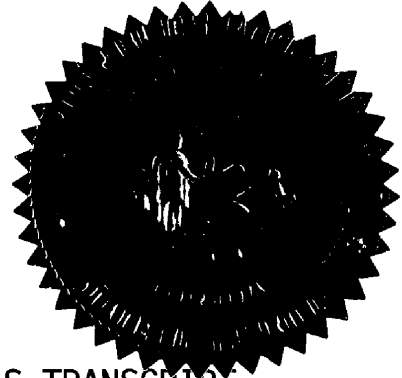


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001797-TP

In the Matter of

PETITION BY DIECA COMMUNICATIONS,
INC. D/B/A COVAD COMMUNICATIONS
COMPANY FOR ARBITRATION OF
UNRESOLVED ISSUES IN INTERCONNECTION
AGREEMENT WITH BELLSOUTH
TELECOMMUNICATIONS, INC.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT
ARE A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING
AND DO NOT INCLUDE PREFILED TESTIMONY.

VOLUME 2

PAGES 194 THROUGH 336

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO BAEZ
COMMISSIONER MICHAEL A. PALECKI

DATE: Wednesday, June 27, 2001

TIME: Commenced at 9:35 a.m.

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

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter
(850)413-6736

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 08241 JUL-5

FPSC-RECORDS-REPORTING

1 I N D E X

2 WITNESSES

3 NAME: PAGE NO.

4 THOMAS E. ALLEN (Continued)

5 Cross Examination by Mr. Twomey 196
6 Cross Examination by Ms. Elliott 283
7 Redirect Examination by Ms. Boone 290

8 WILLIAM SEEGER

9 Direct Examination by Ms. Boone 300
10 Prefiled Direct Testimony Inserted 302
11 Prefiled Rebuttal Testimony Inserted 313
12 Cross Examination by Mr. Twomey 323
13 Redirect Examination by Ms. Boone 334

12

13

14

15

16

EXHIBITS

17 NUMBER: ID. ADMTD.

18 11 BellSouth Unbundled Local Loop,
19 Technical Specifications 295 300

20 10 300

21

22 CERTIFICATE OF REPORTER 336

23

24

25

P R O C E E D I N G S

(Transcript continues in sequence from Volume 1.)

COMMISSIONER JABER: Let's get back on the record.

Mr. Twomey.

MR. TWOMEY: Thank you, Commissioner.

CROSS EXAMINATION

BY MR. TWOMEY:

Q Good afternoon, Mr. Allen.

A Good afternoon.

Q I have a number of questions about the testimony that you've submitted, and I'm going to go through them in the order in which they appear in your testimony, if that's a satisfactory arrangement as far as you're concerned.

A That would be fine.

Q The only thing I'm going to take out of order, because I'm afraid I'll forget to ask you about it, is the correction you made during your identification of your testimony. Is that on Page 27?

A No, that was on 28, the first sentence.

Q Twenty-eight, I'm sorry. And this was of your direct; correct?

A That's correct.

Q All right. The question to which that answer is a response that appears on Page 28, the question is actually on Page 27, and it reads, "Do other ILECs provide such completion

1 reports;" is that right?

2 A Yes.

3 Q You changed the answer to read, "Qwest had developed
4 a completion report that it used to e-mail to Covad daily." I
5 want to make sure I understand what you have -- what the new
6 meaning of the sentence is. Does Covad no longer receive a
7 report from Qwest, a completion report?

8 A No. Covad no longer receives a completion report of
9 the previous day's completed orders.

10 Q Is that because Qwest has stopped providing such a
11 completion report, or is it because Covad for its own reasons
12 no longer is interested or prepared to receive such a report?

13 A That is because --

14 Q I'm sorry, which one?

15 A In the length of the question, I sort of got a little
16 lost. Do you mind --

17 Q Let me try it again. Is the reason that Covad is no
18 longer receiving this report because Qwest will no longer
19 provide you with such a report, or is it because Covad is not
20 either prepared or interested in accepting such a report?

21 A Covad -- because Qwest provided an updated -- a more
22 what I would call precise and daily updated Web-based report
23 that -- and that began in April -- Covad felt that the
24 reliability of that report now was complete enough and we had
25 enough confidence level in it that the daily report became a

1 little redundant.

2 Q Okay. And when you say, "Web-based report," are you
3 saying that there is a Web site that Qwest maintains and
4 updates that Covad will go and access to get the information it
5 needs?

6 A Yes.

7 Q And that is a satisfactory arrangement as far as
8 Covad is concerned?

9 A Yes, it was a satisfactory arrangement because they
10 basically provided us the same access that they have, Qwest.

11 Q So in response to the question which still appears on
12 Page 27, "Do other ILECs provide such completion reports,"
13 would it be accurate to say that no other ILEC provides such
14 completion reports, that is, these daily completion reports, to
15 Covad as of today?

16 A Yes, that's correct, to my knowledge.

17 Q And I presume that you are still interested in having
18 BellSouth provide a daily completion report; is that correct?

19 A Yes, that is correct.

20 Q BellSouth does provide information about completion
21 of orders on its Web site; correct?

22 A BellSouth provides a three -- updated three times a
23 week access to COSMOS and a SWITCH report, yes.

24 Q All right. Let me go back to the beginning of your
25 testimony and just ask a few questions about your background.

1 Mr. Allen, you have not been involved in the installation of
2 business or complex services, have you?

3 A You mean since I first started working?

4 Q Yes.

5 A I have not been involved since I left the direct
6 field force installation force when I was in Augusta, Georgia.

7 Q When was that that you left the installation and
8 maintenance department in Augusta, Georgia?

9 A I was there about two years.

10 Q At what dates? Oh, was that '78 to '80?

11 A Yeah, I actually believe I started in March -- excuse
12 me, April of '79, and I think I went into -- you're taxing my
13 memory -- went into the business office probably sometime
14 around the middle of -- or early in '81, I believe. I also had
15 a stint while I was in installation as a dispatch foreman.

16 Q Now, Mr. Allen, you have not had then any hands-on
17 experience in provisioning or installing telecommunication
18 services or equipment since about 1981; is that right?

19 A Yes, that would be correct in terms of direct
20 hands-on.

21 Q The first issue that you testify about, Mr. Allen, is
22 Issue 5(a) which concerns the appropriate intervals for
23 delivering unbundled voice grade, ADSL, HDSL, or UCL loops;
24 correct?

25 A Yes.

1 Q You have no direct experience or involvement in the
2 steps that it takes to provision any of those types of loops,
3 do you?

4 A Are you asking me if I have provisioned those types
5 of loops myself?

6 Q Yes.

7 A No, I have not installed those types of loops myself.

8 Q Would you agree with me that the actual tasks that
9 must be performed to provision a loop is only one factor in
10 determining what -- within which interval BellSouth can
11 provision a loop to an ALEC in Florida?

12 A Could you be a little bit more specific in terms of
13 what you said by "one factor"?

14 Q Let me try it this way. Would you agree with me that
15 in determining what type of an interval we can agree to for
16 provisioning loops, there are factors other than the actual
17 task times associated with the work, such as workload for that
18 central office, orders from other ALECs, other things going on
19 in the network, that there are other factors that can affect
20 the interval within which something can be provisioned?

21 A Yes, I'll agree with you that there are other things
22 that can affect the interval, but the things that you cite,
23 like workload or workload in the central office, are really
24 something that, to me, is subject to how BellSouth balances its
25 workforce. The fact of the matter that an imbalance may happen

1 from time to time, it should not happen every day as a point
2 of, I guess, constantly doing business because of a lack of
3 staffing if that's what the implication is.

4 Q Would you agree with me that the demand for
5 BellSouth's unbundled network elements in Florida, for example,
6 has historically been concentrated in major metropolitan areas?

7 A Hypothetically, I would agree with you. I have no
8 direct knowledge, but, I mean, it makes sense.

9 COMMISSIONER JABER: Mr. Twomey, can you bring the
10 microphone closer to you?

11 MR. TWOMEY: Yes.

12 BY MR. TWOMEY:

13 Q Would you agree with me, Mr. Allen, that perhaps
14 there are central offices in BellSouth in downtown Miami which
15 get a tremendous amount of demand for unbundled loops and
16 perhaps other central offices in remote areas of the State
17 where no ALEC has requested an unbundled product?

18 A Yes, I will agree that that's probably how you get
19 orders in terms of how they fall out, you know, being that I'm
20 not sure that Havana is BellSouth but being a small central
21 office, but by the same token, BellSouth knows where that
22 workload comes, and it must balance its workload accordingly.

23 I'm not sure that you still do, but, you know, you're
24 asking me to remember 20-some-odd years ago. And I worked out
25 both in part of Augusta as well as cities that I had never even

1 heard of being a native Georgian, you know, Hephzibah, Blythe,
2 Martinez. I came to find out Martinez was a suburb of Augusta
3 with a high workload. And Blythe, Hephzibah, some of the other
4 smaller towns actually had what was referred to as a circuit
5 writing CO tech who worked one day at one, one day at the
6 another. If there was an emergency, then he would be
7 redispached.

8 Q I appreciate the explanation, and I'm not going to
9 cut you off. I will ask you to try to stay on the question
10 that I've asked. Would you agree with me -- I guess the simple
11 question was that the demand for BellSouth's unbundled products
12 can be very different in one part of the State and another?

13 A And I answered, I think, the first part of that that,
14 yes, it could, and BellSouth would accordingly size and balance
15 its workforce to handle it within the normal time frames that
16 it's supposed to handle it.

17 Q Would you agree with me, the demand for unbundled
18 products in general can be different in one part of the country
19 than another?

20 A No, I'm not sure that I agree that one region is
21 fundamentally different than one part of the country. I'm not
22 sure that I -- maybe I'm grasping the gist or the thrust of
23 your question.

24 Q Well, would you agree with me that there could be a
25 difference between the demand for unbundled products in Miami,

1 Florida compared to Powell, Wyoming?

2 A Another place I've never heard of. Again, a smaller
3 place is going -- the volume of orders or the volumes of UNEs,
4 I believe is what you're driving at, is likely different; the
5 mix of the services may not be.

6 Q So the experience of one ILEC may not be the same as
7 the experience that another ILEC has for any of its products or
8 services; correct?

9 A No. I think fundamentally that large ILECs that have
10 large cities find the mix of services in those cities, I would
11 assume, to be essentially the same from one region of the
12 country to the next.

13 Q Have you done any actual analysis of that question
14 that would support your statement, or is that just your
15 speculation about the question?

16 A No, I haven't done any analysis. And, yes, that's
17 speculation or intuitive judgment.

18 Q Would you agree with me that BellSouth's ability to
19 provision a particular product within a given interval can be
20 affected by technology that is available to assist in the
21 provisioning process?

22 A Yes, it can be affected, let's say, by the type of
23 technology that may be encountered. And I think we make note
24 of that, that if it is an IDSL type service with an intervening
25 device than we have offered, that it actually take a little bit

1 longer, or if a work around is required. Another impact that I
2 think that I have seen more often, though, is the fact that
3 training or lack of training on the part of the installers has
4 played a much more of a -- or have much more of an impact on
5 getting UNEs installed.

6 Q Now, Covad has requested in this hearing that the
7 intervals actually be fixed in the contract; correct?

8 A Yes, that is correct.

9 Q Would you agree with me that it's possible that the
10 interval, and let's say that the Commission were to adopt
11 Covad's proposal and have a three-day interval for ADSL loops,
12 just hypothetically, would you -- isn't it possible that
13 technology improvements in the next 18 months could allow
14 BellSouth to provision those ADSL loops in two days?

15 A I'm not sure that technology would advance and you
16 get it deployed that quickly to allow it for 18 months. What I
17 would say is that given proper training, that you could meet
18 it.

19 Q Let me try my question again and be precise.

20 A Okay.

21 Q My question simply is: Wouldn't you agree that it's
22 possible that we could have a technological improvement that
23 none of us foresee that can dramatically reduce the
24 provisioning interval for a product, I've chosen ADSL loops,
25 that that could happen in the next 18 months?

1 A Yes, hypothetically, that could happen.

2 Q Now, is it Covad's position that if BellSouth is able
3 to provision an ADSL loop in an interval that is shorter than
4 what is in Covad's contract, that Covad would still be
5 satisfied with taking the three-day interval that it demanded
6 be fixed into the contract?

7 A Yes. Covad wants the interval to be fixed because as
8 we just said, hypothetically, a technology advance may lead us
9 to a shorter date, and Covad could have an option of opting
10 into agreement for that. What we found and what I think is
11 necessary here is that all the intervals as well as all the
12 said obligations be clearly defined and well understood by both
13 parties, and that's what we're driving for.

14 Q BellSouth has an obligation to provide Covad with
15 nondiscriminatory access to unbundled network elements, among
16 other things; correct?

17 A Yes, that's correct.

18 Q And in deciding what nondiscriminatory access is,
19 this Commission and others have said that we need to look to a
20 retail analog; correct?

21 A Yes.

22 Q Assume that the retail analog for the loop that Covad
23 wishes to purchase, that the provisioning interval for that
24 decreases markedly in the next 18 months. Is it Covad's
25 position that BellSouth need only provision loops within the

1 fixed intervals that Covad proposes, or would you expect
2 BellSouth to meet the retail analog?

3 A Yes, BellSouth would be only obligated to meet the
4 intervals in the contract. As we have stated in another
5 issue -- another answer, excuse me, that if we, Covad, sought
6 an amendment for a quicker interval, we could. The bottom line
7 here in what we've found through our dealings is that things
8 need to be clearly spelled out. We didn't find BellSouth
9 flexible to negotiate any intervals during the negotiation
10 process. And we feel like that these intervals that we have
11 proposed are attainable.

12 Q Well, I want to be very clear. You've mentioned an
13 opt-in, and I wanted to be clear that my hypothetical, this
14 second hypothetical, did not include a situation where anybody
15 else's contract would contain a shorter interval. My question
16 was very limited to, is Covad willing to -- if the Commission
17 puts a fixed interval in its contract, is Covad willing to have
18 BellSouth provision the retail analog in a shorter interval?

19 A The retail analog would not be in the contract. The
20 interval set in our contract is what we're searching for,
21 because, again, I believe it was mentioned in earlier
22 testimony, these agreements are for two years. I'm not sure
23 that any advance could probably effect provisioning of retail
24 service that much faster, but given that, yes, the three-day
25 interval would be what we would have in our agreement.

1 Q So if BellSouth has contracts with every other ALEC
2 in Florida which track the retail analog for the provisioning
3 interval, Covad would be satisfied with a situation where every
4 other ALEC had a smaller interval for provisioning the same
5 product than Covad did. Is that your testimony?

6 A No, not really. I think what I'm saying is that
7 Covad has a right to pursue a change in that interval through
8 an amendment process through negotiation. However, yes, Covad
9 would be -- you know, until that time, Covad would be satisfied
10 with its three-day interval.

11 COMMISSIONER JABER: Mr. Allen, you are willing to
12 take the risk of losing out of the opportunity to have the
13 services provided to you in a shorter amount of time than what
14 you've indicated in your contract?

15 THE WITNESS: Yes, Commissioner, if BellSouth would
16 guarantee -- or we got a three-day interval, I think Covad
17 would be happy with that.

18 BY MR. TWOMEY:

19 Q Well, let's try it the other way. If BellSouth's
20 retail analog for other reasons, technological problems,
21 technological issues, that the retail analog ends up having a
22 longer interval than it currently has today, is it Covad's
23 position that it's entitled to contract language which provides
24 it with better than nondiscriminatory access?

25 A Yes, that the interval would be spelled out in our

1 contract, and the parties would be obligated to that interval.

2 Q Well, certainly they would be if they signed the
3 contract and the Commission ordered it, but under the Telecom
4 Act, do you believe you are entitled to access superior to that
5 which BellSouth is providing to its retail side?

6 MS. BOONE: I'm going to object to that on the
7 grounds that it calls for a legal conclusion. Mr. Allen is not
8 a lawyer.

9 MR. TWOMEY: I just want Mr. Allen's position as a
10 nonlawyer on his company's policy and testimony that they
11 provided in this hearing on these issues.

12 COMMISSIONER JABER: Rephrase the question,
13 Mr. Twomey, and I'll allow it.

14 MR. TWOMEY: Long question. Is it possible for the
15 court reporter to read it back?

16 (Requested question on Page 207, Lines 19 through 24,
17 read back by the court reporter.)

18 MR. TWOMEY: I think I had a follow-up question.

19 THE COURT REPORTER: Yes.

20 MR. TWOMEY: Let me try it. I think I've got it.

21 BY MR. TWOMEY:

22 Q Is it your testimony that you have the right to
23 demand access to unbundled network elements that is superior to
24 the service that BellSouth provides to its own retail UNEs?

25 A Yes, it's my testimony and my opinion that if

1 BellSouth is ordered by this Commission in this arbitration to
2 provide it within three days, that BellSouth can. It is also
3 my position that it is Covad that wants a three-day interval
4 spelled out. We've tried to negotiate an interval with
5 BellSouth, and we never were able to get anywhere for a fixed
6 interval.

7 Q At Page 5 of your direct testimony, Lines 15 through
8 17, you say, "Without a clear contract provision requiring
9 BellSouth to deliver loops in a firm interval, BellSouth has no
10 incentive to meet its targets or to improve." Do you see that?

11 A Yes.

12 Q Now, you understand, and I believe you probably are
13 participating in some of these proceedings, that BellSouth is
14 in the process of requesting this Commission along with the FCC
15 to grant BellSouth a right to offer interLATA in region
16 services; correct?

17 A Yes.

18 Q Do you think that providing nondiscriminatory access
19 to ALECs is an incentive that BellSouth has, or that
20 271 provides BellSouth with an incentive to meet targeted
21 intervals and to provide nondiscriminatory access to ALECs?

22 A No. I'll answer the question this way. No, I don't.
23 What we're here to do today is to really arbitrate an
24 interconnection agreement between BellSouth and Covad. Outside
25 of that, I'm really not prepared to go into great discussion.

1 Q Well, my question was, you said BellSouth has no
2 incentive to provide Covad with these loops at intervals, even
3 at BellSouth's targeted intervals. That was your testimony;
4 correct?

5 A That's correct.

6 Q Now, let me try it from another direction. BellSouth
7 has performance measurements that have been proposed at the
8 Florida Commission; correct?

9 A Yes, that is correct.

10 Q And those contain penalties; correct?

11 A Yes, BellSouth's proposal contains some penalties for
12 certain items. They didn't contain penalties for every single,
13 you know, item. There were various tiers, but some penalties
14 applied. And I, from memory sake, can't tell you where they
15 did and did not.

16 Q Now, BellSouth has proposed performance measurements
17 that will measure BellSouth's ability to provision unbundled
18 loops in a manner which is nondiscriminatory when compared to
19 BellSouth's retail offerings; correct?

20 A You mean in its performance measures?

21 Q Yes.

22 A Yes, BellSouth has made proposals, but all those
23 proposals that BellSouth made did not necessarily have
24 penalties associated with them. To -- my testimony here and
25 the purpose of our arbitration is to set the standards which

1 both companies will interact with, and we feel in this case a
2 three-day interval was achievable. We found no ability or at
3 least no desire on BellSouth's part to try to negotiate a set
4 interval.

5 Q I understand that, Mr. Allen. I'm cross examining
6 you on your statement in your testimony that BellSouth has,
7 quote, no incentive, and I want to know what the basis for that
8 statement is.

9 A The basis for the statement is, right now, that all
10 BellSouth has is targets, and they're basically soft targets to
11 deliver a loop. They change based on volume, and they can
12 change on basically a unilateral decision. What we want is in
13 this arbitrated agreement is to have clear, well-defined
14 obligations of both parties.

15 Q Mr. Allen, what are the steps that must be taken to
16 provision an ADSL loop?

17 A I'm not an operations witness. There is -- I think
18 Mr. Seeger is an operations witness. The question may be
19 better directed at him.

20 Q Is it your testimony that the performance
21 measurements plan that the Commission ultimately adopts will be
22 insufficient to provide Covad with assurances that it will
23 receive nondiscriminatory access to unbundled network elements,
24 specifically the elements at issue in 5(a)?

25 A Yes, it's our view that, again, going back without,

1 again, trying to restate what I've already previously stated,
2 is that our interconnection agreement here is really separate
3 and distinct from what the Commission decides in the
4 performance measures docket. What we're looking for here is
5 similar to certain service guarantees, you may want to call
6 them as well, that you have in your general subscriber services
7 tariff as well as in the private line services tariff to be
8 incorporated into our agreement. We don't feel -- we feel that
9 our agreement could supersede the performance measures for
10 certain cases that we've described here.

11 Q Do you believe that another ALEC, MCI, for example,
12 would be entitled to request that the Commission approve a
13 four-day interval for these same products in its contract?

14 A Yes, I believe that the Commission could approve a
15 four-day interval for MCI in an arbitration with BellSouth for
16 more services.

