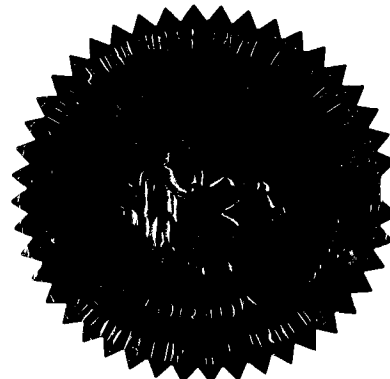


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010098-TP

In the Matter of

PETITION BY FLORIDA DIGITAL NETWORK,
INC. FOR ARBITRATION OF CERTAIN
TERMS AND CONDITIONS OF PROPOSED
INTERCONNECTION AND RESALE
AGREEMENT WITH BELLSOUTH
TELECOMMUNICATIONS, INC. UNDER THE
TELECOMMUNICATIONS ACT OF 1996.



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VOLUME 2

Pages 170 through 274

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER MICHAEL A. PALECKI

DATE: Wednesday, August 15, 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 10548 AUG 24 5

FPSC-COMMISSION CLERK

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 1.)

COMMISSIONER DEASON: Call the hearing back to order.
BellSouth.

MS. WHITE: Yes.

JOHN RUSCILLI

was called as a witness on behalf of BellSouth
Telecommunications, Inc., and, having been duly sworn,
testified as follows:

D I R E C T E X A M I N A T I O N

BY MS. WHITE:

Q Mr. Ruscilli, would you please state your name and
address.

A My name is John Ruscilli, R-U-S-C-I-L-L-I. My
address is 675 West Peachtree, Atlanta, Georgia.

Q By whom are you employed and in what capacity?

A I'm employed by BellSouth Telecommunications. I'm
senior director of state regulatory.

Q Did you cause to be prefiled in this case direct
testimony consisting of 9 pages and rebuttal testimony
consisting of 25 pages?

A Yes, I did.

Q Do you have any changes to that testimony at this
time?

A Yes, I do. This is in my rebuttal testimony on

1 Page 4, Line 21. The "Q" as in "Q" for question should be a
2 Roman Numeral IV, I-V. On Page 11, Line 22, "Page 368" should
3 be Page "370." On Page 12, Line 4, strike the word "in,"
4 that's I-N, before MCI. And on Page 14, Lines 12 through 13, I
5 have a duplicate phrase in there. So strike the phrase that
6 starts with, "May achieve higher utilization rates than the
7 circuit switched market." And that's all the changes.

8 Q If I were to ask you the same questions that are
9 contained in your direct and rebuttal testimony with the
10 corrections that you've just made, would your answers be the
11 same?

12 A Yes, they would.

13 MS. WHITE: Commissioner Deason, I'd ask that
14 Mr. Ruscilli's direct and rebuttal testimony be inserted into
15 the record as if read.

16 COMMISSIONER DEASON: Without objection, it shall be
17 so inserted.

18 BY MS. WHITE:

19 Q Mr. Ruscilli, you had no exhibits to your testimony,
20 did you?

21 A No, I did not.

22

23

24

25

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF JOHN A. RUSCILLI
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 010098-TP
5 JUNE 8, 2001
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. (“BELLSOUTH”) AND YOUR BUSINESS
9 ADDRESS.

10
11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is 675
13 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.

17
18 A. I attended the University of Alabama in Birmingham where I earned a Bachelor
19 of Science Degree in 1979 and a Master of Business Administration in 1982.
20 After graduation I began employment with South Central Bell as an Account
21 Executive in Marketing, transferring to AT&T in 1983. I joined BellSouth in late
22 1984 as an analyst in Market Research, and in late 1985 moved into the Pricing
23 and Economics organization with various responsibilities for business case
24 analysis, tariffing, demand analysis and price regulation. I served as a subject
25 matter expert on ISDN tariffing in various commission and public service

1 commission (“PSC”) staff meetings in Tennessee, Florida, North Carolina and
2 Georgia. I later moved into the State Regulatory and External Affairs
3 organization with responsibility for implementing both state price regulation
4 requirements and the provisions of the Telecommunications Act of 1996, through
5 arbitration and 271 hearing support. In July 1997, I became Director of
6 Regulatory and Legislative Affairs for BellSouth Long Distance, Inc., with
7 responsibilities that included obtaining the necessary certificates of public
8 convenience and necessity, testifying, Federal Communications Commission
9 (“FCC”) and PSC support, federal and state compliance reporting and tariffing for
10 all 50 states and the FCC. I assumed my current position in July 2000.

11
12 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

13
14 A. The purpose of my testimony is to present BellSouth’s policy positions on two
15 issues raised by Florida Digital Network, Inc. (“FDN”) in its Petition for
16 Arbitration (“Petition”) filed with the Florida Public Service Commission
17 (“Commission”) on January 23, 2001. Specifically, I respond to issues 4 and 8 as
18 contained in Appendix A of the Commission’s Order Establishing Procedure,
19 dated June 7, 2001. In addition to my testimony, BellSouth is filing the testimony
20 of Mr. Tommy Williams who will address issue 1 and Mr. Jerry Kephart who will
21 address issues 3, and 10. The parties have reached agreement on Issues 2 and 9,
22 and FDN has withdrawn Issues 5, 6, and 7 from this arbitration.

23

1 *Issue 4A: Is the issue regarding due dates for move orders as stated in 4(B) below, a*
2 *performance measure issue? If so, is it appropriate to arbitrate the issue in this*
3 *proceeding?*

4
5 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

6
7 A. In Issue 4(B) below, FDN is seeking a specific remedy that would apply if
8 BellSouth misses a due date for an FDN move order. What FDN is seeking,
9 therefore, is the establishment of a performance measurement and the imposition
10 of a penalty if BellSouth fails to meet that measurement.

11
12 The Commission has convened a generic docket in which it is considering the
13 establishment of permanent performance measurements and a penalty plan.
14 (Docket No. 000121-TP). All alternative local exchange carriers ("ALECs") that
15 may be affected by performance problems (including FDN) had the opportunity to
16 participate in that docket and offer input into the appropriate performance
17 measurements to be established and the appropriate penalties to impose when
18 these measurements are not met. The outcome of the generic performance
19 measurements docket will properly and adequately resolve this issue as raised by
20 FDN.

21
22 It would be an inefficient use of the Commission's resources to address the same
23 issues in a two-party arbitration decision that it currently is addressing in a
24 generic docket. Additionally, it would be inappropriate if one outcome is reached
25 on this issue in this two-party arbitration and another outcome is reached on this

1 issue in the generic docket. Finally, adopting FDN's position in this docket could
2 improperly result in a double-penalty for BellSouth. Assume, for example, that in
3 the generic docket the Commission adopts a performance measurement and
4 corresponding penalties that would apply to missed move orders. If BellSouth
5 subsequently misses an FDN move order, it could suffer two penalties – having to
6 provide free retail service to FDN's end user and having to comply with the
7 penalty established in the generic docket – for one incident. This is an improper
8 result that should be avoided.

9

10

11 Q. HOW DOES BELLSOUTH RECOMMEND THAT THE COMMISSION RULE
12 ON THIS ISSUE?

13

14 A. The Commission should rule that Issue 4(B) below is a performance measure
15 issue, and it should refer that issue to Docket No. 000121-TP.

16

17 ***Issue 4B: For purposes of the new BellSouth/FDN interconnection agreement, in the***
18 ***event BellSouth misses a due date for a customer move order, should BellSouth be***
19 ***required to provide retail phone service to FDN at the new address at no charge until***
20 ***the move order is completed?***

21

22 Q. PLEASE RESPOND TO FDN'S REQUEST FOR "FREE RETAIL SERVICE"
23 WHEN BELLSOUTH CANNOT MEET THE REQUIRED DUE DATE ON
24 MOVE ORDERS FOR FDN'S END USERS.

25

1 A. BellSouth is not obligated by the Act, by the FCC's rules, or by this
2 Commission's rules to provide free service to an ALEC or to an ALEC's
3 customers. Moreover, FDN's proposal is impractical and unrealistic. If
4 BellSouth is unable to establish a new UNE loop at the customer's new location
5 by the due date, it is highly unlikely that BellSouth would be able to establish
6 retail service at the same new location any sooner because the same facilities
7 would most likely be used to provide either service. This is nothing more than an
8 attempt by FDN to obtain an unwarranted and, as noted above, possibly
9 duplicative penalty from BellSouth.

10

11 Q. PLEASE RESPOND TO FDN'S ALLEGATION IN ITS PETITION THAT "IN
12 MOST CASES" BELLSOUTH MISSES A DUE DATE FOR ESTABLISHING
13 A NEW UNE LOOP AT THE CUSTOMER'S NEW LOCATON.

14

15 A. BellSouth attempts to execute all orders in a timely fashion. While there are
16 occasions when it is unable to do so, BellSouth denies that "in most cases" it
17 misses a due date for an FDN move order. In fact, a review of BellSouth's
18 performance data from January through April 2001 indicates that BellSouth met
19 the installation appointment date on 87.5% of all of FDN's orders. Additionally,
20 the vast majority (77%) of the appointments that BellSouth did not meet were
21 missed due to a situation caused by FDN's end user, not by BellSouth.

22

23 Q. HOW SHOULD THE COMMISSION DECIDE THIS ISSUE?

24

1 A. The Commission should not require BellSouth to provide free retail service when
2 it misses a due date for an FDN move order.

3

4 ***Issue 8A: Is the issue regarding due dates for move orders as stated in 8(B) below, a***
5 ***performance measure issue? If so, is it appropriate to arbitrate the issue in this***
6 ***proceeding?***

7

8 Q. WHAT IS BELLSOUTH'S POSITION REGARDING THIS ISSUE?

9

10 A. In Issue 8(B) below, FDN is seeking a specific remedy for what it apparently
11 perceives to be a problem regarding the time it takes BellSouth to fill FDN's work
12 orders. For all of the reasons I mentioned in support of BellSouth's position on
13 Issue 4(A), the Commission should refer this issue to Docket No. 000121-TP.

14

15 ***Issue 8B: For the purposes of the new BellSouth/FDN interconnection agreement,***
16 ***should BellSouth be required to allow FDN the option of a BellSouth frame attendant***
17 ***who works exclusively on FDN orders, if FDN agrees to fully fund this frame***
18 ***attendant?***

19

20 Q. PLEASE RESPOND TO FDN'S REQUEST THAT THE COMMISSION
21 ORDER BELLSOUTH TO PROVIDE FDN THE OPTION OF HAVING A
22 BELLSOUTH FRAME ATTENDANT WHO WORKS EXCLUSIVELY ON
23 FDN ORDERS.

24

1 A. BellSouth is not required under the Act, the FCC's rules, or this Commission's
2 rules to provide such option to FDN. If FDN desires such an option, it should
3 submit a request through BellSouth's Bona Fide Request ("BFR") process.
4 Through the BFR process, BellSouth can properly evaluate the feasibility of
5 FDN's request. Handling such a request through the BFR process would afford
6 BellSouth the opportunity to evaluate the many factors likely to be associated
7 with such an option, such as supervision and control, liability, union issues, wages
8 and overtime policies, and various administrative issues.

9
10 Q. IF FDN IS WILLING TO "FULLY FUND" SUCH A FRAME ATTENDANT,
11 WHY IS BELLSOUTH NOT WILLING TO OFFER THIS OPTION TO FDN?

12
13 A. The issue is whether BellSouth should be required to include such an option in the
14 new BellSouth/FDN interconnection agreement. Frame attendants simply are not
15 "network elements" that BellSouth is required to unbundle, nor are they necessary
16 on a per ALEC basis for interconnection and resale. If Congress, the FCC, or the
17 Florida Legislature felt it necessary to obligate incumbent local exchange carriers
18 ("ILECs") to dedicate personnel to individual ALECs, they would have clearly
19 expressed such a requirement. They have not done so, and BellSouth simply is
20 not obligated to offer FDN "a BellSouth employed technician dedicated to FDN
21 cutovers."

22
23 Additionally, there are numerous practical ramifications that must be considered.
24 If BellSouth provided a technician dedicated to FDN cutovers, for example, it
25 would be obligated to offer a technician dedicated to cutovers for other ALECs.

1 This could lead to significant workforce administration issues. For instance, how
2 is BellSouth supposed to handle a situation in which ALEC 1, which has not paid
3 for or authorized overtime, has more work than its dedicated technician can
4 handle, while ALEC 2's dedicated technician does not have a full workload?
5 How is BellSouth supposed to handle the union issue that could arise if the
6 technician dedicated to ALEC 2 asks for the opportunity to work overtime like his
7 coworkers? Can BellSouth assign ALEC 2's dedicated technician overtime and
8 have the technician work on ALEC 1 orders or on BellSouth's own orders?

9
10 Furthermore, requiring BellSouth to provide frame attendants dedicated to
11 particular ALECs could result in the need for expanded parking spaces and work
12 areas. Who is going to fund those expansions? Moreover, ALEC 1's technician
13 may need a vehicle to travel from a frame in one central office to a frame in
14 another central office. This leaves fewer vehicles for ALEC 2's technician and
15 for BellSouth's general body of technicians to use, and this could lead to the need
16 for more vehicles. Who is going to pay for the additional vehicles? Additionally,
17 if the technician is "employed" by BellSouth but "funded by" and "dedicate to"
18 FDN, is BellSouth or FDN going to be liable if the employee runs a red light and
19 damages a third party's car?

20
21 Clearly, the remedy sought by FDN would be administratively and financially
22 burdensome. It is also unnecessary. As I noted above, BellSouth's performance
23 data from January through April 2001 indicates that BellSouth met the installation
24 appointment date on 87.5% of FDN's orders, and the vast majority (77%) of the
25 appointments that BellSouth did not meet were missed due to a situation caused

1 by FDN's end user, not by BellSouth. Finally, the performance measurements
2 and penalties the Commission adopts in Docket No. 000121-TP will provide FDN
3 an adequate remedy for missed due dates that may occur.

4

5 Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

6

7 A. The Commission should not require BellSouth to provide a BellSouth employed
8 technician dedicated to FDN cutovers.

9

10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

11

12 A. Yes.

13

14 (#390942)

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF JOHN A. RUSCILLI
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 010098-TP
5 JULY 18, 2001
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. (“BELLSOUTH”) AND YOUR BUSINESS
9 ADDRESS.

10
11 A. My name is John A. Ruscilli. I am employed by BellSouth as Senior Director for
12 State Regulatory for the nine-state BellSouth region. My business address is 675
13 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. ARE YOU THE SAME JOHN A. RUSCILLI THAT FILED TESTIMONY IN
16 THIS DOCKET ON JUNE 8, 2001?

17
18 A. Yes.

19
20 Q. WHAT IS THE PURPOSE OF THE TESTIMONY THAT YOU ARE FILING
21 TODAY?

22
23 A. The purpose of my testimony is to rebut portions of the direct testimony filed on
24 June 8, 2001 by Michael P. Gallagher on behalf of Florida Digital Network, Inc.
25 (“FDN”). Specifically, I will rebut Mr. Gallagher’s testimony addressing a

1 portion of Issue 1. In addition to my testimony, BellSouth is filing the rebuttal
2 testimony of Mr. Tommy Williams, who will rebut Mr. Gallagher's testimony
3 addressing a portion of Issue 1, and of Mr. Jerry Kephart who will rebut Mr.
4 Gallagher's testimony addressing Issue 3 and Issue 10. It is my understanding that
5 Issues 4(a), 4(b) and 8(a) and 8(b) have been withdrawn, and therefore, BellSouth
6 will not address Mr. Gallagher's testimony on those issues.

7
8 ***Issue 1: For purposes of the new interconnection agreement, should BellSouth be***
9 ***required to provide xDSL service over UNE loops when FDN is providing voice service***
10 ***over that loop?***

11
12 Q. DOES MR. GALLAGHER'S TESTIMONY RELATE TO ISSUE 1?

13
14 A. No. As Mr. Williams notes in his rebuttal testimony, Mr. Gallagher's discussion
15 of Issue 1 goes well beyond even a liberal interpretation of the issue. FDN
16 appears to be using Mr. Gallagher's testimony as a "launching pad" for a litany of
17 issues that are not set forth in FDN's Petition. BellSouth has filed an Objection
18 and Motion to Strike the portion of Mr. Gallagher's testimony addressing Issue 1,
19 and my testimony is being filed subject to, and without waiver of, that Objection
20 and Motion.

