundled
3 local loop in combination with other elements, not as
4 a separate element.

5 **CHAIRMAN JOHNSON:** So the testimony -- tell
6 me what the testimony is one more time; that they're
7 getting --

8 **MR. AUDU:** Okay. The testimony says that
9 the most you require -- I mean, most people -- nobody
10 has requested just unbundled local loop.

11 **CHAIRMAN JOHNSON:** No one has requested
12 that?

13 **MR. AUDU:** Nobody. What most of them have
14 done is they've requested the unbundled local loop in
15 combination --

16 **CHAIRMAN JOHNSON:** Okay.

17 **MR. AUDU:** -- with other elements to
18 provision whatever necessary service they need to.

19 **COMMISSIONER GARCIA:** Do you understand what
20 they're asking now? Do you understand that -- the
21 standard that Staff is holding them? No one has
22 ordered this. And then here we go through the
23 order -- through the, I guess, receipts or order forms
24 or billing arrangements to try to find something that
25 no one has requested. But those who have requested

1 the combination have been billed. They may not have
2 been billed appropriately in some cases, but we see a
3 credit so we know from that that it's there, that at
4 least in combination they're doing it. It's just not
5 showing up, correct?

6 **MR. AUDU:** That's correct. The problem
7 really stems -- I mean, if you turn to Page 156 and
8 look at the very issue itself, that is where the
9 problem stems, and the issue says "Has BellSouth
10 unbundled local loop transmission between the central
11 office and the customer's premises from local
12 switching or other services?"

13 What that calls for is the ability to
14 provision just the unbundled local loop.

15 **CHAIRMAN JOHNSON:** Right.

16 **MR. AUDU:** Chances are nobody may request it
17 for just unbundled local loop, and that's where the
18 problem has been, because nobody has requested for
19 just the unbundled local loop, at least not that we
20 found.

21 Now, in the absence of that, do we just say,
22 I mean, that issue goes away, or how do we go about to
23 investigate the ability to provision the unbundled
24 local loop? That is how we default -- I mean, we went
25 on through the subpoenaed information to say, let's

1 see what they have delineated. That did not help. We
2 went over to the billing, and I said, well, let's see
3 how the billing is, I mean, itemized. That also did
4 not help.

5 **COMMISSIONER DEASON:** Well, if BellSouth can
6 provision an unbundled local loop in connection or in
7 addition with a port, why is it that you think that
8 they can't do it if it were requested, just the
9 unbundled loop?

10 **MR. AUDU:** Based on the issue -- I mean, I
11 had the responsibility, or at least from what the
12 issue is, to -- I mean, to come away with the idea
13 that there is the ability to provision the unbundled
14 local loop as a separate entity or separate element.

15 **COMMISSIONER DEASON:** And you said that
16 there is evidence which demonstrates that entities
17 have ordered an unbundled loop in conjunction with a
18 port, and that has been provisioned?

19 **MR. AUDU:** That's correct.

20 **COMMISSIONER DEASON:** And you're confident
21 that has been ordered and provisioned?

22 **MR. AUDU:** That's part of the record.

23 **COMMISSIONER DEASON:** Okay. If they can do
24 an unbundled loop and a port, why is it that you think
25 they can't do just an unbundled loop if it were

1 ordered? Because it's not been ordered.

2 **MR. AUDU:** Well, part of what's happening is
3 that none of the intervenors have said, yes, okay,
4 based on -- based on what they've -- I mean, we've
5 requested and they've provided, we believe that
6 they've demonstrated that they can provision it as a
7 separate element.

8 **CHAIRMAN JOHNSON:** You said none of the
9 intervenors have --

10 **MR. AUDU:** None of the intervenors have
11 indicated that.

12 **CHAIRMAN JOHNSON:** But they haven't -- it's
13 almost as though we're requiring Bell to prove a
14 negative in that --

15 **COMMISSIONER GARCIA:** Exactly.

16 **CHAIRMAN JOHNSON:** -- instance. But none of
17 the intervenors -- have they said either way?

18 **MR. AUDU:** Excuse me.

19 **CHAIRMAN JOHNSON:** Have they said -- well,
20 none of them have made requests --

21 **COMMISSIONER CLARK:** Well, really what their
22 issues go to is parity and the timing of when they've
23 done it. And, I mean, MCI, their concern that they're
24 not getting it in the same time frames, and I guess
25 Witness Falvey was concerned about cut-overs, I mean,

1 that --

2 **COMMISSIONER DEASON:** And all that goes to
3 other issues.

4 **COMMISSIONER CLARK:** Yeah, I understand
5 that. I'm just trying to figure a way -- it seems to
6 me that we can say that BellSouth testified that they
7 are, in fact, providing unbundled local loops.
8 However, this testimony was not corroborated with
9 billing information showing billing separately for
10 each unbundled element.

11 In addition, intervenors presented testimony
12 that the provisioning of unbundled loops was not in a
13 time frame that was on par with BellSouth. But at
14 this point we have no reason to believe that they
15 can't provide it. But I would suggest a clear way of
16 showing that you're providing it is the bill shows it,
17 but then you run into the problem if nobody orders it.

18 **COMMISSIONER GARCIA:** How does your bill
19 show it if nobody has ever ordered it?

20 **COMMISSIONER CLARK:** Yeah, I know.

21 **CHAIRMAN JOHNSON:** Was that statement a --

22 **COMMISSIONER CLARK:** Well, I'm -- it just
23 seems to me that we still have to reach a conclusion
24 on this, don't we, because it's a requirement on the
25 section. I mean --

1 **COMMISSIONER GARCIA:** We simply reach the
2 opposite conclusion Staff has reached. Yes, based on
3 the evidence in the record BellSouth has
4 provisioned --

5 **COMMISSIONER DEASON:** Commissioner Clark, I
6 think I could second your motion if there was no
7 mention of the timing, timing provision -- I think
8 that's a totally separate issue all --

9 **COMMISSIONER CLARK:** That's fine. That's
10 fine.

11 **COMMISSIONER DEASON:** It's not relevant to
12 Issue 5. If you could restate what you said and
13 taking that out --

14 **COMMISSIONER CLARK:** Well, there's no
15 conclusion there, though. I don't know how you wrap
16 it up. BellSouth testified that they are, in fact,
17 providing unbundled local loop transmission. Then
18 whatever 6 is and whatever 7 is.

19 However, this testimony was not corroborated
20 with billing information showing billing separately
21 for each unbundled element. You know, then what do we
22 say? At this point we believe they're capable of
23 providing the unbundled element, but in the next
24 proceeding --

25 **CHAIRMAN JOHNSON:** I think we have to

1 continue to believe that they're capable of it until
2 someone comes forward and says that they -- no one has
3 requested it. So perhaps we do have to --

4 COMMISSIONER DEASON: Well, there's sworn
5 testimony from Mr. Varner that says they're capable --

6 CHAIRMAN JOHNSON: That they're ready.

7 COMMISSIONER CLARK: Yeah. Okay.

8 COMMISSIONER DEASON: They're ready, willing
9 and able.

10 MR. GREER: Commissioners, I've just been
11 pointed -- folks have pointed out to me that there
12 were some intervenors that did verify the subpoena
13 information as far as the local loop transmission.

14 COMMISSIONER KIESLING: I couldn't
15 understand the last thing you said. As far as --

16 COMMISSIONER CLARK: They verified --

17 MR. GREER: There were some competitors that
18 verified.

19 COMMISSIONER KIESLING: As far as?

20 MR. GREER: As local loop transmission.

21 COMMISSIONER KIESLING: Thank you.

22 COMMISSIONER DEASON: They verified that
23 they had received that as an unbundled element.

24 MR. GREER: In trying to verify the
25 subpoenaed information, we said, here is the

1 subpoenaed information for your stuff, did your
2 company actually have this stuff. Now, can I -- you
3 know, can I take the subpoenaed information, yeah. I
4 mean, they did say, yes, they did, in all the cases.

5 **COMMISSIONER CLARK:** Well, we can say
6 "BellSouth testified that they are, in fact, providing
7 unbundled local loops. However, this testimony was
8 not corroborated with billing information showing
9 billing separately for each unbundled element." And
10 leave it at that. I guess the answer would be yes to
11 each one of them.

12 **COMMISSIONER GARCIA:** But I know in
13 Issue 5 --

14 **COMMISSIONER CLARK:** All right. Let's just
15 do Issue 5. Is that a satisfactory decision?

16 **CHAIRMAN JOHNSON:** I think --

17 **COMMISSIONER GARCIA:** Well, can't we just
18 stay --

19 **CHAIRMAN JOHNSON:** -- it is, particularly if
20 Stan just that said there's some information in the
21 record that shows that BellSouth actually did provide
22 unbundled local loop transmission between the central
23 office. Isn't that what you just said? That's a
24 big --

25 **MR. GREER:** That's my understanding, yes.

1 **COMMISSIONER CLARK:** Okay.

2 **COMMISSIONER GARCIA:** Why don't we restate
3 it to the way we've got it here, just change it and
4 say, "Yes, based on the evidence in the record,
5 BellSouth has provisioned unbundled local loops
6 requested by the ALEC."

7 **COMMISSIONER KIESLING:** But that's not true.
8 We've already --

9 **COMMISSIONER GARCIA:** Oh, that's right,
10 because we --

11 **COMMISSIONER KIESLING:** Nobody has asked for
12 it, so they --

13 **COMMISSIONER GARCIA:** You're right.

14 **COMMISSIONER KIESLING:** -- haven't
15 provisioned it.

16 **CHAIRMAN JOHNSON:** Well, didn't you just say
17 someone did?

18 **MR. GREER:** Well, the --

19 **COMMISSIONER GARCIA:** Yeah --

20 (Simultaneous conversation.)

21 **MR. GREER:** The list that I'm looking at is
22 in the response -- and I can't say too much about
23 it -- indicates at least three parties that have
24 provided -- that have received unbundled loops --
25 unbundled loop transmission, and that two of the

1 parties, two of them were parties and verified the
2 numbers. My understanding.

3 **COMMISSIONER KIESLING:** So you're talking
4 about unbundled loop not in combination with anything
5 else?

6 **MR. GREER:** That's what the document says.

7 **COMMISSIONER KIESLING:** Well, then that's
8 different than what you all have been saying.

9 (Simultaneous conversation.)

10 **MR. GREER:** Yes. And I was not aware, and I
11 apologize for it. That's why I wanted to make sure
12 that I clarified it. I apologize.

13 (Simultaneous conversation.)

14 **CHAIRMAN JOHNSON:** And that is in the
15 record? That's a part of the record?

16 **MR. GREER:** Yes, it's in a confidential
17 document. Yes.

18 **COMMISSIONER GARCIA:** So go back to --

19 **COMMISSIONER CLARK:** Issue 5 is then "yes".

20 **COMMISSIONER KIESLING:** Yes. Is that a
21 motion?

22 **CHAIRMAN JOHNSON:** That was a motion.

23 **COMMISSIONER KIESLING:** Is that a motion
24 that Issue 5 is yes?

25 **COMMISSIONER CLARK:** Wait a minute. Let me

1 ask a question. It seems like the issue is a little
2 different than the answer. It says -- the question is
3 have they unbundled, and then it says -- the answer is
4 "No, based on the evidence in the record, BellSouth
5 has not provisioned all of the unbundled local loops
6 requested by ALECs."

7 That's a little -- I mean, they may not have
8 done that, but the record does indicate they've
9 unbundled it.

10 **MR. AUDU:** That's correct.

11 **COMMISSIONER CLARK:** And the issue we have
12 to decide is have they unbundled the local loop
13 transmission; is that correct?

14 **MR. AUDU:** Yes. Based on the information
15 that just came forward, it appears they have.

16 **COMMISSIONER CLARK:** I guess my motion would
17 be that on Issue 5 we say "Yes, based on the evidence
18 in the record, BellSouth has unbundled the local loop
19 transmission between the central office and customers'
20 premises."

21 **COMMISSIONER GARCIA:** Second it.

22 **COMMISSIONER DEASON:** Before we go, let me
23 ask one other question now. Staff has identified a
24 billing problem. Now, Staff was using that billing
25 problem as evidence which would tend to indicate that

1 perhaps they had not unbundled.

2 We now have evidence that we know -- that
3 shows that they have unbundled, but there's still a
4 question about -- and I guess this is my question to
5 Staff. Do you think there's a billing problem that
6 needs to be addressed and, if so, what issue does it
7 pertain to as far as checklist compliance, or is it
8 not relevant to any checklist item?

9 **MR. AUDU:** I believe that there's still a
10 billing problem just like you had addressed in
11 Issue 3, itself, I mean --

12 **COMMISSIONER DEASON:** Mechanized and --

13 **MR. AUDU:** -- mechanized billing.

14 **COMMISSIONER DEASON:** -- format.

15 **MR. AUDU:** That is -- I mean, that is
16 relevant to this issue, also.

17 **COMMISSIONER DEASON:** Okay. So that's
18 contained within Issue 3, which we have already
19 addressed.

20 **MR. AUDU:** Yes.

21 **COMMISSIONER DEASON:** Fine.

22 **MR. AUDU:** Yes.

23 **COMMISSIONER CLARK:** Okay.

24 **CHAIRMAN JOHNSON:** There's a motion on
25 Issue 5. Was there a second?

1 **COMMISSIONER GARCIA:** Second.

2 **CHAIRMAN JOHNSON:** There's a motion and a
3 second to deny Staff and to find -- and the
4 recommendation would be "Yes, based upon the evidence
5 in the record that BellSouth has unbundled local loop
6 transmission between the central office and the
7 customers' premises from local switching or other
8 services."

9 Any further discussion? Seeing none, show
10 it approved unanimously.

11 **CHAIRMAN JOHNSON:** Issue 6?

12 **MR. AUDU:** Issue 6 addresses BellSouth's
13 ability to provision local transport as a separate
14 unbundled network element. BellSouth has not
15 provisioned all of the requested unbundled local
16 transport. Staff determines that BellSouth has not,
17 met the requirement of this checklist item.

18 **COMMISSIONER KIESLING:** Let me just ask you
19 so we don't have to have another 45 minutes of
20 discussion and then find that the facts are different.

21 Do the same facts that you just brought out
22 from the Staff interrogatories, I guess they were,
23 that changed your answer on 5 apply to 6 or --

24 **MR. AUDU:** No.

25 **COMMISSIONER KIESLING:** -- are there other

1 facts that we need to know about?

2 **MR. AUDU:** This particular document
3 specifically affects unbundled local loop, so it does
4 not affect local transport in this case.

5 **COMMISSIONER KIESLING:** Okay. Thank you.

6 **CHAIRMAN JOHNSON:** Any questions on Issue 6?

7 **COMMISSIONER DEASON:** Well, is there any
8 discovery, proprietary or otherwise, which addresses
9 transport as an unbundled element and whether it has
10 actually been provisioned to an ALEC?

11 **MR. AUDU:** There was quite a lot of
12 subpoenaed information that pertained to all of the
13 network elements, but there's none that change -- that
14 goes to change Issue 6.

15 **COMMISSIONER DEASON:** Has there been a
16 request from any ALEC to receive unbundled local
17 transport in and of itself, not in combination with
18 any other element?

19 **MR. AUDU:** The record does not indicate that
20 there is any request for just the unbundled local
21 transport, no.

22 **COMMISSIONER DEASON:** So it's not been
23 requested. So how do we know, then, that Bell is
24 incapable of providing it on an unbundled basis?

25 **MR. AUDU:** Pardon me. I didn't catch that.

1 **COMMISSIONER DEASON:** Axiomatic or -- I'm
2 sorry.

3 **MR. AUDU:** I said, pardon me; I didn't catch
4 your question.

5 **COMMISSIONER DEASON:** Oh. I'm sorry. If
6 it's not been requested, how do we know that Bell is
7 incapable of providing local transport on an unbundled
8 basis?

9 **MR. AUDU:** Commissioners, basically what --
10 the standards Staff had used in Issue 3 -- I mean in
11 Issue 5 whereby we found out within the record that, I
12 mean, that we needed within the record to identify
13 BellSouth's ability of unbundling just local loop is
14 the same thing that we went on to use in Issue 6,
15 whereby we went through the record to see is there a
16 way to identify that the unbundled local transport has
17 been provisioned. When that failed, we also defaulted
18 to using the billing. So, I mean, we're basically
19 going back to --

20 **COMMISSIONER DEASON:** You have no evidence
21 to show that it has been provisioned, and then you
22 went to billing and you couldn't find where it had
23 been billed, so then you concluded that they're not
24 providing it?

25 **MR. AUDU:** We have records to say that they

1 are provisioning local transport in connection with
2 other things. The question is, have they been ever --
3 I mean, have they been able to itemize it in a
4 billing.

5 **COMMISSIONER DEASON:** So there's the billing
6 problem. They have not itemized it as such, but it
7 has been provisioned in conjunction with other
8 unbundled elements?

9 **MR. AUDU:** Yes, sir.

10 **COMMISSIONER DEASON:** So am I understanding
11 you to say that if there is two unbundled elements
12 that are being purchased, and there's a bill for that,
13 but each one is not itemized, you conclude, then, that
14 they're not capable of providing you each unbundled
15 element by itself?

16 **MR. AUDU:** What we're going to say is that
17 they've not demonstrated that they can provide the
18 elements as separate entities.

19 **COMMISSIONER CLARK:** I read what you said in
20 this issue is that you agree that the unbundled local
21 transport is similar to interoffice transport
22 component of special access. So they can provide it.

23 **MR. AUDU:** Yes.

24 **COMMISSIONER CLARK:** But the problem is
25 they're not appropriately billing for it.

1 **MR. AUDU:** That's correct.

2 **COMMISSIONER CLARK:** Because it should be a
3 usage-sensitive UNE.

4 **MR. AUDU:** It's a usage-sensitive UNE in
5 which case BellSouth, I mean, alongside had indicated
6 that there are two usage sensitive UNES that they
7 could not bill for, and this is one of them.

8 **COMMISSIONER DEASON:** We set no rate for
9 local transport on an unbundled basis?

10 **MR. AUDU:** I believe the rates were set on
11 an unbundled basis.

12 **MR. GREER:** Yes, Commissioner, I believe we
13 did.

