

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 TELE-
COMMUNICATIONS ACT OF 1996.

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2nd REVISED VOLUME 7

Pages 862 through 1009

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:

Friday, October 12, 2001

TIME:

Commenced at 1:00 p.m.
Concluded at 5:15 p.m.

PLACE:

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

REPORTED BY:

KORETTA E. FLEMING, RPR
Official Hearing Reporter

APPEARANCES:

(As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DATE

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WITNESSES

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NUMBER: ID. ADMTD.

28 Composite WET-1, WET-2, and WET-3	904	980
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CERTIFICATE OF REPORTER 1009

*In the original Volume 7 of the transcript, Mr. Scollard's rebuttal testimony was inserted. His direct testimony should have been inserted. Revised Volume 7 corrects this action.

P R O C E E D I N G S

(Transcript continues in sequence from Volume 6.)

1
2
3 MR. EDENFIELD: Chairman Jacobs, with the
4 Commission's indulgence, given the hour, I have inquired of
5 Staff and the ALECs whether they had an objection to us taking
6 Dr. Taylor out of turn and calling him next so that, frankly, I
7 can get him off my payroll, and no one had an objection to
8 that.

9 CHAIRMAN JACOBS: Very well.

10 MR. EDENFIELD: So with your indulgence, I would like
11 to call Dr. Taylor as the next witness.

12 CHAIRMAN JACOBS: That's fine.

13 MR. EDENFIELD: Dr. Taylor, were you sworn this
14 morning?

15 THE WITNESS: No, I wasn't.

16 MR. EDENFIELD: I'm sorry. Yesterday, whenever it
17 was, Dr. Taylor has not been sworn.

18 CHAIRMAN JACOBS: Very well. Would you stand and
19 raise your right hand. In this matter before the Florida
20 Public Service Commission, do you swear or affirm that the
21 testimony you're about to give shall be the truth, the whole
22 truth, and nothing but the truth?

23 THE WITNESS: I do.

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

25

1 WILLIAM E. TAYLOR, Ph.D.
2 was called as a witness on behalf of BellSouth
3 Telecommunications, Inc. and, having been duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. EDENFIELD:

7 Q Will you state your name, occupation, and address for
8 the record, please, sir?

9 A Yes. My name is William E. Taylor. I'm an
10 Economist. I work for National Economic Research Associates,
11 Inc., One Main Street, Cambridge, Massachusetts 02142.

12 Q Are you the same Dr. Taylor that caused to be filed
13 in this proceeding 37 pages of surrebuttal testimony together
14 with three exhibits?

15 A Yes.

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

18 A No, I don't.

19 Q If I ask you the questions that appear in your
20 testimony today would your answers be the same?

21 A They would.

22 MR. EDENFIELD: At this point, I would ask that
23 Dr. Taylor's testimony be put into the record as if read.

24

25

1 CHAIRMAN JACOBS: Without objection, show
2 Dr. Taylor's testimony is entered into the record as though
3 read.

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**ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.
SURREBUTTAL TESTIMONY OF WILLIAM E. TAYLOR, Ph.D.
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 960786-TL
AUGUST 20, 2001**

1 **I. INTRODUCTION AND SUMMARY**

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

4 A. My name is William E. Taylor. I am Senior Vice President of National Economic
5 Research Associates, Inc. ("NERA"), head of its Communications Practice, and head of its
6 Cambridge office located at One Main Street, Cambridge, Massachusetts 02142.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL, PROFESSIONAL, AND BUSINESS**
8 **EXPERIENCE.**

9 A. I have been an economist for over twenty-five years. I earned a Bachelor of Arts degree
10 from Harvard College in 1968, a Master of Arts degree in Statistics from the University of
11 California at Berkeley in 1970, and a Ph.D. from Berkeley in 1974, specializing in
12 Industrial Organization and Econometrics. For the past twenty-five years, I have taught
13 and published research in the areas of microeconomics, theoretical and applied
14 econometrics, which is the study of statistical methods applied to economic data, and
15 telecommunications policy at academic and research institutions. Specifically, I have
16 taught at the Economics Departments of Cornell University, the Catholic University of
17 Louvain in Belgium, and the Massachusetts Institute of Technology. I have also conducted

1 research at Bell Laboratories and Bell Communications Research, Inc. I have participated
2 in telecommunications regulatory proceedings before several state public service
3 commissions, including the Florida Public Service Commission (“Commission”) in Docket
4 Nos. 900633-TL, 920260-TL, 920385-TL, 980000-SP, 980696-TP, 990750-TP, 000075-
5 TP, and 000121-TP.

6 I have also filed testimony before the Federal Communications Commission
7 (“FCC”) and the Canadian Radio-television Telecommunications Commission on matters
8 concerning incentive regulation, price cap regulation, productivity, access charges, local
9 competition, interLATA competition, interconnection and pricing for economic efficiency.
10 Recently, I was chosen by the Mexican Federal Telecommunications Commission and
11 Telefonos de Mexico (“Telmex”) to arbitrate the renewal of the Telmex price cap plan in
12 Mexico.

13 I have also testified on market power and antitrust issues in federal court. In recent
14 years, I have studied—and testified on—the competitive effects of mergers among major
15 telecommunications firms and of vertical integration and interconnection of
16 telecommunications networks.

17 Finally, I have appeared as a telecommunications commentator on PBS Radio and
18 on The News Hour with Jim Lehrer. My curriculum vita is attached as Exhibit WET-1.

19 **Q. PLEASE DESCRIBE NERA, YOUR PLACE OF EMPLOYMENT.**

20 A. Founded in 1961, National Economic Research Associates or NERA is an internationally
21 known economic consulting firm. It specializes in devising economic solutions to
22 problems involving competition, regulation, finance, and public policy. Currently, NERA

1 has more than 275 professionals (mostly highly experienced and credentialed economists)
2 with 10 offices in the U.S. and overseas offices in Europe (London, Brussels, and Madrid)
3 and Sydney, Australia. In addition, NERA has on staff several internationally renowned
4 academic economists as Special Consultants who provide their professional expertise and
5 testimony when called upon.

6 The Communications Practice, of which I am the head, is a major part of NERA.
7 For over 30 years, it has advised a large number of communications firms both within and
8 outside the U.S. Those include the regional Bell companies and their subsidiaries,
9 independent telephone companies, long distance companies, cable companies, and
10 telephone operations abroad (e.g., Canada, Mexico, Europe, Japan and East Asia,
11 Australia, and South America). In addition, this practice has provided testimony or other
12 input to governmental entities such as the FCC, the Department of Justice, the U.S.
13 Congress, state regulatory commissions and legislatures, and courts of law. Other clients
14 include industry forums like the United States Telephone Association. Last year, the
15 NERA Communications Practice received the *International Business Leadership Award*
16 from the Center for International Business Education and Research at the University of
17 Florida, citing our work on incentive regulation, transfer pricing, technological
18 convergence and opening new markets to competition.

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

20 A. I have been asked by BellSouth Telecommunications, Inc. ("BellSouth")—an incumbent
21 local exchange carrier ("ILEC")—to address economic and regulatory issues raised in this
22 proceeding in the testimony of Joseph Gillan, on behalf of the Florida Competitive Carriers

1 Association (“FCCA”), and Michael P. Gallagher, on behalf of Florida Digital Network,
2 Inc. (“FDN”). I understand that FCCA represents the interests of the alternative local
3 exchange carriers (“ALECs”) operating in Florida. Specifically, I respond to the
4 contention of Messrs. Gillan and Gallagher that BellSouth is not entitled at present to
5 interLATA authority under Section 271 of the Telecommunications Act of 1996 (“1996
6 Act”). Both would deny BellSouth that authority because, in their view, BellSouth has not
7 yet met its obligations to create the conditions for the emergence of meaningful local
8 exchange competition in Florida.

9 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

10 A. FCCA and FDN have sponsored testimony in this proceeding that purport to show that (1)
11 meaningful local competition is not occurring in Florida, (2) BellSouth is responsible for
12 the alleged lack of local competition in Florida, and (3) BellSouth’s application for
13 interLATA authority under Section 271 of the 1996 Act should be denied until meaningful
14 and irreversible local competition occurs in Florida.

15 My testimony presents evidence that competitive activity among ALECs has, in
16 fact, been increasing in Florida. More importantly, it cites evidence that ALEC activity
17 increases markedly once the ILEC is granted interLATA authority. This evidence has two
18 important implications:

- 19 1. ALECs, many of whom are also providers of interLATA long distance service, have
20 strategic reasons for delaying or impeding entry by ILECs like BellSouth into the
21 interLATA long distance market. An easy way to do so is to hold themselves back from
22 entering and participating seriously in the local exchange market, so as to create the
23 appearance of a lack of meaningful local competition (at least for residential customers).
24 Once entry into the interLATA long distance market is allowed, however, those ALECs
25 no longer have any strategic or economic interest in refraining from competing

1 vigorously.