21
22 Q. WHAT IS FDN ASKING THE COMMISSION TO DO WITH RESPECT TO
23 THIS ISSUE?

24
25 A. FDN's primary focus is to require BellSouth to unbundle its packet switching

1 network throughout the state of Florida. As explained below, this request is
2 contrary to orders of both the FCC and this Commission.

3
4 Q. ARE THE POTENTIAL UNBUNDLING OF PACKET SWITCHING AND THE
5 POTENTIAL CREATION OF AN UNBUNDLED DATA PLATFORM
6 CURRENTLY BEING ADDRESSED BY THE FCC?

7
8 A. Yes. In the *Third Further Notice of Proposed Rulemaking* in CC Docket No. 98-
9 147 and *Sixth Further Notice of Proposed Rulemaking* in CC Docket No. 96-98
10 (“FNPRM”), the FCC has asked for and received comments on its decision not to
11 order the unbundling of packet switching. In the same proceeding, the FCC has
12 asked for and received comments on whether to require ILECs to unbundle the
13 equipment used in the provision of advanced services. In light of this pending
14 proceeding before the FCC, there is no reason for this Commission to either create
15 a new UNE (one that the FCC did not create in the *UNE Remand Order* and that
16 this Commission did not create in the generic cost docket¹) or to order the
17 unbundling of packet switching (which the FCC declined to do in its *UNE*
18 *Remand Order* and which this Commission declined to do in its orders in the
19 Intermedia and ICG Telecom arbitrations).

20
21 Q. IS BELLSOUTH CURRENTLY REQUIRED TO UNBUNDLE ITS PACKET
22 SWITCHING NETWORK?

23

¹ *In re: Investigation into Pricing of Unbundled Network Elements*, Docket No. 990649-TP.

- 1 A. No. In its *UNE Remand Order*,² the FCC stated that “[t]he packet switching
 2 network element includes the necessary electronics (e.g. routers and DSLAMS).”
 3 *Id.* at ¶304 (emphasis added). The FCC then expressly stated “we decline at this
 4 time to unbundle the packet switching functionality, except in limited
 5 circumstances.” *Id.* at ¶306 (emphasis added). These limited circumstances are
 6 set forth in Rule 51.319(c)(5), which states that an ILEC must provide unbundled
 7 packet switching only where all of the following conditions are satisfied:
- 8 (i) The incumbent LEC has deployed digital loop carrier systems, including
 9 but not limited to, integrated digital loop carrier or universal digital loop
 10 carrier systems; or has deployed any other system in which fiber optic
 11 facilities replace copper facilities in the distribution section (e.g., end
 12 office to remote terminal, pedestal or environmentally controlled vault);
 - 13 (ii) There are no spare copper loops capable of supporting the xDSL services
 14 the requesting carrier seeks to offer;
 - 15 (iii) The incumbent LEC has not permitted a requesting carrier to deploy a
 16 Digital Subscriber Line Access Multiplexer at the remote terminal,
 17 pedestal or environmentally controlled vault or other interconnection
 18 point, nor has the requesting carrier obtained a virtual collocation
 19 arrangement at these subloop interconnection points as defined under §
 20 51.319(b); and
 - 21 (iv) The incumbent LEC has deployed packet switching capability for its own
 22 use.
- 23

² See *Implementation of the Local Competition Provisions in the Telecommunication Act of 1996*, CC Docket No. 96-98, *Third Report and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3690 (1999) (“*UNE Remand Order*”).

1 Q. WHEN THE FCC DECIDED NOT TO ORDER INCUMBENTS TO
 2 UNBUNDLE PACKET SWITCHING FUNCTIONALITY, DID IT CONSIDER
 3 THE EFFECTS THAT DECISION MAY HAVE ON COMPETITION IN THE
 4 ADVANCED SERVICES MARKET?

5

6 A. Yes. Throughout the *UNE Remand Order*, the FCC demonstrated an acute
 7 awareness of and concern for advanced services. The FCC supported its decision
 8 to unbundle dark fiber, for instance, by noting, “unbundling of dark fiber is
 9 essential for competition in the provision of advanced services.” *Id.* at ¶196. The
 10 FCC also noted that “access to the subloop will facilitate rapid development of
 11 competition, encourage facilities-based competition, and promote the deployment
 12 of advanced services,” *Id.* at ¶207, and it clarified that incumbents are required to
 13 “provide loops with all their capabilities intact, that is, to provide conditioned
 14 loops, wherever a competitor requests, even if the incumbent is not itself offering
 15 xDSL to the end-user customer on that loop.” *Id.* at ¶191. It is clear, therefore,
 16 that the FCC was interested in establishing UNEs in a manner that allows CLECs
 17 to offer advanced services.

18

19 It is equally clear, however, that the FCC recognized that ALECs can provide their
 20 own xDSL services without having unbundled access to BellSouth’s packet
 21 switching functionality. In Paragraph 190, for instance, the FCC states that:

22 *Unbundling basic loops, with their full capacity preserved, allows*
 23 *competitors to provide xDSL services.*

24

25

* * *

1
2 *Without access to these loops, competitors would be at a significant*
3 *disadvantage, and the incumbent LEC, rather than the marketplace, would*
4 *dictate the pace of the deployment of advanced services.*

5 The FCC further stated that “[a]ccess to unbundled loops will also encourage
6 competition to provide broadband services.” *Id.* at ¶200. Thus with one
7 exception, the FCC determined that “the loop includes attached electronics,
8 including multiplexing equipment used to derive the loop transmission capacity.”
9 *Id.* at ¶175. Significantly, the one exception to this rule is that the loop does not
10 include the DSLAM. *Id.* The FCC stated, “we include the attached electronics
11 (with the exception of DSLAMs) within the loop definition. By contrast, as we
12 discuss below, we find that the DSLAM is a component of the packet switch
13 network element.” *Id.* As I noted above, the FCC then declined to require
14 incumbents to unbundle the packet switch network element, which includes the
15 DSLAM.

16
17 Q. WHEN THE FCC ENTERED ITS *UNE REMAND ORDER*, WAS IT AWARE
18 OF THE USE OF IDLC BY INCUMBENTS?

19
20 A. Yes. The FCC noted “carriers need unbundled subloops to serve subscribers
21 currently served by IDLC loops.” *Id.* at ¶217. More specifically, the FCC
22 explained,

23 *In order to reach subscribers served by the incumbent’s IDLC loops, a*
24 *requesting carrier usually must have access to those loops before the point*
25 *where the traffic is multiplexed. That is where the end-user’s distribution*

1 *subloop can be diverted to the competitive LEC's feeder, before the signal*
 2 *is mixed with the traffic from the incumbent LEC's other distribution*
 3 *subloops for transport through the incumbent's IDLC feeder.*

4 *Accordingly, we find that denying access at this point may preclude a*
 5 *requesting carrier from competing to provide service to customers served*
 6 *by the incumbent's IDLC facilities. This would particularly affect*
 7 *consumers in rural areas, where incumbent LECs use the greatest*
 8 *proportion of DLC loops.*

9 *Id.*

10
 11 Q. AT PAGE 12 OF HIS DIRECT TESTIMONY, MR. GALLAGHER CLAIMS
 12 "BELLSOUTH'S EXISTING NETWORK IN FLORIDA IS VERY DIFFERENT
 13 FROM THE FCC'S CONCEIVED MODEL, WITH MORE FAR MORE (SIC)
 14 FIBER AND DLCs." WHEN THE FCC RELEASED ITS *UNE REMAND*
 15 *ORDER*, WAS IT AWARE OF THE ROLE THAT DSLAMS COLLOCATED IN
 16 REMOTE TERMINALS PLAY IN THE PROVISION OF XDSL SERVICE?

17
 18 A. Yes. Despite Mr. Gallagher's assertions, the following language from the *UNE*
 19 *Remand Order* clearly establishes that the FCC was well aware that an ALEC
 20 would quite often have to collocate a DSLAM at a remote terminal in order to
 21 provide xDSL service over a UNE loop:

22 *competitors seeking to offer services using xDSL technology need to*
 23 *access the copper wire portion of the loop. In cases where the incumbent*
 24 *multiplexes its copper loops at a remote terminal to transport the traffic to*
 25 *the central office over fiber DLC facilities, a requesting carrier's ability to*

1 offer xDSL service to customers served over those facilities will be
2 precluded, unless the competitor can gain access to the customer's
3 copper loop before the traffic on that loop is multiplexed. Thus, we note
4 that the remote terminal has, to a substantial degree, assumed the role and
5 significance traditionally associated with the central office. In addition, in
6 order to use its own facilities to provide xDSL service to a customer, a
7 carrier must locate its DSLAM within a reasonable distance of the
8 customer's premises, usually less than 18,000 feet. In both of these
9 situations, a requesting carrier needs access to copper wire relatively
10 close to the subscriber in order to serve the incumbent's customer.

11 *Id.* at 218 (emphasis added).

12
13 Q. AFTER MAKING THESE STATEMENTS, HOW DID THE FCC ADDRESS
14 THE PROPOSED UNBUNDLING OF PACKET SWITCHING
15 FUNCTIONALITY?

16
17 A. The FCC expressly declined to unbundle the packet switching functionality
18 (which it defined to include DSLAMs) except in very limited circumstances. The
19 FCC came to this conclusion after carefully considering the manner in which
20 proposed unbundled elements would affect an ALEC's ability to provide
21 advanced services such as xDSL, recognizing how the existence of IDLC would
22 impact the provisioning of advanced services such as xDSL, and noting that "the
23 remote terminal has, to a substantial degree, assumed the role and significance
24 traditionally associated with the central office." *Id.* at ¶304, ¶306. In support of
25 this decision, the FCC stated,

1 *Both the record in this proceeding, and our findings in the '706*
2 *Report' establish that advanced service providers are actively*
3 *deploying facilities to offer advanced services such as xDSL across*
4 *the country. Competitive LECs and cable companies appear to be*
5 *leading the incumbent LECs in their deployment of advanced*
6 *services.*

7 *Id.* at ¶307 (emphasis added). The FCC then described the xDSL offerings of
8 several ALECs, and concluded,

9 *Marketplace developments like the ones described above suggest that*
10 *requesting carriers have been able to secure the necessary inputs to*
11 *provide advanced services to end users in accordance with their business*
12 *plans. This evidence indicates that carriers are deploying advanced*
13 *services to the business market initially as well as the residential and*
14 *small business markets.*

15 *Id.*

16
17 Q. DID THE FCC EXPRESS ANY CONCERNS REGARDING THE IMPACT
18 THAT A REQUIREMENT TO UNBUNDLE PACKET SWITCHING
19 FUNCTIONALITY MAY HAVE ON THE DEVELOPMENT OF
20 COMPETITION IN THE ADVANCED SERVICES MARKET?

21
22 A. Yes. In deciding not to require incumbents to unbundle packet switching
23 functionality, the FCC acknowledged that the advanced services market is highly
24 competitive, and it recognized that forcing ILECs to unbundle equipment used to
25 provide competitive advanced services would only impede the further

1 development of competition:

2 *[W]e are mindful that regulatory action should not alter the*
 3 *successful deployment of advanced services that has occurred to*
 4 *date. Our decision to decline to unbundle packet switching*
 5 *therefore reflects our concern that we not stifle burgeoning*
 6 *competition in the advanced service market. We are mindful*
 7 *that, in such a dynamic and evolving market, regulatory restraint*
 8 *on our part may be the most prudent course of action in order to*
 9 *further the Act's goal of encouraging facilities-based investment*
 10 *and innovation.*

11 (*Id.* ¶316.) (emphasis added.)

12
 13 Q. DOES BELLSOUTH OFFER UNES THAT ALLOW FDN TO PROVIDE ITS
 14 OWN XDSL SERVICE IN FLORIDA?

15
 16 A. Yes. As Mr. Williams explains in his rebuttal testimony, BellSouth offers UNEs
 17 that allow FDN to transport data from its packet switch to a DSLAM it collocates
 18 at a remote terminal, and BellSouth provides UNEs that allow FDN to transport
 19 data from a DSLAM it collocates at a remote terminal to its end user's premises.
 20 BellSouth, therefore, offers FDN all the UNEs it needs to provide its own xDSL
 21 service in Florida. Additionally, as Mr. Williams further explains in his rebuttal
 22 testimony, BellSouth will permit a requesting carrier to deploy a Digital
 23 Subscriber Line Access Multiplexer (DSLAM) at the remote terminal, pedestal or
 24 environmentally controlled vault or other interconnection point. In the unlikely
 25 event that BellSouth cannot accommodate such collocation of a DSLAM at a

1 given location (and that BellSouth is unable to provide a virtual collocation
 2 arrangement at these subloop interconnection points), BellSouth will provide
 3 unbundled packet switching to that particular location, as required by the FCC's
 4 UNE Remand Order.

5
 6 Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION PREVIOUSLY
 7 ADDRESSED WHETHER BELLSOUTH MUST UNBUNDLE PACKET
 8 SWITCHING FUNCTIONALITY?

9
 10 A. Yes. The Commission declined to require BellSouth to provide unbundled packet
 11 switching in two arbitration proceedings. In Order No. PSC-00-1519-FOF-TP in
 12 Docket No. 99-1854-TP (BellSouth –Intermedia Arbitration) at page 34, for
 13 instance, the Commission found “that BellSouth shall only be required to
 14 unbundled its packet switching capabilities under the limited circumstances
 15 identified in FCC Rule 51.319(c)(5).” Similarly, in Order No. PSC-00-0128-
 16 FOF-TP in Docket No. 99-0691-TP (BellSouth –ICG Telecom Arbitration) at
 17 page 7, the Commission found that “packet-switching capabilities are not UNEs”.

18
 19 Additionally, in Docket No. 990649-TP (the generic cost docket), the
 20 Commission found that “there are no other elements or combinations of elements
 21 that we shall require BellSouth to unbundle at this time.” See Order No. 990649-
 22 TP at page ~~368~~³⁷⁰.

