

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 960786A-TL

In the Matter of

CONSIDERATION OF BELLSOUTH  
TELECOMMUNICATIONS, INC.'S ENTRY  
INTO INTERLATA SERVICES PURSUANT  
TO SECTION 271 OF THE FEDERAL  
TELECOMMUNICATIONS ACT OF 1996.

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VOLUME 11

Pages 1584 through 1753

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN E. LEON JACOBS, JR.  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER MICHAEL A. PALECKI

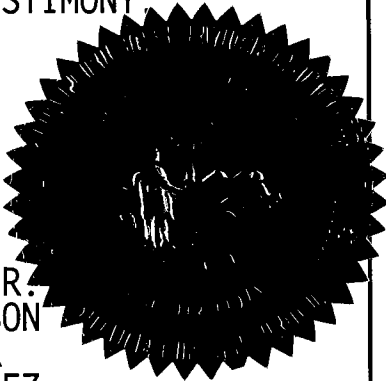
DATE: Thursday, October 18, 2001

TIME: Commenced at 9:40 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.)



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

(Transcript follows in sequence from Volume 10.)

CHAIRMAN JACOBS: Good morning. We'll go back on the record. And let's see, I have no idea where we are. I believe we had just finished your witness Mr. Turner.

MR. LAMOUREUX: We finished Mr. Turner.

CHAIRMAN JACOBS: And your next witness.

MR. LAMOUREUX: And AT&T's next witness is Jay Bradbury.

MR. FEIL: Mr. Chairman, if I may take this opportunity to bring up a logistical issue.

CHAIRMAN JACOBS: Okay.

MR. FEIL: I talked with the parties regarding this. FDN witness Michael Gallagher has to leave early today, and I have asked the parties whether or not they had a problem with taking Mr. Gallagher after Mr. Bradbury, and the parties and the Staff have agreed to that.

CHAIRMAN JACOBS: Very well.

MR. FEIL: Thank you.

CHAIRMAN JACOBS: We will take him out of order then.

MR. LAMOUREUX: Mr. Chairman, I know that Mr. Bradbury has not been sworn. In fact, my guess is that probably most of the witnesses in the room today have not been sworn.

CHAIRMAN JACOBS: Great. Why don't we take this time

1 for -- everyone who's testifying today that has not been sworn,  
2 would you stand and raise your right hand.

3 (Witness collectively sworn.)

4 CHAIRMAN JACOBS: Thank you. You may be seated.

5 JAY M. BRADBURY

6 was called as a witness on behalf of AT&T Communications of the  
7 Southern States, Inc., AT&T Broadband Phone of Florida, LLC.,  
8 and TCG South Florida, Inc., and, having been duly sworn,  
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LAMOUREUX:

12 Q Mr. Bradbury, would you state your full name and  
13 business address for the record, please.

14 A Jay M. Bradbury, 1200 Peachtree Street, Atlanta,  
15 Georgia, and employed by AT&T.

16 Q And did you cause to be filed revised rebuttal  
17 testimony consisting of 14 pages on behalf of AT&T on  
18 October 3, 2001?

19 A Yes, I did.

20 Q Do you have any changes or corrections to make to  
21 that testimony?

22 A No, I do not.

23 Q If I were to ask you the same questions as are  
24 contained in your testimony, would your answers be the same?

25 A They would be.

1 Q And did you also have two exhibits remaining from  
2 your revised testimony JMB-1 and 4?

3 A That's correct.

4 Q And do you have any changes or corrections to those  
5 exhibits?

6 A No, I do not.

7 MR. LAMOUREUX: Mr. Chairman, I would move for the  
8 admission of Mr. Bradbury's testimony subject to cross and  
9 request that his exhibits be designated as Composite  
10 Exhibit 46.

11 CHAIRMAN JACOBS: Without objection, show  
12 Mr. Bradbury's testimony is entered into the record as though  
13 read, and his exhibits are marked as Exhibit 46.

14 (Exhibit 46 marked for identification.)  
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1           **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2           **REBUTTAL TESTIMONY OF JAY M. BRADBURY**  
3           **ON BEHALF OF**  
4           **AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,**  
5           **AT&T BROADBAND PHONE OF FLORIDA, LLC,**  
6           **AND TCG SOUTH FLORIDA, INC.**

7  
8           **DOCKET NO. 960786-A-TL**

9           **OCTOBER 3, 2001**  
10

11   **Q.    PLEASE STATE YOUR NAME AND ADDRESS.**

12   **A.**My name is Jay M. Bradbury. My business address is 1200 Peachtree Street,  
13           Suite 8100, Atlanta, Georgia 30309.

14  
15   **Q.    PLEASE DESCRIBE YOUR CURRENT POSITION AND**  
16           **RESPONSIBILITIES.**

17   **A.**I am a District Manager in the AT&T Law and Government Affairs  
18           organization, and I provide consulting support to AT&T's business units and  
19           other internal organizations.

20   **Q.    PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
21           **PROFESSIONAL EXPERIENCE.**

22   **A.**I graduated with a Bachelor of Arts degree in History from The Citadel in  
23           1966. I have taken additional undergraduate and graduate courses at the

1 University of South Carolina and North Carolina State University in Business  
2 and Economics. In 1987 and 1988, I participated in Advanced Management  
3 Programs at Rutgers University and the University of Houston. I earned a  
4 Masters Certificate in Project Management from Stevens Institute of  
5 Technology in 2000.

6  
7 I began my AT&T career in 1970 as a Chief Operator with Southern Bell's  
8 Operator Services Department in Raleigh, North Carolina. From 1972  
9 through 1987, I held various positions within Southern Bell's (1972 - 1984)  
10 and AT&T's (1984 - 1987) Operator Services Departments where I was  
11 responsible for the planning, engineering, implementation and administration  
12 of personnel, processes and network equipment used to provide local and toll  
13 operator services and directory assistance services in North Carolina, South  
14 Carolina, Kentucky, Tennessee and Mississippi.

15  
16 In 1987, I transferred to AT&T's External Affairs Department in Atlanta,  
17 Georgia where I was responsible for managing AT&T's needs for access  
18 network interfaces with South Central Bell, including the resolution of  
19 operational performance, financial and policy issues. From 1989 through  
20 November 1992, I was responsible for AT&T's relationships (including the  
21 negotiation and administration of billing and marketing contracts, card  
22 honoring contracts, facility contracts, and the support of sales of Network  
23 Systems products) with Independent Telephone Companies within the South



1 Central Bell States and Florida. From November 1992 through April 1993, I  
2 was a Regulatory Affairs Manager in the Law and Government Affairs  
3 Division and was responsible for the analysis of industry proposals before  
4 regulatory bodies in the South Central States to determine their impact on  
5 AT&T's ability to meet its customers' needs with services that are  
6 competitively priced and profitable.

7  
8 In April of 1993, I transferred to the Access Management Organization  
9 within AT&T's Network Services Division as a Manager - Access  
10 Provisioning and Maintenance with responsibilities for on-going management  
11 of processes and structures in place with Southwestern Bell to assure that  
12 their access provisioning and maintenance performance met the needs of  
13 AT&T's Strategic Business Units. In August 1995, I became responsible for  
14 the negotiation and implementation of interfaces for operational support  
15 systems ("OSS") necessary to support AT&T's entry into the local  
16 telecommunications market in the BellSouth states. I assumed my current  
17 position in June 1998.

18

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
20 **PROCEEDING?**

21 A. I am testifying on behalf of AT&T Communications of the Southern States,  
22 Inc. regarding customized operator services and directory assistance  
23 ("OS/DA") routing and branding. Customized OS/DA routing is included

1 under Issue 7 and customized OS/DA branding is included under Issue 8 of  
2 the Commission's order regarding the issues to be addressed in this hearing.  
3 My testimony rebuts the testimony of BellSouth witness W. Keith Milner.

4

5 **Q. WHAT IS CUSTOMIZED OPERATOR SERVICES AND**  
6 **DIRECTORY ASSISTANCE (“OS/DA”) ROUTING?**

7 A. Customized OS/DA routing provides ALECs the ability to obtain Operator  
8 Services and Directory Assistance services from suppliers other than the  
9 incumbent LEC, BellSouth in this case. Central office software, trunking  
10 arrangements, and a customer-specific ordering process are required for  
11 customized OS/DA routing.

12

13 **Q. WHAT TECHNOLOGY DOES BELL SOUTH OFFER TO PROVIDE**  
14 **CUSTOMIZED ROUTING?**

15 A. BellSouth has proposed two technologies for providing customized routing:  
16 Advanced Intelligent Network (“AIN”) and Line Class Codes (“LCCs”)<sup>1</sup>.  
17 These technologies may also be used to route calls to BellSouth's own  
18 OS/DA platform. In addition, BellSouth offers OLNS technology to  
19 provided branded or unbranded OS/DA service from BellSouth's own OS/DA  
20 platform.

21

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<sup>1</sup> Milner, Direct testimony, page 79.

1    **Q.    WHAT MUST BELLSOUTH DEMONSTRATE IN ORDER TO**  
2    **PROVE THAT IT “PROVIDES” CUSTOMIZED OS/DA ROUTING**  
3    **AND SUPPORTING OSS?**

4    A.    The FCC contemplated that a BOC would have to do much more than tell  
5    competitive providers to contact an account team in order to “provide” a  
6    checklist item.    The FCC previously has discussed what it means for a Bell  
7    Operating Company (“BOC”) to “provide” a checklist item.    In its  
8    Ameritech-Michigan 271 order, the FCC concluded that a BOC provides an  
9    item if it “actually furnishes” the item, but if no competitor is actually using  
10   the item, the BOC will be considered to provide the item if it “makes the  
11   checklist item available as both a legal and a practical matter.”    The FCC  
12   further noted that “the mere fact that a BOC has ‘offered’ to provide checklist  
13   items will not suffice” to establish compliance, instead, the “BOC must have  
14   a concrete and specific legal obligation to furnish the item upon request  
15   pursuant to state-approved interconnection agreements that set forth prices  
16   and other terms and conditions for each checklist item.”<sup>2</sup>

17

18

19   **Q.    HAS THE FCC ADDRESSED THE ISSUE OF OS/DA ORDERING?**

20   A.    Yes.    The FCC has determined that ILECs, including BellSouth, must  
21   provide customized routing as part of the switching function, unless they can  
22   prove that customized routing in a particular switch is not technically

1 feasible.<sup>3</sup> The FCC, moreover, anticipated that ALECs may have more than  
 2 one OS/DA routing option, and has previously instructed BellSouth to  
 3 simplify its ordering processes accordingly:

4 We agree with BellSouth that a competitive  
 5 LEC must tell BellSouth how to route its  
 6 customers' calls. If a competitive LEC wants  
 7 all of its customers' calls routed in the same  
 8 way, it should be able to inform BellSouth, and  
 9 BellSouth should be able to build the  
 10 corresponding routing instructions into its  
 11 systems just as BellSouth has done for its own  
 12 customers. (Footnote 705) If, however, a  
 13 competitive LEC has more than one set of  
 14 routing instructions for its customers, it seems  
 15 reasonable and necessary for BellSouth to  
 16 require the competitive LEC to include in its  
 17 order an indicator that will inform BellSouth  
 18 which selective routing pattern to use.  
 19 (Footnote 706) BellSouth should not require  
 20 the competitive LEC to provide the actual line  
 21 class codes, which may differ from switch to  
 22 switch, if BellSouth is capable of accepting a  
 23 single code region-wide. (FCC Second  
 24 Louisiana Order at ¶ 224, emphasis added.)<sup>4</sup>

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<sup>2</sup> Ameritech-Michigan 271 order, pg. 110.

<sup>3</sup> FCC Local Competition First Report and Order, 11 FCC Rcd at 15709.

<sup>4</sup> The footnotes are equally instructive: Footnote 705 discusses the possibility that AT&T might want all its customers' calls routed in a single fashion:

For example, if AT&T wants all of its customers' calls routed to AT&T's operator services and directory assistance, AT&T should be able to tell this to BellSouth once, by letter for instance, and BellSouth should be able to route the calls without requiring AT&T to indicate this information on every order.

Footnote 706, on the other hand, discusses the possibility that AT&T may desire more than one OS/DA routing option:

For example, if AT&T wants some of its operator services and directory assistance calls routed to its operator services and directory assistance platform, but it wants other operator service and directory assistance calls directed to

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Thus, according to the FCC, ALECs are free to select more than one OS/DA routing option, and BellSouth may not require the ALEC to provide actual line class codes in order to obtain any OS/DA routing option if BellSouth is capable of accepting a single code, or indicator, on a region-wide basis. BellSouth witnesses have testified that BellSouth is, indeed, quite capable of accepting a single region-wide code, or indicator, for each of the OS/DA routings that may be requested by an ALEC.<sup>5</sup> Exhibit JMB-1.

**Q. PLEASE DESCRIBE BELL SOUTH'S POSITION ON PROVIDING ELECTRONIC ORDERING FOR CUSTOMIZED OS/DA ROUTING.**

A. Apparently, BellSouth is willing to route OS/DA calls for all of the ALEC's customers to one "default" option per state, based on the ALEC's "footprint" order. However, if ALECs want to route the OS/DA calls of some customers to one platform and other customers to a different platform, BellSouth's position is that the ALEC's order must identify a yet-to-be-determined line class code for the particular central office servicing that customer. Orders that contained such an identifier would fall out to manual processing because

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BellSouth's platform, BellSouth does not know whether to route AT&T's customers' calls to AT&T's platform or its own unless AT&T tells BellSouth which option it is choosing.

1 BellSouth's systems evidently cannot process line class codes. Thus, an  
2 ALEC order for customized routings must go through two manual  
3 translations -- the ALEC representative must translate the customer request  
4 into a line class code, and then the LCSC representative must translate the  
5 line class code into a SOCS-compatible format.<sup>6</sup>

6  
7 In contrast, AT&T has requested that BellSouth assign a single unique  
8 "indicator" for a particular routing option that ALECs could identify on the  
9 order. In other words, AT&T has requested that BellSouth automate the  
10 process. Instead of having two manual translations, BellSouth would  
11 program its OSS to translate the single unique indicator into a SOCS  
12 compatible format.

13  
14 **Q. GIVEN BELL SOUTH'S POSITION, HOW DO ALECS SUBMIT**  
15 **ORDERS FOR CUSTOMIZED OS/DA ROUTING FOR**  
16 **PARTICULAR CUSTOMERS?**

17 A. It is not clear. BellSouth has never provided the methods and  
18 procedures necessary to order customized routing for specific customers. On  
19 May 17, 2001, BellSouth published an ALEC Information Package entitled  
20 "Selective Call Routing Using Line Class Codes." This document provides  
21 to ALECs formal instructions for the establishment of the footprint order and  
22 is based on work BellSouth's witness Keith Milner and I conducted as a part

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<sup>5</sup> BellSouth has never even attempted to demonstrate that does not have this capability.

1 of the AT&T arbitration. BellSouth included in this document two "Ordering  
2 Information" paragraphs beginning on the bottom of page 8 that were not a  
3 part of the effort in which I participated. In addition to being in conflict with  
4 Mr. Milner's testimony filed in this docket<sup>7</sup>, the instructions offered are  
5 confusing, inadequate, and impossible to implement.<sup>8</sup> On July 13, 2001,  
6 BellSouth published Version 2 of the information package (Exhibit JMB-4).  
7 My review of BellSouth's changes finds them to be improved but still  
8 inadequate.

9

10

11 **Q. HAS THERE BEEN A RECENT CHANGE IN BELLSOUTH'S**  
12 **POSITION?**

13 A. Yes. On July 16, 2001, Mr. Keith Milner of BellSouth, and I, acting as  
14 subject matter experts in the AT&T interconnection agreement negotiations  
15 agreed in principle to contract language that will allow AT&T to use region-  
16 wide unique indicators to identify its choice of OS/DA routing option.

17

18 **Q. WHAT IS THE IMPACT OF THIS CHANGE IN POSITION?**

19 A. That of course remains to be seen. To meet its obligations under the Act,  
20 BellSouth must successfully deliver the functionality described in the new

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<sup>6</sup> Milner, Direct testimony, pages 82-84.

<sup>7</sup> Milner, Direct testimony, pages 82-84.

<sup>8</sup> Indeed, KPMG cited these same instructions when it filed Exception 69 in the Florida third party test on June 12, 2001. That exception still remains open.

1 contract language. The FCC has made it clear that in situations such as this a  
 2 BOC must demonstrate present compliance with the Act.<sup>9</sup> BellSouth's  
 3 existing customized OS/DA routing process is not compliant.

4

5 **Q. WHAT IS THE DIFFERENCE BETWEEN CUSTOMIZED OS/DA**  
 6 **ROUTING AND BRANDED/UNBRANDED OS/DA SERVICE?**

7 A. Customized OS/DA routing involves the technology necessary to route calls  
 8 to the specified platform, which typically would be the ALEC's OS/DA  
 9 platform. Providing branded or unbranded OS/DA services, on the other  
 10 hand, involves routing ALEC customer calls to BellSouth's OS/DA platform,  
 11 but in manner that enables BellSouth to provide ALEC branding or  
 12 unbranding for such calls.

13

14 **Q. WHAT TECHNOLOGY DOES BELL SOUTH UTILIZE TO PROVIDE**  
 15 **BRANDED OR UNBRANDED OS/DA SERVICE?**

16 A. LCCs and AIN can be used to provide this service. In addition, BellSouth  
 17 has designed and implemented Originating Line Number Screening

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<sup>9</sup> Memorandum and Opinion, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, 12 FCC Rcd. 20,543 ¶ 55 (F.C.C. August 19, 1997) (No. CC97-137, FCC 97-298) (*"Ameritech Michigan Order"*) "[w]e find that a BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof (emphasis added)." More recently, the FCC stressed that "...a[n] RBOC, under all circumstances, retains the burden of demonstrating that it has "fully implemented the competitive checklist in subsection (c)(2)(B)." *Bell Atlantic New York Order* ¶ 44.



1 (“OLNS”) technology as an alternative for routing ALEC OS/DA calls to  
2 BellSouth’s own platform and provide those calls with either “unbranded” or  
3 ALEC-specific branding. AT&T has purchased OLNS for use in conjunction  
4 with its UNE-P business market entry, and BellSouth implemented OLNS for  
5 AT&T on May 19, 2001.

6

7

8 **Q. PLEASE EXPLAIN HOW AT&T'S CUSTOMERS ARE NOT**  
9 **PROVIDED CALL ROUTING OPTIONS THAT ARE EQUIVALENT**  
10 **TO THOSE BELLSOUTH PROVIDES ITS RETAIL CUSTOMERS?**

11 A. When BellSouth's retail customers dial "0," they are greeted with the  
12 BellSouth brand and are provided with a menu of four options. By picking  
13 one of the options, the BellSouth customer can choose to place a call, or to  
14 have its call automatically routed to BellSouth's residence service and repair,  
15 business service and repair, or a BellSouth operator.

16

17 In contrast, when AT&T's UNE-P business customers dial "0," they are  
18 greeted with the AT&T brand, but are provided a menu of only two options.  
19 AT&T's customers can choose to place a call, or have its call routed to  
20 BellSouth's operator (branded as AT&T). AT&T's customers, however, are  
21 not provided the options of having their calls automatically routed to AT&T's  
22 residence or business service and repair. Instead, AT&T's customers either  
23 have to look up the number and then dial it (which is much less convenient

1 than just pressing "2" or "3"), or they have to call the operator and have the  
2 operator connect them (which is also much slower and results in an additional  
3 charge to AT&T). Thus, BellSouth provides its retail customers with access  
4 to superior OS/DA service than the OS/DA service that BellSouth makes  
5 available to ALECs and their customers.

6  
7 Initially, AT&T's customers were provided four menu options, but two of the  
8 options were to have the call routed to "BellSouth residence service and  
9 repair" and "BellSouth business service and repair." These BellSouth-  
10 branded menu choices were obviously problematic because of the potential  
11 for customer confusion and mis-routing of calls to BellSouth's service and  
12 repair centers rather than AT&T's service and repair centers. Instead of  
13 correcting the branding and routing defects, BellSouth simply eliminated the  
14 options.

15

16 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

17 A. BellSouth has not satisfied 271 checklist items 6 and 7 (FPSC Issues 7 and 8)  
18 because it does not provide non-discriminatory access to customized OS/DA  
19 routing or customized OS/DA branding. Specifically, ALECs cannot order  
20 customized OS/DA routing for a specific customer efficiently and effectively.  
21 With respect to customized OS/DA branding; ALECs not provided call  
22 routing options that are equivalent to those BellSouth provides its retail  
23 customers.

1

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

3 A. Yes, it does.

4

1 BY MR. LAMOUREUX:

2 Q Mr. Bradbury, do you have a summary of your  
3 testimony?

4 A Yes, I do.

5 Q Would you give that now, please.

6 A Thank you. Good morning, Commissioners. My name is  
7 Jay Bradbury. I work for AT&T, and I'm here today to talk to  
8 you about customized routing and branding of operator services  
9 and directory assistance, which I'll refer to for the rest of  
10 this summary as OS/DA. Customized OS/DA routing is included  
11 under Issue 7, and customized OS/DA branding is included under  
12 Issue 8 in this hearing today.

13 Customized OS/DA routing provides ALECs the ability  
14 to obtain operator services and directory assistance services  
15 from suppliers other than BellSouth. Central office software,  
16 trunking arrangements, and a customer-specific ordering process  
17 are required for customized OS/DA routing. BellSouth proposes  
18 two technologies for providing customized routing: The  
19 advanced intelligence network and the use of line class codes.  
20 As I will discuss later, both of these technologies may also be  
21 used to route calls to BellSouth's own OS/DA platform for  
22 customized branding.

23 The FCC has determined that ILECs, including  
24 BellSouth, must provide customized routing as part of the  
25 switching function unless they can prove that it's

1 technologically impossible in a particular switch. The FCC  
2 moreover anticipated that ALECs may have more than one OS/DA  
3 routing option. It has previously instructed BellSouth to  
4 simplify its ordering procedures.

5           Until July of this year, BellSouth's position on  
6 customized routing precluded ALECs from obtaining arrangements  
7 that would comply with the FCC's guidance. On July 16th of  
8 this year, Mr. Keith Milner of BellSouth and I, acting as  
9 subject matter experts in the AT&T interconnection agreement  
10 negotiations, agreed in principal to contract language that  
11 will allow AT&T to use a region-wide unique indicator to  
12 identify its choice of OS/DA routing options. However, to meet  
13 its obligations under the Act, BellSouth must successfully  
14 deliver the functionality described in the new contract  
15 language. The FCC has made it clear that in situations such as  
16 this, an ILEC must demonstrate present compliance with the Act.  
17 To be compliant, BellSouth's customized OS/DA offer must be  
18 available as both a legal and a practical matter. These  
19 conditions will not exist until BellSouth demonstrates that it  
20 has implemented systems and procedures that deliver the  
21 functionality promised in our interconnection agreement.

22           Up till now, I've been discussing customized OS/DA  
23 routing which involves what we need to do to route calls to the  
24 ALEC's own OS/DA platform or a third party's platform.  
25 Customized branding or the unbranding of OS/DA services in

1 contrast involves routing an ALEC's customer's calls to  
2 BellSouth's platform but in a manner that allows BellSouth to  
3 identify it and brand it as an ALEC call or unbrand the call.

4           As I mentioned before, both line class codes and AIN  
5 can be used to provide customized branding. In addition,  
6 BellSouth has designed and implemented originating line number  
7 screening, a technology which provides an alternative for  
8 routing ALEC calls to BellSouth's platforms. AT&T has  
9 purchased OLNS for use in conjunction with its UNE-P business  
10 market entry. BellSouth implemented OLNS for AT&T in May of  
11 this year. Unfortunately, BellSouth's implementation of OLNS  
12 is flawed. Here's how. When BellSouth's retail customers dial  
13 zero, they are greeted with the BellSouth brand and are  
14 provided with a menu of four options.

15           By picking one of the four options, a BellSouth  
16 customer can chose to place a call, can have its call  
17 automatically routed to BellSouth's residence repair or service  
18 center, have its call automatically routed to BellSouth's  
19 business repair or service center, or talk to a BellSouth  
20 operator. In contrast, when AT&T's UNE-P customers dial zero,  
21 they are greeted with the AT&T brand but are provided a menu of  
22 only two options. AT&T's customers can only choose to place a  
23 call or have their call routed to BellSouth's operator where it  
24 will be branded as AT&T. AT&T's customers are not provided  
25 with the options of having their calls automatically routed to



1 A Fine, thank you. Good morning.

2 Q The first concern AT&T had with BellSouth's  
3 customized routing was that AT&T wanted a single default  
4 routing pattern; correct?

5 A No, ma'am. BellSouth has offered a single default  
6 routing pattern. AT&T has never wanted a single default  
7 routing pattern.

8 Q Are you familiar with the so-called footprint order?

9 A Yes, I am.

10 Q Could you describe that for us, please.

11 A The footprint order is what's required in advance of  
12 being able to use the OS/DA service. We communicate to  
13 BellSouth the geography in which we want to have the service  
14 and which of the options we want to have for each central  
15 office within that geography.

16 Q And that was a means to order OS/DA that AT&T  
17 specifically requested BellSouth provide; correct?

18 A That was a means to establish the infrastructure that  
19 would allow OS/DA to be provided. There is no issue about that  
20 process today that I'm aware of.

21 Q Okay. And that was because AT&T and BellSouth  
22 negotiated a resolution to that; right?

23 A Correct.

24 Q AT&T has not placed any orders under this so-called  
25 footprint order, has it?



1           A     I believe we have, yes. We have OLNS operating in  
2 both Georgia and Florida. We would have had to have used the  
3 footprint order process to get OLNS.

4           Q     Have you placed any customized routing orders under  
5 the footprint order?

6           A     We are using OLNS in both states.

7           Q     If you could answer yes or no, please.

8           A     That's a yes, I'm sorry.

9           Q     Okay. What does "SRC" stand for?

10          A     That's the selective routing code.

11          Q     The SRC is a single field identifier for routing in  
12 situations other than where the footprint order is used; is it  
13 not?

14          A     That's pretty much correct. It's what goes on the  
15 order when you're going to designate a routing option for an  
16 individual customer.

17          Q     And this selective routing code was created by  
18 BellSouth and AT&T to resolve the issues raised in your  
19 testimony; correct?