17 Q And another ALEC, such as AT&T, could request a
18 five-day interval. Do you think that would be appropriate for
19 the Commission to approve?

20 A It's not up to me to determine whether or not or what
21 is appropriate for the Commission to approve in terms of what
22 another CLEC may desire or may ask for in an arbitration. What
23 we've asked the Commission here to decide is, you know, based
24 on our position why we feel that it's right and fair.

25 Q Do you think it's reasonable for BellSouth to have to

1 provide the same products and services at different intervals
2 to a variety of different customers?

3 A No. I think what's right for BellSouth -- excuse me,
4 yes. I think what is right for BellSouth is that it live up
5 its agreements, and if those agreements include specified time
6 frames and that's what both parties negotiated or had
7 arbitrated. We're here today to discuss this issue because
8 BellSouth basically did not want to arbitrate a set interval.

9 COMMISSIONER JABER: Mr. Allen, is there ever a
10 situation where the intervals could not be uniform? In other
11 words, does it -- let's say this Commission did agree with you
12 and found that language would be appropriate that dictated a
13 three-day interval, and tomorrow, an ALEC, or even the day
14 after the agreement is effective, an ALEC opts in to that
15 agreement. From a technological standpoint, is there a reason
16 that the interval could not be uniform?

17 THE WITNESS: Commissioner, excuse me, but can I
18 frame it up a little bit different?

19 COMMISSIONER JABER: Please, please.

20 THE WITNESS: So if we got our three-day interval and
21 another CLEC came in, or ALEC, and said, I want to opt-in to
22 Covad's agreement for these same UNEs?

23 COMMISSIONER JABER: Yes.

24 THE WITNESS: I would say that, yes, they have that
25 right to opt-in to it.

1 COMMISSIONER JABER: All right. So with respect then
2 to a longer interval, why would an ALEC even petition for
3 arbitration for a longer interval if there was a current
4 agreement that they could opt-in to with a three-day interval?

5 THE WITNESS: I have no idea.

6 COMMISSIONER JABER: All right. I just wanted to
7 make sure there wasn't anything I was missing.

8 BY MR. TWOMEY:

9 Q Do you think the Commission ought to be striving to
10 have uniform intervals for BellSouth on all of its unbundled
11 elements?

12 A No. When you say, "strive for uniform intervals,"
13 I'm sure you're not implying that all loops should be installed
14 within a set date, time frame, all UNEs.

15 Q No, I'm proposing that for the same element, that the
16 same interval ought to apply to all the companies that buy the
17 same product.

18 A No. I think the answer to your question -- forgive
19 me if don't always exactly remember it word for word. I think
20 in terms of what we're trying to seek here today is the fact
21 that through negotiations, we weren't able to come up with a
22 well-defined, clear interval for provisioning these loops.
23 Therefore, it's Covad's position that a three-day interval for
24 ADSL, HDSL, and ULC (sic) is appropriate given the work
25 involved. We made -- we're not completely uniform in that.

1 Five additional days for conditioning; five days for an IDSL
2 loop. If it required a work around, then it was ten business
3 days. We tried to look and be reasonable where we knew that
4 efforts from BellSouth may require additional work. So to
5 get -- I guess to bring the answer to a close, I think we are
6 trying to be flexible. I think we just got no response during
7 the negotiation process.

8 Q Well, BellSouth provided a response in the
9 negotiation process that a specific deadline interval, in
10 BellSouth's opinion, was not a reasonable approach to these
11 types of intervals. Isn't that the response that you received?

12 A Yes, that was the response.

13 Q BellSouth didn't fail to respond to you.

14 A I didn't mean to -- no, I didn't mean to imply that
15 they failed to respond.

16 Q And the intervals for a lot of these unbundled
17 elements have changed over the years; correct?

18 A Yes, they have changed. The target intervals
19 changed. Some of them actually increased during the life of
20 our existing contract. I want to also point out that, you
21 know, as another item here, we have tried to negotiate a
22 conditioning interval. BellSouth had been really reluctant to
23 provide a reasonable time frame for that, even though it's
24 pretty much of a routine function, my understanding. And only
25 when the Commission in Georgia ordered a 14-day interval did

1 BellSouth agree that it could do it.

2 Q Let's talk about Issue 5(b). A lot of the same
3 issues, general policy issues, that I've just talked to you
4 about apply to Issue 5(b) as well; correct?

5 A Yes.

6 Q I'm going to try to shortcut this by simply asking
7 you whether you agree with BellSouth's position that IDSL loops
8 are more complex to provision than the ADSL loops that are in
9 Issue 5(a)?

10 A Yes. To the extent that there actually may have to
11 be a setting on a card change at a DLC that actually requires
12 that activity or a work around activity, which we noted for in
13 my testimony, that it may be a more complex activity requiring
14 a little bit more time.

15 Q On Issue 5(c) which concerns loop conditioning, first
16 of all, loop conditioning can be, for example, removing load
17 coils; correct?

18 A Yes, that's correct.

19 Q And I know the Commission has heard a lot about load
20 coils in the cost docket. I won't go over that all again here.
21 But load coils can appear in the network, in the underground,
22 in the buried, or in the aerial plant; correct?

23 A Yes.

24 Q Would you agree with me that the work associated with
25 removing load coils will be different depending on which

1 environment it's in?

2 A Again, those questions may be better answered by
3 Mr. Seeger for specifics.

4 Q But do you have a general understanding at all?

5 A It's my general understanding that a lot of
6 conditioning that is on existing plant under 18,000 feet should
7 have been removed as a process of routine maintenance.

8 COMMISSIONER JABER: Mr. Allen, it strikes me in all
9 of these proceedings that we have that some of the concern
10 BellSouth has is not necessarily entering into an agreement
11 with a given ALEC, in this case, Covad, but the affect on a
12 different ALEC when that agreement is opted into. Is there a
13 way to limit the language in an interconnection agreement to
14 just this ALEC, or can you not do that under the FCC rules?

15 THE WITNESS: Commissioner, I'm not an attorney, so I
16 couldn't --

17 COMMISSIONER JABER: Have you ever seen that happen?
18 In other words, the intervals, all of the intervals and all of
19 the conditioning for the UNEs, for example, can language be
20 created for this interconnection agreement that establishes the
21 appropriate interval for Covad only and then provides a
22 disclaimer with regard to other ALECs having to negotiate
23 separately with BellSouth?

24 THE WITNESS: Interesting question. Yes, I have
25 thought about it. I think that there -- whether or not you

1 would want these in interconnection agreements, I'm sure -- you
2 know, they're volume; I guess you could say parameters. Also,
3 the fact that these UNEs are very clear and well-defined --
4 we're not talking about a broad category. In terms of xDSL
5 providers out there in the market today, I venture to say,
6 given the circumstances of the marketplace, that Covad is, in
7 fact, the largest independent nonILEC provider of these
8 services in the market today.

9 Not being a lawyer, I have a little problem how other
10 than, you know, doing that or, I guess, knowing what the market
11 is inherently, the providers, how you would construe it other
12 than to know that the fact that we are the largest. You know,
13 we have been told repeatedly by BellSouth as well as other
14 ILECs that we are their largest purchaser of these type UNEs
15 out there.

16 COMMISSIONER JABER: But as far as you know, we have
17 never received guidance from the FCC or prohibition from the
18 FCC that would limit this agency or the parties from putting
19 that kind of restricting language in an interconnection
20 agreement?

21 THE WITNESS: Again, Commissioner, not being an
22 attorney and working basically with the states, I'd had to give
23 you wrong advice. I'm not aware, but that doesn't mean
24 somebody told me and I didn't forget, but I am not aware.

25 COMMISSIONER JABER: Okay.

1 BY MR. TWOMEY:

2 Q Let me try and to follow -- I'm sorry.

3 COMMISSIONER PALECKI: I had a question that I wanted
4 to ask. It seems to me by the testimony I'm hearing from you
5 today that it's not necessarily the number of days set forth in
6 your testimony that is the -- of paramount importance but
7 rather that we set a specific time limit. And if we go for a
8 different number of days, that's fine, but you want to have the
9 security that there will be a time limitation that is mandated;
10 is that correct?

11 THE WITNESS: Yes. I would say that the primary
12 thrust here is the fact that we want a secure, well-defined,
13 and understood interval. I provided other intervals from other
14 ILECs in my testimony as examples. We picked the three-day
15 interval because we thought it was obtainable, and we felt like
16 as well if BellSouth is ordered to comply with that, that they
17 will find a means to do so.

18 But to get to it, Commissioner Palecki, having
19 everything in this agreement well-defined, clear, and
20 understood in terms of obligations of both parties I think is
21 the theme that we are striving for here in this arbitration.

22 COMMISSIONER PALECKI: So if this Commission decided
23 rather than three, five, and five, five days, five days, and
24 seven, for example, that would not be objectionable to Covad?

25 THE WITNESS: Commissioner, put it like that, I would

1 say, yes, we could probably find that that would be acceptable
2 given the fact that we are just out there, you know, working
3 with a target interval today, that it is very much subject to a
4 whim or a change.

5 COMMISSIONER PALECKI: Thank you.

6 MR. TWOMEY: Thank you, Commissioners. Let me follow
7 up on that line of questioning.

8 BY MR. TWOMEY:

9 Q BellSouth is, and I know it's separate from this
10 proceeding, but BellSouth is participating and I believe Covad
11 is participating in the performance measurement docket where
12 we're going to develop a plan that may very well assess
13 penalties to BellSouth if it's out of compliance or out of the
14 nondiscriminatory access provision for retail and wholesale
15 analogs. Do you generally agree with that?

16 A Yes.

17 Q In exchange for a fixed interval in its contract, is
18 Covad willing to waive any right to collect penalties that it
19 might otherwise have been entitled to? For example, it's kind
20 of a long question, but if we give you a fixed interval of five
21 days but we start provisioning retail in four, if you weren't
22 fixed in your contract, you might be entitled to penalties, but
23 because you've chosen to take a fixed time period, is Covad
24 willing to waive its right to collect any penalties?

25 A I'm not here -- no. Covad is not here to waive its

1 right to collect any penalties, and I guess I get -- I keep
2 getting posed with these hypotheticals. You know, my view is
3 that -- well, the performance measures dockets are separate
4 from these. I understand your hypothetical. No, Covad is not
5 willing to waive its right in those.

6 Q I just want to make sure I understand. So if
7 BellSouth gets to the point where it's provisioning the retail
8 analog in four days, Covad will expect that we
9 start provisioning the wholesale product in four days?

10 MS. BOONE: I'm going to object to this question now
11 because now we've gone on to -- that does not even represent
12 the BellSouth testimony or the BellSouth performance measures
13 proposal. I mean, now we're into something that's not even --
14 I mean, that's not what they have proposed in the performance
15 measures docket that you-all sat in on whenever that was, it
16 seems like last month. So it's not a retail analog.

17 COMMISSIONER JABER: So, Ms. Boone, is your objection
18 that the questioning now is outside the scope of Mr. Allen's
19 testimony?

20 MS. BOONE: Yes, ma'am, it is.

21 COMMISSIONER JABER: Your response to that.

22 MR. TWOMEY: My response to that is that the concern
23 that we've raised is that we want -- and I don't want to argue
24 the case, but I want to probe this witness to find out how his
25 proposal for a fixed interval lays down with BellSouth's

1 efforts to try to provide nondiscriminatory access compared to
2 a retail analog which may change, may fluctuate up or down, and
3 how those two interplay. That's the purpose of --

4 MS. BOONE: Commissioner, can I supplement my
5 objection?

6 COMMISSIONER JABER: No, wait a minute. Mr. Twomey,
7 when you asked the question the first time, you said you were
8 trying to establish that there were no incentives for
9 BellSouth. Now, in that regard, I'll allow those series of
10 questions, but I have to tell you, you are getting into the
11 other docket, and this witness has said repeatedly he's not
12 here to discuss the other docket; it wasn't the purpose of his
13 testimony.

14 MR. TWOMEY: I understand.

15 COMMISSIONER JABER: Ms. Boone, what were you going
16 to say?

17 MS. BOONE: Could I just ask Mr. Twomey if he is
18 going to probe at all about the performance measures docket,
19 that provide Mr. Allen with copies of the BellSouth performance
20 measures proposal so that we can at least look at what we're
21 talking about here?

22 COMMISSIONER JABER: Well, we're not going to reach
23 that point because I don't think we're going to probe into that
24 docket anymore. If you're limited -- if you are trying to
25 understand what incentives he was talking about, I think you

1 can reword those questions, so go ahead.

2 MR. TWOMEY: What I was trying to accomplish was that
3 issue as well as how it interplays, but that was my last
4 question of the subject. I didn't want to question him
5 specifically about the proposal, just generally how they
6 interact. Thank you, Commissioners.

7 BY MR. TWOMEY:

8 Q All right. Mr. Allen, you mentioned a couple of
9 times Covad's business. What exactly -- does Covad sell
10 directly to people who, you know, log on to the Internet,
11 retail end users, or is it to ISP companies?

12 A We have a direct sales channel and basically an ISP
13 sales channel.

14 Q Okay. On Issue 5(c), Page 11, you make the statement
15 on lines -- in Lines 2 through 3 that BellSouth does not make
16 its retail customers wait an undisclosed period of time for a
17 conditioned loop. Do you see that statement that you've made?

18 A Yes.

19 Q What's the basis for that statement?

20 A The basis for that is that, as you can see from
21 the -- at least the first sentence, numerous other retail
22 services require loops that are deconditioned, including ISDN
23 and T-1 service that don't require an additional interval if,
24 in fact, a loop requires conditioning.

25 Q So is it your testimony -- I mean, are you saying

1 here that BellSouth always provisions its retail products that
2 involve conditioning within the -- within a specific interval?

3 A Yes, that's my understanding.

4 Q And there are no circumstances where the customer's
5 installation is delayed for any reason?

6 A No, that's not what I'm saying, because you could get
7 into a facilities issue, which we talk about in Issue 30, that
8 may involve pending facilities and we're trying to provide some
9 parameters. So, no, that's not what I'm saying.

10 Q Let's talk about Issue 6. On lines 17 through 18 of
11 Page 11, you say that as a result, Covad has proposed that
12 BellSouth compensate Covad in the event BellSouth modifies or
13 cancels a Covad unbundled loop order, comma, using the same
14 rates that BellSouth would impose on Covad. Is it your
15 testimony that BellSouth in the ordering and provisioning
16 process between our companies, that BellSouth cancels your
17 orders?

18 A Yes. I would direct you to my rebuttal testimony to
19 that item, Item Number 6. I believe I, in fact, mentioned some
20 of the instances that I found through interviewing our field
21 services technicians that, in fact, BellSouth will cancel and
22 modify. A cancel in particular I think is on Page 11 of my
23 rebuttal that I was informed by our field services management
24 and service technicians that BellSouth systematically cancels
25 the following types of orders: Orders requiring conditioning.

1 Thus, the burden is placed on Covad to issue a new service
2 inquiry LSR for a loop with conditioning; orders with a missed
3 installation appointments, including those appointments missed
4 for reasons attributable to BellSouth. Basically, you've got
5 five days to resubmit, or BellSouth will cancel. And the third
6 example, BellSouth cancels loops that have buried load coils,
7 require a new remote terminal, new pedestal, or where a
8 long-term facility issue cannot be cleared within 30 days. So,
9 yes.

10 Q Just to make sure I understand the testimony, are you
11 saying that that is BellSouth's practice with respect to every
12 order, or is that that has happened on occasion?

13 A No, I'm not saying it's BellSouth's practice on every
14 order. Yes, it does happen.

15 Q Now, when Covad submits an order, it receives a firm
16 order confirmation; correct?

17 A Yes, commonly referred to as a FOC.

18 Q When that order is placed for a product, Covad
19 selects a due date; correct?

20 A Covad selects the due date that is outlined on the
21 services guide. It's a set target interval.

22 Q So, for example, if Covad is purchasing a product
23 that may have a five-day interval and the order is submitted
24 on, you know, June 27th, you will select a due date, you,
25 Covad, will select a due date that conforms to the interval,

1 the target interval, for that product; correct?

2 A Yes.

3 Q For example, in my hypothetical, it would be perhaps
4 July 1st; correct?

5 A Yes, that could be the target date -- I mean, excuse
6 me, the date the order was placed.

7 Q Now, if Covad chooses June 28th as the due date, the
8 firm order confirmation will likely come back with a different
9 due date than the one Covad has submitted; correct?

10 A It would be rejected. What you're looking for and I
11 think what you're skirting around here is what's called the
12 LSR. What we're seeking is that once there's a correct LSR,
13 then the clock basically for installation --

14 Q Well, and I'm not trying to get into errors in the
15 LSR necessarily, although I guess you could characterize that
16 as one. What I meant to say is, if you select a due date which
17 is not conformed with the intervals, you may get an FOC back
18 that contains a different due date than the one that you've
19 submitted; correct?

20 A If it was a blatant error as the one you described --
21 excuse me. Yes. If it was a blatant error like the one you
22 described, I think it would come back as an error before it was
23 accepted.

24 Q Now, when that firm order confirmation comes back, if
25 your due date that you selected conformed to the interval, that

1 due date will likely be on the firm order confirmation when it
2 comes back; correct?

3 A No. I'm -- let me -- can you be a little bit clearer
4 specifically in asking the question?

5 Q Yeah, let me try it this way. BellSouth will not do
6 a -- for example, we'll get into this a little bit more with
7 Issue 30 -- will not conduct a facilities check in response to
8 your LSR before returning the firm order confirmation; correct?

9 A To get a FOC back to me depends on when the order of
10 the LSR is sent. And basically, what we've got is, if it's
11 sent after 10:00 a.m., I may not get it back until the end of
12 the next business day. And therefore, I may not know what has
13 potentially happened there.

14 Q When you get that firm order confirmation back, all
15 that BellSouth has confirmed is that your order has gone
16 through and been accepted and is submitted into the systems;
17 correct?

18 A To the extent that there is not a target.

19 Q Right. And that target date has been generated
20 back -- well, it was originally generated by Covad on its LSR.
21 The return of an FOC with that target date on it is not a
22 confirmation by BellSouth that services will be installed on
23 that particular day because, among other things, we haven't
24 checked to make sure there are no facilities issues; correct?

25 A It is not a firm target that the order will be

1 delivered that day.

2 Q It's not a guarantee that you will get the service
3 installed on that day. That's not the purpose of the firm
4 order confirmation; correct?

5 A That's correct.

6 Q Now, is it your testimony that in a circumstance
7 where the due date for the installation changes from the due
8 date that Covad selected because of -- let's use an example of
9 a facilities issue, and let's say it's one that can be just
10 cleared in a few days, that under those circumstances,
11 BellSouth should have to pay Covad some penalty or some
12 compensation?

13 A Yes. And the answer to this question here, as I
14 stated in my summary, is that we're looking for this agreement
15 to provide a level of reciprocity. If BellSouth can charge for
16 a modification to an order when Covad modifies it, then Covad
17 feels it is rightly compensated when BellSouth issues a
18 modification. What we have that happens a lot of times is that
19 that FOC date may change. It may change on the time it's --
20 the day it's supposed to be delivered. We may get it the
21 following day after it was supposed to be delivered saying
22 there's been a change.

23 The bottom line is, in going through our process, we
24 have to reenter the information, the Covad processes. We may
25 have an irate customer who may have been waiting for us, and we

1 didn't know that the FOC had changed until after the due date,
2 because these are real world examples. And what we're just
3 striving for here is that if, in fact, BellSouth is able to
4 levy a charge on Covad for changing, Covad given the
5 reciprocity, which is, I think, fundamental for any
6 interconnection agreement, has a right to be compensated for
7 the same action at the same terms, rates, and conditions.

8 COMMISSIONER JABER: Mr. Allen, how does an ALEC
9 determine what date to promise the end use customer?

10 THE WITNESS: Basically, Commissioner, they even look
11 to extend out beyond what the promised due date is.

12 COMMISSIONER JABER: That you receive from the ILEC?

13 THE WITNESS: That we receive from the ILEC.

14 COMMISSIONER JABER: Okay. So if the firm order
15 commitment -- is it the --

16 THE WITNESS: Confirmation.

17 COMMISSIONER JABER: -- confirmation, the FOC, is not
18 used for the purpose of giving you a target date but rather
19 just to confirm that the order was received, then how is it you
20 base the estimate for a date to give to your end use customer?

21 THE WITNESS: It's basically just that. It's an
22 estimate when generally that if we can determine that the loop
23 has been delivered, and of course, part of what we're talking
24 about here is joint acceptance testing so that we would know
25 that it would be there. So what we've tried to do in a lot of

1 cases is extend out so we don't disappoint the customer. So
2 we're not looking to jump on it, like if you place an order for
3 new service and BellSouth said, we'll be there between 8:00
4 a.m., you know, or I guess it's between, I guess, 9:00 and
5 12:00 and 1:00 and 5:00, possibly, for their commitments on
6 that due date. That's not what we have here. What we have is
7 a sort of target. And what we've done is through I guess I
8 won't say analysis but through historical action. We know that
9 if we extend out, that it should be there. We go through
10 testing, but still sometimes, you know, it doesn't take place.