23
 24 Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION PREVIOUSLY
 25 ADDRESSED WHETHER BELLSOUTH MUST PROVIDE ITS ADSL

1 SERVICE OVER A UNE LOOP THAT AN ALEC IS USING TO PROVIDE
2 VOICE SERVICE TO THE ALEC'S CUSTOMER?

3
4 A. Yes. In Order No. PSC-01-0824-FOF-TP that was entered in the ~~in~~ MCI
5 WorldCom Arbitration (Docket No. 000649-TP), the Commission found at
6 section XIII, page 51,

7 *While we acknowledge WorldCom's concern regarding the status of the*
8 *DSL service over a shared loop when WorldCom wins the voice service*
9 *from BellSouth, we believe the FCC addressed this situation in its Line*
10 *Sharing Order. The FCC states that "We note that in the event that the*
11 *customer terminates its incumbent LEC provided voice service, for*
12 *whatever reason, the competitive data LEC is required to purchase the full*
13 *stand-alone loop network element if it wishes to continue providing xDSL*
14 *service. FCC 99-355, ¶72.*

15
16 * * *

17
18 *We believe the FCC requires BellSouth to provide line sharing only over*
19 *loops where BellSouth is the voice provider. If WorldCom purchases the*
20 *UNE-P, WorldCom becomes the voice provider over that loop/port*
21 *combination. Therefore, BellSouth is no longer required to provide line*
22 *sharing over that loop/port combination.*

23
24
25

1 Q. DOES THIS COMMISSION HAVE THE AUTHORITY TO ORDER A NEW
2 UNE OR TO ORDER THE UNBUNDLING OF THE PACKET SWITCHING
3 FUNCTIONALITY?
4

5 A. Yes. The Supreme Court's *Iowa Utilities Board* decision and the FCC's *UNE*
6 *Remand Order*, however, are absolutely clear that a pre-condition to compelled
7 unbundling is a finding of impairment for the services at issue based on a careful
8 analysis of available alternatives. This Commission, therefore, may establish a
9 new UNE only if the carrier seeking the new UNE carries the burden of proving
10 the impairment test set forth in the FCC's *UNE Remand Order*.
11

12 Q. DOES FDN'S REQUEST COMPLY WITH THE IMPAIRMENT STANDARD?
13

14 A. No. The statutory impair standard requires consideration of whether a carrier's
15 ability to "provide the services it seeks to offer" would be impaired without access
16 to a particular unbundled element. As Mr. Williams explains in his rebuttal
17 testimony, BellSouth offers UNEs to ALECs like FDN that allow ALECs to
18 transport their data signals from their packet switches to the remote terminal and
19 from the remote terminal to the customer premises.
20

21 Q. IS FDN NONETHELESS IMPAIRED IN ITS ABILITY TO OFFER ITS OWN
22 XDSL SERVICE IF BELLSOUTH DOES NOT UNBUNDLE ITS PACKET
23 SWITCHING FUNCTIONALITY AND ITS DSLAMS IN ADDITION TO
24 UNBUNDLING ITS LOOPS?
25

1 A. No. The FCC squarely addressed this question in its *UNE Remand Order*,
2 explaining:

3 *We recognize that equipment needed to provide advanced services, such as*
4 *DSLAMs and packet switches are available on the open market at*
5 *comparable prices to incumbents and requesting carriers alike.*

6 *Incumbent LECs and their competitors are both in the early stages of*
7 *packet switch deployment, and thus face relatively similar utilization rates*
8 *of their packet switching capacity.* *Packet switching utilization rates will*
9 *differ from circuit switching utilization rates because of the incumbent*
10 *LEC's monopoly position as a carrier of last resort. Incumbent LEC*
11 *switches, because they serve upwards of 90 percent of the circuit switched*
12 *market, ~~may achieve higher utilization rates than the circuit switched~~*
13 *market, may achieve higher utilization rates than the circuit switches of*
14 *requesting carriers. Because the incumbent LEC does not retain a*
15 *monopoly position in the advanced services market, packet switch*
16 *utilization rates are likely to be more equal as between requesting carriers*
17 *and incumbent LECs. It therefore does not appear that incumbent LECs*
18 *possess significant economies of scale in their packet switches compared*
19 *to the requesting carriers.*

20 *Id.* at ¶308. (Emphasis added.)

21
22 The FCC went on to unquestionably state, “We further decline to unbundle
23 specific packet switching technologies incumbent LECs may have deployed in
24 their networks.” *Id.* at ¶311.

25

1 Additionally, the FCC has acknowledged that there is “burgeoning competition”
2 to provide advanced services, *Id.* at ¶316, and this “burgeoning competition”
3 exists without unbundled access to ILEC advanced services equipment.

4 The existence of this competition alone precludes a finding of impairment. As the
5 FCC said in the *UNE Remand Order*, “we find the marketplace to be the most
6 persuasive evidence of the actual ability of alternatives as a practical, economic,
7 and operational matter.” *Id.* at ¶66. This competition, however, is not all that
8 supports the decision not to unbundle packet switching functionality. This
9 decision also is supported by a number of other FCC findings, including that the
10 advanced services business is “nascent,” that the pre-conditions of natural
11 monopoly are absent, that several technologies are well positioned to provide
12 advanced services to the end-user customer, and that ILECs, if anything, trail in
13 the deployment race.³

14
15 Clearly, FDN is not impaired by the fact that neither packet switching
16 functionality nor the DSLAM is available as a UNE because FDN can purchase,
17 install, and utilize these elements just as easily and just as cost-effectively as
18 BellSouth. It can then use this equipment in combination with either its own
19 facilities, facilities it obtains from a third party, or UNEs it obtains from
20 BellSouth to provide its own xDSL service to its customers.

21

³ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability
to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment
Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, *Second Report*,
FCC 00-290, released August 21, 2000, at ¶¶ 70, 94-111.

1 Q. ARE THERE OTHER FACTORS THAT THE COMMISSION NEEDS TO
2 CONSIDER IN DETERMINING WHETHER FDN'S REQUEST MEETS THE
3 IMPAIR STANDARD?
4

5 A. Yes. The Commission must analyze the effects unbundling will have on
6 investment and innovation in advanced services.⁴ There are important differences
7 between the effects of unbundling elements used to provide traditional
8 telecommunications services and the effects of unbundling new investment used
9 to provide advanced services. As the FCC has noted, "[i]nvestments in facilities
10 used to provide service to nascent markets are inherently more risky than
11 investments in well established markets. Customer demand for advanced services
12 is also more difficult to predict accurately than is the demand for well established
13 services."⁵ An important part of the FCC's reasoning to not unbundle advanced
14 services equipment, even though traditional services equipment had been
15 unbundled, was to avoid stifling competition and to encourage innovation.⁶ This
16 fact remains all the more relevant today.
17

18 Further, the Commission's analysis of whether newly deployed advanced services
19 facilities can properly be unbundled also must take into the account the fact that
20 ALECs and other entities can also choose to invest in deploying similar facilities.

⁴ Even a conclusion that carriers would be impaired in their ability to offer advanced services without unbundling would not be sufficient to lead to UNE treatment of facilities used for advanced services. The FCC's multi-part "impairment" test requires consideration of the effect of unbundling on investment and innovation, and the results of that analysis may determine the outcome. Thus, the Commission has determined that packet switching should not be unbundled due to the negative effects unbundling would have on ILEC investment in packet technologies.

⁵ *UNE Remand Order*, ¶ 316.

⁶ *Id.*

1 Thus, ALECs can choose to install ATM switches and DSLAMs, just as
2 BellSouth has done, and will continue to do. ALECs are not impaired by
3 implementing this strategy. BellSouth invests significant resources in deploying
4 equipment necessary to provide advanced services. It would be inherently unfair
5 to allow ALECs to simply use the ILEC's equipment as unbundled network
6 elements where the ALEC is not impeded in deploying its own equipment.
7 Indeed, where an ALEC can deploy its own equipment, parity demands that the
8 ALEC should deploy such equipment and not ride the investment and risk of the
9 ILEC.

10
11 Based on these factors, the Commission cannot require the unbundling of network
12 elements used to provide advanced services. To do so would read the "necessary
13 and impair" standard completely out of the 1996 Act. Moreover, it would have a
14 chilling effect on BellSouth's incentives to invest in the technologies upon which
15 advanced services depend. ALECs will not have any incentive to invest in
16 equipment to provide advanced services if they can ride the backs of, and shift
17 investment risks to, the ILECs. Conversely, an ILEC's incentive to invest in new
18 and innovative equipment will be stifled if its competitors, who can just as easily
19 invest in the equipment, can take advantage of the equipment's use without
20 incurring any of the risk. C. Michael Armstrong of AT&T made exactly this
21 point in a speech, entitled *Telecom and Cable TV: Shared Prospects of the*
22 *Communications Future*, which he delivered to the Washington Metropolitan
23 Cable Club in November of 1998:

24 *No company would invest billions of dollars . . . if competitors which have*
25 *not invested a penny of capital nor taken an ounce of risk can come along*

1 *and get a free ride in the investments and risks of others.*

2

3 Q. PLEASE COMMENT ON MR. GALLAGHER'S ATTEMPTS TO COMPARE
4 UNBUNDLED CIRCUIT SWITCHING TO UNBUNDLED PACKET
5 SWITCHING.

6

7 A. As I mentioned above, the FCC has already determined that significant differences
8 between packet switching functionality and circuit switching functionality render
9 any such comparison inappropriate in the context of an "impairment" analysis.
10 *UNE Remand Order* at ¶308. Packet switching is a much newer technology that
11 can, and is being deployed by ALECs just as BellSouth is deploying it.

12

13 Q. ON PAGE 28, MR. GALLAGHER STATES THAT "EXCEPT FOR THE
14 'IMPAIR' STANDARD I DESCRIBED ABOVE, THE FCC HAS NOT ISSUED
15 A GENERALLY APPLICABLE TEST TO DETERMINE WHETHER PACKET
16 SWITCHING SHOULD BE UNBUNDLED." DO YOU AGREE?

17

18 A. No. As Mr. Gallagher goes on to point out, "in the 1999 *UNE Remand Order*, the
19 FCC created a four-part test setting forth one set of circumstances where packet
20 switching clearly must be unbundled." BellSouth agrees that the FCC set forth
21 this four-part test as the exception to its generally applicable rule that packet
22 switching is not required to be unbundled. The FCC, however, clearly stated that
23 an incumbent has no obligation to unbundle packet switching functionality "if it
24 permits a requesting carrier to collocate its DSLAM in the incumbent's remote
25 terminal, on the same terms and conditions that apply to its own DSLAM." *Id.* at

1 ¶313 (emphasis added.). As Mr. Williams explains in his rebuttal testimony,
2 BellSouth will permit FDN to collocate its DSLAM in BellSouth's remote
3 terminal on the same terms and conditions that apply to BellSouth's own
4 DSLAM. If BellSouth is not able to accommodate such collocation at a given
5 remote terminal, BellSouth will unbundle packet switching functionality at that
6 terminal.

7
8 On page 29 of his testimony, Mr. Gallagher seems to suggest that if each of these
9 four conditions discussed above exist anywhere in the State of Florida, BellSouth
10 is somehow required to provide unbundled packet switching everywhere in the
11 State of Florida. That simply is not the case. As the FCC stated in its *UNE*
12 *Remand Order*:

13 *When an incumbent has deployed DLC systems, requesting*
14 *carriers must install DSLAMs at the remote terminal instead of at*
15 *the central office in order to provide advanced services. We agree*
16 *that, if a requesting carrier is unable to install its DSLAM at the*
17 *remote terminal or obtain spare copper loops necessary to offer*
18 *the same level of quality for advanced services, the incumbent LEC*
19 *can effectively deny competitors entry into the packet switching*
20 *market. We find that in this limited situation, requesting carriers*
21 *are impaired without access to unbundled packet switching.*

22 *Id.* at ¶313 (emphasis added). Clearly, the FCC intended for this exception to the
23 rule to apply only in *limited situations*. Requiring the statewide unbundling of
24 packet switching if an ALEC can find one remote terminal to which this exception
25 applies would impermissibly ignore the FCC's intent by allowing the limited

1 exception to swallow the general rule.

2
3 Moreover, FDN's allegation, on page 30, that "CLECs are denied collocation of
4 DSLAM functionality" is wrong. As Mr. Williams explains in his rebuttal
5 testimony, BellSouth has not denied FDN, or any other ALEC, the ability to
6 collocate a DSLAM in a remote terminal in Florida.

7
8 Q. IN SECTION III OF HIS TESTIMONY, WHICH BEGINS ON PAGE 32, MR.
9 GALLAGHER ARGUES THAT "BELLSOUTH IS REQUIRED BY SECTION
10 251(c)(4) OF THE FEDERAL ACT TO OFFER ITS HIGH-SPEED DATA
11 SERVICE FOR RESALE." PLEASE COMMENT.

12
13 A. Again, Mr. Gallagher is mistaken. In fact, the United States Court of Appeals for
14 the District of Columbia Circuit issued a decision in a case right on point.⁷ The
15 Court states in its Background discussion:

16
17 *At issue in this case is that part of the 'Second Report and Order' in which*
18 *the Commission addressed the question whether the resale requirement of*
19 *§251(c)(4)(A) applies to an ILEC's offering of advanced services. As the*
20 *Commission acknowledged, it had previously determined that advanced*
21 *services constitute 'telecommunications service' and that the end-users and*
22 *ISPs to which the ILECs offer such services are 'subscribers who are not*
23 *telecommunications carriers' within the meaning of §251(c)(4)(A). The*

⁷ *Association of Communications Enterprises, Petitioner v. Federal Communications Commission and United States of America, Respondents, On Petition for review of an Order of the Federal Communications Commission, Case No. 00-1144; decided June 26, 2001.*

1 remaining issue, therefore, was whether an ILEC's offering of certain
 2 advanced services, including DSL, is made 'at retail' so as to trigger the
 3 discount requirement. The Commission ultimately concluded that while an
 4 incumbent LEC DSL offering to residential and business end-users is
 5 clearly a retail offering designed for and sold to the ultimate end-user, an
 6 incumbent LEC offering of DSL services to Internet Service Providers as
 7 an input component to the Internet Service Provider's high-speed Internet
 8 service offering is not a retail offering. Accordingly, . . . DSL services
 9 designed for and sold to residential and business end-users are subject to
 10 the discounted resale obligations of section 251(c)(4) . . . [H]owever, . .
 11 .section 251(c)(4) does not apply where the incumbent LEC offers DSL
 12 services as an input component to Internet Service Providers who combine
 13 the DSL service with their own Internet Service. (Emphasis added.)

14
 15 The Association of Communication Enterprises (ASCENT) petitioned for
 16 review of this determination, and various telecommunications and DSL
 17 providers intervened on behalf of the Commission.

18
 19 In conclusion, the Court states:

20 *In sum, having considered ASCENT's objections, we find the Commission's*
 21 *Order in all respects reasonable.*

22
 23 Q. ON PAGE 34, MR. GALLAGHER STATES, "FDN SEEKS TO BE ABLE TO
 24 RESELL THE TELECOMMUNICATIONS PORTION OF THIS SERVICE
 25 [BELLSOUTH FAST ACCESS INTERNET SERVICE]. . ." IS FDN

1 ENTITLED TO WHAT IT IS REQUESTING?

2
3 A. No. BellSouth Fast Access Internet Service is not a telecommunications service.
4 It is an enhanced, non-regulated, non-telecommunications Internet Access Service
5 that uses BellSouth's wholesale DSL telecommunications service. Mr.
6 Gallagher's reference to this service as "BellSouth's retail DSL service" should
7 not be allowed to confuse the issue. Regardless of how FDN refers to the service,
8 BellSouth does not offer a tariffed retail DSL service, and based on the FCC's
9 *Second and Report and Order* (CC Docket No. 98-147, *Deployment of Wireline*
10 *Services Offering Advanced Telecommunications Capability* (1999)) referred to
11 above, as well as the Court's Decision, BellSouth has no obligation to make
12 available its wholesale telecommunications DSL service at the resale discount,
13 pursuant to section 251(c)(4). BellSouth also has no obligation to make its
14 Internet Access offering available at the resale discount because it is not a retail
15 service.

16
17 Q. IS THE ASCENT V. FCC COURT DECISION, MENTIONED ON PAGE 35 OF
18 MR. GALLAGHER'S TESTIMONY, RELEVANT TO THIS ISSUE?

19
20 A. No. The January 9, 2001 ruling ("Ascent Decision") by the United States Court of
21 Appeals for the District of Columbia Circuit is inapplicable to this issue, and does
22 not support the position put forth by Mr. Gallagher. FDN's strained reading of the
23 January decision, in my opinion, is misguided. FDN has taken a statement out of
24 context, and using it inappropriately for its advantage, concludes that the Court's
25 ruling supports its position that BellSouth should be required to offer BellSouth

1 advanced data services for resale. Mr. Gallagher's conclusion based on the
2 "Ascent Decision" is wrong. The decision being referred to by Mr. Gallagher
3 deals with regulatory relief granted by the FCC regarding resale of advanced
4 services if conducted through the separate affiliate established in the Ameritech
5 and SBC merger. The Court ruled that an ILEC may not "sideslip §251(c)'s
6 requirements by simply offering telecommunications services through a wholly
7 owned affiliate." This is not what is at issue here, nor does the ruling require
8 BellSouth to offer its advanced data services for resale at a wholesale discount, as
9 Mr. Gallagher would have this Commission believe. Further, BellSouth has no
10 separate affiliate for the sale of advanced services, and therefore, this decision
11 does not apply to BellSouth.

12
13 Q. PLEASE COMMENT ON MR. GALLAGHER'S DISCUSSION ON PAGES 38
14 AND 39 THAT "THE *LINE SHARING RECONSIDERATION ORDER* DID NOT
15 ENDORSE THE ILECs' REFUSAL TO SELL DSL SERVICES."