20          A     That's correct. The contract language that we now  
21 have is designed to resolve the issue. BellSouth simply has  
22 not yet implemented the methods and procedures that would allow  
23 the contract language to become effective.

24          Q     AT&T and other ALECs can send SRCs electronically;  
25 correct?

1           A     I don't know. We have not been able to test that.  
2 BellSouth says they have that capability, but they have denied  
3 us the capability to test it. At the present time, as I  
4 understand it, that would result in an order which we would  
5 send electronically but would fall out for manual processing.  
6 The contract language that we have is designed to produce an  
7 order that can be sent electronically and processed  
8 electronically. That doesn't exist yet. When it does, we will  
9 test that.

10           Q     Do you know Donna Cain (phonetic)?

11           A     Yes, I do.

12           Q     Donna Cain is the AT&T representative designated to  
13 work with BellSouth to designate and develop the list of SRCs;  
14 correct?

15           A     That's correct.

16           Q     And isn't true, Mr. Bradbury, that the only reason  
17 the SRCs are, quote, yet to be determined, as you allege in  
18 your testimony, is because Ms. Cain has yet to attend a meeting  
19 with BellSouth to create that list?

20           A     No, I don't believe that's correct. I'm aware of a  
21 number of conference calls Ms. Cain has had with BellSouth to  
22 work on that list. Whether or not -- it may not have been  
23 completed yet, but I know the work is underway on that list.  
24 BellSouth also has software development that they have to do.  
25 They've indicated that that software development will be

1 completed sometime in November.

2 Q On Page 10 of your testimony, you call BellSouth's  
3 instructions for customized routing, quote, confusing,  
4 inadequate, and impossible to implement. Now, the footprint  
5 order and the SRC that we were just discussing were developed  
6 jointly by you and Mr. Milner, were they not?

7 A The footprint order was; the SRC was not, no.

8 Q You and Mr. Milner negotiated final contract language  
9 on the SRC process, did you not?

10 A That's correct. After BellSouth had determined that  
11 it was going to use the SRC process and provided me with some  
12 explanation about it, Mr. Milner and I met again and reached  
13 the contract language that we now have that incorporates the  
14 use of the SRCs. And we are simply waiting on BellSouth to  
15 finish its software development that will allow that to happen.  
16 It hasn't been done yet.

17 Q So in essence, just so I understand, you're here  
18 complaining today about a process that you personally  
19 negotiated with BellSouth and implemented in your  
20 interconnection agreement; correct?

21 A I'm here today simply to indicate that it has not yet  
22 been implemented. We have a promise and good intent on  
23 BellSouth's part to do that; however, I've had that same  
24 promise and good intent from BellSouth on this very issue in  
25 1997, 1998, and 1999. So I'm just a little bit skeptical. I'm

1 here to tell you, I've got a promise; it isn't implemented.  
2 When it's implemented, we'll test it. But until it's  
3 implemented, BellSouth has not met its obligations under the  
4 Act.

5 MS. FOSHEE: I have no further questions. Thank you,  
6 Mr. Chairman.

7 CHAIRMAN JACOBS: Very well. Staff.

8 MS. BANKS: Staff has no questions.

9 CHAIRMAN JACOBS: Commissioners.

10 Redirect.

11 MR. LAMOUREUX: No redirect.

12 CHAIRMAN JACOBS: All right. Way to get started this  
13 morning.

14 MR. LAMOUREUX: I would --

15 CHAIRMAN JACOBS: One exhibit; right?

16 MR. LAMOUREUX: Exhibit 46.

17 CHAIRMAN JACOBS: Without objection, show Exhibit 46  
18 is admitted.

19 (Exhibit 46 admitted into the record.)

20 CHAIRMAN JACOBS: Thank you. You're excused,  
21 Mr. Bradbury.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 CHAIRMAN JACOBS: Mr. Feil.

25 MR. FEIL: Thank you, Mr. Chairman. Florida Digital

1 Network calls Michael Gallagher to the stand.

2 MICHAEL P. GALLAGHER

3 was called as a witness on behalf of Florida Digital Network,  
4 Inc., and, having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FEIL:

7 Q Mr. Gallagher, you've been sworn, have you not?

8 A Yes, I have.

9 Q Could you please state your name, employer, and  
10 business address for the record.

11 A Michael Gallagher, Florida Digital Network, 390 North  
12 Orange Avenue, Orlando, Florida.

13 Q Has Florida Digital Network prefiled your rebuttal  
14 testimony in this docket consisting of 19 pages?

15 A Yes, it has.

16 Q Do you have any changes or corrections to that  
17 testimony?

18 A Yes.

19 Q Can you tell us what those are?

20 A I believe in my testimony I refer to a BellSouth  
21 affiliate being involved in the DSL transaction amongst itself,  
22 and now I've come to understand that there's not an affiliate  
23 involved, but my testimony is still the same in that they  
24 should have to resell that service.

25 Q Okay. Is that change you've indicated a result of a

1 mistake on your part or some confusion as to what the real  
2 facts were?

3 A It was both.

4 Q Other than the change you referred to, if I ask you  
5 the same questions in your prefiled testimony today, would your  
6 answers be the same?

7 A Yes, they would.

8 (For convenience of the record, the prefiled rebuttal  
9 testimony of Witness Michael P. Gallagher is inserted into the  
10 record.)

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1 **Q. Please state your name and address.**

2 A. My name is Michael P. Gallagher. My business address is 390 North  
3 Orange Avenue, Suite 390, Orlando, Florida, 32801.

4 **Q. Who do you work for?**

5 A. I am Chief Executive Officer of Florida Digital Network, Inc. ("FDN").

6 **Q. What are your responsibilities as CEO of FDN?**

7 A. As CEO of FDN, I am ultimately responsible to the shareholders for all  
8 aspects of FDN's operations and performance. On a management level,  
9 FDN's President & Chief Operating Officer, Chief Financial Officer and  
10 General Counsel report directly to me; FDN's Engineering & Operations,  
11 Customer Service, and Sales Vice Presidents report to the President & COO,  
12 who is also in charge of FDN's Marketing and IS functions. I am involved in  
13 the day-to-day business dealings of the company and the decision-making on  
14 everything from marketing and sales strategies, product development,  
15 network architecture and deployment, financing, human resources, customer  
16 care, regulatory changes, etc.

17 **Q. Please describe your education and your work experience in the**  
18 **telecommunications sector.**

19 A. I received a B.S. Degree in Mathematics with a minor in Physics from  
20 Rollins College.

21 Prior to co-founding FDN in 1998, I served as Regional Vice  
22 President for Brooks Fiber Communications where I had overall  
23 responsibility for operations, engineering, finance and sales in the State of

1 Texas. Brooks Fiber Communications merged into WorldCom on January  
2 31, 1998. Prior to holding the VP position at Brooks, I was president of  
3 Metro Access Networks (MAN), a second-generation CLEC in Texas  
4 founded in 1993. At MAN, I developed all business strategies, designed  
5 network architecture, secured contracts with the company's original customer  
6 base, and had overall responsibility for operations and performance. MAN  
7 merged into Brooks Fiber in March 1997. Prior to MAN, I worked for  
8 Intermedia Communications and Williams Telecommunications Group  
9 (WilTel) as sales representative securing contracts with large commercial  
10 customers.

11 **Q. Have you previously testified in a regulatory proceeding before a**  
12 **state utility commission, the FCC or a hearing officer?**

13 A. No.

14 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

15 A. I intend to rebut BellSouth claims regarding ALEC market share and  
16 claims that BellSouth has fulfilled the resale requirement of the Section 271  
17 competitive checklist. These issues have been identified as Issues 1(c) and  
18 15, respectively, in this proceeding.

19 In summary, aside from the reasons offered by the other CLEC parties  
20 in this proceeding, FDN maintains the Commission should not recommend  
21 that BellSouth complies with Section 271 requirements for authority to



1 provide in-region inter LATA services because competition has not taken  
2 irreversible hold in Florida and because BellSouth has not, as required,  
3 fulfilled its resale obligations under Sections 251(c)(4) of the  
4 Telecommunications Act of 1996 (the "Act"). FDN believes BellSouth has  
5 overstated facilities-based business line competition in Florida, and FDN  
6 asserts BellSouth fails to meet its resale obligation by refusing to offer its  
7 high-speed data service for resale over UNE loops that CLECs use for voice  
8 service. I will also explain in my testimony why BellSouth's failure to meet  
9 this resale obligation is so critically important to competition in Florida.

10 **Q. Could you please briefly provide some background on FDN and**  
11 **describe its operations?**

12 A. FDN is a facilities-based Florida CLEC. FDN is also an IXC, a data  
13 services provider (both dial-up and dedicated), and, through an affiliate, FDN  
14 offers ISP and other Internet services. FDN was founded in 1998 with the  
15 mission of offering packaged services (local, long distance and Internet) to  
16 small- and medium-sized businesses. FDN launched operations in Orlando in  
17 April 1999 and expanded to Fort Lauderdale in May 1999 and to Jacksonville  
18 in June 1999. A second round of expansion in West Palm Beach, Miami and  
19 the Tampa Bay area was completed in the first quarter of 2000.

20 FDN owns and operates Class 5 Nortel DMS-500 central office  
21 switches in Orlando, Tampa, Jacksonville, and Ft. Lauderdale. FDN's  
22 switches are connected by fiber optic cable owned and operated by FDN to  
23 nearby incumbent local exchange carrier (or "ILEC") tandem switches. FDN

1 leases collocation cages or has virtual collocation space in over 100 ILEC  
2 wire centers. Remote switching equipment is installed at these collocation  
3 sites and from these sites FDN accesses ILEC UNE loops. Connectivity from  
4 the collocation sites to the central ILEC tandem switch is via T-1 circuits  
5 leased from the ILEC. FDN relies upon its rights under the Act to obtain  
6 “last mile” access to Florida consumers through the purchase of unbundled  
7 network elements (UNEs) from ILECs such as BellSouth. FDN does not  
8 utilize the UNE platform or UNE-P service delivery vehicle, nor does FDN  
9 resell BellSouth local voice service.

10 FDN uses BellSouth’s TAG gateway for electronic ordering. Using  
11 systems and software FDN developed on its own, FDN transmits virtually all  
12 of its local service requests (“LSRs”) to Bell electronically with minimal  
13 manual intervention.

14 The vast majority of FDN’s LSRs to BellSouth are for 2 wire voice  
15 grade UNE loops. Based on information provided by BellSouth, FDN is the  
16 largest procurer of UNE voice-grade loops from BellSouth in Florida. As  
17 such, FDN has a significant interest in insuring BellSouth’s compliance with  
18 legal and regulatory requirements and in insuring the viability of  
19 telecommunications competition in the State of Florida.

20 **ISSUE 1(c) (Competing Providers’ Market Share)**

21 **Q. Please explain FDN’s position regarding Issue No. 1(c).**

22 A. FDN believes that BellSouth has overstated the number of facilities-based  
23 business access lines served by CLECs. The number of viable facilities-

1 based CLECs has dwindled from the time of BellSouth's analysis and  
2 continues to dwindle as the financial community withdraws support from the  
3 communications sector and ILECs inhibit the pace of competition, the E911  
4 database entries BellSouth relies on for facilities-based CLEC line count may  
5 not be current, and other data and experience suggests a picture different  
6 from what BellSouth presents.

7 Through the affidavit and supporting exhibits of Mr. Victor K.  
8 Wakeling, BellSouth presents two estimating methodologies that BellSouth  
9 maintains prove that CLECs serve 24.8% or 21.1% of business lines in  
10 BellSouth's service area. BellSouth's estimates are simply at odds with  
11 FDN's observation and experience in its years in the Florida market.

12 The vast majority of CLEC business lines tabulated in both  
13 BellSouth's Method One and Method Two estimates are facilities-based lines  
14 (514,814 in Method One and 397,589 in Method Two), and the cornerstone  
15 of both BellSouth estimating methodologies relies on a tabulating CLEC  
16 E911 database listings.

17 However, of the 45 facilities-based CLECs in Mr. Wakeling's  
18 exhibits, more than 25% are out of business already, and a number of others  
19 are experiencing financial difficulties and may not survive this year, let alone  
20 long-term. The rate of CLEC failures exceeds the rate of CLEC births. Thus,  
21 BellSouth's data is stale and getting staler. Further, tabulations from the  
22 E911 database will be overstated unless the database is regularly updated to  
23 remove CLEC customers disconnected for nonpayment or other reasons or

1           when CLECs go out of business. FDN believes that the database may not be  
2           current.

3                       In addition, as I mentioned, FDN operates in all of Florida's largest  
4           metropolitan statistical areas (MSAs), and BellSouth's estimate that CLECs  
5           serve 24.8% or 21.1% of the business sector simply is inconsistent with  
6           FDN's observation and experience in the marketplace.

7                       To illustrate, FDN believes that a Florida market where facilities-  
8           based CLECs targeting businesses should have well-established penetration  
9           is the downtown Orlando market, densely populated with business customers,  
10          and served through BellSouth's Magnolia central office (CO). However,  
11          FDN has reason to believe that CLECs have little market share there. FDN  
12          randomly sampled two percent of some 250,000 discrete telephone numbers  
13          assigned years ago in large NXX blocks to BellSouth which are routed  
14          through the Magnolia CO to determine the local routing number (LRN)  
15          assigned to each. These telephone numbers are portable such that a customer  
16          switching to a CLEC service can retain the number. The LRN for these  
17          numbers will correspond to the local exchange company (BellSouth or  
18          facility-based CLEC) currently providing local service to the number. FDN  
19          found that 94% of the numbers tested were assigned BellSouth's LRN, while  
20          only 6% were assigned to CLEC LRNs. Although this test does not account  
21          for new numbers assigned to CLECs, FDN believes, based on its experience,  
22          that more than 80% of its customers have ported numbers and less than 20%  
23          have new numbers issued to FDN. Adjusting for that factor, and consistent

1 with FDN's own observation and experience in Orlando, CLECs serve  
2 approximately 7.2% of the market, leaving BellSouth with the remaining  
3 92.8%.

4 FDN believes similar analyses in other exchanges would have similar  
5 results – that CLECs have less competitive market share than BellSouth  
6 reports. Accordingly, FDN suggests the Commission critically evaluate  
7 BellSouth's market share claims in light of this type of evaluation and CLEC  
8 experience.

9 **ISSUE 15 (Resale Requirement)**

10 **Q. What is FDN's position regarding Issue No. 15?**

11 A. FDN has sought, and BellSouth has refused to provide, resale of high-  
12 speed data service over UNE loops that FDN uses to provide voice service.  
13 FDN maintains that BellSouth's refusal to do so violates Sections 251(c)(4)  
14 and 252(d)(3) of the Act and, therefore, BellSouth does not meet Section 271  
15 checklist item number 14, contained in Section 271 (c)(2)(B)(xiv) of the Act.

16 **Q. Why is BellSouth's failure to meet this resale obligation important to**  
17 **FDN?**

18 A. To compete, FDN must have the ability to offer its customers a  
19 combination of circuit-switched voice services, such as local dial tone, and  
20 packet-switched high-speed data services, such as Digital Subscriber Line  
21 (DSL) services. FDN is able to provide DSL to some end-users in Florida by  
22 collocating its own DSL multiplexers (DSLAMs) in BellSouth's central  
23 offices. However, FDN is precluded from providing high-speed data service

1 where BellSouth has deployed Digital Loop Carrier (DLC) facilities. The  
2 severity of this limitation on competition is felt nowhere more than Florida,  
3 as *more than 60%* of all BellSouth access lines in Florida pass through DLCs  
4 according to BellSouth. In FDN's experience in its initial Florida markets,  
5 FDN believes the percentage of DLCs approaches 70%. BellSouth does not  
6 offer any resale products that would enable CLECs to provide high-speed  
7 data service to consumers who are served by DLC loops where the CLEC is  
8 the voice provider. It will be essential for FDN to offer high-speed data  
9 services on an ubiquitous basis in Florida over the same customer loops that  
10 it uses to provide its voice services. This issue is of paramount importance  
11 for FDN to be able to launch a facilities-based competitive local voice option  
12 for residential subscribers. Florida is lagging in facilities-based local voice  
13 competition for residential subscribers at this time.

14 Although FDN is collocated in more than half of BellSouth's central  
15 offices in the state of Florida, and is able to offer voice services to 100% of  
16 accessible consumers served by these offices, FDN is unable to provide DSL  
17 service to approximately 70% of these end-users because of the presence of  
18 BellSouth DLCs.

19 **Q. What are DLCs?**

20 A. The DLC performs an analog to digital conversion that aggregates  
21 telecommunications from the individual customer subloops to a shared  
22 transmission facility bound for the central office. Deployment of DLCs and  
23 successor technologies will ultimately save billions of dollars annually in

1 maintenance and switching costs. In the past, and still today throughout most  
2 of the country, the vast majority of last mile loops consist of “home run”  
3 copper facilities between the customer and the central office. However, in  
4 the past quarter-century, as Florida’s population grew explosively, BellSouth  
5 deployed a tremendous number of DLCs at remote terminals (RTs) in its  
6 distribution network in Florida.

7 **Q. Why do BellSouth’s DLCs preclude FDN from offering DSL**  
8 **service?**

9 A. DSL cannot be transmitted through a DLC unless it is first  
10 multiplexed for digital transmission to the central office. Therefore, the  
11 carrier must locate at the remote terminal a DSLAM, or, in the case of Next  
12 Generation Digital Loop Carriers (“NGDLCs”), DSL-capable line cards that  
13 perform DSLAM functionality. Mainly because of cost and space  
14 considerations, FDN and other CLECs cannot collocate DSLAMs or line  
15 cards at remote terminals. Therefore, BellSouth today is the only carrier in  
16 Florida able to offer DSL service where its DLCs are deployed.

17 **Q. Can FDN sustain long-term viability if it is limited to providing**  
18 **DSL only on non-DLC loops?**

19 A. It would be very difficult as demand for DSL increases. In most  
20 Florida central offices, more so than in most of the rest of the nation, FDN  
21 will not be able to succeed in the voice or data market if it is limited to  
22 providing DSL service only to end-users who can be served from the central  
23 office. As I stated previously, more than 60% of BellSouth’s Florida access

1 lines pass through DLCs and cannot be served from the central office. Of the  
2 remaining 30-40% of the end-user base, many cannot receive central office  
3 based DSL due to excessive loop lengths, the presence of bridged taps, load  
4 coils or repeaters, or other factors. With such a high percentage of the DSL  
5 market closed to central-office-only strategies, CLECs will not be able to  
6 compete for customers without BellSouth at least fulfilling the resale  
7 obligation addressed in this testimony. If BellSouth is the only carrier that  
8 can provide DSL to a substantial percentage of consumers, it can leverage its  
9 market power to suppress competition for voice services, as I have indicated  
10 above. Therefore, an exclusive central office strategy will not only fail in the  
11 DSL market, but it could also fail in the voice services market as well. My  
12 point is well illustrated by the failure of many exclusive central-office based  
13 CLEC strategies, even where the rate of DLCs is much lower than Florida.  
14 Of the three major national DSL CLECs, NorthPoint has already dissolved in  
15 bankruptcy and Covad and Rhythms are in serious financial peril.

16 **Q. Why it is important for FDN to be able to offer both voice and**  
17 **data services?**

18 A. A large and growing number of residential and business customers are  
19 seeking carriers that can satisfy all of their telecommunications needs,  
20 including voice and high-speed data services. These customers want to be  
21 able to obtain these services through a single point of contact and on a single  
22 bill. If FDN is unable to offer high-speed data services, it will not only lose  
23 opportunities in the data market, but it will also be unable to remain



1 competitive in the voice local exchange and interexchange markets in  
2 Florida.

3 **Q. Is FDN's objective to provide high-speed data service in Florida**  
4 **urgent?**

5 A. Absolutely. It is well established that early entry and early name  
6 recognition are crucial to success in markets for new technologies and new  
7 services. BellSouth understands this as well, as it is aggressively deploying  
8 DSL in Florida today even as it denies competitors the resale and UNE DSL  
9 products that CLECs need to compete. With each day that passes, FDN falls  
10 further behind BellSouth in the high-speed data market, and the probability of  
11 losing its existing and prospective voice customers grows. In Florida alone,  
12 BellSouth by the end of April 2001 had 133,015 high-speed data subscribers  
13 in the State of Florida, 43,291 of which were added in the first quarter 2001.  
14 Florida customers represent nearly one-half of BellSouth's DSL lines region-  
15 wide, and approximately one-half of its first quarter growth. Therefore,  
16 FDN's efforts to obtain resale for a bundled DSL and voice offering are  
17 extremely urgent and of utmost importance to FDN's short-term and long-  
18 term viability in the state.

19 **Q. Does FDN's inability to offer voice and high-speed data on the**  
20 **same telephone line impair its ability to offer local exchange voice**  
21 **services in Florida?**

22 A. Yes. First, as I mentioned, FDN's inability to offer high-speed data to  
23 most customers impairs its ability to sell voice services to customers looking

1 for a bundled service offering from a single carrier. Second, FDN is impaired  
2 in its ability to sell local exchange voice services by BellSouth's unnecessary  
3 and anticompetitive practice of leveraging its control of the DSL market in  
4 Florida to injure competitors in the voice market. To illustrate, if a  
5 prospective FDN customer today is obtaining both voice and data services  
6 over one line from BellSouth, that customer is not able to migrate local  
7 exchange voice service to FDN's facilities-based voice service without  
8 having BellSouth disconnect the data service, even though BellSouth easily  
9 has the capability to continue to provide data service on the line. Because  
10 FDN is unable in most cases to offer DSL service to the customer on the  
11 same telephone line, the customer is likely to lose interest in obtaining voice  
12 telephone services from FDN, even when FDN is able to offer superior  
13 pricing and service. BellSouth's ability to manipulate its market power to  
14 injure competitors will only increase as competitive DSL providers continue  
15 to disappear.

16 **Q. How does the lack of competitive DSL providers affect Florida**  
17 **consumers?**

18 A. In markets where only one or only a few providers are available, these  
19 providers have fewer incentives to provide quality service or competitive  
20 rates to their customers. As BellSouth has solidified its growing control over  
21 the DSL market in Florida, it recently raised its retail DSL prices in the state  
22 and discontinued some of its competitive promotions. If competitors are

1 denied meaningful access to BellSouth's last mile connections to end-users,  
2 price increases could be expected to continue.

3 **Q. Must BellSouth offer wholesale high-speed data service to FDN**  
4 **for resale pursuant to Section 251(c)(4) of the Telecommunications Act**  
5 **of 1996?**

6 A. Yes. BellSouth and its affiliates are required to offer, on a discounted  
7 wholesale basis, all of their retail telecommunications services, including  
8 xDSL and other high-speed data services, pursuant to the resale obligations  
9 applicable to incumbent local exchange carriers under Section 251(c)(4) of  
10 the Act. While resale is not the only means of access, the Act does require  
11 BellSouth to offer it, and BellSouth should be required to provide FDN such  
12 access.

13 **Q. Does BellSouth offer for resale its high-speed data services today**  
14 **under the terms of Section 251(c)(4)?**

15 A. No. BellSouth's only wholesale high-speed data service in Florida is  
16 its voluntary, market-rate offer to Internet Service Providers (ISPs).  
17 BellSouth offers this service only for telephone lines on which BellSouth is  
18 the local exchange carrier. Since BellSouth considers the service to be  
19 voluntary, there is no guarantee that it will continue to be made available at  
20 rates, terms and conditions that would allow a competitor to compete with  
21 BellSouth's retail service.

1           **Q.    If a resold DSL product were available pursuant to Section**  
2           **251(c)(4), could BellSouth refuse to resell DSL to CLECs for use on lines**  
3           **where it is not the local exchange carrier?**

4           A.    No. An ILEC cannot impose unreasonable or discriminatory  
5           limitations on resale services provided under Section 251(c)(4).

6           **Q.    What retail products does BellSouth offer to provide high-speed**  
7           **data service?**

8           A.    To the best of my knowledge, BellSouth's consumer high-speed data  
9           service is sold as BellSouth Fast Access Internet Service. FDN seeks to be  
10          able to resell the telecommunications portion of this service, which,  
11          depending on BellSouth's deployment, could be provided either over DSL,  
12          fiber-fed DLC, or all-fiber loops. (I refer to the telecommunications portion  
13          of this service as BellSouth's retail DSL service, but for the purposes of this  
14          testimony I intend to include with this term any technology BellSouth uses to  
15          provide consumer high-speed data services.) BellSouth offers other higher-  
16          capacity high-speed data services, such as T-1 service, but these services are  
17          not a subject of my testimony in this case.

18          **Q.    On what basis has BellSouth refused to offer resold DSL service**  
19          **under Section 251(c)(4)?**

20          A.    BellSouth claims that its DSL services are exempt from the resale  
21          obligations of Section 251(c)(4) of the Telecommunications Act, which  
22          applies to retail telecommunications services. As I understand its position,  
23          BellSouth maintains that its local exchange carrier entity does not sell retail

1 DSL, but instead sells DSL only to Internet Service Providers (ISPs). This  
2 position is based upon the FCC's 1999 decision that sales of DSL to ISPs are  
3 wholesale services that are exempt from resale obligations under Section  
4 251(c)(4).<sup>1</sup> However, the BellSouth group of companies, taken together, is  
5 the largest retail DSL provider in Florida. BellSouth does sell retail DSL  
6 through an ISP that it owns and controls. BellSouth's ISP obtains DSL from  
7 BellSouth's local exchange company. BellSouth promotes and sells its  
8 telephone and DSL services using the same advertisements, customer service  
9 and sales agents, and Internet sites, including www.BellSouth.com.  
10 Revenues from DSL sales and telecommunications services are reported  
11 together and accrue for the benefit of the same BellSouth shareholders. If  
12 BellSouth were permitted to avoid its Section 251 obligations by selling all of  
13 its telecommunications service on a wholesale basis to other affiliates, it  
14 would render the unbundling and resale obligations of the Federal Act  
15 meaningless. Therefore, retail sales of telecommunications services by any  
16 BellSouth affiliate should be attributed to the local exchange carrier operation  
17 for the purposes of Section 251.

18 **Q. Have any courts interpreted an ILEC's resale obligations where**  
19 **retail services are sold by an affiliate of the ILEC rather than by the**  
20 **ILEC itself?**

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<sup>1</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, Second Report and Order, FCC 99-330 (rel. November 9, 1999) ("UNE Remand Order").