14 **COMMISSIONER DEASON:** We did set rates?

15 **MR. GREER:** Yes, we did.

16 **COMMISSIONER DEASON:** But we don't have any
17 bills reflecting those rates that we established?

18 **MR. GREER:** Not that I'm aware of, no.

19 **MR. AUDU:** No, sir.

20 **COMMISSIONER DEASON:** So what is Bell
21 billing? I mean, they're not usually in the business
22 of providing something they're not billing for.

23 **MR. AUDU:** Part of the whole thing is the
24 idea that being that transport is usage sensitive,
25 BellSouth has indicated that they have not had the

1 capability to bill for this. It was --

2 COMMISSIONER DEASON: Are they giving it
3 away, then, because they can't bill for it?

4 MR. AUDU: Excuse me?

5 COMMISSIONER DEASON: We have evidence that
6 shows it has been provisioned, the service has been
7 provided to ALECs. It's just that it's been provided
8 in conjunction with other unbundled elements. My
9 question is, are they providing it for free?

10 MR. AUDU: I would be hard pressed to say
11 no, but at the same time they have not billed -- even
12 BellSouth right in here said that they have not
13 provisioned any usage-sensitive billing.

14 It was the last week of the hearing that
15 they indicated that somewhere down in August they had
16 come up with the capability to put in place mechanized
17 billing, but until then, they had not billed for
18 anybody.

19 They said they had provided the option to
20 bill any ALEC -- I mean, to provide manual billing, in
21 which case most of the ALECs -- I mean, the clients
22 that are going to wait for the mechanized billing.

23 So I would not say they are providing it for
24 free, but we don't have any documentation that says
25 that -- I mean, they've billed.

1 **COMMISSIONER DEASON:** Did we establish a
2 usage-sensitive rate for this element?

3 **MR. AUDU:** For transport?

4 **COMMISSIONER DEASON:** Local transport.

5 **MR. GREER:** For local transport, yes. It's
6 comments like three zeros and a five per minute, and
7 four zeros and a 12 per mile. So there were some
8 usage-sensitive rates established for a common end,
9 and there's dedicated transport, also.

10 **MR. GREER:** Commissioners, essentially, you
11 know, the bottom line that we got to is that Bell is
12 required to show that they can provide local transport
13 on an unbundled basis separate from everything else,
14 and there's nothing that we could see that would
15 indicate that they can do that.

16 **COMMISSIONER DEASON:** And what would
17 indicate that? A bill which shows that as a separate
18 line item?

19 **MR. GREER:** That would be one thing that
20 would indicate it. You know, somebody saying that
21 they've actually requested it and that they're
22 receiving it would be something that would indicate
23 it.

24 **COMMISSIONER DEASON:** But people have
25 indicated -- entities have indicated they are

1 receiving local transport, it's just that it's been in
2 conjunction with other unbundled elements; is that
3 correct?

4 **MR. GREER:** I believe that's correct --

5 **MR. AUDU:** That's correct.

6 **MR. GREER:** Yes.

7 **COMMISSIONER DEASON:** So if they can
8 unbundle it and provide it in conjunction with
9 something else, why do you think they just couldn't
10 unbundle it and provide it by itself? I mean, if you
11 unbundle something, you unbundle it.

12 **MR. AUDU:** Definitely if you unbundle
13 anything, you unbundle it. We're aware of the opinion
14 that if they unbundle it that they should be also in a
15 position to show it as an entity or a separate element
16 in a billing format. That way we have some form of
17 collaborative documentation, but that was not the
18 issue.

19 **MR. GREER:** And it just really is whether or
20 not they've made a showing that they can actually
21 unbundle the element, and Staff didn't think that they
22 had. I mean, is there any reason why I would think
23 that they couldn't? I would hope not. But have they
24 made that showing to me in this proceeding? I can't
25 say that they have.

1 **CHAIRMAN JOHNSON:** What evidence did they
2 provide, Stan?

3 **MR. GREER:** Excuse me?

4 **CHAIRMAN JOHNSON:** What evidence did they
5 provide?

6 **MR. GREER:** Outside of -- we provided like
7 we've provisioned local transport, like to the IXC's.
8 Outside of that, I don't recall much of any.

9 **CHAIRMAN JOHNSON:** But they testified that
10 they could?

11 **MR. GREER:** Yes.

12 **COMMISSIONER DEASON:** They testified that
13 they did or they have been, did they not?

14 **MR. GREER:** Not as -- as a separate
15 unbundled network element, I don't think so, but as a
16 combination of providing service to IXC's and that kind
17 of stuff, I think that's where they testified that
18 they --

19 **CHAIRMAN JOHNSON:** They testified that they
20 could provide it as a separate element, but it hadn't
21 been requested.

22 **MR. GREER:** Right. And the FCC essentially
23 said that they have to make a showing in situations
24 where nobody has actually requested it.

25 **CHAIRMAN JOHNSON:** And are you concerned

1 that perhaps they aren't going to -- I guess they also
2 testified that they would have problems or that they
3 couldn't bill for it separately. Is that the issue?

4 **MR. GREER:** Well, there's a lot of questions
5 as far as like common transport, how you're going
6 break that up from switching and bill a
7 usage-sensitive rate. I'm not sure how we're going to
8 do that, but that I think is another issue that --

9 **COMMISSIONER CLARK:** Let me ask a question.
10 Could it be said that with respect to this particular
11 item in order to demonstrate that it is, in fact,
12 unbundled, you have to also demonstrate that you can
13 do it -- you can bill the usage? I mean, because as I
14 understand it, this is a usage-sensitive item.

15 **MR. AUDU:** That's correct.

16 **MR. GREER:** Some -- I mean, you know, the
17 common -- clearly is, the dedicated is a -- you know,
18 a per mile type? Yeah. I mean, if that's usage --

19 **COMMISSIONER CLARK:** All right.

20 **MR. GREER:** -- but I don't consider --

21 (Simultaneous conversation.)

22 **COMMISSIONER CLARK:** But you cannot really
23 provide it without -- at least on the common, without
24 also being able to bill it, because you -- it's not
25 like, say, the other element we had where --

1 **MR. GREER:** Giving them credit --

2 **COMMISSIONER CLARK:** -- you know if you got
3 it by whether or not the service works. Here the
4 service works, but you've also got to know how much of
5 it you're using. And that's -- and the crux of the
6 issue is that in order to demonstrate that they've
7 unbundled the local transport on the trunk side, they
8 have to show that they can bill this --

9 **MR. AUDU:** That's correct.

10 **COMMISSIONER CLARK:** -- usage-sensitive
11 element, and they have not shown that they can bill
12 it.

13 **MR. AUDU:** So far --

14 **COMMISSIONER CLARK:** In order to --

15 **COMMISSIONER GARCIA:** Is that what you were
16 trying to say?

17 **MR. AUDU:** Yes, sir.

18 **COMMISSIONER GARCIA:** I just want to make
19 sure that that's exact -- because if that's what you
20 were trying to say, I agree with the recommendation.
21 I think we got caught up in the concept of billing as
22 being proof that the service has occurred. In this
23 case you cannot provide the service unless you have
24 time-sensitive billing so that you can bill your
25 customer, correct?

1 **MR. AUDU:** That's correct, because the ALEC
2 needs to turn around and bill their end user customer,
3 but not until they are also billed by BellSouth -- I
4 mean, it's haphazard exactly what is going on.

5 **COMMISSIONER GARCIA:** First time I've seen
6 Mike Tye shake his head, so I must have something
7 right thus far today.

8 That's exactly what you meant. If that's
9 what you meant, I can move this, although I'd like
10 Staff to simplify this when it puts it on its final
11 order, because I think it's a little bit convoluted.

12 **COMMISSIONER CLARK:** I think his first
13 sentence of his recommendation does, in fact,
14 summarize it, now that we've understood it.

15 Based on the evidence in the record,
16 BellSouth cannot bill for this usage-sensitive UNE;
17 therefore, it does not meet it as a checklist item.

18 **MR. AUDU:** That's correct.

19 **COMMISSIONER GARCIA:** And I think that gives
20 a very definitive track -- mark for the company to
21 hit.

22 **CHAIRMAN JOHNSON:** Is that a motion?

23 **COMMISSIONER CLARK:** Yes.

24 **CHAIRMAN JOHNSON:** And a second?

25 **COMMISSIONER GARCIA:** Yes.

1 **CHAIRMAN JOHNSON:** Any further discussion?

2 Seeing none, show it approved, then, unanimously.

3 **CHAIRMAN JOHNSON:** Issue 7.

4 **MR. AUDU:** Commissioners, Issue 7 addresses
5 BellSouth's ability to provision local switching as a
6 separate network element. BellSouth has not
7 provisioned all the requested unbundled local
8 switching. Staff finds that BellSouth is not in
9 compliance with this checklist item. Staff is open
10 for questions.

11 **COMMISSIONER DEASON:** Is this the same as
12 Issue 6?

13 **MR. AUDU:** Yes, sir.

14 **COMMISSIONER DEASON:** So the previous motion
15 would apply here as well?

16 **COMMISSIONER GARCIA:** Is it exactly like
17 Issue 6, or is this more like Issue 5?

18 **COMMISSIONER DEASON:** Well, there's a
19 usage-sensitive element here --

20 (Simultaneous conversation.)

21 **MR. AUDU:** Yes.

22 **COMMISSIONER DEASON:** -- is there not?

23 **COMMISSIONER GARCIA:** That's right.

24 **COMMISSIONER CLARK:** I think it is.

25 **CHAIRMAN JOHNSON:** It is, Stan?

1 **MR. GREER:** Yes, there is a usage-sensitive
2 element in the switching component.

3 **COMMISSIONER CLARK:** And the distinction
4 being that BellSouth -- Milner and Scheye initially
5 testified that they cannot -- could not bill for it,
6 then they said they could. So the record certainly is
7 not clear that they can bill for it.

8 **MR. AUDU:** That's correct.

9 **COMMISSIONER CLARK:** I would move Issue 7,
10 and being that they have not provided unbundled local
11 switching from local transport loop -- local loop
12 transmission or other services, because they have not
13 demonstrated they can bill for it on the
14 usage-sensitive basis.

15 **CHAIRMAN JOHNSON:** Is there a --

16 **COMMISSIONER DEASON:** Second.

17 **CHAIRMAN JOHNSON:** There's a motion and
18 second. Any further discussion? Seeing none, show it
19 approved unanimously.

20 **CHAIRMAN JOHNSON:** And we're going to take a
21 15-minute break.

22 (Brief recess.)

23 - - - - -

24 **CHAIRMAN JOHNSON:** We're going to reconvene.
25 Special Agenda Item 8.

1 **MR. GREER:** Commissioners, Item 8 is an
2 issue that deals with a nondiscriminatory provision of
3 911 directory assistance and operator call completion
4 services.

5 Staff believes that BellSouth has provided
6 911 and operator call completion services. However,
7 Staff does not believe that BellSouth has shown that
8 it can provide selective routing, branding of DA
9 services and nondiscriminatory access to directory
10 listings.

11 Therefore, Staff recommends the Commission
12 deny -- or not pass BellSouth on this issue.

13 **COMMISSIONER DEASON:** Well, the question I
14 have on selective routing, it's not even been
15 requested, has it?

16 **MR. GREER:** I don't believe it has,
17 Commissioner, and it essentially is -- it's an item
18 that the Commission ordered that they provide, and
19 it's in various agreements, and I would -- and we
20 thought it was appropriate for them to make a showing
21 that they can provide the selective routing.

22 **COMMISSIONER DEASON:** Did they provide
23 testimony indicating that they were capable and
24 willing to provide a selective route?

25 **MR. GREER:** They indicated that they were

1 capable of providing it and would provide it when they
2 were -- when somebody requested it. They did say
3 that.

4 **COMMISSIONER DEASON:** So how are they
5 supposed to demonstrate that they actually can if no
6 one has requested it?

7 **MR. GREER:** Commissioners, there was various
8 testimony on the selective routing by AT&T that says
9 that they have tried to request selective routing and
10 that they have not -- that they have not been able to
11 get it. And this is a Georgia request for selective
12 routing. They have not been able to provide it in
13 Georgia. And the technologies are the same in Georgia
14 as Florida, at least as far as I'm aware. And I did
15 not see why selective routing in Georgia would not be
16 any different than provision of selecting routing here
17 in Florida. Therefore, I don't think they can provide
18 the selective routing as indicated by their testimony.

19 **COMMISSIONER DEASON:** So BellSouth testifies
20 that they can, and AT&T says we didn't request it, but
21 we had trouble in Georgia so we can't do it in
22 Florida?

23 **MR. GREER:** Yes.

24 **COMMISSIONER DEASON:** And we conclude then
25 they can't do it in Florida?

1 **MR. GREER:** I conclude that there's no
2 reason why the technologies are different. Selective
3 routing is a switch function, and they use the same
4 technologies in Georgia as they do here, the DMS-100s
5 and whatever. And there has been some problems with
6 the selective routing in Georgia, and there's no
7 reason why I would think that they could provide it in
8 Florida if they can't do it in Georgia.

9 **COMMISSIONER DEASON:** Did BellSouth address
10 that in their testimony?

11 **MR. GREER:** Not that I recall.

12 **COMMISSIONER CLARK:** There was another
13 issue, Commissioner Deason, where, in effect, I
14 interpret it as BellSouth saying, yes, you could
15 conclude if we couldn't do it in Georgia, we can't do
16 it here. It wasn't on this particular issue, as I
17 recall, but somewhere I had questions about relying on
18 whether or not they could do it in another state
19 whether it was applicable here, but somewhere
20 there's --

21 **MR. WIGGINS:** Commissioner Clark, I think
22 that's Issue 12. Number portability.

23 **COMMISSIONER CLARK:** What page?

24 **MR. WIGGINS:** 235.

25 **COMMISSIONER GARCIA:** What?

1 **MR. WIGGINS:** 235.

2 **MR. GREER:** And, Commissioners, where there
3 were some similarities between the Georgia
4 proceedings -- what they were doing in Georgia and the
5 Florida operations, then we considered that that was
6 evidence to show that they -- that questioned whether
7 or not they could provide the services that they say
8 they could provide.

9 **COMMISSIONER GARCIA:** Let me get this
10 straight, Stan. We used Georgia as a litmus test for
11 what can be done in Florida?

12 **MR. GREER:** We use Georgia as a litmus test
13 to raise concerns, I think, on whether or not they can
14 provide the selective routing that they claim they can
15 provide.

16 **COMMISSIONER GARCIA:** Simply because they
17 said they couldn't do it in Georgia, or assuming that
18 Georgia has a better system --

19 **MR. GREER:** No, sir.

20 **COMMISSIONER GARCIA:** -- or that if
21 BellSouth can do it in Georgia, they can do it
22 anywhere.

23 **MR. GREER:** If BellSouth has problems in
24 Georgia, the switching tech -- selective routing is a
25 switching technology, or a function of the switch.

1 And the switching technology used in Georgia should be
2 very similar, if not the same, than the switching
3 technology used in Florida. I don't know specifically
4 whether or not Georgia has DMS-100s and 5-Es, but I'm
5 sure they do. And if they can't do those types of
6 functions in the switching technology in Georgia,
7 which is the same as Florida, then I don't see any
8 reason why they would be able to do the selective
9 routing in Florida.

10 **COMMISSIONER CLARK:** Let me ask. The
11 statement I had reference to was the quote you give
12 Witness Milner on Page 165, and he -- it was a
13 question about the fact that Sprint's -- no,
14 Worldcom --

15 **MR. GREER:** Did you say 165?

16 **COMMISSIONER CLARK:** Yes. In effect, the
17 witness was saying there that BellSouth uses the same
18 processes in Florida as in other states in Bell's
19 nine-state region to respond to requests from ALECs
20 for resold service unbundled network elements and
21 interconnection arrangements. And, Commissioner
22 Deason, quite frankly, I just sort of extrapolated
23 that to other issues that they seem to be saying that
24 because we're going to be using the same sort of
25 processes and systems, that it was -- you could make

1 the comparison. And if it was not being able to be
2 provided in Georgia, notwithstanding that you might
3 not have a request or it being provided in Florida,
4 you could conclude that it couldn't if they weren't
5 able to do it in Georgia.

6 **MR. GREER:** And, Commissioner, if for some
7 reason the switching technologies were totally
8 different, and there was no comparison between the two
9 states, or the situation depended on the issue, I
10 don't know that I would say that you can use Georgia
11 data. I mean, but being that the technology should be
12 very similar, if not the same, then I think that the
13 experience in Georgia is something that we can draw on
14 from here to indicate whether or not they can provide
15 what they say they can provide.

16 **COMMISSIONER DEASON:** What exactly does
17 selective routing accomplish?

18 **MR. GREER:** I'm sorry?

19 **COMMISSIONER DEASON:** What does selective
20 routing accomplish?

21 **MR. GREER:** Essentially, selective routing
22 allows the ALEC to -- for example, operator services;
23 instead of routing one of their customer's calls to a
24 BellSouth operator services, they can use a line class
25 code to route the call to an ALEC's operator services,

1 and it allows them to vary their services with
2 BellSouth and pick and choose how they want certain
3 things to do. And they would purchase that from Bell,
4 you know, like they get the local switching element,
5 and then that would be part of local switching, is the
6 ability to provide selecting routing.

7 **COMMISSIONER DEASON:** And you're saying that
8 Bell selectively routes its own calls?

9 **MR. GREER:** Well, Bell routes their calls --
10 when a Bell customer dials the operator, they route
11 their calls to the BellSouth operator; and when an
12 ALEC purchases unbundled loops and switching from
13 BellSouth, then when their customer dials the
14 operator, they want them to go to the ALEC's operator
15 versus the BellSouth operator. And that's what the
16 selective routing does is allows them that ability.

17 **COMMISSIONER GARCIA:** In their testimony
18 BellSouth said that they could do that?

19 **MR. GREER:** They claim that they could do
20 it, but we were concerned based on the information
21 provided by AT&T of the Georgia experience and whether
22 or not they could actually do what --

23 **COMMISSIONER GARCIA:** And the problem is
24 that no one has requested it here.

25 **MR. GREER:** That's my understanding. And we

1 have ordered it by the Commission -- in the
2 arbitration proceedings, that they shall provide
3 selective routing.