2 2. The benefits from interLATA long distance entry by ILECs like BellSouth are not
3 restricted to greater competitive activity in the local exchange market alone.
4 BellSouth's entry will also make the interLATA long distance market more competitive
5 and reduce prices for consumers. In fact, with all carriers free to participate in any
6 telecommunications market segment, innovative and higher quality services and service
7 packages may be expected to be available from all carriers—BellSouth and ALECs
8 alike—and these, in turn, will enhance consumer welfare. Thus, denial of interLATA
9 authority to BellSouth on unsubstantiated grounds would only deny consumers the
10 substantial benefits expected to accrue to them by the 1996 Act.

11 My testimony also disputes the link that Messrs. Gillan and Gallagher have
12 attempted to make between the level of ALEC activity in Florida and BellSouth's terms
13 and conditions for providing access to its network. I demonstrate that there are a whole
14 host of other factors—none of which has anything to do with BellSouth—that can explain
15 churn in the ranks of ALECs.

16 Finally, my testimony explains why the ALEC witnesses' use of market share
17 analysis is inconclusive and misleading, whether to establish the true current state of local
18 competition in Florida, or to predict BellSouth's future market conduct with respect to its
19 competitors. In particular, it explains why, in a market in which BellSouth's market share
20 (whether of lines, revenue, or capacity) is decreasing, a supposedly high market share says
21 nothing about BellSouth's ability to dominate its competitors or to limit competition in any
22 way. In fact, because the 1996 Act has lowered sunk costs and entry barriers for ALECs
23 (by offering three alternative means of entry), local competition has taken hold and become
24 irreversible. In this respect, the fundamental conditions have been created for BellSouth to
25 receive interLATA authority in Florida.

1 **II. ALEC OBJECTIONS TO BELL SOUTH'S PETITION FOR INTERLATA**
 2 **AUTHORITY UNDER SECTION 271 OF THE 1996 ACT**

3 **Q. WHAT IS FCCA'S POSITION REGARDING BELL SOUTH'S PETITION FOR**
 4 **INTERLATA AUTHORITY UNDER SECTION 271 OF THE 1996 ACT?**

5 A. Mr. Gillan, as FCCA's principal witness, accuses BellSouth [at 3] of having used
 6 "obstructionist tactics over the past five years" to make it impossible for the "emergence of
 7 measurable and meaningful local competition" in Florida. Evidently, Mr. Gillan believes
 8 that there is not only insufficient local competition in Florida today to justify granting
 9 BellSouth the interLATA authority it seeks, but also that BellSouth remains in a position to
 10 leverage any grant of that authority to achieve "even greater dominance in the *future*."¹

11 Mr. Gillan asks [at 3] that any grant of interLATA authority to BellSouth be
 12 predicated on confirmation that BellSouth is providing potential entrants non-
 13 discriminatory and cost-based access to its network, and that the acid test for that purpose
 14 be that local competition in Florida be "measurable and meaningful."

15 **Q. WHAT EVIDENCE DOES MR. GILLAN SUBMIT TO SUPPORT HIS**
 16 **ADVOCACY?**

17 A. Mr. Gillan contends [at 4-5] that BellSouth has exaggerated the amount of local
 18 competition actually occurring in Florida. In his view, resale activity is "neither viable nor
 19 irreversible," and has actually declined 30 percent in the first quarter of 2001. He also
 20 believes that competition based on unbundled network elements ("UNEs") leased from

¹ Emphasis in original.

1 BellSouth is minimal at roughly 2 percent of the market, and that facilities-based
2 competition from ALECs is negligible and oriented only toward the most lucrative
3 customer segment. In a similar vein, Mr. Gallagher disputes [at 5-6] BellSouth's estimates
4 of the extent of local competition (particularly for business customers), and accuses [at 7]
5 BellSouth of having refused to resell its high-speed data service over the UNE loops that
6 FDN uses to provide voice service.

7 In addition, Mr. Gillan devotes much of his testimony attempting to demonstrate
8 that the UNE rates that BellSouth has proposed in its Statement of Generally Available
9 Terms and Conditions ("SGAT") would, if anything, foreclose any meaningful local
10 competition. To overcome this perceived barrier to meaningful local competition in
11 Florida, Mr. Gillan recommends [at 23-26] that the Commission require BellSouth to
12 provide its UNEs (and all possible UNE combinations, including "new combinations") on
13 non-discriminatory terms and at cost-based rates, and to make high-speed data or xDSL
14 services available for resale. Mr. Gillan also asks [at 27] that the Commission step up "its
15 vigilance and regulatory oversight" of BellSouth or to adopt a "structural approach" that
16 would supposedly induce BellSouth to operate in a manner more conducive to a
17 competitive market.

18 **Q. WHAT IS YOUR OVERALL RESPONSE TO THE TESTIMONY OF MESSRS.**
19 **GILLAN AND GALLAGHER?**

20 A. The advocacy in the ALEC witnesses' testimony is clearly structured to serve and secure
21 the ALECs' own economic interests. However, that does not mean that the Commission
22 should only be concerned with the issues that these witnesses raise, or the manner in which

1 they raise them. Evidently, their testimony is designed to make two points:

- 2 1. Meaningful local competition is not occurring in Florida.
- 3 2. Meaningful local competition cannot occur in Florida unless certain remedial measures
4 are taken. At a minimum, BellSouth must be denied its petition for interLATA
5 authority under Section 271 of the 1996 Act.

6 My testimony questions the basis of the first of those conclusions and the ALEC
7 witnesses' reading of the available data on local competition. It also disputes the narrow
8 public interest focus implicit in their testimony. For example, they appear to overlook
9 completely the 1996 Act's intent to promote competition in *all* telecommunications
10 markets. Although the FCC has predicated interLATA authority for BellSouth (and other
11 Regional Bell Operating Companies or "RBOCs") on the creation of conditions that favor
12 competitive entry in local exchange markets, it has *not* established a litmus test (in terms of
13 market share or anything else) for that threshold level of local competition. Besides, the
14 Commission has a legitimate interest in considering the benefits that *both* local competition
15 and greater long distance competition would bring to consumers in Florida. The narrow
16 focus of the ALEC testimony attempts, in effect, to obscure the immense public interest
17 value that would stem from BellSouth's entry into the in-region long distance market. The
18 ALEC witnesses also overlook mounting evidence that local competition and ALEC
19 activity are, in fact, more likely to grow when the incumbent RBOC is granted interLATA
20 authority than when the status quo is maintained.

21 As for the second conclusion, it appears that the ALEC witnesses (principally
22 Mr. Gillan) is asking the Commission to apply measures that, by any standard, are
23 excessive and even draconian for ensuring that BellSouth does its part to facilitate the
24 growth of local competition. If the SGAT rates are found wanting in any way, then the

1 Commission would surely engage the relevant parties to determine how they would need to
2 be modified to meet the FCC's rules (based on the 1996 Act) for non-discriminatory and
3 cost-based access to UNEs. In fact, that very process has been completed in Florida with
4 an Order by the Commission in Docket No. 990649-TP. However, the conditioning of
5 BellSouth's interLATA authority on some unspecified or vague threshold of local
6 competition is wholly unnecessary and contrary to the public interest.

7 **III. LOCAL COMPETITION IN FLORIDA**

8 **1. ALEC Market Performance and the Public Interest**

9 **Q. BOTH MR. GILLAN AND MR. GALLAGHER DISPUTE BELLSOUTH'S CLAIM**
10 **THAT LOCAL COMPETITION IS OCCURRING IN FLORIDA. DO YOU**
11 **AGREE WITH THEIR POSITION ON THE MATTER?**

12 A. No. The ALEC witnesses complain that local competition is, if anything, on the decline in
13 Florida, and then affix the blame for that fully on BellSouth and the manner in which it has
14 priced its UNEs or resold its advanced data services. I disagree with both their assessment
15 of the state of local competition and the putative role that BellSouth may have in the course
16 that competition has taken in Florida.

17 **Q. WHAT IS YOUR PRIMARY DISAGREEMENT WITH THE ALEC WITNESSES**
18 **IN THIS REGARD?**

19 A. The ALEC witnesses are mistaken in connecting the manner in which BellSouth provides
20 access to its network to potential entrants to what they consider to be a very low level of
21 actual local competition in Florida. While I address the latter point about the actual state of

1 local competition later, I do not accept the connection that these witnesses make. For
2 example, he states [at 7]:

3 Importantly, BellSouth's empirical estimates of competition are inconsistent
4 with other evidence, while its anecdotal information relies heavily on the early
5 (and presumptive) announcements by ALECs that have either experienced
6 financial difficulty or deployed technologies that fell well short of expectations.
7 Far from illustrating a competitive local marketplace in Florida, the underlying
8 data demonstrates that the promise of a competitive local market in Florida
9 remains an elusive goal.