1           A.     Yes. In *ASCENT v. FCC*,<sup>2</sup> decided in January 2001, the United  
2 States Court of Appeals for the District of Columbia held that retail sales of  
3 advanced telecommunications services by ILEC affiliates are subject to the  
4 resale obligations of the Act. The court found that an ILEC may not “sideslip  
5 § 251(c)’s requirements by simply offering telecommunications services  
6 through a wholly owned affiliate.” Although the case involved a regulation  
7 pertaining only to SBC, the logic of the decision applies equally to BellSouth.  
8 Therefore, the FCC’s ISP exemption cannot be read to exempt BellSouth  
9 from its obligation to resell the retail telecommunications service that is  
10 provided by any BellSouth affiliate.

11                 On June 26, 2001, the United States Court of Appeals for the District  
12 of Columbia denied a petition for review of the FCC’s Advanced Services  
13 Second Report and Order that defined ILEC sales of high-speed data service  
14 to Internet Service Providers as a wholesale offering that is not subject to the  
15 resale obligation of Section 251(c)(4).<sup>3</sup> However, this decision, and the  
16 BellSouth argument I mentioned earlier, are inapplicable to the issue here,  
17 where BellSouth sells its own retail DSL through a BellSouth-owned ISP  
18 affiliate, because BellSouth’s ISP affiliate is treated as part of BellSouth’s  
19 ILEC operation for the purposes of Section 251, and not as a separate

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<sup>2</sup> *Association of Communications Enterprises v. FCC*, 235 F.3d 662, (D.C. Cir. January 9, 2001)(“*ASCENT I*”).

<sup>3</sup> *Assn. of Comm. Enterprises v. FCC*, Docket No. 00-1144 slip op. (D.C. Cir. June 26, 2001) (*ASCENT II*), denying petition for review of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order (November 9, 1999). Despite identical names, this decision is not related to *Assn. of Comm. Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. January 9, 2001).

1 affiliate.<sup>4</sup> The recent D.C. Appeals Court decision, in other words, in no way  
2 addresses instances in which an ILEC provides retail high-speed data service  
3 through its own ISP affiliate.

4 **Q. Have any State commissions found that the “ISP exemption”**  
5 **created by the FCC’s Second Report and Order is not relevant to an**  
6 **ILEC’s obligation to resell the high-speed data it provides through its**  
7 **own ISP?**

8 A. Yes. On June 27, 2001, the Indiana Utility Regulatory Commission  
9 (IURC) ruled that Ameritech must offer for resale a wholesale discount on  
10 the DSL service it provides through its own ISP affiliate. The IURC found  
11 that if the FCC’s ISP exemption in the Second Report “were the only  
12 authority guiding the Commission’s decision, Ameritech’s position might  
13 prevail.” However, the IURC held that the DC Circuit’s January 9, 2001,  
14 *ASCENT I* decision required that sales of DSL by an ILEC ISP were not  
15 eligible for the exemption under the Second Report, as the retail services of  
16 all ILEC affiliates were to be considered collectively as products of the ILEC.  
17 The Commission held that “the Second Report . . . do[es] not change that  
18 fact,” and that “notwithstanding the definition of “at retail” found in the  
19 Second Report,” Ameritech could not avoid its DSL resale obligations “by  
20 setting up a wholly owned affiliate to offer those services.” Ameritech was  
21 therefore required to make available a resale high-speed data service offering  
22 in the manner requested by FDN in this proceeding.

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4 *Assn. of Comm. Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. January 9, 2001) (“*ASCENT I*”).

1           If the Second Report had no bearing on the decision to require  
2 Ameritech to resell its high-speed data service in Indiana, the D.C. Circuit's  
3 affirmation of the Second Report likewise has no bearing on BellSouth's  
4 obligation to resell its high-speed data services in Florida.

5           **Q.     Have any states taken steps to require an ILEC to make available**  
6 **for resale the retail DSL products of separate ISP affiliates?**

7           A.     Yes. On May 7, 2001, the Connecticut Department of Utility Control  
8 (DPUC) issued a draft decision that would require the state's largest  
9 incumbent, Southern New England Telephone Company (SNET), to resell  
10 any telecommunications service, including DSL, that is sold by its ISP  
11 affiliate and any other affiliates. The draft decision rejected arguments by  
12 SNET that are virtually identical to those offered by BellSouth. As the DPUC  
13 noted, "[t]he ASCENT [I] Decision clearly holds that 'an ILEC [may not be  
14 permitted] to avoid § 251(c) obligations as applied to advanced services by  
15 setting up a wholly owned affiliate to offer those services.' [SNET's]  
16 repeated claim that this holding has no application to the services it offers  
17 ignores that decision's plain language."<sup>5</sup>

18           **Q.     Is FDN's position that BellSouth must resell both the**  
19 **telecommunications and enhanced services that are sold together by**  
20 **BellSouth's ISP?**

21           A.     No. Section 251 applies only to telecommunications services, and  
22 that is all that FDN is seeking to resell. However, BellSouth cannot refuse to

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<sup>5</sup> Petition of DSLnet Communications, LLC Regarding Section 251(c) Obligations of the Southern New England Telephone Company, Docket 01-01-17, Draft Decision at 9 (Conn. D.P.U.C. May 7, 2001) (internal citations omitted).



1           separate its telecommunications service from its enhanced services for the  
2           purpose of denying resale. FCC bundling rules require BellSouth to offer its  
3           telecommunications services separately from any enhanced services, even if  
4           it only sells them as a bundled product.<sup>6</sup>

5           **Q. Does that conclude your rebuttal testimony?**

6           A. Yes.

7

8

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6 Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket 96-61; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, CC Docket 98-183, Report and Order, FCC 01-98 (rel. March 30, 2001), at ¶ 39.

1 BY MR. FEIL:

2 Q Do you have a summary of your testimony?

3 A Yes.

4 Q Could you please provide it.

5 A Again, my name is Mike Gallagher, Florida Digital  
6 Network. We are a smart bill type CLEC; that means we put a  
7 lot of our own network in, but at the last mile, we rely on  
8 BellSouth to provide us a local loop or a UNE to access the  
9 customer. We've got four classified switches installed,  
10 several hundred miles of fiber, a hundred collocations. We  
11 feel we've got more collocations than anyone and BellSouth in  
12 the state of Florida, about \$60 million in plant in the ground  
13 in Florida. We think we're the largest provider of UNE loops  
14 in Florida. We've been told that by our account team at  
15 BellSouth. We provide competition for the small business. We  
16 believe that the larger businesses have several options, and we  
17 believe the only way to provide competition to the small  
18 business and possibly residential is to use that last mile UNE  
19 loop. We have roughly 60,000 of them installed right now.

20 My testimony has two parts. The first part is a  
21 market survey. FDN recently has been in the market to raise  
22 capital. As part of that capital raise, some of our potential  
23 investors were very interested in the market share penetrations  
24 in Florida. We needed to provide them data as to how  
25 penetrated the local market was, so we needed to come up with

1 some sort of projection, so we did. And how we did it is as  
2 follows.

3 We went to the -- our oldest market, which is  
4 Orlando. We went to the largest CO in Orlando, which is the  
5 Magnolia central office. There is 25 10,000 number blocks  
6 assigned to BellSouth in that central office. We queried every  
7 50th number of those numbers using our SS7 network to find out  
8 the local routing -- the local provider who underlies that  
9 phone number. So we queried about every 50th one of 5,000  
10 numbers. That came back 94 percent of those numbers were still  
11 with BellSouth, 6 percent were with CLECs. That doesn't  
12 account -- there's -- that wouldn't account for any customer in  
13 the Magnolia CO who was assigned a phone number by a CLEC, so  
14 we had to adjust for that.

15 FDN, it's our experience, more than 80 percent of our  
16 customers are BellSouth customers that we port their number. A  
17 small percent we give a phone number to. So once adjusted for  
18 roughly an 80/20 part of the CLECs issuing actual phone numbers  
19 to customers, we came out with about 92 percent market share  
20 for BellSouth, and 8 percent for customers. And the only  
21 reason that's in my testimony is, a month or so later,  
22 BellSouth announced how much market share it claimed the CLECs  
23 had, and it was just so different that I felt we had to come  
24 before the Commission and just make our point that we were not  
25 seeing that in the marketplace.

1           The second part of the my summary is related to the  
2 resale of DSL. Just from the customer's perspective, the small  
3 customer, they want to see a bundle of local, long distance,  
4 and Internet, the high-speed Internet. In Florida, BellSouth  
5 has more than 90 percent of the high-speed Internet market, and  
6 the reason is the architecture of the local loop. Florida is  
7 way different from any other state. As we've talked about  
8 before, there's these remotes out there. There's some 200  
9 central offices but 12,000 remotes that sit between the  
10 customer and the central office. That architecture gives  
11 BellSouth an unfair competitive advantage because they're able  
12 to put their DSLAMs at those remotes. And they have all the  
13 customers, so they're able to get, like I said, 90 percent plus  
14 market share. So it really matters that there's 12,000 remotes  
15 in Florida. It really matters -- should matter to this  
16 Commission that it is a different architecture down here, and  
17 competitors need access to resell that high-speed DSL.

18           Further, an FDN customer -- if we market to a  
19 customer who wants to change to us for voice service, if  
20 they're using a BellSouth DSL service, it shuts off when they  
21 are ported to FDN. As soon as that line ports to FDN, the DSL  
22 shuts off. That locks us out of a huge amount of market and  
23 potentially completely shuts us out of the residential market.

24           Collocation at the remote seems to be, you know,  
25 BellSouth's answer to this problem. I'm here to tell you it's

1 not practical, feasible. I've run an 8-port miniRAM. I've  
2 heard BellSouth say that's an option, an 8-port DSLAM, and the  
3 economics just aren't there. It's sort of analogous to me  
4 being able to -- you know, I could go down to the store and  
5 rent a backhoe and dig a ditch from here to the, you know,  
6 nearest CO and put copper in the ground, but that's ludicrous.  
7 That's why the Act was created, to allow the resale of these  
8 sort of elements. So I just don't see that argument as flying.  
9 And also, the cable modems are pointed out as an option, and  
10 I'm here to tell you also in my customer segment that I sell  
11 to, cable modems are not an option for small businesses. So  
12 that's the summary of my testimony.

13 CHAIRMAN JACOBS: The discussion we had earlier  
14 regarding resale of -- resale of -- was it of high-speed  
15 services?

16 THE WITNESS: Yes, sir.

17 CHAIRMAN JACOBS: What's your experience with that?

18 THE WITNESS: There is no true resale of high-speed  
19 services. BellSouth wholesales based on their own pricing  
20 numbers they've made up. They'll wholesale DSL to ISPs, but  
21 there is no resale discount as decided by this Commission  
22 applied to any high-speed product, and I'm not able to have  
23 access to that.

24 CHAIRMAN JACOBS: Does Florida Digital offer that  
25 now?

1 THE WITNESS: Yes, sir. We wholesale BellSouth.

2 CHAIRMAN JACOBS: You issue the UNEs; right -- no.  
3 My question is this, actually: UNE-P, is that an option for  
4 you to provide it?

5 THE WITNESS: No. There is no UNE-P option for  
6 high-speed data.

7 CHAIRMAN JACOBS: Would that be a market -- will  
8 there be a market benefit to you offering broadband over  
9 a UNE --

10 THE WITNESS: Absolutely, a broadband UNE would be a  
11 fantastic option for us.

12 CHAIRMAN JACOBS: Okay.

13 BY MR. FEIL:

14 Q Does that conclude your summary?

15 A Yes, sir.

16 MR. FEIL: Mr. Gallagher is tendered for cross.

17 CHAIRMAN JACOBS: Very well. Thank you.

18 Ms. White.

19 MS. WHITE: Thank you, Chairman Jacobs.

20 CROSS EXAMINATION

21 BY MS. WHITE:

22 Q Mr. Gallagher, my name is Nancy White; I represent  
23 BellSouth Telecommunications. Good morning.

24 A Good morning.

25 Q I just want to correct -- start off by correcting

1 something in your testimony, I think. On Page 2, Line 13 of  
2 your testimony, you state that you haven't testified before  
3 this Commission before, and I think you testified in the FDN  
4 arbitration just recently, didn't you?

5 A Right. When -- we talked about that last night, and  
6 we felt that at the time we filed this I hadn't testified, so  
7 you're right, I have testified before the Commission.

8 Q Okay. And would you agree that your testimony in the  
9 FDN arbitration on the issue of resale of DSL over UNE loops or  
10 UNE-P is almost identical to the testimony you filed in this  
11 case?

12 A It's close.

13 Q Okay. Now, let's talk about this for a minute. FDN  
14 provides DSL service to its end users; right?

15 A Yes.

16 Q And you do that through an affiliate or subsidiary  
17 called FDN.net?

18 A Dot com.

19 Q Dot com, sorry.

20 And do you have a specific name for your Internet  
21 service? Does FDN.com have a --

22 A No. We just -- you know, we call it various speeds.  
23 We rate it based on the speeds.

24 Q All right. And to provide this service, you buy DSL  
25 service from BellSouth through BellSouth's federal tariff; is

1 that right?

2 A Yes.

3 Q Okay. And --

4 A That service, though, only works on a BellSouth phone  
5 line.

6 Q Okay.

7 A And we're in the business of providing local phone  
8 service, so it gets in the way.

9 Q All right. But that DSL service that you buy from  
10 BellSouth is essentially the pipe, the transport for Internet  
11 service; is that right?

12 A That's right.

13 Q And you add the Internet piece to that transport and  
14 provide the bundle to your end user customers; right?

15 A We provide web -- the web part, yes, and the mail  
16 part.

17 Q Now, an end user cannot buy just DSL service from  
18 BellSouth, can he?

19 A They don't know that. They think they can. They're  
20 marketed to. They think they're buying BellSouth DSL.

21 Q Okay. But they cannot buy -- they cannot call up  
22 BellSouth and say, I want to just buy that transport piece,  
23 just that DSL piece from you, can they?

24 A If they call BellSouth with that, BellSouth will  
25 either try to sell them the DSL, the whole package, or point



1 them to their ISP that they want to go to, if it's AOL, and  
2 say, AOL can buy this from us. But I would imagine that's how  
3 that goes.

4 Q Well, what BellSouth is going to try to sell them, or  
5 send them to AOL who will try to sell them, is the whole  
6 shebang, the whole Internet service; correct?

7 A Right.

8 Q Not just the pipe?

9 A Right. But the customers aren't smart enough to know  
10 that in our market segment mostly that they can buy the pipe.  
11 They think they have to buy the whole thing.

12 Q Okay. Now, BellSouth only sells to end users the  
13 bundle, the pipe that is DSL and the Internet service over that  
14 pipe, and its called Fast Access. Is that a fair statement?

15 A That's semantically correct, yes.

16 Q Okay. Now, Internet providers can get term and  
17 volume prices from BellSouth's tariff for DSL transport, can't  
18 they?

19 A Yes.

20 Q And what FDN wants is to sell -- to resell the DSL  
21 transport only. Is that a fair statement?

22 A Yes.

23 Q And you want to resell that at a wholesale discount?

24 A Yes.

25 Q Now --

1 A And we also want it to work on our phone lines.

2 Q Okay. Now, if you want to provide both voice and DSL  
3 service to an end user over a single line today, you can  
4 collocate a DSLAM at the remote terminal. That's one option;  
5 right?

6 A That's theoretical, yes.

7 Q Okay. And I believe you said in your summary that  
8 you did some cost analysis for installing DSLAMs at remote  
9 terminals?

10 A Yes.

11 Q And you'll have to correct me if I'm wrong, but I  
12 think you provided that as a late-filed exhibit in the FDN  
13 arbitration?

14 A At the request of the Commissioners, yes.

15 Q Right. And did that show that the cost of installing  
16 a DSLAM in a remote terminal was about \$8,000 to \$9,000?

17 A Yes.

18 Q Okay. And the other option you can use --

19 COMMISSIONER JABER: How much was it, Mr. Gallagher?

20 THE WITNESS: I think -- I don't have it in front of  
21 me. I didn't bring it, but I think the DSLAM part was about  
22 \$8,000 before -- I think that was before installation costs.

23 BY MS. WHITE:

24 Q And the other option you have to provide DSL over  
25 voice line is to resell BellSouth service to that end user,

1 BellSouth's local service to that end user?

2 A Right. We're prohibited from doing that, though, by  
3 our investor group because they don't view that as a viable  
4 option for local competition, resale.

5 Q And it's my understanding -- I think I read this,  
6 maybe it was today or in the last few days -- that FDN just got  
7 an infusion of capital, didn't they?

8 A That actually happened a couple of months ago.

9 Q Okay. And one of the conditions of that is that you  
10 not provide DSL service over a BellSouth resold line?

11 A We can provide resale. We have bank covenants,  
12 though, that our bankers don't like it. And we can do whatever  
13 we want. We just have to have a certain number of  
14 facilities-based lines.

15 Q I see. Now, your problem -- or one of your problems  
16 with buying DSL service from BellSouth's tariff without the  
17 discount is the difference between the wholesale rate and the  
18 retail rate. Is that a fair statement?

19 A Yes.

20 Q And it's really the lack of arbitrage that's the  
21 problem?

22 A Yes.

23 Q Now, can you tell me whether the lack of arbitrage is  
24 the standard for whether FDN is impaired in its ability to  
25 provide DSL service?

1           A     What do you mean by "lack of arbitrage," I guess?  
2     Could you explain exactly what you mean?

3           Q     All right. Let me try this again. The -- you buy  
4     the DSL service from BellSouth's tariff at a specific rate.

5           A     Right.

6           Q     Can you give me an estimate of what that rate is?

7           A     In the low \$30.

8           Q     And you're going to sell it to your customers,  
9     package it with the web information and sell it to your  
10    customers.

11          A     Right.

12          Q     And what's your retail price for that?

13          A     It's whatever yours is. Yours is \$49.

14          Q     Okay. So I think I pay \$49 for my service.

15          A     Right.

16          Q     So --

17          A     I wish we could sell it for more, but we're not that  
18    good.

19          Q     Well, and I have to tell you, because I like it so  
20    much, I might pay more.

21                 But if -- I think what I'm understanding is, the  
22    problem is you don't see there's enough margin between the low  
23    \$30 price that you buy it for and the \$49 that you sell it for?

24          A     I think the \$30 -- the mid-30 price is a price that  
25    you guys arbitrarily set. And what I'm saying is, it's not a

1 real resale discount. It's not a voided cost. It's not based  
2 on the metrics that have been set here. I'm just saying that  
3 we should have fair access to that just like --

4 Q So you want a lower wholesale price so you have a  
5 bigger margin between that and the retail price?

6 A In theory, that's possible that that's what the  
7 resale discount would yield, yes.

8 Q What's the resale discount in Florida for a business  
9 customer -- business line? I'm sorry, not a customer.

10 A You know, I don't have that off the top of my head.

11 Q And I don't either, and I apologize for that.

12 A Well, I can help you with the math as I see it.  
13 You-all sell dial up for about 19 bucks; right?

14 Q Uh-huh.

15 A Dial up access cost is pretty much zip, so most of  
16 that cost is in what you call the Internet service. So if you  
17 take \$49 bucks and you take \$19 off the top of that, you end up  
18 with \$30. So the resale discount should be applied to that \$30  
19 because that's theoretically the cost of that DSL access. I  
20 don't see how you can get around that.

21 Q But don't you already have almost a 40 percent  
22 discount from the retail price? In other words, if BellSouth  
23 is selling it at \$49 or \$50 and you're buying it in the low  
24 30s, then isn't that almost a 40 percent discount already?

25 A But you're saying that 49 includes, to use your

1 words, the water, pipe and the water or whatever, the Internet  
2 and the pipe. And what I'm saying is, if you-all are selling  
3 dial up for \$19, that's mostly all the Internet service, the  
4 web, the mail. The 19 should come off the top of the 45 -- 49  
5 so that you've got a \$30 cost -- what you-all are saying is  
6 your cost for DSL.

7 Q Well, wait a minute. The 19 --

8 A And I'm paying 35.

9 Q The \$19 is for dial up access; correct?

10 A Right.

11 Q And dial up access isn't the same thing as DSL, is  
12 it?

13 A Dial up includes e-mail and web surfing ability  
14 and --

15 Q And isn't the resale discount applied to the retail  
16 price?

17 A There is no -- we haven't seen a retail price for  
18 just the DSL.

19 Do you have one?

20 Q I have no idea. I sincerely doubt it, though,  
21 Mr. Gallagher.

22 All right. Let's move on for a minute. Well, one  
23 more question on this area. Has the FCC required in any  
24 271 proceeding that the ILEC resell DSL over UNE-P lines in  
25 order to demonstrate compliance with the resell checklist item?

1 A I don't know.

2 Q Now, let's move on to competition for a minute. On  
3 Page 5 of your testimony, you say that of the 45  
4 facilities-based ALECs that were referenced in BellSouth's  
5 testimony, more than 25 percent are out of business already.  
6 Do you recall that?

7 A Yes.

8 Q Now, if I accept that as true, and I am rusty on  
9 math, that still leaves 32-some-odd facilities-based ALECs in  
10 Florida, doesn't it?

11 A I think some of those have died since this testimony,  
12 so I think it's probably less than that now.

13 Q Okay. Do you know how many facilities-based ALECs  
14 the FCC deemed sufficient for 271 approval in Oklahoma?

15 A No.

16 Q Would you accept, subject to check, that it was one?

17 A Subject to check, yes.

18 Q Okay. Do you know how many facilities-based ALECs  
19 the FCC deemed sufficient for 271 approval in Massachusetts?

20 A No.

21 Q Would you accept, subject to check, that it was  
22 three?

23 A Yes.

24 Q Would you accept, subject to check, that in the  
25 seven states that have received 271 approval, the number of

1 facilities-based ALECs that the FCC deemed sufficient ranged  
2 anywhere from one to seven?

3 A I accept that.

4 Q Now, in your summary and in your testimony you claim  
5 that BellSouth's estimate of business competition was  
6 inconsistent with FDN's experience in Orlando.

7 A That's right.

8 Q I think that's on Page 6 of your testimony. And you  
9 describe this 2 percent sample you took.

10 A Yes.

11 Q Who performed that for you?

12 A Our marketing department.

13 Q Okay. Do you know whether it was -- do you know  
14 whether it was a statistically valid sample?

15 A No.

16 Q You don't know or --

17 A I just know it is what it is as we describe it.

18 Q Okay. So you don't know whether it is or not?

19 A No.

20 Q Okay. Did you attach any supporting documentation of  
21 this sampling to your testimony?

22 A No.

23 Q And you looked at only one central office; isn't that  
24 right?

25 A Right.



1 Q Do you know how many BellSouth central offices are in  
2 the Orlando exchange?

3 A In the Orlando area, there's about 8, 12, but  
4 Magnolia is the biggest by far.

5 MS. WHITE: Thank you, Mr. Gallagher. I don't have  
6 anything further.

7 CHAIRMAN JACOBS: Staff.

8 MS. BANKS: Staff has no questions.

9 CHAIRMAN JACOBS: Commissioners.

10 COMMISSIONER PALECKI: I have just a few questions.  
11 You have questioned the data that has been provided about --  
12 concerning the number of ALEC customers in Florida by doing  
13 your own independent research. How could our Staff do a sanity  
14 check? Is there anything that we could do independently?  
15 Because right now we have a difficult situation. We have a set  
16 of data provided by BellSouth. We have the data you've  
17 provided, which is just a small sample, that appears to be  
18 contrary to the BellSouth data. Do you have any suggestions?

19 THE WITNESS: We would welcome -- we would give --  
20 turn all our data over and our methods and all of that and  
21 welcome the Staff to have that data if you'd like. I mean,  
22 it's no problem at all.

23 And again, our data, we didn't do it because, you  
24 know, we wanted to come up here and oppose BellSouth on that  
25 issue. We just happened to have that data, and then BellSouth

1 came out with their publicity campaign for, I guess, this 271,  
2 and we saw their numbers, and it just didn't seem right. So  
3 I'm not a statistician, but we had to have some numbers to show  
4 investors, and that's how we got them, and they accepted them  
5 as valid. And we'll gladly turn over that data and the way we  
6 got the data. It really wasn't that hard to get.

7 COMMISSIONER PALECKI: Now, you testified that if a  
8 BellSouth customer that currently has DSL service chooses voice  
9 service from your company, the DSL service will be shut off.

10 THE WITNESS: Yes, sir.

11 COMMISSIONER PALECKI: What about if you have a  
12 situation where you are providing voice service and that  
13 customer wishes to add DSL service?

14 THE WITNESS: They are told they have to go back to  
15 BellSouth for local -- for their local, so we would lose them  
16 as a customer.

17 COMMISSIONER PALECKI: If they go to you and ask for  
18 DSL service, is there any way you can provide that service and  
19 retain them as your customer?

20 THE WITNESS: We have two methods. We can either  
21 tell them, look, we have to sell you our DSL product, which has  
22 a BellSouth phone number underneath it, you know, if you want  
23 to use it as a fax line or something like that, it's a little  
24 extra expense for you, but, you know, we have this product.  
25 And that's sort of a clumsy type sale. It doesn't work that

1 well. Then we have an IDSL product that we sell that we're  
2 able to sell. It's just lower speed. It's 128 kilobits versus  
3 BellSouth's ADSLs run about 5 (sic) megabits.

4 COMMISSIONER PALECKI: Now, the first option, is that  
5 resale of the BellSouth service?

6 THE WITNESS: Yes, sir. It's the resale out of the  
7 tariff, the BellSouth, you know, federal tariff deal with a  
8 BellSouth phone number underneath it.

9 COMMISSIONER PALECKI: And why do you say that that  
10 is a clumsy --

11 THE WITNESS: Because we have to buy, you know, a \$25  
12 phone line just to get started, and then we buy that resale,  
13 you know, circuit, say, that we pay mid 30s for. So our cost  
14 is almost 50 bucks, and the customer can get it for 49 from  
15 BellSouth.

16 COMMISSIONER PALECKI: And how do you provide the  
17 IDSL service?

18 THE WITNESS: We have 100 collocations in BellSouth  
19 COs. IDSL is not considered broadband. It's considered narrow  
20 band. It's a time division multiplex type signal that can ride  
21 on fiber and ride through remotes using the right cards in the  
22 remotes or the ISDN cards in the remotes. It's like ISDN but  
23 turned on all the time. So we are able to offer that. It's  
24 just at a lower speed.