16
17 A. Again, I disagree with Mr. Gallagher's conclusion that BellSouth is required to
18 provide ADSL service when it is no longer the voice provider. Paragraph 26 of
19 the *Line Sharing Reconsideration Order* states, in part:

20 *we deny AT&T's request for clarification that under the 'Line Sharing*
21 *Order', incumbent LECs are not permitted to deny their xDSL services to*
22 *customers who obtain voice service from a competing carrier where the*
23 *competing carrier agrees to the use of its loop for that purpose. Although*
24 *the 'Line Sharing Order' obligates incumbent LECs to make the high*
25 *frequency portion of the loop separately available to competing carriers*

1 *on loops where incumbent LECs provide voice service, it does not require*
2 *that they provide xDSL service when they are no[t] longer the voice*
3 *provider. We do not, however, consider in this Order whether, as AT&T*
4 *alleges, this situation is a violation of sections 201 and/or 202 of the Act.*

5
6 As is apparent from the above, and contrary to Mr. Gallagher's allegation, the
7 FCC did rule -- it denied AT&T's request, and it clearly stated that its orders do
8 "not require that [incumbents] provide xDSL service when they are no longer the
9 voice provider." *Id.*

10
11 Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO CONCLUDE ON
12 THIS ISSUE?

13
14 A. The clear intent of the FCC was that the packet switching functionality should not
15 be unbundled (except in limited circumstances) and that all providers have the
16 same opportunity to place whatever equipment they need to provide high speed
17 data. If FDN chooses not to submit collocation requests, BellSouth cannot be
18 held to blame for FDN's business decision not to collocate. The FCC rules state
19 that packet switching does not need to be unbundled unless specific conditions are
20 met, and the FCC goes on to specifically state that if collocation is available,
21 packet switching does not have to be unbundled. As explained in detail in the
22 testimony of Mr. Williams, BellSouth has collocation and UNE offerings that
23 meet these guidelines.

24
25 BellSouth requests that the Commission reach the same conclusion that both the

1 FCC and this Commission have reached in the past and deny FDN's request on
2 this issue.

3

4 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

5

6 A. Yes.

7

8 (#397189)

9

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25

1 BY MS. WHITE:

2 Q Mr. Ruscilli, would you please give your summary.

3 A Yes, I would. Good afternoon. My testimony in this
4 docket addresses the policy portion of Issue 1, which is,
5 should BellSouth be required to provide xDSL service over
6 unbundled loops when FDN is providing voice service over that
7 loop? The short answer is no. BellSouth is not required to do
8 what FDN is asking. Through this issue of wanting this
9 Commission to require xDSL service over UNE loops when
10 BellSouth is not the voice provider, FDN is basically asking
11 this Commission to require BellSouth to unbundle its packet
12 switching network throughout the state of Florida.

13 Both this Commission and the FCC have addressed the
14 issue of whether an ILEC is required to generally unbundle the
15 packet switching functionality, and both have ruled that except
16 in limited circumstances the ILEC is not required to do so.
17 This Commission and the FCC have both also addressed the issue
18 specifically stated by FDN in its petition. The FCC made
19 absolutely clear in its Line Sharing Order that the incumbent
20 LEC is not required to provide xDSL service on an unbundled
21 loop when the incumbent LEC is not the voice provider, and this
22 Commission upheld that position in its order in the
23 MCI/BellSouth arbitration.

24 FDN's request for the Commission to establish a new
25 UNE should also be denied. FDN's request does not meet the

1 impairment standard established by the FCC in its UNE Remand
2 Order. As Mr. Williams will explain, FDN can collocate a DSLAM
3 in a remote terminal. BellSouth offers UNEs to allow FDN to
4 transport its data signals from its packet switches to the
5 remote terminal and from the remote terminal to the customer's
6 premise. The FCC recognized that ALECS like FDN are able to
7 get the equipment they need to provide the services they wish
8 to provide from the open market at prices comparable to what is
9 available to the ILEC. FDN is not impaired by the fact that
10 BellSouth provides neither packet switching nor DSLAM as a UNE
11 because FDN can also purchase, install, and utilize these
12 elements just as easily and just as cost-effectively as
13 BellSouth.

14 Once it has the requisite equipment, FDN can then use
15 it in combination with its own facilities, the facilities of a
16 third party, or with the UNEs it attains from BellSouth to
17 provide its own xDL (sic) service to its customers. FDN's
18 argument that BellSouth must offer its xDSL for resale is also
19 incorrect. A recent court decision made plain the requirements
20 from the FCC's Second Report and Order with regard to whether
21 resale requirements of the Act apply to ILECs offering advanced
22 services. The requirement is clear. If BellSouth markets DSL
23 to residential and business end users, then the service is
24 clearly a retail offering, and the wholesale discount applies.
25 However, if the DSL service is offered to Internet service

1 providers as an input component to the ISP service offering, it
2 is not a retail offering, and the resale requirements of the
3 Act do not apply. BellSouth's Fast Access Internet service
4 falls into the latter category. Fast Access is not a
5 telecommunication service. It is an enhanced, nonregulated,
6 nontelecommunication Internet access service that uses
7 BellSouth's wholesale DSL telecommunication service as one of
8 its components. BellSouth does not offer a tariffed resale,
9 excuse me, retail DSL service, and therefore, BellSouth has no
10 obligation to make available its wholesale DSL service at the
11 retail discount.

12 BellSouth also has no obligation to make its Internet
13 access offering available at the resale discount because it is
14 not an enhanced, nonregulated, nontelecommunication service, I
15 mean, because it is. BellSouth has both collocation and UNE
16 offerings that can meet the needs expressed by FDN. FDN has
17 the same opportunity as all other providers, including
18 BellSouth, to place whatever equipment is necessary to provide
19 high-speed data. BellSouth cannot be held accountable for or
20 required to compensate FDN because of a business decision that
21 FDN has made. BellSouth should not be required to unbundle its
22 packet switching functionality except under the limited
23 circumstances put forth by the FCC and upheld by this
24 Commission, nor should be it be required to provide DSL service
25 over a UNE loop when BellSouth is not the voice provider.

1 Thank you. That completes my summary.

2 MS. WHITE: Mr. Ruscilli is available for cross
3 examination.

4 COMMISSIONER DEASON: Mr. Feil.

5 MR. FEIL: Thank you, Commissioner.

6 CROSS EXAMINATION

7 BY MR. FEIL:

8 Q Good afternoon, Mr. Ruscilli.

9 A Good afternoon, sir.

10 Q I wanted to ask you a few quick questions here
11 without being too redundant of the testimony we've heard
12 earlier today. Could I start you at your rebuttal testimony,
13 Page 22, Lines 3 through 5? Sorry, that's Page 22, Lines
14 3 through 5.

15 A Yes, sir, I'm there.

16 Q Okay. And I want to make sure I understand here
17 the -- what we've been referring to as the pipe and the water
18 analogy here. Basically what you are saying here is,
19 BellSouth's Fast Access Internet service comes in two parts.
20 It has two component parts: One, Internet access, which is
21 what we have been calling the water, and two, DSL service or
22 DSL transport; is that correct?

23 A Well, Internet access I think that you are referring
24 to as the water is -- what we're talking about there is
25 Internet, a Web page, e-mail, the content that's provided by

1 the ISP, not the access, and then the transport pipe.

2 Q Okay. So the Internet access consists of Internet
3 content, e-mail, Web-based services; is that correct?

4 A Yes, that's the Internet portion of it.

5 Q Okay. That's the Internet access portion that you
6 were referring to in your testimony?

7 A Yes, I will agree with you.

8 Q Okay. And then the other component is the DSL
9 service or the DSL transport component?

10 A Yes, that's one of the components.

11 Q And the DSL component is high-speed data transmission
12 over the high-frequency portion of the loop; is that correct?

13 A Yes.

14 Q Is it correct to say that BellSouth Fast Access
15 Internet service is sometimes referred to BellSouth Fast Access
16 ADSL?

17 A Yes, it's been referred to as that.

18 Q And the Internet access component that we're talking
19 about here, is this offered as a service by BellSouth
20 Telecommunications or BellSouth.net or some other BellSouth
21 entity?

22 A It is actually offered by BellSouth
23 Telecommunications.

24 Q Okay. And BellSouth Telecommunications and
25 BellSouth.net are affiliates; is that correct?

1 A Yes. They're both wholly-owned companies under
2 BellSouth Corporation.

3 Q And BellSouth Telecommunications is an ILEC; is that
4 correct?

5 A Yes.

6 Q And BellSouth.net is not an ILEC; is that correct?

7 A That's correct.

8 Q And is it correct to say that BellSouth.net is not a
9 PSC-certificated CLEC either?

10 A No, it's not.

11 Q Okay.

12 A That's correct.

13 COMMISSIONER DEASON: I'm sorry, it's not correct to
14 say that, or it is not a CLEC?

15 THE WITNESS: I apologize, I said it backwards. It
16 is not a CLEC, and he is correct.

17 BY MR. FEIL:

18 Q And is it correct to say that BellSouth.net is not an
19 ISP?

20 A No, BellSouth.net is an ISP.

21 Q BellSouth Telecommunications also an ISP?

22 A No.

23 Q Okay. Now, to the extent that the Internet access
24 portion of BellSouth Fast Access Internet service includes
25 provision of ISP service, who is providing that service?

1 A Well, again, the ISP portion is the content, the
2 servers, the equipment, e-mail capabilities that is provided by
3 BellSouth.net. And it's coupled with the wholesale DSL
4 offering that's in our federal tariff to provide the complete
5 package.

6 COMMISSIONER DEASON: Let me ask you a question about
7 the federal tariff. You filed that with the FCC. Does the FCC
8 make any type review of the appropriateness of the rates you
9 charge, or is it just basically information on when presumed to
10 be valid?

11 THE WITNESS: I'm not sure, Chairman Deason. I think
12 there's presumptive validity that we have with the kind of
13 regulation we're under with the FCC, but I'm not sure if it's
14 just -- if it's not subject to any kind of challenge. It could
15 be challenged, but --

16 COMMISSIONER DEASON: Do you know if the FCC has made
17 any type of review of the particular rates you have filed?

18 THE WITNESS: No, I'm not aware of any. They may
19 have.

20 BY MR. FEIL:

21 Q And I'm sorry if I'm being repetitive, Mr. Ruscilli,
22 but you said BellSouth.net is an ISP; right?

23 A Yes.

24 Q And BellSouth.net is the entity that provides the
25 Internet access component of the BellSouth Fast Access Internet

1 service; is that correct?

2 A It's providing the Internet component. I'm getting a
3 little tripped up with your word "access" because sometimes
4 people view "access" and "transport" as the same term.

5 Q Okay. I'm sorry.

6 A It provides the Internet portion. It's where you go
7 to get the content, the Web page you go to, the DSL Web page
8 for BellSouth.net. You have e-mail, et cetera.

9 Q Okay. Thank you. I'll try to refer to it as
10 "Internet" rather than "Internet access" when I'm referring to
11 the two parts.

12 A I understand what you are talking about.

13 Q Okay. If I am not a BellSouth Telecom customer, can
14 I get the Internet service of BellSouth.net through a dial-up
15 account?

16 A Yes, I believe BellSouth.net offers the dial-up modem
17 account. I don't know for sure if it's a requirement that you
18 have to be a BellSouth customer. I don't think it's open.

19 Q Okay. So you are not sure?

20 A I'm not sure. You might ask Mr. Williams. He may
21 know. I'm not certain on that.

22 Q Okay. Now, going back to your testimony on Page 22,
23 Line 14, you say that the -- let me see if I can find the
24 reference. Well, actually you refer to it as Internet access
25 offering.

1 A I do. I just wanted to make sure I was understanding
2 the points of your question.

3 Q Okay. You say that Internet access offering is not a
4 retail service; correct?

5 A On Line 14, yes.

6 Q And the DSL component of the service, BellSouth Fast
7 Access Internet service, who supplies that service?

8 A That's supplied by BellSouth Telecommunications in
9 its FCC tariff.

10 Q And you're saying that BellSouth Telecommunications
11 provides that service to BellSouth.net?

12 A Well, it's accounted for as if it were provided by
13 BellSouth.net. BellSouth Telecommunications uses that service
14 in its provision of its Fast Access product in addition to the
15 enhanced service from BellSouth.net, and then BellSouth
16 accounts for that tariffed price in its cost allocation manuals
17 that it files with the FCC.

18 Q If I'm buying BellSouth Fast Access Internet service,
19 who am I buying it from? BellSouth Telecom or BellSouth.net?

20 A BellSouth Telecommunications.

21 Q But didn't you -- did I misunderstand you, or does
22 BellSouth Telecommunications provide the DSL component to
23 BellSouth.net? Isn't that what you said?

24 A No, I didn't say it that way.

25 Q Okay.

1 A BellSouth.net provides, as I said before, the
2 content, e-mail, et cetera, the enhanced portion. That's
3 combined with the DSL service that's in the federal tariff, and
4 it's offered as the product that's branded BellSouth Fast
5 Access. That product is marketed and sold by BellSouth
6 Telecommunications.

7 And then what I was saying earlier is that the -- in
8 that combination, there's a purchase, so to speak, of the
9 tariff component, which is the DSL component, and that's
10 accounted for when BellSouth files its cost allocation manuals
11 with the FCC. So the tariff component is part of that, and
12 it's paid for, so to speak.

13 Q So you're saying that -- let me make sure I
14 understand your testimony -- BellSouth Fast Access Internet
15 service is a retail product; correct?

16 A It's a retail product, but it's an enhanced,
17 nonregulated, nontelecommunications product.

18 Q But neither of the two components that make up the
19 service, the DSL and the Internet components, neither of those
20 are retail products. Is that your testimony?

21 A The DSL component, which now we're talking about the
22 pipe, that's not a retail product. That's offered only
23 wholesale to ISPs. The Internet service itself, the Web
24 content that's provided with it, it in and of itself is not
25 offered as a retail product. There is a dial-up component to

1 BellSouth.net where you dial in on a modem, but I think there's
2 more included with that.

3 Q When you say "more included with that," what do you
4 mean? I'm sorry.

5 A Well, again, I wasn't really sure when you dial in if
6 you get additional components, additional functionality. I'm a
7 little -- in the area I don't understand with the dial-up --

8 Q Okay.

9 A -- as opposed to Fast Access.

10 Q So in short, you are saying that you don't know
11 whether or not if I have the Internet service through the
12 dial-up or through DSL, whether or not it's different or how it
13 differs. Is that what you are saying?

14 A I don't think it differs significantly. I've had
15 both of them. I have the Fast Access now. I had the dial-up
16 for years.

17 COMMISSIONER DEASON: Let me ask a question. If a
18 customer calls BellSouth Telecommunications, the regulated
19 telephone company, and says that they wish to purchase
20 high-speed Internet access, what happens after that?

21 THE WITNESS: I'm not certain of our marketing
22 scripts. But essentially, if they're wanting to buy a
23 high-speed Internet access, BellSouth Telecommunications has a
24 product, and it's called Fast Access service. And the customer
25 could be instructed to go to a particular Internet site if they

1 have Internet capability currently, and this was discussed by
2 Mr. Gallagher, enter in a telephone number to see if it's in
3 their community, or the rep may be able to ascertain that right
4 there on-line with the customer on the telephone call.

5 COMMISSIONER DEASON: So the first thing is to
6 determine whether that capability exists for that customer's
7 location?

8 THE WITNESS: That's correct. It's not ubiquitous in
9 a particular city where we're deploying it. In my case it was
10 more difficult to get Fast Access, not more difficult, it was
11 longer to get Fast Access, about a year and a half after we
12 went into Atlanta because I live very far outside of the city
13 of Atlanta.

14 COMMISSIONER DEASON: Okay. Let's assume a customer
15 calls and either the customer rep is able to tell the customer
16 or the customer determines that through the Internet or
17 whatever that the service is available. What happens after
18 that?

19 THE WITNESS: Well, I subscribed on-line, so I'll
20 walk through what happened to me when I went to BellSouth Fast
21 Access. I entered in my telephone. It said that it was
22 available and that I would receive a confirmation after they
23 do -- in other words, it's available in the community, and then
24 they have got to find out if it's specifically available at
25 your address. So they said, yes, it's available in Woodstock,

1 Georgia, which is where I live. And then they came back about
2 two or three days later, I believe, saying it is qualified on
3 my particular telephone number, and then they scheduled an
4 installation. Now, mine was a longer period of time ago, so I
5 had a physical installation at my particular location, but now
6 they will send a modem kit out to a customer, and they can
7 self-install.