4 **COMMISSIONER GARCIA:** See, that being the
5 case, if they're forced to provide it, I don't
6 understand how we couldn't have met the checklist,
7 unless that someone asked for it and didn't get it.

8 **MR. GREER:** And we looked at it solely as
9 the fact that, you know, have they indicated that they
10 could provide selective routing, you know, we have
11 their testimony, we have the Georgia experience which
12 raises some concerns, and we believe that they should
13 show -- be able to prove that they can provide it, and
14 we didn't think so.

15 **COMMISSIONER GARCIA:** The only thing that
16 concerns me is being compared to Georgia in anything,
17 so --

18 **MR. GREER:** I understand that.

19 **COMMISSIONER DEASON:** Their football team
20 did quite well Saturday.

21 **COMMISSIONER CLARK:** Oh, come on.

22 (Laughter)

23 **COMMISSIONER KIESLING:** Now a topic we can
24 all get excited about.

25 **COMMISSIONER CLARK:** I had to be in Atlanta

1 while that occurred.

2 **COMMISSIONER DEASON:** They did something
3 that perhaps FSU will not be able to.

4 **COMMISSIONER KIESLING:** That's right.

5 **COMMISSIONER GARCIA:** That alone should be
6 reason enough to vote this thing through.

7 **COMMISSIONER CLARK:** I took solace in the
8 fact that Georgia Tech doesn't like the Bulldogs as
9 much as I don't, so --

10 You know, I thought I'd get through the
11 whole day. (Laughter)

12 I have to say Swafford was the first, so --

13 **MR. GREER:** He probably did that when he
14 first came in.

15 **COMMISSIONER DEASON:** Swafford may be the
16 one that laughs last at the end of this season. But I
17 have some difficulty with making a determination that
18 BellSouth does not meet a checklist item if it's never
19 been requested. And they have sworn testimony in the
20 record saying they can do it, and we've ordered them
21 to do it as part of their agreements.

22 It seems to me that this may be one where we
23 should find checklist compliance for this case,
24 realizing that there are other things that they fail,
25 and then in the subsequent 271 proceeding, if there

1 are changed circumstances, i.e., it had been requested
2 and it had been denied and not provisioned, that's the
3 information we'll take up at that time.

4 **COMMISSIONER GARCIA:** Let me ask something.
5 What happens --

6 **COMMISSIONER CLARK:** I think that's fine.

7 **COMMISSIONER GARCIA:** Yeah. No, I'll second
8 that if that's a motion. I want to ask you a question
9 on this. We've ordered them to do this. What happens
10 if they don't do it? In other words, AT&T tomorrow
11 asks, they say, "I'd like this service," and BellSouth
12 says no, what's AT&T's recourse?

13 **MR. GREER:** I assume they'll file some kind
14 of complaint with the Commission.

15 **COMMISSIONER GARCIA:** And what's in our bag
16 of weapons to force Southern Bell to comply?

17 **MR. GREER:** We would have to look at the
18 agreement that AT&T signed with BellSouth and see
19 whether or not what's required under the agreement and
20 whether or not BellSouth's complying with the
21 agreement.

22 **COMMISSIONER GARCIA:** And we find that
23 BellSouth is not complying with the agreement.

24 **MR. GREER:** Right, and then we --

25 **COMMISSIONER GARCIA:** We can then fine

1 BellSouth?

2 **MR. GREER:** I don't know. I would --

3 **MS. BARONE:** Commissioner Garcia, I think
4 that, first of all, I think there are two issues going
5 on here. I think that Staff has just stated that we
6 have an order telling them to do something, and if
7 they don't do it, we may be able to show cause then,
8 and ask them why they're not in compliance. I think
9 you have the ability through your order of process and
10 through the process to fine them if that's necessary.

11 **COMMISSIONER GARCIA:** I want to make that
12 point, because throughout the recommendation, Staff
13 talks about different places where BellSouth has
14 agreed to do this or orders that we've asked them to
15 do it. And simply because they haven't done it, I
16 just think that the fact is that they're legally
17 obligated to do it and are within this Commission's
18 jurisdiction. I would assume that the last thing in
19 the world that BellSouth would want is to be fined by
20 this Commission on an ongoing basis until it provides
21 a particular service that they have a binding
22 obligation to this state to provide.

23 **MS. BARONE:** Yes, the 8th Circuit has made
24 it clear that the jurisdiction remains with the
25 commissions who approved the arbitrated agreements.

1 **COMMISSIONER GARCIA:** Thank you. I'll
2 second that if that was a motion.

3 **COMMISSIONER CLARK:** Wait a minute. Well, I
4 think we need to understand what the motion is because
5 we state --

6 **COMMISSIONER DEASON:** Well, there's another
7 issue here that needs to be addressed, too. And
8 perhaps we need to address it. That being the --

9 **MR. GREER:** Access directory assistance
10 database.

11 **COMMISSIONER DEASON:** Yeah. The numbers
12 that are provided and that apparently BellSouth
13 believes it would be a violation of agreements for
14 those ALECs -- or who have indicated they do not want
15 their numbers being part of those numbers eligible for
16 this service.

17 **MR. GREER:** Yes, Commissioner.

18 **COMMISSIONER DEASON:** And I'm having some
19 difficulty adopting the FCC's position and just
20 saying, well, we're usurping the agreements that have
21 been entered into. Do we have the jurisdiction just
22 to negate contractual relationships?

23 **MR. GREER:** I'll have to defer to my
24 legal --

25 **COMMISSIONER DEASON:** Because I understand

1 that's what this is. This is an agreement, and that
2 we would be ordering BellSouth if they want to get 271
3 compliant, to violate an agreement.

4 **COMMISSIONER CLARK:** No. I think what we
5 would be telling them is that you don't enter into
6 those kinds of agreements, that -- well, what is it?
7 You can't enter into a contract that's in violation of
8 the law. It's not a valid contract.

9 **MS. BARONE:** Exactly.

10 **MR. GREER:** And that, I think, is where the
11 problem comes in that databases have been identified
12 as an unbundled element. The directory assistance
13 database is an unbundled element, the carriers have
14 the same obligation that BellSouth does as far as
15 Section 222, as far as how they use the customer
16 proprietary information, and we think it's
17 inappropriate that the ALECs receive all directory
18 listings unless the customer, meaning the individual
19 customer, requests them not to provide it.

20 **COMMISSIONER DEASON:** Well, as I understand
21 it, it's other ALECs that have agreed with Bell for
22 Bell not to include their numbers in their directory
23 assistance.

24 **MR. GREER:** Truthfully, I haven't seen the
25 contract. I've looked at contracts in the various

1 arbitrated agreements and the interconnection
2 agreements and the negotiated agreements, and I don't
3 see that provision that says they can't provide it. I
4 don't know what --

5 **COMMISSIONER DEASON:** Isn't that what
6 BellSouth's saying, is they're providing them all
7 unless there's an agreement with an entity saying,
8 don't provide our numbers?

9 **MR. GREER:** But I think that's a restriction
10 on the provision of the unbundled element that is not
11 appropriate because I believe that unbundled -- that
12 directory listing, a customer should be able to access
13 all directory listings of a specific --

14 **COMMISSIONER DEASON:** I'm not debating that.
15 I think it would be fine that every number should be
16 available unless a specific customer says I don't want
17 my number given out, and that should be honored. But
18 at the same time, if for some reason, business reasons
19 or whatever, there are competitors out there that
20 don't want their numbers as part of the database, and
21 signed an agreement to that effect, do we just say
22 that is an unlawful agreement and, therefore, we are
23 telling you not to abide by it?

24 **MR. GREER:** I believe that the company is
25 required to provide the DA database, the complete DA

1 database, to the carriers if requested. And Bell's
2 concern of giving out customer proprietary information
3 is something that's addressed by Section 222 of the
4 Federal Act, which says, that, you know, they have to
5 protect it just as BellSouth does, and they can't use
6 it for marketing purposes; they can only use it for
7 the provision of telephone service. And we had this
8 similar discussion in various arbitrations, I think,
9 in response to other type of customer information, and
10 we fell on the side --

11 **COMMISSIONER GARCIA:** I misunderstood that,
12 so what the information is needed for is simply to
13 provide telecommunications services?

14 **MR. GREER:** Yes, it's not for marketing
15 purposes, and that's clearly laid out in Section 222
16 of the federal law.

17 **COMMISSIONER GARCIA:** Well, what you're
18 saying is, if they don't have this information, they
19 wouldn't be able to complete calls and things of that
20 nature in their system. Is that what you're saying?

21 **MR. GREER:** Well, as a customer wanting
22 directory assistance service for somebody that's
23 provided to an ALEC that says, "Well, we don't want
24 you to get that DA listing," then that customer can't
25 get access to that DA listing unless they go and enter

1 an agreement with the competitive ALEC; and I don't
2 think that's part --

3 **COMMISSIONER GARCIA:** I'm sorry. Explain
4 that to me again, Stan. I'm sorry. I missed
5 something.

6 **MR. GREER:** Say an AT&T customer wants
7 directory listings for a Bell -- I don't want to use
8 BellSouth -- a Time Warner customer that they've
9 entered into an agreement with BellSouth that they
10 will not provide directory listings for those
11 customers so when AT&T gets that information and
12 provides this directory listing service to their
13 customers, they won't have the Time Warner listings.
14 And so, when the customer dials the Time Warner,
15 "Well, we don't have any listing for that customer,"
16 period. Or they have to direct them to BellSouth to
17 handle that directory listings for them.

18 **COMMISSIONER CLARK:** I thought the point was
19 the FCC rules say that the information about customers
20 will be provided to all competitive providers;
21 therefore, it's inappropriate for there to be an
22 agreement restricting it. And the concern about the
23 privacy of the customers is addressed by saying that
24 all competitor providers of service have the same
25 obligation to maintain the confidentiality of that

1 information.

2 **MS. BARONE:** Yes, ma'am.

3 **COMMISSIONER CLARK:** Which is similar, I
4 think, to what was done with respect to when
5 divestiture took place. All the competitive access
6 providers have the ability to find out -- have the
7 ability to access customer records in the sense of
8 getting them changed to their -- to be their
9 providers, and they can input that into the system,
10 and that's one of the problems we have with slamming.
11 But the point is to have competitive service, there
12 has to be that access, and I think it's -- maybe the
13 issue is that we shouldn't necessarily find them not
14 in compliance with the checklist, but we need to fix
15 that -- or the FCC has to fix it on a generic basis
16 and make it more clear that you cannot enter into
17 agreements that don't allow access to your
18 subscribers.

19 **COMMISSIONER DEASON:** Well, I agree with
20 that. I think that it is not appropriate for this
21 Commission to put BellSouth in a situation of either
22 complying with our requirements for 271 and
23 potentially violating an agreement regardless of how
24 we view those agreements. I think we need to address
25 it more generically. I would feel very confident that

1 if we made a decision and that it was legally correct,
2 to tell BellSouth that we've investigated this, this
3 is the correct thing, and these type agreements are
4 not appropriate, they will provide the numbers. But
5 right now I think they're caught between a rock and a
6 hard spot, and I think they're taking the conservative
7 approach and saying, "We've got agreements and until
8 we're told to do otherwise, we've got to abide by the
9 agreements." And I think they're doing the right
10 thing by trying to honor the agreements.

11 **MS. BARONE:** Commissioner Deason, I
12 understand that, and I think there's one concern that
13 I have -- and it may not be a concern -- but the
14 agreement that was presented at the hearing was merely
15 for compensation. I haven't seen a written agreement
16 between BellSouth and an ILEC that states that you
17 cannot reveal that information. All I've seen is an
18 agreement for compensation. They state that that's
19 their agreement. But I have not seen that in writing.

20 **COMMISSIONER DEASON:** I'm sorry, agreement
21 for compensation? What is the issue?

22 **MR. GREER:** Provision of like of how much
23 you're going to pay for each directory listing, or
24 something like that, when that's the compensation
25 mechanism.

1 **COMMISSIONER DEASON:** You mean BellSouth to
2 pay an ALEC to allow them to put into their database
3 the numbers to be --

4 **MR. GREER:** No, no. The ALEC will pay --
5 like for the directory assistance services that we
6 have tariffed by the Commission they pay a certain
7 amount per number of listings that they get. That's
8 what I think she's referencing when she talks about
9 compensation.

10 **MS. BARONE:** Huh-uh.

11 **MS. SIRIANNI:** It's my understanding that it
12 was a compensation that Bell would pay the ALEC whose
13 customer they would give out. And once they signed
14 that agreement, then that was kind of, then, "Okay,
15 you could give those customers' names out." If
16 nothing was signed then you couldn't give any of those
17 customers' names out. That was their idea --

18 (Simultaneous conversation.)

19 **COMMISSIONER DEASON:** So the ALECs are
20 putting leverage on BellSouth to get revenue --

21 **MS. BARONE:** Huh-uh.

22 **COMMISSIONER CLARK:** -- by saying we're not
23 going to allow you to include our numbers in your
24 database if you don't pay us for it? Is that what
25 you're saying?

1 **MS. BARONE:** All I know is that the only
2 piece of paper we had had to do with compensation
3 between the ILEC and -- I mean, BellSouth and the
4 ALEC, and there wasn't anything more we had to look
5 at.

6 **COMMISSIONER DEASON:** And so if BellSouth
7 refused to pay for the ability to include those
8 numbers in their DA database, they weren't including
9 them? Is that what you're saying?

10 **MS. BARONE:** No, that's not what I'm saying.
11 I don't know -- I have to go back and look at that.
12 The point I'm making is I haven't seen an agreement, a
13 signed agreement, saying that you cannot reveal this
14 information. That's the only point I'm making.

15 **MR. GREER:** And, Commissioners, I try to not
16 rely on the FCC's rules too often, and I didn't in
17 this case because I think they have an obligation to
18 provide the unbundled network element of directory
19 databases and access to all the information that's in
20 that. And if they've entered into agreement that
21 restricts that, then that's, to me, an inappropriate
22 restriction of that unbundled network element, and I
23 don't think they ought to be doing that. I think the
24 concerns that they raise of having protections for
25 customer proprietary information is handled by

1 Section 222 of the federal law. And I think also that
2 the FCC has a proceeding right now to establish the
3 requirements pursuant to 222.

4 **COMMISSIONER CLARK:** Let me ask. Is it
5 appropriate to sort of, in dealing with this issue, to
6 say that we concur or we agree with the Second Report
7 and Order of the FCC where it says that any customer
8 of a competing provider should be able to access any
9 listed number on a nondiscriminatory basis,
10 notwithstanding the identity of the customer's local
11 service provider or the identity of the telephone
12 service provider for the customers whose directory
13 listing is requested?

14 I think you need to do that in order to
15 continue to have universal service that everybody is
16 able to reach everybody else, and I think we should
17 say that we believe that's the intent of the Act, and
18 the FCC has established in its rules; and if BellSouth
19 believes that the -- notwithstanding those provisions
20 it's appropriate to have these agreements, they can
21 come in and tell us. But I think on the basis of
22 what's in the Act, they should be providing the
23 access.

24 **COMMISSIONER DEASON:** See, the difficulty
25 I'm having is the way I understand the issue, and I

1 may be misunderstanding it -- is that it was the ALECs
2 who would not let -- BellSouth wanted to have all of
3 the numbers in the database. I don't think there's
4 any reason why BellSouth would not, but the agreement
5 was the ALEC says, don't put our numbers in there, we
6 don't want them in.

7 Now, why? I don't know why they would want
8 that. It seems to me if we're going to let the
9 competitive model work, those customers of that ALEC
10 whose numbers are not in the DA database and they
11 start getting complaints from their friends and
12 relatives that I tried to call you, but I couldn't get
13 your number, it wasn't in the DA database, that
14 perhaps -- the competitive model will take care of
15 that.

16 If the customer doesn't like that, they will
17 switch back to BellSouth or they will go to another
18 ALEC. We don't have to be mandating that, it doesn't
19 seem to me. That's what competition is all about.
20 And I don't know what the business interest is of an
21 ALEC to not have their numbers in the DA database, but
22 there maybe is a valid competitive reason, maybe their
23 marketing, that you sign up with us and nobody can
24 call DA and get your number. Maybe some people like
25 that. I don't know. But that is the competitive

1 model.

2 **MR. GREER:** Commissioner, and the control of
3 what goes in the database and what goes out of the
4 database is not the ALECs; it's that BellSouth has
5 that control and agrees, "Okay, we're not going to put
6 your stuff in the database if we can't provide that to
7 other folks."

8 That's their control. It's their database.
9 And, you know, the customer themselves have a specific
10 right, I think, under the federal law, to say I don't
11 want you to publishing my directory listing.

12 I think the FCC's order takes that into
13 effect of when they say you don't have to give out
14 unpublished numbers, or those kind of things, and you
15 also have the ability to say, I don't want you to give
16 out the individual customer, the directory listing, to
17 these competitors. I think that is --

18 **COMMISSIONER DEASON:** Am I characterizing it
19 correctly that there are ALECs who wanted BellSouth
20 not to have their numbers in the database?

21 **MR. GREER:** That's my understanding of
22 BellSouth's --

23 **COMMISSIONER DEASON:** Why would an ALEC want
24 that?

25 **MR. GREER:** I couldn't tell you.

1 **MS. BARONE:** And we don't know that maybe
2 that was an agreement they entered into prior to this
3 new competitive world. We don't know. But I think
4 perhaps what we can do is we can take what
5 Commissioner Clark said and take your concerns and
6 address this issue by stating the law, but also
7 addressing your concerns and asking the FCC to address
8 that.

9 **COMMISSIONER DEASON:** But I'm having
10 difficulty saying that BellSouth is in violation of
11 this checklist item if all they're doing is trying to
12 say, "Look, we've got an agreement, we're just trying
13 to abide by it."

14 **MR. GREER:** And, Commissioners, the part
15 that they're violating is essentially the provision of
16 the unbundled access to the DA database, and that's
17 the bottom line as far as I'm concerned. And whether
18 they're violating the contract or whether they should
19 have entered the contract, I don't think that's
20 something I need to deal with, because I think that's
21 a restriction that they shouldn't have not agreed to
22 in trying to provide an unbundled access to the
23 databases.