11 COMMISSIONER JABER: So should the firm --

12 THE WITNESS: Order confirmation.

13 COMMISSIONER JABER: Yeah, I'm looking for at what
14 point BellSouth does tell you when they can deliver.

15 THE WITNESS: Basically, it's a target. It's a
16 target in that process that we know it's supposed to be
17 delivered.

18 COMMISSIONER JABER: But how are you aware of that
19 target?

20 THE WITNESS: Because as it was stated earlier, we
21 pick a due date based on a schedule. So we know -- let's just
22 say that they made the schedule.

23 COMMISSIONER JABER: Okay. You pick the due date.

24 THE WITNESS: Yes.

25 COMMISSIONER JABER: The ALEC picks the due date, and

1 you communicate that to BellSouth?

2 THE WITNESS: Yes.

3 COMMISSIONER JABER: And how do you do that? What
4 process? When you order?

5 THE WITNESS: Through the LSR process when we order.

6 COMMISSIONER JABER: Okay. But what you get back is
7 the firm order confirmation that doesn't okay your suggested
8 target. It just says, we've received your order.

9 THE WITNESS: We received your order and everything
10 looks right.

11 COMMISSIONER JABER: Does it even go that far?

12 THE WITNESS: I don't think it really goes that far.
13 I guess part of what slipped out there was what we're searching
14 for, I guess, as part of our arbitration here is that the clock
15 really starts from receipt of a correct LSR, and then the due
16 date interval is firmly established and set.

17 COMMISSIONER JABER: Go ahead, Mr. Twomey.

18 BY MR. TWOMEY:

19 Q Once Covad submits its LSR and receives the firm
20 order confirmation back, there's nothing else for Covad to do
21 but to ultimately accept the delivery of the service; correct?

22 A No -- I mean, you're sort of admitting that the joint
23 acceptance testing is part of delivering the loop, I mean;
24 correct?

25 Q Well, let me say this: Is there anything that would

1 cause Covad -- is there any unexpected thing that could happen
2 that would cause Covad to not be willing to accept the product
3 on the date that you requested that it be delivered?

4 A No. To the extent that Covad may have a reason to
5 modify an order, I think, you know, I acknowledged that in my
6 testimony, because a customer may not be able to be available,
7 conditions change.

8 Q And in no circumstances -- BellSouth has done some
9 work. It has begun the process of provisioning. And depending
10 on when we hear from you to change the date, we may be pretty
11 far down along the road. And if you change the date because
12 your customer just decides he doesn't want high-speed Internet
13 anymore, his teenage son is the one who called up and placed
14 the order, you'll cancel that. And you're acknowledging that
15 under those circumstances, Covad would be willing to reimburse
16 BellSouth for the costs that it incurred; correct?

17 A Yes, to what I have said here is, and I will say it
18 one more time, is that --

19 Q I don't need you to say something over and over
20 again. I just need you to answer my questions. If you feel
21 you need to explain, that's fine, but I don't need you to do
22 that for purposes of my question.

23 A Well, I --

24 COMMISSIONER JABER: Go ahead, Mr. Allen.

25 THE WITNESS: Okay. Thank you, Commissioner.

1 A Yes. Covad would be willing to compensate BellSouth
2 for some of -- for its costs. By the same token, we feel like
3 BellSouth should be willing to compensate us when it does the
4 same -- or has the same action or their actions result in us
5 cancelling an order.

6 Q Now, let's get back to your order. When you receive
7 the firm order confirmation back with a due date that you've
8 selected, you understand that it's possible that BellSouth may
9 not have facilities to serve your customer at that time;
10 correct?

11 A Yes, I do understand that a pending facilities
12 condition could arise on some orders.

13 Q And let's try not to get into the realm of Issue 30.
14 Let's assume that it's an issue that can be resolved by
15 BellSouth within two days; correct?

16 A We'll assume that.

17 Q Under those circumstances, BellSouth has not told you
18 at any point in the process yet that we've done a facilities
19 check, and we know we can provision it. We haven't done that
20 yet, have we?

21 A No.

22 Q And BellSouth doesn't do a facilities check for its
23 own retail customers either, does it?

24 A Subject to check, I don't really know what you do on
25 your retail services customers, to be honest with you, but I'll

1 accept your word, subject to check.

2 Q But the point is, BellSouth could have to postpone a
3 delivery of a service or a product for its retail customers
4 just like it does for Covad; correct?

5 A Yes, that's correct, but let me make a couple of
6 points. On a pending facilities condition, there are various
7 degrees. Is it a new construction? But I agree with you. If
8 there are no facilities there, then you can't deliver the
9 retail. It's going to be very difficult to deliver the other.
10 I think that information would be given back to Covad. Covad
11 could decide, inform the end user.

12 But I sort of lose you a little bit that, you know,
13 though there are a lot of pending facilities issues in Florida,
14 you know, hopefully what you are trying to do is make sure that
15 those don't arise frequently, and I don't think that they do.
16 So to just lump everything into pending facilities, I sort of
17 get a little bit lost on your implication.

18 Q Well, BellSouth is obligated to provide Covad with
19 nondiscriminatory access to the network elements; correct?

20 A Yes.

21 Q But it's your testimony -- or is it your testimony
22 that provisioning -- doing a provisioning process that works
23 similar to the retail side is not sufficient for Covad? You
24 want some guarantees about particular dates?

25 A We want firm set intervals, yes.

1 Q Do BellSouth's retail customers get firm set
2 intervals that cost BellSouth penalties in the event that they
3 don't meet, you know, a Tuesday delivery, they don't deliver it
4 until Wednesday?

5 A Yes, it's my understanding that they do.

6 Q What kind of penalties are those?

7 A I'm not an authority on your -- excuse me. It is my
8 understanding that what you offer in your general subscriber
9 services tariff is \$25 to residential customers, a hundred to
10 business for dial tone type. And I looked at the -- I did look
11 at the tariff offering in B2. And B2, which is your private
12 line services tariff, seems to offer penalties for failure to
13 meet certain commitments, including the delivery date, as it
14 appeared to me waiving the entire nonrecurring charge. So I
15 said, yes, you do provide service guarantees to your retail
16 customers.

17 Q Now, under those circumstances, BellSouth selects the
18 delivery date; correct?

19 A Yes, you select the delivery date because these
20 customers have called you seeking your service.

21 Q In other words, it's not the same thing as a
22 wholesale customer who selects the due date; correct?

23 A No, it's not the same to the extent that I don't
24 order services out of the general subscriber or private line
25 services tariff. I order them through basically, you know, my

1 interconnection agreement.

2 COMMISSIONER JABER: But when the retail end user
3 calls BellSouth and they say, I want a connection through
4 BellSouth, BellSouth says to the retail end user, I'm assuming,
5 we can connect you. It will be day after tomorrow. That's my
6 understanding. Is that your understanding?

7 THE WITNESS: Yes, Commissioner, that they give them
8 a due date.

9 COMMISSIONER JABER: Is Covad asking for something
10 more than that?

11 THE WITNESS: No. I think, in fact, Covad is just
12 seeking really a clear due date, a firm due date.

13 COMMISSIONER JABER: All right. Is that --
14 Mr. Twomey, I'm trying to understand the line of your
15 questioning and what you're trying to establish.

16 MR. TWOMEY: Well, let me try it this way.

17 BY MR. TWOMEY:

18 Q BellSouth charges its retail customers -- can charge
19 its customers a retail market price; correct?

20 A No. BellSouth charges rates that are approved by
21 this Commission, I think, in its general subscriber services
22 tariff and its private line services tariff.

23 Q But it's not a price that is set using TELRIC
24 methodology; correct?

25 A Mr. Twomey, I guess you're probing cost-based

1 questions to me that may be better addressed by other people.
2 I'm not that familiar with the TELRIC cost model. It was --
3 many years ago I was very much involved with the Florida
4 private line services costing model, and I'm not sure that I
5 can tell you the difference.

6 Q Well, BellSouth -- now, I don't want to probe too
7 deeply into the TELRIC issues, but is Covad willing to pay for
8 any additional costs that BellSouth would incur to set up this
9 sort of guaranteed delivery system?

10 A No. I mean, what we're here really saying is that
11 you're obligated to provide me with a working loop. What we're
12 striving for is a set interval under the rates and terms of
13 this interconnection agreement. So the answer is, no, we're
14 not willing to pay any more. We feel it's part of the
15 obligation to provide the service. If you're providing me with
16 a service that doesn't work, I'm not getting any value out of
17 it anyway.

18 Q I didn't think we were straying into nonworking
19 loops, but for example, BellSouth perhaps could provide you
20 with a firm due date if it checked facilities before providing
21 you with a due date. That's one way that that could be done;
22 correct?

23 A Yes, that's one way it could be done. And, in fact,
24 Qwest checks -- has a 13-point step for verifying facilities.
25 That's really a part of its overall installation process for

1 us.

2 Q Is Covad willing to pay whatever costs would be
3 associated for BellSouth to perform a facilities check prior to
4 delivering an unbundled loop?

5 A No. It's our position that you should be providing
6 me with a working loop anyway. We don't pay Qwest any more.
7 No, no.

8 COMMISSIONER JABER: Mr. Allen, here's the point. If
9 BellSouth can't provide you with a set due date because they
10 have not done the facilities test yet, why is it not acceptable
11 to Covad to compensate for the facilities test in exchange for
12 an expedited treatment of, you know, knowing when the due date
13 is?

14 THE WITNESS: Commissioner, I don't really think that
15 we're asking for any kind of expedited treatment. In terms of
16 facilities check, BellSouth has the ability to look to see what
17 various facilities exist to provide the service. I think that
18 if you get into a situation where there may be no facilities
19 available, then I think BellSouth should be under an obligation
20 to contact Covad and say, we've got, you know, a facilities --
21 no available facilities here at this condition or, excuse me,
22 at this premise. But what we've found, and I guess in the
23 overall thrust of this is that, you know, we're looking for set
24 intervals. We're looking for set performance standards.
25 Exceptions, you know, we make and take into account, but not --

1 but they are exceptions.

2 COMMISSIONER JABER: Are they able -- is BellSouth
3 able to determine immediately whether there are facilities or
4 not?

5 THE WITNESS: It is my understanding that they have
6 their own internal databases where they can look to see if
7 various facilities are available through either I believe the
8 system is called Map Viewer as well as other, the word I'm
9 searching for is, complementary facilities database search
10 engines that they have. So I don't think it's anything that,
11 again, takes them a long period of time because it's really
12 part of a normal course of them doing business.

13 COMMISSIONER JABER: Go ahead, Mr. Twomey.

14 BY MR. TWOMEY:

15 Q Is Covad willing to take into consideration the time
16 it would take to do a facilities check in setting the interval
17 for the loop provision?

18 A No. Again, as I said, most of these are databases,
19 and they can be searched relatively -- I think it's part of the
20 process of providing the service.

21 Q How -- I'm sorry, I didn't realize -- I thought you
22 were finished.

23 A Go ahead.

24 Q How would that facilities check be conducted?

25 A I understand that basically the databases allow

1 BellSouth to check to see what facilities are there, what the
2 composition of those facilities are, and then pick the service
3 that corresponds with a -- excuse me, then pick the facility
4 with the service that corresponds basically with what's being
5 ordered.

6 Q And you don't know how long that takes?

7 A I understand that basically you're searching a
8 database, and you're going to search that database really as a
9 part of providing any service, I would assume.

10 Q What is your understanding based on? You said you
11 have an understanding that we're checking a database. I want
12 to know what's the basis for your understanding.

13 A The basis for understanding is basically as I've
14 heard it described.

15 Q By whom?

16 A I can't tell you by whom. It'd been various
17 proceedings.

18 Q Let's talk about Issue 7(a). This is the issue
19 concerning joint acceptance testing for nondesigned loops;
20 correct?

21 A Yes, that's correct.

22 Q Now, just to try to put this issue in perspective,
23 BellSouth does offer a designed loop that would include joint
24 acceptance testing as well as some other features, correct, as
25 part of the price for the designed loop?

1 A Yes. You provide other loops for joint acceptance
2 testing as a part of the, I guess, overall part of your
3 responsibilities to provide the service. With respect to the
4 UCL nondesigned, what we have found is that many of those loops
5 are delivered and they are not working. And to the extent that
6 they are not working, we have made a proposal that we're
7 willing to basically put our money where our mouth is and live
8 by, that if BellSouth provides those UCL nondesigned loops that
9 are working at least 90 percent of the time, then we will pay
10 for that testing.

11 Q I'm not sure I got a specific answer to my other
12 question, and I don't mean to suggest it was nonresponsive, but
13 I want to make sure I have the record clear. You do have the
14 ability to purchase a designed loop that includes joint
15 acceptance testing; correct?

16 A Yes. We purchase loops that joint acceptance testing
17 is a part of the procedure to ensure as a safety net that those
18 loops are delivered working.

19 Q Okay. And you're changing my -- that's why I'm
20 asking you again. Do you have a problem with my description of
21 them as designed loops? I just want to get a yes or no to the
22 question. Can you buy designed loops that include joint
23 acceptance testing? And if the answer is no, that's fine. I
24 just want to make sure I understand your answer.

25 A I would say that your question cuts off part of it

1 short. That, yes, they are part of the provisioning process
2 that has been agreed to by Covad and BellSouth to provide joint
3 acceptance testing to ensure that a working loop is delivered.

4 Q And those are designed loops; correct?

5 A They are basically clean cooper loops.

6 Q Well, let me ask it this way. Maybe I don't need to
7 go back and forth with you. Are they designed loops, or are
8 they not designed loops?

9 A I guess I'm getting a little bit confused by what
10 you -- how you define "designed." I'm not trying to be
11 argumentative.

12 COMMISSIONER JABER: Mr. Twomey, the witness has
13 indicated he doesn't understand your use of the word "designed"
14 loops, perhaps starting out the question with what your
15 definition is would help.

16 MR. TWOMEY: Thank you, Commissioner.

17 BY MR. TWOMEY:

18 Q What I was going to ask him was: Has he ever heard
19 the term "designed loop" before?

20 A Yes, I have.

21 Q What does it mean to you?

22 A To me, it basically means you go through an extremely
23 elaborate process. But that's not the case with the loops that
24 we're -- here. That's the reason I'm having trouble drawing
25 the parallel.

1 Q I understand and I --

2 COMMISSIONER JABER: In terms of meaning, Mr. Allen,
3 what is your understanding of what a designed loop is? What
4 constitutes a designed loop?

5 THE WITNESS: Commissioner, I guess I've hung around
6 engineers through my early development career probably more
7 than I should have, so I've got this, you know, sort of I guess
8 a little bit more of an expectation of what may be involved to
9 deliver something that may be a very complex type service.
10 What we have found is, you know, that complexity from being,
11 you know, based on 20 years ago has basically been simplified
12 in a lot of cases.

13 As I've stated earlier, you know, specific questions
14 about actual engineering or technical operations may be best
15 directed to another witness. I'm sort of prejudiced by
16 preconceived negotiations, so I'm not sure that I can, you
17 know, give an adequate answer to his question as he pursues.
18 What, I guess, I've tried to state was that we were willing,
19 you know, to pay for these tests if they, in fact, deliver
20 working loops to us 90 percent of the time.

21 COMMISSIONER JABER: Mr. Twomey, you might want to
22 try rephrasing the question without -- or show him something
23 that meets what your understanding of designed loops is.

24 BY MR. TWOMEY:

25 Q Let's start with what you did say. You said a

1 designed loop is an elaborate process; correct?

2 A Yes, I said that based on what I knew from 20 years
3 ago, which I think I also said.

4 Q All right. Does BellSouth offer xDSL loops that are,
5 quote, designed loops as BellSouth uses the term; that is, they
6 include a design layout record, joint acceptance testing, and
7 some other things? Do they offer such a product?

8 A If that -- yes. If they offer that product with
9 those attributes, then, yeah, I don't know that I would
10 classify all that as a design special service.

11 Q Well, BellSouth calls it a designed loop, and you're
12 familiar with that term; correct?

13 A Yes.

14 Q And Covad has been asking in proceeding after
15 proceeding for the last couple of years for us to offer a
16 product that is a nondesigned loop; correct?

17 A A clean cooper loop, unbundled copper loop
18 nondesigned.

19 Q All I'm trying -- I'm not trying to trick you. I'm
20 just trying to get you to agree with me, if you can, that we do
21 have a product that is a designed loop that does include joint
22 acceptance testing; correct?

23 A Yes.

24 Q And at your request, we have developed a product
25 called a nondesigned loop, UCL-ND, which does not include a

1 design layout record and does not include joint acceptance
2 testing, correct, that's another product we offer?

3 A No, I wouldn't necessarily agree with you that it was
4 at our request. I think it may have been at another CLEC's
5 request. But given that fact, I think what we're -- what we're
6 asking for here is assurance that those UCL nondesigns are
7 provisioned working; that all the work necessary to make them
8 function has been done. The only way that that can be assured
9 is through joint acceptance testing. If BellSouth meets the
10 90 percent benchmark, we are very much willing to pay. You
11 have not heard me say that we wouldn't pay. If BellSouth's
12 performance drops below that, then BellSouth basically has to
13 pay for it. The fact of the matter is, deliver me a loop that
14 doesn't work is of no use to me.

15 Q Mr. Allen, would it be fair to characterize the
16 UCL-ND as a loop which does not as of today include joint
17 acceptance testing in the product that you purchase?

18 A Yes, I think that's BellSouth's position.

19 Q Okay. And BellSouth made this product available
20 because certain CLECs, and I feel comfortable saying Covad was
21 among them, requested a clean copper loop that didn't have all
22 the features that our designed loop had; correct?

23 A Yes, that's correct. But the trailer here is the
24 fact that all the necessary work needed to be performed,
25 cross-connects, whatever, ensured that that loop did work.

1 What we have experienced and what we're saying here is, as a
2 safety net to ensure it works, is that we're -- you know, if it
3 works 90 percent of the time, then Covad pays. If it doesn't,
4 BellSouth pays.

5 Q Thank you. Now, Covad is willing to pay -- well, let
6 me back up. BellSouth has expressed its willingness to do the
7 joint acceptance testing; correct? There's no dispute about
8 that?

9 A BellSouth wants to be compensated at a different rate
10 than what Covad has proposed for joint acceptance testing.
11 Yes, yes.

12 Q But I want to make sure the record is clear that
13 there's no dispute that we're willing to do the joint
14 acceptance testing; correct?

15 A Yes.

16 Q Covad wants to pay for joint acceptance testing but
17 not at the cost-based rate that BellSouth has proposed;
18 correct?

19 A Yes, that's correct. Covad has proposed a rate very
20 similar because we have the same condition -- or agreement in
21 the Southwestern Bell area. And basically, that is one of my
22 attachments, I believe, as an exhibit, is to ensure that Covad
23 gets a working loop, that joint acceptance testing should be
24 performed and basically performed at a rate that we think is
25 fair. It's obviously higher -- the rate that we've proposed in

1 this agreement is higher than the rate that Southwestern Bell
2 gets to charge.

3 Q Let's talk about Issue 7(b).

4 MR. TWOMEY: Commissioner, I apologize, I can't
5 remember whether you wanted to break at 2:00 or 2:30. Was it
6 2:30?

7 COMMISSIONER JABER: It's 2:25.

8 MR. TWOMEY: Okay.

9 BY MR. TWOMEY:

10 Q Issue 7(b) concerns the issue of whether BellSouth
11 can change these definitions and specifications for its loops;
12 correct?

13 A Yes.

14 Q Just to try to put all this in perspective, and I'm
15 not asking for a legal conclusion, Covad has the right to buy,
16 lease piece parts of BellSouth's network under the Telecom Act;
17 correct?

18 A Yes.

19 Q But for the Act, you might have to go out and
20 construct your own network to provide services to customers;
21 correct?

22 A Yes. I think we have constructed our own network.

23 Q Let me be more precise. You might have to entirely
24 replicate BellSouth's network if you didn't have the right to
25 come in and purchase piece parts or lease piece parts of our

1 network; correct?

2 A Yes.

3 Q You've talked about what the network looked like 20
4 years ago. You agree with me that BellSouth's network changes
5 from time to time; correct?

6 A Yes.

7 Q And with the pace of technological change these days,
8 it can change -- perhaps in a year, you could have minor
9 changes here and there to different parts of the network;
10 correct?

11 A No, I'm not sure that you could have minor changes to
12 the network that implies that you can't provide a type of
13 service that you have been able to provide the day before. Was
14 that the thrust of your question?