8 COMMISSIONER DEASON: Okay. And that arrangement is
9 between the end use customer and BellSouth Telecommunications,
10 the regulated telephone company?

11 THE WITNESS: Well, BellSouth Telecommunications, the
12 regulated telephone company, is the company that bills for that
13 and can provide that to you. When I signed up, I was on a
14 BellSouth.net Web page, but it can happen either way.

15 COMMISSIONER DEASON: Okay. Now, let's throw another
16 wrinkle in here. If the customer wishes to obtain high-speed
17 Internet access but wants to use a different Internet service
18 provider other than BellSouth.net, is that possible? And if
19 so, how do they go accomplishing that?

20 THE WITNESS: They could, you know, on their own
21 accord contact Earthlink or another ISP that advertises that
22 they offer some sort of DSL or high-speed access type service,
23 place an order with them. And then that particular carrier
24 would go through the same steps that Mr. Gallagher had
25 mentioned a while ago, and check and see if it was available in

1 that particular customer's community and then at that address,
2 and see if facilities were available and provide service that
3 way.

4 COMMISSIONER DEASON: So then it would be incumbent
5 upon the alternative ISP then to actually make arrangements
6 with BellSouth to install the DSL capability for that
7 particular location?

8 THE WITNESS: That's correct. That's what they are
9 buying out of the FCC tariff.

10 COMMISSIONER DEASON: Okay.

11 MR. FEIL: Okay. Thank you, Commissioner.

12 BY MR. FEIL:

13 Q Mr. Ruscilli, do you have a copy of your deposition
14 in front of you?

15 A Yes, I do, just a few seconds. Yes, sir.

16 Q Could you turn to Page 22 of the deposition?

17 A Yes.

18 Q And basically what I'm going to do here,
19 Mr. Ruscilli, is, I'm going to read you passages, and I just
20 want you to tell me whether or not the statement is correct or
21 incorrect as stated in your deposition.

22 A Okay.

23 Q On Page 22, Line 14, beginning at Line 14, Mr. Sloan
24 asked you a question. "Now, I just want to get to the point of
25 this line of questioning. Doesn't BellSouth have a retail

1 Internet DSL service?"

2 And Mr. Turner interjected an objection. He objected
3 to the form of the question. And he said, "You can answer it."

4 And your answer was, "BellSouth through its
5 BellSouth.net company provides an enhanced service which it is
6 an Internet access service which, among other things, provides
7 Web content, e-mail, those kinds of items to its consumers.
8 And one of the components of that is the DSL service that is
9 tariffed in the federal tariff that's available to any ISP to
10 take that particular service and combine it with whatever they
11 might want to combine it and offer to their customers and to
12 provide it. It's a BellSouth.net service that's being
13 provided. It's enhanced because it's not DSL. It's DSL with
14 Internet access, the Web content and everything else which
15 BellSouth markets on behalf of BellSouth.net."

16 So is that answer complete and correct as I've read
17 it?

18 A No. As I had indicated during this line of cross, I
19 wasn't really familiar with the structure during the
20 deposition, and I was speaking as best I understood it at that
21 time. And we've provided a subsequent -- responded to
22 counsel's data request on this.

23 To correct this particular passage that you read,
24 it's a BellSouth telecommunication service that BellSouth
25 Telecommunication markets. That would take care of that.

1 Q So in short, BellSouth.net is not providing a service
2 to end users. Is that what you're saying?

3 A That's correct.

4 Q It's BellSouth Telecom that's providing service to
5 end users.

6 A BellSouth.net is providing the enhanced portion that
7 I've discussed earlier, but BellSouth Telecommunications, yes,
8 is marketing that service.

9 Q Okay. And then on Page 24, Line 13, "Does
10 BellSouth.net take Internet access transport service on the
11 same terms and conditions as other similarly situated ISP?"

12 You said, "Yes. All ISPs buy out of that tariff,
13 including BellSouth.net, under the same terms and conditions,
14 and then what they do with it beyond that is dependent on that
15 ISP." So is that statement correct in your deposition?

16 A No, I -- excuse me. Yes. Also, I think it's Item
17 Number 68 where we provided a response on August I think it was
18 the 13th or 14th that we filed this. That needs to change
19 also.

20 Q How does that need to change?

21 A It is correct to say all ISPs buy out of that tariff,
22 and "that tariff" is referencing the federal tariff.

23 BellSouth.net does not physically purchase out of that tariff.

24 BellSouth Telecommunications takes that tariff product and
25 account for that tariff product when it combines it with the

1 BellSouth.net service.

2 Q So are you saying then that BellSouth
3 Telecommunications buys a wholesale service from itself?

4 A That's correct, and it accounts for it in the cost
5 allocation manual.

6 Q So BellSouth.net doesn't buy anything from BellSouth
7 Telecommunications' tariff, the wholesale --

8 A Right, with reference to this service. Yes.

9 Q Okay. On the bottom of Page 26 of your deposition,
10 beginning at Line 23, Mr. Sloan asked you -- well, actually,
11 let me begin you at Line 25 there. "And I wanted to know, is
12 BellSouth Fast Access Internet service an ISP service, or is
13 this the name that you've given to BellSouth's DSL offering?"

14 And your answer was, "It's an ISP service. Fast
15 Access DSL, as I was saying earlier, is Web content" --

16 A Counselor, excuse me.

17 Q I'm sorry.

18 A My pagination didn't come out very well on this --

19 Q Oh, I'm sorry.

20 A -- and I can't find where you're reading from.

21 Q Okay. Actually, let me give you a copy that I have.

22 A Okay. I apologize.

23 COMMISSIONER DEASON: And, Mr. Feil, you may want to
24 read those a little slower.

25 MR. FEIL: Okay. I'm trying to go fast.

1 COMMISSIONER DEASON: We've got plenty of time.
2 You-all were -- have eliminated it down to one issue, so --

3 BY MR. FEIL:

4 Q Again, I'm on the bottom of Page 26.

5 A Thank you. Go again.

6 Q And I'm sorry, I misspoke. It was Ms. Banks who
7 asked the question, not Mr. Sloan. I missed the heading there.
8 Anyway, at the bottom, Page 26, starting at Line 25, Ms. Banks
9 asked, "And I wanted to know, is BellSouth Fast Access Internet
10 service an ISP service, or is this the name that you've given
11 to BellSouth's DSL offering?"

12 Your answer was, "It's an ISP service. Fast Access
13 DSL, as I was saying earlier, is Web content, e-mail, those
14 kinds of things, enhanced services. And one of the things
15 that's used to provide Fast Access, one of the underlying
16 components is the wholesale DSL offering that we offer to any
17 ISP that wants to buy it."

18 And my question to you simply is, is that a correct
19 statement? Is there a change you need to make to that?

20 A I would make a change. Instead of saying it's an ISP
21 service, I would say it's an enhanced, nonregulated,
22 nontelecommunications Internet access service.

23 Q Mr. Ruscilli, now, BellSouth Telecom advertises and
24 markets to end users the BellSouth Fast Access Internet
25 service; correct?

1 A Yes, that's one of the methods that we advertise for.
2 MR. FEIL: Commissioners, if I could have an exhibit
3 number. I believe we are at Exhibit 9.

4 COMMISSIONER DEASON: That's correct, Exhibit 9.

5 MR. FEIL: And I would title this, if I may, as
6 BellSouth advertisement, Fast Access Internet service.

7 COMMISSIONER DEASON: I have some extra copies if
8 someone needs them. I'm sorry, Mr. File, you wish this
9 entitled what?

10 MR. FEIL: BellSouth advertisement, Fast Access
11 Internet service.

12 (Exhibit 9 marked for identification.)

13 THE WITNESS: I don't believe we advertise for Big K
14 on the second page here.

15 MR. FEIL: Well, let me explain to you basically what
16 those pages are, and I can show you the originals.

17 THE WITNESS: This is fine. I can read this. Thank
18 you.

19 BY MR. FEIL:

20 Q The first page is basically a copy of one side of a
21 newspaper advertisement. And I wanted to ask you, is there any
22 reference on that advertisement to BellSouth.net?

23 A None that I see. It's difficult to read all the
24 footnotes, but it doesn't appear to be in the footnotes.

25 Q It does not appear, you say?

1 A It does not appear to be in the footnotes. They are
2 difficult to read, but just looking at it, I don't see the
3 phrase "BellSouth.net."

4 Q Does this look to you like an advertisement for
5 BellSouth Fast Access Internet service?

6 A Oh, it is.

7 Q Okay. The second page there is -- actually, I'll
8 show you the original, if you don't mind -- is a copy, a front
9 and back copy of a receipt from a Big K Kmart. Basically, an
10 FDN employee walked into the Kmart, bought some milk and
11 chlorinizer, and saw this BellSouth advertisement on the back
12 of the receipt. Let me show it to you.

13 A I got you.

14 Q Now, is what's on the back of that receipt, you
15 recognize that as a BellSouth advertisement --

16 A Yes, I do.

17 Q -- for Fast Access Internet service?

18 A Yes, I do.

19 Q Okay. Does BellSouth bundle the price offerings for
20 local voice service with BellSouth Fast Access Internet
21 service?

22 A If you are a complete choice customer of BellSouth,
23 which is where you would have basic residential service, as an
24 example, and your choice of a number of vertical features, you
25 are eligible for a discount.

1 Q So in short, there is a bundled price offering?

2 A Yes, so to speak.

3 Q And actually, Commissioner Deason asked you this
4 question, but isn't it correct that BellSouth Telecom bills for
5 Fast Access Internet service on the same bill as you will get
6 for your local phone service?

7 A They can. You can have it billed separately, or you
8 can have it all billed on one bill.

9 Q Okay. And if -- let's say it's -- if it's billed all
10 on one bill, if I don't pay my bill, I have BellSouth voice
11 service, I have BellSouth Fast Access Internet service, I don't
12 pay my bill, I get a disconnect notice, I'll have both services
13 disconnected; is that correct?

14 A I don't know the sequence of that disconnect.
15 BellSouth offers billing for many of its products. I have
16 personally a pager, two cellular phones, BellSouth Internet
17 Fast Access, BellSouth entertainment, which is a cable service,
18 and two phone lines all on one bill. If you don't --

19 COMMISSIONER DEASON: You are a good employee, aren't
20 you?

21 THE WITNESS: Yes, sir.

22 MR. FEIL: He's a company man.

23 THE WITNESS: Yes, sir. Would you repeat that for
24 me? I want to use that one. But I do. And I'm not sure of
25 the sequence or how things are disconnected if you don't pay

1 your bill. I think there's a -- there are rules that apply to
2 that.

3 BY MR. FEIL:

4 Q Okay. Well, if BellSouth Telecom bills retail
5 customers for Fast Access Internet service and advertises Fast
6 Access Internet service to retail customers, do you think the
7 end user customer knows that the DSL component is only
8 available to ISPs on a wholesale basis?

9 A I couldn't begin to think what an end user would know
10 whether or not DSL component is available to ISP on a wholesale
11 basis or not.

12 Q Fair enough, Mr. Ruscilli. If a BellSouth Telecom
13 Fast Access Internet service customer has a line problem as
14 opposed to a software problem, has a line problem, say, it's a
15 short, is it BellSouth Telecom technicians that go out and
16 repair the line?

17 A I mean, if there's a physical problem with the line,
18 a BellSouth technician would go out and repair the line. If
19 it's a short, it could be in the inside wire, and the consumer
20 would be responsible for that if they didn't have inside wiring
21 plan, which I have that too.

22 Q Where BellSouth Telecom is providing Fast Access
23 Internet service, BellSouth Telecom owns and maintains the
24 copper loop; correct?

25 A Yes.

1 Q BellSouth Telecom owns and maintains the DSLAM;
2 correct?

3 A Yes.

4 Q BellSouth Telecom owns and maintains the packet
5 transport facilities; correct?

6 A Yes.

7 Q And BellSouth Telecom owns and maintains the ATM
8 switch; correct?

9 A Yes.

10 Q Okay. The next exhibit I wanted to pass out, if I
11 may, as Exhibit 10 --

12 COMMISSIONER DEASON: While we're doing that, let me
13 ask a question about this particular advertisement. This is
14 exciting. I mean, where I live we don't have anything like
15 this. This is the first time I've seen something like this.

16 When you advertise this, was this in the Orlando
17 Sentinel, or do you have any idea which newspaper this --

18 THE WITNESS: I have no idea. I know in Atlanta you
19 will see similar ads like this in the Atlanta Journal and
20 Constitution. I don't know which newspapers, but they do have
21 newspaper coverage.

22 COMMISSIONER DEASON: Okay. Well, the marketing
23 side, you know, when you advertise in a newspaper such as the
24 Orlando Sentinel, it has a wide coverage area. Do you have the
25 capability generally to cover the Orlando area with DSL

1 service, or do you get a lot of calls that you actually have to
2 indicate to customers is not available?

3 THE WITNESS: I'm not sure of the availability of
4 customers that we cannot provide it to. My only personal
5 experience is in Atlanta, and as I said, we had been putting
6 DSL out for about a year to a year and a half before it was
7 even available, even though many customers were calling and
8 requesting it. We just -- it takes -- you know, we have to
9 deploy a DSLAM. We've got to put equipment in the field, and
10 we have to make that judgement on where we're going to put it
11 based on the number of customers we can get. And so it may not
12 be available everywhere, but I don't know the percentage of
13 customers that can receive the service or not.

14 COMMISSIONER DEASON: Well, let me ask you this maybe
15 at a little bit broader level. Would it be fair to say that
16 your marketing and your customer representative folks work
17 together with your engineering and planning and deployment
18 folks so that all of this is synchronized to some extent?

19 THE WITNESS: I would think to some degree.
20 Mr. Williams might be able to expand upon that, but I would
21 think to some degree before we make the investment in
22 advertising and full-scale marketing we're pretty sure there's
23 a base there that we can reach and that we've done our market
24 research to make sure there are customers that are there
25 willing to purchase the service.

1 COMMISSIONER DEASON: Mr. Feil, do you wish to have
2 this identified?

3 MR. FEIL: As Exhibit Number 10.

4 COMMISSIONER DEASON: It will be so identified.

5 (Exhibit 10 marked for identification.)

6 MR. FEIL: And I guess the title would be letter of
7 Nancy White dated April 13, 2001.

8 BY MR. FEIL:

9 Q Do you have a copy of that letter, Mr. Ruscilli?

10 A Yes.

11 Q Okay. And you're familiar with who Ms. White is, are
12 you not?

13 A Yes. She's the lawyer that is putting me up in this
14 hearing.

15 Q Okay. Do you recognize this as a letter from
16 Ms. White?

17 A Yes. I have not seen this letter before, but I
18 recognize the letterhead.

19 Q Okay. I'm going to ask you a few quick questions
20 about this letter. In the first paragraph she indicates that
21 she misspoke at the February 6, 2001 agenda. So apparently,
22 you know, she, like you, had some corrections to make to what
23 she said. But the thing I want to focus on is a few statements
24 in the second paragraph. There she says in the second
25 sentence, "BellSouth.net Inc. does not provide services to end

1 users." So is that consistent with your testimony here today?

2 A Where --

3 Q I'm in the sentence --

4 A It is consistent. I just can't find the sentence.

5 Q I'm sorry. It's the second sentence of the second
6 paragraph.

7 A Yes. To the best of my understanding, that's
8 correct.

9 Q Okay. And then the fourth sentence she says,
10 "BellSouth Telecommunications, Inc. generally markets its" and
11 then it goes on from there. Now, is that statement consistent
12 with your testimony here today?

13 A Yes.

14 Q Okay. Now, on the next page, it's still, I guess,
15 part of the same paragraph. It's not indented, but she says
16 there -- the sentence that begins, "BellSouth.net Inc. is not,
17 and never has been, an Internet service provider." Is that
18 consistent with your testimony here today?

19 A That's inconsistent, but I would suggest Ms. White
20 would be the correct person on this.

21 Q So are you now changing your testimony that
22 BellSouth.net is not an Internet service provider when earlier
23 you said it was?