24 **COMMISSIONER DEASON:** But it wasn't
25 something they were trying to get. They're saying it

1 was the ALEC themselves who are the ones that are
2 trying to get all of the nondiscriminatory access to
3 DA; it was them that didn't want their numbers in the
4 DA database.

5 **MR. GREER:** And the ALEC comes to BellSouth
6 and says, "BellSouth, I don't want you to publish my
7 directory listings." And BellSouth says, "Well, I'm
8 sorry; I have to provide access to the DA database,
9 and if it goes into my database, it's going to be
10 published. If you don't like that, then you go do
11 your own DA database and purchase the stuff from me."

12 I mean, the ALECs have that option. And I
13 guess the bottom line to me was that the DA database
14 is BellSouth's database, and they are the ones that
15 have the control of what goes in and what doesn't go
16 in. It's not the ALECs that have the ability, "Well,
17 I don't want my listings published."

18 "Okay. That's great go somewhere else and
19 do it."

20 **COMMISSIONER GARCIA:** How do you go
21 somewhere else, Stan?

22 **MR. GREER:** You do your own database.
23 There's various folks that do their own directory
24 listings, and that's one of the things is that, like
25 MCI wants to get all the directory listings so their

1 customers can call whoever they need to call, and
2 they're going to do their own database versus using
3 Bell's.

4 **COMMISSIONER DEASON:** Are there ALECs that
5 are going to go to MCI and say, we don't want your
6 numbers in your database to give out when somebody
7 calls your DA?

8 **MR. GREER:** And I think MCI has --

9 **COMMISSIONER GARCIA:** You would be the first
10 one, Stan, to say that's all right for MCI to do that?

11 **MR. GREER:** What?

12 **COMMISSIONER GARCIA:** That MCI could do that
13 deal?

14 **MR. GREER:** Depending on the requirements
15 that they have under the Federal Act, maybe, because
16 the incumbent LECs have specific requirements as far
17 as providing unbundled network elements. And the
18 competitive ALECs may or may not carry that same
19 burden.

20 **COMMISSIONER DEASON:** When were these
21 so-called agreements that we did that I haven't seen,
22 were when were they entered into?

23 **MS. SIRIANNI:** I don't know the exact dates.

24 **COMMISSIONER DEASON:** Was it before the FCC
25 made this determination, which is reported at the

1 bottom of Page 195?

2 **MS. SIRIANNI:** Actually, I don't think we
3 have the exact agreements that were entered into.
4 What we have is a sample of an agreement that
5 BellSouth would enter into with an ALEC or another
6 incumbent LEC, and it shows that -- you know, there's
7 a place where it shows what the compensation would be
8 that --

9 **COMMISSIONER DEASON:** Is this really an
10 issue on compensation or is it an issue on access to
11 numbers?

12 **MS. SIRIANNI:** There is nothing in the
13 agreement that states, "Yes, I will put your customers
14 in the database or no, I will not put your customers
15 in the database." There's no verbiage in the contract
16 that is in this record that states that. It is purely
17 about compensation and that this is what you will get
18 when we do this.

19 **COMMISSIONER DEASON:** And who is trying to
20 get compensation from whom?

21 **MS. SIRIANNI:** The ALEC or the incumbent LEC
22 whose customers' names would go into the directory
23 database would be compensated by BellSouth.

24 **COMMISSIONER DEASON:** And BellSouth is an
25 entity that has to have the database, so they're being

1 asked to put information in their database which
2 benefits all subscribers, including the subscribers of
3 the ALEC who wants the compensation for it?

4 **MS. SIRIANNI:** Well, I guess how you could
5 look at it is BellSouth in turn gets compensated by
6 the subscribers who call them for directory
7 assistance. I can go and look at the exhibit and --

8 **COMMISSIONER DEASON:** Unless -- and MCI sets
9 up their own directory assistance, and they have
10 access to the database themselves.

11 **MS. SIRIANNI:** That's true.

12 **COMMISSIONER DEASON:** So is Staff's
13 position, because BellSouth has entered into these
14 agreements and they want to abide by the agreements,
15 they should to be noncompliant because it's
16 discriminatory?

17 **MR. GREER:** Yes, Commissioner.

18 **CHAIRMAN JOHNSON:** Any other questions on
19 that point or any others in this --

20 **COMMISSIONER GARCIA:** Right. I think they
21 met the first point of it, at least I thought. And I
22 wouldn't want -- I wouldn't want to readdress that
23 part of it, the one about --

24 **MR. GREER:** 911?

25 **COMMISSIONER GARCIA:** Yeah. Well, 911

1 and --

2 **MR. GREER:** Operator call completion.

3 **COMMISSIONER GARCIA:** Right. Because no one
4 had asked for it, correct?

5 **MR. GREER:** No, the folks have asked for it
6 and they have provided it. If you'll look on Page 197
7 you'll see that --

8 **COMMISSIONER GARCIA:** Right.

9 **COMMISSIONER CLARK:** Let me ask a question.
10 Would it be -- is the operator call completion the
11 idea -- is that the selective routing issue?

12 **MR. GREER:** I don't believe it's the same
13 issue. I believe it's a little different. And I
14 apologize; I can't remember right off the top of my
15 head how it specifically operates.

16 **COMMISSIONER GARCIA:** What's the selective
17 routing?

18 **MR. GREER:** The selective routing just
19 routes it to -- you know, I used operator --

20 **COMMISSIONER GARCIA:** Within the
21 recommendation, I meant.

22 **MR. GREER:** I used operating services as an
23 example. It could be repair. It could be any
24 specific thing you need to route it to.

25 **COMMISSIONER GARCIA:** Right. So in this one

1 the only thing that we would leave behind or the only
2 issue that Staff still needs addressed is the
3 directory assistance issue?

4 MR. GREER: That's one of them.

5 COMMISSIONER GARCIA: And that's with a
6 certain --

7 COMMISSIONER CLARK: I'm confused. I
8 thought you had an issue -- they don't provide
9 selective routing. Therefore, which one of these
10 items --

11 COMMISSIONER DEASON: That's directory
12 assistance.

13 MR. GREER: The DA.

14 COMMISSIONER CLARK: All right.

15 COMMISSIONER DEASON: And there's two
16 problems with DA. One is the selective routing, and
17 the other is this question about numbers in the
18 database.

19 MR. GREER: Exactly.

20 COMMISSIONER CLARK: Well, can we say
21 something like "BellSouth has provided
22 nondiscriminatory access to 911 and E911 and operator
23 completion services." Is that a correct statement?
24 "However, with respect to directory assistance
25 services, they are not providing selective routing,

1 which we believe they should, and they are not
2 providing access to directory assistance to an ALEC
3 for customers of an ALEC with which they have an
4 agreement not to provide that information." And then
5 say something like "Whether or not this constitutes a
6 discriminatory practice depends on whether or not the
7 agreements are in violation of the Act or the FCC
8 rules." And then at some other proceeding we have to
9 decide what's appropriate.

10 **COMMISSIONER DEASON:** I can agree with all
11 of that except for one thing; and that is, in your
12 suggestion concerning selective routing you indicated
13 that it's not being provided. And it's true it's not
14 being provided, but it's not been requested either.
15 So I'm having difficulty saying that they cannot
16 provide it. We have testimony from them saying that
17 they can, and it has not been requested, so we can't,
18 I think, affirmative --

19 **COMMISSIONER CLARK:** Yeah.

20 **COMMISSIONER DEASON:** We have the Georgia
21 experience, but I'm not so sure that that overcomes
22 sworn testimony from BellSouth saying that they can do
23 it.

24 **MR. GREER:** Commissioner, I think that also
25 applies to the -- I mean, that logic also applies to

1 the branding, because that is an issue on Page 195,
2 middle of the page, branding of DA services is also
3 part of that, the Georgia experience. And I just want
4 to make sure that we capture all three.

5 **COMMISSIONER GARCIA:** I, likewise, can -- I
6 can second your motion, but I don't think we need to
7 go to that other part of it because I think it hasn't
8 been asked, and we have testimony that it can be
9 provided.

10 **MR. GREER:** And would you be considering
11 that changed circumstances in a subsequent filing?

12 **COMMISSIONER GARCIA:** Yeah, if --
13 (Simultaneous conversation.)

14 **MR. GREER:** If they actually can --

15 **COMMISSIONER DEASON:** By all means, if it's
16 requested and it's not provided, that is proof
17 positive and conclusively.

18 **COMMISSIONER GARCIA:** If tomorrow AT&T asks
19 for it and does not receive it when -- if and when
20 they come back here, that's not approved.

21 **COMMISSIONER CLARK:** I'm -- you know, it's
22 great that you second the motion, but I don't know
23 what the motion is. And I guess with respect to the
24 selective routing, that was the issue where they
25 hadn't requested it here but they had requested it in

1 Georgia. And we should simply say that it hasn't been
2 provided, but it hasn't been requested in Florida,
3 although there is testimony that it was requested in
4 Georgia and has not yet been provided.

5 **COMMISSIONER DEASON:** I don't even know if
6 we need to include that.

7 **COMMISSIONER KIESLING:** I don't think we
8 need to add that because --

9 **COMMISSIONER CLARK:** That's all right with
10 me.

11 **MR. GREER:** That goes with the branding,
12 too.

13 **CHAIRMAN JOHNSON:** The branding, they
14 requested it; they're having problems in Georgia?

15 **MR. GREER:** This is Georgia, Georgia's
16 experience again.

17 **COMMISSIONER CLARK:** But they're working on
18 it?

19 **MR. GREER:** But they're working on it, yes.

20 **COMMISSIONER CLARK:** And then with respect
21 to the access to directory assistance, I think we can
22 say that we'll tell them that they're not providing
23 access to the ALECs because the ALECs, they have
24 signed agreements which indicate they can't provide
25 that access. Whether or not it's discriminatory

1 depends on whether that agreement violates either the
2 law or applicable rules. And I think that's the way
3 we should leave it.

4 **CHAIRMAN JOHNSON:** Say the last part. What
5 was your last part on the --

6 **COMMISSIONER DEASON:** I can live with that.

7 **COMMISSIONER CLARK:** Whether or not this
8 constitutes discriminatory behavior or access --

9 **COMMISSIONER GARCIA:** You're leaving that
10 for the FCC to judge. But as far as our rules go
11 right now, you feel that they met the checklist point?

12 **COMMISSIONER CLARK:** Well, I think it
13 depends on whether or not the agreements are
14 appropriate. And without looking at the agreements
15 and without looking at the 1996 law and the rules, I'm
16 not ready to say it's inappropriate, but I will say I
17 think there are -- and, you know, I understand the
18 notion of a competitive market, and it may be
19 appropriate for people to be able to market that they
20 won't give you out the information, but I think there
21 are overriding public and universal issues that I
22 think is apparently what the FCC is trying to address,
23 and I think it may be inappropriate for those kinds of
24 agreements. But that's not something we should deal
25 with --

1 **COMMISSIONER DEASON:** But I think it's
2 something -- if we're going to make that call, which I
3 don't know if it's our call to make, perhaps it's the
4 FCC's, we need to take some evidence on it from a
5 public policy standpoint as to why it needs to be one
6 or the other and why it should override otherwise
7 binding agreements between rational parties who have
8 signed them.

9 **COMMISSIONER CLARK:** I don't view it as
10 overriding, and I view it as probably the agreements
11 are not enforceable because they were invalid to begin
12 with, but you get to the same point and I think we
13 should resolve it, but we don't have to resolve it
14 now.

15 **CHAIRMAN JOHNSON:** So we're just going to
16 leave it open?

17 **COMMISSIONER CLARK:** It would be with
18 respect to access to directory assistance, BellSouth
19 does not provide access, and enumerate the situation
20 in which they don't provide access, and then say
21 whether or not this constitutes -- violates the
22 nondiscriminatory requirement depends on whether the
23 agreements are valid agreements.

24 **COMMISSIONER DEASON:** That raises another
25 question. Do we know for a fact that BellSouth has

1 denied access to any of these DAs, these numbers in
2 their DA database?

3 **MR. GREER:** It's my understanding from MCI
4 that that's MCI's position, that they have asked --
5 (Simultaneous conversation.)

6 **COMMISSIONER DEASON:** There have been
7 attempts to get certain numbers and they've been
8 denied?

9 **MR. GREER:** Yes, that's my understanding.

10 **COMMISSIONER CLARK:** That's my motion.

11 **COMMISSIONER KIESLING:** I'll second it.

12 **COMMISSIONER GARCIA:** So this one would
13 be -- if we had to pass or fail it, this would be a
14 qualified pass or a qualified --

15 **COMMISSIONER CLARK:** It's enumerating what
16 they have done, but what they haven't done, too. I
17 mean, I think --

18 **COMMISSIONER DEASON:** Somewhere in the
19 middle.

20 **COMMISSIONER CLARK:** They haven't passed A
21 and B -- I mean, A and C.

22 **CHAIRMAN JOHNSON:** They have A and C, but
23 they have not B --

24 (Simultaneous conversation.)

25 **COMMISSIONER CLARK:** But it's getting late.

1 **CHAIRMAN JOHNSON:** -- and we're just going
2 to leave it open?

3 **COMMISSIONER CLARK:** Right.

4 **CHAIRMAN JOHNSON:** So as to the bottom line,
5 we don't have a bottom line yea or nay?

6 **COMMISSIONER CLARK:** I mean, I would break
7 it up that you can say yea on A. You can --

8 **CHAIRMAN JOHNSON:** You can say it --

9 **COMMISSIONER CLARK:** Yeah. How is it broken
10 down in the law?

11 **MR. GREER:** A, B and C, just as it is.

12 **COMMISSIONER GARCIA:** Oh, okay. Then we've
13 got a yea on A and a yea on C, right?

14 **COMMISSIONER CLARK:** Right.

15 **COMMISSIONER KIESLING:** And the nay is
16 with --

17 **COMMISSIONER GARCIA:** With that
18 qualification. Okay. It looks like we've got
19 unanimity then.

20 **CHAIRMAN JOHNSON:** There's a motion to
21 second. Any further discussion? Seeing none, show
22 that approved, then, unanimously.

23 **CHAIRMAN JOHNSON:** Item 9.

24 **MR. MUSSELWHITE:** Commissioners, Item 9
25 deals with whether or not BellSouth has provided white

1 page directory listings for customers of other
2 telecommunications telephone exchange service. Staff
3 was --

4 **COMMISSIONER CLARK:** Move Staff.

5 **COMMISSIONER KIESLING:** Second.

6 **CHAIRMAN JOHNSON:** There's a motion and
7 second. Any further discussion? Seeing none, show it
8 approved unanimously.

9 **COMMISSIONER CLARK:** I move Staff on 10.

10 **COMMISSIONER KIESLING:** Second.

11 **CHAIRMAN JOHNSON:** Any discussion? Seeing
12 none, show it approved unanimously.

13 **CHAIRMAN JOHNSON:** Issue 11?

14 **MR. FOGLEMAN:** Commissioners, Issue 11
15 relates to BellSouth's provisioning of databases and
16 associated signaling necessary for call routing and
17 completion. Such databases include line information
18 databases, advanced intelligent network databases,
19 toll free number databases, and automatic location
20 identification dated management systems. Other
21 databases, such as directory assistance databases,
22 while falling under the broader category of call
23 related databases, are not necessary to meet this
24 checklist requirement.

25 Based on the evidence provided in this

1 proceeding, Staff believes that BellSouth has met this
2 checklist requirement. Staff is open to your
3 questions at this time.

4 **MR. GREER:** Commissioners, it's my
5 understanding that Mr. Fogleman has never been to the
6 agenda before, so I will introduce him to you.

7 **COMMISSIONER KIESLING:** I'm sorry. I can't
8 hear you.

9 **MR. GREER:** It's my understanding that
10 Mr. Fogleman has never been to agenda before. I'd
11 like to let you be aware of that so you can pound him
12 into the ground.

13 (Simultaneous conversation.)

14 **COMMISSIONER GARCIA:** That's why we let him
15 finish.

16 (Simultaneous conversation.)

17 **COMMISSIONER CLARK:** He picked a great
18 recommendation.

19 **COMMISSIONER DEASON:** It's a brilliant
20 recommendation. I move it.

21 **COMMISSIONER KIESLING:** And I second it.

22 **CHAIRMAN JOHNSON:** There's a motion and a
23 second. Seeing no dissension, show it approved
24 unanimously.

25 **COMMISSIONER CLARK:** Commissioner --

1 Chairman Johnson, the only thing I wanted to mention
2 was I had the opportunity to be on the consumer
3 telephone lines on Tuesday, and I did have a call from
4 somebody whose telephone number was switched without
5 them knowing it, and the only way they found out was
6 they made a call to, like, their daughter's house.
7 The daughter didn't recognize the phone number. I
8 guess she had --

9 **COMMISSIONER GARCIA:** Caller ID.

10 **COMMISSIONER CLARK:** And then when she tried
11 to call back on the number she knew, she didn't get
12 it, and for some reason she went ahead and used the
13 other number, and they discovered it had been changed.
14 There was no explanation, but I guess it brought home
15 to me the fact that I hope that we will head off any
16 local service slamming before it occurs, because
17 it's -- to me it's way more serious than the long
18 distance provider, especially if your number is
19 changed, because how do you know? You don't usually
20 make phone calls to yourself, and somebody may be
21 trying to get a hold of you. It was just very
22 troubling, and I think we need to really be careful
23 about it.

24 **COMMISSIONER GARCIA:** Following on that
25 line, I think we've gotten -- for those of you who

1 have attended a few of these slamming workshops, along
2 the same line for interLATA slamming, has become a
3 serious concern in some of these issues, and it's
4 along the same lines of sort of a new type of slamming
5 that the people are being victimized.

6 **CHAIRMAN JOHNSON:** Issue 12.

7 **MR. WIGGINS:** Commissioners, Issue 12 deals
8 with whether or not BellSouth has provided number
9 portability pursuant to the applicable requirements.
10 Staff does not believe that BellSouth has met the
11 requirements to satisfy this checklist item. Staff is
12 open for any questions.

13 **COMMISSIONER DEASON:** What is route indexing
14 portability hub?