15 Q No. I mean, you can provide a finished service over
16 a variety of different technologies; correct?

17 A Yes, you can.

18 Q And you could be providing fiber optic service that
19 with an enhancement to some of the computers on each end of the
20 fiber can change the technical characteristics of that fiber;
21 correct?

22 A Yes.

23 Q And the end user may not see a difference, his phone
24 will still work when he picks it up, but the technical
25 characteristics of that loop may change; correct?

1 A No, I'm not sure that the technical characteristics
2 of the loop are changing. I think what you may be wanting to
3 say is that the technology used to provide that service may be
4 changing, but the technical specifications of that service
5 itself may not change.

6 Q Well, let's be clear when we're talking about
7 services or facilities. I'm talking about the technical
8 specifications for the facilities used to provide the services.
9 Those can change, can't they?

10 A The reason why I'm pausing a little bit longer than
11 necessary is, yes, I guess I'm losing you a little bit. The
12 technology to provide those services may change. What I'm
13 talking about and I think what this issue really addresses is,
14 the specifications that are in place when we agree to this
15 interconnection agreement for the services that I get from
16 BellSouth or that Covad gets from BellSouth shouldn't be
17 allowed to be changed arbitrarily.

18 It doesn't say that Covad may not be willing to
19 accept BellSouth's change. We're just saying that BellSouth
20 should seek that change through an amendment to the
21 interconnection agreement and not unilaterally impose that
22 change on Covad, especially if it greatly affects customers
23 that Covad already has in service. Being that it could -- if
24 it became a repair and maintenance issue where the
25 parameters -- like the noise parameters were set higher than

1 they would when initially installed, or on the installation
2 end, if the dB loss parameters changed greatly, it would
3 redefine that loop that Covad has really -- is part of Covad's
4 business plan. Nowhere in that response did we say or even
5 implied, I don't believe, that technical specifications could
6 change. We're just saying for the life of the agreement,
7 BellSouth must seek Covad's approval for those changes and
8 can't impose those changes unilaterally on Covad.

9 Q All right. Let me just make sure I can identify with
10 the area of disagreement here. Let's presume that BellSouth is
11 providing Covad with a loop -- let's make it easy for me to
12 understand -- just to provide voice service to an end user.
13 Okay. Can you follow me on that?

14 A Oh, yeah. Oh, I'm sorry. Yes.

15 Q Copper loop voice service -- very simple, okay -- for
16 purposes of this question. Is it your position that
17 BellSouth -- let me back up, one more predicate. There are
18 technical specifications which attach to that loop. They are
19 described in BellSouth's TR73600, I believe is the document.
20 Is it your testimony that BellSouth cannot change those
21 technical specifications for that loop even if it doesn't make
22 any change in the service that the end user obtains?

23 A No. I mean, the thrust of what we're asking for here
24 does not really direct itself so much at voice services versus
25 specifically the services that Covad purchases from BellSouth.

1 Q Okay. Let me try it this way just so that you don't
2 think I got you out of context. Let's say you got an xDSL
3 loop, and your customer is using it for the transmission of
4 high-speed data. Is it your testimony that BellSouth cannot
5 change the technical specifications of that xDSL loop even if
6 it has no impact on the customer's ability to use the service?

7 A Yes. What I'm saying here is that BellSouth cannot
8 change the technical specification references for the services
9 that's we're purchasing under this interconnection agreement
10 without seeking Covad's approval through an amendment for those
11 specification changes. As I understand it, it doesn't happen
12 often. I only have, I guess, personal experience with one.

13 I'm not saying that we're not open, but we're asking,
14 since this is really a two-way agreement, that for the life of
15 this agreement, BellSouth at least come to Covad proactively,
16 lay it out, explain it, and give Covad the option whether or
17 not it's willing to sign the amendment for the life of this
18 agreement.

19 Q All right. Well, let's presume we've got service to
20 a business customer here in Tallahassee. BellSouth's got a
21 loop provisioned to Covad. It's providing xDSL service for the
22 customer, and a new technology comes out in six months after
23 this contract is prudent. It provides great enhancements for
24 BellSouth, but it changes the noise parameters for the loop.
25 It doesn't impact the customer. It's not to a degree

1 sufficient to change the customer's service, but it does, in
2 fact, change the technical specifications. Is it your position
3 that BellSouth's network organization has to come to Covad and
4 ask for permission to upgrade its network when that upgrade
5 will have no impact on your customer service?

6 A Yes. I think what I am saying is that if -- and you
7 made, I believe, in your characterization of that example, you
8 said that it may change the noise parameters or the service
9 that Covad is offering.

10 Q No. My hypothetical specifically was, it would
11 change the parameter sufficient for it to be a change but not
12 impact the service that the customer's receiving.

13 A Again, the answer to your answer is that, yes, I
14 would expect BellSouth to explain that to us in terms that
15 there is no impact and seek a change. I think what we're --
16 this thing is maybe getting a little more complex than as I
17 understand it really is. Technical specifications may or may
18 not change.

19 What Covad is fearful of is that BellSouth to make, I
20 guess, or potentially relieve itself of responsibilities may
21 drastically change the noise parameters of certain circuits
22 that we order; do so unilaterally, arbitrarily. Therefore,
23 that if they have a circuit that was actually put in working
24 with the original specs, if it went in trouble and had to be
25 repaired, all we would get from the BellSouth maintenance

1 personnel would be that now that service that had been working
2 is no longer -- or excuse me, is within the technical
3 specifications that BellSouth now adheres to, but it wouldn't
4 allow service to the end user. That's what we're trying to
5 prevent.

6 Q I just want to make sure that we are talking about
7 language that's going to end up in a contract, and Mr. Oxman
8 made it clear that, you know, we could very well end up in
9 court if there is any disagreements between the parties. Is
10 it -- you know, it's possible that 50 other ALECs could opt-in
11 to BellSouth's agreement with Covad; correct?

12 A Yes.

13 Q And with this language, BellSouth's network
14 operations group would have to ask permission of 50 different
15 ALECs to make a change to its network. Under the language that
16 you've proposed, whether or not it goes as far as you've
17 described, the language that you've proposed would require us
18 to do that, wouldn't it?

19 A The language -- yes, to the extent that the language
20 that I'm proposing if it was adopted by other CLECs in their
21 interconnection agreement may, in fact, allow that. All we're
22 saying here is that BellSouth cannot unilaterally make changes
23 to the circuits -- the technical specifications of the UNEs
24 that we're ordering without seeking our, really, approval and
25 understanding. What we're trying to prevent here is just

1 unilateral and arbitrary actions that have a fundamentally,
2 really, I hate to say, disastrous effect on our ability to
3 provide service to end users, especially if those end users had
4 had service before.

5 COMMISSIONER JABER: Mr. Allen, what suggestion would
6 you offer to satisfy the concern that BellSouth would have to
7 go and notify all the other ALECs that have opted in to that
8 agreement before making any sort of technical specification
9 change?

10 THE WITNESS: I guess, Commissioner, to be really
11 clear and be succinct, I think that those could probably be
12 narrowly defined through languages that just really focus in on
13 what we are talking about here with xDSL services, my view.
14 Again, there are not that many other independent xDSL service
15 providers out there of the scope of Covad. But we're talking
16 about something here that could fundamentally impact our
17 customers if BellSouth unilaterally made a change.

18 COMMISSIONER JABER: I'm just looking for a way to
19 allow you-all an opportunity to think about how these kinds of
20 issues could be negotiated, maybe not just for this proceeding
21 but for going forward. Are you saying it's really not even a
22 legitimate concern?

23 See, if the concern is really not with Covad, the
24 ALEC, but with regard to BellSouth's treatment by all of the
25 other ALECs, then is there a way to craft some language in

1 these interconnection agreements that makes it clear that a
2 specific provision of an agreement applies to the original ALEC
3 and BellSouth?

4 THE WITNESS: Again, a very interesting question. I
5 guess I'm trying to look at the up side. I would want to
6 believe that there may be some ways that we could construct or
7 put the language there that may narrowly define it enough to
8 satisfy BellSouth. It's not that we don't understand, I guess,
9 some of the concerns expressed by Mr. Twomey.

10 The fact is that for the services that we're
11 providing, it really becomes somewhat -- I mean, a real life
12 problem for us if they, in fact, do change the parameters,
13 because what we are talking about is the customers that may
14 have had service, it worked fine, they change the parameter,
15 the customer went into maintenance mode, and then because those
16 parameters have been redefined, he may not ever get the service
17 that he originally had because the noise levels maybe go up.

18 COMMISSIONER JABER: I understand. And they are also
19 saying that by virtue of the services that Covad is requesting,
20 it almost restricts the situation to Covad by virtue of the
21 circumstances of the size of Covad and the services that Covad
22 offers.

23 THE WITNESS: Yes, I believe I did say that, and I
24 believe that would be true.

25 COMMISSIONER JABER: But to the degree other ALECs

1 use these sort of provisions to arbitrate or to, you know,
2 raise issues with respect to BellSouth's treatment of them,
3 might there be some language that even restricts the situation
4 further? Something to think about. You've said over and over
5 again you're not an attorney, you haven't thought about this
6 situation, but it is something that I will be looking at in the
7 future.

8 THE WITNESS: Yes, Commissioner. And I think that
9 from our position on this issue we've always tried to be, you
10 know, at least approachable enough and flexible enough that we
11 would be open to -- if BellSouth had a suggestion to handle our
12 concerns. What we're fearful of, and I guess what we've
13 experienced a little bit, is the fact that an ILEC will make an
14 arbitrary decision, and significant, I think at least in my
15 opinion, significant technical specifications or changes don't
16 happen overnight. They are planned for; they are understood.
17 We're just saying, don't impact our business plan without
18 trying to consult with us and bring us into the process, so we
19 can see if there is ability to deal with it as well.

20 COMMISSIONER JABER: So then you would be amenable to
21 a provision that requires BellSouth to notify Covad of major or
22 significant, to use your words, changes in technical
23 specifications before implementation?

24 THE WITNESS: And seek our agreement if those
25 specifications are going to impact the services and our end

1 users that we serve and are currently serving.

2 COMMISSIONER JABER: Okay. Go ahead, Mr. Twomey.

3 BY MR. TWOMEY:

4 Q In response to the Commissioner's questions, is it --
5 is Covad satisfied to limit the agreements that it seeks to
6 impose on BellSouth to be situations where the service to the
7 end user is affected?

8 A Could you please state that one more time.

9 Q You have posited in response to many of my questions
10 disruption of the customer service, wholesale disruption of
11 Covad because of a technical change. My question is, if the
12 technical change does not impact the service, would
13 BellSouth -- would Covad be willing to not have this process
14 where we have to come to you for approval and permission to
15 change our own network?

16 A Yes. I think if we could narrowly define it in terms
17 of the services that Covad are concerned with, then I'm not --
18 I don't think Covad is of the opinion that for every single
19 technical change that you may want to make, that you have to
20 seek our approval. I think what I'm saying is, for the
21 changing technical specifications that impact the services that
22 we use to provide our service through, then you must seek our
23 agreement through that through an amendment.

24 Q Now, we've talked repeatedly about this
25 nondiscriminatory access issue, and I know you're not a lawyer,

1 but I just want to get your position as a policy witness. If
2 BellSouth is making technical changes, even if they do impact
3 your customers but that impact all of BellSouth customers the
4 same way, what provision of it in the Act or the FCC rules or
5 anywhere can you point to that gives you the right to have your
6 customers on a different service than BellSouth's own customers
7 over its own network?

8 A I sort of lost you there, really. What I'm searching
9 for in this agreement is an agreement that BellSouth does not
10 make any unilateral changes that affect my business. And I
11 think I've said that repeatedly. Again, I'm not a technical
12 person. I can't expect or imagine all the technical
13 ramifications of what BellSouth may or may not do for all its
14 services. What I'm trying to say here, and I think I've been
15 pretty clear, is that BellSouth cannot make unilateral changes
16 to the services that are a part of this interconnection
17 agreement with Covad without getting Covad's approval.

18 COMMISSIONER JABER: Mr. Twomey, how about we go
19 ahead and take a break now and come back at 10 till 3:00? And
20 we can pick up with this line of questioning.

21 MR. TWOMEY: I was moving on to the next issue, so
22 that's a good breaking point.

23 COMMISSIONER JABER: Okay. Thank you.

24 (Brief recess.)

25 COMMISSIONER JABER: Let's get back on the record.

1 Mr. Twomey, you were cross examining, I think; right?

2 MR. TWOMEY: I was trying.

3 BY MR. TWOMEY:

4 Q Mr. Allen, let's go to Issue 8.

5 A Okay.

6 Q This is the only one I'm going to actually read word
7 for word, but the issue statement here could not be more
8 specific. "When Covad reports a trouble on a loop where, after
9 BellSouth dispatches a technician to fix the trouble, no
10 trouble is found but later trouble is identified on that loop
11 that should have been addressed during BellSouth's
12 first dispatch, should Covad pay for BellSouth's cost of the
13 dispatch and testing before the trouble is identified?" That's
14 the issue that you've framed for the Commission; correct?

15 A Correct.

16 Q Now, BellSouth has said in its testimony that under
17 the circumstances you've described in the issue that you've
18 identified, we agree with you, that we won't charge you for the
19 dispatch if under the narrow circumstances described in Issue
20 8. Does that resolve this issue?

21 A To the -- no, to the extent that we don't feel like
22 you should be charging us to begin with. I think that's the
23 issue as well.

24 Q Okay. So what you have a problem with -- the relief
25 you want from this Commission is not an affirmative answer to

1 the question you've identified as Issue 8. You don't want us
2 to charge you for trouble dispatches at all when the result of
3 the dispatch is no trouble found; correct?

4 A We don't want BellSouth to charge us when no trouble
5 is found because a high percentage of the time there's a
6 subsequent trouble, we want BellSouth to work with us to get
7 those troubles closed.

8 Q Okay. Well, BellSouth has said that if there's no
9 trouble found by BellSouth's technician but later trouble is
10 discovered that should have been discovered by the technician
11 the first time, we won't charge you for that, so let's set that
12 category of circumstances aside.

13 Your language wouldn't even permit BellSouth to
14 charge you for a dispatch when there's no trouble found ever;
15 correct?

16 A Can I ask you for a clarification?

17 Q Yes.

18 A For the no trouble, the no charge, are you saying
19 that Covad would have to seek an adjustment?

20 Q Well, I'm not the best witness to answer that
21 question, but what I will tell you is -- for purposes of my
22 question, I'm assuming that the process between the companies
23 will result in you not being charged for that dispatch. I
24 don't know exactly what the process is, but for purposes of my
25 question, I'm not -- it's not important to me whether you get

1 charged and credited or not charged. Is that a central issue
2 for Covad?

3 A The central issue for Covad is that the loop really
4 gets -- is not closed prematurely, that it is -- worked and
5 delivered -- excuse me, that it's not prematurely closed, that
6 we do get a working loop. That's the issue.

7 Q Okay. Well, let me make sure that I understand the
8 limits, because again, we're going to have to live with this
9 language and apply it to a variety of circumstances as we move
10 forward.

11 If Covad calls BellSouth and asks for a dispatch to
12 investigate trouble on a loop and there's no trouble found on
13 that dispatch and there is never trouble found on that loop for
14 as long as Covad is buying it, do we get to charge you for that
15 dispatch under your language?

16 A It's our position that basically that BellSouth
17 should not be able to charge for no trouble found.

18 Q Let me just ask you, and I will not interrupt your
19 explanation, but if you could give me a yes or no to the
20 question, or tell me that you can't give me one, I'd like that
21 first so the record is accurate.

22 A Could you restate the question, please.

23 Q My question is: In a circumstance where you've
24 requested us to dispatch a truck or a technician to investigate
25 trouble on a loop, there is no trouble found by that

1 technician, and as a matter of fact there is never any trouble
2 found on that loop for as long as Covad is providing service
3 over it, under those circumstances, under your proposed
4 language is BellSouth entitled to be reimbursed for the cost of
5 that dispatch?

6 A No. To the extent that we're not going to report a
7 trouble unless there is a trouble there and we've got the
8 ability before we even report the trouble to go and identify or
9 at least determine that there is a trouble there, we are not
10 going to dispatch BellSouth needlessly. But what happens with
11 BellSouth is, they code those troubles "no trouble found" a lot
12 of times. And then repeatedly after repeated troubles were
13 opened, they work with Covad technicians, and they identify
14 that trouble and then it's closed. So I guess we're trying to
15 build incentive here to get BellSouth to actually get it right
16 the first time. And the way we feel that that's best addressed
17 is for no charges to apply to no trouble found.

18 Q What incentive does such a scenario provide to Covad
19 to only call us when there's really a problem, if any
20 incentive?

21 A Excuse me?

22 Q If any incentive.

23 A Again, would you --

24 Q Under your scenario, you're trying to create some
25 incentives for BellSouth. My question is, what incentives are

1 there under that proposal for Covad not to call us unless they
2 really have a problem on the loop?

3 A The incentive is that we're not going to turn in a
4 trouble unless there's a problem with the loop.

5 Q What's the consequence if you do turn in a trouble
6 and there's no trouble on the loop under your proposal? What's
7 the consequence to Covad?

8 A The consequence if there's no trouble found? There's
9 no -- there's no direct consequence, but again, I go to the
10 point that I'm not going to turn in a trouble unless there's a
11 trouble there. That's the point.

12 Q Well, BellSouth is saying, we won't charge you if you
13 turn out to be right and we're wrong. And I understand that,
14 but my question is, what language do you want the Commission to
15 approve for this issue to go into the contract?

16 A I don't know that I could give you the exact language
17 right now, but basically, as I've stated in my testimony, that
18 we feel like it's our position that there shouldn't be a charge
19 because we're not going to submit a needless trouble report.
20 And the incentive needs to be on the front end to have
21 BellSouth work with us to identify that trouble the first time.
22 That's our position.

23 Q All right. Let's assume for purposes of my question
24 that Covad requests BellSouth to go out and investigate trouble
25 on ten loops in the month of July. We do that. We dispatch

1 the technicians; no trouble is found. That characterization of
2 no trouble turns out to be accurate, and there is no trouble on
3 the loop. Who bears the costs associated with those
4 dispatches?

5 A On a hypothetical, I guess going back to my point --
6 I'd rather just stick to what I've seen, you know, happen --

7 Q I understand that, but I think I'm entitled to ask
8 you questions.

9 COMMISSIONER JABER: Mr. Twomey, let him finish his
10 answer.

11 MR. TWOMEY: I'm sorry.

12 A To the extent that the current process to seek, I
13 guess, the credit for such a charge that I'm aware of is very
14 cumbersome, it's very time-consuming, and it's hard to do on
15 Covad's part. By not allowing to charge for the no trouble
16 found since we're not concerned in one unless there is a viable
17 reason as it seems -- as it is determined by Covad to submit
18 the charge. I get to the point, and we may not be able to get
19 off of this, but the fact of the matter is, if BellSouth was
20 not allowed to charge for it, there would be more incentive to
21 get it fixed when Covad initially reported it.

22 COMMISSIONER JABER: Mr. Allen, but in those
23 situations where BellSouth is dispatched and no trouble is
24 found, you would agree that BellSouth bears that cost under
25 your proposal?

1 THE WITNESS: Certain maintenance costs, I guess,
2 Commissioner, are what, I guess, are covered in the monthly
3 charge.

4 COMMISSIONER JABER: What? Say that again.

5 THE WITNESS: I would have thought that there was
6 certain maintenance costs that are taken care of as part of the
7 monthly charge for the loop. To get to this issue --

8 COMMISSIONER JABER: But the costs associated with
9 dispatch in those cases where there is a dispatch no trouble
10 found is a cost that BellSouth incurs.

11 THE WITNESS: Yes.

12 COMMISSIONER JABER: All right. Now, if this
13 Commission were to find that Covad should be entitled, for
14 example, to have costs recovered for, when we started your
15 testimony, costs recovered for services not provided, UNEs not
16 provided when you expect them to be provided, doesn't the
17 opposite also hold true, that if there are dispatches and no
18 trouble is found, that perhaps Covad should compensate for
19 those costs?

20 THE WITNESS: I'm going to answer the question this
21 way, and I think this does get to your point. There needs to
22 be a mechanism in place if a charge was going to apply for no
23 trouble found that needs to be, I guess, not imposed a burden
24 on Covad if, in fact, a subsequent trouble is later. As I
25 understand it, if BellSouth reports a no trouble found, then

1 they basically apply a charge. We have to go back, track it,
2 and dig it out. I think that if a mechanism was devised that,
3 in fact, would not -- or could easily, I guess, be adjusted, it
4 could go in place where there was a time period in case another
5 trouble came in where it could be adjusted without going
6 through the background and digging out the records and trying
7 to make them up from Covad's part, at least, I guess, as I also
8 said in my testimony, that the part of our issue is to not be
9 prematurely charged when, in fact, a trouble took place. So if
10 there was a mechanism there, I guess it would go to address
11 part of our issue.