10 I find this statement remarkably candid in its recognition of various factors—none
11 of which has anything to do with BellSouth—that have hampered, delayed, or otherwise
12 stalled entry by several prospective ALECs. By now, we are all familiar with the recent
13 changes in the economy, in general, and in capital markets, in particular, which have
14 adversely affected the financial integrity and risk-taking ability of new entrants. The churn
15 experienced by those prospective entrants is nothing unique to (1) Florida, (2) the
16 telecommunications industry, or (3) this most recent period in history. Moreover, it is the
17 nature of competition that entrants succeed or fail because what they do or try sometimes
18 works and sometimes doesn't. In most markets, there are no guarantees—or guarantors—
19 of successful entry. Although the protections and the assistance provided to entrants in the
20 telecommunications industry surpass greatly those available in non-regulated industries or
21 markets, there is no denying the possibility that the business cycle or the entrants' own
22 actions contribute in large part to determining how successfully competition can take root
23 or grow. None of this may have anything to do with the behavior and conduct of the
24 incumbent firm.

25 **Q. COULDN'T, AS MR. GILLAN SUGGESTS, BELLSOUTH'S BEHAVIOR**

1 **TOWARDS ITS RIVALS HAVE ANY EFFECT ON THE STATE OF LOCAL**
2 **COMPETITION IN FLORIDA?**

3 A. Of course it could. After all, BellSouth is the incumbent carrier that once was the sole
4 owner of network facilities and provider of services within its service territory. However,
5 having recognized just how expensive it could be for competitors to enter using solely their
6 own facilities, the 1996 Act and subsequent FCC rules have guaranteed that entry could
7 occur initially by easier means, e.g., through resale of the incumbent's retail services and
8 cost-based and non-discriminatory access to essential network elements and platforms. I
9 do not disagree with Mr. Gillan that if BellSouth were to evade providing these means of
10 entry to potential rivals, competitive entry would be disrupted. However, neither he nor
11 Mr. Gallagher have offered substantive proof that BellSouth has provided inadequate
12 access to its network. Nor have they shown any clear connection between BellSouth's
13 market conduct and the performance and economic fortunes of its new local exchange
14 rivals in Florida.²

15 Providing non-discriminatory and cost-based access to BellSouth's network reduces
16 and eliminates barriers to entry that competitors would otherwise face. However,
17 removing entry barriers does not, by itself, guarantee successful entry and operation by new
18 ALECs. Any supposed failure of "meaningful" local competition in Florida can also be
19 explained by a host of other factors, including, but not limited to, the following.

20 1. New carriers may experience crippling financial difficulties, particularly in tight capital

² See, e.g., testimony by BellSouth witness Thomas Williams in this proceeding which counters Mr. Gallagher's charge that FDN is precluded from providing high-speed data service over BellSouth's Digital Loop Carrier facilities when FDN is the voice service provider.

- 1 or credit markets where continued dependence on venture capital becomes problematic.
- 2 2. Entrants may adopt technologies that are not cost-effective or market strategies that do
3 not appeal to customers.
- 4 3. In some markets, new carriers must compete against inefficient retail market prices, e.g.,
5 where universal service obligations set up implicit or explicit subsidies that make
6 competition in the local exchange difficult and unattractive.
- 7 4. Finally, carriers who already provide interLATA services may have their own strategic
8 reasons to delay entry or serious participation in the market.

9 Where ALECs avoid these problems, entry has been more brisk, e.g., to serve
10 business local exchange customers. Also, ALEC entry, as a rule, has been greater in the
11 more populous and industrialized states than in the more rural or less populous states. For
12 example, according to a recent FCC report (see *infra*, fn. 3), the states with double-digit
13 ALEC access line market share were, in order, New York, Minnesota, Louisiana, Kansas,
14 Texas, Massachusetts, Georgia, Illinois, Iowa, and Pennsylvania. Highly averaged access
15 line charges frequently make it difficult for local exchange carriers to recover their line and
16 service costs in the sparsely populated states and, hence, make entry less attractive to
17 ALECs.

18 All of these factors can have a direct bearing on the course of local competition in
19 Florida, even though Mr. Gillan would prefer that the Commission's spotlight remain
20 trained solely on BellSouth's market conduct.

21 **Q. HOW DO YOU RESPOND TO THE EXAMPLE THAT MR. GALLAGHER**
22 **PROVIDES [AT 6-7] WHICH PURPORTS TO SHOW THAT EVEN IN A**
23 **"MARKET" LIKE ORLANDO, WHICH HAS A HIGH CONCENTRATION OF**
24 **BUSINESS CUSTOMERS, THE ALEC "SHARE" OF THOSE CUSTOMERS IS**
25 **ONLY ABOUT 7 PERCENT?**

1 A. Mr. Gallagher's "analysis" of the Orlando "market" and his calculation of the likely ALEC
2 share of business customers in that market does not establish cause and effect. That is, it
3 does not prove that BellSouth or, more generally, any lack of competition is at fault for the
4 allegedly low ALEC success rate at signing up business customers in the Orlando area.

5 Assuming for the moment that the 7.2 percent ALEC share calculated by Mr. Gallagher is
6 approximately correct—which may not be the case at all—that is not *per se* evidence of
7 either insufficient local competition or BellSouth's obstruction of competition. There is
8 nothing in Mr. Gallagher's analysis to indicate whether business customers in the Orlando
9 area have somehow been shielded from competition by BellSouth, such as by BellSouth
10 making it impossible for the ALECs to have access to those customers.

11 **Q. THE ALEC WITNESSES POINT TO THE RECENT FINANCIAL WOES OF**
12 **SOME ALECS TO SUGGEST THAT LOCAL COMPETITION MAY NOT**
13 **OCCUR OR BE PERMANENT. DO YOU AGREE?**

14 A. Absolutely not. There is virtually no chance that competition will disappear or even
15 significantly recede in the local exchange even if particular competitors exit the market.
16 First, the major competitors are not "start-up" ALECs; many substantial firms compete in
17 Florida and elsewhere, including AT&T (and its Teleport subsidiary), WorldCom (and its
18 MCI Metro and MFS subsidiaries), Time Warner, and other members of the FCCA. In fact
19 the major competitors are not really "ALECs," *per se*. They are more accurately
20 characterized as diversified telecommunications service providers.

21 Second, the number of lines served by competitors has been growing vigorously—
22 especially in the last year. ALECs have made substantial sunk investments between 1997

1 and 2000.³ This substantial sunk investment clearly demonstrates that competition is
2 permanent. Local competitors, as a whole, will not walk away from this substantial sunk
3 investment.

4 Third, the current travails of some ALECs are a normal part of the competitive
5 process. For example, a telecommunications analyst noted recently:

6 Statistically speaking, the CLEC industry is performing at a phenomenal rate
7 when compared with how other industries performed in their startup phase, such
8 as the automobile, railroad or PC industries. Admittedly, as the industry
9 approaches the five-year mark, we are witnessing some fallout, but what we
10 should be focusing on is the impressive success of the CLEC market. According
11 to the most conservative of estimates, approximately 50 percent of all startups
12 fail by the fifth year. If this is true then the CLEC industry should be lauded as
13 truly exceptional. ... NPRG [New Paradigm Resources Group] reports 223
14 CLECs as of late 2000, thus making the failure rate due to a bankruptcy filing a
15 measly 4 percent.⁴

16 Finally, and most importantly, even if some individual ALECs exit the local
17 market, the remaining competitors are likely to purchase their assets (in the case of a
18 facilities-based ALEC) and/or take over their customer bases. This would strengthen the
19 purchaser's network and product mix and, ultimately, strengthen competition.⁵ Mr.

³ According to the Association for Local Telecommunications Services ("ALTS"), ALECs invested over \$55 billion in infrastructure nationally between 1997 and 2000. David A. Wolcott, Director, Public Policy Research, ALTS, "An ALTS Analysis: Local Competition Policy & The New Economy," February 2, 2001: 4; available at www.alts.org <<http://www.alts.org>>, retrieved May 10, 2001. A similar figure (\$56 billion) was cited in another ALTS report, *See* The Association for Local Telecommunications Services, "The State of Local Competition 2001," February 2001: 4.

⁴ Robert A. Saunders, Senior Analyst, "Evolution in Action," Eastern Management Group, March 16, 2001, available at <http://www.teledotcom.com/article/TEL20010316S0004>, retrieved June 8, 2001.

⁵ As Mr. Saunders states: "the very factors that are currently challenging the industry will ultimately lead to the development of a strong and viable CLEC sector. Companies that are doing well now will most likely continue to succeed due to experienced management, financial discipline, strategic acquisition and strong customer service. Other companies will rise up to replace the ones that fall along the way, learning from past mistakes and leveraging new technologies to more efficiently compete with incumbents." *Id.*

1 Gallagher's concern [at 5] that a significant fraction of ALECs in Florida have exited the
2 market over the past year is, therefore, misplaced. A reduction in the *number of*
3 *competitors* is not tantamount to a reduction in *competition* itself.