25 COMMISSIONER PALECKI: And how much lower is the

1 speed? Have you had any customers that have complained  
2 about --

3 THE WITNESS: Oh, yeah. Yes, they complain about the  
4 speeds. In order of magnitude, it's roughly ten times the --  
5 BellSouth ADSL is 1.5 megabits or roughly -- yeah, DSL is 128  
6 kilobits. So it's 1,500 kilobits versus 128 kilobits in speed.

7 COMMISSIONER PALECKI: Thank you.

8 COMMISSIONER JABER: Mr. Gallagher, just a couple of  
9 questions. On Page 17 of your testimony, you discuss the  
10 Indiana decision. I think it's come to be known as ASCENT I,  
11 the Ameritech --

12 THE WITNESS: Right.

13 COMMISSIONER JABER: The change you made in the  
14 summary of your testimony, does that affect this part of your  
15 testimony at all, or do you still believe that state  
16 commissions have the authority to order that DSL be provided at  
17 a wholesale discount even if it's provided by a Bell affiliate?

18 THE WITNESS: I do. I do believe that.

19 COMMISSIONER JABER: You still believe that?

20 THE WITNESS: Yes, I do.

21 COMMISSIONER JABER: Okay. Well, then tell me more  
22 about this decision and what authority the state commission  
23 cited and their rationale. That's my first question. And the  
24 second question is, was it overturned or upheld by a subsequent  
25 court?

1 THE WITNESS: I understand that ASCENT I is around  
2 that -- that an ALEC can't avoid a resale obligation through an  
3 affiliate. And the ASCENT II, I don't know if it overturned  
4 it, but it addressed the similar, and it didn't seem to require  
5 the resale, you know, and it didn't address whether or not  
6 underneath who was the dial tone provider, whether that had to  
7 be Bell or it could be a CLEC.

8 COMMISSIONER JABER: Let me ask the attorneys,  
9 Mr. Chairman, with your indulgence. In the issue that covers  
10 DSL service being sold at wholesale, do you feel like you have  
11 the ability to brief us on these two decisions?

12 MR. FEIL: Yes, ma'am, we certainly will.

13 COMMISSIONER JABER: Mr. Chairman, I would ask that  
14 the parties just include that discussion. I want to know more  
15 about those two decisions and whether the Indiana Commission's  
16 decision was overturned.

17 CHAIRMAN JACOBS: Very well. Does anybody need  
18 clarification? That's pretty clear. So we'll just add that as  
19 an issue in the brief?

20 COMMISSIONER JABER: Yeah -- or actually, it's  
21 already an issue. I just want them to discuss it.

22 CHAIRMAN JACOBS: Specifically focus on the Indiana  
23 decision.

24 COMMISSIONER JABER: Yeah.

25 And then on Page 9 of your testimony, Mr. Gallagher,

1 you reference line cards, and we heard a lot of testimony about  
2 line cards yesterday. And as I understood BellSouth, they  
3 weren't just concerned about the security as it relates to the  
4 line cards being used for collocation in a remote terminal but  
5 also just access to the -- direct access to the system and  
6 whether there was potential for messing up or disconnecting a  
7 BellSouth customer. And I guess in my own mind, I analogize it  
8 to a floppy disk in a computer. And you and I know you're not  
9 supposed to just take the floppy disk out --

10 THE WITNESS: Right.

11 COMMISSIONER JABER: -- at certain points in  
12 programs. And is my analogy correct?

13 THE WITNESS: I think that's a very good analogy.  
14 The way that DSL will be provided at the remote by the ILEC  
15 would either be through these line cards that have a voice and  
16 a data side to them, sort of a next generation line card, or by  
17 just putting a DSLAM just right next to the old style digital  
18 loop carrier. We remember from our testimony from the FDN  
19 hearing that BellSouth isn't going the former direction.  
20 That's sort of a project pronto thing. That's the way SBC's  
21 going. BellSouth is putting the DSLAMs actually in the  
22 cabinets. So I think that this whole issue of security-related  
23 DLC NGLD (sic) as line cards is sort of irrelevant now since  
24 the architecture BellSouth is pursuing is a separate chassis,  
25 separate DSLAM, splitter, the whole thing.

1           COMMISSIONER JABER: So then you would not be looking  
2 for this Commission to order line card collocation in a remote  
3 terminal?

4           THE WITNESS: If that were the method BellSouth were  
5 choosing, I would want that. But all I'm saying is,  
6 practically what's really going on out there is, there's a  
7 DSLAM going in and that's what we want to be unbundled or  
8 resold just as a matter of practicality. If they decided to do  
9 it via line cards, maybe there's a cabinet that's too small to  
10 fit a DSLAM in, and they decide to put line cards in, we would  
11 want the same access to those line cards on unbundled basis. I  
12 certainly wouldn't want our FDN technicians going in and  
13 opening up the cabinets and fooling around with those line  
14 cards. That does seem to be, you know, a difficult thing to  
15 do.

16           COMMISSIONER JABER: Okay. Thank you.

17           CHAIRMAN JACOBS: Redirect.

18           MR. FEIL: Thank you, Mr. Chairman.

19                           REDIRECT EXAMINATION

20 BY MR. FEIL:

21           Q     Mr. Gallagher, Ms. White asked you a question about  
22 an \$8,000 cost for a DSLAM. What type of DSLAM would that be?

23           A     It was a smallest type that we could buy, an 8-port  
24 DSLAM.

25           Q     Do you think it would be practical for CLECs like FDN

1 to install 8-port DSLAMs?

2 A No, it would not.

3 Q Why not?

4 A First of all, the maximum subscribers we could get  
5 would be eight, and that would -- the gross margin we could  
6 achieve off the eight customers wouldn't even pay for the rent,  
7 the power, and the back haul, you know, from that remote back  
8 to our nearest collo.

9 Q Can ISPs like FDN's ISP get the same term and volume  
10 discount as BellSouth can under the BellSouth wholesale tariff  
11 that Ms. White referred to?

12 A I don't know. We're fairly small fish. I don't know  
13 how we could get any decent term and volume comparatively.

14 MR. FEIL: That's all I have. Thank you.

15 CHAIRMAN JACOBS: Very well. I see no exhibits.

16 MR. FEIL: No exhibits.

17 CHAIRMAN JACOBS: Thank you very much. You are  
18 excused, Mr. Gallagher.

19 (Witness excused.)

20 MR. FEIL: Thank you for taking Mr. Gallagher out of  
21 order.

22 CHAIRMAN JACOBS: And we're back to Mr. Lamoureux.

23 MR. LAMOUREUX: And AT&T's next and last witness is  
24 Denise Berger. Ms. Azorsky is going to put on Ms. Berger.  
25 Before we do that, we had caught a typographical error in her



1 testimony. When we filed the revised testimony, the number of  
2 the footnotes that were accompanying the text had been deleted  
3 but the text in the footnotes of the testimony somehow  
4 mysteriously remained. We have revised copies of the text of  
5 her revised testimony that I'd like to hand out, and I had  
6 previously handed out a copy to BellSouth as well.

7 MR. EDENFIELD: And just so long as the  
8 representation is the only thing that's been removed are those  
9 footnotes that should not have been there, I have no problem  
10 with this, and I think that is what Mr. Lamoureux has  
11 represented to me.

12 MR. LAMOUREUX: Unless our Word software did  
13 something else mysterious, that is the only thing that even  
14 changed.

15 MS. WHITE: (Inaudible.)

16 CHAIRMAN JACOBS: These days unfortunately it is.

17 DENISE C. BERGER

18 was called as a witness on behalf of AT&T Communications of the  
19 Southern States, Inc., AT&T Broadband Phone of Florida, LLC,  
20 and TCG South Florida, Inc., and, having been duly sworn,  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. AZORSKY:

24 Q Could you please state your full name for the record.

25 A Denise Berger.

1 Q And your employer and business address.

2 A AT&T, 1200 Peachtree Street, Atlanta, Georgia.

3 Q Are you the Denise C. Berger who caused to be filed  
4 16 pages of revised rebuttal testimony, a corrected version of  
5 which has been handed out today?

6 A Yes.

7 Q Do you have any changes or corrections to that  
8 testimony?

9 A No, I don't.

10 Q If I were to ask you the questions in that testimony,  
11 would your answers be the same?

12 A Yes.

13 Q And did you have two exhibits attached to that  
14 testimony?

15 A Yes, I did.

16 MS. AZORSKY: Mr. Chairman, I'd like to ask if --  
17 that those exhibits be marked as the next composite exhibit.

18 CHAIRMAN JACOBS: Very well. I see DCB-1 and 8.  
19 Those are the two?

20 MS. AZORSKY: Correct.

21 CHAIRMAN JACOBS: Okay. So there are no  
22 intervening -- okay. Show those marked as Exhibit 47,  
23 composite.

24 (Exhibit 47 marked for identification.)

25 BY MS. AZORSKY:

1 Q Ms. Berger, do you have any changes to what have been  
2 marked as Composite Exhibit 47?

3 A No, I do not.

4 Q Do you have a summary of your testimony?

5 A Yes, I do.

6 Q Would you give that now?

7 A I will. Good morning. I work in AT&T's local  
8 services and access management group, and I spend most of my  
9 time trying to manage BellSouth's performance as a supplier of  
10 local services through both business-to-business negotiations  
11 as well as operational negotiations. I speak with BellSouth  
12 personnel virtually on a daily basis to try and resolve  
13 customer issues as well as the process issues between our two  
14 companies.

15 I want to talk to you today about local number  
16 portability, an issue that is critical to AT&T's success in  
17 opening up the Florida market to competition. The problems  
18 that AT&T and its customers are having with BellSouth's number  
19 portability processes have persisted for years and continue to  
20 resurface. After several years of what should have been fully  
21 mechanized number portability, ALECs are still experiencing  
22 chronic problems with BellSouth's processes which directly  
23 impact ALEC customers.

24 First, BellSouth's failure to disconnect ported  
25 numbers from its switches causes ALEC customers to lose the

1 ability to receive calls from some BellSouth customers,  
2 generally those that are in their home switch area or in their  
3 neighborhood area. This same failure causes some ALEC  
4 customers to continue receiving duplicate bills from BellSouth  
5 for service that no longer exists.

6 Second, BellSouth reassigns telephone numbers that  
7 belong to ALEC customers often up to a year after the customer  
8 has ported its service to another local service provider.

9 Third, BellSouth's faulty porting process creates the  
10 inability of BellSouth to correctly process partial ports of  
11 local services to ALECs.

12 Fourth, BellSouth's failure to upgrade its systems as  
13 well as its software causes loss of the ALEC customer's calling  
14 party information. In short, the calling party's name and  
15 telephone number do not appear on some Caller ID boxes.

16 BellSouth would have you believe that they have fixed this  
17 problem, and I can tell you that they have not.

18 Fifth, BellSouth's marketing of nonportable dialable  
19 numbers causes competitive harm to ALECs. Since over  
20 80 percent of all customers who choose a competitive carrier  
21 port their telephone numbers, the customers who own these  
22 telephone numbers are reluctant to port their service to  
23 another carrier. In my last discussion with BellSouth on this  
24 topic, BellSouth representatives told me that these numbers  
25 were not portable to ALECs.

1 Sixth, BellSouth's inability or unwillingness to  
2 quickly migrate customers back to BellSouth causes negative  
3 impacts to customers who port their telephone numbers to ALECs.  
4 BellSouth is the only incumbent local exchange company that  
5 refuses to provide an emergency snap back process to quickly  
6 restore a customer's service in the event that something  
7 unexpected happens during the number porting process. These  
8 problems significantly impact the ALEC customer's business.  
9 Because of these negative impacts, his perception is that since  
10 he didn't have the problems prior to taking his service to the  
11 ALEC, that the fault must lie with the ALEC and not with  
12 BellSouth.

13 BellSouth would have you believe that their systems  
14 and processes are stable. In testimony filed in this  
15 proceeding, BellSouth tries to shift the blame for the problems  
16 to ALECs like AT&T. AT&T is not responsible for many of the  
17 problems experienced by its customers.

18 In summary, BellSouth does not meet its obligations  
19 to ALECs in the area of number portability, and as a  
20 consequence, ALECs cannot meet their obligations to their  
21 customers. The result is that competition does not get the  
22 chance to develop that it deserves. Local number portability  
23 is critical in the context of local market competition since  
24 most customers won't give up their telephone number.  
25 BellSouth's ability to meet Checklist Item 11 in a quality

1 manner is key in developing competition. And most importantly,  
2 for competition to be effective, it must be reliable,  
3 predictable, and sustained over time. BellSouth does not  
4 deliver this reliability and predictability in the area of  
5 local number portability. This failure hurts customers which  
6 hurts competition. Until BellSouth fixes its problems with  
7 local number portability and consistently meets its benchmarks,  
8 BellSouth should not be granted 271 relief. That concludes my  
9 summary.

10 MS. AZORSKY: Mr. Chairman, I'd like to move  
11 Ms. Berger's testimony as if read from the stand.

12 CHAIRMAN JACOBS: Very well. Without objection, show  
13 Ms. Berger's testimony is entered into the record as though  
14 read.

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                   **REBUTTAL TESTIMONY OF DENISE C. BERGER**

3                   **ON BEHALF OF**

4                   **AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,**

5                   **AT&T BROADBAND PHONE OF FLORIDA, LLC,**

6                   **AND TCG SOUTH FLORIDA, INC.**

7  
8                   **DOCKET NO. 960786-A-TL**

9                   **OCTOBER 3, 2001**

10  
11           **Q.     PLEASE STATE YOUR NAME AND ADDRESS.**

12           A.     My name is Denise C. Berger. My business address is 1200 Peachtree Street,  
13                 N.E., Atlanta, Georgia 30309.

14           **Q.     PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**  
15           **EXPERIENCE AS THEY RELATE TO ISSUES IN THIS PROCEEDING.**

16           A.     I hold a Bachelor of Fine Arts degree from the University of Southern Mississippi  
17                 and a Master of Business Administration from the University of Houston with an  
18                 emphasis in Marketing and Management.

19                 I am employed with AT&T as the District Manager for Supplier Performance in  
20                 AT&T's Local Services and Access Management Department for Alabama,  
21                 Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South  
22                 Carolina and Tennessee. As a district manager, my duties entail managing the

1 ongoing performance improvement of AT&T's local services suppliers in the  
2 Southern Region for all local services AT&T offers. My team is responsible for  
3 evaluating and managing the ongoing performance improvement of AT&T's  
4 suppliers, including BellSouth Telecommunications, Inc. ("BellSouth"). We  
5 evaluate and manage to resolution all client escalation requests. My team is  
6 partnered with AT&T's internal product delivery and customer care organizations  
7 to ensure our suppliers' performance meets or exceeds internal client direct  
8 measures of quality.

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
10 **PROCEEDING?**

11 A. My testimony addresses BellSouth's inability to provide number porting in a  
12 nondiscriminatory manner. As outlined below, BellSouth has failed to  
13 demonstrate that it satisfies the requirements of the Act.

14 **Q. DO YOU ANTICIPATE THAT ANY OF THE ISSUES DISCUSSED IN**  
15 **YOUR TESTIMONY WILL BE RESOLVED AS A RESULT OF**  
16 **BUSINESS-TO-BUSINESS NEGOTIATIONS?**

17 A. No. The BellSouth Account Team assigned to resolve AT&T issues has informed  
18 AT&T that it is unable to respond to AT&T regarding local service issues that  
19 have been raised in any regulatory forum.<sup>1</sup> AT&T thus must choose resolution of  
20 its issues either through business-to-business negotiations or through a regulatory  
21 body, but not both. In light of BellSouth's policy change (previously BellSouth's

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<sup>1</sup> See Letter from Bernadette Seigler of AT&T to Jan Flint of BellSouth, June 29, 2001, attached as Exhibit DCB-1.



1 Account Team would work with AT&T to address issues, even those that were the  
2 subject of regulatory proceedings), I do not expect that AT&T will be able to  
3 negotiate and resolve any issues with BellSouth in a timely fashion.

4 **I. LOCAL NUMBER PORTABILITY (ISSUE 12)**

5 **Q. WHAT IS BELLSOUTH'S LEGAL OBLIGATION REGARDING**  
6 **NUMBER PORTABILITY?**

7 A. Section 271(c)(2)(B) of the Act requires a BOC to comply with the number  
8 portability regulations adopted by the FCC pursuant to section 251.<sup>2</sup> Section  
9 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number  
10 portability in accordance with requirements prescribed by the Commission."<sup>3</sup>  
11 Accordingly, BellSouth must provide number portability in a manner that allows  
12 users to retain existing telephone numbers "without impairment in quality,  
13 reliability, or convenience."<sup>4</sup> The FCC states that these rules require that any  
14 long-term number portability method "does not result in any degradation in  
15 service quality or network reliability when customers switch carriers."<sup>5</sup>

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<sup>2</sup> 47 U.S.C. § 271(c)(2)(B)(xii).

<sup>3</sup> *Id.*, § 251(b)(2).

<sup>4</sup> *Id.*

<sup>5</sup> 47 CFR ¶ 52.23(a)(5).

1 **Q. MR. MILNER CLAIMS THAT BELL SOUTH IS PROVIDING LOCAL**  
2 **NUMBER PORTABILITY IN ACCORDANCE WITH THE FCC'S**  
3 **RULES? DO YOU AGREE?**

4 A. No. Although he addresses quantity of numbers ported, Mr. Milner fails to  
5 address the quality of BellSouth's LNP processes, nor does he address the  
6 problems AT&T and its customers are experiencing with LNP.

7 **Q. WHAT IS NUMBER PORTABILITY?**

8 A. LNP is a network feature that allows a telephone number that originally was  
9 assigned to one switch to be ported to a second switch. This feature gives  
10 customers the ability to change local service providers without changing their  
11 telephone number. The FCC mandated that the Local Routing Number ("LRN")  
12 method of LNP be deployed under industry guidelines developed by the Local  
13 Number Portability Administration working group ("LNPA") of the FCC's North  
14 American Numbering Council ("NANC"). LRN allows the re-homing of  
15 individual telephone numbers to other switches through an addressing and routing  
16 scheme that uses the SS7 signaling network and centralized databases. Each  
17 public network switch is assigned a ten-digit LRN, and each customer's telephone  
18 number is matched in a regional database with the LRN for the switch that serves  
19 that telephone number.

20 **Q. WHAT IS THE IMPORTANCE OF THE AIN TRIGGER?**

21 A. The setting of a trigger in the switch currently serving the customer, the "donor"  
22 switch, causes call termination in that switch for the particular telephone number  
23 to be suspended and a query sent to the LNP database for routing information. If

1 the ALEC has not yet activated the port, the donor switch will route the call  
2 within itself. If the ALEC has activated the port, the donor switch will be  
3 instructed to route the call to the ALEC switch.

4 Simply stated, the AIN trigger puts the BellSouth switch on alert that the  
5 customer is changing local service providers. When a call for the customer  
6 arrives in the BellSouth switch, instead of automatically completing the call on  
7 the old BellSouth loop, the trigger causes the switch to check whether the number  
8 port has been activated by the ALEC. If it has, the BellSouth switch sends the  
9 call to the ALEC switch for completion. If it has not, the BellSouth switch will  
10 complete the call as it has in the past.

11 **Q. WHEN SHOULD THE AIN TRIGGER BE SET?**

12 A. The presetting of the trigger gives the ALEC the ability to control the activation  
13 of number portability for the telephone number on the date agreed to with the  
14 customer. According to national standards, BellSouth should preset AIN triggers  
15 for all ported numbers in the donor switch on the day before the porting is to  
16 occur. In some circumstances, translations must be manually set on the day the  
17 number is ported for some types of telephone numbers such as Direct Inward Dial.  
18 If BellSouth does not properly set the triggers or fails to do the manual  
19 translations on or before the due date, the ALEC customer will lose some or all of  
20 its ability to receive incoming calls.

1 **Q. WHY IS NUMBER PORTABILITY IMPORTANT?**

2 A. Number portability is the ability of users of telecommunications services “to  
3 retain, at the same location, existing telecommunications numbers **without**  
4 **impairment of quality, reliability, or convenience** when switching from one  
5 telecommunications carrier to another.”<sup>6</sup> In its initial order on number portability,  
6 the FCC noted that number portability is essential to meaningful competition in  
7 the provision of local exchange services and affirmed that number portability  
8 provides consumers flexibility in the way they use their telecommunications  
9 services and promotes the development of competition among alternative  
10 providers of telephone and other telecommunications services.<sup>7</sup>

11 The FCC has also recognized that:

12 a lack of number portability likely would deter entry by competitive providers of  
13 local service because of the value customers place on retaining their telephone  
14 numbers. Business customers, in particular, may be reluctant to incur the  
15 administrative, marketing, and goodwill costs associated with changing telephone  
16 numbers. As indicated above, several studies show that customers are reluctant to  
17 switch carriers if they are required to change telephone numbers. To the extent  
18 that customers are reluctant to change service providers due to the absence of  
19 number portability, demand for services provided by new entrants will be

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<sup>6</sup> 47 U.S.C. § 153(30) (emphasis added).

<sup>7</sup> *First Number Portability Order* ¶ 28.

1 depressed. This could well discourage entry by new service providers and thereby  
 2 frustrate the pro-competitive goals of the 1996 Act.<sup>8</sup>

3 **Q. HOW HAS NUMBER ASSIGNMENT IN LOCAL SWITCHES**  
 4 **TRADITIONALLY BEEN DONE?**

5 A. Historically, blocks of 10,000 numbers have been assigned to local switches. A  
 6 ten thousand block represents a complete NXX prefix in the North American  
 7 Numbering Plan (NPA-NXX-XXXX). New ALEC switches are assigned new  
 8 NXX prefixes and the ALEC is free to give phone numbers within the prefix to its  
 9 customers. However, approximately 80% of the customers migrating to an ALEC  
 10 choose to keep their old BellSouth number. These customers are able to do so  
 11 because incumbent LECs are required to provide number portability. When an  
 12 ALEC customer's number is ported, that number continues to be assigned to that  
 13 customer. It should not be reassigned to someone else.

14 **Q. DESCRIBE THE PROBLEM AT&T'S CUSTOMERS ARE**  
 15 **EXPERIENCING WITH REASSIGNMENT OF THEIR TELEPHONE**  
 16 **NUMBERS.**

17 A. BellSouth has a chronic number reassignment problem. When a telephone  
 18 number is ported to AT&T or another ALEC, the number belongs to the ALEC  
 19 customer. Sometimes, however, BellSouth erroneously reassigns the number to a  
 20 new BellSouth line.

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<sup>8</sup> *Id.* ¶ 31 (citations omitted).

1 **Q. WHAT HAPPENS WHEN BELLSOUTH REASSIGNS A NUMBER**  
2 **BELONGING TO AN AT&T CUSTOMER?**

3 A. When this happens, the AT&T customer receives calls from people who are  
4 attempting to call the new BellSouth customer. This causes confusion and  
5 inconvenience for the AT&T customer as well as the new BellSouth customer.  
6 Exhibit DCB-8 outlines number reassignment problems that have affected several  
7 of AT&T's customers.

8 **Q. DOES THE NUMBER REASSIGNMENT OCCUR SOON AFTER THE**  
9 **CUSTOMER'S TRANSITION TO BELLSOUTH?**

10 A. No. This number reassignment problem can surface more than a year after the  
11 number was ported. BellSouth's normal procedure when a customer discontinues  
12 service is to place the number in a pool of numbers to be "aged" for one year  
13 before it can be assigned to a new line. When BellSouth erroneously places an  
14 ALEC customer's number in this pool, it postpones the manifestation of the  
15 problem. The problem is like a time bomb waiting to explode and disrupt the  
16 ALEC customer's business or residential telephone use. When the problem  
17 occurs, customers blame it on their local service provider, the ALEC, even though  
18 it is BellSouth's error.

19 **Q. DO BELLSOUTH CUSTOMERS EXPERIENCE NUMBER**  
20 **REASSIGNMENT?**

21 A. This problem arises when a customer changes local service providers from  
22 BellSouth to an ALEC and ports its number. BellSouth customers do not have

1 porting problems when they stay with BellSouth. This type of problem creates a  
2 barrier that prevents ALECs from attracting and keeping customers.

3 **Q. HOW HAS AT&T ATTEMPTED TO REDUCE THE INCIDENCE OF**  
4 **ERRONEOUS NUMBER REASSIGNMENT?**

5 A. There is no action that AT&T can take to reduce the incidence of number  
6 reassignment, short of never porting a number from BellSouth.

7 **Q. PLEASE EXPLAIN WHAT IS A ZIP CONNECT OR “ODDBALL” CODE.**

8 A. BellSouth historically has assigned zip connect numbers, called “oddball” codes,  
9 to certain BellSouth functions, such as retail support centers, network repair,  
10 equipment repair, or testing. Zip connect numbers allow customers to use a  
11 seven-digit telephone number for state-wide applications. Recently, BellSouth  
12 has assigned such “oddball” codes to its retail customers.

13 **Q. WHAT PROBLEMS ARE ASSOCIATED WITH BELLSOUTH’S**  
14 **ASSIGNMENT OF ODDBALL CODES TO RETAIL CUSTOMERS?**

15 A. There are two major problems with the assignment of oddball codes to BellSouth  
16 retail customers. First, an ALEC’s local service customers cannot complete calls  
17 to oddball codes unless the ALEC installs prohibitively expensive and duplicative  
18 interconnection trunking to one BellSouth end office in each NPA in the LATA,  
19 an inefficient result that is not required under the Act. Accordingly, ALEC local  
20 service customers are unable to call BellSouth customers who have been assigned  
21 these oddball codes. In addition, an ALEC local service customer who uses  
22 BellSouth equipment is unable to contact BellSouth repair in the event of

1 equipment problems. AT&T has lost customers and others are threatening to  
2 leave because they cannot complete calls to these numbers.

3 Second, oddball codes are internal to BellSouth and cannot be ported to ALECs.

4 This means that a BellSouth retail customer with an oddball code number would  
5 have to change its number if it wanted to leave the incumbent local service  
6 provider. Number portability is very important to customers. A customer with an  
7 oddball code number that was considering changing local service providers could  
8 be deterred from making the change because it would lose its established  
9 telephone number. BellSouth's practice of assigning oddball codes to certain of  
10 its retail customers therefore erects a barrier to competition for those customers.