12 COMMISSIONER JABER: Have the parties discussed
13 whether that mechanism could start after so many dispatches
14 have occurred? In other words, you know, if you have an alarm
15 in your house, after so many false alarms, law enforcement
16 charges you a \$25 fee. Is there something similar to that that
17 you-all have considered and in turn we might want to consider?

18 THE WITNESS: Not that I'm really aware of right now.

19 COMMISSIONER JABER: Might that be acceptable to
20 Covad?

21 THE WITNESS: It could possibly be acceptable.

22 COMMISSIONER JABER: Okay.

23 COMMISSIONER PALECKI: You know, we're dealing with
24 human beings here, and human beings make mistakes. Covad
25 employees will make mistakes, I'm sure, reporting trouble when

1 there's not, and I'm sure that likewise BellSouth employees
2 will sometimes make mistakes when they show up at the scene.
3 They are dispatched, and they don't find the trouble when it's
4 actually there. But I detect a lot of frustration on your
5 part. You're using the words like "cumbersome," "time
6 consuming," "we want BellSouth to work with us." And I see
7 what you're trying to do is put mechanisms in place.

8 But wouldn't your frustration be better dealt with if
9 BellSouth had a group of employees that you could go to when
10 you had a problem, when you have a situation where you're not
11 able to get a customer served properly, and where you could go
12 to only in the trouble situations you could go to this group of
13 employees in order to cut through the red tape so you don't
14 have to get back on the end of the line to have another, you
15 know, whole administrative process takes place before you can
16 get another truck out there to look at it?

17 It seems like we have this frustration, and everyone
18 is trying to deal with strict rules when it would be better
19 dealt with by better communication between Covad and BellSouth
20 and by BellSouth putting in place employees who would be able
21 to work with you and cut through the red tape.

22 THE WITNESS: Commissioner, there is escalation
23 lists, but I think with this issue in particular, and maybe the
24 idea mentioned by Commissioner Jaber gets to the heart of it,
25 we do have escalation lists for items that come to our

1 attention that loops or customers that may require that.

2 What we're trying to do here, though, is prevent a
3 premature closeout of a no trouble found. So I'm not sure that
4 an escalation list for all troubles would necessarily get to
5 the heart of it. But to try to, I guess, move through this
6 issue, you know, we just don't feel we should be charged
7 prematurely and quickly for no trouble found, especially when
8 they are subsequently found.

9 COMMISSIONER PALECKI: But you also understand
10 BellSouth's concerns, that there are times when Covad will make
11 a mistake and BellSouth will be required to send out a truck
12 when there actually isn't trouble, there's perhaps a mistake
13 has been made by Covad, and it's not something that BellSouth
14 is able to, you know, remedy. The mistakes are going to be
15 made by both sides, we're dealing with human beings.

16 THE WITNESS: Mistakes are going to be made.

17 COMMISSIONER PALECKI: And so you understand
18 BellSouth's concern that under that circumstance, when they
19 send out a truck, they want to be able to charge Covad.

20 THE WITNESS: If no trouble is found.

21 COMMISSIONER PALECKI: If no trouble is found.

22 THE WITNESS: I guess what we -- a mechanism that
23 would prevent, you know, what I'd call a burdensome process
24 that would eliminate that would probably be a means to address
25 it, that wouldn't charge or wouldn't allow for charges

1 prematurely to be levied. Certainly, I agree that mistakes
2 could be made. It's not our position to send BellSouth on
3 anything but a trouble that we've identified that exists and is
4 there. And I guess our feeling is, you know, that there needs
5 to be clarity through this agreement on how -- if a charge is
6 going to apply, how it should apply, and if a mechanism is
7 there so the burden is not on Covad to go back and trace all
8 these charges, especially, really, when they weren't
9 appropriate is done.

10 COMMISSIONER PALECKI: Thank you.

11 MR. TWOMEY: Thank you, Commissioners.

12 BY MR. TWOMEY:

13 Q Just to make sure that I understand the terminology
14 you've used, in response to Commissioner Palecki, you talked
15 about escalation list. Those are people at BellSouth that
16 BellSouth has made available to you to call to do the kinds of
17 things that the Commissioner describes as cutting through the
18 red tape; correct?

19 A Cutting through the red tape on specific, not just
20 normal day-to-day operations, I mean, orders. On escalations,
21 if they get escalated to management, there is a list, yes.

22 Q Okay. Now, the proposal that you have is that you
23 not pay up front for the dispatch, as I understand it, if we're
24 talking about some sort of a compromise position. Is that what
25 you're describing?

1 A I believe that's what Commissioner Jaber basically --

2 Q Okay. Now, if we do that, BellSouth wouldn't
3 actually be paid for that dispatch unless it turned out that it
4 was right, there was no trouble; correct?

5 A Correct.

6 Q At what point would we determine that BellSouth was
7 right? Would we wait 30 days to see if trouble turned up, 60
8 days, 90 days?

9 A I'm not really prepared to address what the period
10 may be here. It's hard to -- you know, there may have to be
11 some analysis performed, I'm not sure. It could probably be
12 arrived at, likely.

13 Q Would you agree with me that you would have to have
14 some reasonable time period so that BellSouth wasn't sitting
15 there just waiting to be paid six months from now?

16 A I think that was implicit in a mechanism that would
17 be developed.

18 Q And we've addressed this with other issues as well.
19 Again, this is one of these concessions that if Covad is
20 excused from paying for trouble dispatches, every CLEC or ALEC
21 who opts in to contract will similarly be excused from paying
22 dispatches; correct?

23 A If they opted in to it.

24 Q Now, BellSouth -- did you get a chance to read
25 Ms. Cox's testimony on -- in response to your testimony on this

1 issue?

2 A You'd have to show it to me.

3 Q Let me just try this. We may not need to bring it
4 over to you because -- depending on how you answer this
5 question. I'm not going to characterize her testimony. Are
6 you aware that BellSouth, and this will be my only question on
7 this subject, are you aware that BellSouth has proposed in
8 performance measurements docket a measure to address this issue
9 of trouble dispatches and no trouble found?

10 A I really hate to say. You know, I'm aware of what's
11 in some of the performance measures issues. I guess dragging
12 that in here is not really what we're about.

13 Q That's fine. I'll let Ms. Cox address it. Let's
14 move to Issues 11(a) and (b). This is another issue where we
15 may be close. Is Covad willing to pay the manual ordering
16 charges for submitting orders for services when there is no
17 electronic database in existence, excuse me, electronic
18 interface in existence either for the wholesale product that
19 Covad is submitting orders with respect to or for whatever
20 BellSouth's retail analog is?

21 A If they have a complete -- yes, if they have a
22 complete system that allows for ordering. Those systems right
23 now don't exist for all xDSL services, such as IDSL, unbundled
24 copper loop, and line sharing is having problems. The other --
25 for the other loops, those developments stages for LENS, TAG,

1 EDI are in developmental embryonic stages. They are not stable
2 and, as I understand it, go down quite often. If they were
3 fully implemented and functional for all types of services, all
4 types of xDSL services, then I think Covad's position is that a
5 manual service order would apply if we elected not to use them.

6 Q Okay. Let me -- I asked a long question, and perhaps
7 I took a left turn when you thought I was taking a right turn.
8 The hypothetical I have is that there is no electronic ordering
9 mechanism for BellSouth's retail side for the analog to what
10 you're ordering, and there is also not a system for Covad to
11 submit the orders electronically. It doesn't exist. It hasn't
12 been developed for either the retail or the wholesale. Under
13 those circumstances, do you think it's appropriate for Covad to
14 pay the manual ordering charge?

15 MS. BOONE: I object to that question, Commissioner,
16 on the grounds that it assumes facts not in evidence.
17 Mr. Twomey has just suggested that there is some hypothetical
18 retail analog for some hypothetical service that Covad may be
19 ordering that may or may not be capable of being ordered
20 electronically. And I just don't -- there's no evidence of
21 what the retail analog is. There's no evidence that you can't
22 order it electronically. And I object to the question on that
23 ground.

24 MR. TWOMEY: I absolutely assumed facts not in
25 evidence. It's a hypothetical question, and I believe we're

1 entitled to ask those kinds of questions, and I'm sure she'll
2 ask some of those tomorrow of my witnesses.

3 COMMISSIONER JABER: Mr. Twomey, you are entitled to
4 ask hypothetical questions, but those questions need to have
5 some sort of foundation, and perhaps you need to establish that
6 he understands every step of the hypothetical.

7 MR. TWOMEY: Okay. And it wasn't clear to me that he
8 didn't understand it. If he doesn't understand the question,
9 let me try to walk him through again.

10 BY MR. TWOMEY:

11 Q Let's assume that BellSouth has a complex business
12 product that can be ordered for BellSouth's retail customers
13 only through a manual process. You understand that assumption?

14 A Yes.

15 Q Assume that Covad is offering an unbundled network
16 element or is purchasing an unbundled network element from
17 BellSouth that is the analog, the wholesale analog, to that
18 service, and it also can only be ordered manually. Do you
19 understand that assumption?

20 A Yes.

21 Q In that circumstance, is it Covad's position that it
22 should pay the manual ordering charges associated with
23 submitting an order?

24 A Yes. If that was truly the case, I'd say that would
25 probably be -- that's a hypothetical, but in reality, your

1 retail services have -- your customers call a service rep.
2 They place an order through an electronic system. What we're
3 saying is that the electronic systems that -- and these all do
4 have parallels -- there should be an electronic interface
5 available to us, otherwise -- and I thought I did as well
6 remember this from Ms. Cox testimony, that the electronic
7 interfaces should be available. If they go down, we shouldn't
8 have to pay to fax over manually. I think that's what I do
9 remember she addressed. However, services that -- we don't
10 have a system ready for line sharing. We don't have one for
11 IDSL. We don't have one for UCL. The ones for the other xDSL
12 services do not -- or are not available 100 percent of the time
13 to use.

14 The point is that for us to be as efficient and
15 effective as possible, we need to have electronic interface,
16 and we shouldn't be penalized by having to order those services
17 manually.

18 Q And I hope you understand BellSouth's position on
19 this, which is, if we've got an electronic ordering system in
20 place and it doesn't work on Tuesday and you have to submit a
21 bunch of manual orders, we're not going to charge you the
22 manual ordering charge on Tuesday for those orders. You
23 understand that's BellSouth's position; correct?

24 A Yes.

25 COMMISSIONER JABER: Can I ask you a question,

1 Mr. Twomey? Did you-all depose this witness before this
2 hearing?

3 MR. TWOMEY: No.

4 COMMISSIONER JABER: Okay. Let me be clear on why
5 I'm asking that question, because to the degree I'm involved
6 with panels on interconnection agreements, this kind of
7 discovery really should happen before we get to the hearing. I
8 appreciate getting educated on this. It is helpful, but there
9 is a difference between education and discovery at a hearing.
10 And I would encourage all of the parties to do their discovery
11 and their negotiations in good faith prior to the hearing.

12 MR. TWOMEY: Commissioner?

13 COMMISSIONER JABER: Go ahead.

14 MR. TWOMEY: In response to that, the only thing I'll
15 say is that I think there is not a clear statement of Covad's
16 position in the testimony. And what I'm trying to do is elicit
17 evidence for you to consider.

18 COMMISSIONER JABER: I appreciate that that's what
19 you're trying to do today. My point is, if you're not clear on
20 their position, that's a very useful purpose for discovery.
21 And it might be that some issues are resolved prior to hearing
22 by allowing all of the parties the opportunity to do that kind
23 of discovery. Go ahead.

24 MR. TWOMEY: Okay. I just wanted to say I understand
25 their position clearly. I just want to try to make you

1 understand it because I disagree with it.

2 MS. BOONE: And I'd like to say I think our position
3 is clearly stated. Thank you.

4 BY MR. TWOMEY:

5 Q Mr. Allen, let's move to Issue 12. In this case, you
6 are proposing language which if approved by the Commission
7 would allow Covad to cancel an order for a loop that it had
8 placed if BellSouth doesn't meet the interval, even if
9 BellSouth's failure to meet the interval doesn't have any
10 impact on your ability to offer service to the customer. Under
11 those circumstances, you don't think you should be charged for
12 the cancellation; is that right?

13 A Yes. What we are saying, if BellSouth doesn't
14 deliver the loop in an interval and especially, I guess, if the
15 customer cancels it with us, that Covad should not have to pay
16 BellSouth a charge. We're not -- if the customer wants the
17 service, we're not going to cancel the order for the sake of
18 cancelling the order.

19 Q But that's my point. Again, this is another
20 situation where the language that you proposed for approval by
21 the Commission doesn't contain that qualification that you've
22 just put into the record; correct?

23 A I don't know -- no, I don't agree with your
24 characterization. I think that given the fact that --
25 customers get frustrated when loops aren't delivered, when

1 their service isn't delivered, excuse me. That's what we're
2 trying to address here. As I also stated in my testimony,
3 there should be no incentive anyway to delay delivery of a loop
4 to Covad on the part of BellSouth. If BellSouth meets the
5 interval, then we really don't have a problem here. For
6 whatever reason, if the customer didn't cancel it, then
7 obviously, the order, Covad is not going to cancel it just
8 because BellSouth missed the interval to avoid a charge.

9 Q Let's look at Issue 21. Actually, I believe I
10 covered as much as I wanted to cover with Issue 21 when I
11 discussed your correction to your testimony at the beginning,
12 so we can actually go to Issue 22. I apologize for that delay.

13 Issue 22 concerns the request by Covad that BellSouth
14 be required to use the Sunset ADSL test set; correct?

15 A Yes.

16 Q And you've testified that that test set is -- works
17 with the type of equipment that Covad is deploying; correct?

18 A DTM4 (sic), correct.

19 Q Do all CLECs, ALECs deploy the same equipment that
20 Covad is deploying?

21 A I have no earthly idea. Covad is willing to certify
22 that it's deploying that type equipment which it works with the
23 Sunset test set.

24 Q Is it possible that other ALECs are using facilities
25 for which the Sunset ADSL test set would not be compatible?

1 A Yes, it's possible.

2 Q Now, the Sunset ADSL test set is used by BellSouth.

3 A Yes, for BellSouth's retail services. For its retail
4 line shared services, BellSouth uses the Sunset test set.

5 Q And that's to determine BellSouth's -- whether the
6 xDSL service is working properly, correct, for the customer?

7 A Yes.

8 Q BellSouth -- unless we adopt this proposal, BellSouth
9 typically doesn't get involved with testing how your ADSL
10 service works for your customer, does it?

11 A For our line shared service? Please give me a little
12 bit more specificity in your question.

13 Q Well, does BellSouth use the test set for anything
14 other than just testing the loop?

15 A Your Sunset test set?

16 Q Yes.

17 A You use your Sunset test set for your line shared
18 service to test to make sure that the high frequency portion is
19 working. That's what you use it for.

20 Q Okay. And does BellSouth do other continuity tests
21 for its own ADSL service?

22 A To my knowledge, no. For BellSouth's own line shared
23 service, it uses the Sunset test set, which we think is the
24 best thing for BellSouth and Covad to use in testing the Covad
25 shared lines as well. And the way that became known to us was

1 that BellSouth CO technicians started using it to get our
2 service to work. It's got a high degree of reliability. I
3 assume that's why you use it.

4 Q Now, BellSouth does do the LSVT test for the line
5 shared loops that it provisions to Covad; correct?

6 A That's what it uses on the installation portion.

7 Q Now, you say that the ADSL test set -- this is on
8 Page 30 of your testimony, of your direct testimony at Page 30,
9 Line 18 -- that the Sunset test set would only be used in a
10 repair and maintenance situation; correct?

11 A That's what's in my testimony, yes.

12 Q So we wouldn't be doing anything with that Sunset
13 test set for you at the time we provision the loop; correct?

14 A Yes. That's because if the loop is not working on
15 the due date, it's an immediate maintenance issue.

16 Q If there's a repair and maintenance issue that comes
17 up three months after we provisioned the loop, is it your
18 expectation that BellSouth will come out with a Sunset test set
19 and look at the loop for you?

20 A The Sunset test set is basically used in the central
21 office, the way I understand it, and it tests for continuity.
22 And when you do that test, it can identify exactly where the
23 trouble is. Again, I said I'm not a technical person, but I've
24 talked to technical people about this one. And it looks and it
25 identifies that trouble. And it can be identified very quickly

1 when it's used. The LSVT may or may not. It's a tone so it's
2 not -- it's dissimilar in its functionality, being that the
3 Sunset test set will really identify the problem and trouble
4 and get it eliminated.

5 Q Let's try to look at Issue 29, which is the rates for
6 Covad collocation. You did not provide an analysis of the cost
7 study, did you, on collocation?

8 A No. And based on my answer, once BellSouth files a
9 cost study, Covad will have an opportunity to evaluate it.

10 Q And BellSouth did file a cost study. I just want to
11 clarify, you are not the witness to talk about --

12 A No, I'm not the witness to talk about collocation.
13 Excuse me.

14 Q Okay. The only thing you have to say about Issue 29
15 is what's on Page 31 of your testimony?

16 A Yes.

17 Q Okay. Do you agree that the cost study results, to
18 the extent that there are assumptions or adjustments that are
19 consistent with what was done by the Commission in the cost
20 docket 990649, that those same adjustments ought to be done to
21 the cost study for the collocation?

22 MS. BOONE: I object to that question on the grounds
23 it's beyond the scope of Mr. Allen's direct. He has two
24 sentences there that say, Covad will respond when BellSouth
25 files the cost study.

1 MR. TWOMEY: And I can ask another witness that
2 question if there is another witness. I wasn't sure whether
3 Mr. Allen was talking about just sort of a policy, because he
4 inserted it, and whether Mr. Riolo has anything to say beyond
5 specific adjustments that he's made. I just don't know which
6 witness. If she's telling me that Mr. Riolo can answer that
7 question, I'll ask Mr. Riolo.

8 COMMISSIONER JABER: Why don't we let the witness
9 tell us? Ask your question one more time.

10 And Mr. Allen, if there is a better witness to answer
11 Mr. Twomey's question completely, then answer the question by
12 letting him know who that witness is.

13 THE WITNESS: Yes, Commissioner.

14 BY MR. TWOMEY:

15 Q Is it Covad's position that whatever adjustments or
16 modifications and whatever the final cost study output of the
17 cost docket in front of the Commission in 990649 to the extent
18 that there are -- there is overlap in some of the same
19 assumptions and models are used in this docket for the
20 collocation, is it Covad's position that the results ought to
21 be the same in both dockets?

22 A I'm going to have to defer those to Mr. Riolo.

23 Q Is he a Covad employee?

24 COMMISSIONER JABER: Why don't you ask Mr. Riolo that
25 question?

1 MR. TWOMEY: Oh, okay.

2 BY MR. TWOMEY:

3 Q All right. My last issue is Issue 30. Mr. Allen,
4 you understand that BellSouth may have pending facilities
5 issues for its retail customers?

6 A Yes.

7 Q And that there are no firm deadlines, contractual or
8 tariff commitments to resolve pending facilities issues between
9 BellSouth and its retail customers; correct?

10 A Between BellSouth and whom?

11 Q And its retail customers.

12 A No. There's no contractual that I'm aware of. I am
13 aware that BellSouth try to clear those troubles within 30
14 days.

15 Q And Covad is not willing to accept the same terms for
16 pending facilities that BellSouth has for its retail customers;
17 is that right?

18 A No. Covad has offered what it thinks is a proper
19 break down that actually acknowledges it. Some of these
20 pending facilities issues are easily fixed and corrected.
21 Other ones may take a little bit longer, and still others where
22 new construction is involved may actually even take longer.

23 Our view of this issue is that pending facilities has
24 been a black hole that our loops fall into, and they stay there
25 without any relief. What we're struggling with is to try to

1 have BellSouth put some parameters that can clear those issues,
2 clear those facilities so our customers just don't get
3 frustrated and cancel their orders.

4 MR. MEZA: That's all I have.

5 COMMISSIONER JABER: Commissioners, any questions?
6 Staff.

7 CROSS EXAMINATION

8 BY MS. ELLIOTT:

9 Q Good afternoon, I'm Jessica Elliott; I'm a Staff
10 attorney. I'm going to start with Issue 6. On Page 11, Lines
11 19 through 21 of your direct testimony, you testify that
12 BellSouth has repeatedly and unilaterally cancelled Covad
13 unbundled loop orders, oftentimes on the date BellSouth
14 originally promised to provide the loop, the firm order
15 confirmation date; is this correct?

16 A Yes.

17 Q Does BellSouth provide a rationale for these
18 cancellations?

19 A Yes. In my testimony, at least in my rebuttal
20 testimony, it has the issues that resulted -- or where
21 BellSouth used to cancel our orders.

22 Q Please explain some of the reasons that BellSouth has
23 provided. I know that you said it's in your rebuttal
24 testimony, but if you could, briefly summarize.