24 A Earlier I was under the impression that it was
25 because at one time it was a completely separate company, and

1 it was an Internet service provider called BellSouth.net. And
2 I think with some changes in restructuring and what the law had
3 allowed with the joint marketing of these two companies some
4 things may have changed. I would defer to Ms. White's opinion
5 on this over mine. This is really probably a legal
6 understanding.

7 Q Okay. And if I could refer you to Staff's composite
8 Exhibit Number 5. I don't know if you have it in front of you,
9 but --

10 A I do not.

11 Q Okay. It's -- the thing in particular I'm going to
12 refer to is BellSouth's response to FDN's second set of
13 interrogatories, Item Number 68. I believe you made reference
14 to this.

15 A I have a copy of that.

16 Q Okay. Let me ask you a few quick questions about
17 that. Okay. At the second paragraph, the last sentence, I
18 want to ask you whether or not that second sentence -- or that
19 last sentence there is consistent with your understanding of
20 your testimony here today?

21 A Yes, it is.

22 Q Okay.

23 MR. TURNER: Excuse me. I was just going to ask if
24 we could read the sentence in the record just to make sure
25 we're all understanding exactly what you're talking about.

1 THE WITNESS: Sure. Counselor, was that sentence the
2 sentence that said, "The easiest way" --

3 MR. FEIL: Yes. Go ahead and read it.

4 THE WITNESS: -- "to understand the function of
5 BellSouth.net is to think of it as a vendor that provides BST
6 with the equipment and professional services that enable BST to
7 provide an enhanced information service to retail customers as
8 BellSouth Fast Access ADSL."

9 BY MR. FEIL:

10 Q Does that mean that BellSouth.net is not providing
11 Internet service?

12 A Yes.

13 Q And as far as you know, is the remainder of the
14 answer of this interrogatory correct?

15 A Yes. That was my discussion that I've been having
16 about how we account for the tariff product of the DSL portion
17 with respect to the federal guidelines.

18 Q Is it fair to say that the demand for DSL service is
19 growing?

20 A Yes, I think that's a fair statement. I think the
21 demand for advanced services of this type in general is
22 growing. We discussed it a little earlier, cable, and cable is
23 clearly the dominate player. It's about two to one over DSL,
24 but the advance for high-speed services in general is certainly
25 growing. An incumbent or a subset of that would be DSL.

1 Q Do you know whether or not the FCC has agreed with
2 your position that cable is a competing service of DSL?

3 A Well, I think the FCC recognized in the UNE Remand
4 Order as recently as a few days ago in the advanced notice of
5 inquire, I think I might be misstating what the title of it is,
6 they recognized that cable is out there providing high-speed
7 entertainment and high-speed Internet access at a level of
8 almost two to one over what DSL is as far as the penetration in
9 the marketplace.

10 COMMISSIONER JABER: Mr. Ruscilli?

11 THE WITNESS: Yes, ma'am.

12 COMMISSIONER JABER: BellSouth.net is not an ISP. It
13 is not -- help me understand what BellSouth.net is exactly.
14 And when was it formed? Do you know?

15 THE WITNESS: I don't know for certain when it was
16 formed. I think sometime in 1996 or '97, but I really don't
17 know. At one time it was a separate company providing Internet
18 content that you dialed into. I believe there were some
19 changes in corporate structure that were allowed by what went
20 on with changes in the Act as far as the provisioning of
21 information services. There were some set provisions three
22 years after the Act.

23 As it stands now, BellSouth.net is a wholly-owned
24 affiliate of BellSouth Corporation. It has employees. Those
25 employees provide what we would call professional services.

1 They are the people that would design the Web pages and the
2 information that are out there. Those are the people that when
3 I have trouble with my Fast Access line I call. I'm talking to
4 actually those BellSouth.net employees or their agents to
5 resolve the problems that I'm having either with my software or
6 perhaps it's a line problem. They're the ones --

7 COMMISSIONER JABER: So you the BellSouth customer,
8 you the BellSouth telephone customer who also receives Internet
9 service through retail offerings provided by BellSouth, called
10 BellSouth.net customer service?

11 THE WITNESS: Yes. There's -- if you're a Fast
12 Access customer, there is a specific number you call for help
13 with your Fast Access service. You don't talk to a standard
14 customer service rep. If you do, they will refer you, I
15 believe, to the BellSouth.net number.

16 COMMISSIONER JABER: Okay. I guess my -- what I'm
17 trying to figure out now is whether BellSouth.net was
18 established just for the purpose of ensuring that the Fast
19 Access service and the Internet provisioning wouldn't look like
20 a wholesale function and, therefore, constitute an unbundling
21 network element. Could you help me understand that?

22 THE WITNESS: Sure. It was formed way before Fast
23 Access was deployed by BellSouth. We were required, I believe,
24 by the Act. As far as how we provided information service, it
25 had to be through a separate affiliate. And that's when you

1 dialed up in a dial-up modem at 9.6 or 288, and you could
2 contact BellSouth.net just like you could Prodigy or
3 CompuServe. It was before the deployment of DSL, well before.

4 BY MR. FEIL:

5 Q Mr. Ruscilli, I want to read you a statement and then
6 ask you a question. I'm quoting from a document here. I'll
7 show it you if you want to see it. I'm not playing any tricks
8 on you, but let me read this. "We also disagree with the
9 incumbent LEC's argument that cable television service" --

10 COMMISSIONER DEASON: Mr. Feil?

11 MR. FEIL: Yes.

12 COMMISSIONER DEASON: Slow it down just a little.

13 MR. FEIL: Sorry.

14 BY MR. FEIL:

15 Q "We also disagree with the incumbent LEC's argument
16 that cable television service offers a viable alternative to
17 the incumbent's unbundled loop. Cable service is largely
18 restricted to residential subscribers and generally supports
19 only one-way service, not the two-way communications telephony
20 requires. Moreover, we conclude that declining unbundled loop
21 scenarios where cable telephony is available would be
22 inconsistent with the Act's goal of encouraging entry by
23 multiple providers, given that neither mobile nor fixed
24 wireless can yet replace wire line service. If we were to take
25 the incumbent's approach, consumers might be left to choose

1 between only the cable company and the incumbent LEC." Do you
2 recognize this as a statement by the FCC?

3 MS. WHITE: Before he answers that, I'd like Mr. Feil
4 to give what he's reading from to the witness, so he can see in
5 what context --

6 COMMISSIONER DEASON: Mr. Feil offered to do that.
7 I'm sure he will.

8 MR. FEIL: And what this is is an excerpt from the
9 UNE Remand Order, specifically Paragraph 189.

10 A I recognize the statement as being from the FCC, and
11 it's in the context of the discussion of whether or not they
12 should have to unbundle high capacity loops. But I have before
13 me FCC00-290 where it goes into a great discussion about the
14 shares of residential service and high-speed technology, and
15 it's comparing DSL to cable. It shows that cable has 78
16 percent of the market, and ADSL has 16 percent.

17 Q I'm sorry, what document are you reading from,
18 Mr. Ruscilli?

19 A I'm reading from -- I don't have the title. I just
20 have a portion of it, but it is FCC00-290.

21 Q Is that a report? It's an order? What is it?

22 A I don't have the title with me. I just collected
23 pages associated with the level of broadband --

24 Q All right. Well --

25 A I believe it's probably FCC's report on broadband

1 deployment probably from the year 2000.

2 Q So it's a statistical compilation. Is that what you
3 are saying?

4 A Yes.

5 Q Okay. Thank you.

6 A But in that compilation they're clearly recognizing,
7 as they did in the order that just came out, notice of inquiry
8 that just came out a couple of days ago, that DSL is out there.
9 It's growing at great leaps and bounds, but it's not anywhere
10 near what cable is doing with its high-speed.

11 Q Okay. Mr. Ruscilli, is it correct to say you are not
12 a lawyer?

13 A It's very correct to say I'm not a lawyer.

14 Q Okay. So to the extent that the lawyers involved in
15 this proceeding at the Commission may have a different legal
16 opinion of the circuit court case you recited, they are
17 certainly free to do that. Is that a fair statement?

18 A Absolutely. I would encourage that.

19 MR. FEIL: Thank you. Nothing further.

20 COMMISSIONER DEASON: Staff.

21 CROSS EXAMINATION

22 BY MS. BANKS:

23 Q Good afternoon, Mr. Ruscilli.

24 A Good afternoon, Ms. Banks.

25 Q I am -- well, you know who I am, Ms. Banks, and I had

1 just a few questions to ask on behalf of Commission Staff. The
2 first question: Would you say that it's correct that BellSouth
3 Telecommunications packages its DSL service along with its
4 Internet content from BellSouth.net?

5 A Yes. It is one service that has two components. It
6 has the Internet content, and it has the DSL component of that.

7 Q And then BellSouth markets it to its end users?

8 A Yes, it does.

9 Q Okay. BellSouth will sell wholesale DSL service to
10 FDN's ISPs; correct?

11 A It would sell it to FDN's ISP and any other ISP.

12 Q Okay. And that ISP can then package it with its own
13 Internet content service, and then market it to its end users?

14 A Yes. I think that's what Mr. Gallagher testified he
15 would like to do.

16 Q Okay. If FDN is a voice provider for a particular
17 customer, can FDN's ISP purchase BellSouth's wholesale DSL
18 service to be packaged and then sold to that same customer?

19 A No.

20 Q Okay. Why not?

21 A BellSouth only provides its DSL type service when the
22 customer -- and it's in that tariff, in the federal tariff.
23 It's only available when the customer is a BellSouth voice
24 customer. Now, FDN can buy the high-speed -- the DSL service
25 from the tariff and package it with its Internet service, but

1 FDN is actually providing the voice on its own switch.

2 Now, if FDN wanted to do that and found a market to
3 do that, they could certainly buy a DSLAM and put a DSLAM out
4 there if that was necessary. In a remote terminal, put the
5 DSLAM there. They could put in the splitters and provide voice
6 over data to their own ISP.

7 Q Okay.

8 A They are not impaired. They can go out and spend the
9 money and do that.

10 Q Okay. Is it your understanding FDN's primary dispute
11 involves the ability to offer DSL service when BellSouth has a
12 digital loop carrier, or DLC, deployed at a remote terminal?

13 A Yes. I mean, I think that the primary dispute here
14 is that, as it happens in many arbitrations, it's one of money.
15 We have facilities that we've over the last three years placed
16 out there, the DSLAMs in remote terminals. And FDN is faced
17 with a decision, does it want to deploy a remote terminal and
18 go through that expense, or see if it can get this Commission
19 to rule that it can be provided as a UNE, wherein FDN doesn't
20 take any risk, any capital risk, in deploying equipment.
21 That's what this argument is really about.

22 Q Okay. And along those same lines, could FDN's --

23 COMMISSIONER DEASON: Excuse me. Let me interrupt
24 just a second. Is it BellSouth's concern that there -- the
25 reason you are taking the position that you are, obviously,

1 there are legal reasons in the way you do that, but then
2 usually the legal interpretations are sometimes premised upon
3 the economic effect of those. Is it BellSouth's concern that
4 there's potentially a requirement to provide access to the
5 DSLAMs and their capabilities at TELRIC, and it's really a
6 question that that's not perhaps, in your opinion, a
7 compensatory return on your investment?

8 THE WITNESS: It's BellSouth's opinion that that's
9 what they want, is to have access to the DSLAM, and
10 Mr. Gallagher himself testified, at TELRIC prices. When
11 BellSouth began --

12 COMMISSIONER DEASON: Can I rephrase? Would you
13 entertain an offer at something greater than TELRIC and provide
14 access, or is this, in your opinion, a legal prohibition in you
15 doing so?

16 THE WITNESS: Well, it's a legal -- I don't know if
17 it's a prohibition, sir. Certainly legally we're not required
18 to do it, as far as what the FCC has said, in my lay opinion.
19 We have not had any negotiations with FDN or any other carrier
20 on whether or not we could do that at some sort of market rate
21 above TELRIC. I think BellSouth's concern in this particular
22 hearing is that we've been deploying DSLAMs now for several
23 years, and we've been deploying them under the assumption that
24 we are not obligated to unbundle packet and not obligated to
25 have to resell our xDSL service. And so we've investigated a

1 marketplace, done market studies, and determined that we see an
2 opportunity to deploy some equipment and make some money.

3 The specter of having to provide that as a UNE now
4 would cause any prudent business to reevaluate its business
5 plans because that is a change. It's not the same kind of
6 return that you would be considering in a marketplace. And
7 Mr. Gallagher appropriately testified that in his own case, and
8 I fully understand his logic and agree with it. If he were
9 required to do the same, he would have to reevaluate.

10 COMMISSIONER DEASON: But I guess the focus of my
11 question is, would you entertain an offer from someone to
12 provide DSLAM access and access to its capabilities at what you
13 consider to be a compensatory return on your investment?

14 THE WITNESS: I think possibly we would. I have to
15 apologize, I'm not the person that could probably make that
16 decision, but I would certainly think possibly we could
17 consider it.

18 BY MS. BANKS:

19 Q Mr. Ruscilli, you have already stated that FDN's ISP
20 can purchase a DSL at wholesale; correct?

21 A Yes. It can buy the DSL wholesale out of the FCC
22 tariff.

23 Q Okay. Could that -- FDN's ISP purchase a wholesale
24 DSL for a loop that contains a digital loop carrier at a remote
25 terminal?

1 A No. They would have to -- and you might want to ask
2 this to Mr. Williams, as far as the technical aspects of it,
3 but they would have to deploy DSLAM at the remote terminal for
4 this to work. But once they have that DSLAM in the remote
5 terminal, the other two components, the wire getting to that
6 terminal from the customer and the wire going from that
7 terminal to FDN's central office, is available already today as
8 UNEs.

9 Q Okay. Just for clarification, what is the difference
10 between BellSouth offering a service at wholesale and offering
11 service at retail -- resale?

12 A Just from a general perspective, the wholesale -- and
13 we'll use this one, DSL service that we're offering in our FCC
14 tariff. It's offered with the understanding that there's a
15 large amount of technical support that is going to be necessary
16 to provide the service, and that technical support is going to
17 come from the customer. And generally those are ISPs. It's
18 offered with the understanding that the ISP will have other
19 necessary equipment, in this case an asynchronous transfer mode
20 switch, and be able and competent to establish virtual circuits
21 between the DSLAM and that switch.

22 That kind of technical support is not one that we
23 would expect an average consumer or even a small business to
24 have that kind of expertise. That's why it is wholesale. We
25 are selling it to another carrier that would take upon itself

1 that ability of technical capability.

2 Other services that offer to consumers directly are
3 ones that are already put together such as our Fast Access
4 service where we already have the virtual circuits to the
5 Internet established, we already have the asynchronous transfer
6 mode switch set up and the content. So then the consumer just
7 has to plug in the modem and turn it on and it works. So
8 that's a retail offering, and then the wholesale offering
9 assumes another carrier is going to take that upon themselves
10 to do it.

11 COMMISSIONER PALECKI: What if FDN was an Internet
12 service provider?

13 THE WITNESS: Well, FDN is an Internet service
14 provider. I think they have a company called FDN.com. They
15 can buy from our tariff a DSL pipe. And then it's incumbent
16 upon them to have the technical wherewithal to connect that to
17 their Internet service that they provide, their Web content
18 programming, establish the virtual circuits on that path, have
19 an ATM or a frame relay type switch there to make it work,
20 because all the pipe does, it's doesn't give you the Internet.
21 It's just a transport piece. Something has to get you out to
22 the world.

23 COMMISSIONER PALECKI: What about connecting it to
24 the customer? That's what I'm -- FDN purchased as an Internet
25 service provider the pipe, who connects it up to the customer?

1 And how would that work?

2 THE WITNESS: I think you need to ask Mr. Williams
3 that. I'm sort of a little bit beyond my area. I sort of
4 understand the big picture. He's a little bit more detailed --

5 COMMISSIONER PALECKI: Is that feasible?

6 THE WITNESS: I think it is, but Mr. Williams would
7 be able to answer it more technically and more thoroughly.

8 COMMISSIONER PALECKI: Because BellSouth -- let's say
9 AOL as a Internet service provider was the wholesale customer
10 of the BellSouth DSL. It's BellSouth that would hook it up to
11 the end use customer, correct, the retail end use customer?