11 **Q. WHAT IS A PARTIAL PORT?**

12 A. A partial port occurs when a customer chooses to migrate some, but not all, of its  
13 lines to an ALEC. In that case, BellSouth ports only part of the customer's  
14 service. For example, a business customer with ten lines might decide to try out  
15 AT&T local service by having AT&T serve five of them.

16 **Q. WHAT PROBLEMS DOES BELLSOUTH HAVE WITH PARTIAL**  
17 **PORTS?**

18 A. BellSouth has had difficulty porting a subset of a customer's numbers. This is  
19 especially true if the main number, which BellSouth has used for billing, is ported  
20 to an ALEC. BellSouth does not seem to be able to efficiently change the billing  
21 telephone number for the customer. This can cause problems with the customer's  
22 service on lines that stay with BellSouth. For example, if the customer wants to



1 change features or call in a trouble, BellSouth may not be able to handle the call.  
2 This deficit in BellSouth's processes causes difficulty when the customer wants to  
3 modify service to the lines that stay with BellSouth.

4 **Q. DOES THIS 'PARTIAL PORTING' PROBLEM AFFECT CUSTOMERS**  
5 **WHO STAY WITH BELL SOUTH FOR THEIR LOCAL SERVICE?**

6 A. No. Once again, this problem only affects customers who have chosen to try out  
7 service with an ALEC by allowing that ALEC to provide some of their local  
8 service. When the customer experiences problems in this try out situation, the  
9 customer may determine that it is too risky to proceed with allowing the ALEC to  
10 become the customer's sole local services provider. The risk of suffering  
11 complications with existing telephone service erects yet another barrier preventing  
12 customers from leaving the incumbent local service provider and inhibiting  
13 competition.

14 **Q. EXPLAIN WHAT YOU MEAN BY THE PHRASE "CALLING PARTY**  
15 **INFORMATION."**

16 A. An important feature for some customers is the ability to have their name appear  
17 on the caller identification boxes of recipients of their calls. This information  
18 identifies the calling party. For example, a department store that contacts a  
19 shopper wants the shopper to be able to identify the store as the caller. When that  
20 department store changes local service providers from BellSouth to AT&T, the  
21 department store should be able to keep the same telephone number and keep the  
22 calling party information feature.

1 **Q. DOES BELLSOUTH'S SIGNALING SYSTEM 7 NETWORK PROVIDE**  
2 **FOR CALLING PARTY IDENTIFICATION?**

3 A. No. The ability to be identified on a call recipient's caller identification box  
4 depends upon the presence of ten-digit Global Title Translation ("GTT")  
5 capabilities in the network carrying the call. BellSouth failed to implement ten-  
6 digit GTT in the Signaling Transfer Points ("STP"s) in its Signaling System 7  
7 ("SS7") network. Instead, BellSouth provided for only six-digit GTT, which can  
8 identify the state or city where the call originated, but not the identity of the caller.  
9 This is not a problem for customers whose local service is provided by BellSouth.  
10 BellSouth dips their own Calling Name database and identifies the calling party.  
11 However, when the customer changes his service to an ALEC and that ALEC  
12 does not subscribe to BellSouth's Calling Name Database ("CNAM") service,  
13 BellSouth, because it only dips six digits, can identify neither the calling party's  
14 name nor his local service provider.

15 **Q. WHAT IMPACT DOES BELLSOUTH'S FAILURE TO IMPLEMENT**  
16 **TEN-DIGIT GTT HAVE ON AT&T CUSTOMERS?**

17 A. If an ALEC subscribes to a database other than BellSouth's, that ALEC's  
18 customers who port their numbers from BellSouth lose the ability to be identified  
19 to call recipients who are BellSouth customers. If the department store that chose  
20 AT&T as its local service provider telephones a customer or potential customer  
21 who receives local service from BellSouth, the department store cannot be  
22 identified on the call recipient's caller identification display.

1 **Q. HOW DO CUSTOMERS REACT TO THE LOSS OF CALLING PARTY**  
2 **INFORMATION?**

3 A. AT&T has had complaints from customers throughout the BellSouth region  
4 regarding this issue, and some customers have threatened to leave AT&T if the  
5 problem was not fixed.

6 **Q. HOW DID BELL SOUTH RESPOND WHEN AT&T REQUESTED A FIX?**

7 A. When AT&T requested a fix, BellSouth offered the choice of an interim semi-  
8 automated solution or a manual solution that would have required both companies  
9 to resort to manual processes for each new AT&T customer. The interim semi-  
10 automated solution would have cost AT&T over \$350,000 to implement, only to  
11 throw it away when BellSouth fixes the real problem. Thus, the semi-automated  
12 solution was not acceptable to AT&T at all, and the manual solution was not  
13 acceptable except as a short-term solution. AT&T was forced to seek assistance  
14 from a regulatory body to order BellSouth to promptly devise a permanent  
15 solution. AT&T filed a complaint with the Tennessee Regulatory Authority that  
16 led to a hearing on the issue.

17 **Q. WHAT RELIEF DID THE TENNESSEE REGULATORY AUTHORITY**  
18 **PROVIDE TO AT&T?**

19 A. The Hearing Officer in the case found the following:

20 In conclusion, the Hearing Officer finds that: (1) the  
21 number portability requirements found in the Telecom Act  
22 and FCC rules as well as state statutes prohibiting anti-  
23 competitive practices require BellSouth, as well as all other  
24 local exchange carriers, to provide the network functions  
25 necessary to deliver the caller's name to its subscribers  
26 regardless of the caller's choice of carrier, and; (2) neither

1 six-digit GTT nor the interim solution of loading ALEC  
 2 numbers in BellSouth's CNAM database sufficiently  
 3 satisfy these number portability obligations, and: (3)  
 4 applicable number portability obligations do not mandate  
 5 the deployment of a specific technology such as ten-digit  
 6 GTT. For these reasons, BellSouth is ordered to make the  
 7 necessary network modifications to allow the calling  
 8 party's name to be delivered on all calls regardless of the  
 9 caller's local service provider. Such modifications shall be  
 10 in place no later than April 6, 2001.<sup>9</sup>

11 The Hearing Officer concluded: "As detailed in this order, BellSouth clearly does  
 12 not comply with the legal mandates for providing number portability."<sup>10</sup>

13 **Q. HAS THE FIX BEEN IMPLEMENTED IN FLORIDA?**

14 A. Not completely. Although BellSouth implemented the fix in South Florida in  
 15 May 2001, it will not be implemented in North Florida until November 2001.  
 16 Until then, AT&T and its North Florida customers will suffer adverse  
 17 consequences.

18 **Q. UNTIL THE FIX IS IMPLEMENTED, IS AT&T AT A COMPETITIVE**  
 19 **DISADVANTAGE?**

20 A. Absolutely. Before AT&T can use the interim manual workaround solution, it  
 21 would have to ask the potential customer if he wanted to continue having people  
 22 that receive calls from him to be able to see his name displayed with caller ID.  
 23 This would alert the customer that something is wrong with AT&T's service since  
 24 his name should always be displayed with caller ID. The permanent solution

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<sup>9</sup> Initial Order of Hearing Officer, Before the Tennessee Regulatory Authority, Docket No. 00-00971, pp. 14-15.

<sup>10</sup> *Id.*

1 should fix this problem by making the feature work as it does for BellSouth  
2 customers.

3 **Q. WHAT DOES THE PHRASE “SNAP BACK” MEAN?**

4 A. When a customer changes local service providers from BellSouth to an ALEC and  
5 then immediately changes back to BellSouth, the rapid reversion to BellSouth-  
6 provided service is known as a snap back. BellSouth reacquires the customer’s  
7 number and provides service.

8 **Q. WHAT CAUSES SNAP BACKS?**

9 A. Snap backs generally occur because a customer changes his mind about switching  
10 to the ALEC. Snap backs are much more prevalent among residential, rather than  
11 business, customers. A less common reason for a snap back is an AT&T facility  
12 problem that prevents provision of service to the customer in question, resulting in  
13 the need to return the customer to BellSouth service.

14 **Q. DOES BELLSOUTH HAVE A PROCEDURE FOR PERFORMING SNAP**  
15 **BACKS?**

16 A. No.

17 **Q. DO OTHER ILECS LACK A SNAP BACK PROCEDURE?**

18 A. No. BellSouth is the only ILEC without a snap back procedure.

19 **Q. WHAT IS THE IMPACT ON FLORIDA CUSTOMERS OF**  
20 **BELLSOUTH’S FAILURE TO IMPLEMENT A SNAP BACK PROCESS?**

21 A. An efficient snap back process is often necessary to assure continuity of service.  
22 BellSouth’s failure to provide reliable snap back causes customers in Florida and

1 other BellSouth states to risk loss of service in instances where the ALEC has  
2 facility problems. Moreover, when a customer makes the choice to return to  
3 BellSouth and is told it cannot do so immediately, the customer's needs are  
4 frustrated. Customers understandably blame the ALEC.

5 **Q. WHAT IS THE IMPACT ON ALECS OF BELLSOUTH'S FAILURE TO**  
6 **IMPLEMENT A SNAP BACK PROCESS?**

7 A. BellSouth's process failure impairs ALEC efforts to compete. Customers come to  
8 know that when they switch to an ALEC it is all or nothing. If something goes  
9 wrong they cannot immediately go back to BellSouth and may lose telephone  
10 service. BellSouth's lack of a good process for snap back is anti-competitive.

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

12 A. Yes.

1 MS. AZORSKY: And Ms. Berger is available for cross.

2 CHAIRMAN JACOBS: Very well. Mr. Edenfield.

3 MR. EDENFIELD: Thank you, Chairman Jacobs.

4 CROSS EXAMINATION

5 BY MR. EDENFIELD:

6 Q Good morning, Ms. Berger. How are you?

7 A Good morning.

8 Q I'm Kip Edenfield. I don't think I've crossed you  
9 yet in one of these proceedings.

10 A I don't think so.

11 Q Somehow Ms. Foshee apparently was able to dodge that  
12 in Florida. I'm not sure how that happened yet.

13 Number portability -- with me, it's always best to  
14 start at the ground and work our way up -- that is a situation  
15 where a customer wants to change the providers, local  
16 providers, and wants to take the phone number with them. Is  
17 that a general description of what number portability is?

18 A Yes, I believe so.

19 Q Okay. And this is not just a BellSouth issue, is it?  
20 There are situations where an AT&T local customer may want to  
21 switch to, say, MCI, for example, and take their number with  
22 them, and in that instance, AT&T would have to port the number  
23 to MCI.

24 A That's correct.

25 Q Would you agree with me that for the majority of

1 local service requests involving number portability, that those  
2 are handled electronically?

3 A I would have to defer to Mr. Bradbury on that  
4 question.

5 Q I guess what I'm getting at is, there are a couple of  
6 number types -- and I think Mr. Milner may have touched on  
7 this, and I think you mention it in your testimony as well --  
8 such as direct-inward dial, numbers for PBX, and there's some  
9 technical limitations on the ability to port those  
10 electronically. Can you think of any other types of numbers  
11 that can't be ported electronically?

12 A Again, my area of expertise is not whether orders are  
13 sent electronically or manually, so I would hesitate to answer  
14 that question. I mean, you are correct in that we do  
15 experience significant problems with direct-inward dial  
16 numbers. Whether or not the cause of the problem is whether  
17 the order was sent manually or electronically, I don't know.

18 Q Okay. I'm sorry. I thought in your testimony you  
19 had a discussion about a criticism of BellSouth for not having  
20 an electronic means of porting those numbers. Did I just  
21 misread what's in your testimony?

22 A I think what's in my testimony is the fact that  
23 BellSouth cannot put ten-digit triggers in some of their  
24 switches on DID numbers that are being ported.

25 Q Okay. That's different from what I was talking



1 about?

2 A I believe that is different. At least my  
3 understanding of what you were talking about was how the order  
4 is sent from an ALEC to BellSouth. The ten-digit trigger issue  
5 is something that is in BellSouth's network and has nothing to  
6 do with the way that the order is sent.

7 Q When -- those instances where AT&T ports a number to  
8 MCI, for example, does AT&T -- or can AT&T port all of those  
9 numbers electronically?

10 A I don't know.

11 Q Does AT&T have the -- was it -- you call it the  
12 ten-digit trigger?

13 A Again, my area of expertise is not what AT&T does.  
14 My area of expertise is in negotiating supplier performance  
15 with BellSouth. So I really can't speak to what AT&T does on  
16 our side or how they do it.

17 Q All right. So you don't know whether AT&T has the  
18 same limitations in porting numbers that BellSouth has?

19 A No, I don't. But I know that -- no, I don't.

20 Q Do you know whether AT&T has some of the problems  
21 that you're complaining about in this docket when it ports  
22 numbers to other carriers?

23 A No, I don't, but I don't believe that that's what  
24 we're here to talk about today. I think we're here to talk  
25 about whether BellSouth has met its obligations under the

1 competitive checklist.

2 Q All I'm getting to is, you seem to have a number of  
3 criticisms of BellSouth's number porting abilities or number  
4 portability procedures, and I'm just wondering whether AT&T may  
5 have some of the same problems. In other words, are these  
6 industry issues? Are they -- or just something that's just  
7 limited just to BellSouth, or if you even know the answer to  
8 that?

9 A Again, I can talk to you anecdotally about what some  
10 of my counterparts in other regions have experienced with other  
11 ILECs. As far as being an industry expert about what an ALEC  
12 can or cannot do, I would not be able to answer those  
13 questions.

14 Q Okay. Well, let me move along then. On these  
15 direct-inward dial numbers and the PBX type numbers, since they  
16 have to be handled manually, you will agree with me that  
17 BellSouth has developed a project team to assist AT&T with the  
18 porting of those numbers?

19 A I would agree with you that BellSouth classifies the  
20 porting of direct-inward dial numbers as projects and that  
21 there is a project manager that is assigned to AT&T to handle  
22 projects.

23 Q Okay. Now, there's also a discussion about a  
24 particular problem involving a number of purchase order  
25 numbers. I may be getting this a little bit confused here. I

1 just want to make sure I'm on the same page with you. There  
2 was a discussion about some purchase order numbers, and there  
3 was a loss of inbound calling capabilities associated with the  
4 DID numbers. Do you recall reading that from Mr. Milner's  
5 exhibit? This happened around August 25th of last year.

6 A This was one of Mr. Milner's exhibits?

7 Q Yeah, it was Mr. Milner's Exhibit Number 13 to his  
8 testimony. He discusses back on August 25th of 2000 that we  
9 had sent a letter to AT&T requesting a list of purchase order  
10 numbers so that we could investigate allegations that you had  
11 made concerning the loss of inward calling capabilities. Are  
12 you familiar with Mr. Milner's exhibit?

13 A Yes. Now that you go into a little more detail, I am  
14 familiar with what you are describing. However, I can tell you  
15 that in our dealings with the BellSouth account team assigned  
16 to AT&T, whenever AT&T would bring problems for resolution to  
17 the account team, the push back that we would get was that the  
18 occurrences must be recent, that they would not go back in time  
19 and do any kind of root cause analysis or any kind of process  
20 resolution on things that had happened in the past.

21 Well, in between the time that I complained and the  
22 letter that you reference, AT&T had established a work-around  
23 process in our work center because the problem was so pervasive  
24 and we were having so many customer complaints about the  
25 problem so that we developed a work-around. Whereas, our

1 agents in our work center at the time that the number porting  
2 process was supposed to have been completed called the  
3 BellSouth work center and stayed on the line with the BellSouth  
4 agent until the number was disconnected in the BellSouth  
5 switch. Because of that work-around that AT&T felt like it had  
6 to put in place, we had no recent occurrences of the problem  
7 and so therefore couldn't bring any recent occurrences to  
8 BellSouth.

9 Q So the answer was, yes, you're familiar with the  
10 letter?

11 A Yes, I am familiar with the letter.

12 Q Okay. In that letter, BellSouth had requested from  
13 AT&T that you provide to us a number of purchase order numbers.  
14 Do you know whether you ever did that?

15 A That was what I was trying to explain, that the  
16 discussion that we had with BellSouth was that they would not  
17 accept old instances of the problem. AT&T had implemented a  
18 work-around, so we had no new instances of the problem. And I  
19 informed the BellSouth account team at the time that because of  
20 the work-around, because of their policy of not going back in  
21 time and taking anything that they considered over a month old  
22 to work on, I was not able to provide them with any recent  
23 examples.

24 COMMISSIONER PALECKI: Could you tell us what a  
25 "work-around" is? I'm not familiar with that terminology.

1 THE WITNESS: It's just, I guess, a slang terminology  
2 for -- if you've got a particular process, whether that's a  
3 manual process or an electronic process, that's a documented  
4 process in there, and let's say there is -- you identify a gap  
5 in that process that is causing either orders to fall out or  
6 causing something to happen that's not the way that it should  
7 happen. Then from a process or from a work center perspective,  
8 you look at it and say, okay, how can I work around this  
9 problem? What steps can I implement that will help me avoid  
10 the problem if I can't fix the root cause of the problem?

11 Does that answer your question?

12 COMMISSIONER PALECKI: Yes. Thank you.

13 BY MR. EDENFIELD:

14 Q Are you aware of whether -- I'm sorry,  
15 Commissioner Palecki, were you done? I'm sorry.

16 Are you aware of whether any other ALEC in Florida  
17 had to do such a work-around to be able to submit number  
18 portability LSRs?

19 A No, I'm not aware of any operational processes that  
20 any other ALEC would implement.

21 Q Let's kind of get into how this works a little bit.  
22 You would agree with me that when requesting number  
23 portability, that AT&T will submit an LSR to both BellSouth and  
24 to an organization called NPAC, N-P-A-C?

25 A I would agree with you that AT&T would issue an LSR

1 to BellSouth. AT&T would issue a request -- it's not an LSR --  
2 a request to impact to port the number, yes.

3 Q What is NPAC?

4 A The Number Portability Administration Center, I  
5 think.

6 Q What is their responsibility? Why do you send a  
7 request to them?

8 A NPAC is the controlling organization that oversees  
9 the industry numbering databases and determines who -- what  
10 ALEC or what ILEC owns a particular telephone number.

11 Q Will you agree with me that the request you send to  
12 NPAC and the LSR that you send to BellSouth both have to have  
13 on there AT&T's operating company number, also known as an OCN?

14 A Yes, I would agree that both of those do have a field  
15 that would have an OCN populated in it. Correct.

16 Q Will you agree with me that if somehow the OCN on the  
17 request to NPAC is different than the OCN that you put on the  
18 LSR to BellSouth, that it can cause problems in getting numbers  
19 ported?

20 A I would agree with you that the OCN probably should  
21 match. And I think that you are discussing an issue with 300  
22 broadband customers that AT&T had ported in the state of  
23 Kentucky. Our work center put one operating company number  
24 that identified AT&T on the LSR that went to BellSouth and put  
25 another AT&T operating company number on the request that went

1 to NPAC. However, I don't want to leave the Commission with  
2 the notion that every single one of those customers had an  
3 adverse impact. There were 300 total customers, and 34 of  
4 those customers had problems.

5 Q Okay. You keep answering my questions before I ask  
6 them. This may go quicker than I even thought. The issue  
7 we're talking about is a situation where AT&T did put incorrect  
8 OCNs or conflicting OCNs on the request to NPAC and on the LSR  
9 that it sent to BellSouth; is that correct?

10 A They put two different AT&T OCN -- yes. They put two  
11 different AT&T OCNs on the request and the LSR.

12 Q All right. And in that instance, not all 300 but at  
13 least some of the customers of those 300 -- some percentage of  
14 those were affected by that mistake?

15 A Yes, 34 customers had an adverse impact. I am not  
16 certain that the conflicting OCNs caused the problem because  
17 there are two questions in my mind. First of all, when an ALEC  
18 sends a request to NPAC, BellSouth must concur. BellSouth  
19 concurred on all 300 of those requests that went to NPAC. The  
20 second issue is that of the 300 customers, 266 of them  
21 provisioned just fine. It was only 34 of them that had a  
22 problem. So I can't with 100 percent certainty say that the  
23 problems that the 34 experienced were because of the  
24 conflicting OCNs.

25 Q All right. Let me make sure that I understand what

1 you're telling me. You're not suggesting that it's BellSouth's  
2 responsibility to make sure that AT&T gets the right operating  
3 company numbers on the request to NPAC and on the LSRs, are  
4 you?

5 A No. My -- what I was trying to say was that, you  
6 know, BellSouth has the obligation to concur on a number port.  
7 They concurred on all 300 of these.

8 Q Okay. So it's BellSouth's fault. Is that what  
9 you're suggesting? BellSouth is somehow at fault for that?

10 A No, that's not what I'm saying.

11 Q Okay. Let me ask you this. As a result of that  
12 problem that occurred, would you agree with me that AT&T ended  
13 up changing its procedure on how it puts OCNs on request to  
14 NPAC and on LSRs?

15 A Yes, we did.

16 Q And I guess the gist of this is, you would agree with  
17 me that number portability is basically a -- it's almost like a  
18 two-way street? In other words, it's not just AT&T and it's  
19 not just BellSouth. This is a process where we're going to  
20 have to work together, and if either side makes a mistake, then  
21 it can be impacting on customers. Would you agree with that?

22 A Yes, I can agree with that.

23 Q Let's talk about number reassignment for a second.  
24 As I understand it, this is an issue that arose -- and you're  
25 obviously going to be a lot more familiar with this than I am,



1 but it arose in 1999 when it was discovered that some numbers  
2 that had been ported out by BellSouth were somehow left in the  
3 system, and those same numbers that had been ported out were  
4 also being assigned to BellSouth customers. Is that basically  
5 the issue that came up?

6 A Yes, that's basically the issue.

7 Q And would you agree with me that in order to fix this  
8 problem, that BellSouth implemented some type of method where  
9 it would mark numbers that had been ported out, at least make  
10 some kind of notation in the database so that these numbers  
11 would not be reassigned out? At least that was the fix that we  
12 attempted to make?

13 A I agree that BellSouth did implement a manual fix to  
14 the problem. The problem was a failure on the part of  
15 BellSouth to put in a field identifier on the order that  
16 BellSouth created. However, because AT&T experienced problems  
17 after that fix was implemented, I can't with 100 percent  
18 certainty say that that -- you know, that certainly didn't fix  
19 all the problems.

20 Q Certainly. And in fact, at the end of 2000, the  
21 problem resurfaced in the form of apparently some of the  
22 numbers that had been ported out before the fix was  
23 implemented, those numbers somehow resurfaced back in the  
24 database because they had not gone back and done -- the fix was  
25 just prospective from the time it was put in. It was not

1 retro -- "retrospective" is not a word but it was not  
2 retroactive. Is that a fair assessment of what happened?

3 A That's a fair assessment of my limited understanding  
4 of what BellSouth did, because I have asked several times and  
5 continue to ask BellSouth to help me understand what the root  
6 cause of the problem was and what electronic things that  
7 BellSouth was going to do to fix the problem.

8 In addition, I've been asking BellSouth since  
9 probably March of this year to go into the -- their databases  
10 and to check every AT&T DID number that had been ported from  
11 BellSouth to ensure that the field identifier was on that order  
12 because I've had so many experiences with customers that have  
13 had their numbers reassigned. One poor customer here in  
14 Florida has got to be the poster child for number reassignment  
15 because I think that he's had part of his DID blocks reassigned  
16 six different times. I began asking BellSouth to check those  
17 DID numbers in March. To date, they have not done that.

18 Q It's your position that BellSouth has not done that?

19 A Correct.

20 Q Okay. Let me ask you this. You would agree with me  
21 that BellSouth is currently in a project with all of the ALECs  
22 to go back and identify all of the numbers that have been  
23 ported since 2000?

24 A I can't agree with that because I have -- no one has  
25 ever informed me that BellSouth is working on any project with

1 all of the ALECs to identify DID numbers. And I can only turn  
2 to this letter that I got from BellSouth on September the 24th  
3 of this year that tells me that BellSouth has not yet completed  
4 the examination of all telephone numbers assigned to AT&T.

5 Q Would you agree with me that the project that was  
6 being worked on to identify all of the numbers that had been  
7 ported since 2000, that the fix was implemented for AT&T on  
8 March -- I'm sorry, on May 23, 2001?

9 A I'm sorry, you'll have to clarify your question  
10 because I don't understand what fix you're talking about was  
11 implemented in March.

12 Q It's actually in May. It's my understanding that on  
13 May 23, 2001 as a result of this project that BellSouth is  
14 working on with the ALECs to try to solve this issue that  
15 you're complaining about, that on May 23, 2001, we got that  
16 information from AT&T previous to that, and on May 23, 2001, we  
17 went into the database and fixed your problem. Do you not have  
18 that same understanding?

19 A No, I do not. Now, let me clarify because I don't  
20 want us to get clouded up in labels. AT&T has several  
21 different organizations that sell local service. We have our  
22 broadband organization. We have our consumer organization. We  
23 sell AT&T's digital link service which primarily uses DID  
24 blocks of numbers, and we also have what in -- between AT&T and  
25 BellSouth we talk about either LNS or TCG. And these are the

1 customers and the products that we got when AT&T merged with  
2 TCG.

3 BellSouth has stated before that they had completed  
4 the examination of all of the AT&T DID numbers but not the TCG  
5 DID numbers. Now, all of those are AT&T. They just have  
6 different internal labels on them. But again, I go back to  
7 this letter that I got from BellSouth on September 24th which  
8 says that BellSouth has not completed the examination of all  
9 telephone numbers assigned to AT&T or TCG.

10 Q Okay.

11 A And that would be after the May date that you are  
12 talking about.

13 Q All right. You would agree with me that irrespective  
14 of whether the problem is completely fixed or not that  
15 BellSouth is working on the problem?

16 A I can't agree with that because I don't know what  
17 BellSouth is doing. I know that when I have a customer -- that  
18 I receive a complaint, that I call the BellSouth account team,  
19 and that -- you know, we've now gotten the process down to  
20 probably two days. After a couple of days the customer's  
21 problem is solved, but this is on a onesie-twosie basis. And  
22 as far as any wholesale operational fixes, I'm not aware of  
23 any.

24 Q Okay. When's the last time you are aware of a  
25 porting issue where a number was assigned to both a BellSouth

1 customer and an AT&T customer?