25 A Okay. Give me a chance to find it. On Page 11,

1 starting on -- of the rebuttal.

2 Q Lines 19 through 21.

3 A I thought that you asked me to run through those
4 reasons. I'm sorry if I misunderstood you. They are listed in
5 my rebuttal.

6 COMMISSIONER JABER: Staff, are you asking Mr. Allen
7 to elaborate on the rationale given by BellSouth for
8 cancellation?

9 MS. ELLIOTT: Yes.

10 COMMISSIONER JABER: Mr. Allen, in your rebuttal
11 testimony, you delineate some of the reasons. I think Staff is
12 asking you for additional elaboration. I'm not sure I
13 understand the question myself.

14 Jessica, are you asking him to give you a little --

15 MS. ELLIOTT: That's okay.

16 COMMISSIONER JABER: If it's a good question, I don't
17 want you to give up. Are you asking for additional information
18 in support of Mr. Allen's --

19 MS. ELLIOTT: Yes. If he can provide it, yes.

20 A I don't have it to provide right here. This was
21 given to me from talking to field service technicians and their
22 management, but I don't have any further data.

23 Q Okay.

24 COMMISSIONER PALECKI: Can you just run through them
25 orally to refresh my memory?

1 THE WITNESS: Yes, Commissioner. Orders requiring
2 conditioning. Excuse me. Let me start at the beginning.

3 BellSouth systematically cancels the following type
4 of orders: Orders requiring conditioning. Thus, the burden is
5 placed on Covad to issue service inquiry LSR for a loop with
6 conditioning. Orders with missed installation appointments,
7 including those appointments missed for reasons attributable
8 solely BellSouth. Thus, Covad must resubmit the order each
9 time within five days, even if it was a BellSouth-caused missed
10 appointment. Three, BellSouth cancels loops that have buried
11 load coils, require a new remote terminal, new pedestal, or
12 where a long-term facility issue cannot be cleared within 30
13 days.

14 COMMISSIONER PALECKI: Thank you.

15 BY MS. ELLIOTT:

16 Q Okay. Then I guess we'll switch gears to Issue 7. I
17 have a few questions on the joint testing issue. I'm referring
18 to your rebuttal testimony, Page 13, Lines 17 and 18. And in
19 this rebuttal testimony, you state that -- the statement on
20 Lines 17 and 18 is about the acceptance of the loops as
21 delivered. Does Covad have the latitude to not accept a
22 BellSouth loop as delivered?

23 A This question gets to the point of joint acceptance
24 testing on nondesigned loop. Are you talking about all loops
25 in general or specifically the one -- the UCL nondesigned that

1 this one was referenced to and BellSouth does not want to
2 perform?

3 Q The nondesigned loop.

4 A It is BellSouth's position that it won't perform
5 joint acceptance testing as a part of loop delivery. So what
6 happens is, we don't know if that loop is delivered working on
7 the date. That way joint acceptance testing becomes a safety
8 net to ensure we do get a working loop.

9 Q Okay. And now, I'm referencing Page 15 on your
10 rebuttal testimony, Lines 12 through 17. Am I correct that
11 Covad's joint testing proposal includes testing done on all
12 orders, dispatch and nondispatch orders?

13 A This answer is really directed to the UCL
14 nondesigned?

15 Q Yes. What I'm trying to find out is, on the
16 nondispatched orders, could this testing be performed
17 mechanically from a remote location?

18 A On stand-alones there's -- on stand-alone loops,
19 ADSL, the ones we've talked about, there is going to be a
20 BellSouth dispatch, and they are going to be working with --
21 they have to call Covad basically through the testing
22 acceptance procedures and make sure it works before we accept
23 the loop. I don't feel like I'm answering your question, and
24 it's not because I'm not trying. There's no acceptance testing
25 now as a part of the UCL nondesigned, so we don't know if we're

1 not getting a working loop, and then it becomes a major issue
2 in terms of repair and maintenance if all the work hadn't been
3 completed. The work may not have been completed on the due
4 date I think is the thing that you have to remember. We're
5 trying to turn it up. The only way that you can do that is to
6 have joint acceptance testing.

7 Q All right. We're going to shift gears to Issue
8 8 now. Could you please refer to your rebuttal testimony on
9 Page 19; it's Lines 9 through 11. This testimony references a
10 proposal for a delayed maintenance status. Could you please
11 discuss the status of the proposal. And just briefly explain,
12 was this proposal on the table while you were negotiating? And
13 if it was, how did BellSouth respond to this proposal?

14 A I'm not sure I know how BellSouth responded to the
15 proposal. Let me describe what this is. Basically, if there
16 is a trouble ticket and it's open, there is -- assume that
17 BellSouth said there's no trouble; we said that there is a
18 trouble. It would go -- we would have said, okay, put it into
19 delayed maintenance status for 48 hours; therefore, it should
20 be looked at. Part of this procedure would have BellSouth look
21 at it again later to determine whether or not there's a
22 trouble, not just that it would sit, but it would look to
23 determine if they saw that trouble later.

24 COMMISSIONER JABER: Was it part of what was
25 negotiated, and if so, what was BellSouth's response, I think

1 were the follow-up questions.

2 THE WITNESS: Yeah, I thought I -- if I didn't answer
3 that, I'm sorry. I'm not sure what BellSouth's response was,
4 and I'm not sure that it was there for them to -- but I didn't
5 know.

6 BY MS. ELLIOTT:

7 Q I have one question regarding Issue 11. Under what
8 circumstances, if any, is Covad willing to pay a nonrecurring
9 charge for a manually submitted LSR?

10 A Covad is willing to pay if it elects not to use the
11 electronic ordering interface if it exists for the orders that
12 we're trying to order from BellSouth. If it was available and
13 we made an elective decision not to use it, then a manual
14 service order charge would apply provided that it existed and
15 it wasn't down for some maintenance reason.

16 Q Okay. And I have a couple of final questions on
17 Issue 21. In your direct testimony, Page 24, Lines 19 through
18 22, you testify that provisioning a line shared loop requires
19 no truck roll. All BellSouth has to do is perform some simple
20 cross-connections in the central office. Covad seeks accurate
21 information from BellSouth confirming that the
22 cross-connections necessary to provision a loop have been
23 performed. Is this -- this is a correct synopsis of --

24 A Yes. Yes, it is.

25 Q Okay. What are the work processes necessary to

1 provision a line shared loop?

2 A Basically, taking two jumpers or taking jumpers and
3 attaching them to the splitter, to the Covad splitter. I think
4 there is going to be more information on that given later by
5 some of the technical witnesses, but that's basically it. It's
6 a simple cross-connect function in the central office. That's
7 probably an easier way to understand it.

8 Q Could you please explain why Covad will want accurate
9 information with respect to the fact that a line shared loop
10 has been provisioned?

11 A Yes. For one, we need to know that the work has been
12 performed. And that's what we're really getting to. Because
13 of the auto-complete process that BellSouth uses, the billing
14 starts immediately on this flow through when they show
15 auto-complete; however, the work may not have been performed.
16 What we're trying to do is have a mechanism developed that we
17 can check so we'll, you know, know that the work, in fact, has
18 been performed.

19 Q Okay. Can you explain what information you desire to
20 let you know that the work has been performed?

21 A Yes. Basically, that the order has been worked and
22 it's complete.

23 Q Okay. On Page 25, Lines 1 through 3 of your direct
24 testimony, you testify that BellSouth refuses to send Covad a
25 service order completion like it does for other loop orders.

1 Our experience shows that BellSouth routinely fails to perform
2 cross-connections on time; is this correct?

3 A Yes.

4 Q What is a service order completion?

5 A A service order completion is just -- is an
6 electronic notice saying that the work has been completed.

7 Q What are some of the reasons that BellSouth has given
8 for its refusal to provide service order completions for line
9 shared orders?

10 A Other than I assume that they just don't want to do
11 the e-mailed list, and they don't want to update their
12 COSMOS/SWITCH system that we use, which is really an extraction
13 of the system, any more than three days a week.

14 Q How often would you say BellSouth has failed to
15 perform cross-connections on time?

16 A It would only be a guess. I'm not sure I could
17 really address that specifically with a data level.

18 MS. ELLIOTT: Okay. That's fine. That's all that
19 Staff has.

20 COMMISSIONER JABER: Ms. Boone, redirect?

21 MS. BOONE: Yes, very briefly.

22 REDIRECT EXAMINATION

23 BY MS. BOONE:

24 Q At the beginning of your testimony, Mr. Twomey was
25 asking you about intervals and how -- whether you had any

1 experience with other ILECs and the demand of those ILECs. Do
2 you recall that set of questions?

3 A Yes.

4 Q Now, without giving away any secret Covad numbers,
5 could you give the Commission an idea of the comparison of
6 volume that Covad has in orders between, say, California and
7 Florida?

8 A They are both in the thousands. I mean, there is
9 many thousands of orders on a monthly basis for both California
10 and Florida.

11 Q Is there one state that's dramatically larger?

12 A I would guess California was larger.

13 Q And Mr. Twomey was also asking you some questions
14 about uniform intervals for all the different ALECs. I think
15 you mentioned AT&T and MCI and Covad. Do you remember that
16 series of questions?

17 A Yes.

18 Q Now, if the Commission approved Covad's interval and
19 other ALECs were also entitled to that interval, then would
20 there be a uniform interval for delivering these types of UNEs?

21 A Yes, there would.

22 Q Would it be the BellSouth interval?

23 A No.

24 Q But that doesn't mean it's not uniform.

25 A No -- yes, that's correct.

1 Q Now, I believe Commissioner Jaber asked you about the
2 risk that Covad might bear if we got a set interval in our
3 contract, and then BellSouth was able to reduce that interval.
4 Do you recall that question?

5 A Yes.

6 Q Now, is that a risk that Covad is willing to bear?

7 A Yes.

8 Q Would you look at Page 5 of your direct testimony?
9 Mr. Twomey directed you to Line 17 where you state, quote,
10 BellSouth has no incentive to meet its, quote, targets or to
11 improve, period, close quote. Do you see that?

12 A Yes.

13 Q Now, he asked you about the 271 process. Do you
14 recall that?

15 A Yes.

16 Q After BellSouth gets 271, assuming they do, will
17 BellSouth have an incentive to improve its service to Covad?

18 A No, it will not.

19 Q I'd like to talk to you a little bit about Issue 6.
20 Mr. Twomey was asking you some things about the process by
21 which BellSouth would check if facilities were existing. Do
22 you recall that?

23 A Yes, I do.

24 Q Is Covad in Issue 6 asking BellSouth to do that?

25 A No.

1 Q What is Covad asking BellSouth to do?

2 A Basically, Covad is just asking that, you know, it be
3 reimbursed for costs that result from a direct result of having
4 to reschedule an order.

5 Q And some of the things you've talked about, about
6 rescheduling the order were facilities issues and work
7 scheduling problems; is that right?

8 A Yes.

9 Q Now, when Covad has issues and Covad needs to change
10 an order, is BellSouth proposing that Covad pay for that?

11 A Yes.

12 Q So what is Covad proposing in response to that?

13 A Basically, to be treated the same when BellSouth
14 places those costs on Covad.

15 Q Now, another thing that came up in that discussion is
16 the term -- I think BellSouth said that Covad, quote, selects
17 the due date for loops. What is your understanding about how
18 Covad has to pick that due date?

19 A It has to look at the prescribed interval in the
20 services product guide and pick that date -- pick the time
21 span, rather. It's not a date. It's a time span, and
22 basically, plug it in.

23 Q So right now, if BellSouth says it takes five days
24 after the FOC or seven days total, then how would that fit into
25 the order that Covad would place?

1 A Covad would basically have to go back and look at the
2 services product interval guide and determine for that order
3 what the interval would be based on the target date.

4 Q So can Covad get a loop delivered in a shorter amount
5 of time than what the interval guide says?

6 A No.

7 Q Why not?

8 A Because that is what's prescribed in the interval
9 guide for various types of xDSL services.

10 Q Now, the Staff was just asking you a little bit about
11 Issue 7(a) and the UCL nondesigned loop. Now, do you believe
12 that BellSouth is obligated to deliver Covad a functional loop?

13 A Yes.

14 Q And how does the process of joint testing ensure
15 that?

16 A It's really safety net. It basically -- because it
17 requires a joint testing procedure between Covad and BellSouth,
18 that because we won't accept it unless it's a good loop, we
19 know we're going to get a loop on the first time provisioning
20 in, and it won't become a maintenance issue.

21 Q And to follow up the Staff's question, if it's not a
22 good loop, does Covad have the right to not accept it?

23 A Yes.

24 Q And then what happens?

25 A BellSouth basically has to go out and make it work.

1 Q Now, we talked a little bit on Issue 7(b) about --
2 well, just state real simply in a sentence what Covad wants in
3 7(b).

4 A Covad wants that BellSouth not be allowed to
5 unilaterally change the technical references for the loops that
6 it purchases in this agreement without seeking our permission.

7 MS. BOONE: I'd like to hand out an exhibit which
8 would be Exhibit 11.

9 COMMISSIONER JABER: Ms. Boone, what is the proposed
10 exhibit? And I'll mark it.

11 MS. BOONE: Yes, it is the BellSouth unbundled local
12 loop, technical specifications.

13 COMMISSIONER JABER: That will be marked Exhibit 11.
14 (Exhibit 11 marked for identification.)

15 MS. BOONE: Thank you.

16 BY MS. BOONE:

17 Q Would you please take a look at this, please,
18 Mr. Allen. Is this the technical reference you're referring to
19 in this issue?

20 A Yes.

21 Q Now, Mr. Twomey was asking you some questions about
22 whether BellSouth would be able to upgrade its network. Does
23 what Covad proposes in Issue 7(b) have anything to do with
24 upgrading its network?

25 A No, it does not.

1 Q So would you look at Page 17?

2 A Okay.

3 Q Do you see where it says, "ADSL-capable loop"?

4 A Yes.

5 Q Now, would you look just down -- I'm not going to ask
6 you any technical questions here, but if you could, just look
7 down this page, and tell me if you believe -- or what you
8 believe these to be, whether they are technical specifications,
9 or what exactly this tells us about an ADSL-capable loop.

10 A It's basically the technical parameters for the ADSL
11 loop.

12 Q So if Covad has the right to buy a loop and it's set
13 fourth in its contract, when it buys that loop, is this
14 document right here, Exhibit 11, how BellSouth defines what
15 Covad is buying?

16 A Yes.

17 Q And that's what Covad doesn't want to change during
18 the life of its contract?

19 A Yes, that's correct.

20 Q And Mr. Twomey asked you some questions about what if
21 the changes does not impact Covad's services. Do you remember
22 those questions?

23 A Yes, I do.

24 Q Is Covad --

25 COMMISSIONER JABER: I'm sorry, Ms. Boone. If these

1 are the technical specifications, Mr. Allen, and it is
2 something that is published like this by BellSouth, can this
3 document be incorporated into an interconnection agreement?

4 THE WITNESS: Yes, I believe it could.

5 COMMISSIONER JABER: All right. Go ahead, Ms. Boone.

6 BY MS. BOONE:

7 Q Mr. Allen, is the technical reference currently
8 referred to in the Covad agreement?

9 A Yes.

10 Q And can BellSouth change this without changing
11 specifically the Covad agreement?

12 A Yes.

13 Q Yet, Mr. Twomey was asking you a question about what
14 if the changes did not impact Covad's services. How would
15 BellSouth know what types of services or kinds of services or
16 specifications for the services that Covad is ordering -- or
17 offering?

18 A I don't have any idea.

19 Q Would they have access to that information?

20 A They would know what we order.

21 Q They would know the unbundled network elements we
22 order?

23 A Yes.

24 Q Would they know what Covad's engineering department
25 was developing based on these specifications for new products?

1 A No, they would not.

2 Q Commissioner Palecki was asking you some questions
3 about Issue 8 on the trouble tickets, about working through
4 issues with BellSouth on, you know, a businesslike basis. Do
5 you recall that question?

6 A Yes, I do.

7 Q What has been Covad's experience in trying to work
8 through issues when we didn't have any contract language to
9 rely upon?

10 A It's very difficult.

11 Q Could you elaborate on that?

12 A BellSouth generally does not -- if it has to make a
13 decision, it basically makes it for its benefit, I guess I
14 should have said. It is not openly agreeable to settle issues
15 or work through issues in a businesslike manner. That's the
16 reason -- the theme of my testimony, in particular, is that we
17 need the specificity in this agreement so problems like that
18 can be avoided.

19 Q Now, BellSouth -- Mr. Twomey was asking you some
20 questions about what BellSouth has agreed to do, which appears
21 to be to credit Covad if there are multiple trouble tickets and
22 then the trouble is eventually found. Do you recall those
23 questions?

24 A Yes, I do.

25 Q Are you aware of a process in place at BellSouth that

1 would credit us up front for that?

2 A No, I'm not.

3 Q Has BellSouth proposed any way, other than Covad
4 going back and challenging bills, to get those credits?

5 A No, they haven't.

6 Q On Issue 12, Mr. Twomey was asking you about
7 situations in which Covad cancels orders. If it took BellSouth
8 45 days to deliver a loop but the Covad customer was happy to
9 wait, would Covad cancel that order?

10 A No.

11 Q So when will Issue 12 really come into play?

12 A When the customer cancels the Covad order.

13 Q And what has been your experience about the relation
14 between the amount of time a customer waits for a loop and
15 whether that customer cancels the order?

16 A The longer they wait, the higher likelihood of
17 cancellation on the part of the customer.

18 Q On Issue 21, you noted that Qwest no longer provides
19 Covad with a daily line sharing completion order. Why is that?

20 A Because the new system or the system that they had in
21 place for the Web-based, they enhanced it to where it's updated
22 daily, and it's easy and readable to use. And it was easy for
23 us to work with. And by mutual agreement, we agreed to
24 discontinue the daily e-mailed report.

25 Q Does BellSouth have a similar usable system for

1 Covad?

2 A No, they do not.

3 Q My final question is about the Sunset test system.
4 And you mentioned that Covad was willing to certify that our
5 equipment would work with that test set; is that right?

6 A That's correct.

7 Q Could BellSouth require that all CLECs doing line
8 sharing certify that if they wanted to use the test set?

9 A Yes, they could.

10 MS. BOONE: Thank you. I have no further questions.

11 COMMISSIONER JABER: Do you want to move exhibits

12 9 -- no, it's 10 and 11.

13 MS. BOONE: Yes. Thank you, Commission.

14 COMMISSIONER JABER: Any objection? Exhibits 10 and
15 11 will be admitted into the record.

16 (Exhibits 10 and 11 admitted into the record.)

17 COMMISSIONER JABER: Thank you, Mr. Allen.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 MS. BOONE: Covad calls its next witness,

21 William Seeger.

22 WILLIAM SEEGER

23 was called as a witness on behalf of Covad Communications
24 Company and, having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. BOONE:

2 Q Will you state your name for the record, please.

3 A William Seeger.

4 Q And by whom are you employed?

5 A Covad Communications.

6 Q Mr. Seeger, you were here when Commissioner Jaber
7 gave witnesses the oath?

8 A Yes, I was.

9 Q Now, did you cause to be filed in this docket
10 11 pages of direct testimony and 7 pages of rebuttal?

11 A Yes, I was.

12 Q And if I ask you the same questions here today, would
13 your answers be substantially the same?

14 A Yes, they would.

15 MS. BOONE: I'd like to move that these -- his
16 testimony be inserted into the record as though read.

17 COMMISSIONER JABER: Yes. Mr. Seeger's direct
18 prefiled testimony and his rebuttal prefiled testimony will be
19 inserted into the record as though read.

20

21

22

23

24

25

1 **Q. What is your name and by whom are you employed?**

2 A. My name is William Seeger and I am employed as a Program Manager in the
3 Network Deployment group at Covad Communications Company ("Covad"). My
4 business address is 2650 Military Trail, Suite 200, Boca Raton, Florida 33431.

5 **Q. Please describe your responsibilities since you have been employed by Covad?**

6 A. I have been with Covad since September 1998. I was initially hired as a Installation
7 Supervisor in the New York Metropolitan Region. In that role, I was responsible for
8 installation, dispatching and repair of xDSL lines. I also worked with ILEC
9 resolution (now Service Delivery) on missed loop delivery and vendor meets. In
10 addition, I worked with Network Deployment to accept space from Bell Atlantic
11 (Verizon) in the Long Island area.

12

13 In March of 1999, I moved to the BellSouth Region as Operations Manager for
14 Miami, Atlanta and Raleigh Metropolitan Statistical Areas ("MSA"), with
15 responsibility for managing the installation and repair of Covad's xDSL loops in
16 those areas. In that role, I also had responsibility for managing transmission,
17 including DS1 and DS3 loops, that Covad uses for long haul traffic. In this capacity,
18 I worked extensively and directly with BellSouth personnel on access to central
19 office issues, delivery of circuits, and troubleshooting. I acted as the main point of
20 contact for Covad technicians on trouble tickets and when Covad's technicians and
21 BellSouth's technicians met on "vendor meets" to jointly resolve problems on loops.