12 THE WITNESS: I believe so. I just don't know
13 precisely --

14 COMMISSIONER PALECKI: And I guess the question I
15 have is, would BellSouth do the same for FDN?

16 THE WITNESS: If we do it for AOL, we would do it for
17 FDN, but precisely how we do it, I don't know.

18 COMMISSIONER PALECKI: Thank you.

19 BY MS. BANKS:

20 Q Mr. Ruscilli, just to clarify the question that I
21 just asked, I was asking you to distinguish between wholesale
22 and resale BellSouth's offerings. And was that the distinction
23 you were making, or were making a distinction between wholesale
24 and retail?

25 A I'm sorry, I was making the distinction between

1 wholesale and retail. I misunderstood you. Would you ask me
2 the question again? And this is with resale?

3 Q Yes. What is the distinction between BellSouth's
4 offer between wholesale services versus resale?

5 A Wholesale services are those services -- an example
6 would be most -- the most appropriate example would be our FCC
7 tariff where we provide services to carriers in bulk. DSL
8 would be one of those.

9 Resale are those services that we offer, and they are
10 specifically telecommunications services that we offer to
11 consumers, and that's available at a Commission-prescribed
12 discount. The wholesale is not available at a discount.

13 Q Okay. Is it correct to say that BellSouth will offer
14 DSL service at resale only to an ALEC that is reselling
15 BellSouth's voice service?

16 A That's right. If an ALEC is reselling our voice
17 service, we'll -- and it's because we still have the voice
18 technically underneath that, we'll allow them to resell the
19 BellSouth access service that they have. It's not at a
20 discount, though.

21 Q And that is the only circumstance that you are
22 offering at resale?

23 A I believe so. I believe so. You might ask
24 Mr. Williams to make sure.

25 MS. BANKS: That concludes Staff's cross. Thank you,

1 Mr. Ruscilli.

2 THE WITNESS: Thank you.

3 COMMISSIONER PALECKI: I have a couple of questions
4 for Mr. Ruscilli.

5 THE WITNESS: Yes, sir.

6 COMMISSIONER PALECKI: Mr. Ruscilli, do you have a
7 copy of Exhibit Number 8, which was BellSouth's exhibit with
8 the --

9 THE WITNESS: No, sir, I don't.

10 COMMISSIONER PALECKI: -- on the collocation space in
11 the remote terminal?

12 THE WITNESS: No, sir, I don't have that. I have it
13 now, sir.

14 COMMISSIONER PALECKI: All right. If you take a look
15 at this exhibit, we have a DSLAM located at the remote
16 terminal, and I want for purposes of my questions for you to
17 assume that that is BellSouth's piece of equipment. It's their
18 DSLAM right there. The end user is an FDN customer. Let's say
19 they are the only -- that phone we see right there is the only
20 FDN customer that's located off of that remote terminal. It's
21 a single phone. If that end user wanted any DSL service, could
22 that be provided to that end user without FDN losing the voice
23 telephone customer?

24 THE WITNESS: Yes, I believe so. And Mr. Williams
25 can give a more technical answer to this and certainly correct

1 me if I misstate this. But FDN could put a DSLAM of its own in
2 that remote terminal.

3 COMMISSIONER PALECKI: Now, would that be
4 economically feasible for a single end use customer, a \$52,000
5 piece of equipment?

6 THE WITNESS: Probably not.

7 COMMISSIONER PALECKI: Now, what if that end user
8 wanted to sign up for BellSouth DSL and that end user is an FDN
9 customer, could that end user do that? And if so, would it
10 still be able to retain its FDN voice service?

11 THE WITNESS: No. BellSouth would not offer xDSL to
12 a customer of another -- a voice customer of another carrier.

13 COMMISSIONER PALECKI: All right. Let's assume that
14 that end user now is a BellSouth --

15 COMMISSIONER DEASON: Excuse me. Let me interrupt.
16 I'm just following up on that question you just asked. You
17 would not do that because you don't have to, and it's not in
18 your economic interest to do so, or why would you not?

19 THE WITNESS: Well, one, we don't have to. It's been
20 asked numerous times to the FCC, and each time the FCC has
21 denied it, specifically in the Line Sharing Order and as
22 recently as the Texas order. They denied AT&T's request for
23 that particular thing. Secondly, and I think you hit upon it,
24 it's a business decision. This is a new market. It's a
25 burgeoning market. We've got a business model that we're

1 operating under, and it's something we've not considered doing.

2 COMMISSIONER PALECKI: Now, let's assume that end
3 user is a BellSouth DSL customer, a BellSouth phone customer,
4 and wanted to sign up for FDN phone service, could that end
5 user do so?

6 THE WITNESS: Okay. If the end user was a BellSouth
7 Fast Access customer and they had BellSouth voice, and your
8 question is, suppose they wanted to go to FDN voice, to make
9 sure I understood it?

10 COMMISSIONER PALECKI: Correct.

11 THE WITNESS: The FCC spoke to this also that if the
12 incumbent LEC loses the voice, it has no obligation to provide
13 the DSL service to the customer. So we would not provide the
14 DSL service to the customer.

15 COMMISSIONER PALECKI: The question I have is, the
16 relief that's being asked for by FDN is that BellSouth be
17 required to share their DSLAM facilities. Can you think of any
18 relief short of that that will allow a solution to this problem
19 and that will allow an FDN customer to stay on with FDN phone
20 service while still receiving the BellSouth DSL or any other
21 DSL service? Is there any solution short of what's being
22 requested by the petitioner here?

23 THE WITNESS: I'm not sure there actually is a
24 solution as described by the petitioner here. We heard a lot
25 of testimony this morning from Mr. Gallagher about the economic

1 and feasibility on a large scale to go out and deploy 12,000
2 DSLAMs. BellSouth doesn't have 12,000 DSLAMs. It only has
3 3,700 DSLAMs, and we didn't get those yesterday. We've been
4 building those up over four years based on a market model.

5 In a particular case like this, I believe that the
6 FCC, even in its Line Sharing Order, said that through line
7 sharing it would encourage the ALECs to deploy DSLAMs. I think
8 the solution here is to encourage ALECs to deploy DSLAMs to
9 open up more marketplaces than BellSouth's even going to to
10 provide competition. The opposite of this in order to
11 accomplish what you've just said basically says that FDN is
12 just going to take over providing DSL from BellSouth to
13 customers that already have it.

14 COMMISSIONER PALECKI: What if an existing ALEC isn't
15 really interested in getting in the DSL market? All they want
16 to do is retain their existing telephone customers. I guess
17 the point I'm trying to make is, do you understand the
18 difficult box that you are putting this Commission in? You're
19 basically putting us in a position where you're telling us
20 anytime one of these ALEC customers wants to go over to DSL
21 service with BellSouth, that that ALEC is going to always lose
22 the voice service.

23 THE WITNESS: I don't think it's "always lose the
24 voice service." There's the resale opportunity that Ms. Banks
25 was talking to me about. They can resell BellSouth's voice and

1 then maintain the ADSL service.

2 COMMISSIONER PALECKI: So there is nothing -- there
3 is absolutely no way short of the ALEC putting in its own
4 DSLAM? And I'm talking about in my scenario where you have a
5 single customer off that remote terminal. That's the only way
6 that end user customer is going to be able to get both DSL
7 service and be able to retain itself as an ALEC voice phone
8 customer, and there's no other solution?

9 THE WITNESS: No, with the exception that they can
10 convert that customer from ALEC facilities provided voice to
11 BellSouth resold voice.

12 COMMISSIONER PALECKI: What is entailed in that? And
13 what are the differences in margins you are talking about?

14 THE WITNESS: Margins, I don't know. I mean, they
15 get a discount when they resell the voice service, and I don't
16 know what their margins are that they are making now when they
17 provide voice by themselves, but there might be a difference in
18 margins.

19 COMMISSIONER JABER: Isn't that contrary to
20 BellSouth's basic philosophy that these ALECs should be
21 facilities-based ALECs? So if their only solution is for them
22 to resell BellSouth's voice service, it seems contrary to your
23 basic philosophy.

24 THE WITNESS: I don't know that our basic philosophy
25 is that everybody should be a facilities-based player.

1 Clearly, the FCC said that there are, you know, three ways to
2 get into the marketplace. One is through resale, and there are
3 companies out there that are doing that today and doing well.
4 One is through doing UNEs, and the other one is by providing
5 your own facilities such as FDN is trying to do today with
6 their switches. So I don't think it's contrary to BellSouth's
7 policy. There are three ways to get at the marketplace. I
8 believe you can have robust competition in all three areas.

9 COMMISSIONER PALECKI: And what are those three ways?

10 THE WITNESS: Resale, which was prescribed by the Act
11 where they resell the incumbent LEC services; purchasing UNEs,
12 UNE combos, that's been before this Commission several times;
13 or putting in their own switches and putting in their own pipes
14 or buying pipes from somebody else.

15 COMMISSIONER PALECKI: But I think that only two of
16 those are available for the ALEC who doesn't want to go into
17 the DSL business but still wants to allow his customer to be
18 able to have DSL service from somebody else.

19 THE WITNESS: That's true.

20 COMMISSIONER PALECKI: And that's either the resale
21 or you buy your own DSLAM.

22 THE WITNESS: That's true.

23 COMMISSIONER PALECKI: And you've already
24 acknowledged that for one end user at the end of a remote
25 terminal it would not be economically feasible to purchase a

1 DSLAM for that one customer.

2 THE WITNESS: That's true.

3 COMMISSIONER PALECKI: All they want to be able to do
4 is keep their existing voice service, and you're telling me
5 there are no other solutions, and there's nothing that you are
6 able to come up with in your discussions with FDN that would
7 allow FDN to continue to serve its voice customers.

8 THE WITNESS: Outside of the resale option that I
9 discussed, no.

10 COMMISSIONER PALECKI: And you're willing to take the
11 chance of coming to this Commission, and you have no idea what
12 we're going to decide, rather than coming up with some middle
13 ground that will allow FDN to still serve that voice customer
14 even though you're providing it with DSL service.

15 THE WITNESS: Well --

16 COMMISSIONER PALECKI: It seems like you should use
17 your imaginations.

18 THE WITNESS: As I indicated in response to
19 Chairman Deason's comment, we have not had those kinds of
20 discussions with FDN or any other player in the marketplace at
21 this point in time. I can't make the decision that we will or
22 will not do that, but I can certainly say that we would
23 probably entertain it. But we have not had any discussions to
24 say if there is something above where approaching a market rate
25 where we could do this before for these other players. We have

1 just not had those discussions.

2 COMMISSIONER PALECKI: Thank you.

3 COMMISSIONER JABER: I've got just a couple. On Page
4 12 -- actually, before I do that, let me follow up on one of
5 the first questions Commissioner Palecki asked you. In the
6 beginning, he asked you if there was a solution to the ALEC's
7 request with respect to providing DSL service and maintaining
8 their own voice line, and you said, yes, there is the
9 possibility of locating the DSLAM in the remote terminal.

10 THE WITNESS: Yes.

11 COMMISSIONER JABER: But that alone is not enough, is
12 it?

13 THE WITNESS: There's more that they would have to
14 do. They would have to buy the UNEs from the --

15 COMMISSIONER JABER: They would have to what?

16 THE WITNESS: They would have to buy a UNE for the
17 facility to get from the -- the packet data from the DSLAM back
18 to their switch.

19 COMMISSIONER JABER: They would have to buy the UNEs.
20 Would that involve buying the Fast Access service and the voice
21 line? Is that what you're referring to?

22 THE WITNESS: They would have to buy the UNEs for --
23 he was mentioning DS-3 transport, but you could go down to a
24 DS-1 transport at about \$43 a month as opposed to the numbers
25 that he -- well, I'm sorry, there's two ends of it, so about

1 \$80 a month as opposed to what he was talking about at the
2 expenses of \$1,500 a month. He would have to buy that to get
3 his packet service back to his switch. And remember, he's his
4 own provider now, so he would have to set up -- and presumably
5 he has his own ATM switch there to send that back.

6 COMMISSIONER JABER: All right. On Page 12 of -- and
7 I don't know if you have this in front of you, but in
8 Mr. Gallagher's testimony, he references the Line Sharing
9 Order. And regardless of whether you agree with the Line
10 Sharing Order or not, you do have to acknowledge that it was
11 the FCC's attempt to recognize that CLEC access to DSL was
12 critical. You would agree with me there? Whether we agree
13 with the order or not, they were trying to promote CLEC access
14 to DSL technology; right?

15 THE WITNESS: Yes. They were encouraging CLEC access
16 to a particular UNE in the DSL order, which is the
17 high-frequency portion of the loop, so that they can bring
18 advanced services to the marketplace.

19 COMMISSIONER JABER: Now, in that same order, the FCC
20 also recognized that in that spirit, in allowing CLEC access to
21 DSL technology, state commissions could impose additional
22 obligations on ILECs and even identify new UNEs if it needed to
23 to promote CLEC access to DSL technology; right? And, again,
24 it doesn't matter whether we agree with it or not, but it's
25 what the --

1 THE WITNESS: That was certainly in the UNE Remand
2 Order. I can't remember it being in the Line Sharing Order,
3 but it may very well been in there also.

4 COMMISSIONER JABER: Okay. So then in response to
5 one of the questions that Commissioner Palecki had that I also
6 have with respect to identifying solutions, I suppose the
7 ultimate solution is for us take some of this guidance from the
8 FCC and use our authority to identify additional UNEs.

9 THE WITNESS: That is a possible solution. I would
10 encourage and urge the Commission to look at the impairment.
11 And, you know, the FCC has said with respect to impairment the
12 fact that it cost more may not necessarily be determinative.

13 COMMISSIONER JABER: As a matter of fact, they have
14 the -- they've got the standard probably in the Line Sharing
15 Order, which is to make sure that it would be in the spirit of
16 promoting additional and procompetitive requirements.

17 THE WITNESS: Yes.

18 COMMISSIONER JABER: Now, if I wanted to explore the
19 possibility of identifying additional UNEs in the hope of
20 finding a solution, the two UNEs I would be looking to identify
21 would be the Fast Access service and that voice line that has
22 to be bought to make sure that the ALEC customer, voice
23 customer, is not getting kicked off of the line. Those would
24 be the additional UNEs; correct?

25 THE WITNESS: Well, possibly you could consider them.

1 And, Commissioner Jaber, it's probably a legal argument, and
2 I'm not qualified to discuss it. But Fast Access is an
3 enhanced, nonregulated telecommunication service and not
4 subject to regulations of the Act. So I don't know if it could
5 be conformed into a UNE or not, but that's probably a legal
6 debate.

7 COMMISSIONER JABER: Yeah, and I am sure that the
8 lawyers don't need an invitation to include this discussion in
9 the brief. But from a technology standpoint, I'm trying to
10 identify what all is needed to make sure that the ALECs can
11 keep the voice line when a customer switches DSL providers.
12 And from your testimony and from Mr. Gallagher's testimony what
13 I gather is, if the DSLAM is located in the remote terminal,
14 you also need the Fast Access service and you need the voice
15 line UNE. Is there anything else you can think of?

16 THE WITNESS: Not that I can think of or that I would
17 technically know. You may ask Mr. Williams, but again, to
18 accomplish what Mr. Gallagher wants, he has his own Internet
19 access service. He wants the whole pie, so I don't know why
20 Fast Access would be part of that.

21 COMMISSIONER JABER: All right. Thank you.

22 COMMISSIONER PALECKI: Mr. Ruscilli, I have one
23 further question. You had mentioned in your summary an FCC
24 order where you stated there were only limited circumstances
25 under which BellSouth would be required to unbundle its packet

1 switching.

2 THE WITNESS: Yes, sir.

3 COMMISSIONER PALECKI: What are those limited
4 circumstances that would require that under the FCC order you
5 were referring to?

6 THE WITNESS: The FCC order that I was referring to
7 was the UNE Remand Order, sometimes called the 319 Order, and
8 the circumstances have been put in the Code of Federal
9 Regulation 51.319, I believe. And what they say is that if the
10 incumbent LEC -- and I'm doing this from memory -- has deployed
11 digital loop carrier, there is no spare copper facilities
12 available, and has deployed packet for its own purposes, packet
13 switching, and will not allow an ALEC to collocate in its
14 remote terminal, then, and only then, must it unbundle the
15 packet.