2 A In July of this year.

3 Q In July is the last time?

4 A Uh-huh.

5 Q Okay. Let's talk about partial ports for a second.

6 A Uh-huh.

7 Q And as I understand this issue, it's when a customer  
8 chooses to move over some of its services or its lines but not  
9 all of them from one carrier to another. So in essence, the  
10 customer has part of its service through, in my example,  
11 BellSouth and part of its service with AT&T.

12 A Correct.

13 Q All right. And if I understand your testimony, the  
14 issue here seems to be one of billing, or have I misread what  
15 you're saying? In other words, after a partial port happens,  
16 the customer continues to get a bill from BellSouth on the  
17 numbers that have been moved -- or the services that have been  
18 moved over to AT&T.

19 A That is one of the issues, yes.

20 Q Will you agree with me that in order to successfully  
21 complete a partial migration, that in my example AT&T has to  
22 provide the main billing number of the account that's going to  
23 be ported over?

24 A That's correct. When we port only part of a  
25 customer's service from BellSouth to AT&T, one of the things

1 that BellSouth requires us to do is to tell them what the new  
2 main bill telephone number is going to be and to tell --  
3 basically, they want us to tell them -- tell us how to dispose  
4 of the service that's remaining with BellSouth, what the new  
5 main bill telephone number is going to be, and what to do with  
6 the directory listing on that service that remains with  
7 BellSouth.

8 Q All right. Would you agree that the significance of  
9 the main bill telephone number is that that is, at least in  
10 BellSouth and I assume AT&T is set up the same way, that that  
11 is how your bill is identified in the systems? It's by a main  
12 telephone number.

13 A Yes.

14 Q And it is also the ALEC's responsibility to get for  
15 BellSouth the main billing telephone number -- I know I just  
16 screwed that up -- the main billing telephone number -- is that  
17 what it is -- for the services that the customer is going to  
18 leave with BellSouth?

19 A That's a BellSouth requirement, yes.

20 Q Would you agree with me that the failure of the ALEC  
21 to do either of these can result in some problems?

22 A I would agree that it could result in some problems,  
23 but I'm not aware of any instance where it has resulted in a  
24 problem.

25 Q Is AT&T in a situation where it has not provided

1 BellSouth both the main billing number for the services that  
2 are leaving and the services that are staying? I mean, have  
3 you failed to do that in any instance?

4 A Not that I'm aware, but the difficulty with doing  
5 this is that BellSouth has not provided us any fields in which  
6 to tell them how to dispose of this service. So we have to do  
7 it in the remark section of the order, which is cumbersome and  
8 is what I would call an opportunity for failure.

9 Q You talk about opportunity for failure, but you're  
10 not aware of any problems, I think you just said, not aware of  
11 any problems that have ever resulted from that?

12 A You asked me if I was aware of any problems that had  
13 resulted in AT&T's failure.

14 Q Yes. Are you aware of any --

15 A I'm not aware of any problems that were caused by  
16 AT&T's failure.

17 Q Will you agree with me that the processes and  
18 procedures for doing a partial port are found on BellSouth's  
19 Web site?

20 A Yes, I would.

21 Q Have you ever reviewed that on the Web site, those  
22 procedures?

23 A Not recently, but I think I -- yes, I have.

24 Q Okay. Do you submit the orders for partial  
25 migrations on an LSR? Do those come to BellSouth via an LSR or

1 through some other process?

2 A Oh, okay. I'm sorry, I thought you were asking me if  
3 I did it.

4 Q No, not you personally.

5 A Okay. Thanks. Yes, we do -- that is via LSR.

6 Q And the LSR is designed by the billing forum, OBF?

7 A I don't know.

8 Q Okay. Let's talk about calling party information for  
9 a second. I think that's another part of your testimony. And  
10 this deals with global title translations. And are you  
11 familiar with those?

12 A I'm familiar with that term.

13 Q Will you agree with me that global title  
14 translations, or GTT, is basically a routing code that when  
15 someone dials a telephone number, it tells the system where to  
16 go to find the particular customer's name that's associated  
17 with that number? In other words, if I pick up the phone and I  
18 call you, it will dial your number, but at some point GTT will  
19 tell the call where to go into the database to locate my name  
20 so that on your Caller ID box or whatever my telephone number  
21 and my name will show up.

22 A Yes, that's sounds generally correct. I'm not a  
23 technical expert, but that basically lines up with my  
24 understanding. Yes.

25 Q Well, I'm sure Mr. Milner is cringing in the



1 background from my technical explanation. Obviously, I'm not  
2 either. Will you agree with me that in Florida there is no  
3 legal requirement to provide GTT on a ten-digit basis?

4 A I am not aware that there is a law in the books in  
5 the state of Florida that says BellSouth has to provide  
6 ten-digit GTT. However, I do believe that there is -- part of  
7 the FCC rules on number portability says that the customer's  
8 service should not be impaired. And if the customer, when he's  
9 with BellSouth, can call a BellSouth customer and have his name  
10 and telephone number show up on that called party's Caller ID  
11 box but when he changes his service to AT&T and calls that very  
12 same customer and it shows "unknown name," then, you know,  
13 that's -- in my mind, that's discriminatory.

14 Q Let's go back in history a little ways. BellSouth  
15 has what's known as six-digit GTT. And what you're asking for  
16 is ten-digit GTT; right?

17 A Correct.

18 Q And BellSouth offered you an interim solution, an  
19 electronic interim solution back in October of 1999. Do you  
20 recall that?

21 A Yes, I do.

22 Q And, in fact, two other ALECs were using that interim  
23 solution that we had offered which would add the names of the  
24 customers. In other words, it would do a dip into BellSouth  
25 CNAM or customer name database and it would pick out the name.

1 A Correct.

2 Q And you're aware that two other ALECs were using that  
3 interim fix?

4 A I had heard that two other ALECs were using that,  
5 correct.

6 Can I elaborate?

7 Q Well, if I ask a question that will get you there,  
8 feel free.

9 Will you agree with me that even though we discussed  
10 this interim solution with BellSouth -- that BellSouth  
11 discussed the interim solution with AT&T, that AT&T never  
12 submitted the paperwork to implement that interim solution?  
13 That is not what you wanted?

14 A No. AT&T didn't submit the -- well, no. Let me go  
15 back. Yes, AT&T did submit the paperwork. However, now I want  
16 to elaborate. The problem with ten-digit global title  
17 translation is that because BellSouth in a noncompetitive  
18 environment was the only carrier, they only needed six digits  
19 to figure out who the calling party was.

20 In a competitive environment where you've got numbers  
21 porting back and forth, six digits no longer worked in a  
22 competitive environment because BellSouth just in dipping on  
23 that six digits, which would be the NPA/NXX, wouldn't tell the  
24 network which CLEC or ALEC owned the customer. Without knowing  
25 that, is that -- and again, I am not a technical person, but as

1 I understand it, as the call is pulsing across the network, it  
2 gets to the point and it says, I don't know what carrier owns  
3 this number. And if I don't know what carrier owns this  
4 telephone number, then I can't go back to that carrier's  
5 database, dip it, get the calling party name and send it on its  
6 way. The only thing I can do is to determine that it is 305,  
7 493, that it's in Miami, Florida. So that's all I can deliver.

8 That was not a problem that was created by ALECs, but  
9 it was a problem that was significantly impacting at least  
10 AT&T's customers, and based on some of the reading that I did,  
11 I can only -- I can surmise that it was impacting other ALEC  
12 customers as well.

13 When BellSouth came to -- approached us and said,  
14 okay, well, we have this interim electronic solution. We were  
15 like, okay, fine. That sounds really good. Let's go for it.  
16 We filled out the first form; sent it over to BellSouth; then  
17 began to start looking into the issue more and determined that  
18 it was going require software and systems upgrades on the side  
19 of AT&T that were going to cost us -- conservatively cost us  
20 \$350,000 to complete. This was throw-away technology for us.  
21 We did not have any other use for it once BellSouth finally  
22 fixed the ten-digit global title translation problem.

23 So as a business decision, you know, we couldn't in  
24 all good conscience say, oh, yeah, I'm going to write a check  
25 for \$350,000 to solve a problem that wasn't mine to begin with.

1 I didn't create it, and by the way, I can't use it after the  
2 root cause problem is solved.

3           So you are absolutely correct. AT&T did not avail  
4 itself of that solution for those very reasons. We went back  
5 to BellSouth and said, we need for you to continue to load in  
6 the calling name information manually into your database of  
7 customers that complained. Now, that put us in a very  
8 vulnerable position with customers because we didn't go out and  
9 just wholesale say, okay, customers, if you come with AT&T,  
10 you're going to lose this particular ability. Your name is not  
11 going to show up anymore.

12           Now, that may seem like an insignificant problem,  
13 but, you know, in the days of telemarketing -- you know, we all  
14 screen our calls either via Caller ID or answering machines or  
15 some other issue. We had significant business customers who  
16 were telling us that they would try to call -- I mean, first of  
17 all, we had customers who said, no more. We're not porting any  
18 more service to you until you get this problem fixed. We had  
19 customers who said, we call our employees to come in and work  
20 shifts because somebody else has called in sick. They're not  
21 answering the telephone because my name is not showing up.

22           When we told BellSouth that we would not avail  
23 ourselves of the \$350,000 interim electronic solution, then  
24 they told us that they were no longer going to manually load in  
25 the information from our complaining customers. And at that

1 time we filed a complaint in the state of Tennessee. And as a  
2 result, BellSouth did agree to continue loading in the names of  
3 customers who complained. So that's what we're doing today.  
4 We are loading in manually only the names of customers who  
5 complain about the problem.

6 Q I'm sorry, you were done?

7 CHAIRMAN JACOBS: Mr. Edenfield, why don't we  
8 take a -- is there a point where we can take a quick break?

9 MR. EDENFIELD: I'll take a break whenever you like.

10 CHAIRMAN JACOBS: All right. Why don't we take ten  
11 minutes and come back?

12 (Brief recess.)

13 CHAIRMAN JACOBS: Mr. Edenfield, you may continue.

14 MR. EDENFIELD: Thank you, Chairman Jacobs.

15 BY MR. EDENFIELD:

16 Q There's a chance we could get done today if we can  
17 avoid explanations that --

18 A No.

19 Q -- (inaudible) to the Gettysburg Address.

20 MS. WHITE: I don't know him. That's all I'm saying,  
21 is I don't know who this person is.

22 MR. EDENFIELD: Please feel free to explain your  
23 answer.

24 COMMISSIONER JABER: You think she was delivering the  
25 Gettysburg Address? I don't know what your witnesses where

1 doing.

2 MR. EDENFIELD: My witnesses actually look like  
3 Abraham Lincoln.

4 BY MR. EDENFIELD:

5 Q All right. Let me take one step back before we try  
6 to get through this thing here. You had mentioned a particular  
7 customer of AT&T that had his direct-inward dial porting  
8 numbers reassigned, like, six times. I think that's what you  
9 said.

10 A Yes.

11 Q Where was that? What state?

12 A Florida.

13 Q Can you tell me who the customer was?

14 MS. AZORSKY: Is that proprietary information?

15 Q Well, let me ask you this. Do you know who the  
16 customer was?

17 A Yes, I do.

18 Q So that we don't run into a proprietary issue, I  
19 would ask that AT&T provide me as a late-filed exhibit or  
20 provide as a late-filed exhibit the name of the customer, and  
21 we can do it under proprietary if, in fact, it's proprietary,  
22 but provide that so we can do some investigation into that  
23 allegation.

24 A Sure. I mean, BellSouth already knows the account --  
25 the name of the customer. The BellSouth account team knows who

1 the customer is.

2 Q Okay.

3 CHAIRMAN JACOBS: Do you want to --

4 MS. AZORSKY: I don't think we have a problem  
5 providing it as a late-filed exhibit for the Commission, but as  
6 Ms. Berger said, BellSouth already has that information. The  
7 BellSouth account team has been provided it a few times.

8 MR. EDENFIELD: That's fine, but, I mean, I just want  
9 to make sure we're on the same page.

10 MS. AZORSKY: We'll provide it.

11 MR. EDENFIELD: Okay.

12 CHAIRMAN JACOBS: We'll mark that as Exhibit 48,  
13 late-filed.

14 (Late-Filed Exhibit 48 identified.)

15 BY MR. EDENFIELD:

16 Q All right. Let me see if I can take us back through  
17 this calling party information history and then bring us up to  
18 where we are. As I understand it, there was a problem prior to  
19 October 1999. BellSouth offered AT&T an interim solution which  
20 would allow AT&T to submit electronically to BellSouth and have  
21 BellSouth manually update the CNAM database, offered that  
22 solution to AT&T. You didn't want it for the reasons stated.  
23 We offered you a second interim solution in May 2001. You  
24 didn't want that either; correct?

25 A Now you're going to have to clarify for me. You

1 offered --

2 Q You're not aware that in May of this year we offered  
3 you a second solution pending the ten-digit GTT being  
4 implemented in Florida?

5 A Can you tell me what that was?

6 Q I don't have the slightest idea other than we offered  
7 you something in May 2001. You're not familiar with -- it's  
8 not ringing any bells?

9 A If BellSouth offered something in May of this year,  
10 they didn't offer it to me. And I can only talk to you about  
11 two solutions that we have used -- that have been on the table.  
12 The one is to manually load in the name and telephone number  
13 and the OCN of the customers who complain, and the interim  
14 electronic solution with the \$350,000 price tag that we  
15 declined to avail ourselves of. But the manually loading of  
16 complaining customers, we are doing that.

17 Q Okay. My understanding of -- I'm just being funny.  
18 My understanding what was being offered to you in May 2001 was  
19 a fix, or whatever you want to call it, wherein you would send  
20 BellSouth on a text file --

21 A We do that.

22 Q -- some type of text file, and then it --

23 A That's how we do that.

24 Q Okay. That's how we're doing it now?

25 A That's how you -- I send it to you in a text file,



1 the name, the telephone number, the OCN. And I send it via  
2 e-mail, and BellSouth loads that customer's information into  
3 the BellSouth calling name database.

4 Q And since we've started doing that, you would agree  
5 that you have used this process for the grand total of  
6 five customers in the state of Florida?

7 A That is how many -- we are only using it, as I said,  
8 for customers who complain.

9 Q So that means the answer is, yes, there have been  
10 five customers who complained?

11 A Yes. We are only using it for customers who  
12 complain.

13 Q And for Florida, that would be five?

14 A I'll take your word for it.

15 Q Let's talk about where we are right now on ten-digit  
16 GTT. You will agree with me that BellSouth was in the process  
17 of doing ten-digit GTT even before you filed your complaint in  
18 the state of Tennessee, that that was a project that was  
19 underway?

20 A Yes, it was a project that I found out after I filed  
21 the complaint in Tennessee. But the BellSouth account team had  
22 never -- in all the conversations that I had with them about  
23 the problem had never indicated to me that BellSouth was  
24 working on a solution and that that solution was going to take  
25 until November of 2001 to implement.

1 Q Okay. And you would agree with me that in South  
2 Florida and in the 904 area code, which is Jacksonville, that  
3 BellSouth has already implemented ten-digit GTT for Florida?

4 A I'll agree -- I can agree that South Florida has been  
5 upgraded to ten-digit GTT. I'm not aware that 904 has been  
6 completed because no one from BellSouth has let me know that.  
7 But in South Florida, even after ten-digit GTT was implemented,  
8 we have experienced additional problems with calling names  
9 showing up on Caller ID boxes.

10 Q And are you working -- those problems that you say  
11 have occurred since implementing ten-digit GTT, are you working  
12 with BellSouth to try to get those resolved?

13 A Yes.

14 Q And one last thing just so we're not left with a bad  
15 impression. The six-digit GTT, that was something that was  
16 used by BellSouth prior to the Act even being implemented;  
17 right?

18 A Correct.

19 Q All right. Let's talk real quickly about snap back,  
20 and then we can get done with this. Snap back is, I guess, a  
21 phrase -- I'm not sure who coined the phrase, but we've heard  
22 about it for the first time here. But this is an issue that  
23 describes a situation where a subscriber that has decided to  
24 change local service from BellSouth to, in this example we will  
25 say, AT&T for whatever reason changes their mind, or either

1 there are no -- AT&T does not have the facilities available to  
2 serve that customer after the election has been made to leave  
3 BellSouth.

4 A Yes, it can include those situations. It can include  
5 anytime that during the port that there is a problem, whether  
6 it's caused by AT&T or BellSouth or the customer changing his  
7 or her mind, but anything that's unusual that happens at the  
8 time of the port. The snap back process that's been  
9 implemented by other ILECs is an opportunity for us to quickly  
10 get the customer back onto the ILEC facility so that his  
11 service is not impaired.

12 Q Okay. All right. Let's talk about the different  
13 types of scenarios. If I understand what you're talking about,  
14 you have issues that come up before the port and issues that  
15 can come up after the port. Is that a fair assessment?

16 A Sure.

17 Q And for a customer changing his or her mind about  
18 leaving BellSouth before the port, that's not really a problem,  
19 is it?

20 A It is a problem, but it's not a problem that would be  
21 solved by it with a snap back process.

22 Q Okay. And to the extent there are facility  
23 problems -- in other words, the customer decides to go over to  
24 AT&T, but there's no facility in place, that is something that  
25 AT&T can test for, and in fact, probably should test for,

1 before the number is ported. Would you agree with that?

2 A I agree with that, and AT&T does test for that before  
3 the number is ported.

4 Q All right. So there really shouldn't be any  
5 post-port facility issues then, at least from an AT&T facility  
6 issue?

7 A Well, I mean, should there be? No. You hope there  
8 never are. Are there some? Yes, there are. Either something  
9 happens with the concurrence and impact, something happens with  
10 the facility, something happens with noise on the line or dial  
11 tone or whatever, that even though it's the exception and not  
12 the rule, there are things that happen that causes an  
13 impairment of a customer's service. And what AT&T is asking  
14 BellSouth to do is to do what every other ILEC has done, and  
15 that is, give us a process to quickly snap the customer's  
16 service back until the problem can be isolated and fixed.

17 Q Give me an order of magnitude on that. How many  
18 times have we run into a problem between BellSouth and AT&T  
19 where a customer was ported, the number was ported, and  
20 subsequent to that, we had an issue where there was a facility  
21 problem?

22 A I don't any -- I don't know the numbers.

23 Q Do you know whether there's actually -- that's ever  
24 actually ever happened?

25 A I'm sure it has.

1 Q Can you give me an example? Do you know specifically  
2 that it's happened? In other words, are you personally  
3 familiar with it, or are you just guessing?

4 A Where a facility was at issue?

5 Q Yes.

6 A Yes, I know that it's happened, but you asked me for  
7 an order of magnitude, I can't give you that.

8 Q All right. So you don't know how prevalent or  
9 unprevalent that is?

10 A No. Fortunately, it's the exception, as I said, and  
11 not the rule. But for the customer who does have a problem at  
12 the time of port, for that customer it's pretty significant.

13 Q All right. Let's talk about the customer that  
14 changes their mind after the port. Would you agree with me  
15 that after the number is cut over, that that customer is  
16 technically an AT&T customer?

17 A Yes.

18 Q All right. And at that point if the customer changes  
19 its mind, could there be issues of slamming, et cetera,  
20 et cetera, if, in fact, BellSouth were to just take a customer  
21 back without that customer's permission after the number has  
22 been ported?

23 A To answer your question, yes, there could be slamming  
24 issues, but let me elaborate.

25 Q Sure.

1           A     Those are not -- customers changing their minds after  
2 ports are not what we're talking about when we're talking about  
3 snap back. We're talking about -- I mean, if a customer  
4 changes his mind after he's ported to a CLEC, then that  
5 customer is going to need to go through the ordering process,  
6 call BellSouth up, say, hey, I want to come back to you.  
7 BellSouth issues the LSR to AT&T, and we go through the  
8 standard process. So that's not what we're talking about here.

9                     We're talking about customers who -- or ports that,  
10 for whatever reason, go bad, and in order to make sure that the  
11 customer and his or her business is not impacted, we're saying  
12 we need a snap back process to get back there. We're not  
13 talking about customers who change their mind after the port.

14           Q     All right. You talk about ports gone bad. I was  
15 under the impression that the two circumstances we were talking  
16 about was, one, where you had a port, and then you had some  
17 kind of facility problem, and the other issue is where you had  
18 a port, and then the customer, for whatever reason, changes  
19 their mind. Are you telling me that that latter category is  
20 not really a snap back issue?

21           A     No, it's not.

22           Q     All right. Other than having a port and then having  
23 a facility problem, what else are you encompassing within snap  
24 back on a post-port issue?

25           A     I mean, there could be any one of a number of

1 different kinds of issues. I mean, it could be noise on the  
2 line. It could be dial tone issues. It could be a facility  
3 issue. It could be any one of a number of issues. And it  
4 could be issues caused by AT&T. It could be issues caused by  
5 BellSouth. What we're asking for, though, is that, this is a  
6 customer in trouble. We can't get the problem isolated and get  
7 it solved. So let's put the customer back, which is what every  
8 other ILEC is doing for -- doing, put the customer back, let us  
9 figure out what the problem is, and then we will reschedule the  
10 port at a later date.

11 Q All right. I'm not trying to be obtuse. I'm really  
12 just trying to understand what you're getting at here from a  
13 practical standpoint. What kind of testing are you doing  
14 before you sign off on the port?

15 A AT&T does the standard testing that BellSouth has  
16 recommended. We check for dial tone. We check for the  
17 telephone number in the switch. We do all of the testing that  
18 should be done, but there are times when there is a problem.  
19 And what we're asking BellSouth to do is to give us a snap back  
20 process that when a customer is in trouble, when there's a  
21 problem, let's put it back, and we will reschedule the port for  
22 another time when we've had an opportunity to delve into it and  
23 isolated problem. It's what every other ILEC is doing.

24 Q Okay. When the port happens, if you've done your  
25 line testing, you will have confirmed there's dial tone, so the

1 customer does have some type of service at its house or his or  
2 her house or its house -- you would agree with that -- or its  
3 business?

4 A Sometimes yes, sometimes no.

5 Q Well, you're not going to port a number if you do a  
6 test and the test isn't satisfied?

7 A That is correct. We'll stop the port.

8 Q Okay. So when you do the port, the customer has some  
9 type of service. You confirm that via the testing?

10 A What I'm saying is, there are times when something  
11 happens. You can't isolate the problem at the time. Something  
12 happens, whether it's with the facility, with the port, in the  
13 network, whatever. And I'm saying, for those isolated  
14 instances, let's put together -- let put a process in place  
15 that says that customer is in trouble. Let's get him back  
16 until we can figure out what the problem is, instead of leaving  
17 him with either no service or faulty service while we're  
18 looking for the process.

19 Up until now, what BellSouth has said is that that  
20 customer has to go through the win-back process which will  
21 take, like, seven days to get him back on the BellSouth  
22 network. What we're asking for is for BellSouth to do the same  
23 thing that every other ILEC has done. When there's a  
24 problem -- when there is a problem and it cannot be isolated  
25 and fixed at the time of the port, let's snap that customer



1 back, keep the customer whole.

2 Q Okay. I guess all I'm trying to get at is, you're  
3 asking BellSouth, you know, to create a brand new procedure  
4 when, in fact, there are certain other protocols already in  
5 place. In other words, if a customer is not an AT&T customer  
6 and you're doing that over a BellSouth facility, you have  
7 procedures in place where you can submit a repair order. You  
8 can do a trouble ticket. There are things you can do to have  
9 that line fixed other than taking a customer that's now an AT&T  
10 customer and without that customer's permission, I guess,  
11 having that customer sent back to BellSouth and subjecting  
12 BellSouth to potential slamming issues, is all I'm saying. You  
13 don't think there are normal procedures for submitting repair  
14 tickets and trouble tickets would take care of noise on the  
15 line and things such as that?

16 A We do use the repair process. There are procedures  
17 there, but what I'm talking about are the exceptions where  
18 there is something that has happened with the port, there is  
19 something that has happened at the time of the port, and  
20 collectively our two companies cannot figure out what the  
21 problem is. Instead of leaving the customer in a -- either  
22 with no service or bad service, do what every other ILEC is  
23 doing, snap it back to BellSouth until we can figure out what  
24 the problem is. And I'm not talking about a day after or two  
25 hours after. I'm talking about at the time of the port, while

1 that is happening, before AT&T accepts the service.

2 Q Let me ask you this. Can you give me any example of  
3 where you've had a problem where at the time of the port there  
4 was some facility issue, noise on the line, any of the examples  
5 you have given, and BellSouth did not work with you to resolve  
6 that problem?

7 A Can I cite chapter and verse to date? No.

8 Q Can you --

9 A Are there examples? Yes.

10 Does BellSouth refuse to snap a customer back when  
11 the customer is in trouble? Yes.

12 Do other ILECs have a process for doing it? Yes.

13 Q So the answer to my question is, no, you cannot cite  
14 to me an example where a customer has left BellSouth to go to  
15 AT&T and there was some issue at the time of the port or some  
16 issue with the facility that BellSouth did not agree to work  
17 with you? You cannot give me that cite?

18 A BellSouth does work with us. What I am saying,  
19 though, is that our two companies cannot isolate the cause of  
20 the problem, and therefore, the customer is impacted. And what  
21 we're asking is, let's just put him back where he was until we  
22 can figure out what the problem is. I'm not saying BellSouth  
23 is not working with us. I'm saying, let's put a snap back  
24 process in place. BellSouth is the only ILEC that doesn't have  
25 one.

1 Q All right. Well, I'm just trying to figure out  
2 whether you've got a solution looking for a problem, or do you  
3 have a problem. Can you give me an example of a problem where  
4 BellSouth did not work with you to resolve it? That's all I'm  
5 asking. Can you give me an example?

6 A No. I've said BellSouth works with us. We cannot  
7 isolate the problem. The issue that I'm talking about in my  
8 testimony is snapping back the service, not whether or not  
9 BellSouth is working with us on a problem.

10 MR. EDENFIELD: I'm done. I have no further  
11 questions. Thank you.

12 CHAIRMAN JACOBS: Very well. Staff.

13 CROSS EXAMINATION

14 BY MS. HELTON:

15 Q Good morning, Ms. Berger. My name is Mary Anne  
16 Helton. I'm an attorney here on the Staff with the Commission.

17 A Good morning.

18 Q I just want to clarify something that you were  
19 talking about with Mr. Edenfield. If you'd turn to Page 14 of  
20 your testimony, please.