4 **Q. IS IT LIKELY THAT THE APPARENT SHAKEOUT AMONG ALECS WILL**
5 **LEAD TO STRONGER COMPETITION?**

6 A. Yes. The current apparent shakeout, including consolidations and acquisitions, will result
7 in robust, viable competition. Although a few competitors are struggling and might even
8 go out of business, there is little chance that the competition faced by BellSouth will
9 become ineffective or anything less than permanent. Indeed competitors have been
10 becoming larger in terms of revenue, geographic reach, and service lines, better able to take
11 advantage of economies of scale and scope, and more credible with customers (allowing
12 them to experience lower churn rates). Thus, there can be no lasting long-term negative
13 effect even if a number of the smaller competitors do not survive as separate entities. One
14 industry source accurately summarized the situation this way:

15 Expect the strong CLECs to bulk up this year, while the weaker ones turn into
16 road kill on the Information Superhighway. Although many carriers are facing
17 slowing sales, plummeting stock prices and possible bankruptcy, many CLECs
18 have found their niche and will survive the economic storm.⁶

19 **Q. PLEASE EXPLAIN WHAT STRATEGIC REASONS POTENTIAL**
20 **COMPETITORS MAY HAVE FOR DELAYING THEIR ENTRY AND SERIOUS**
21 **PARTICIPATION IN THE LOCAL EXCHANGE MARKET.**

⁶ R. Pringle, "CLEC Shopping Days?" *Communications Today*, 7(36), February 26, 2001.

1 A. Once the 1996 Act has been fully implemented, the telecommunications industry will see
2 vigorous competition in each of its market segments. For the longest time, interstate long
3 distance markets were kept insulated from competition from ILECs, even as those ILECs
4 did not have to face competition from other carriers in local exchange markets. Reciprocal
5 entry into each other's markets now would leave these carriers with both opportunities and
6 problems. Obviously, the greatest opportunity in these seamless markets with all service
7 prohibitions lifted would be for a carrier—be it an erstwhile local exchange carrier or an
8 erstwhile long distance carrier—to offer comprehensive service combinations on attractive
9 terms (such as term and volume discounts, one-source billing, comprehensive customer
10 service, etc.). On the flip side, the greatest problem would be for a carrier to protect its
11 customers and profit margins from its traditional services, even as it deals with new
12 competitors for those services and tries itself to break into new market segments.

13 With economic incentives shaped in this manner, it is perfectly understandable for
14 both ILECs and long distance carriers to want to act in ways that protect their positions in
15 their traditional lines of business for as long as possible. The difference, of course, is that
16 while the 1996 Act imposes a duty on ILECs like BellSouth to perform market-opening
17 functions, there is no corresponding or reciprocal duty on long distance carriers.

18 Accordingly, the long distance carriers—many of which are manifestly interested in
19 assuming the role of ALECs in the local exchange market—have strategic reasons to delay
20 entry by BellSouth and other RBOCs into the interstate long distance market. Here, too,
21 the fundamental asymmetry is striking: even though the public interest would be well
22 served by additional competition for long distance services, there is little attempt to

1 examine or discuss that possibility. Rather, there has been a concerted effort all around the
2 country to impede RBOC entry into the interstate interLATA long distance market, even
3 after those RBOCs have satisfied various state regulatory agencies about their compliance
4 with the requirements of Sections 271 and 272 of the 1996 Act.

5 **Q. IS THIS SUPPOSEDLY STRATEGIC ATTEMPT TO DELAY RBOCs' RECEIPT**
6 **OF INTERLATA AUTHORITY MERELY A MATTER OF SPECULATION ON**
7 **YOUR PART?**

8 A. Not at all. First, it is important to recognize that with roughly equal-sized annual revenues
9 in the local exchange and interstate long distance markets *both* sides have economic
10 incentives to delay or block further competition.⁷ However, the duties imposed on RBOCs
11 like BellSouth by the 1996 Act and FCC rules make it much more difficult for the RBOCs
12 to impede the development of local competition. The long distance carriers and would-be
13 ALECs face no corresponding burden in delaying RBOC entry into interLATA markets.

14 Second, there is now increasing evidence that the strategy of stalling and blocking
15 interLATA authority for RBOCs is rapidly abandoned once the FCC, in fact, grants such
16 authority in any given state. In fact, FCC and other sources now confirm that ALEC entry
17 and participation have increased significantly *after* interLATA authority was granted to the
18 RBOCs. This abrupt turnabout only substantiates the conclusion that any perceived lack of
19 local competition can be attributed to strategic game-playing by long distance carriers who

⁷ Recent FCC data show that revenues from local and long distance services were \$112 billion and \$108 billion, respectively, in 1999. FCC, *Telecommunications Industry Revenue: 1999*, Industry Analysis Division, Common Carrier Bureau, September 2000.

1 are typically the most well-resourced and durable ALECs to enter local markets.

2 **Q. PLEASE ELABORATE ON THE GROWING EVIDENCE IN THIS REGARD.**

3 **A.** A recently released FCC report offers startling evidence on how quickly ALEC competitive
 4 activity has increased in New York and Texas, the first two states to win FCC approval for
 5 their incumbent RBOCs (Verizon and SBC, respectively) to offer in-region interLATA
 6 long distance services.⁸

7 According to this report:⁹

- 8 1. 20 percent of end-user lines in New York were served by ALECs (the most of any state)
 9 as of December 31, 2000, a full year since Verizon received interLATA authority in the
 10 state. This was up from 9 percent at the end of 1999. ILEC-served lines actually
 11 declined by over 1.7 million (14 percent) during that year, while ALEC-served lines
 12 gained by over 1.5 million (132 percent).
- 13 2. 12 percent of end-user lines in Texas were served by ALECs (fifth highest among all
 14 states) as of December 31, 2000, six months since SBC received interLATA authority in
 15 the state. This was up from 4 percent at the end of 1999. ILEC-served lines actually
 16 declined by over 538,000 (4 percent) during that year, while ALEC-served lines gained
 17 by over 1.1 million (188 percent). ALECs added 644,980 lines in the second half of
 18 2000 alone (following the grant of interLATA authority for SBC), or nearly 60 percent
 19 of the annual gain in 2000.
- 20 3. Of the 27 states for which complete data on end-user lines were available from both
 21 1999 and 2000, only Virginia exceeded the impressive rate of growth of end-user lines
 22 served by ALECs in New York and Texas.
- 23 4. ALEC's share of end-user lines in New York and Texas were higher by 150 and 50
 24 percent, respectively, than the ALEC share nationwide (8 percent).
- 25 5. As of December 31, 2000, Texas and New York had the highest and second highest
 26 number of ALECs (at 25 and 23, respectively) in operation. Also, they had the second
 27 and third highest percentage—after Florida—of Zip Codes with seven or more

⁸ FCC, *Local Telephone Competition: Status as of December 31, 2000*, Industry Analysis Division, Common Carrier Bureau, May 2001. Also see the accompanying news release "Federal Communications Commission Releases Latest Data on Local Telephone Competition."

⁹ See, in particular, Tables 6, 8, and 12, and Table 4 of another FCC report, *Local Telephone Competition at the New Millennium*, Industry Analysis Division, Common Carrier Bureau, August 2000.

1 operational ALECs (at 36 and 32 percent, respectively). In contrast, among the most
2 populous states, New York and Texas had among the lowest percentage of Zip Codes
3 not served by any ALEC at all (at 16 and 7 percent, respectively).

4 Taken together, these statistics reveal the degree to which increased competitive
5 activity in the local exchange market is associated with states in which the incumbent
6 RBOCs have received interLATA authority from the FCC. From the standpoint of
7 economic incentives, it makes sense that ALEC activity should be so pronounced in the
8 larger and more populous states in which all remaining barriers to competition in all market
9 segments have been removed.

10 **Q. IS THERE ANY OTHER EVIDENCE ON THIS ISSUE?**

11 A. Yes. A recent study conducted by Professor J. A. Hausman at the Massachusetts Institute
12 of Technology compared the effects of long distance entry by Verizon in New York and
13 SBC in Texas with those of the status quo in two control states, Pennsylvania and
14 California. Professor Hausman used Pennsylvania and California as statistical control
15 groups for New York and Texas (respectively) because the states are similar with respect to
16 LATAs, ILEC ownership structure, and geography, and differ mainly by whether the ILEC
17 has received Section 271 authority.

18 The Hausman study found that basic local service bills fell by 6.6 percent in New
19 York after Verizon received interLATA authority and by 2.8 percent in Texas after SBC
20 received interLATA authority. More importantly for present purposes, the study estimated
21 that ALECs' revenue market share for local services rose dramatically in New York and
22 Texas, relative to the control states, after interLATA authority was granted. In New York,
23 market share rose from 3.5 percent to 17.2 percent (compared to Pennsylvania's 1.1

1 percentage point gain) and, in Texas, the gain in market share was from 8 percent to 15.1
2 percent (compared to California's 0.9 percentage point gain).