16 And as testimony has been presented here today,
17 direct and certainly Mr. Williams will present the same
18 testimony, we will go well above and beyond and out of our way
19 to accommodate any ALEC that wants to collocate its DSLAM in a
20 remote terminal. So there's no requirement for us according to
21 the FCC 319 Order to unbundle our packet.

22 COMMISSIONER PALECKI: Commissioner Deason had
23 mentioned earlier today whether or not FDN had approached
24 BellSouth about -- with the concept of sharing in the cost of a
25 DSLAM. Is that something that would be a possible solution

1 here? If one of the ALECs, for example, an ALEC that only had
2 a few end use customers at the end of your remote terminal
3 wanted to share in the cost of the DSLAM, would that be
4 something that you might entertain?

5 THE WITNESS: Again, you know, I don't have the
6 authority to make those decisions, but it might possibly be
7 something we could consider. We don't think it is required or
8 necessary, but it might be possibly something we could consider
9 at some sort of market rates.

10 COMMISSIONER PALECKI: Now, as a Commission, we have
11 received mandates from both the federal and our state
12 government to encourage competition. Does it seem like we are
13 correctly following such a mandate if we allow a condition to
14 exist that every time an ALEC customer decides to sign up for
15 DSL service, the ALEC loses the voice customer? It doesn't
16 seem fair to me, and that's the reason I'm asking you the
17 question.

18 THE WITNESS: I agree, and I understood your
19 question, and I understand your comment. I think isolated
20 incidents, those things may happen, but there is considerable
21 competition in the marketplace when you look at cable alone.
22 There are opportunities for customers to have high-speed
23 advanced services through cable. They are coming on-line with
24 the DSS satellite where you can have high-speed Internet
25 access. There are other direct broadcast. I forget the name

1 of them. I think it's wide area multiplexing. Technologies
2 that are on the horizon. I think the refrain that needs to be
3 considered here by this Commission and one that the FCC
4 cautioned in its order, it said, this is a burgeoning market.
5 Before we start to hem it in with regulations, we want to think
6 about what's the impact going to be on the marketplace. And
7 that's why they refrained from doing packet. They said,
8 there's packet out there.

9 And as we were just discussing a while ago, there is
10 much more cable that's providing the same type of service,
11 actually faster than DSL, on cable. And so to go into players
12 in the marketplace and to begin to put regulations on them that
13 may cause reevaluations of business plans, I'm not sure that's
14 going to further competition.

15 COMMISSIONER PALECKI: So you could tell FDN to team
16 up with a cable company when they receive inquiries for
17 customers that want DSL, try to sell them cable broadband, and
18 that way they could keep their voice telephone customers?

19 THE WITNESS: I would encourage FDN and any ALEC to
20 consider any and all possibilities.

21 COMMISSIONER PALECKI: Thank you.

22 COMMISSIONER DEASON: I have just a question or two.
23 Back to Exhibit Number 8. I believe you have that in front of
24 you.

25 THE WITNESS: Yes, sir.

1 COMMISSIONER DEASON: The end use customer, I want
2 you to assume, is an FDN customer subscribing to voice and
3 maybe some ancillary services, but they don't have any DSL
4 service. And this customer calls up BellSouth and inquires as
5 to whether they can obtain DSL service. And I would assume
6 that they would be told that they are not capable of having DSL
7 service because they are receiving voice service from a
8 different carrier; is that true?

9 THE WITNESS: Well, I think a number of things would
10 happen. First, we don't know if BellSouth can actually offer
11 DSL in this area or not. We don't know in this DSLAM if this
12 customer is within the requirements. And then, secondly, since
13 it's an FDN customer, they're not going to appear in any
14 BellSouth database. So the BellSouth rep most likely would not
15 be able to say yea or nay, and they would have to identify them
16 with another carrier. And then at that point they would be
17 told that they couldn't have -- or should be told that they
18 could not have BellSouth Fast Access.

19 COMMISSIONER DEASON: Okay. They would be told that
20 they cannot because BellSouth cannot verify whether they are
21 DSL capable or because they're a subscriber to a different
22 telephone company?

23 THE WITNESS: Well, both. We wouldn't find them, and
24 then we would have to find out -- either the customer would
25 have to say, well, I'm actually being provided service by

1 another carrier, and we can't provide that service over another
2 carrier's.

3 COMMISSIONER DEASON: Okay. Now, would BellSouth say
4 to that customer, but if you switch to BellSouth, we can --
5 assuming that it is indeed capable, would the representative
6 have that knowledge, and would that representative tell the
7 potential customer that?

8 THE WITNESS: I don't know if they would have that
9 knowledge to tell the customer that or not. I haven't seen any
10 marketing scripts that would ever suggest that they do that,
11 but I don't know that they're out there or not.

12 COMMISSIONER DEASON: Okay. I'm putting my place --
13 I'm putting myself in the place of the end use customer for a
14 moment. And I'm receiving my local service from FDN, and I
15 want to obtain high-speed Internet access. I call BellSouth
16 because I see this advertisement. And I call the 1-877 number,
17 and I indicate that I want high-speed Internet access. The
18 customer representative would probably ask for my telephone
19 number?

20 THE WITNESS: Yes. I mean, that's the way we
21 identify in our database whether or not it's even available to
22 your area.

23 COMMISSIONER DEASON: Okay. So when I give that
24 telephone number then, the customer representative is going to
25 say, you are not in our database, and maybe ask, who do you

1 receive service from, and then the customer representative then
2 determines that I'm not a voice customer of BellSouth.

3 THE WITNESS: Okay.

4 COMMISSIONER DEASON: Am I told at that point that,
5 sorry, there is nothing I can do, good day, and hang up or --

6 THE WITNESS: As I said earlier, I don't know if any
7 additional marketing of BellSouth's service -- in other words,
8 like you said, to convince the customer to go to BellSouth
9 would occur. I would think most likely we would encourage the
10 customer to contact their voice provider.

11 COMMISSIONER DEASON: Okay. Now, obviously, you
12 would agree that BellSouth is in the telecommunications
13 business to make money, wouldn't you?

14 THE WITNESS: Yes, sir.

15 COMMISSIONER DEASON: Okay. In fact, I would
16 assume -- you probably have stock in the company and want the
17 company to make money, wouldn't you?

18 THE WITNESS: Yes, sir.

19 COMMISSIONER DEASON: Okay. And there's nothing
20 wrong with making a profit, don't get me wrong. But I guess
21 the question I have is, I'm trying to understand BellSouth's
22 motivation. Would there be more profit in losing a customer
23 altogether or having a partial customer and providing DSL
24 service even though you do not provide voice service? Or is it
25 part of your master marketing plan that you felt like you were

1 going to maximize your revenue by having this requirement
2 because not only would you obtain a DSL customer but you are
3 going to regain a voice customer?

4 THE WITNESS: I think what BellSouth does, it looks
5 at a lot of inputs into making its business model. Besides the
6 marketplace, the available market, you know you are going to
7 lose some customers, and you're going to get some customers,
8 but you also look at what are the costs to provide service to
9 that customer, what are the operational costs. Mr. Williams
10 can speak some to what the operational impediments can be when
11 the customer belongs to another carrier and has their voice
12 service to that, and they can be very onerous. And then the
13 question --

14 COMMISSIONER DEASON: Okay. Operational impediments.

15 THE WITNESS: There are those.

16 COMMISSIONER DEASON: And Mr. Williams can address
17 those?

18 THE WITNESS: He will address some of those.

19 COMMISSIONER DEASON: Okay. So you're saying because
20 of those operational impediments, and usually there are costs
21 associated with operational impediments, that it may not be in
22 your best interest to maximize profits by having a quote,
23 unquote partial customer, i.e., one that you provide DSL
24 service to but not voice service.

25 THE WITNESS: I think it could be one of many inputs

1 that would go into a business plan for you to consider whether
2 or not you want to have a partial customer or not, but
3 certainly there are operational impediments and there may be
4 other issues that were considered too.

5 COMMISSIONER DEASON: If I'm that end use customer
6 and I make that call and I'm told that, sorry, you're a
7 customer of a different telephone company, I cannot provide you
8 that service, and I say why, what am I told?

9 THE WITNESS: I don't know. I have this gut feeling
10 that they are told they are encouraged to call their carrier to
11 obtain high-speed Internet service, but I really don't know
12 what they're told. I haven't seen the marketing scripts
13 when -- that our customer service representatives would use.

14 COMMISSIONER DEASON: Suppose I'm a very stubborn,
15 obstinate customer, and I say, well, I want to know, is it
16 because you don't want to serve me, or is it because that
17 Florida Public Service Commission won't let you, or is it
18 because technically it's inconceivable for me to receive local
19 service from one company and DSL service from the another? You
20 have no idea what would be answered?

21 THE WITNESS: I don't think any of those three
22 answers would come out of a customer service rep's mouth, but I
23 don't know what the answer would be.

24 COMMISSIONER DEASON: Okay.

25 COMMISSIONER PALECKI: Mr. Ruscilli, just one

1 follow-up question. What if in this Exhibit Number 8 the end
2 user got an additional phone line? Would the end user be able
3 to use the extra line with BellSouth DSL service, and since
4 it's on a separate line receive the phone service from FDN or
5 any other ALEC?

6 THE WITNESS: I think the answer would be the same,
7 Commissioner. If the customer had a second line and had phone,
8 and by "phone," I assume you mean voice service from FDN,
9 BellSouth would not provide the xDSL service to the customer.

10 COMMISSIONER PALECKI: I think the testimony I've
11 heard is that we have high-frequency and low-frequency ranges
12 in a single copper line. If we had two separate phone lines,
13 we wouldn't need to share the same line with the high frequency
14 and the low frequency. Wouldn't that solve the problem? I'm
15 asking you because I don't know technically. I'm pretty new to
16 this area.

17 THE WITNESS: And I'm not very technically competent.
18 If you would save that for Mr. Williams, he might could explain
19 the technical aspects of it.

20 COMMISSIONER PALECKI: Thank you.

21 THE WITNESS: Thank you, sir.

22 COMMISSIONER DEASON: Redirect.

23 MS. WHITE: Yes, just a few.

24 REDIRECT EXAMINATION

25 BY MS. WHITE:

1 Q Mr. Ruscilli, like you, I try to be a good BellSouth
2 employee, and I'm a BellSouth voice customer. And I can buy
3 Fast Access Internet service from BellSouth; right?

4 A Yes.

5 Q And that's the combination as we've talked about of
6 the DSL pipe and the Internet service; is that correct?

7 A That's correct.

8 Q Now, as a BellSouth voice customer, can I call up
9 BellSouth and say, I want to order just the DSL pipe?

10 A No.

11 Q Mr. Feil read to you from an order, FCC order. I
12 believe it was Order Number 99-238, the Third Report and Order.
13 I believe he read Paragraph 189 about the viability of cable
14 television service. Do you recall that?

15 A Yes, I do.

16 Q Did the FCC address in that same order whether an
17 ILEC was required to unbundle packet switching or DSLAMs?

18 A They have addressed in several of the orders, and I
19 don't recall this order in complete, but every time that they
20 have been approached with this issue, they have said there are
21 no requirement to unbundle packet switching outside of the
22 limited exceptions that I discussed with Commissioner Palecki.

23 Q Now, Commissioner Jaber was asking you several
24 questions about what is needed to provide DSL service by FDN,
25 specifically if this Commission decided they wanted to create

1 additional UNEs.

2 A Yes.

3 Q Do you recall that discussion?

4 A Yes.

5 Q Now, if you look at -- let's look at Exhibit 8.

6 BellSouth already provides the UNE that is the transport from
7 the remote terminal to the central office, does it not?

8 A Yes, they provide a number of UNEs that will
9 accomplish that.

10 Q Are those UNEs available to FDN?

11 A Yes, they are.

12 Q Does BellSouth currently provide a UNE that will
13 provide transport from the remote terminal to the end user?

14 A Yes, it will.

15 Q And that exists right now?

16 A It does, in several forms.

17 Q And is it available to FDN?

18 A It is, to all ALECs.

19 Q So is it fair to say that the only item that is not a
20 UNE that is needed is the DSLAM?

21 A Yes.

22 Q And that is not a UNE right now?

23 A It's not a UNE right now, and it has been rejected as
24 one several times by the FCC.

25 COMMISSIONER JABER: Okay. My question, though,

1 Mr. Ruscilli -- and I'm glad Ms. White is following up. My
2 question goes to what is needed to allow the ALEC to maintain
3 its voice line and provide DSL service.

4 THE WITNESS: Right.

5 COMMISSIONER JABER: So it's my understanding, to
6 keep their voice line, from testimony we've heard today, they
7 need the Fast Access service and some additional voice UNE. Is
8 that what you said earlier? This is an opportunity for you to
9 clarify, because like Commissioner Palecki, I'm relatively new
10 to this too. So I need you to tell me what is needed for that
11 voice line to stay engaged.

12 THE WITNESS: Yes, ma'am. The Fast Access service,
13 remember, is BellSouth service offering combining DSL and its
14 Internet enhanced service offering. If this customer is an FDN
15 customer, they don't have Fast Access service. If FDN wants to
16 provide an Internet type service to that customer, FDN needs,
17 in the discussion here in context of what you were discussing,
18 what would they need, they would need a DSLAM, either their own
19 or, as you're suggesting, possibly access to BellSouth's DSLAM.

20 COMMISSIONER JABER: Okay. So under the authority
21 given to us in the Act and assuming we have this requisite
22 state authority and consistent with the spirit of the Line
23 Sharing Order, we could identify the DSLAM as a separate UNE in
24 addition to the Fast Access service.

25 THE WITNESS: Yes, assuming you have those kinds of

1 legal authorities, but again, the FCC has looked at this
2 impairment test several times and rejected it.

3 BY MS. WHITE:

4 Q Let me follow up a little bit on that. In order for
5 a customer to keep voice service with FDN, Florida Digital
6 Network, and to obtain xDSL service, they would need a DSLAM,
7 which is not a UNE now; is that right?

8 A That's correct.

9 Q They would need a transport UNE between the central
10 office and the remote terminal; right?

11 A That's correct.

12 Q And that is already established as a UNE today;
13 right?

14 A That's correct.

15 Q The third thing they would need is a transport UNE
16 between the remote terminal and the customer premises; correct?

17 A Yes, and that's available today too.

18 Q So out of the three requirements that are needed, or
19 the three UNEs that are needed, the only one that doesn't exist
20 today is the DSLAM; right?

21 A That's correct.

22 Q And what are -- are there any other -- what are the
23 standards for establishing a new UNE? Has the FCC set
24 standards for establishing UNEs?

25 A Well, yes, they have, under direction of the court

1 about whether it's necessity for competition, and is
2 competition impaired if they don't have it. And impairment is
3 the key issue here.

4 MS. WHITE: Thank you. I have nothing further.

5 COMMISSIONER DEASON: Exhibits.

6 MS. WHITE: I believe there were no exhibits.

7 MR. FEIL: FDN moves Exhibits 9 and 10 into the
8 record.

9 COMMISSIONER DEASON: Ten is the letter; correct?
10 Yes.

11 MR. FEIL: Yes, sir.

12 COMMISSIONER DEASON: Any objection? Hearing no
13 objection, show then Exhibits 9 and 10 are admitted.

14 (Exhibits 9 and 10 admitted into the record.)

15 COMMISSIONER DEASON: Thank you, Mr. Ruscilli.

16 THE WITNESS: Thank you, sir.

17 (Witness excused.)

18 COMMISSIONER DEASON: We have one remaining witness;
19 is that correct? Okay. We will take a 15-minute recess.

20 (Brief recess.)

21 (Transcript continues in sequence with Volume 3.)

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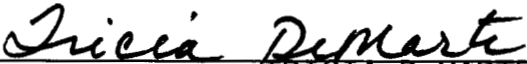
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4
5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
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11 transcript constitutes a true transcription of my notes of said
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,
14 attorney or counsel of any of the parties, nor am I a relative
15 or employee of any of the parties' attorneys or counsel
16 connected with the action, nor am I financially interested in
17 the action.

18 DATED THIS 24th DAY OF AUGUST, 2001.

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TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736