15 **MR. WIGGINS:** Sir -- I mean, Commissioner
16 Deason, I'm not an engineer, but from what I
17 understand of it, it's a number portability solution
18 in which the porting is provided from the access
19 tandem instead of from each central office.

20 **COMMISSIONER DEASON:** And it's not been
21 requested?

22 **MR. WIGGINS:** In this case, as in Issue 8
23 that Mr. Greer alluded to earlier, that we use
24 testimony in Georgia, because essentially we believe
25 that provision of this number portability solution is

1 basically the same technology or similar.

2 **COMMISSIONER DEASON:** Do we have testimony
3 from BellSouth indicating that they're capable of
4 providing this type of number portability solution?

5 **MR. WIGGINS:** Yes, sir. Also with that
6 testimony they only provided laboratory testing as a
7 demonstration that they can provide this service.
8 They didn't provide any carrier-to-carrier testing.

9 **COMMISSIONER CLARK:** Commissioner Deason, I
10 had a different take on this. I thought that
11 BellSouth agreed to provide this service in its
12 agreement with AT&T, and they're not providing it.
13 That was your main point?

14 **MR. WIGGINS:** Yes. And AT&T indicated in
15 the record that the reason they have not ordered the
16 service in Florida because they haven't been able to
17 get it in Georgia, and they were scheduled to do
18 operational testing -- I mean, to enter into
19 operational testing with BellSouth in October. We're
20 saying that BellSouth has not demonstrated as of this
21 point that they can provide this service.

22 **COMMISSIONER DEASON:** I think this is very
23 similar to a previous item we discussed when we're
24 using the Georgia situation as controlling evidence
25 here in Florida. It brings me some difficulty. I

1 would think that this would not be a reason to say
2 that BellSouth does not meet this criteria, this
3 checklist, but, obviously, if it is requested and not
4 provided that is a changed circumstance that doesn't
5 exist right now that would be evidenced in a future
6 271 proceeding. And, obviously, BellSouth would not
7 be compliant.

8 But right now we do not have what I consider
9 to be the type proof positive that says BellSouth
10 cannot provide this type of service.

11 **COMMISSIONER CLARK:** I guess I saw this
12 differently and maybe Staff should clarify it.

13 It seems to me that the overall requirement
14 with regard to number portability was remote call
15 forwarding and DID. That was sort of the overall
16 thing to do. But aside from that, BellSouth agreed to
17 provide number portability to AT&T through the two
18 other methods; that being R-H-P-H -- no, R-I; I'm
19 sorry -- and LERG.

20 **MR. WIGGINS:** Yes, that is correct.

21 **COMMISSIONER CLARK:** Well, I view that, if
22 it's in their agreement they, in effect, have made
23 that request, and it's not being provided.

24 **COMMISSIONER DEASON:** I think it can be in
25 the agreement, but this has to be a request to

1 actually install it and provide it for a given
2 service; and that, as I understand it, has not been
3 done. I guess it's been done because of the problems
4 in Georgia, but it still remains it has not been
5 specifically requested in Florida.

6 **MR. WIGGINS:** You're correct, Commissioner
7 Deason. It has not been formally requested in Florida
8 because AT&T indicated it is having problems receiving
9 the service from Bell in Georgia, and they have not
10 worked out those problems yet; therefore, they have
11 not requested it in Florida.

12 **COMMISSIONER GARCIA:** But the federal law
13 says it can be provided through remote call forwarding
14 or inward dialing trunks, right?

15 **MR. GREER:** Or other comparable means, yes.

16 **COMMISSIONER GARCIA:** So clearly, if I
17 remember correctly, BellSouth said it is providing
18 remote call forwarding.

19 **MR. GREER:** Yes.

20 **CHAIRMAN JOHNSON:** We just in our order
21 required more than the FCC did, but the FCC did give
22 us that broader language to suggest that we could do
23 that if we found it was technically feasible.

24 **COMMISSIONER DEASON:** And I think we
25 included it because BellSouth volunteered saying we

1 can do it; is that correct?

2 **MR. GREER:** Yes.

3 **COMMISSIONER CLARK:** What is LERG?

4 **COMMISSIONER GARCIA:** What is what?

5 **COMMISSIONER CLARK:** LERG.

6 **CHAIRMAN JOHNSON:** L-E-R-G.

7 **MR. GREER:** Local exchange routing guide.

8 It's the routing tables used by the companies to route
9 all calls.

10 **CHAIRMAN JOHNSON:** Stan, did AT&T -- I
11 understand that AT&T did try to order this service in
12 Georgia, and it hasn't been provided yet, and they've
13 not ordered it here. Did they state any other
14 reason -- well, I guess they stated the reason that,
15 well, it was not working in Georgia, it's probably not
16 working here; but did they give anything else? Did
17 they provide any other technical information?

18 **MR. GREER:** I think not. No. I think that
19 was their main emphasis, that we haven't been able to
20 get it to work in Georgia so, you know, there's no
21 reason to why it would --

22 **CHAIRMAN JOHNSON:** And you would agree with
23 that?

24 **MR. GREER:** Once again, I think the
25 technology stuff is the same, and so, yes, I would,

1 but in trying to be consistent with what we did in
2 Issue 8, this probably falls kind of in the same boat.

3 **COMMISSIONER DEASON:** Do we know if
4 BellSouth was even under some type of a requirement
5 from the Georgia Commission to provide this type of
6 number portability in Georgia?

7 **MR. GREER:** I don't know.

8 **COMMISSIONER CLARK:** Let me ask a question
9 on this. When we have permanent number portability,
10 will it wipe out all the other ways of providing
11 number portability?

12 **MR. GREER:** In the areas that they are
13 required to provide permanent number portability, I
14 think the interim solutions go away.

15 **COMMISSIONER CLARK:** Do you think even the
16 R-I-C-H?

17 **MR. GREER:** Yes.

18 **COMMISSIONER CLARK:** When is that permanent
19 solution supposed to be --

20 **MR. GREER:** There's various stages. There's
21 a top 100 MSAs in the country by the end of '98.
22 Florida has Tampa, Sarasota, Miami, Jacksonville,
23 Orlando, I think those are the ones that I recall.

24 **COMMISSIONER CLARK:** Is it appropriate to --
25 let me put it differently. Why is it appropriate to

1 say they have not met it because they haven't provided
2 two particular times?

3 **MR. WIGGINS:** Basically because -- and in
4 the arbitration proceeding this Commission --
5 BellSouth agreed to provide it, and in arbitration
6 proceeding you ordered them to provide it because they
7 agreed to, and they haven't demonstrated that they can
8 provide it.

9 **COMMISSIONER GARCIA:** Haven't demonstrated
10 in Florida because we haven't be asked.

11 **MR. WIGGINS:** And the reason why they
12 haven't demonstrated it in Florida is because they
13 have problems with it in Georgia, and AT&T said they
14 would have ordered it in Florida if they could get it
15 working in Georgia.

16 **COMMISSIONER GARCIA:** See, I invite AT&T to
17 request it. I mean they've got -- they've got an
18 order from this Commission in hand. Let them request
19 it. And if they don't get it this Commission has to
20 deal with that.

21 But we're changing the burden. First of all
22 I don't like being compared to Georgia. And second, I
23 think that South Florida is a larger profit center for
24 that company. I hope that they put their best
25 equipment in Florida. I think it would be a mistake

1 to invest in Georgia in the long run, but that's
2 another deal. What I think -- what I do think is that
3 in this case they have said that they will provide.
4 This Commission has an order requiring that they
5 provide it. AT&T hasn't asked. If AT&T asked for it
6 and BellSouth can provide it then this Commission will
7 be one of the people that will be dealing with that
8 issue. I mean --

9 **COMMISSIONER CLARK:** Then what do we want to
10 say? We should say, "Yes, BellSouth has provided
11 number portability pursuant to that section by using
12 remote call forwarding and direct inward dialing.
13 However, they do have a agreement with AT&T that
14 indicates they will provide it."

15 **COMMISSIONER GARCIA:** Remember this is going
16 to the FCC.

17 **COMMISSIONER CLARK:** I know. I know.

18 **COMMISSIONER GARCIA:** We may be sticking our
19 standard in when we don't have --

20 **COMMISSIONER CLARK:** No. I think they will
21 be providing it through RIPH and LERG when requested.
22 Since they have not yet had a request, we find them in
23 compliance. They will be out of compliance if they
24 have a request and they don't meet it.

25 **COMMISSIONER GARCIA:** I'll second it.

1 **CHAIRMAN JOHNSON:** There's a motion and
2 second. Any further discussion? Seeing none show
3 that approved unanimously.

4 Issue 13.

5 **COMMISSIONER CLARK:** I move it.

6 **CHAIRMAN JOHNSON:** Any questions?

7 **COMMISSIONER KIESLING:** Second.

8 **CHAIRMAN JOHNSON:** There's a motion and a
9 second. Show 13 approved unanimously.

10 14.

11 **MS. NORTON:** I found a typo in my
12 recommendation statement. I was told I have to
13 correct it. It's on the last line. Where it says
14 "251" it should say "271".

15 **COMMISSIONER GARCIA:** Last line of --

16 **MS. NORTON:** The recommendation statement,
17 on Page 248, Issue 14.

18 **MS. NORTON:** This checklist item Staff has
19 recommended that Bell has not complied with the
20 requirements of the Act. They have engaged in
21 agreements; the rates and terms for reciprocal
22 compensation are correct where they exist. However,
23 the requirements of the Act say that the reciprocal
24 compensation shall apply to all calls that -- all
25 calls terminated on network -- that they were

1 originated on the network facilities of the other
2 carrier. I apologize for that.

3 At any rate, Bell has withheld compensation
4 for calls terminated to information service providers.
5 They did that by simply writing a letter to the ALECs
6 with whom it has agreements and stating it would no
7 longer compensate or bill for those calls.

8 Staff believes that this violates the terms
9 of its agreements, the intent of the Act, and on that
10 basis we recommend that Bell has not complied with the
11 requirements of the Act for this item.

12 **COMMISSIONER DEASON:** How do we know it
13 violates the terms of those agreements?

14 **MS. NORTON:** I'm not saying in this issue
15 that on -- I'm not going to the point as to whether or
16 not information service provider traffic should be
17 compensated. That will be handled later. What I'm
18 saying is that the terms of their agreements require
19 that they handle this type of thing in a very
20 different manner.

21 **COMMISSIONER DEASON:** You're saying that the
22 agreements required them to file for some type of
23 dispute resolution with the Commission before they
24 unilaterally took this action?

25 **MS. NORTON:** If the agreements have a

1 dispute resolution clause, they needed to notify the
2 parties there was a problem; they need to attempt to
3 resolve it. After a specified period of time, if they
4 couldn't resolve it, they needed to come here. Where
5 there is other wording for dispute resolution clauses,
6 they at least needed prior notification. It is not
7 Bell's role, in Staff's opinion, they can unilaterally
8 modify the terms and conditions of agreements with a
9 letter so stating that there --

10 **COMMISSIONER DEASON:** Is it their position
11 they unilaterally changed the terms and conditions of
12 that agreement, or that something outside of the scope
13 of that agreement changed the meaning of the
14 agreement? Not within their control, but outside of
15 their control it changed the meaning of agreement,
16 therefore, there was no reason to go through the
17 dispute resolution.

18 **MS. NORTON:** No sir, they did not do that.
19 In the August 12 letter they said the information
20 service provider traffic was jurisdictionally
21 interstate, and, therefore, not subject to the terms
22 for reciprocal compensation. They did not say that
23 anything had changed. The terms of the agreement,
24 they did not address the agreement.

25 **COMMISSIONER DEASON:** Wasn't their decision

1 by the FCC that that was interstate jurisdiction and
2 that was not the law of the land, so to speak, at the
3 time those agreements were entered into and that
4 terminology used?

5 **MS. NORTON:** There's nothing in our record
6 specifically on that other than it is -- I'm not sure
7 exactly when the FCC made that decision, but that's an
8 issue that's been around for many, many, many years
9 and it is one that is under dispute. And I believe
10 that there will be complaints filed here, and this
11 will be addressed.

12 And as I said, I'm not -- I don't think it's
13 appropriate to go to the merits of the dispute at this
14 point. All I'm saying is that Bell needed to address
15 it in a different way, and that it does come down to
16 that they did change -- make amendments to the
17 agreements. They were not negotiated beforehand.
18 Bell was not saying that this new ruling -- or that
19 there was a new ruling that modified things. But even
20 if there had been, they still needed to address it
21 differently. I think what happened was they became
22 aware of it and decided to take this course of action.

23 **COMMISSIONER DEASON:** I guess I'm a little
24 bit confused. You used the terminology "changed the
25 agreements." Unilaterally changed the agreements?

1 **MS. NORTON:** Right. Agreements call for
2 compensation for termination of local traffic. This
3 appears --

4 **COMMISSIONER CLARK:** Are the agreements
5 specific on the treatment of information service
6 providers?

7 **MS. NORTON:** There's nothing in the
8 agreements addressing --

9 **COMMISSIONER CLARK:** It's just local
10 traffic. And then if something changes, what
11 constitutes local traffic, how is that a change of
12 their agreement? If ISP no longer is local traffic
13 and they are only obligated to compensate for local
14 traffic, how is that a violation or a change of the --

15 **MS. NORTON:** Commissioner, I think you're
16 presuming first that that is local traffic, and that
17 is a subject of hot dispute.

18 **COMMISSIONER CLARK:** I thought -- excuse me
19 for interrupting, but I thought this issue was
20 specifically taken up by this Commission, and
21 BellSouth brought before us the notion that they
22 shouldn't have to do the reciprocal payment; that
23 those other ALECs had to enter into their own
24 agreements with the ISPs. Have I got that wrong?

25 **MS. NORTON:** It's a different issue.

1 **COMMISSIONER CLARK:** Oh.

2 **COMMISSIONER DEASON:** It's basically a
3 question of whether ISP is local. Is a call to an
4 information service provider a local call, or whether
5 it is under the interstate jurisdiction? Is that
6 correct?

7 **MS. NORTON:** That's the issue.

8 **COMMISSIONER DEASON:** Okay.

9 **MS. NORTON:** And I think that's the issue --
10 certain costs.

11 **COMMISSIONER DEASON:** And we're not trying
12 to make a ruling on the merits of that issue. The
13 question is, is when there was a determination,
14 whether right or wrong, that that was not local
15 traffic. And Bell started interpreting the agreement
16 saying the agreement requires compensation to local;
17 this is no longer local so, therefore, it falls
18 outside the terms of our agreement.

19 **COMMISSIONER GARCIA:** Isn't the question
20 broader though? I think Staff tries to be specific to
21 try to address, but the question is much broader. Has
22 BellSouth provided reciprocal compensation
23 arrangements in accordance with the requirements of
24 252(d)(2) of the Telecommunications Act of 1996? I
25 mean, that's the question, isn't it?

1 **MS. NORTON:** That's correct.

2 **COMMISSIONER CLARK:** Can I --

3 **COMMISSIONER GARCIA:** And according to that
4 question it has.

5 **MS. NORTON:** It has -- I mean, I think the
6 way it would need to be interpreted is that it has not
7 provided reciprocal compensation pursuant to its
8 agreement in the Act for all traffic, for all local
9 traffic. And the question is --

10 **COMMISSIONER DEASON:** That's assuming that
11 it is local traffic, and we're not debating that.

12 **MS. NORTON:** Well, yes -- no, that's not
13 correct, sir. It is debatable. I mean, it is at
14 issue whether or not it is local. It appears local,
15 at any rate.

16 **COMMISSIONER DEASON:** We're not making a
17 ruling today whether it's local or not.

18 **MS. NORTON:** Understood. However,
19 traffic -- there was -- I'm sorry.

20 **COMMISSIONER GARCIA:** So if we're not making
21 that determination, has BellSouth provided reciprocal
22 compensation arrangements?

23 **MS. NORTON:** What it has done is amend its
24 agreements without going through appropriate
25 procedures. To the extent the traffic appears local,

1 it was never addressed in negotiations as being
2 anything other than local. It, itself, was billing
3 and paying for it. Then to unilaterally change
4 without prior warning was, in my estimation at least,
5 it was a violation of the agreement.

6 **COMMISSIONER GARCIA:** If it's violation of
7 the agreement, shouldn't they come in here and
8 shouldn't we litigate this out here?

9 **MS. NORTON:** It will happen -- oh, not in
10 the 271 context, but it will happen.

11 **COMMISSIONER CLARK:** Let me ask a question.
12 You said my question was a different issue. I'm
13 sorry, but I thought it was the same issue. What was
14 the big debate about in a past proceeding?

15 **MS. NORTON:** I've got to remember it.

16 In that issue, in the arbitration
17 proceedings, the issue was the ALECs wanted -- they
18 wanted the ILECs to --

19 **COMMISSIONER DEASON:** They wanted the ILECs
20 to go ahead and complete those calls regardless of
21 whether --

22 **MS. NORTON:** And bill and collect.

23 **COMMISSIONER DEASON:** -- or not there was an
24 agreement between the ALEC and the information service
25 provider.

1 **MS. NORTON:** Right. And this is different
2 from just the -- they wanted to adopt the LEC's
3 relationship with the information service provider.
4 They wanted to take that on. That's what happened in
5 the arbitration dockets.

6 **COMMISSIONER CLARK:** Right. And what did we
7 say?

8 **MS. NORTON:** We said, "No, you go get your
9 own agreements. Don't block any calls to end users,
10 but nobody gets paid until the ALECs have established
11 all their own relationships, the signed contracts with
12 the information service providers themselves." And so
13 the issue went to a relationship with an information
14 service provider. That distinguishes it from the
15 current situation when it is just an ALEC and an ILEC
16 transporting the traffic. It's not the rates that the
17 information service provider charges and you keep a
18 nickel and forward the rest to the information service
19 provider.

20 **COMMISSIONER CLARK:** I still think they are
21 somehow related. I can't figure out how, but -- I
22 guess, Commissioner Deason, I had a note, so should we
23 send this up conditionally?

24 It seemed to me that the issue of the
25 traffic has to be resolved, but they are providing

1 reciprocal compensation arrangements, but a dispute
2 has surfaced with respect to the ISP. If it's
3 determined that that is local, then they have violated
4 those agreements. If it is not, then they haven't
5 violated it.