3 In addition, the Hausman study found that long distance entry by Verizon in New
4 York and SBC in Texas induced substantially greater reductions in long distance prices in
5 those states than were observed in the control states following FCC action to reduce
6 interstate access charges. Professor Hausman estimated that long distance prices were 9-14
7 percent lower in New York than they would have been without interLATA authority for
8 Verizon, and 19-24 percent lower in Texas than they would have been without interLATA
9 authority for SBC.

10 These findings are significant for two reasons. First, they present the first and most
11 comprehensive comparison to date of the differential experiences of comparable states that
12 differ primarily in that one has allowed long distance entry by the ILEC and the other has
13 not. The use of control states puts the post-long distance entry experience of New York
14 and Texas in the proper perspective. Second, they confirm the FCC's survey-based report
15 that competitive activity *in the local exchange markets* increased dramatically after the two
16 states were allowed to have unfettered long distance competition. From the public interest
17 standpoint, therefore, the consumer benefits of granting interLATA authority to RBOCs
18 like BellSouth are two-pronged: (1) bill savings and welfare gains from significantly lower
19 long distance prices and (2) lower local service bills and greater ALEC penetration.

20 2. Market Share Analysis and BellSouth's Market Performance

21 Q. MR. GILLAN ALLEGES THAT THE VARIOUS INDICATORS OF ENTRY
22 (RESALE, UNE-BASED, AND OWN FACILITIES-BASED) IN FLORIDA DO NOT

1 **PAINT A HOPEFUL PICTURE ABOUT LOCAL COMPETITION IN FLORIDA.**

2 **DO YOU ACCEPT HIS ANALYSIS AND CONCLUSIONS?**

3 A. No. Mr. Gillan's conclusions are unacceptable because his analysis is flawed and his
4 conclusions are incorrect. As discussed above, recent statistics (especially those released
5 by the FCC) paint a far more optimistic picture about ALEC activity, particularly *in*
6 *response to* the grant of interLATA authority to the incumbent RBOC. Also, although Mr.
7 Gillan concludes that it must be BellSouth's fault that ALEC activity in Florida is, in his
8 view, anemic, the Commission should keep in view the host of other factors (discussed
9 above) which have a direct and non-negligible effect on such activity.

10 Mr. Gillan contends [at 9] that the resale-based entry "is declining rapidly, and at a
11 rate far faster than gains in either UNE-P or loops individually. ... Nearly 25% of the
12 competitive activity that BellSouth claims exists ... are [sic] based on an entry strategy that
13 is not only not irreversible, it is in full reverse already." First, Mr. Gillan's conclusion that
14 the number of resold lines is rapidly declining stems from an incorrect interpretation of the
15 data, as discussed in the rebuttal testimony of BellSouth witness Cynthia Cox.

16 Second, even if resale demand were falling or were not growing at an increasing
17 rate, one cannot conclude that local competition has failed. The role of resale in
18 telecommunications is transitional. It is a mechanism to allow entrants to compete in mass
19 markets without having to deploy a ubiquitous network, much as MCI and Sprint were able
20 to do in the early days of long distance competition by reselling AT&T services. In the
21 long run, resale is not expected to be as profitable as facilities-based entry: resale-based
22 entry makes it more difficult for ALECs to differentiate their services or add their own

1 innovative features (a matter that Mr. Gillan recognizes, at 9) and is, therefore, not ideal for
2 ALECs eager to offer tangible alternatives to the ILEC's services. However, as an entry
3 strategy, resale serves ALECs well in areas where wholesale facility costs exceed the retail
4 prices that ILECs are allowed to charge.

5 Third, the period identified by Mr. Gillan is also one in which the UNE platform
6 (combined loop and switching) has been made available to ALECs. As UNE-P is
7 functionally similar and significantly cheaper than resale, it is not surprising that ALECs
8 would substitute UNE-P facilities for resale.

9 Finally, such substitution is entirely consistent with the U.S. Department of
10 Justice's concept of irreversible competition, Mr. Gillan's claim to the contrary
11 notwithstanding. The irreversibility standard for competition was developed for the Justice
12 Department by Professor Marius Schwartz and is described as follows:

13 The foregoing analysis persuades me that BOC entry is appropriate when, and
14 only when, the market in the state has been irreversibly opened to local
15 competition....Opening the market does not require evidence of local
16 competition of all forms and in all regions of a state sufficient to substantially
17 discipline BOC market power. The Act aims to let market forces determine
18 what forms of entry work best and where...¹⁰

19 By this standard, entry and operation by ALECs, taken as a *group*, should become
20 irreversible before local competition can be said to have taken hold. Most importantly, it is

¹⁰ Affidavit of Marius Schwartz, "Competitive Implications of Bell Operating Company Entry into Long Distance Telecommunications Services," May 14, 1997, filed with the FCC as an appendix to the Department of Justice's evaluation of SBC's application to provide interLATA services in Oklahoma, May 16, 1997, *In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, and of Ameritech's application in Michigan, June 25, 1997, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137.

1 competitive entry *in general* that should be irreversible, not any specific mode of entry
2 such as resale.

3 Mr. Gillan also blames [at 9] this alleged failure of resale-based entry on “a small
4 margin between the wholesale and retail rate” and the “negligible margins [that] exist now”
5 after the Eighth Circuit of Appeals vacated the FCC’s avoidable cost methodology for
6 setting the wholesale discount for resold services. The fact is that with the wholesale
7 discount for resold services and UNE prices set at efficient levels, the potential entrant
8 should be indifferent between using either resale or UNEs to enter. Contrary to Mr.
9 Gillan’s reasoning, this has nothing to do with the size of the margin *per se* between the
10 wholesale rate and the retail rate. The problem with resale, of course, is that it does not
11 allow entrants to differentiate or develop their own services. Therefore, it is natural for
12 resale to become a less-preferred mode of entry as competition matures. Also, if wholesale
13 and retail rates are not compatibly geographically de-averaged, then potential entrants
14 could be induced to prefer one mode of entry over another, depending on the exact
15 relationship between those rates.

16 **Q. DOES MR. GILLAN OFFER AN ASSESSMENT OF THE OTHER MODES OF**
17 **ENTRY IN FLORIDA’S LOCAL EXCHANGE MARKETS?**

18 A. Yes. Mr. Gillan believes, however, that ALECs have not made much headway using the
19 two other means of entry either. For example, he estimates [Gillan, Exhibit JPG-3] UNE-
20 based competition in Florida to be limited to 1.5 percent (in line terms) and 1.4 percent (in
21 revenue terms). Furthermore, he contrasts [Gillan, Exhibits 1 and 5] BellSouth’s estimate
22 of a ALEC market share (in line terms) of 10.6 percent against his own estimate of 3.7

1 percent (“low estimate”) to 5.5 percent (“high estimate”). While BellSouth witness
2 Cynthia Cox responds to Mr. Gillan on this point, I note here that even the FCC has found
3 the ALEC market share in Florida to be 8 percent, a figure that is considerably higher than
4 Mr. Gillan’s.¹¹

5 **Q. DOESN’T MR. GILLAN CHALLENGE [AT 18-19] THE FCC’S ESTIMATE AS**
6 **BEING INFLATED FOR FAILING TO ADJUST FOR THE DIFFERENCE**
7 **BETWEEN “LINES” AND “VOICE GRADE EQUIVALENTS?”**

8 A. Yes, but Mr. Gillan makes the unsupported assertion [at 17-18 and Exhibit JPG-6] that the
9 FCC survey report incorrectly compares BellSouth’s lines to ALECs’ voice grade
10 equivalents. However, the FCC’s instructions to survey respondents—which I have
11 attached as Exhibit WET-3—make it clear *several times* that the information sought
12 pertains to voice grade equivalent lines. There is no credible reason to believe that,
13 contrary to these instructions, ILECs alone responded with line measures, while all ALECs
14 responded faithfully with voice grade equivalents.

15 **Q. MR. GILLAN USES MARKET SHARE ANALYSIS TO SUPPORT HIS**
16 **CONTENTION THAT LOCAL COMPETITION IS INSUFFICIENT IN FLORIDA**
17 **BECAUSE BELLSOUTH HAS FAILED TO PROVIDE ALECS NON-**
18 **DISCRIMINATORY ACCESS TO ITS NETWORK. DO YOU ACCEPT HIS**
19 **REASONING?**

20 A. No. As I remarked earlier, the connection Mr. Gillan makes between an allegedly low

¹¹ FCC, *Local Competition Report*, May 2001, Table 6.

1 level of local competition in Florida and BellSouth's alleged denial of non-discriminatory
2 access to its competitors is overly simplistic and ignores other reasons for variations in
3 ALEC activity. Moreover, Mr. Gillan [at 3] makes a larger inference with which I
4 disagree, namely, that were BellSouth to be granted interLATA authority in Florida, it
5 would "gain even greater dominance in the future." Although Mr. Gillan does not explain
6 the sense in which he uses the term "dominance," I am aware of at least two possible
7 usages.