21 A Okay.

22 Q It's not clear to me. You're talking about a fix  
23 here on Line 14.

24 A Yes.

25 Q What is that fix?

1           A     BellSouth implemented a schedule by NPA that they  
2 were going to upgrade from the six-digit global title  
3 translation to the ten-digit. South Florida was completed in  
4 May of this year. North Florida is not scheduled to be  
5 completed until next month. North Florida, I think, was the  
6 last one on the schedule.

7           Q     Do you have any information as to whether that  
8 November 2001 date is still a valid completion date?

9           A     Based on what I've been told, they tell me that it's  
10 still a valid completion date.

11          Q     Do you know whether they have an exact date in  
12 November?

13          A     No.

14          Q     I think you talked about with Mr. Edenfield some  
15 problems in South Florida related to the ten-digit GTT. Could  
16 you elaborate on what those problems are -- or were?

17          A     Sure. I had a problem -- I had a customer who had  
18 complained prior to the transition to ten-digit GTT, and so we  
19 manually loaded the customer into the BellSouth database. The  
20 customer continued to complain, saying that his name was still  
21 not showing up. So I went to BellSouth and said, well, you  
22 know, this is still a problem. And BellSouth came back and  
23 said, well, we fixed our problem. It must be a problem on your  
24 side. The destination point code is not correct.

25                 So after two months of going back and forth and

1 finally trying to get our database experts together, we found  
2 out that there was a problem in a switch down in South Florida.  
3 BellSouth tells me that they have fixed the problem, but again,  
4 I'm not real sure about what the root cause of the problem was  
5 and how pervasive the problem is. I don't know if it was one  
6 switch or if it's ten switches or what.

7 Q Well, has that been a recurring problem?

8 A I don't know because I only found out about it within  
9 the last couple of weeks. This is very recent.

10 Q Do you know whether there are any other problems?

11 A Not to my knowledge.

12 MS. HELTON: Thank you, Ms. Berger.

13 THE WITNESS: Thank you.

14 CHAIRMAN JACOBS: Commissioners.

15 Ms. Berger, earlier in your testimony you talk about  
16 the assignment problem. Is that similar or different to the  
17 problem you were discussing with Mr. Edenfield?

18 THE WITNESS: I'm sorry, Commissioner, could you  
19 repeat your question?

20 CHAIRMAN JACOBS: Earlier in your testimony on Page  
21 10, you talk about the problem of reassignment, I'm sorry,  
22 reassignment of numbers.

23 THE WITNESS: Uh-huh.

24 CHAIRMAN JACOBS: Is that different from the problem  
25 that you were discussing with Mr. Edenfield that this one

1 customer had? It sounds like this is a different problem that  
2 could occur either at the time of the port or later, the  
3 reassignment problem.

4 THE WITNESS: No. Number reassignment and snap back  
5 are two different issues.

6 CHAIRMAN JACOBS: Okay. And is the reassignment  
7 problem, is that recurring?

8 THE WITNESS: It does occur, but it's -- I have to  
9 wait until a customer complains about it, and so it's not  
10 anything that AT&T can go out and identify the customers who  
11 are going to be impacted.

12 CHAIRMAN JACOBS: I see. You indicated that there  
13 are other companies would have implemented a snap back process.  
14 Do you have information about how that process works in the  
15 other companies? Or maybe it's in your testimony. I'm just  
16 trying to find --

17 THE WITNESS: As far as the technical details of how  
18 they work it, the agent on the AT&T side and the agent on the,  
19 let's say, Ameritech side, for example, will work together, and  
20 they will just reverse what's been done up to that point.  
21 There are no forms involved. There's no, you know, orders  
22 involved at that point in time. They just reverse what's  
23 happened and take the customer back.

24 CHAIRMAN JACOBS: Okay. And how do customers respond  
25 to that or react to that?

1 THE WITNESS: Customers aren't happy that what they  
2 had planned to have happen didn't happen, but they are much  
3 happier than having either no service or faulty service for a  
4 long period of time.

5 CHAIRMAN JACOBS: Very well. Thank you.

6 Redirect.

7 MS. AZORSKY: I have no questions, Mr. Chairman.

8 CHAIRMAN JACOBS: Very well. Exhibits.

9 MS. AZORSKY: I would however like to move in  
10 Exhibit 47.

11 CHAIRMAN JACOBS: Without objection, show Exhibit 47  
12 is admitted. And Exhibit 48 is a late-filed.

13 (Exhibit 47 marked for identification.)

14 CHAIRMAN JACOBS: Thank you, Ms. Berger. You are  
15 excused.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 CHAIRMAN JACOBS: Rather than go ahead, we do have a  
19 time we need to get to a function. We're going to go ahead and  
20 break for lunch now. I'm sorry?

21 MR. EDENFIELD: Okay. I'm sorry. I felt like we  
22 have very little for the next two witnesses. We could probably  
23 finish by lunch if you're --

24 CHAIRMAN JACOBS: Okay.

25 MR. EDENFIELD: I mean, I don't want to impose on

1 your plans. I'm sorry. I'm not trying to do that. I think  
2 we're close.

3 CHAIRMAN JACOBS: If we can get done, that would  
4 be --

5 MR. EDENFIELD: We could probably get done by 12:30  
6 easily.

7 CHAIRMAN JACOBS: Well, we need to break at 12:00, so  
8 why don't we do one, then we'll come back afterwards? Will  
9 that work, or should we go --

10 MR. EDENFIELD: Well, I could finish, but depending  
11 on how long the summaries are, we might finish by noon. I've  
12 got one question, I think, for this witness.

13 CHAIRMAN JACOBS: Okay. Let's do one, and we'll see  
14 how we go from there.

15 MR. MELSON: Commissioner Jacobs, we'll take  
16 Mr. Darnell, and then after lunch, I'll do the testimony that  
17 we're stipulating in.

18 CHAIRMAN JACOBS: Okay. Now, the Sprint witness is  
19 not -- has been withdrawn?

20 MR. MELSON: The Sprint witness is withdrawn.

21 CHAIRMAN JACOBS: Okay. I don't know how I missed  
22 that list, but I did. Okay.

23 GREG DARNELL  
24 was called as a witness on behalf of WorldCom Incorporated and,  
25 having been duly sworn, testified as follows:



## DIRECT EXAMINATION

1  
2 BY MR. MELSON:

3 Q Mr. Darnell, you were sworn this morning, weren't  
4 you?

5 A Yes, I was.

6 Q Would you state your name and address for the record,  
7 please.

8 A My name is Greg Darnell. My address is 6 Concourse  
9 Parkway, Atlanta, Georgia, zip code 30328.

10 Q By whom are you employed and in what capacity?

11 A By WorldCom Incorporated in the capacity of regional  
12 senior manager of public policy for the BellSouth region.

13 Q And have you filed 21 pages of rebuttal testimony and  
14 9 pages of supplemental rebuttal testimony in this docket?

15 A Yes, I have.

16 MR. MELSON: Mr. Chairman, I ask that those two  
17 pieces of testimony be inserted into the record as though read.

18 CHAIRMAN JACOBS: Without objection, show  
19 Mr. Darnell's testimonies are entered into the record as though  
20 read.

21 BY MR. MELSON:

22 Q And you had one exhibit attached to your rebuttal  
23 testimony identified as GJD-1; is that correct?

24 A That is correct.

25 MR. MELSON: Mr. Chairman, I'd ask that that be

1 marked as Exhibit 49.

2 CHAIRMAN JACOBS: Show it marked as Exhibit 49.

3 (Exhibit 49 marked for identification.)

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                                   **REBUTTAL TESTIMONY OF**  
3   **GREG DARNELL**  
4                                   **ON BEHALF OF WORLDCOM**  
5   **DOCKET NO. 960786-TL**  
6   **July 20, 2001**

7  
8   **Q.    PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

9    A.    My name is Greg Darnell, and my business address is 6 Concourse Parkway,  
10          Suite 3200, Atlanta, Georgia, 30328.

11

12   **Q.    BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

13    A.    I am employed by WorldCom, Inc. (formerly known as MCI WorldCom, Inc.)  
14          as Regional Senior Manager -- Public Policy.

15

16   **Q.    HAVE YOU PREVIOUSLY TESTIFIED?**

17    A.    Yes, I have testified in proceedings before regulatory commissions in Alabama,  
18          California, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South  
19          Carolina and Tennessee, as well as before the Florida Public Service  
20          Commission ("Commission"), and on numerous occasions have filed comments  
21          with the Federal Communications Commission ("FCC"). Attached as Exhibit  
22          \_\_\_\_ (GJD-1) to this testimony is a summary of my academic and professional  
23          qualifications.

24

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

1 A. The purpose of my testimony is to show that BellSouth does not currently  
 2 provide nondiscriminatory access to all required network elements in  
 3 accordance with the requirements of checklist item (ii) [Issue 3 in this  
 4 proceeding]. In doing so, I will rebut portions of the direct testimony of Ms.  
 5 Cox and Ms. Caldwell proffered on behalf of BellSouth. These witnesses  
 6 erroneously claim that BellSouth meets this checklist requirement by offering  
 7 nondiscriminatory access to all required UNEs at TELRIC rates.

8

9 ***Issue 3: Does BellSouth currently provide nondiscriminatory access to all required***  
 10 ***unbundled network elements, with the exception of OSS which will be***  
 11 ***handled in the third party test, in accordance with Sections 251(c)(2) and***  
 12 ***252(d)(1) of the Telecommunications Act of 1996, pursuant to Section***  
 13 ***271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?***

14 ***(a) Does BellSouth currently provide all required unbundled network***  
 15 ***elements at TELRIC-based prices?***

16 **Q. WHAT DOES CHECKLIST ITEM NO. (ii) REQUIRE?**

17 A. Section 271(c)(2)(B)(ii) states that BellSouth must provide "Nondiscriminatory  
 18 access to network elements in accordance with the requirements of sections  
 19 251(c)(2) and 252(d)(1)."

20

21 Section 252(d)(1) in turn requires that the pricing of unbundled network  
 22 elements shall be nondiscriminatory, based on the cost (determined without  
 23 reference to a rate-of-return or other rate-based proceeding) of providing the  
 24 interconnection or network element, and may include a reasonable profit.

25

1 **Q. HAS THE FCC ADOPTED PRICING RULES TO IMPLEMENT THE**  
2 **REQUIREMENTS OF SECTION 252(d)(1)?**

3 A. Yes, the FCC in August 1996 promulgated pricing rules which govern the states'  
4 implementation of the section 252(d)(1) pricing requirements. *In re*  
5 *Implementation of the Local Competition Provisions in the Telecommunications*  
6 *Act of 1996*, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996)  
7 ("Local Competition Order"). Despite appeals by BellSouth and other ILECs,  
8 the FCC's authority to promulgate pricing rules was upheld by the United States  
9 Supreme Court. *See AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999). The  
10 FCC's pricing rules require that states interpret Section 252(d)(1) of the Act to  
11 require that the rates for UNEs to be set at the sum of the Total Element Long  
12 Run Incremental Cost (TELRIC), plus a reasonable allocation of forward-  
13 looking common costs. 47 C.F.R. § 51.505(a). The TELRIC of a UNE is  
14 defined by 47 C.F.R. § 51.505(b) as:

15 (T)he forward-looking cost over the long run of the total  
16 quantity of the facilities and functions that are directly  
17 attributable to, or reasonably identifiable as incremental to,  
18 such element, calculated taking as a given the incumbent  
19 LEC's provision of other elements.

20  
21 **Q. DOES THE FCC REQUIRE A SPECIFIC APPROACH TO**  
22 **TELRIC PRICING?**

23

1 A. Yes. The particular TELRIC approach taken by the FCC, and made applicable  
 2 to the states, is often referred to as the “scorched node” method. 47 C.F.R.  
 3 §51.505 (b) (1) states:

4 Efficient network configuration. The total element long-run  
 5 incremental cost of an element should be measured based  
 6 on the use of the most efficient telecommunications  
 7 technology currently available and the lowest cost network  
 8 configuration, given the existing location of the incumbent  
 9 LEC's wire centers.

10

11 The FCC's TELRIC methodology assumes that wire centers will be placed at the  
 12 ILECs' current wire centers, but that the rest of the network will be  
 13 reconstructed assuming the most-efficient technology for reasonably foreseeable  
 14 capacity requirements. Local Competition Order ¶ 685. This definition of  
 15 “forward-looking” adopted by the FCC takes existing switch locations as a  
 16 given, and then, assuming a hypothetical carrier, “builds out” an interoffice and  
 17 local network, based on efficient engineering practices and forward-looking (but  
 18 currently available), least-cost technology.

19

20 **Q. WHAT MUST BELLSOUTH DO TO DEMONSTRATE THAT ITS UNE**  
 21 **RATES COMPLY WITH THE ACT AND FCC RULES?**

22 A. By definition, “cost-based” rates must be supported by cost studies proving that  
 23 the rates are derived from the forward-looking cost of providing the leased  
 24 elements, taking into account the particular circumstances present in each state.  
 25 The FCC has specifically stated that it expects “a BOC to include in its [section

1           271] application detailed information concerning how unbundled network  
2           element prices were derived.” *In re Application of Ameritech Michigan*  
3           *Pursuant to Section 271 of the Communications Act of 1934, as amended, to*  
4           *Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137,  
5           Memorandum Opinion and Order, FCC 97-298 at ¶ 291 (rel. Aug. 19, 1997)  
6           (footnote omitted). The FCC will reject a 271 application if basic TELRIC  
7           principles are violated. *In re Application of Verizon New England Inc., Bell*  
8           *Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long*  
9           *Distance Company (d//b/a Verizon Enterprise Solutions), And Verizon Global*  
10          *Networks Inc., For Authorization to Provide In-Region, InterLATA Services in*  
11          *Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC  
12          01-130 at ¶ 20 (rel. April 16, 2001).

13

14   **Q.   WHAT UNE RATES HAS BELLSOUTH SUBMITTED IN THIS**  
15   **PROCEEDING?**

16   A.   BellSouth has submitted two categories of rates. The rates which BellSouth has  
17   submitted for most UNEs are included as Attachment A to BellSouth's proposed  
18   Statement of Generally Available Terms (SGAT), which is Exhibit CKC-5 to  
19   Ms. Cox' testimony. The rates in Attachment A are the rates that BellSouth  
20   *proposed* in the Commission's UNE cost docket, Docket No. 990649-TP. Ms.  
21   Cox says that when the Commission enters a written order in that docket, the  
22   rates in Attachment A will be updated to reflect the Commission-approved rates.  
23   At that time, Ms. Cox says that BellSouth will, upon request, negotiate  
24   amendments to incorporate those rates into existing agreements. (Cox Direct at  
25   10-11)

1 In addition to the UNEs that were considered in Docket No. 990649-TP, there  
2 are certain additional UNEs for which BellSouth has filed cost studies for the  
3 first time in this proceeding. These include studies for (i) physical collocation,  
4 (ii) line sharing, and (iii) non-designed unbundled copper loops.

5  
6 **Q. DOES THIS FILING SHOW THAT BELLSOUTH'S CURRENT UNE**  
7 **RATES IN FLORIDA ARE "COST-BASED" AND IN COMPLIANCE**  
8 **WITH THE ACT?**

9 A. No. The rates included in BellSouth's filing for most UNEs are the rates that it  
10 *proposed* in Docket 990649-TP, not the rates approved by the Commission in its  
11 May 25, 2001 order. (Order No. PSC-01-1181-FOF-TP) Since BellSouth has  
12 not yet updated its filing in this docket to reflect these Commission-reviewed  
13 rates, it presumably is waiting until the Commission enters its order on  
14 reconsideration before submitting its "final" rate schedule. This means,  
15 however, that as of today BellSouth is not offering UNEs at the rates approved  
16 by the Commission. As discussed below, even those Commission-approved  
17 rates will not be "cost-based" unless and until the Commission completes the  
18 next phase of the UNE cost docket *and* orders BellSouth to make other changes  
19 which are needed to make BellSouth's rates TELRIC-compliant. Further,  
20 BellSouth is for the first time in this proceeding proposing what it contends are  
21 cost-based rates for a number of UNEs, including physical collocation, line  
22 sharing, and non-designed UCLs. The earliest that BellSouth can be considered  
23 to be offering "cost-based" rates for these elements will be at the conclusion of  
24 this 271 proceeding.

25



1 **Q. WHAT CHANGES MUST BE MADE IN THE RATES APPROVED BY**  
2 **THE COMMISSION IN THE UNE COST DOCKET IN ORDER FOR**  
3 **BELLSOUTH'S RATES TO BE COST-BASED?**

4 A. BellSouth will not have cost-based rates unless and until (i) BellSouth has  
5 updated its UNE cost studies to replace its loading factor calculations with a  
6 "bottoms-up" calculation of costs as required by the final order in Docket No.  
7 990649-TP, (ii) the Commission orders BellSouth to recalculate all UNE prices  
8 using a single network design which properly reflects economies of scale and  
9 scope as requested by the Motion for Reconsideration and Clarification filed in  
10 that docket by WorldCom, AT&T, Covad and Z-Tel, and (iii) the Commission  
11 orders BellSouth to make the other changes identified in the Motion for  
12 Reconsideration and Clarification that are necessary to make BellSouth's rates  
13 TELRIC-compliant.

14  
15 **Q. PLEASE EXPLAIN WHY BELLSOUTH'S COST STUDIES MUST**  
16 **IMPLEMENT THE BOTTOMS-UP APPROACH BEFORE THEY CAN**  
17 **BE TELRIC-COMPLIANT.**

18 A. In its cost study filing in the UNE cost docket, BellSouth calculated cable and  
19 structure costs by the applying loading factors to material prices instead of  
20 explicitly modeling the cost of engineering, installation and associated  
21 structures. The Commission found that BellSouth's use of these linear loading  
22 factors will distort cost relationships between rural and urban areas, which is a  
23 particular problem in a case in which loop rates were being deaveraged.  
24 Because the Commission was unable to correct this flaw based on the record  
25 before it, the Commission is requiring BellSouth to refile its loop model within

1 120 days of the issuance of the Order to replace these loading factors with an  
2 explicit "bottoms-up" modeling of these engineering and placement costs.  
3 (Order No. PSC-01-1181-FOF-TP, pages 283-284, 305-306) Until this refiling  
4 has been made and reviewed by all parties, and new rates have been set by the  
5 Commission, BellSouth will not have "cost-based" loop rates and will not meet  
6 the requirements of checklist item (ii).

7

8 **Q. PLEASE EXPLAIN WHY BELLSOUTH'S RATES MUST BE**  
9 **RECALCULATED USING A SINGLE NETWORK DESIGN FOR ALL**  
10 **ELEMENTS IN ORDER TO COMPLY WITH THE ACT'S COST**  
11 **STANDARD.**

12 A. In its cost study filing in the UNE cost docket, BellSouth submitted three  
13 distinct loop cost scenarios: (1) the BST 2000 Scenario used to determine the  
14 cost of stand-alone loops; (2) the Combo Scenario used to determine the cost of  
15 voice grade loops combined with a switch port; and (3) the Copper Only  
16 Scenario used to derive the cost of copper-based xDSL loops. Although the  
17 Commission found that the use of a single unified network design, in principle,  
18 is the most appropriate for setting UNE rates (Order, page 154), it nevertheless  
19 set UNE loop rates based on BellSouth's three-scenario approach. (Order, page  
20 155) Under FCC Rule 51.505(b), however, the use of a single, unified  
21 network design is not only the most appropriate in principle, but it is in fact  
22 required. This requirement is in place so that the UNE rates can reflect the  
23 economies of scope and scale enjoyed by the incumbent and as such provide  
24 ALECs with a realistic opportunity to compete against the incumbent's services

1 using UNEs. The rates set using BellSouth's three scenario approach are  
 2 therefore not "cost based" as required by the FCC's pricing rules.

3

4 **Q. WHY DO YOU SAY THAT A SINGLE UNIFIED NETWORK DESIGN IS**  
 5 **REQUIRED BY THE FCC'S RULES?**

6 A. FCC Rule 51.505(b) states:

7 (b) Total element long-run incremental cost. The total  
 8 element long-run incremental cost of an element is  
 9 the forward-looking cost over the long run of the  
 10 total quantity of the facilities and functions that  
 11 are directly attributable to, or reasonably  
 12 identifiable as incremental to, such element,  
 13 *calculated taking as a given the incumbent*  
 14 *LEC's provision of other elements.*

15 (1) Efficient network configuration.  
 16 The total element long-run incremental cost of an  
 17 element should be measured based on the use of  
 18 the *most efficient telecommunications technology*  
 19 *currently available* and *the lowest cost network*  
 20 *configuration*, given the existing location of the  
 21 incumbent LEC's wire centers.

22 (Emphasis added.)

23

24 Under this rule, UNE rates must be set based on "the lowest cost network  
 25 configuration," not on several different network configurations. That single  
 26 network configuration must take into account "the incumbent LEC's provision of

1 other elements." That is, the single network must be designed taking into  
2 account the demand for all elements, not just the element for which costs are  
3 determined. This is necessary in order to capture the economies of scale and  
4 scope that the LEC achieves as the result of offering its whole panoply of  
5 elements and services.

6

7 **Q. HOW DOES BELLSOUTH'S USE OF THE THREE-SCENARIO**  
8 **APPROACH VIOLATE THIS RULE?**

9 A. BellSouth's use of the three-scenario approach violates Rule 51.505(b) in three  
10 ways. First, BellSouth used different engineering assumptions for the entire  
11 network based on the type of UNE being costed. For loop/port combinations,  
12 BellSouth assumed an engineering design in the Combo Scenario based on the  
13 use of integrated digital loop carrier (IDLC) technology. For stand-alone loops,  
14 BellSouth assumed an engineering design in the BST 2000 Scenario based on  
15 the use of older, universal digital loop carrier (UDLC) technology. And for  
16 xDSL loops, BellSouth assumed an engineering design in the Copper Only  
17 Scenario based on the use of all copper loops. This violates the requirement in  
18 Rule 51.505(b) to use "the" lowest cost network configuration. The lowest cost  
19 network configuration for serving demand that includes stand-alone loops,  
20 loop/port combinations, and xDSL loops would be a single network that  
21 includes the appropriate mix of IDLC, UDLC and all copper loops. Yet despite  
22 the fact that the FCC's rules require the use of a single, most efficient network,  
23 BellSouth failed to provide cost studies that comply with those rules.

24

1 Second, by modeling an "all copper" network and an "all UDLC network" for  
2 pricing some loops, BellSouth did not model the use of the "most efficient  
3 technology currently available."  
4

5 Third, BellSouth's use of three different scenarios violates the requirement in  
6 Rule 51.505(b) to calculate costs for UNEs taking into account as a given the  
7 "incumbent LEC's provision of other elements." The purpose of this  
8 requirement is to ensure that UNE cost studies take into account the efficiencies  
9 that the incumbent LEC achieves from deploying a network to meet all demand  
10 for all elements, thereby achieving economies of scale and scope. In order to  
11 properly reflect the requirements of this rule, BellSouth must model a single  
12 network that takes into account the expected demand for loop/port  
13 combinations, stand-alone loops, and xDSL loops. That forecast must include  
14 demand both for UNE loops and for loops to meet BellSouth's own retail  
15 demand. The mix of IDLC, UDLC and copper loops in the resulting single  
16 network thus would be optimized to meet the demand for the various types of  
17 facilities, and that network would include the efficiencies resulting from  
18 economies of scale and scope. Instead, BellSouth modeled three separate  
19 networks, assuming alternatively that every customer location would require  
20 service via IDLC loops (Combo), that every customer location would require  
21 service via UDLC loops (BST 2000), and that every customer location would  
22 require service via copper loops (Copper Only). That assumption is clearly  
23 flawed. Some percentage of customer locations will require IDLC, some  
24 percentage will require UDLC, and some percentage will require copper. Only

1 by projecting actual demand for each type of facility will the resulting network  
2 include the appropriate economies of scale and scope.

3

4 **Q. IS THE REQUIREMENT THAT THE TOTAL ANTICIPATED**  
5 **DEMAND FOR A NETWORK ELEMENT MUST BE USED IN THE**  
6 **DEVELOPMENT OF THE UNE RATES COVERED BY FCC RULES?**

7 A. Yes. 47 C.F.R. 51.511(a) requires that total anticipated demand for a network  
8 element to be used in the development of UNE rates. Specifically, Rule  
9 51.511(a) requires:

10 The forward-looking economic cost per unit of an element.  
11 . . ., as defined in § 51.505 of this part, divided by a  
12 reasonable projection of the sum of the total number of  
13 units of the element that the incumbent LEC is likely to  
14 provide to requesting telecommunications carriers and the  
15 total number of units of the element that the incumbent  
16 LEC is likely to use in offering its own services, during a  
17 reasonable measuring period.

18

19 **Q. DOES THE PROCESS UTILIZED BY BELL SOUTH AND ADOPTED BY**  
20 **THIS COMMISSION IN THE DEVELOPMENT OF UNE RATES**  
21 **COMPLY WITH THIS FCC RULE?**

22 A. No. BellSouth never forecasts the demand for UNEs in the development of its  
23 UNE rates. BellSouth develops its prices for UNE rates based on what it calls  
24 an “Rservice” technique. BellSouth’s Rservice method of costing, costs UNEs  
25 to all customers that could ever *potentially* want the UNE. This means for a

1 typical residential POTS customer, BellSouth's costing methodology assumes  
2 that this customer will want BellSouth's retail voice service, an ALEC's UNE-P  
3 voice service, service provided by an ALEC using a stand alone voice loop,  
4 DSL service provided by the BellSouth data affiliate, and DSL service provided  
5 by a data-ALEC using a DSL loop. As such, the rates established for  
6 BellSouth's UNE ignore certain economies of scale and scope enjoyed by  
7 BellSouth. The impact on the development of local competition in Florida of  
8 ignoring these economies can be seen in the marketplace.

9

10 **Q. PLEASE EXPLAIN WHAT OTHER CHANGES NEED TO BE MADE**  
11 **TO BELLSOUTH'S COST MODEL IN ORDER FOR THE RESULTING**  
12 **RATES TO BE TELRIC-COMPLIANT.**

13 A. There are at least two other changes that are required before the rates produced  
14 by BellSouth's cost model could be considered TELRIC-compliant. Drop  
15 lengths must be recalculated assuming routing from the corner of lots and  
16 shared cost allocations must be recalculated on a per-pair basis.