6 **MS. BARONE:** Yes, ma'am. At minimum we
7 would say it appears they are in violation, but
8 because there's no determination, I'm not sure that
9 that would be the best way to go.

10 **MS. NORTON:** Commissioner, I'd say there was
11 a violation no matter how the FCC or this Commission
12 ultimately decides the jurisdiction issue.

13 **COMMISSIONER CLARK:** And the violation
14 arises why?

15 **MS. NORTON:** To the extent that they just
16 went and summarily modified their agreements without
17 entering into negotiations, without going through
18 dispute resolution clauses, without seeking --

19 **COMMISSIONER CLARK:** Why did they do that?
20 Why did they just issue the letter? Because they had
21 something from the FCC saying --

22 **MS. NORTON:** They didn't say they did it
23 because of a recent ruling.

24 **MS. BROWN:** Commissioners, the problems that
25 legal Staff has with the way this recommendation

1 statement is worded is that we have not had a full
2 proceeding to determine whether, in fact, there's
3 evidence to reach the conclusion that they are in
4 violation of their agreements and their contracts.
5 And, therefore, we would, at a minimum, prefer that
6 you put in there that it is -- apparently BellSouth is
7 in violation. And when we have a complaint, to come
8 in here and we can fully resolve this, then there will
9 be the time to make the determination of whether they
10 have violated those agreements or not.

11 But we didn't bring this up because it
12 appeared before this -- until just now, because it
13 appeared to me that Commissioner Clark was heading on
14 a direction that would not require this statement to
15 go in the order we would prefer it not to go.

16 **COMMISSIONER DEASON:** I agree. I don't know
17 that there's even an apparent violation.

18 **MS. BROWN:** We said at a minimum.

19 **COMMISSIONER DEASON:** The agreements call
20 for there to be compensation for local traffic. It's
21 just a question of how do you define local traffic?
22 There's been a change of circumstances that defined
23 ISP.

24 You shake your head. What did the FCC do?
25 Did they define it differently?

1 **MS. NORTON:** Commissioner, there are two
2 cases -- the evidence in the record states that there
3 are two cases at the FCC now where this is being
4 addressed. So I don't think that it's right to say
5 that there has been a change that redefines it as not
6 being local traffic. I think the issue with respect
7 to jurisdiction on this traffic has been there for a
8 long time.

9 This Commission, in Docket 880423, addressed
10 it. It's not a new issue. There's nothing that --
11 Bell did not come in and say, "We have got a new
12 issue. We've got a new order from the FCC." They did
13 not say that. They just simply sent a letter saying
14 "Oh, this is jurisdictionally interstate.

15 It's just like we just realized this." They
16 didn't say an order had been issued, so nothing
17 legally changed.

18 They admitted in cross examination that this
19 was an issue in dispute, and because it was an issue
20 in dispute, that's why Staff takes issue with the way
21 they handled it via that letter instead of treating it
22 as a dispute.

23 **COMMISSIONER GARCIA:** Commissioner Deason,
24 more properly I think you'd like it to be stated to
25 the extent that there is no issue over the

1 classification of traffic, BellSouth has provided
2 reciprocal compensation.

3 **COMMISSIONER DEASON:** What do you mean by no
4 issue -- oh, you're just --

5 **COMMISSIONER GARCIA:** I'm restating it so
6 that issue remains out there. But to the extent
7 that's not an issue, then BellSouth has provided --

8 **COMMISSIONER DEASON:** I think that BellSouth
9 has provided reciprocal compensation. There is an
10 outstanding issue on the appropriate treatment of cost
11 to information service providers. I think we can
12 recognize that as an outstanding matter that needs
13 resolution.

14 I'm not convinced that their treatment of
15 unilaterally -- I don't think they unilaterally
16 changed the agreement. I think the agreement speaks
17 for itself. There was a different interpretation what
18 that agreement meant.

19 **MS. NORTON:** That's a decision you'll have a
20 opportunity to make. You'll be addressing that, I
21 believe.

22 **COMMISSIONER DEASON:** I'm not saying I agree
23 with the interpretation, but I think that is their
24 interpretation. And obviously it's a dispute that is
25 going to come here. And I'm not convinced that we

1 need, for this checklist item, to say they are
2 noncompliant because of that pending dispute. Maybe
3 we need to qualify to indicate they have met the
4 requirements of this checklist item with that one
5 exception, and that is the subject of dispute, which
6 will be resolved.

7 **COMMISSIONER CLARK:** I think that's fine.
8 But I wanted to ask a question. When we originally
9 set the reciprocal compensation, they were counting
10 the ISP traffic as local, right?

11 **MS. NORTON:** That's what the record states,
12 yes.

13 **COMMISSIONER CLARK:** So they, at least,
14 initially believed it to be local, too.

15 **MS. NORTON:** They were billing it and paying
16 for it.

17 **COMMISSIONER CLARK:** And I would suggest
18 that it is inappropriate for them to just unilaterally
19 send a letter that says it's local. I think that
20 situation -- it appears to me both parties had thought
21 it was local. They should call them up and say "We
22 don't think it's local anymore and we're going to
23 start treating it that way" and then brought it to us.

24 **COMMISSIONER GARCIA:** Precisely. And that's
25 why it's going to come before us and and we're going

1 to hear that out, correct?

2 **COMMISSIONER DEASON:** I'm not saying the way
3 they treated it was the best way to treat it. I agree
4 that probably the better way would have been to be
5 more up front about it and brought a dispute and had
6 it resolved. But I'm not so sure that the way they
7 handled it sending the letter rises to the extent that
8 they need to be found noncompliant with this checklist
9 item, when for the vast majority of the traffic they
10 are providing reciprocal compensation.

11 **COMMISSIONER CLARK:** I don't have any
12 problem with saying yes, they are in compliance with
13 having reciprocal compensation arrangements. However,
14 a dispute as to the character of ISP traffic has
15 arisen, and whether it is local compensation and,
16 therefore, subject to the agreements, we will resolve
17 that issue in a subsequent proceeding.

18 **MS. NORTON:** You haven't made a motion yet
19 but there's language in the Staff analysis that
20 expresses the viewpoint that this was not an
21 appropriate way to handle it. Maybe I should wait
22 with this question until after you have --

23 **COMMISSIONER CLARK:** I would move we say,
24 "Yes, but there has been a dispute as to the
25 appropriate treatment of ISP traffic, whether or not

1 it is, in fact, local, and therefore, subject to the
2 agreements."

3 **CHAIRMAN JOHNSON:** Is there a motion?

4 **COMMISSIONER GARCIA:** Why don't we just
5 state it in a positive way -- if we're saying we met
6 it.

7 **COMMISSION CLARK:** I said that.

8 **COMMISSIONER KIESLING:** "Yes" is a positive.

9 **COMMISSIONER GARCIA:** I'm sorry. I missed
10 it.

11 **CHAIRMAN JOHNSON:** Do you want to repeat it?

12 **COMMISSIONER GARCIA:** Yeah. Please.

13 **COMMISSIONER CLARK:** "Yes. BellSouth has
14 provided reciprocal compensation arrangements in
15 accordance with the section. However, a dispute has
16 arisen as to the character of ISP traffic and whether
17 or not it is local. We will resolve that dispute, and
18 if it turns out to be local, they will be expected to
19 provide the compensation."

20 **MS. NORTON:** Do you believe that it's
21 appropriate to have language in the order as to how
22 they handle this?

23 **COMMISSIONER CLARK:** No. Let's just resolve
24 the issue and then we can talk about that.

25 **COMMISSIONER KIESLING:** Second.

1 **CHAIRMAN JOHNSON:** There's a motion and a
2 second. Any further discussion? Seeing none, show it
3 approved unanimously.

4 **COMMISSIONER CLARK:** I do think it's
5 appropriate to say, you know, once they identify --
6 what did the letter say? "By the way we're not going
7 to pay for this anymore because --"

8 **MS. NORTON:** I believe the terms were "We
9 will make every effort to not -- we will not pay
10 compensation. We will make every effort not to bill
11 for this traffic."

12 **COMMISSIONER CLARK:** And then what happened?
13 And then --

14 **MS. NORTON:** All the parties immediately
15 filed that letter. The letter was dated August 12th,
16 and parties were supplementing discovery responses by
17 filing it as supplementary. And when we saw it we
18 said, well, the substance of it is really not
19 appropriate as a 271 issue, the substance of it, but
20 the handling of it was a concern.

21 **CHAIRMAN JOHNSON:** Robin, you're concerned,
22 you said -- and it's in the Staff recommendation, your
23 concern was the process that was used, or, in fact,
24 that the appropriate process, dispute resolution
25 process was not used --

1 **MS. NORTON:** Yes.

2 **CHAIRMAN JOHNSON:** -- in addressing -- I
3 agree with you, that it appears to me, too, that the
4 appropriate process was not used, but that doesn't
5 seem to go to the core issue of reciprocal
6 compensation. And this is really for further review.
7 But how do we deal with those issues? When a company
8 does not, indeed, follow contractual language or
9 terms of an agreement that require certain type
10 dispute resolution, what is the vehicle for the
11 Commission or someone else addressing that issue?

12 **MS. NORTON:** That's why I asked whether or
13 not there should be language in this order expressing
14 the Commission's viewpoint on the way Bell did handle
15 it. Because if there is a dispute resolution clause
16 and we believe that was the way it was appropriately
17 handled, then they don't --

18 **COMMISSIONER CLARK:** I guess -- I can see
19 what Staff is concerned about. But how would they --
20 they didn't know when they sent the letter that they
21 would necessarily have a dispute. You know, I mean
22 you got to say "This is what we propose to do; do you
23 have a problem," maybe.

24 **MS. NORTON:** If they had said "This is what
25 we proposed to do --

1 **COMMISSIONER CLARK:** They didn't say that
2 this is what we're going to do.

3 I guess -- I can think of circumstances
4 where you enter into these agreements, you think you
5 really know what you're talking about, and then
6 something comes up and had you thought about it, you
7 would have addressed it. And you send the letter and
8 really nobody has any problems with it.

9 I mean, can you always predict when people
10 will have problems with it, and, therefore, should you
11 have treated it as a dispute to begin with? How do
12 you know that it's going to be a dispute?

13 **MS. NORTON:** I think initially they need to
14 have made a contact, explain the situation. Say
15 "Here's how we propose to deal with it. Here's how we
16 wish to deal with it." And in reponses to that they
17 will learn whether or not there's a dispute on their
18 hands.

19 What I'm concerned about is that they do
20 have binding contracts. It does not appear it was
21 respected. It was something that came up after the
22 contract. If any other carrier wants to order
23 anything that is not absolutely contained in its
24 contract, that carrier must go through a bona fide
25 request process which involves up to months.

1 **MS. BROWN:** Commissioners --

2 **CHAIRMAN JOHNSON:** I would agree with you,
3 Robin, that at a minimum we need to encourage and
4 stress that the parties to these agreements follow the
5 process that's set forth within those agreements.

6 **COMMISSIONER GARCIA:** You don't think
7 that --

8 **CHAIRMAN JOHNSON:** I don't think they did in
9 instance.

10 **COMMISSIONER GARCIA:** No. But you don't
11 think this discussion makes that point clear?

12 **CHAIRMAN JOHNSON:** I'm hopeful that it does.
13 But I think one of the things Ms. Norton is perhaps
14 suggesting, if we just blow over it, the parties will
15 think this is okay. I don't think we are endorsing a
16 particular behavior. And it's not to pick at Bell and
17 not to pick at the intervenors either, but it's to
18 encourage them to follow a process of notice and
19 trying to work these issues out amongst themselves
20 before it gets to the point where they have to file a
21 complaint with the Commission.

22 And in this instance perhaps this could have
23 been avoided; perhaps not. But I think we do need to
24 send that message. If they have -- what's it called,
25 bona fide -- whatever that process is called, dispute

1 resolution --

2 **MS. NORTON:** Those are two different things.
3 That was just using an example of --

4 **CHAIRMAN JOHNSON:** Here the dispute
5 resolution process.

6 **MS. NORTON:** The dispute resolution process
7 is something that needed to be applied here. What I
8 needed to say to clarify for the bona fide request
9 process is what Bell requires carriers to do who want
10 to depart from the terms of their contract or order
11 something in addition that's not being specifically
12 discussed beforehand and incorporated in there. They
13 go through this bona fide request process, which
14 requires them filing a list of what they want. Bell
15 takes a certain amount of time to come back with the
16 rates. And it's a process that can take several
17 months.

18 So it's -- contrast that with how Bell
19 handled when it felt it needed to make a change.

20 **CHAIRMAN JOHNSON:** I think it's clear that
21 the parties have to work together, and to the extent
22 that there is an issue, that through -- I don't know
23 whoever's fault, if there's a change in the law, fine.
24 But if they can put forth statements and notice that
25 this is what we intend to do and try to work through

1 those before they are elevated to the level where they
2 have to come to the Commission, that is certainly
3 something we should be supportive of and stress to the
4 parties that they need to do.

5 This is going to be a long process as is.
6 And to the extent the parties can work together to try
7 to reach a resolution on these issues, this
8 Commission, I'm sure, is encouraging that.

9 I don't know what we can do in this
10 instance. In the context of a 271, they didn't follow
11 that process. But I don't know if that rises to the
12 level that we say they don't meet the reciprocal
13 compensation arrangement, so --

14 **COMMISSIONER CLARK:** I think probably what
15 you should put in the order, that we have concerns
16 about any party unilaterally making an interpretation
17 of the agreement, that it is appropriate for the
18 parties to work together. And perhaps in this
19 instance the more appropriate action to have taken was
20 to say, this is what we intend to do absent hearing
21 from you. But I think that what needs to be evidenced
22 is the desire to cooperate and not dictate.

23 **COMMISSIONER DEASON:** I think you've made a
24 very good point in that you used the terminology
25 "unilateral decision concerning interpretation." I

1 think what Staff is saying is, it wasn't a unilateral
2 decision concerning interpretation. It was a
3 unilateral decision to change the agreement. And I've
4 not made that leap yet. I don't think that their
5 interpretation changed the agreement.

6 The language in the agreement stays the
7 same. It's local traffic. The question is what
8 constitutes local traffic? And they've interpreted --
9 and that's the terminology, Commissioner Clark, you
10 used -- that they have interpreted that differently.
11 And I agree it would be better to even put parties on
12 notice that you want to interpret something
13 differently from the way it has been interpreted
14 before. But I don't think that means that it's a
15 change in the agreement and that it has to go through
16 a dispute resolution process and that for that reason
17 they should be found in violation of reciprocal
18 compensation.

19 **COMMISSIONER CLARK:** I think we're past that
20 issue. We've said they are compliant with it. But I
21 think it would be appropriate to say that when -- you
22 can't unilaterally change the interpretation. That we
23 expect cooperation and parties working together to
24 resolve things. And where they can't, that they would
25 bring differences of interpretation to us.

1 **CHAIRMAN JOHNSON:** Ms. Brown, did you have a
2 point?

3 **MS. BROWN:** Commissioners, if we could use
4 that language in the order and the language that
5 Chairman Johnson just used to speak about the
6 Commission's concerns on this matter, and not go much
7 further than that with language that says it is clear
8 that there's been a violation of the agreement. And a
9 lot of this stuff that's here in this recommendation,
10 I want direction from you all that we do not have to
11 put that in the order.

12 **COMMISSIONER CLARK:** I think the direction
13 is clear now that, yes, we'll find them in compliance.
14 We'll say there's a dispute that's arisen and then
15 evidence concern that there shouldn't be unilateral
16 changes in interpretation, and that we expect
17 cooperation between the parties in terms of
18 interpreting their agreements.

19 **MS. BROWN:** That's what we'll put. Thank
20 you.

21 **CHAIRMAN JOHNSON:** We've done 15 and 15A.

22 **COMMISSION CLARK:** Move 16.

23 **CHAIRMAN JOHNSON:** You move 16?

24 **COMMISSIONER GARCIA:** Second.

25 **CHAIRMAN JOHNSON:** There's a motion and

1 second on 16. Any discussion? Seeing none, show it
2 approve.

3 Item 17.

4 **MR. GREER:** Commissioner, Item 17 --

5 **COMMISSIONER KIESLING:** We've already
6 decided that there will be some of them, so --

7 **MR. GREER:** Right. It's a moot issue as far
8 as I'm concerned.

9 **COMMISSIONER KIESLING:** We don't need to
10 vote on it.

11 **COMMISSIONER CLARK:** Okay.

12 **CHAIRMAN JOHNSON:** 17 is moot.

13 **COMMISSIONER GARCIA:** 18, I think, is to
14 some degree what we discussed when we began this; what
15 do we do with this docket. And I guess -- Monica, why
16 don't you put it into words we can go with, I think.

17 **COMMISSIONER CLARK:** I can short-circuit. I
18 don't think we should close it now.

19 **COMMISSIONER KIESLING:** That's what it says.

20 **COMMISSIONER GARCIA:** That's not what it
21 says.

22 **MR. GREER:** Issue 18A is the one that has
23 that other language on there.

24 **COMMISSIONER GARCIA:** But it says --

25 **MS. BARONE:** On Issue 18 it says this docket

1 should remain open.

2 **COMMISSIONER GARCIA:** If you keep going, it
3 says the Commission -- if you look at the first full
4 sentence on Page 298, "The Commission should order
5 that BellSouth must, at the time of any subsequent
6 filing, provide any documents supporting that file."

7 **MR. GREER:** And Commissioner, I think this
8 goes back to the belief that we think they need to
9 file the complete information they file with the FCC
10 with us, as, I think, Commissioner Johnson pointed
11 out, required by the FCC.

12 **COMMISSIONER DEASON:** I don't have a problem
13 with having the complete filing. The problem I have
14 is the last sentence there in the first paragraph,
15 "it", I guess you're saying the Commission should not
16 rely on any information or reference any information
17 filed to support its filing in this proceeding.

18 **MR. GREER:** Really what I was meaning was
19 that I don't want to get a filing that says, well,
20 look at binder 75 in this proceeding to be the
21 document that we're supposed to be getting. I would
22 prefer them to file the complete filing with us versus
23 going, say --

24 **COMMISSIONER GARCIA:** Isn't that an
25 inordinant amount of work? We've already got it here

1 and there's not going to be any changes in that area.
2 Unless the parties bring up those issues again and
3 they want to dispute it, when on God's green earth
4 would you want another BellSouth truck to pull up with
5 all of these documents?