8 First, dominance may simply be a statement about market share (in terms of
9 revenue, lines, or capacity), but carry no further connotation about the firm's behavior.
10 That is, the focus is on market *structure*, rather than on market *conduct*. Alternatively,
11 dominance may imply not merely "high" market share, but also the ability to exert market
12 power to the detriment of the firm's competitors, i.e., a statement about both market
13 structure and conduct. No matter how Mr. Gillan means to use the term, the only matter of
14 substance that should concern this Commission is whether a high market share for
15 BellSouth now and in the future would augur badly for Florida consumers. In other words,
16 is BellSouth able now, and will it be able in the future, to exert market power simply on the
17 strength of its high market share? In my opinion, BellSouth's high market share in the
18 local exchange market presently foreshadows no such dire outcome.

19 **Q. PLEASE EXPLAIN WHY A MARKET SHARE ANALYSIS (SUCH AS MR.**
20 **GILLAN CONDUCTS) DOES NOT NECESSARILY IMPLY THAT BELLSOUTH**
21 **WILL EXERCISE MARKET POWER NOW AND IN THE FUTURE.**

22 A. To begin with, it is useful to remember that, for historical reasons, BellSouth was the sole

1 service provider in the local exchange market in Florida until the passage of the 1996 Act.
2 Although, by definition, this gave BellSouth monopoly status prior to the 1996 Act, i.e., a
3 market share of 100 percent, it is useful also to remember that BellSouth was never
4 permitted to exercise market power commensurate with that status. In other words,
5 regulation disciplined BellSouth's actions in the local exchange market, performing the
6 same function that competition would perform in a market with no entry barriers.

7 Now, in the wake of the 1996 Act, the local exchange market in Florida is in
8 transition to deregulation and competition. That target state, however, cannot be attained
9 by simply passing legislation or encoding the new laws into new rules of engagement. The
10 new laws and rules have merely provided the necessary conditions, i.e., reduced barriers to
11 entry, by which competitive entry can occur. This removal of entry barriers does *not*
12 guarantee—nor should it—that any entry that occurs will be successful and will occur at
13 BellSouth's expense. That is, there can be no expectation that BellSouth will not compete
14 as strenuously to keep its customers as new entrants may compete to take those customers
15 away.

16 While ensuring fair and efficient access to BellSouth underlying network is
17 consistent with promoting competition in the local exchange, handicapping any one
18 party—be it BellSouth or a ALEC—is not. Thus, beyond setting terms and conditions
19 which ensure that ALECs can engage with BellSouth on an efficient and equitable basis,
20 there is no compelling reason for the Commission to somehow restrain BellSouth until its
21 market share falls to some acceptable, but entirely arbitrary, level. I believe that the
22 Commission has actively pursued over the past five years precisely the rules of engagement

1 that create the necessary conditions for competition. It has another opportunity now to
2 ensure that BellSouth's proposed SGAT remains supportive of those conditions.

3 The flaw in Mr. Gillan's market share analysis is that it fails to recognize that there
4 is no magic number or level to which the incumbent firm's market share must fall before
5 the process of competition that is underway can be declared to be beyond harm's reach. In
6 fact, no specific or trigger level of market share is contemplated for this purpose in either
7 Section 271 of the 1996 Act or in the FCC's implementing rules. In a market in which
8 every firm starts from scratch (i.e., with little or no market share), but becomes increasingly
9 concentrated because one or more firms in it are able to extract some advantage not
10 available to the rest, there may be legitimate cause for concern. However, in a market in
11 which one firm, for historical reasons, starts with 100 percent market share and experiences
12 an erosion of that share with increasing competitive entry, there cannot be the same cause
13 for concern. In other words, only increasing, rather than decreasing, market share of the
14 dominant incumbent (or increasing concentration of the market as a whole) should be
15 worthy of regulatory investigation and action. Mr. Gillan provides no evidence that that is
16 happening, only that BellSouth's market share is not falling fast enough for his taste.

17 Again, as I said earlier, there can be numerous reasons for that, none of which is connected
18 to BellSouth.

19 **Q. ARE THERE OTHER MECHANISMS IN PLACE WHICH WOULD PREVENT**
20 **ANY EFFORT BY BELL SOUTH TO SUBVERT COMPETITION FROM ALECS?**

21 **A. Yes.** Even after BellSouth is allowed entry into the interLATA long distance market, the
22 Commission would retain full oversight over BellSouth's rates for access to its network,

1 the quality of wholesale service provided to ALECs, etc. Besides, the ALECs themselves
2 are obviously vigilant and have the resources to seek relief and redress if they feel
3 exploited or disadvantaged in any way by BellSouth. BellSouth itself has implemented a
4 voluntary and self-effectuating enforcement mechanism that obliges it to pay expeditiously
5 to aggrieved parties penalties for poor or non-compliant wholesale service quality. All of
6 these factors provide protections over and above what would be available from the
7 marketplace alone. Hence, a market share analysis cannot convey the real picture of the
8 protections available against attempt by BellSouth to manipulate its competitors.

9 **Q. EARLIER YOU CITED MARKET SHARE DATA TO CLAIM THAT**
10 **COMPETITIVE ACTIVITY HAS BEEN INCREASING IN FLORIDA. DOES**
11 **THAT NOT CONFLICT WITH YOUR PRESENT CLAIM THAT MARKET**
12 **SHARE ANALYSIS CONTAINS NO USEFUL INFORMATION ABOUT**
13 **BELLSOUTH'S IMPACT ON COMPETITION?**

14 A. No. My earlier reference to market share data was intended to provide evidence of
15 competitive inroads made by ALECs since the 1996 Act. However, such market share
16 information cannot, and should not, be used in any way to draw inferences about
17 BellSouth's market conduct in the future, as Messrs. Gillan and Gallagher have done.

18 **Q. ARE YOU SAYING THAT MARKET SHARE IS NOT A SOUND PREDICTOR OF**
19 **MARKET CONDUCT?**

20 A. Yes. Market share reflects the market structure that has resulted from *past* actions. With
21 BellSouth's sole provider status in the past, it should be no surprise that its market share is

1 where it is today, a few short years after the 1996 Act. A much better predictor of market
2 power and the future conduct of firms in the market are the conditions of entry and exit. If
3 barriers to entry remain, the incumbent firm will be able to exert market power unless
4 otherwise restrained. However, once those barriers to entry (and exit) have been removed
5 or reduced, even a dominant incumbent firm may be in no position to exercise market
6 power or prevent competitive activity.

7 Economists agree that sunk costs are the most important barrier to entry or exit.¹²

8 Faced with the prospect of having to make large and risky capital outlays simply to enter
9 the market, and the further prospect of being unable to recover those costs in the event of
10 having to exit the market, a firm may choose not to enter the market in the first place.

11 However, any mechanism or regulation that lowers those sunk costs to negligible or
12 manageable levels holds the promise of greater competitive entry and participation. That
13 mechanism was provided by the 1996 Act and follow-on FCC rules in the form of the
14 ILEC's duties to interconnect, unbundle its network, and offer its services for resale at
15 wholesale discounts. The considerable facility costs of entry having been avoided in this
16 fashion, new ALECs can form and compete despite the obvious difference in size between
17 themselves and the incumbent.¹³

18 **Q. PLEASE EXPLAIN HOW, DESPITE THE PRESENCE OF A DOMINANT**

¹² Sunk costs are costs that cannot be easily recovered or reversed if a firm should decide to scale back or stop production or, in the extreme, exit the market. Sunk costs need not always be fixed costs.

¹³ Sunk costs associated with developing a customer base may still remain. That is why resale-based entry can provide the respite ALECs need to be able to start offering service while taking the time to acquire and retain customers.

1 **INCUMBENT FIRM, THE ABSENCE OF SUNK COSTS OF ENTRY AND EXIT**
2 **CAN PREVENT ANY EXERCISE OF MARKET POWER.**

3 A. Competition—particularly of the “perfect” or textbook kind—is not the only form of
4 market organization that can prevent the exercise of market power. Another form of
5 market organization known as “contestability” can prevent market power from emerging in
6 a market that has one dominant firm (in terms of market share) and a competitive fringe of
7 relatively small firms. According to the theory of contestable markets, when the market
8 structure is as described and sunk costs are low or non-existent, even small competitors can
9 carry out “hit-and-run” entry, i.e., enter at very low cost, undercut the dominant firm for
10 services for which the latter is charging supra-competitive prices, collect a profit, and exit
11 at very low cost, if necessary.¹⁴ Although this could create some churn in the ranks of the
12 small competitors, the end result is to effectively discipline the pricing practices of the
13 dominant incumbent firm. Despite its relatively large size, that firm cannot exercise
14 market power or abuse consumers.