1 In April 2000, I moved from Operations to my current position as a Program
2 Manager in Network Deployment, responsible for Central Office space acceptance,
3 ordering, and applications from ILECS (BellSouth, GTE/Verizon, and Sprint) in the
4 Southern region, Georgia, Florida, North Carolina, South Carolina, Tennessee,
5 Kentucky and Louisiana.

6 **Q. Briefly describe your professional and educational background.**

7 A. Prior to Covad, I was employed by NY Telephone/NYNEX/Bell Atlantic for over 30
8 years. I started my career with New York Telephone in 1965 as a Frame technician
9 and moved to Switching in 1969, working in XB1 & 5 plus T and N carrier. I
10 continued in this capacity until 1988 when I moved to Installation/Repair working
11 as a Service Technician responsible for installation and maintenance of
12 communications services to homes and business. In 1993, I became part of a self-
13 managed group and handled ISDN plus fiber and SLC systems in remote terminals.
14 During my time at New York Telephone/ NYNEX/ Bell Atlantic, I was also a
15 Communications Workers of America ("CWA") shop steward for over 20 years. As
16 a result of these experiences, I am very familiar with Bell System practices and
17 procedures.

18 **Q. What is the purpose of your testimony?**

19 A. The purpose of my testimony is to explain how certain terms and conditions in
20 Covad's Interconnection Agreement with BellSouth have a critical effect on Covad's
21 ability to succeed in the Florida market. Covad proposed a number of reasonable
22 improvements to the standard BellSouth Interconnection Agreement that address

1 Covad's unique needs regarding xDSL provisioning. Nonetheless, many of these
2 proposals were resoundingly rejected by BellSouth. As a result, Covad has been
3 forced to arbitrate these disputes. I will discuss Arbitration Issues 5(a), 5(b), 5(c), 8,
4 25, and 30.

5

6 **ISSUE 5(a): WHAT IS THE APPROPRIATE INTERVAL FOR BELL SOUTH TO**
7 **PROVISION AN UNBUNDLED VOICE-GRADE LOOP, ADSL, HDSL, OR UCL**
8 **FOR COVAD?**

9

10 **ISSUE 5(b): WHAT IS THE APPROPRIATE INTERVAL FOR BELL SOUTH TO**
11 **PROVISION AN ISDN-COMPATIBLE LOOP FOR COVAD?**

12 **Q. What were BellSouth's promised loop delivery intervals when you acted as**
13 **Operations Manager for Covad?**

14 **A.** That's the difficult part. There were none. Covad's first Interconnection Agreement
15 with BellSouth, signed in 1998, did not specify in the contract loop delivery
16 intervals. Instead, BellSouth lists "target" intervals in a separate Product and
17 Services Interval Guide. Because these intervals were not in our Interconnection
18 Agreement, BellSouth was free to change the loop delivery intervals at its whim.

19 **Q. To your knowledge, did BellSouth alter its loop delivery intervals in any way in**
20 **2000?**

21 **A.** Yes. In July 2000, BellSouth extended its loop delivery interval for ISDN loops
22 from 7 to 12 business days. Covad uses this ISDN loop for its ISDN Digital

1 Subscriber Line ("IDSL") service. BellSouth said it was making this change so that
2 the target interval in its Product and Services Guide would more accurately reflect
3 customer experience. In other words, BellSouth would make no effort to improve
4 its service. Rather, BellSouth just wanted to make sure that the numbers matched.

5 **Q. Why are loop delivery intervals important to Covad?**

6 A. From an operations perspective, intervals remain critical to ensuring constant service
7 quality and to driving improvement in provisioning techniques. Without firm,
8 established loop delivery intervals, Covad's personnel have no way to persuade
9 BellSouth to improve its processes or even to speed up the delivery of a single loop.

10

11 By having a firm loop delivery interval in our contract, everyone at Covad and at
12 BellSouth will know what is expected. That way, we can work together to deliver
13 loops in the reasonable intervals Covad proposes.

14 **Q. What loop delivery intervals does Covad propose?**

15 A. Covad proposes that BellSouth deliver ADSL, HDSL, UCL and UDC/IDSL loops
16 within 3 business days. For loops that require conditioning, Covad proposes that the
17 loops be delivered within 5 days.

18 **Q. In your experience, are these intervals achievable?**

19 A. Yes. In my time at Bell Atlantic, I was responsible for installing, repairing and
20 following up on the status of "Held for cable" (facilities issues) on exactly the types
21 of loops that Covad orders from BellSouth. I also worked specifically with ISDN
22 loops over fiber, so I know how long it really takes to provision these loops. Well-

1 trained technicians can perform all the provisioning activities necessary for xDSL
2 loops in three days. Remember, provisioning an xDSL loop is exactly like
3 provisioning a plain copper voice loop. The central office technicians run simple
4 cross connections in the central office and, when a dispatch is required, the
5 installation and maintenance technicians perform rudimentary cross connection work
6 in the field.

7

8 Moreover, when Covad experienced problems with BellSouth provisioning ISDN
9 loops for Covad's xDSL service, I personally worked extensively with BellSouth to
10 help train their technicians. We've gone to a lot of trouble to help BellSouth develop
11 methods and procedures for provisioning these loops, just to insure that Covad could
12 get timely loop delivery. All of that information is now in BellSouth's hands and it
13 has been for over a year. That is more than adequate time to train its personnel to
14 deliver functional loops in a timely manner.

15 **Q. When you worked for Bell Atlantic, were there set loop delivery intervals which**
16 **technicians had to meet?**

17 **A.** Yes. In fact, set loop delivery intervals are invaluable to driving improvement in
18 work steps and processes internally at an incumbent carrier. Additionally, a firm and
19 established delivery interval allows all parties to know what they are working toward
20 and what is expected.

1 **ISSUE 5(c): WHAT SHOULD BE THE APPROPRIATE INTERVAL FOR**
2 **BELLSOUTH TO "DECONDITION" (I.E., REMOVE LOAD COILS OR BRIDGED**
3 **TAP) LOOPS REQUESTED BY COVAD?**

4 **Q. Can conditioning work be performed in 5 business days, as advocated by**
5 **Covad?**

6 **A. Yes. I've personally conditioned and overseen the conditioning of thousands of**
7 **loops. This is typical, everyday maintenance work done by incumbent carriers. Five**
8 **business days is ample time to conduct this work.**

9

10 **ISSUE 8: WHEN COVAD REPORTS A TROUBLE ON A LOOP WHERE, AFTER**
11 **BELLSOUTH DISPATCHES A TECHNICIAN TO FIX THE TROUBLE, NO**
12 **TROUBLE IS FOUND BUT LATER TROUBLE IS IDENTIFIED ON THAT LOOP**
13 **THAT SHOULD HAVE BEEN ADDRESSED DURING BELLSOUTH'S FIRST**
14 **DISPATCH, SHOULD COVAD PAY FOR BELLSOUTH'S COSTS OF THE**
15 **DISPATCH AND TESTING BEFORE THE TROUBLE IS IDENTIFIED?**

16 **Q. Explain this issue.**

17 **A. Covad wants to be credited for trouble tickets BellSouth closes because it reports "no**
18 **trouble found" -- when BellSouth later does find and acknowledges a problem with**
19 **their loop.**

20 **Q. Why is this issue important to Covad?**

21 **A. Several reasons. First, when Covad reports a trouble on a circuit, that means that a**
22 **Covad customer's DSL line is not working. As a young company, we are working**

1 hard to generate high customer satisfaction and good will. Therefore, we need to
2 resolve trouble situations as quickly as possible. To do so, Covad first conducts a
3 series of tests through its equipment to determine where the trouble lies. Once Covad
4 identifies that the problem is in the BellSouth loop, Covad opens a trouble ticket with
5 BellSouth.

6

7 On repairs, BellSouth charges Covad each time it opens a trouble ticket and reports
8 that "no trouble is found." That means BellSouth technicians, either in the UNE
9 Center or in the field, have closed the trouble ticket and have not identified a
10 problem. There are numerous instances in which Covad has opened 2, 3 or more
11 trouble tickets on a single loop, only to have those trouble tickets closed by
12 BellSouth without repairing the problem. To add insult to injury, Covad is then
13 charged for those trouble tickets.

14

15 Covad has identified these instances because many times Covad requests a "vendor
16 meet" with BellSouth where BellSouth and Covad technicians actually meet and try
17 to resolve problems. With Covad technicians present, BellSouth routinely admits
18 that it failed to check the cross box connections on earlier trouble tickets or otherwise
19 failed to attempt to repair the loop. That means BellSouth erroneously closed the
20 trouble ticket, reporting "no trouble found." Later, when BellSouth checked the loop
21 as it is supposed to do, BellSouth found the problem.

1 What Covad proposes is simple. When BellSouth identifies and resolves a trouble
2 ticket with Covad, Covad will not have to pay for any trouble tickets on that same
3 loop that were closed because "no trouble was found." That way, BellSouth has an
4 incentive to identify and resolve trouble tickets the first time. Also, this ensures that
5 Covad is not penalized for BellSouth's failure to identify and resolve problems in a
6 timely fashion.

7

8 Remember, the entire time BellSouth is erroneously closing trouble tickets, Covad's
9 customer is without DSL service. Covad has no incentive to open trouble tickets
10 when no problem exists on the loop.

11

12 **ISSUE 25: IN THE EVENT COVAD DESIRES TO TERMINATE ITS**
13 **OCCUPATION OF A COLLOCATION SPACE, AND IF THERE IS A WAITING**
14 **LIST FOR SPACE IN THAT CENTRAL OFFICE, SHOULD BELLSOUTH NOTIFY**
15 **THE NEXT ALEC ON THE WAITING LIST TO GIVE THAT ALEC THE**
16 **OPPORTUNITY TO TAKE THAT SPACE AS CONFIGURED BY COVAD (SUCH**
17 **AS RACKS, CONDUITS, ETC.), THEREBY RELIEVING COVAD OF ITS**
18 **OBLIGATION TO COMPLETELY VACATE THE SPACE?**

19 **Q. Please describe why this issue is important to Covad.**

20 **A Covad is attempting to get BellSouth to act as a reasonable landlord would act.**
21 When Covad elects to exit its collocation space, for whatever reason, there is an
22 opportunity for another ALEC to take over that space in a very short interval and at

1 very low costs. Essentially, Covad has already paid for the racking and other space
2 preparation necessary to support ALEC facilities. BellSouth's contract proposal
3 would require Covad to remove all its equipment from the central office, including
4 bays, racking -- everything. That means that if BellSouth put Covad in the very end
5 of a huge unprepared space, Covad could have to remove racking for that entire
6 space. This could be quite expensive for Covad.

7
8 Additionally, it seems incredibly wasteful to tear down essential racking or bays that
9 another ALEC may want to use.

10
11 Covad merely wants to retain the right to find another ALEC interested in acquiring
12 the space from Covad. That way Covad could negotiate privately with the other
13 ALEC to sell its equipment and could be relieved of the obligation to restore the
14 space to its original condition. Despite what BellSouth said in its response to
15 Covad's petition, Covad does not want (and would not ask) BellSouth to broker its
16 equipment. Nonetheless, BellSouth is the only party that has information about
17 ALECs seeking entrance to a particular central office. Thus, Covad asks that
18 BellSouth send a simple email to ALECs on the waiting list, asking them to contact
19 Covad about acquiring Covad's space. Then, BellSouth will be out of the transaction
20 altogether.

1 Just like a normal landlord is interested in filling empty apartments, BellSouth could
2 facilitate the transfer of space from one ALEC to another through this simple
3 procedure. This would save Covad and other ALECs money and would eliminate
4 wasteful removal of equipment that another ALEC will simply have to reinstall.

5

6 **ISSUE 30: SHOULD BELLSOUTH RESOLVE ALL LOOP "FACILITIES" ISSUES**
7 **WITHIN THIRTY DAYS OF RECEIVING A COMPLETE AND CORRECT LOCAL**
8 **SERVICE REQUEST FROM COVAD?**

9 **Q. What does Covad propose with respect to resolving facilities issues?**

10 A. Covad's proposal is simple. BellSouth should be required to resolve loop facilities
11 issues within 30 days. Covad needs a firm time interval for resolution of these issues
12 so that Covad personnel can follow up with BellSouth to ensure that loop orders do
13 not drop off into the back hole known as "pending facilities."

14

15 When BellSouth encounters a facility issue with a Covad loop order, BellSouth
16 informs Covad that the order is "pending facilities." That could mean many things:
17 (1) there is no copper to that particular area; (2) there is a problem with the cable
18 somewhere; or (3) a variety of other issues. I personally have seen orders fall into
19 that black hole, and remain there for months. No one at BellSouth seems to be
20 accountable for attempting to resolve these issues in a timely manner. Establishing
21 the 30-day interval Covad proposes will do exactly that.

1 **Q. Why does Covad need a 30-day interval?**

2 A. This is a reasonable amount of time. BellSouth proposes that it will treat Covad
3 facilities issues in the same time frame as it resolves its own. The problem with this
4 is that no one knows how long it takes BellSouth to resolve its own facilities
5 problems. It is extremely difficult to build a business and to deliver customer
6 satisfaction with uncertain time frames like BellSouth proposes. A set facilities
7 resolution interval benefits everyone by ensuring that both Covad and BellSouth
8 understand what is expected.

9 **Q. Does this conclude your direct testimony?**

10 A. Yes.

1 **Q. What is your name and by whom are you employed?**

2 A. My name is William Seeger and I am employed as a Program Manager in the
3 Network Deployment group at Covad Communications Company ("Covad"). My
4 business address is 2650 Military Trail, Suite 200, Boca Raton, Florida 33431.

5 **Q. Please describe your responsibilities as a Program Manager in the Network
6 Deployment Group at Covad.**

7 A. I am responsible for Central Office space acceptance, ordering, and applications
8 from ILECs (BellSouth, GTE/Verizon, and Sprint) in the Southern region: Georgia,
9 Florida, North Carolina, South Carolina, Tennessee, Kentucky and Louisiana.

10 **Q. What is the purpose of your rebuttal testimony?**

11 A. The purpose of this testimony is to respond to issues raised by BellSouth witnesses
12 Jerry Kephart, Jerry Latham, and Tommy Williams in their direct testimony.

13 **Issue 5(a): WHAT IS THE APPROPRIATE INTERVAL FOR BELLSOUTH TO**
14 **PROVISION AN UNBUNDLED VOICE-GRADE LOOP, ADSL, HDSL, OR UCL**
15 **FOR COVAD?**

16 **Q. Do you agree with Mr. Latham that extra time is required for physical cross-
17 connections rather than software translations?**

18 A. No. I worked in the central office environment for many years. The physical cross-
19 connection takes a few minutes, 10 minutes at the very most. A cross-connection
20 consists of running a wire from the Covad OVC/DS0 block on the mainframe to the
21 associated pair and cable. The longest connection in BellSouth territory is
22 approximately 100 feet. On the average, the longest connection is approximately

1 30 feet. The physical act of wiring is not a time consuming process. A BellSouth
2 technician would then have to update COSMOS. That would take another few
3 minutes, at the most. A BellSouth central office technician making a cross-
4 connection to Covad's equipment should not add days to the loop delivery interval.

5 **ISSUE 5(b): WHAT IS THE APPROPRIATE INTERVAL FOR BELLSOUTH TO**
6 **PROVISION AN IDSL-COMPATIBLE LOOP FOR COVAD?**

7 **Q. Do you agree that provisioning an IDSL-compatible loop should take 10**
8 **business days?**

9 A. No. BellSouth wants an extra four days because these loops require a specialized
10 line card and must be provided on certain slots in the DLC. I have personally
11 installed cards in Covad DSLAMs in Florida. This process requires no more than
12 10 minutes in the central office and one hour maximum in the remote terminal.
13 When I worked as a NYNEX technician, I installed SLC 96 (a type of digital loop
14 carrier system) cards in both central offices and remote terminals and this is not a
15 time consuming process. It entails simply putting a line card in a specific slot on
16 the DLC unit. The necessary work does not justify adding four business days to the
17 interval.

18 **Issue 5(c): WHAT SHOULD BE THE APPROPRIATE INTERVAL FOR**
19 **BELLSOUTH TO "DECONDITION" (I.E., REMOVE LOAD COILS OR**
20 **BRIDGED TAP) LOOPS REQUESTED BY COVAD?**

21 **Q. Do you agree with Mr. Latham's assessment regarding the number of days it**
22 **takes to decondition a loop?**

1 A. No. The first thing a BellSouth technician should do when it is determined that the
2 requested loop needs conditioning is to look for a clean loop. While working for
3 NYNEX, when I installed ISDN lines (which also required clean loops), and no
4 clean facilities were available, I would make an attempt to find clean facilities by
5 going into the closest terminal, identifying other working numbers in those
6 terminals, checking to see if any were clean, and then attempting to do a line station
7 transfer, thus freeing up a clean pair.

8 If conditioning is required, that work is routine and can easily be
9 accomplished in five days. Mr. Latham states that BellSouth needs 10 days to
10 decondition aerial facilities. I disagree. When I was a repair technician at NYNEX,
11 I removed multiple cross-connections and multiple drop wires (i.e., bridged tap).
12 The process took approximately 2 hours from start to finish. The physical act of
13 deconditioning is performed during the technician's daily workload. If you add a
14 day for plant engineering to determine how many load coils are involved and where
15 they are (although the task would never take even close to 8 hours), and another day
16 to schedule it into the technician's work load, it would still take only 3 days to
17 condition a loop. Therefore, Covad's proposed 5-day interval is more than
18 adequate time. I do not see why BellSouth needs 10 days and BellSouth does not
19 explain the rationale of the time they propose. As for buried plant and underground
20 plant, BellSouth suggests 15 and 30 days, respectively. Again, I disagree. The
21 actual point of where the bridged tap or load coil would be "buried" would not be
22 placed where they need fifteen days to access it. In Florida, when loops are buried,

1 they typically are only 3 inches underground. As for underground plant, the 30
2 days proposed by BellSouth is totally unreasonable. I cannot imagine the work
3 would ever take more than part of a single day. Even with engineering and
4 scheduling, 30 days to accomplish this is excessive.

5 **Issue 7(a): WHEN BELLSOUTH PROVISIONS A NON DESIGNED xDSL LOOP,**
6 **UNDER WHAT TERMS, CONDITIONS AND COSTS, IF ANY, SHOULD**
7 **BELLSOUTH BE OBLIGATED TO PARTICIPATE IN JOINT ACCEPTANCE**
8 **TESTING TO ENSURE THE LOOP IS PROPERLY PROVISIONED?**

9 **Q. Do you agree with Mr. Kephart that BellSouth should charge Covad for time**
10 **and materials to do Joint Acceptance Testing?**

11 **A.** No. When I managed field service technicians for Covad in Florida, many times
12 my technicians were forced to call BellSouth to open a trouble ticket because the
13 loop was not tagged, was defective, had excessive metallic noise (meaning there
14 was a short or ground on line) and lack of connectivity. Nonetheless, BellSouth
15 dropped those loops as "good." Therefore, Joint Acceptance Testing of all loops
16 is crucial. Joint Acceptance Testing ensures that loops that are not functioning
17 properly get fixed during the provisioning process, rather than requiring resolution
18 of the problem problems in the repair and maintenance process, which could add
19 many more days to provision a working loop to the customer. In theory, BellSouth
20 tests their own loops with a CAT access terminal which gives them a read out on
21 the line. Therefore, if BellSouth does it for their own customers, they should also
22 do the same for Covad. Joint Acceptance Testing should not cost additional time

1 and materials as it's a simple task which consists of the BellSouth technician
2 calling Covad and Covad running the loop test while the BellSouth technician is
3 still at the network interface device ("NID").

4 The bottom line is that my experience with BellSouth has shown that we
5 need a joint process to deliver loops on the BellSouth side and to accept them on
6 the Covad side to ensure they are working when delivered.

7 **Issue 23: SHOULD COVAD HAVE ACCESS TO ALL POINTS ON THE LINE**
8 **SHARED LOOP?**

9 **Q. Do you agree with Mr. Williams' statement that to allow individuals not**
10 **employed by BellSouth to perform work at its frame is a potential risk?**

11 A. No. Covad does not want to do wiring on the MDF, we only want to be able to test.
12 Therefore, Mr. Williams' statement regarding Covad technicians causing a potential
13 risk is not relevant. Covad technicians are held accountable by Covad just as
14 BellSouth technicians are held accountable to BellSouth. Covad technicians are
15 instructed not to tamper with any BellSouth owned or maintained equipment and
16 they would not alter or remove any BellSouth connections without BellSouth's
17 approval. Furthermore, my technicians have as much interest in maintaining
18 BellSouth's network as BellSouth does. After all, Covad's service depends on a
19 functional BellSouth network. If the BellSouth network is disrupted, Covad's
20 service will not work either. Thus, we share BellSouth's need to maintain network
21 security.