6 **MR. GREER:** Because the documents may not be
7 the same.

8 **COMMISSIONER GARCIA:** They have to be the
9 same.

10 **MR. GREER:** But the cross-reference gets to
11 be a real troublesome thing for Staff to see what is
12 there.

13 **CHAIRMAN JOHNSON:** I think this is less
14 confusing.

15 **COMMISSIONER GARCIA:** Okay.

16 **COMMISSIONER KIESLING:** Plus it takes a lot
17 of time for Staff to go through and put together the
18 record by picking some out of this notebook and some
19 out of this notebook.

20 **COMMISSIONER GARCIA:** If it's easier for
21 Staff, then I'm fine with it. I was trying to save
22 Staff time.

23 **COMMISSIONER CLARK:** Move Staff.

24 **COMMISSIONER KIESLING:** Second.

25 **CHAIRMAN JOHNSON:** Any further discussion?

1 Show 18 approved unanimously.

2 We need to take a ten-minute break.

3 **COMMISSIONER KIESLING:** We do?

4 **COMMISSIONER GARCIA:** How about we defer
5 this to tomorrow?

6 **CHAIRMAN JOHNSON:** No, let's finish it.

7 **COMMISSIONER GARCIA:** This is PAA. They are
8 able to argue this, aren't they?

9 **MS. SIRIANNI:** 60 days we have until
10 November 24th to rule on it.

11 **MS. BARONE:** We can defer it to the 18th.

12 **COMMISSIONER GARCIA:** I'm going to move to
13 defer. I'm going to use my prerogative. Move to
14 defer.

15 **COMMISSIONER CLARK:** Wait a minute. There
16 may be people here that have come specifically for
17 this.

18 **MS. SIRIANNI:** We may have parties here who
19 want to speak who were not planning on being here
20 tomorrow.

21 **COMMISSIONER GARCIA:** They don't have to go
22 tomorrow. We have until when?

23 **MS. SIRIANNI:** November 24th, the 60-day
24 clock.

25 **MS. BARONE:** Unless they waive the clock.

1 **MS. SIRIANNI:** Unless they waive the clock.
2 That's pursuant to the Act.

3 **COMMISSIONER GARCIA:** That gives us --

4 **MS. SIRIANNI:** Until November 24th.

5 **COMMISSIONER GARCIA:** We could tack this on
6 agenda, correct?

7 **MS. SIRIANNI:** There is a November 18th
8 agenda conference.

9 **COMMISSIONER CLARK:** Commissioner Garcia,
10 the only thing I would suggest is that there may be
11 people here who specifically came because they thought
12 they were going to be able to address it, and I'd just
13 rather get it done.

14 **COMMISSIONER KIESLING:** I'm in agreement
15 with that.

16 **CHAIRMAN JOHNSON:** So does that take back
17 that deferral?

18 **COMMISSIONER GARCIA:** No, I just --

19 **COMMISSIONER KIESLING:** How about if we
20 limit them to five minutes?

21 **COMMISSIONER GARCIA:** If we're willing to
22 limit them -- I'll hear it. But what I'm not willing
23 to do is enter into the same type minutiae discussion
24 with lawyers participating. We may be here for a
25 month. (Laughter)

1 If we limit each of them to five minutes and
2 that's it -- but obviously we are all going to have
3 questions that we want to hash out. And I don't know
4 if we have time for that. Because, I mean, I think
5 they would fall over into the next aisle here if we
6 had lined them all up. I just wanted to be able to
7 address them with some sense. But if -- I will
8 withdraw on the condition that we give them only five
9 minutes each to speak.

10 **CHAIRMAN JOHNSON:** You don't want the
11 deferral?

12 **COMMISSIONER CLARK:** Let me ask a question.
13 If they make the SGAT compliant with what we've
14 decided in the other issues, then it's done?

15 **MS. SIRIANNI:** Yes. Well, let me say this:
16 There -- the SGAT may contain additional information
17 that the checklist items did not require. So the
18 SGAT, remember, is a -- it is like an agreement that
19 if a small carrier or such.

20 **COMMISSIONER CLARK:** Right.

21 **MS. SIRIANNI:** -- would come and want
22 service, then they would take the SGAT. There may be
23 certain services or information beyond what is
24 required by the 14 checklist items that BellSouth may
25 have put into their SGAT in order -- for a small

1 carrier. So I can't say for because everybody sitting
2 here today has a small portion of what was in the
3 SGAT, that pertains to their particular checklist
4 item. So I cannot say yes for sure that it is exactly
5 everything in the checklist items is exactly what is
6 in the SGAT.

7 **COMMISSIONER CLARK:** Madam Chair, I think
8 your idea of taking a small break and starting back up
9 a good idea.

10 **CHAIRMAN JOHNSON:** We're going to take --
11 how's much time do you need? Ten minutes? We'll take
12 a ten-minute break.

13 (Brief recess taken.)

14 - - - - -

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

17 **COMMISSIONER GARCIA:** Madam Chairman, just
18 to clarify the record or any misperception that might
19 exist in the record, I just -- I'm not hurrying this
20 process along. I only think that we can go so far
21 today with what has been done by Staff. Maybe our
22 counsel can correct it, but I just think that the SGAT
23 is something different in the broader sense of
24 everything we have addressed today. So I think
25 focusing on it too much is perhaps not -- this is

1 neither the right time nor does it make any big
2 difference. Am I mistaken in that? If I am, then
3 give them three hours apiece. I'll stay here all
4 night. I have nowhere to go. Well, I do have
5 somewhere to go but it's not an important place.

6 (Laughter)

7 **COMMISSIONER KIESLING:** Clyde's will still
8 be open when we finish. (Laughter)

9 **COMMISSIONER GARCIA:** I know Swafford will
10 be saving my seat. (Laughter)

11 I just want to understand it, because I
12 don't want any misperception. This issue is very
13 important, and I think we've argued minutiae here all
14 today because it's so important; it's important
15 minutiae. And what I want to make sure is that my
16 perception of this SGAT is correct.

17 **COMMISSIONER KIESLING:** Could I say
18 something in that regard, too? I mean, one of the
19 reasons I wanted to get it over tonight is not because
20 I necessarily want to hear the oral argument, but
21 because I question what we're even doing with this
22 item in the 271 proceeding.

23 I mean, it seems to me that the SGAT,
24 especially the one we're supposed to look at right
25 now, was never even brought to us during the

1 proceeding and that we did not have any pending
2 request that we approve it. And in my mind that whole
3 process belongs somewhere else besides in the 271
4 proceeding. So I'm wondering whether we have to do
5 18A in this proceeding, or if we ought not to kind of
6 start over with a new docket number and everything
7 else that just addresses the approval or disapproval
8 of the SGAT.

9 **CHAIRMAN JOHNSON:** Ms. Barone.

10 **MS. BARONE:** Yes, Commissioners, I would
11 point out a couple of things.

12 Number one, Staff has recommended to you
13 that an SGAT is not necessary for the 271 proceeding,
14 first of all. There are interconnection agreements
15 that if implemented would meet all 14-point checklist
16 items. So we don't think it is necessary.

17 Second of all, yes, the final SGAT did come
18 out; was filed with this Commission outside the
19 record, therefore, that's why we're dealing with it
20 PAA.

21 In terms of being dealt with in this Docket
22 960786, we just -- it's more of an administerial
23 thing. We thought we could bring it to you today --
24 because of the 60-day clock-day clock. Yes, we could
25 deal with this item on November 18th. We could defer

1 it until then, but we decided to go ahead and bring it
2 to you now.

3 The issues we deal with in 18A are
4 derivative from the evidence that was presented to you
5 and, therefore, we thought we would be able to handle
6 it this way. But you're right, it's not necessary for
7 the 271 proceeding, number one, because you have found
8 that they've not met the requirements.

9 And, number two, they even have
10 interconnection agreements that meet all 14-point
11 checklist items.

12 **COMMISSIONER KIESLING:** And I would also
13 suggest since the SGAT we're being asked to consider
14 came in after the record in this proceeding closed,
15 it's even difficult for me to understand how we're
16 going to be using the record evidence in this case to
17 decide whether or not to approve the SGAT.

18 I mean, you know, I would certainly think
19 that BellSouth would want an opportunity to present
20 some more information.

21 **MS. BARONE:** Certainly. And they could do
22 that when they filed it. We have all of this
23 information and because it's a proposed agency action
24 I think it's given us more information to be able to
25 make a recommendation to you. We've done that in the

1 past. So if BellSouth wanted to pull the statement at
2 this time and wanted to make some refinements to it,
3 based on your decisions in the 271 proceeding -- and
4 I'm trying to keep that separate -- and I think that's
5 really wise to keep this 252 process separate from the
6 271 proceeding. And if they wanted to do that based
7 on what they've heard today, they could do that. They
8 could waive the clock; they could withdraw the SGAT.
9 We could come in here, we could open another docket.
10 They could recommend submitting it with some changes
11 that you've suggested that may need to be made because
12 of what you found in the 271 proceeding.

13 **COMMISSIONER KIESLING:** Let me ask you this:
14 From what date did you start the 60-day clock running?

15 **MS. BARONE:** When they made their official
16 filing, I believe it was September 25th.

17 **COMMISSIONER KIESLING:** Of the SGAT?

18 **MS. BARONE:** Excuse me?

19 **COMMISSIONER KIESLING:** When they filed the
20 final SGAT --

21 **MS. BARONE:** Right. They filed it as an
22 exhibit and they also filed it as an official SGAT
23 filing for 252 purposes. And we started the clock on
24 that day, which was September 25th.

25 **COMMISSIONER KIESLING:** And it would have

1 been just as appropriate on whatever date that was to
2 open a new docket to deal with the SGAT request as it
3 was to tack on it here?

4 **MS. BARONE:** Yes, ma'am.

5 **COMMISSIONER KIESLING:** So the two other
6 than that, there's some -- I guess some connection
7 between them, they are not necessary to the
8 decision -- one is not dependent on the other for
9 anything in the decision.

10 **MS. BARONE:** Yes, ma'am.

11 **COMMISSIONER GARCIA:** Ms. Kaufman, are you
12 arguing one side of this and BellSouth is arguing the
13 other?

14 **MS. KAUFMAN:** I'm not sure what BellSouth is
15 going to argue. But I'm here on behalf of the Florida
16 Competitive Carriers Association, as well as numerous
17 counsel sitting behind me, in a effort to keep this
18 short to support the Staff on the issuance as a PAA.

19 **COMMISSIONER CLARK:** Well, I vote with them
20 since they have decided to eliminate all those people.
21 (Laughter)

22 **COMMISSIONER GARCIA:** They certainly have my
23 support.

24 No. If that's the case, I think we can give
25 them more time, because if there's only two sides

1 here, and Staff, I think we can give a little bit more
2 time to give a little bit more leeway, I thought
3 that -- every participant. We've only got two sides.

4 I also have another point I want to make
5 before we moved off the 271. What was the time clock
6 to the 271 proceedings? I know we had a quick time
7 clock. What was it, 60 days or 45 days?

8 **MS. BARONE:** Actually the time clock has
9 changed throughout the year.

10 The FCC had issued a public notice that
11 wanted our comments within 20 days of a filing of a
12 petition at the FCC. And then later they came out and
13 stated they wanted the state decision before the RBOCs
14 filed with the FCC, so we just put in place the most
15 expeditious process that we could --

16 **COMMISSIONER GARCIA:** How many days did this
17 take, Monica, from beginning to today?

18 **MS. BARONE:** They filed on July 7th and we
19 went to hearing on September 2nd.

20 **MS. KAUFMAN:** Commissioner Garcia, I just
21 want to correct the record. I want it to be clear the
22 position I'm advocating for the FCCA and the parties
23 behind me is the approval of the PAA today.

24 If you were to decide to go another way, I
25 think some of my colleagues would want to address you,

1 and I just want that to be clear.

2 **COMMISSIONER GARCIA:** I was amazed that
3 Ms. Rule was able to keep her seat. (Laughter)

4 I have another question for Staff now. We
5 just finished this proceeding in terms of 271. That
6 does not bar Southern Bell from deciding that since
7 July they've made significant improvements and
8 addressed the issues that were addressed today and
9 they could, in theory, choose to file Friday again and
10 start this whole process over.

11 **MS. BARONE:** Yes, sir.

12 **COMMISSIONER GARCIA:** And this Commission
13 still has -- I would assume, and I guess that's a
14 policy that we have to make from here -- still has the
15 policy that we'll move as expeditiously as possible
16 and rearrange our calendars, of course, with the
17 Chairman's help and Staff's help. I know none of you
18 want to do this again. But we would in essence be
19 prepared to do that again, correct? They can file at
20 any time again. This allows us to move forward
21 tomorrow if that be the case.

22 **MS. BARONE:** Are you asking me could they
23 turn around and file here again? (Laughter) I
24 thought so.

25 **COMMISSIONER GARCIA:** I know they can go to

1 the FCC, and that's their choice. We've done our part
2 in that. But if the company decides that since the
3 hearing in September they have made -- or they have
4 met some of those issues, or most of those issues
5 which were brought up -- I hope the company doesn't
6 use this as an ongoing thing -- but have met some of
7 the issues that we wanted addressed, and clearly the
8 record reflected what we did -- a picture in time back
9 then -- they could decide Monday of next week to file
10 again. I don't think they could make that many copies
11 that quickly. But if they did that, they could file,
12 and we would begin this process all over, and
13 specifically looking at the same requirements that we
14 were looking at here, probably focusing on those
15 issues we felt did not meet --

16 **COMMISSIONER CLARK:** Don't look so glum. I
17 really doubt --

18 **COMMISSIONER GARCIA:** Ms. Barone, I'm not
19 looking for you to resign, either. That is precisely
20 where we are now.

21 **MS. BARONE:** Yes, sir. They could file.
22 They could file tomorrow. They couldn't physically
23 pull it off, but yes, in theory they could.

24 **COMMISSIONER GARCIA:** Fortunately for us.

25 **CHAIRMAN JOHNSON:** But what about

1 Commissioner Kiesling's issue about the -- first of
2 all, I guess, the filing that was made was outside of
3 the context of this particular docket. Now, can we
4 rely upon the record in this docket as a basis for
5 whatever decision we make, even if we put this in
6 another?

7 **COMMISSIONER DEASON:** This is a PAA.

8 **CHAIRMAN JOHNSON:** Yes.

9 **MS. BARONE:** Yes, you could.

10 **COMMISSIONER KIESLING:** That was my point;
11 that deciding this is not dependent on what we've just
12 done here the rest of the day. It's a PAA. It's
13 separate; and it could be done in another docket as a
14 PAA on a regular agenda. It doesn't have to become
15 intertwined with the 271 proceeding. And my concern
16 is that we don't have a clear line between them. And
17 if all of this goes into the same, you know, order.

18 **COMMISSIONER CLARK:** Are you going to do two
19 separate orders?

20 **COMMISSIONER KIESLING:** Got to be.

21 **MS. BARONE:** What I was considering doing is
22 an order on BellSouth's petition -- a final order on
23 BellSouth's petition regarding 271 and a proposed
24 agency action, and do it all in the same order and
25 have a severability clause. Because a lot of the

1 information is based on the evidence that's in the
2 issues on 2 through 14.

3 **COMMISSIONER KIESLING:** It would still be in
4 the same docket number.

5 **COMMISSIONER CLARK:** I don't think it
6 matters.

7 **MS. BARONE:** It doesn't matter. You can
8 handle it that way. We have it all in one place. If
9 BellSouth wants to proceed, you have it all in one
10 place; you have the SGAT, you have all the evidence in
11 one order. They can take that and go back. If
12 there's a protest, of course, we go from there. But
13 we'll have severability language.

14 **CHAIRMAN JOHNSON:** Any other questions? Do
15 you want to proceed?

16 **COMMISSIONER KIESLING:** Not especially.

17 (Laughter)

18 **CHAIRMAN JOHNSON:** Any time limitations?
19 We've waived the five-minute --

20 **COMMISSIONER KIESLING:** No, we haven't.

21 (Laughter) That was one vote.

22 **COMMISSIONER GARCIA:** Don't do it on my
23 account. If there's only two sides here, we can give
24 them a few more minutes to be more complete, you know,
25 that's all I was saying.

1 **COMMISSIONER CLARK:** Ten minutes.

2 **COMMISSIONER KIESLING:** Ten minutes.

3 **CHAIRMAN JOHNSON:** Then we'll go with the
4 ten minutes. BellSouth.

5 **MS. WHITE:** Nancy White and John Marks on
6 behalf of BellSouth. And I'll try to hit the
7 highlights and not repeat a lot of what has been said
8 today.

9 In the Staff's recommendation on BellSouth's
10 SGAT, the first oddity I'd like to talk about is the
11 issue of dialing parity.

12 In Issue 13 the Staff and the Commission
13 found that BellSouth had met the checklist item of
14 dialing parity. However, in Issue 18A regarding
15 approval of the SGAT, the Staff has said BellSouth has
16 not met this item because of some kind of issue about
17 transmission quality. This is the first and only time
18 the issue of transmission quality is located in the
19 recommendation. So that's an inconsistency that I
20 think should be noted and fixed.

21 With regard to the issue of interconnection
22 in the SGAT, the Commission's already decided, for now
23 at least, to hold off on the Internet service provider
24 traffic issue. But on the two-way trunking, the SGAT
25 allows two-way trunking. It sets forth the PLU factor

1 which is in the SGAT. Those are two of the things
2 that the Staff complains about. AT&T is the only
3 party who complained about two-way trunking in the
4 SGAT and about the PLU factor.

5 AT&T's arbitration agreement allows two-way
6 trunking. AT&T has no switches in Florida right now
7 so, therefore, there's no need for interconnection
8 trunks for AT&T. AT&T will not use the SGAT in
9 Florida. So it doesn't seem to me that this is a
10 point on which the SGAT should be denied.