15 **Q. DOES THE MANNER IN WHICH MARKET SHARE IS MEASURED HAVE ANY**
16 **BEARING ON THESE ISSUES?**

17 A. No, the basic unsuitability of a market share measure for predicting future market conduct
18 and performance (of *any* carrier) will remain whether market share is measured in terms of
19 revenue, lines, or capacity. However, it is worth noting that, as far as market share
20 measures go, the most faithful representation of market structure comes not from revenue

¹⁴ William J. Baumol, John C. Panzar, and Robert D. Willig, *Contestable Markets and the Theory of Industry*
(continued...)

1 or line share measures, but rather from capacity share measures. A market share analysis
2 based on *lines* (such as in the FCC's survey report) is more likely to overstate
3 concentration—and understate competition—in the market because a disproportionately
4 small percentage of access lines may account for a disproportionately large percentage of
5 revenues, particularly in light of the known fact that competitors tend initially to
6 concentrate on securing the business of large, high-volume customers to the neglect of
7 smaller customers. Therefore, in the early aftermath of the opening of a market to
8 competition, conventional market share analysis tends to overstate the degree to which the
9 market is actually concentrated and the exercise of market power that is actually possible.

10 Measuring market share in terms of *capacity* or the stock of productive facilities,
11 rather than lines or revenues, gives a more reliable predictor of the firm's future (strategic)
12 behavior.¹⁵ The capacity-based share measures the total volume of output that the firm's
13 installed productive facilities could produce. For this reason, a firm's capacity is a
14 determinant or driver of outcomes such as the number of lines sold or revenue dollars
15 earned. Larger capacity usually translates into an ability to serve greater volumes of
16 existing or new demand. The capacity share measure is sometimes depicted directly in
17 terms of the size of the facilities themselves (e.g., the number of route-miles of installed

(...continued)

Structure, revised edition, New York: Harcourt Brace Jovanovich, 1988.

¹⁵ The Department of Justice has recognized in its *Horizontal Merger Guidelines* that market shares should be calculated using the best indicator of firms' future competitive behavior. For differentiated products, sales revenues are a better indicator while, for undifferentiated products, physical capacity is a more suitable indicator. Capacity should be understood as the stock of productive facilities rather than the access lines over which customers receive services. Capacity refers to how quickly service provision can be expanded; access lines provide no such information.

1 fiber from which various services could be provided). ALECs tend to have relatively more
2 fiber deployed in their networks than ILECs; hence, measures of line and capacity market
3 share are quite likely to diverge.

4 **Q. HAS ANY OF THE PARTIES IN THIS PROCEEDING TAKEN POSITIONS**
5 **ELSEWHERE THAT ARE CONSISTENT WITH YOUR APPROACH TO**
6 **ASSESSING COMPETITION AND USING MARKET SHARE ANALYSIS?**

7 A. Yes. In other proceedings, AT&T—which is an ALEC member of FCCA in this
8 proceeding— has, through a variety of economic experts, acknowledged the limitations of
9 market share analysis and argued against using it for predicting the incumbent’s market
10 conduct. These experts testified that if new entrants can provide substitutes and expand
11 rapidly, then those carriers can prevent an incumbent with a high market share from
12 exercising market power. They also emphasized that regardless of its market share, the
13 incumbent’s market power will be constrained if entry barriers are low. AT&T has also
14 argued that, to the extent that market concentration is relevant, it should be measured using
15 the relative capacities of the competitors in the market, not their shares of recent revenues
16 or output.

17 The FCC summarized AT&T’s position in the so-called Non-Dominance
18 proceeding as follows:

19 AT&T contends that market share alone is not a valid measure of market power
20 in any aspect of the interexchange market because: (a) competitors’ excess
21 capacity constrains AT&T’s ability to restrict output; and (b) AT&T’s aggregate
22 share does not reflect the extraordinary amount of consumer “churn” currently
23 occurring in the marketplace. Thus, AT&T argues that market share figures

1 based solely upon output—rather than on total available capacity—distort the
 2 importance of market share as an indicator of market power...¹⁶

3 Drs. Mayo and Kaserman noted on behalf of AT&T that:

4 [I]nformation that, in some cases, might be contained in a market share number
 5 at a specific point in time is diluted substantially by the fact that AT&T began
 6 the post-divestiture period with an inherited high [market] share. The
 7 competitive significance of a market share number...stems from a firm's ability
 8 (or lack thereof) to *retain* a given market share in the wake of an attempt to raise
 9 prices to above-competitive levels.

10 [T]he presence of a high market share at a given point in time provides no
 11 information on the incumbent firm's vulnerability to market share losses.¹⁷

12 [M]arket share is one of the economic determinants of market power, it cannot
 13 by itself demonstrate that a firm has significant control over market price. The
 14 other economic determinants, such as entry conditions, must also be conducive
 15 to providing such control.¹⁸

16 It is important to understand that a firm cannot hold significant market power
 17 unless it has a large market share and other firms' supply responsiveness is low.
 18 That is *either* a low market share *or* a high responsiveness of other firms' supply
 19 to price changes means that the firm is facing effective competition. Is [sic]
 20 market share is low, significant market power cannot exist even if the
 21 responsiveness of other firms' supply to price changes is limited. *Conversely,*
 22 *where other firms' supply is highly responsive to price changes, an individual*
 23 *firm cannot possess significant market power even if it holds a very high share.*¹⁹

24 The FTC further notes that, "[t]he issue of entry barriers is perhaps the most
 25 important qualitative factor, for if entry barriers are very low it is unlikely
 26 market power...will persist for long."²⁰

¹⁶ *Motion of AT&T Corp. to be Reclassified as Non-Dominant Carrier*, FCC 95-427, October 23, 1995, ¶42, citing AT&T *Ex Parte* Filing, April 24, 1995, at 30-35.

¹⁷ David Kaserman and John Mayo, "Is AT&T Dominant? An Assessment of the Evidence," June 1995, Attachment to AT&T *Ex Parte* letter from Charles L. Ward to William C. Caton, CC Docket 79-252, at 13.

¹⁸ *Id.*, at 16. Emphasis added.

¹⁹ *Id.*, at 14, emphasis added.

²⁰ *Id.*, at 15.

1 AT&T has acknowledged elsewhere that there is no clear theoretical or empirical
2 link between the degree of concentration and the intensity of competition in a market. One
3 AT&T witness argued:

4 [T]he link between market concentration and market competitiveness is a
5 tenuous one, and that measuring concentration is not a substitute for analyzing
6 the factors that determine market performance. ... It is widely recognized that a
7 firm's market power depends on whether rivals can supply defecting customers
8 without significant increases in marginal cost and on whether consumers regard
9 the products of other firms as good substitutes.²¹

10 He also argued (as I do in my testimony) that capacity is the proper basis for measuring and
11 analyzing market share.²²

12 **Q. BEYOND HIS MARKET SHARE ANALYSIS, MR. GILLAN ATTEMPTS TO**
13 **MAKE THE CASE [AT 20-21 AND EXHIBIT JPG-7] THAT BELLSOUTH'S SGAT**
14 **RATES FOR UNES ARE SO UNFAVORABLE TO ALECS THAT, IF**
15 **BELLSOUTH WERE TO ATTEMPT SERVING THE MARKET TODAY AS A**
16 **ALEC, IT WOULD FIND ITS PROFITS SHRINKING DRAMATICALLY. DO**
17 **YOU AGREE WITH HIS ANALYSIS?**

18 **A.** No. The bulk of Mr. Gillan's case in this regard is made in his Exhibit JPG-7 which
19 purports to be a hypothetical income statement for a BellSouth that operates in Florida
20 solely by leasing UNEs from some other source. To this end, Mr. Gillan replaces
21 BellSouth's own embedded costs of operating its network with the payments Mr. Gillan

²¹ Statement of Stanley M. Besen, *Reply Comments of American Telephone and Telegraph Company*, CC Docket No. 90-132, September 18, 1990, Appendix B, at 2-3 (footnotes omitted).

²² *Id.*, at 3-4.

1 estimates BellSouth would make for leased UNEs sufficient to serve the current level of
2 demand. This analysis is problematic from several standpoints.

3 First, the entire analysis rests on a number of assumptions which are either specious
4 or unsupported, or both. To begin with, I find it inconceivable that *any* local exchange
5 carrier would attempt to serve BellSouth's current level of demand in Florida by using
6 UNEs alone, i.e., with no facilities of its own. Also, Mr. Gillan does not explain (beyond
7 claiming they were "developed") where the assumptions underlying usage by the "average
8 user" came from [at 20]. Nor does he provide any basis to calculate or verify the claimed
9 level of UNE lease payments of over \$2.1 billion [Exhibit JPG-7]. These omissions make
10 it impossible to determine whether Mr. Gillan's calculations are even remotely correct.