17

18 **Q. WHY MUST DROP LENGTHS BE RECALCULATED BASED ON A**  
19 **DIFFERENT ROUTING ASSUMPTION THAN BELLSOUTH USED IN**  
20 **ITS COST STUDIES?**

21 A. FCC Rule 51.505(b)(1) requires the use of "the lowest cost network  
22 configuration." The use of angular drop placement necessarily produces shorter  
23 drop distances than the rectilinear drop placement method used by BellSouth,  
24 and thereby produces the lowest cost configuration. Until BellSouth's models

1 reflect the "lowest cost network configuration," the costs produced by those  
 2 models cannot be deemed TELRIC-compliant.

3

4 **Q. WHAT CHANGE MUST BE MADE TO BELL SOUTH'S METHOD OF**  
 5 **ALLOCATING SHARED COSTS?**

6 A. In using the BellSouth loop cost model (BSTLM) to calculate costs for specific  
 7 UNEs, it is necessary to allocate shared investments (such as digital loop carrier  
 8 common equipment and fiber feeder cable) to individual services. In the UNE  
 9 cost docket, the Commission approved BellSouth's method of allocating shared  
 10 investments in loop plant based on DS0 equivalents (i.e. the number of voice  
 11 channel equivalents represented by a particular service.) Under this "per-DS0"  
 12 methodology, a 2-wire facility used to provide high-capacity T-1 service --  
 13 which carries 24 voice channel equivalents -- is allocated 24 times as much  
 14 shared cost as a 2-wire voice grade loop. WorldCom and AT&T advocated  
 15 allocating shared investments based on the number of copper pair equivalents  
 16 used to provide the service. This "per-pair" methodology means that a copper  
 17 pair equivalent used to provide voice service bears the same allocation of shared  
 18 costs as the same facility used to provide T-1 service. Such an allocation avoids  
 19 the anti-competitive impact of placing high levels of shared costs on high-  
 20 capacity services whose demand is fairly inelastic.

21

22 In Paragraph 696 of its Local Competition Order, the FCC stated:

23 We conclude that forward-looking common costs shall be  
 24 allocated among elements and services in a reasonable  
 25 manner, *consistent with the pro-competitive goals of the*



1                    *1996 Act*. . . [A]n allocation methodology that relies  
2                    exclusively on allocating common costs in inverse  
3                    proportion to the sensitivity of demand for various  
4                    network elements and services [i.e. Ramsey pricing] may  
5                    not be used.

6                    (Emphasis added.)

7

8                    When applied to the allocation of shared costs which by definition are not  
9                    causally related to a single service or facility, these pro-competitive  
10                    requirements of the FCC's rule require shared costs to be allocated in a way that  
11                    minimizes any adverse impact on competition. Thus the Commission should  
12                    require that those costs be allocated on a per-pair basis in order to ensure that the  
13                    resulting rates are TELRIC-compliant.

14

15    **Q.    WHY IS IT IMPORTANT THAT BELLSOUTH BE REQUIRED TO**  
16                    **REVISE ITS UNE RATES TO BE TELRIC-COMPLIANT BEFORE IT**  
17                    **GETS SECTION 271 APPROVAL?**

18    A.    It is important because BellSouth's current rates, which are not TELRIC-  
19                    compliant, are so high as to be a barrier to entry. Each of the changes described  
20                    above should bring BellSouth's UNE rates closer to cost, and increase the  
21                    likelihood of broad scale competitive local entry.

22

23    **Q.    CAN THE RATES THAT BELLSOUTH HAS FILED FOR THE FIRST**  
24                    **TIME IN THIS PROCEEDING BE EFFECTIVELY ANALYZED TO**  
25                    **DETERMINE IF THEY ARE COST BASED?**

1 A. No. BellSouth uses its BellSouth Loop Model (BSTLM) to support its proposed  
2 rates for its non-designed loop offering (i.e. element A.13.12). BellSouth failed  
3 to file its complete BSTLM in this proceeding. Its filing is missing the GIS  
4 preprocessing data for its wire centers in Florida. This means none of the  
5 engineering assumptions BellSouth has made in determining the network design  
6 that supports the cost for its non-designed loop offering can be changed. As  
7 such, even if parties were permitted adequate time and process to analyze  
8 BellSouth's non-designed loop offering, it could not be done in this proceeding.  
9 Data ALECs have been asking BellSouth for non-designed loops since 1999.  
10 BellSouth should not be permitted to shoehorn a UNE cost case into this 271  
11 compliance review.

12  
13 **Q. DO YOU HAVE REASON TO BELIEVE THE RATES BELLSOUTH**  
14 **HAS PROPOSED FOR ITS NON-DESIGNED LOOP OFFERING,**  
15 **PHYSICAL COLLOCATION AND LINE SPLITTING ELEMENTS ARE**  
16 **NOT COMPLIANT WITH THE ACT'S COST BASED REQUIREMENTS**  
17 **AND THE FCC RULES?**

18 A. Yes. The input assumptions BellSouth has made in the development of its non-  
19 designed loop offering fail to incorporate the decisions this Commission reached  
20 in its May 25, 2001 order. Assuming these decisions on cost of capital,  
21 depreciation and inflation should be equally applied to the cost development of  
22 non-designed loops, BellSouth's proposed rates for non-designed loops do not  
23 meet the cost-based standard determined by this Commission. Further,  
24 BellSouth has proposed a new rate structure for Physical Collocation and has  
25 proposed an additional new rate element for Cable Records.

1   **Q.    DOES BELLSOUTH’S PROPOSED NEW RATE STRUCTURE FOR**  
2   **PHYSICAL COLLOCATION AND LINE SPLITTING CREATE**  
3   **CONCERNS?**

4   A.    Yes. BellSouth proposes to charge ALECs a separate monthly recurring rate for  
5   security access systems. There is no rational need for a separate monthly  
6   recurring rate for security access systems. Charging separately for security  
7   access systems would be synonymous with charging separately for door locks.  
8   It is not necessary to have separate rates for shared and common costs such as  
9   door locks and security access systems. In fact, the creation of a separate rate  
10   for a shared and common cost is inadvisable because unnecessarily complicates  
11   the analysis and creates an opportunity to double recover costs.

12  
13   BellSouth also proposes a new charge for access to cable records. These cable  
14   records are known as Circuit Facility Assignments (CFAs). Presently, there is  
15   no additional charge for CFAs. By creating this new charge for CFAs,  
16   BellSouth must be contending that the previous rates for collocation are not  
17   adequately compensating them for the forward-looking cost of providing  
18   ALECs with CFAs. As such, in order for this Commission to analyze this  
19   contention, all costs of collocation must be analyzed.

20  
21   BellSouth also proposes a charge for a new UNE called line splitting. BellSouth  
22   proposes to only sell line splitting in groups of 24 or 96. However, certain  
23   ALECs require lines to be split on an individual line basis. Further, the cost  
24   support BellSouth has filed does not identify the level of anticipated line  
25   splitting demand BellSouth has used in the development of its line splitter costs.

1 As such, it is unclear if BellSouth has complied with 47 C.F.R. 51.511(a) in the  
2 development of its line splitting rates.

3

4 **Q. IN LIGHT OF THESE CONCERNS, HOW SHOULD THE**  
5 **COMMISSION PROCEED?**

6 A. The Commission has already ordered BellSouth to refile its UNE cost studies to  
7 replace its loading factors with a "bottoms-up" cost approach. It makes sense  
8 for BellSouth to update its studies for physical collocation, line splitting and  
9 non-design UCLs at the same time and file them in the UNE cost docket. The  
10 Commission could then hold a single set of hearings to resolve all the remaining  
11 cost issues in a docket designed for that purpose. This procedure would not  
12 delay BellSouth's 271 application, since its current rates are not "cost-based"  
13 and need to be further revised before it can get 271 relief in any event.

14

15 **Q. ARE THERE ANY OTHER REASONS THAT THE COMMISSION**  
16 **SHOULD NOT TRY TO SET ANY UNE RATES IN THIS DOCKET?**

17 A. Yes. The purpose of Section 271 is to allow BellSouth (and the other RBOCs)  
18 to obtain interLATA authority only *after* they have demonstrated that their  
19 markets are open to competition. One of the important requirements for an open  
20 market is the availability of cost-based UNE rates. Rates which first become  
21 available to competitors only at the end of the state's section 271 review will not  
22 have contributed to the development of competition. BellSouth should be  
23 required to make its 271 demonstration using rates that are in effect at the time,  
24 not rates that will become effective some time in the future.

25

1 *Issue 3(b) Has BellSouth satisfied other associated requirements, if any, for this*  
2 *item?*

3 **Q. IN ADDITION TO PRICING ISSUES, WHAT OTHER**  
4 **REQUIREMENTS DOES THE ACT PLACE ON BELL SOUTH WITH**  
5 **REGARD TO OFFERING UNES?**

6 A. Checklist item (ii) states that BellSouth must provide “Nondiscriminatory access  
7 to network elements in accordance with the requirements of sections 251(c)(2)  
8 and 252(d)(1)”.

9  
10 **Q. DOES BELL SOUTH PROVIDE NONDISCRIMINATORY ACCESS TO**  
11 **ALL CAPABILITIES OF THE LOOP INCLUDING ALL ATTACHED**  
12 **ELECTRONICS?**

13 A. No. BellSouth does not provide nondiscriminatory access to all capabilities of  
14 the loop and all attached electronics. A loop is capable of being split by a line  
15 splitting device into a low frequency channel and a high frequency channel.  
16 When a loop is split in this manner it expands the capability of the loop so that  
17 both voice and data can exist on the same loop.

18  
19 BellSouth uses line-splitting devices to split loops for itself. BellSouth will also  
20 provide a line splitting device to data ALECs to permit line splitting between a  
21 voice ALEC and a data ALEC. Thus, if BellSouth has a line sharing  
22 arrangement with a data ALEC by which BellSouth provides voice service to the  
23 customer and the data ALEC provides digital subscriber line (“DSL”) service,  
24 and another ALEC wins the customer’s voice business, BellSouth is willing (in

1 principle, at least) to allow the two ALECs to use the splitter to provide service  
2 to the voice and DSL service to the customer.

3

4 What BellSouth is *not* willing to do is permit line splitting between itself and a  
5 voice ALEC. In other words, if BellSouth provides voice and DSL service to a  
6 customer, and an ALEC wins the customer's voice business, BellSouth will not  
7 allow the ALEC to use the splitter and provide voice service using the same line  
8 BellSouth uses to provide DSL service. The end result is that a customer who  
9 wants to use BellSouth for DSL service and an ALEC for voice service must use  
10 two separate lines at a higher cost. As a practical matter, therefore, ALECs will  
11 have no realistic opportunity to provide voice service to customers for whom  
12 BellSouth provides DSL service.

13

14 **Q. WHAT IS THE EFFECT OF THIS DISCRIMINATION IN THE**  
15 **PROVISION OF LINE-SPLITTING?**

16 A. BellSouth's failure to provide voice-ALECs with nondiscriminatory access to  
17 line splitters creates an unnecessary barrier to local competitive entry by  
18 preventing voice-ALECs from offering service to certain customers. The  
19 customers that will be denied the benefits of competition by this discriminatory  
20 practice are the growing number of customers that want DSL services.  
21 BellSouth should not be permitted to exercise its monopoly power in this  
22 manner.

23

1           Before BellSouth can be considered in compliance with checklist item (ii) it  
2           must provide voice-ALECs with line splitters on nondiscriminatory terms and  
3           conditions and at cost-based rates.

4

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

6   A.    Yes.

7

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                   **SUPPLEMENTAL REBUTTAL TESTIMONY OF**  
3                   **GREG DARNELL**  
4                   **ON BEHALF OF WORLDCOM**  
5                   **DOCKET NO. 960786-TL**  
6                   **October 5, 2001**

7  
8   **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

9   A.   My name is Greg Darnell, and my business address is 6 Concourse Parkway,  
10       Suite 3200, Atlanta, Georgia, 30328.

11

12   **Q.   ARE YOU THE SAME GREG DARNELL THAT CAUSED TO BE FILED**  
13       **REBUTTAL TESTIMONY IN THIS PROCEEDING ON JULY 20, 2001?**

14   A.   Yes.

15

16   **Q.   WHY ARE YOU NOW FILING SUPPLEMENTAL REBUTTAL**  
17       **TESTIMONY?**

18   A.   I am filing supplemental rebuttal testimony due to material changes that have  
19       occurred since the time I filed my rebuttal testimony on July 20, 2001.

20

21   **Q.   WHAT MATERIAL CHANGES HAVE OCCURRED SINCE THE TIME**  
22       **OF YOUR REBUTTAL TESTIMONY?**

23   A.   A decision made by the Commission on October 2, 2001, in docket number  
24       990649-TP that has caused the magnitude of BellSouth's non-compliance with  
25       Section 271 checklist item (ii) (Issue 3 in this proceeding) to increase. In



1 addition, on October 1, 2001 BellSouth made a UNE cost case filing in Georgia  
2 that further illustrates how excessive BellSouth's Daily Usage File charges are in  
3 Florida.

4

5 **I. INFLATION FACTORS**

6

7 **Q. WHAT OCCURRED ON OCTOBER 2, 2001 IN FLORIDA PSC DOCKET**  
8 **NUMBER 990649-TP?**

9 A. The Commission adopted a staff recommendation that re-instates previously  
10 disallowed inflation factors from BellSouth's UNE rate development.

11

12 **Q. WHAT IS THE BOTTOM LINE IMPACT OF THE COMMISSION'S**  
13 **DECISION TO REINSTATE BELLSOUTH'S INFLATION FACTORS?**

14 A. It increased the rates that BellSouth will charge for UNEs by approximately  
15 8.5%. For, example the average UNE-P loop cost was increased \$1.23 per  
16 month, from \$13.91 to \$15.14.

17

18 **Q. HOW DOES THIS NEW BELLSOUTH FLORIDA AVERAGE UNE-P**  
19 **LOOP COST COMPARE TO THE AVERAGE UNE-P LOOP COST**  
20 **DETERMINED BY THE GEORGIA PSC FOR BELLSOUTH?**

21 A. It is approximately 21% higher than the average UNE-P loop cost determined by  
22 the Georgia PSC. On March 13, 2000 in Docket Number 10692-U the Georgia  
23 PSC established an average UNE-P loop cost of \$12.55 for BellSouth.

1 **Q. IS IT REASONABLE FOR THE AVERAGE BELLSOUTH UNE-P LOOP**  
2 **COST IN FLORIDA TO BE 21% HIGHER THAN THE AVERAGE**  
3 **BELLSOUTH UNE-P LOOP COST IN GEORGIA?**

4 A. No. The average UNE-P loop cost in Florida should be less than the average  
5 UNE-P loop cost in Georgia.

6  
7 **Q. WHY SHOULD THE AVERAGE BELLSOUTH UNE-P LOOP COST IN**  
8 **FLORIDA BE LESS THAN THE AVERAGE UNE-P LOOP COST IN**  
9 **GEORGIA?**

10 A. Population density is a primary driver of loop cost. BellSouth Florida territory is  
11 significantly more densely populated than BellSouth Georgia territory. In  
12 BellSouth Florida territory there is a population density of 176 households per  
13 square mile. In BellSouth Georgia territory there is a population density of 85  
14 households per square mile.

15  
16 **Q. IS THE AVERAGE LOOP COST IN GEORGIA COMPLIANT WITH**  
17 **FCC UNE PRICING RULES?**

18 A. No. The average loop cost in Georgia also exceeds TELRIC and therefore is not  
19 compliant with FCC UNE pricing rules. The BellSouth Florida UNE-P loop rate  
20 just exceeds TELRIC by a larger amount than the BellSouth Georgia UNE-P  
21 loop rate. Further, the Georgia PSC has just initiated a proceeding to evaluate  
22 BellSouth's UNE rates that should result in a reduction to the currently effective  
23 UNE-P loop rates.

1 **Q. WHAT IS A REASONABLE APPROXIMATION OF TELRIC**  
2 **COMPLIANT UNE-P LOOP RATE FOR BELLSOUTH FLORIDA?**

3 A. A TELRIC compliant statewide average UNE-P loop cost for BellSouth Florida  
4 should be less than \$7.00.

5  
6 **Q. PLEASE EXPLAIN HOW THE REINSTATED INFLATION FACTORS**  
7 **ARE USED IN BELLSOUTH'S COST MODELS?**

8 A. The inflation factors are applied by BellSouth's cost calculator to the investment  
9 amounts determined by BellSouth's loop model (BSTLM), switching model  
10 (SCIS), and ancillary worksheets used to develop investment for other UNEs  
11 such as high capacity loops.

12  
13 **Q. WAS THE COMMISSION CORRECT IN REINSTATING THESE**  
14 **INFLATION FACTORS?**

15 A. No. These inflation factors cause the effects of inflation on investment to be  
16 double counted.

17  
18 BellSouth's approach to inflation adjustments relies on the fundamentally flawed  
19 premise of applying Telephone Plant Indices (TPI) inflation factors to investment  
20 amounts that already include the effects of industry inflation.

21  
22 **Q. PLEASE EXPLAIN.**

1 A. The cost of capital that was applied to investment and used to develop UNE rates  
2 was a nominal cost of capital, that is, the cost of capital took into account the  
3 effects of national and industry wide inflation on BellSouth's cost of debt and  
4 equity. BellSouth's application of TPIS to investment amounts that already  
5 include the effects of inflation, double counts the effects of inflation on costs.  
6 BellSouth's position on this issue is nonsense. BellSouth claims there are two  
7 types of inflation, first there is the type of inflation that debt and equity holders  
8 take into consideration and second, there is specific inflation related to specific  
9 equipment. The fundamental flaw in BellSouth's position is that debt and equity  
10 holders take into account ALL inflation (i.e. direct and indirect) that may effect  
11 BellSouth. As such, the specific inflation that BellSouth assigns to specific  
12 equipment is a subset of the first type of inflation that is taken into account  
13 through the nominal cost of capital. The application of a nominal cost of capital  
14 to all investment and the application of specific TPIS on specific equipment  
15 double counts of the effects of the specific inflation.

16  
17 **II. DAILY USAGE FILE CHARGES**

18  
19 **Q. IN YOUR REBUTTAL TESTIMONY YOU STATED THAT THIS**  
20 **COMMISSION SHOULD NOT PERMIT BELLSOUTH TO "SHOEHORN**  
21 **A UNE COST CASE INTO THIS 271 COMPLIANCE REVIEW". DOES**  
22 **WHAT WAS FILED BY BELLSOUTH IN THE GEORGIA UNE COST**  
23 **CASE ON OCTOBER 1, 2001 ILLUSTRATE WHY THIS IS SO**  
24 **IMPORTANT?**

1 A. Yes.

2

3 **Q. PLEASE COMPARE THE DAILY USAGE FILE CHARGES IN**  
 4 **FLORIDA TO THE RATES RECENTLY FILED BY BELLSOUTH IN**  
 5 **GEORGIA.**

ELEMENT	FLORIDA CURRENT	FLORIDA PROPOSED	GEORGIA PROPOSED
ADUF PROCESSING	.01439100	.00808700	.00184900
ADUF TRANSMISSION	.00012973	.00000000	.00013189
<b>TOTAL ADUF</b>	<b>.01452073</b>	<b>.00808700</b>	<b>.00198089</b>
ODUF RECORDING	.00000710	.00000000	.00000880
ODUF PROCESSING	.00683500	.00456700	.00249600
ODUF TRANSMISSION	.00010811	.00000000	.00010991
<b>TOTAL ODUF</b>	<b>.00695021</b>	<b>.00456700</b>	<b>.00261471</b>

6

7 **Q. SHOULD BELLSOUTH'S COST TO PRODUCE DAILY USAGE FILE**  
 8 **INFORMATION BE SIMILAR STATE TO STATE?**

9 A. Yes. According to BellSouth, the systems they use to extract this data and  
 10 provide the data are regional. As such, the only cost difference between states  
 11 should be that generated by differences in labor rates.

12

13 **Q. SHOULD THERE BE ANY SEPARATELY DELINEATED CHARGE**  
 14 **FOR DAILY USAGE FILE INFORMATION?**

15 A. No. BellSouth establishes its shared and common cost factors using its  
 16 embedded systems costs and embedded expense to investment ratios. BellSouth  
 17 then develops its Daily Usage File charges files by contending that it has and will  
 18 incur additional incremental costs (i.e. above embedded cost) due to the creation  
 19 of "systems" to provide daily usage file information to ALECs. As such,  
 20 BellSouth's cost study development for Daily Usage File information is founded

1 on the flawed premise that TELRIC equals embedded cost – nothing +  
2 incremental cost. The foundation of this argument assumes that nothing in  
3 BellSouth’s embedded systems cost is inefficient and that future system  
4 development will not bring any reduction to cost.

5

6 BellSouth’s future systems cost will bring certain reductions in costs and  
7 BellSouth is not the least-cost, most efficient carrier (i.e. some inefficiencies do  
8 exist and as such, embedded cost exceeds TELRIC). As such, BellSouth’s cost  
9 development for its Daily Usage File charges violates FCC TELRIC principles.

10

11 **Q. ARE BELLSOUTH’S UNE RATES AN UNREASONABLE AND**  
12 **UNNECESSARY BARRIER TO COMPETITIVE RESIDENTIAL LOCAL**  
13 **MARKET ENTRY?**

14 A. Yes.

15

16 **Q. WHY DO YOU SAY THAT BELLSOUTH'S CURRENT UNE RATES**  
17 **ARE AN UNREASONABLE BARRIER TO COMPETITIVE LOCAL**  
18 **ENTRY?**

19 A. In the near term, the use of the UNE platform (UNE-P) is the method of service  
20 provisioning that presents the most opportunity for significant competitive  
21 residential local entry. BellSouth’s current UNE-P rates significantly exceed  
22 “cost based” levels as this term has been defined by the Telecommunications Act  
23 of 1996 and the FCC UNE pricing rules. UNE rates that exceed cost based  
24 levels are unreasonable. In addition, BellSouth has even proposed higher UNE

1 rates in this Commission's "120 day docket".<sup>1</sup> For UNE-P, BellSouth's proposed  
2 rate is \$18.13, absent the increase caused by the reinstatement of the inflation  
3 factor. This provides further evidence that BellSouth has no intention of  
4 complying with 271 checklist item (ii).

5

6 **Q. WHY DO YOU SAY THAT BELLSOUTH'S CURRENT UNE RATES**  
7 **ARE AN UNNECESSARY BARRIER TO COMPETITIVE LOCAL**  
8 **ENTRY?**

9 A. It is unnecessary because for the year 2000 BellSouth's intrastate rate of return in  
10 Florida was approximately 19.46%. As such, there is currently no reason for this  
11 Commission to be concerned with protecting BellSouth from the effects of local  
12 competition.

13

14 **Q. WHAT SHOULD BELLSOUTH'S ABILITY TO EARN A 19.46%**  
15 **INTRASTATE RATE OF RETURN TELL THIS COMMISSION?**

16 A. The fact that BellSouth was able to earn a 19.46% rate of return suggests that the  
17 current intrastate telecommunications market is not as competitive as it needs to be.  
18 It would be a contradiction to have both BellSouth earning monopoly profits and  
19 conclude the local telecommunications market is competitive.<sup>2</sup>

20

21 **Q. IN COMPARISON, WHAT BARRIERS TO ENTRY WILL BELLSOUTH**  
22 **FACE IN ENTERING THE INTERLATA LONG DISTANCE MARKET?**

23 A. Relatively little. As stated by, Jeff Battcher, BellSouth Director of Corporate

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<sup>1</sup> Florida Public Service Commission, Docket No. 990649-TP.

<sup>2</sup> The existence of BellSouth supranormal profits over an extended period of time is strong evidence in and of itself of abuse of Market Power. David L. Kaserman and John W. Mayo, Government and Business: The Economics of Antitrust and Regulation, The Dryden Press: Orlando, FL (1995), at pages 98-99.

1           Communications, "It's [271 relief] obviously important, Georgia and Florida, once  
2           we get in we think we'll get \$5.2 billion in revenue just in the first year. It doesn't  
3           cost us anything extra."<sup>3</sup> In addition, as stated by Verizon's CEO Ivan Seidenberg,  
4           when asked if Verizon were interested in buying AT&T, the No. 1 long-distance  
5           firm, Seidenberg said there was no need, Verizon would end up with AT&T's  
6           customers without paying for them.<sup>4</sup> This, combined with the fact the BellSouth  
7           currently has enough market power to generate supranormal profits, should provide  
8           the Commission with some concern about the remonopolization of residential  
9           telecommunications service (local and long distance combined) in Florida if  
10          BellSouth is granted 271 relief at this time.

11

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

13   A.    Yes.

---

<sup>3</sup> Memphis Business Journal, October 1, 2001.

<sup>4</sup> Krause, R, (2001, October 1), *Telecommunications carrier rumors swirl, but would a Bell even want AT&T?*, Investor's Daily, p. 5.



1 BY MR. MELSON:

2 Q Mr. Darnell, could you please summarize your two  
3 pieces of testimony.

4 A Yes. Thank you. Good morning -- it's still  
5 morning -- good morning, Commissioners. Thank you for the  
6 opportunity to speak before you today. My written testimony  
7 concerns what I believe to be the most fundamental item to  
8 opening up the local telecommunications market to competition.  
9 This item is the prices new entrants must pay to BellSouth to  
10 purchase pieces of BellSouth's network. If you want an  
11 explanation about why residential local competition has not  
12 developed in Florida in the past five years, you don't have to  
13 look much farther than the topic of my testimony.

14 BellSouth's rates for UNEs are way too high. In this  
15 summary, I have started out with the big picture and then moved  
16 to some of the more specific items that have caused the big  
17 picture to be what it is. The rate BellSouth charges for  
18 unbundled voice grade loops is about double what it should be.  
19 There are a number of interrelated factors that have caused  
20 this to occur.

21 (Technical difficulty with the audio system.)

22 CHAIRMAN JACOBS: We'll go off the record and come  
23 back at 1:00.

24 (Lunch recess.)

25 (Transcript continues in sequence with Volume 12.)

1 STATE OF FLORIDA     )  
 2                                 :             CERTIFICATE OF REPORTER  
 3 COUNTY OF LEON        )

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

8         IT IS FURTHER CERTIFIED that I stenographically  
 9 reported the said proceedings; that the same has been  
 10 transcribed under my direct supervision; and that this  
 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 21st DAY OF OCTOBER, 2001.

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