11 With regard to collocation, the SGAT sets
12 forth collocation arrangements, both physical and
13 virtual, as well as rates. The Staff complains that
14 the SGAT contains interim rates. However, the Act
15 does not require permanent rates for the SGAT to be in
16 compliance. The FCC itself has endorsed interim proxy
17 rates for interconnection. There's a cost proceeding
18 in January at which the Commission will take up the
19 issue of permanent rates for physical and virtual
20 collocation. And this Commission can order BellSouth
21 to substitute the interim prices in the SGAT with the
22 permanent ones reached in that proceeding.

23 As far as physical collocation, there are
24 several in progress right now. BellSouth has not
25 refused any physical collocation requests. Part of

1 the problem with regard to provisioning the intervals
2 for physical collocation is the fact that almost all
3 of the sites require construction jobs, and building
4 permits are required for those construction jobs. All
5 work that BellSouth can do without the permits is on
6 schedule, but BellSouth can't be held responsible for
7 how long it takes the city or municipality to issue a
8 permit. We work with the ALEC and the municipality as
9 close as we can in order to get that accomplished. So
10 we believe that the collocation section of the SGAT
11 should be approved.

12 With regard to the access to unbundled
13 network elements, again the Staff says interim rates
14 are in there, and that's not good enough for the SGAT.
15 The Act does not support the contention that the rate
16 must be permanent. And again the cost proceeding in
17 January can be used to substitute those prices.

18 With regard to unbundled local transport,
19 there was testimony that BellSouth is providing that,
20 277 dedicated trunks. It is in the SGAT, and,
21 therefore, it should be approved in the SGAT. Same
22 with regard to switchboards. The Staff stated that
23 the unbundled local switching wasn't appropriate in
24 the SGAT, but it was undisputed that BellSouth is
25 providing unbundled local switches.

1 We admit that there are billing errors, but
2 we are providing these items. The bills aren't
3 perfect but the ALECs are paying the correct price,
4 and we're working on that.

5 With regard to the combinations of UNEs that
6 the Staff brought up, they said that in the SGAT
7 BellSouth's position is contrary to law. That's just
8 not correct. They overlooked that last 8th Circuit
9 order that came out on October 14th, 1997, which was
10 prior to the issuance of the recommendation in this
11 case. And the 8th Circuit specifically stated that
12 the Act does not permit the new entrant to purchase
13 the UNE platform at UNE prices. It said to permit
14 combinations as UNE prices would obliterate the
15 distinction Congress has drawn between UNEs and
16 resale.

17 With regard to operation support systems,
18 the Staff recommends that the SGAT has not met the
19 requirement of the operation support systems.
20 However, the standard for OSS is not perfection; the
21 standard is parity. The standard is not that the ALEC
22 systems provided to the ALECs must be identical to
23 those provided to BellSouth.

24 The Act requires that access to operation
25 support systems be in substantially the same time and

1 manner to provide an efficient competitor with
2 meaningful opportunity to compete. And BellSouth's
3 operations support systems in the SGAT do that.

4 The main focus that the Staff had on
5 preordering was that the Bell system is not integrated
6 with the ordering system; that the LENS is not
7 integrated with the EDI.

8 The Act does not require such integration,
9 but the ALEC can integrate these systems with some
10 development effort, and BellSouth is prepared to
11 assist in that. Furthermore, the ALEC can
12 electronically cut and paste LENS information into the
13 EDI in less than a minute.

14 The bottom line is that LENS provides ALECs
15 with the same functions as BellSouth and accesses the
16 same BellSouth data bases. The Staff believes that
17 BellSouth should go by the industry standard.
18 However, there is no industry standard for
19 preordering.

20 AT&T and MCI were some of the biggest
21 complainers about BellSouth's preordering system, but
22 neither one of them used LENS at this time and there's
23 no indication they will. In fact, BellSouth has
24 agreed to develop an interface specific to AT&T's
25 specifications for preordering.

1 With regard to ordering and provisioning,
2 BellSouth offers ALECs EDI for resale and simple
3 unbundled network elements and EXACT for trunking and
4 complexing unbundled network elements. EDI is a
5 national standard and EXACT has been used in the
6 access world for years. It is also an industry
7 standard.

8 With regard to maintenance and repair
9 BellSouth in the SGAT offers ALECs the exact same
10 system that BellSouth uses now: TAFI, trouble analysis
11 facilitation interface. It is capable of handling
12 sufficient volume.

13 The Staff and AT&T complain that all of
14 AT&T's representatives can't use TAFI at the same
15 time. I don't understand why that's a problem,
16 because AT&T does not use TAFI now, and their witness,
17 Mr. Bradbury, specifically stated they have no
18 intention of ever doing so. Plus, AT&T will not be
19 using the SGAT. So I don't believe that's a problem.

20 The Staff also complained that BellSouth has
21 not provided technical specifications for TAFI to the
22 ALECs. As far as I can determine, no one has asked
23 for them.

24 With regard to the interim number
25 portability section of the SGAT, the Commission has

1 already decided differently than what the Staff is
2 recommending in this section, and, therefore, I won't
3 go into that.

4 The same with regard to some of the others?
5 I won't go into that.

6 With regard to resale, the Staff said that
7 the Commission should reject the resale section of the
8 SGAT. BellSouth is providing over 40,000 resold
9 services in Florida to the ALECs, and that was in
10 testimony in the hearing that was undisputed.

11 The Staff complains that the SGAT contains
12 tariff conditions that are inappropriate. Well,
13 Section 14C of the SGAT specifically states that
14 tariff conditions apply to resold services, and they
15 set forth the specific conditions approved by this
16 Commission, such as the fact that residential service
17 may not be resold to nonresidential customers.

18 With regard to performance measurements,
19 performance measurements is not a requirement of the
20 Act or the 14-point checklist, but the Staff has
21 raised it to a level of a checklist item. Again, the
22 parties with arbitration agreements or interconnection
23 agreements will not use the SGAT.

24 BellSouth proffered performance measurements
25 and standrads based on its agreement with AT&T. These

1 are measure -- standards measuring the performance
2 meeting or falling outside of bounds, which is parity
3 with the standards that BellSouth has to meet today.

4 The Staff has adopted the Local Competitive
5 User's Guide even though it acknowledges it is a
6 one-sided measure. It's not a comparison to
7 incumbent local exchange performance.

8 Furthermore, the Staff said that six months
9 of statistically valid commercial usage was
10 appropriate. However, that appears to be a market
11 share test with the FCC and -- FCC has said is not
12 appropriate.

13 The bottom line is that in the SGAT,
14 BellSouth has put forth effort, time and money into
15 fulfilling its obligation under the Act. The SGAT
16 provides a means for ALECs with whom BellSouth does
17 not have interconnection agreements, either negotiated
18 or arbitrated, to get into business.

19 It also allows BellSouth to show that it can
20 generally offer the checklist items for which, while
21 there may be a provision in an arbitration agreement,
22 that BellSouth is to provide that, the ALEC has not
23 ordered it yet. So it can show, through the SGAT,
24 that it can generally offer and provide these items.

25 The bottom line here is that the loudest

1 complainers to the SGAT seem to be parties who are not
2 going to use the SGAT or are not competing now.

3 BellSouth has the duty to provide the items
4 listed in 271 at parity in the SGAT, and we believe we
5 have done that and that the SGAT should be approved.
6 Thank you.

7 **CHAIRMAN JOHNSON:** Thank you. Ms. Kaufman.

8 **MS. KAUFMAN:** Thank, you Chairman Johnson.
9 I can be very brief. I'm not going to respond to
10 really any of Ms. White's substantive comments.

11 I think you discussed much of this
12 throughout the day. What I do want to focus on some
13 comments Commissioner Kiesling made, and that is the
14 procedure that's been followed in this case with
15 regard to the SGAT requires that you issue it as a
16 PAA.

17 I think that if BellSouth has complaints,
18 they certainly are welcome to use the protest
19 mechanism that results from a PAA. And we believe
20 that because the final, final, final SGAT was
21 essentially filed after the record was closed, any
22 action that you take in regard to it has to be issued
23 as a PAA.

24 Thank you.

25 **CHAIRMAN JOHNSON:** Thank you. Any

1 questions, Commissioners?

2 **COMMISSIONER CLARK:** I do have -- would
3 Staff respond to the issue of the transmission
4 quality?

5 **MS. SIRIANNI:** Yes. That paragraph should
6 be deleted, Commissioner Clark.

7 **COMMISSIONER CLARK:** All right. And they've
8 indicated that the PLU factor is in there. Is that
9 right? I mean, to me if it's in there they probably
10 have solved the other issue, but it isn't in the
11 record in the other case, so maybe we're making
12 progress here.

13 **MS. NORTON:** I'm sorry, Commissioner, were
14 you directing that at me?

15 **COMMISSIONER CLARK:** Well, wasn't the
16 concern with respect to one of the items that the
17 two-way trunking, that they needed to establish the
18 PLU factor? If they've got it in the -- I guess what
19 I'm suggesting, if they, in fact, have it in this
20 SGAT, we could use it --

21 **MS. NORTON:** Can you just direct me to where
22 you're --

23 **COMMISSIONER CLARK:** Two-way trunking. One
24 of the concerns was --

25 **COMMISSIONER KIESLING:** You're asking for a

1 page reference?

2 MS. NORTON: Right.

3 COMMISSIONER CLARK: I don't know. Do you
4 have it?

5 COMMISSIONER KIESLING: No, I don't.

6 MS. NORTON: Okay.

7 CHAIRMAN JOHNSON: She's referring to what
8 BellSouth said that they now have.

9 MS. NORTON: In the case. Okay.

10 COMMISSIONER CLARK: The SGAT now has a PLU
11 factor in it. Does it?

12 MS. NORTON: Okay.

13 COMMISSIONER CLARK: Yes?

14 COMMISSIONER GARCIA: It's a question.

15 MS. NORTON: I'm trying to remember
16 specifically, but I don't recall seeing it in there.
17 If Ms. White said that there is a PLU factor -- what I
18 believe is in there is the formula.

19 MS. WHITE: Right.

20 COMMISSIONER CLARK: Let me move on. The
21 interim versus permanent, we've addressed that. And I
22 would assume that you will make the order on the PAA,
23 to the extent it was modified with respect to the 271
24 filing, that you will make the same modification with
25 respect to the PAA order.

1 **MS. BARONE:** Yes, ma'am.

2 **COMMISSIONER CLARK:** Okay. And I think the
3 issues that have been raised -- the performance
4 measurements, is that the issue -- what's in the SGAT,
5 is the issue the same as what we discussed with
6 respect to those standards?

7 **MS. SIRIANNI:** I believe it is, Commissioner
8 Clark.

9 **COMMISSIONER CLARK:** Okay. Thanks.

10 **COMMISSIONER KIESLING:** I have one question,
11 also. On the reciprocal compensation question that we
12 debated earlier, while I don't think our discussion
13 directly decides whether the reciprocal compensation
14 Section 13 of the SGAT is in compliance, at least are
15 we going to modify whatever comes out in the PAA to
16 have it be consistent with the -- what we're going to
17 say -- we're not saying that BellSouth has violated
18 the terms of an ALEC agreement in its handling of ISP
19 traffic. We're not going to say that in the PAA,
20 right?

21 **MS. BARONE:** That's correct.

22 **MS. NORTON:** I would direct you to one
23 portion --

24 **COMMISSIONER GARCIA:** I'm sorry.
25 Commissioner Kiesling, could you repeat what you said?

1 **COMMISSIONER KIESLING:** On Page 309 of the
2 Recommendation where they are discussing Section 13 on
3 reciprocal compensation, Staff again reaches the
4 conclusory -- or conclusion, I guess -- makes the
5 conclusory statement that BellSouth has violated ALEC
6 agreements in its handling of the ISP traffic
7 controversy.

8 **COMMISSIONER CLARK:** I assume that's
9 covered -- what's in the SGAT, and our proposed agency
10 action with respect with that, will be consistent with
11 what we determine --

12 **MS. BARONE:** Every single item will reflect
13 your decision.

14 **COMMISSIONER GARCIA:** That was a question I
15 had.

16 If we delineated the points we wanted
17 addressed in the proceeding we just finished, should
18 we not adopt all of those procedures in here? I mean,
19 here -- in essence here can we not tell them that
20 that's what we want?

21 **MS. BARONE:** I think for those particular
22 items, yes. That's a very narrow question or very
23 narrow issue is whether BellSouth needs to go back and
24 look at its SGAT in view of what you've decided in
25 271. And those decisions are the same decision here,

1 yes.

2 I think what Ms. Sirianni was stating
3 earlier, though, is that everything that's in the SGAT
4 is not necessarily contained in the 271 proceeding.
5 And that's all we wanted to say; I caution you on
6 that.

7 **COMMISSIONER GARCIA:** Okay. I guess I was
8 approaching it in a different manner. And I think
9 Commissioner Clark kind of --

10 **COMMISSIONER CLARK:** Our comments with
11 respect to the SGAT will be made consistent with our
12 decision with regard to 271. And that will cover all
13 of the issues such as reciprocal compensation.

14 **MS. BARONE:** Yes, ma'am.

15 **COMMISSIONER GARCIA:** So, in essence, can we
16 reform -- that's my question. Are we reforming the
17 SGAT to meet what we just discussed in the 271
18 proceeding?

19 **COMMISSIONER DEASON:** We're not changing
20 anything. We're just changing our reasons for denial
21 of the SGAT consistent with our vote in 271.

22 **COMMISSIONER GARCIA:** You can't change the
23 SGAT.

24 **COMMISSIONER KIESLING:** No. All we're being
25 asked is to approve it or not approve it. I just want

1 it clear that when we give our reasons in the PAA for
2 not approving it, that we don't list a reason that
3 we --

4 **MS. NORTON:** To that end, Commissioners, on
5 Page 300 and 301, I address Bell's definition of local
6 traffic in the context of that information service
7 providers issue. And if I could get from you whether
8 you think that that's -- that needs to come out.

9 **COMMISSIONER CLARK:** It needs to be made
10 consistent with what our decision was in 271.

11 **COMMISSIONER KIESLING:** But if it was not an
12 issue in 271, is it something that Staff can still
13 bring to our attention in the PAA process, and
14 that's -- if I understand what you're saying, is
15 that --

16 **MS. NORTON:** It goes specifically to the
17 definition of local traffic. And we were saying that
18 since it's different from that which you have approved
19 previously, we're not sure now we know there's a
20 dispute as to the definition. We don't think it ought
21 to be in there.

22 **COMMISSIONER DEASON:** You're recommending
23 that we not approve language that is subject to a
24 dispute and there's been no resolution. And that
25 language is in the SGAT and has not been resolved, and

1 so it would be premature at this point to approve that
2 language in the SGAT.

3 **COMMISSIONER CLARK:** Okay.

4 **COMMISSIONER KIESLING:** If I understand
5 where we are -- and I'm not trying to jump ahead of
6 questions -- but I'm comfortable moving Staff on the
7 PAA with all of the modifications that we've
8 discussed.

9 **COMMISSIONER CLARK:** Second.

10 **CHAIRMAN JOHNSON:** There's a motion and
11 second. Any further discussion? Seeing none, all
12 those in favor signify by saying "aye."

13 **COMMISSIONER CLARK:** Aye.

14 **COMMISSIONER KIESLING:** Aye.

15 **COMMISSIONER DEASON:** Aye.

16 **COMMISSIONER GARCIA:** Aye.

17 **CHAIRMAN JOHNSON:** Show it approved
18 unanimously. Are there any other matters?

19 **COMMISSIONER CLARK:** I did want to say that
20 I understand we have not approved the 271 filing, but
21 I am heartened by the fact that I think there's been
22 lots of progress and we're getting there. And I think
23 we should recognize that a lot of people are working
24 hard to accomplish it. And I think it's good, and I
25 think we are slowly winnowing down what needs to be

1 done so that at some point we can say, yes, we're
2 ready; we think they've complied.

3 I think you all did a good job of analyzing
4 it and putting forth the issues we needed to decide.
5 Thanks.

6 **COMMISSIONER GARCIA:** I'd like to just agree
7 with Commissioner Clark on that. I think Staff has
8 done a wonderful job. I would say, though, you know,
9 it's important -- and I think we did that today -- to
10 keep the big picture in perspective. I know we were
11 looking at a lot of smaller issues, but the big
12 picture is important. I'm certain the day after Judge
13 Greene's order there wasn't suddenly competition in
14 long distance service. And we're still looking at
15 things in that area. And likewise in this area, we're
16 going to have to keep working it long after we've
17 settled the checklist and other issues. And it's
18 incumbent on us to keep this process moving to get the
19 competition the legislature wanted, the federal
20 government wanted and we all wanted.

21 **CHAIRMAN JOHNSON:** Any other comments?

22 **COMMISSIONER DEASON:** Amen.

23 **CHAIRMAN JOHNSON:** Drinks are on Walter.

24 Thank you all. This hearing is adjourned.

25 (Thereupon, the hearing concluded at 5:55 p.m.)

1 STATE OF FLORIDA)

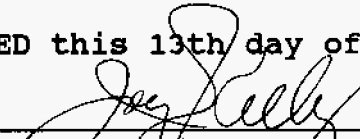
2 : CERTIFICATE OF REPORTERS
3 COUNTY OF LEON)

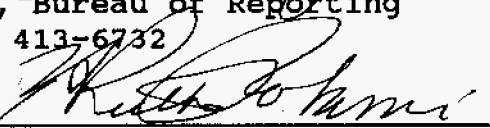
4 We, JOY KELLY, CSR, RPR, Chief, Bureau of
5 Reporting, and H. RUTHE POTAMI, CSR, RPR, Official
6 Commission Reporters,

7 DO HEREBY CERTIFY that the Special Agenda
8 Conference in Docket No. 960786-TL was heard by the
9 Florida Public Service Commission at the time and
10 place herein stated; it is further

11 CERTIFIED that we stenographically reported
12 the said proceedings; that the same has been
13 transcribed under our direct supervision; and that
14 this transcript, consisting of 366 pages, Volumes 1
15 and 2, constitutes a true transcription of our notes
16 of said proceedings

17 DATED this 13th day of November, 1997.

18 
19 _____
20 JOY KELLY, CSR, RPR
21 Chief, Bureau of Reporting
22 (904) 413-6732

23 
24 _____
25 H. RUTHE POTAMI, CSR, RPR
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