22 **Issue 30: SHOULD BELL SOUTH RESOLVE ALL LOOP "FACILITIES" ISSUES**

1 **WITHIN THIRTY DAYS OF RECEIVING A COMPLETE AND CORRECT LSR?**

2 **Q. Do you agree with Mr. Kephart's statement that it is not reasonable to place**
3 **an arbitrary, artificial time limit on when facilities issues can be resolved?**

4 A. Covad is not requesting an arbitrary time limit to resolve facilities issues. We
5 believe that 30 days is more than reasonable.

6 We need to set a specific interval so BellSouth will resolve the problem. If
7 there is not a fixed date, the problem will drop off into the "black hole known as
8 pending facilities," as I stated in my direct testimony. BellSouth states that facility
9 problems are handled for ALECs using the same procedure BellSouth uses. The
10 problem with that is that we do not know how long BellSouth takes to resolve their
11 own facility issues.

12 Covad has placed hundreds of orders with BellSouth that were held
13 "pending facilities." Because there is no deadline to fill these orders, many linger
14 for days or even months before either Covad or the customer cancels them. All we
15 are trying to do is to get BellSouth to focus on resolving these issues in a timely
16 way. Without a clean cut interval, BellSouth will never resolve the problems in a
17 way that enables Covad to deliver customer satisfaction.

18 The first thing a BellSouth technician should do when encountering a
19 facilities issue is to check the local terminal for spare facilities. For an underground
20 facility, the technician should check 10 pairs in each direction from the facility in
21 question. As a NYNEX technician, I usually worked in the same area and over
22 time became quite familiar with facilities in the cross box and the BellSouth

1 technicians should be the same. Therefore, it is not unreasonable to test multiple
2 pairs to see if anything looks good. The second step, if there are no pairs available,
3 would be to attempt to perform a line station transfer. Even if the BellSouth
4 technician were to go that route, it certainly would not take 30 days. In other cases,
5 there may be no clean facilities in the terminal or no facilities at all. In any of these
6 situations, BellSouth should be able to resolve the problem in 30 days. Covad has
7 discussed with BellSouth setting specific intervals based on the specific type of
8 facility problem, but the parties have not yet reached agreement on this issue.

9 **Q. Does this conclude your rebuttal testimony?**

10 **A. Yes.**

11

1 BY MS. BOONE:

2 Q And have you prepared a brief summary?

3 A Yes, I have.

4 Q Please give it.

5 A I was the field operations manager in the Miami
6 region, which covers from Coral Gables to West Palm Beach, from
7 June of 1999 until moving on to network planning, where I'm
8 currently working, in April of 2000. Prior to my work at
9 Covad, I was employed by NY Telephone Company/NYNEX/Bell
10 Atlantic, now Verizon, for 33 years in many capacities,
11 including field installation, repair, and central office
12 switching. In summary of my testimony and rebuttal, I would
13 like to give a brief statement on what I consider to be key
14 points on five issues.

15 On the Issues 5(a) and (b), interval for voice grade
16 loop, three days should be sufficient time for BellSouth to
17 wire the central office and dispatch and still meet their
18 forced to load requirements. In my time with Bell, it was my
19 experience that this was adequate time to provision and deliver
20 a loop that was ISDN compatible. It's no great mystery. You
21 process the order, provision the loop, schedule, roll the truck
22 to install the line, then perform a joint acceptance test to
23 make sure the line is working properly. This work can easily
24 be accomplished in three days. These intervals are crucial to
25 Covad for the same reasons that they offer BellSouth. Bell

1 promises its retail customers delivery of POTS and special
2 services based upon defined intervals. Their operating and
3 business office personnel make staffing, provisioning,
4 inventory, and consumable management decisions based on these
5 intervals. If Bell acknowledges their own requirements using
6 critical data, critical date scheduling and plans, it seems
7 anticompetitive that they are denying the same information to
8 wholesale customers.

9 As far as IDSL loops, BellSouth can provision an IDSL
10 compatible loop in five business days or less by maintaining
11 proper DLC carrier records and assigning IDSL properly and by
12 properly training their field and central office personnel in
13 testing, installation, and diagnostic procedures.

14 For Issue 7, joint acceptance testing. I would like
15 to point out that joint acceptance testing is a service that's
16 provided by Covad to the ILECs, not just BellSouth. Since the
17 ILECs cannot test stand-alone UNEs because they are
18 nonswitched, Covad, through our test equipment, provides the
19 service to Bell. We are only looking for BellSouth to provide
20 working loops the first time out. Joint acceptance testing
21 will ensure that they deliver that.

22 On Issue 8, repeat trouble tickets cost Covad money
23 and customer satisfaction. We do not gain anything by
24 submitting false trouble reports. Bell, however, is measured
25 by the Public Service Commission on trouble tickets and time to

1 repair the same. I've seen ILECs close tickets as no trouble
2 found in my past just to get rid of the tickets and clear the
3 report clock. Verizon used to scrub tickets by having office
4 and technical people attempt to close tickets remotely, and
5 then giving them a no trouble found status. Inevitably, these
6 troubles returned later and had to be cleared through a
7 dispatch. Why should the customer, which is Covad, have to pay
8 the cost if a Bell tech fails to identify a trouble?

9 Actually, if we must pay a fee, it works to
10 BellSouth's advantage to not find any trouble or even close out
11 as no trouble found if a trouble was actually found. When a
12 circuit is not turned up, Covad install techs attempt to sink a
13 router and pass traffic from our demark in the central office.
14 If this works in the CO and not at the customer's demark, the
15 only place in between is Bell's network.

16 On Issue 25, space preparation. If Covad vacates a
17 space, Bell is potentially going to charge another ALEC the
18 same fee it has collected from Covad, and Bell hasn't even done
19 anything. All we want is a fair shot at trying to avoid
20 unnecessary expenses, and BellSouth would not be losing
21 anything.

22 And for Issue 30, Covad's proposal of a 30-day
23 interval for Bell to resolve facility issues is a fair interval
24 and would ensure that orders not get lost in the PF bucket. I
25 have personally seen orders in the Miami and Boca Raton areas

1 delay service to potential Covad customers for over 30 days
2 almost resulting in the cancellation of service requests. Bell
3 needs to have some form of penalty or else they can and will
4 stall in their obligations. I know that Bell can repair most
5 facility issues with 7 days and within 30 days if construction
6 is required. That concludes my summary.

7 MS. BOONE: Mr. Seeger is available for cross
8 examination.

9 COMMISSIONER JABER: Mr. Twomey, are you doing the
10 cross examination?

11 MR. TWOMEY: Yes. Thank you.

12 CROSS EXAMINATION

13 BY MR. TWOMEY:

14 Q Mr. Seeger, good afternoon. My name is Mike Twomey;
15 I represent BellSouth.

16 A Good afternoon.

17 Q Just very quickly, you were working for Verizon, I
18 guess, before you retired from the Bell system; correct?

19 A Well, I actually retired the company at that time I
20 think was Bell Atlantic.

21 Q It was still Bell Atlantic. That was in 1998; is
22 that right?

23 A Yes, correct.

24 Q Okay. Did you provision -- were you responsible for
25 provisioning unbundled loops to CLECs anytime between 1996 and

1 1998?

2 A No.

3 Q And you didn't provision any xDSL-capable loops while
4 you were at Bell Atlantic before you retired either, did you?

5 A No, xDSL, no. ISDN, yes.

6 Q Would it be fair to say that one of the fundamental
7 assumptions in your testimony is that BellSouth and Bell
8 Atlantic have the same practices and procedures for
9 provisioning the loops and doing the things that Covad wants
10 done?

11 A Yes, I would assume so.

12 Q What kind of an analysis of BellSouth's systems and
13 procedures and practices have you done to lead you to that
14 conclusion?

15 A Well, I've dealt with -- as the operations manager, I
16 dealt directly with BellSouth's UNE center in Birmingham in
17 resolving installation and repair tickets and troubles.

18 Q In your analysis you have determined, have you not,
19 that there are differences in the way that BellSouth provisions
20 loops to wholesale providers than the way that Bell Atlantic
21 does; is that right?

22 A Yes.

23 Q I want to talk about collocation departures first;
24 that's Issue 25. That's the issue of BellSouth -- or Covad
25 notifying BellSouth that it wants to leave its collocation

1 space.

2 A Yes.

3 Q BellSouth has intervals that it must meet in order to
4 provide collocation space; correct?

5 A Yes.

6 Q So if a CLEC comes to BellSouth and wants collocation
7 space, BellSouth has specific time periods within which this
8 Commission and the FCC have determined that those things must
9 be accomplished; correct?

10 A That's correct.

11 Q Would you agree with me that Covad's proposal that
12 BellSouth allow Covad some period of time to try to find a
13 suitable replacement could impact the interval within which
14 BellSouth could provide collocation space?

15 A Yes. But I don't think we're looking for some time
16 to just randomly look for someone to take our place. What
17 we're stating is that if there is a list, a waiting list of
18 another ALEC that is willing -- that wants to get into that
19 office that was, therefore, denied because of space
20 limitations, all we want, give us the number one name on the
21 list, and let us have the opportunity to contact them to see if
22 they are willing to take our space as is, and thus, saving us
23 the cost of removing our equipment, racking and everything
24 else, and it also saves BellSouth the cost of having to rebuild
25 it.

1 Q Okay. Assuming the number one ALEC on the list is
2 willing to take the space but it takes you a week to go back
3 and forth with the ALEC to work out the details, is it your
4 position that that week should be added to BellSouth's
5 intervals so that they are not penalized by allowing you to do
6 this?

7 A I honestly haven't thought of it. Yes, I would say
8 that that's reasonable.

9 Q That has not been part of Covad's proposal to date;
10 correct?

11 A No.

12 Q Now, in the event that there's a CLEC, an ALEC on the
13 list, number one, who does not need the space configured the
14 way Covad wants it, but the second ALEC on the list wants the
15 space exactly the way that Covad wants it, Covad is not
16 suggesting that we jump over number one and go to number two;
17 right?

18 A No, absolutely not.

19 Q If BellSouth were willing to simply send an e-mail to
20 the first ALEC on the waiting list and advise that ALEC that
21 Covad was moving out of space, here's Covad's phone number,
22 call them and see if you-all can work something out, would that
23 be acceptable to Covad to resolve this issue?

24 A I think it would be, yes, if Covad was copied on the
25 e-mail.

1 Q Covad recognizes, of course, that there are
2 proprietary -- that there are confidentiality requirements that
3 BellSouth not identify that next ALEC to you unless they desire
4 to be identified.

5 A That's correct.

6 Q Okay. You acknowledge, right, that BellSouth's
7 existing retail customers may have orders that would go into a
8 pending facilities status for service?

9 A Yes.

10 Q Of course, I'm talking about Issue 30. Is Covad
11 willing to accept the same treatment for its wholesale services
12 that BellSouth offers to its retail services with regard to
13 pending facilities?

14 A I would have to say yes.

15 Q So if BellSouth does not provide customers with a
16 guarantee that a pending facility problem will be resolved
17 within 30 days, Covad would be willing to accept that same
18 nonguarantee; correct?

19 A Well, thinking back, we are -- I think what -- all we
20 are asking for is a defined interval of when these facilities
21 are going to be repaired. Stating it generally like you say,
22 it could be someone who lives, I don't know, in the middle of
23 the swamps, and they can't provide service to them. They are
24 going to fall into a pending facility, wholesale, retail,
25 whatever, and that could take months with no defined interval.

1 We're not asking for that, because for Covad's position, I
2 don't think that those customers would be looking for our
3 services.

4 Q Let me make sure -- I'm a little confused now. I
5 thought I understood your position in response to the last
6 question. Is Covad willing to accept the same status with
7 respect to pending facilities that BellSouth's retail customers
8 have? And that's a yes or no, and then explain.

9 A No.

10 Q Was there some part of my question --

11 A Yes, the first time I answered without thinking it --
12 thinking all of the ramifications through.

13 COMMISSIONER PALECKI: Let me try to clarify that.
14 So what you're saying is, you want a 30-day time period for
15 Covad customers, and you think that BellSouth customers should
16 have the same treatment.

17 THE WITNESS: That's correct.

18 COMMISSIONER PALECKI: But you want a defined period.

19 THE WITNESS: Yes, sir, we do.

20 COMMISSIONER PALECKI: And you understand that you
21 will receive no better service than BellSouth.

22 THE WITNESS: That is correct.

23 COMMISSIONER PALECKI: But you think BellSouth also,
24 their customers should have a defined period as well.

25 THE WITNESS: Yes.

1 BY MR. TWOMEY:

2 Q With your experience in the telephone industry, I'm
3 sure you recognize that there could be a circumstance where,
4 because of a lack of facilities or a lack of working
5 facilities, no matter what BellSouth does, it may not be able
6 to clear a pending facilities in, for example, 40 days. That's
7 happened to you perhaps before, hasn't it?

8 A Yes, it has.

9 Q What are you proposing BellSouth do in a circumstance
10 where it simply is impossible to provide -- clear the pending
11 facilities within 30 days?

12 A I think they should contact Covad and any customer.
13 And in our instance, contact Covad and we could -- let us know
14 what the extenuating circumstances are; then, therefore, we can
15 notify our customer. It all comes down to our customer
16 satisfaction, that we have to give our customer some answer
17 instead of the just, quote, it's a Bell problem. If we can
18 give them a specific answer, I'm sure those onesie-twasie
19 situations could be worked out.

20 Q So if BellSouth were willing to agree to language in
21 the contract that said that we will contact you and explain the
22 situation, that would be sufficient for you to close this
23 issue?

24 A With a defined interval -- with a defined 30-day
25 interval, yes.

1 Q And a -- well, let me --

2 A And a commitment to discuss extenuating
3 circumstances.

4 COMMISSIONER PALECKI: Would you have any problem
5 with an exception to the 30-day period, or whatever the defined
6 interval is, where there are extenuating circumstances that
7 would make the time period impossible to comply with?
8 Obviously, it seems as if you agree, there are times when even
9 40 days cannot be complied with because of extenuating
10 circumstances. So we would need an exception, would we not?

11 THE WITNESS: Yes, we would.

12 COMMISSIONER PALECKI: So you would have no problem
13 with generally a 30- or 40-day defined period, except in such
14 cases where there are extenuating circumstances that make that
15 period impossible to comply with?

16 THE WITNESS: Yes, that would be fine as long as
17 those extenuating circumstances didn't come up every time. And
18 if you leave -- in my experience with ILECs working for and
19 working for a CLEC, if you give them an inch, they're going to
20 take the inch plus. So if we leave a door open without giving
21 them a defined, firm interval, they're going to take it, and
22 they're going to -- extenuating circumstances are going to tend
23 to crop up all the time. And if there is something, then at
24 least we can go back to the Commission and say, hey, wait a
25 minute, this is not fair.

1 COMMISSIONER PALECKI: Well, you answered a question
2 earlier that there were days -- or there were circumstances
3 where even 40 days could not be complied with. It was just
4 impossible. What are some of the circumstances that you've
5 seen that make that time limitation not meetable?

6 THE WITNESS: If, for instance, Bell was going to
7 recondition their outside plant, okay, or if they were doing a
8 fiber project to a certain region, and that region could be all
9 60, 70-year-old copper. Right now, the plan is to deploy fiber
10 in two months. I wouldn't expect Bell to go out and
11 recondition their copper plant when I know in two months
12 they're going to deploy fiber. That would be one kind of an
13 example. When they have it scheduled in their plans that, hey,
14 we are going to recondition our plant, I think that's
15 understandable that they wouldn't be required to recondition
16 something that would be outdated or would be done away with.

17 COMMISSIONER PALECKI: Would it be impossible to
18 enumerate those circumstances generally where the specified
19 time limitation would not apply? Would that be a solution to
20 our dilemma here?

21 THE WITNESS: Yes, but --

22 COMMISSIONER PALECKI: Because, obviously, there are
23 circumstances where the specific time period that you want just
24 should not apply.

25 THE WITNESS: That should not apply?

1 COMMISSIONER PALECKI: Well, you just named two of
2 them.

3 THE WITNESS: Yes, but those are few and far between.
4 The majority of the instances, especially with a pending
5 facilities, or held for cable on an installation order, they
6 can be repaired within seven days with no problem. If it's
7 just a simple -- I'd say -- you would have an instance where
8 you could have a certain cable with "X" amount of defective
9 pairs in that cable, and those pairs could be repaired, either
10 F1 or F2 pairs. They could be repaired by -- and I know with
11 NYNEX/Verizon, we had crews that were just assigned to that.
12 All they did was held-for-cable orders. And they went out and
13 that was their job for the day. They went out and made those
14 pairs good, fixed them, released the orders, no problems. And
15 the greater majority, to me, from what I've seen of the pending
16 facilities fall into that category.

17 COMMISSIONER PALECKI: It seems to me as a
18 Commissioner that Covad and BellSouth should be able to develop
19 some language that would generally put in place a specified
20 time period as you are asking for, but that would allow
21 BellSouth an out under those unusual circumstances where it was
22 simply impossible to meet the specified time limit. And I just
23 don't see why this has to be such a difficult issue to come to
24 an agreement on.

25 THE WITNESS: I don't think it is a difficult issue

1 from Covad's standpoint, you know, from our standpoint.

2 COMMISSIONER PALECKI: Thank you.

3 BY MR. TWOMEY:

4 Q Let me ask you, Mr. Seeger, isn't it true that to
5 date, up through today, Covad has never proposed language which
6 would allow any exception for extenuating circumstances?

7 A I don't know that.

8 Q Who else could I ask that question of?

9 A I would assume Jason Oxman would be the one who could
10 have answered that.

11 Q Was he identified as a witness on Issue 30? Well --

12 COMMISSIONER JABER: Mr. Seeger, I think he was
13 asking that question of you. Do you have a copy of the
14 prehearing order?

15 THE WITNESS: No, I don't.

16 BY MR. TWOMEY:

17 Q Okay. Let me just ask you to accept, subject to
18 check, that he was not identified as a witness on Issue 30.

19 A Excuse me? I --

20 Q Let me ask you to accept, subject to check, that he
21 was not identified as a witness on Issue 30.

22 A Yes.

23 MR. TWOMEY: Okay. That's all I have for this
24 witness.

25 COMMISSIONER JABER: Commissioners.

1 COMMISSIONER PALECKI: Nothing further.

2 COMMISSIONER JABER: Staff.

3 MS. BANKS: Staff has nothing.

4 COMMISSIONER JABER: Ms. Boone.

5 REDIRECT EXAMINATION

6 BY MS. BOONE:

7 Q I'd like to follow up on Commissioner Palecki's
8 question by handing you Mr. Allen's rebuttal testimony. Can
9 you turn to Page 29 of that testimony and look at Line 7? Have
10 you done that?

11 A Yes.

12 Q Could you please summarize for the Commissioners what
13 it was that Covad said in that piece of Mr. Allen's testimony.

14 A What he's saying in his testimony is that it should
15 not take more than seven calendar days to clear a defective
16 cable pair and make facilities available. Let me -- for a
17 facility exhaust condition, the interval should be 30 calendar
18 days. And for new construction, the interval should be the
19 same as that BellSouth quotes for its retail POTS service.

20 Q Okay. Mr. Twomey asked you some questions about when
21 you left Bell Atlantic and what kind of work you had done
22 there. Can you tell the Commission if there is anything
23 different about provisioning unbundled loops for Covad than
24 there is from provisioning loops for Bell Atlantic?

25 A No, no difference.

1 Q And then on Issue 25, the collocation issue,
2 Mr. Twomey asked you whether this discussion between Covad and
3 one of the ALECs on the waiting list would take up time in
4 BellSouth's collocation interval. Do you remember those
5 questions?

6 A Yes.

7 Q Now, if Covad has the space and Covad holds the
8 space, is the interval for delivering space to a new ALEC, has
9 that even started to tick yet?

10 A No.

11 Q So if Covad were discussing with an ALEC on the
12 waiting list about taking over space, would that have any
13 impact?

14 A It would have no impact at all on BellSouth.

15 MS. BOONE: Thank you. That's all.

16 COMMISSIONER JABER: There are no exhibits for
17 Mr. Seeger. And thank you, Mr. Seeger, for your testimony.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 (Transcript continues in sequence with Volume 3.)

21 - - - - -

22

23

24

25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

8

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

14

15 I FURTHER CERTIFY that I am not a relative, employee,
16 attorney or counsel of any of the parties, nor am I a relative
17 or employee of any of the parties' attorneys or counsel
18 connected with the action, nor am I financially interested in
19 the action.

20

21 DATED THIS 5TH DAY OF JULY, 2001.

22

23

Tricia DeMarte

24

TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736

25

26

27

28

29

30

31

32

33

34