11 Second, suppose UNEs are priced at forward-looking total element long run
12 incremental cost ("TELRIC") and assume BellSouth replaced its own network with the
13 UNEs needed to serve current demand. In theory, BellSouth's *forward-looking, economic*
14 network costs would fall by the product of its volumes and its UNE rates, which would just
15 offset its new cost of purchasing UNEs, given by the product of its volumes and its UNE
16 rates. The net effect of this thought-experiment would be no change in costs and no change
17 in net revenue. Thus, if we assume Mr. Gillan's calculations were correct: i.e.,

- 18 • his price-out of the TELRIC of the UNEs necessary to provision BellSouth's volume
19 of usage services in Florida, and
- 20 • his measure of depreciation and network operating expenses associated with the
21 provision of usage services in Florida

22 all we could conclude from Mr. Gillan's demonstration—at best—would be that forward-
23 looking costs such as TELRIC differ from embedded costs. Since BellSouth and ALECs

1 compete in the market on the basis of forward-looking economic costs—not embedded
2 costs—Mr. Gillan’s demonstration—even if correct—tells us nothing about the ability of a
3 ALEC to compete with BellSouth at TELRIC-based UNE prices.

4 Mr. Gillan’s demonstration raises an additional red flag. The TELRIC of a network
5 element is generally thought to be less than its embedded cost because, by design, TELRIC
6 reflects more efficient choice of technology and a perfectly efficient network design and
7 provisioning. Thus, Mr. Gillan’s claim that TELRIC-based UNE rates are much higher
8 than embedded costs must mean that BellSouth’s UNE rates are even further above
9 TELRIC levels. However, the Commission has scrutinized these TELRIC-based UNE
10 rates on numerous occasions over the past few years. Either the Commission has erred in
11 this regard in the past, or Mr. Gillan has incorrectly calculated the UNE lease payments
12 entry and/or the embedded costs associated with network usage services in his Exhibit
13 JPG-7. More information on Mr. Gillan’s calculations would be needed to determine
14 which of these possibilities is true.

15 **Q. WHAT DO YOU CONCLUDE FROM THIS DISCUSSION?**

16 A. I conclude that whatever the actual market shares of BellSouth and the ALECs in Florida
17 as a group may be, the real issue is whether BellSouth, despite its obviously large market
18 presence, is in any position to deter retail competition by raising barriers to entry, primarily
19 at the wholesale level. If the Commission should find that BellSouth has raised no such
20 barriers—and the oversight and rulemaking functions this Commission has exercised in the
21 past few years have ensured that that is so—then the facts of open local exchange markets
22 and increasing local competition in Florida cannot be denied. Also, with valid TELRIC-

1 based rates in effect today for BellSouth's UNEs, the most significant source of entry
2 barriers in Florida has been removed. Thus, whatever course local competition takes in
3 Florida, the concerns of the ALEC witnesses regarding BellSouth's market share should
4 have little or no relevance for determining whether the time has come for BellSouth to
5 receive interLATA authority in Florida.

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

7 **A. Yes.**

1 MR. EDENFIELD: And I would ask that his three
2 exhibits be marked as composite -- I'm sorry, I lost the last
3 number -- is it 28?

4 CHAIRMAN JACOBS: 28.

5 MR. EDENFIELD: Composite 28 for identification.

6 CHAIRMAN JACOBS: Show that marked as 28.

7 MR. EDENFIELD: Thank you.

8 (Exhibit 28 marked for identification.)

9 BY MR. EDENFIELD:

10 Q Did you prepare a summary of your testimony, Dr.
11 Taylor?

12 A Yes, I did.

13 Q Would you give that now please, sir?

14 A Sure. Good afternoon, thanks for taking me out of
15 order. The purpose of my rebuttal testimony is to respond to
16 some economic claims of Mr. Gallagher and Mr. Gillan, regarding
17 two things: The current state of local competition in Florida
18 and second, what we can learn from that state of competition
19 about the potential success or the irreversibility of the
20 competitive process.

21 Now, first off, there is a considerable disagreement
22 regarding the current state of local competition in Florida, at
23 least on the record. The intervenors note or claim that there
24 are low market shares for ALECs and claim that, particularly,
25 the resale market shares, ALEC activity is declining.

1 Well, for an economist, what matters is not, first of
2 all, the absolute market share of anybody to tell whether the
3 competitive process is working. As, for example, AT&T has
4 argued at great length on its own behalf when it was trying be
5 deregulated that market share is a poor measure of
6 competitiveness, particularly for a previously-regulated firm.

7 Instead, economists say we should focus on entry
8 barriers, on the capacity of competitors to take customers, and
9 not on the achieved levels of market share. And second, of
10 course, wouldn't concede for a minute that the market share
11 levels in Florida are low. Indeed, they're roughly at the
12 level they were in Texas and in New York when the FCC found
13 that the 271 criteria were met.

14 Also, the decline in resale volumes, if there
15 actually was one, has no significance on its own. What matters
16 is the totality of competition through our own facilities,
17 through resale, through UNE and UNE-P, and particularly when
18 you look at the availability of UNE-P, which is like cheap
19 resale, you shouldn't be surprised in the least to see ALECs
20 substitute away from resale towards UNE-P when it is
21 implemented; ergo what happens to one mode of competition,
22 namely resale, tells you nothing about how the competitive
23 process is working. Intervenors also note that a number of the
24 CLECs have been doing poorly in the last eight or ten months.
25 They've been purchased or filed for bankruptcy.

1 Again, what matters is that the competitive process
2 is healthy in Florida, not particular competitors. The major
3 competitors aren't start-ups, they're not small companies, they
4 haven't gone bankrupt; they're the incumbent, the long-distance
5 carriers, cable companies, and in total, lines served by ALECs
6 in Florida have been growing vigorously over this period.
7 ALECs have made substantial sunk investments nationally over
8 \$50 billion in the last four years, and that investment remains
9 in place capable of providing service to customers who are
10 currently BellSouth customers.

11 We have to remember that competition is an
12 evolutionary process. The competitors that are left at the end
13 of the day are stronger. On average, roughly or more than 50%
14 of all start-up businesses in the United States fail after five
15 years. By that standard, the ALEC industry has been extremely
16 successful. The fraction of ALECs that have failed is tiny,
17 it's nowhere near 50%.

18 Second, what can we learn, what can we infer from the
19 state of competition? Well, intervenors and, particularly
20 Mr. Gillan, claims that perhaps we could learn that UNE rates
21 or resale rates are too high, and to make that argument he
22 recalculates BellSouth Florida's income statement as if
23 BellSouth had to buy its own UNEs.

24 I can't speak for the numbers, I can't follow his
25 arithmetic, but even if this were true and accurate, what that

1 study -- what that table simply shows is that the
2 forward-looking economic cost of the facilities is bigger than
3 the imbedded costs. I mean, after all, this Commission looked
4 hard at UNE rates, decided what those Telric-based costs were
5 and set rates at that level.

6 Now, all that matters for competition is
7 forward-looking economic costs, so if the forward-looking
8 economic costs happen to be bigger than embedded costs, well,
9 that's fine, but that's not a competitive advantage, you know,
10 that's the -- competition takes place based on forward-looking
11 costs and for those, your own dockets have assured that prices
12 are set at forward-looking Telric of BellSouth.

13 Intervenors have said that competition here isn't
14 irreversible but, of course, what we've seen is the opposite;
15 that is, once 271 authority has been granted, it's not that
16 we've seen that competition recedes, we see the opposite.
17 You've heard citations in the last couple of days to the FCC
18 December 2000 study, which showed markedly increasing shares
19 for CLECs in New York and in Texas. In New York, from roughly
20 9% to about 20% of lines after one year of 271 authority; in
21 Texas from about 4% to about 12% after six months of 271
22 authority.

23 Second, there is a study my testimony talks about by
24 professor Hausman at M.I.T., which takes that analysis one step
25 further, which controls for other events, events like the

1 availability of UNE-P, events that are common across all the
2 states. It does that by not looking at the absolute change in
3 market share, but looking at changes in New York and Texas
4 compared to a control state.

5 For New York, Hausman's study compares what happened
6 in New York with what happened in the same period in
7 Pennsylvania, which didn't have 271 authority, but which was
8 otherwise similar. And for Texas, comparing Texas to
9 California, which similarly did not have 271 authority, but
10 which was otherwise similar.

11 The Hausman results show a large increase in ALEC
12 share in both New York and in Texas compared with what happened
13 in Pennsylvania and in California; 13 percentage points in New
14 York compared with about one in Pennsylvania, 7 percentage
15 points in Texas compared with about one in California -- sorry,
16 it was Pennsylvania compared to New York. I misspoke.

17 Hausman also showed a small reduction in local bills;
18 6.6% in New York relative to what happened in Pennsylvania,
19 2.8% in Texas relevant to what happened in California and, not
20 surprisingly, a large reduction in long-distance bills, the
21 order of 10 to 25% in New York and Texas compared with
22 Pennsylvania and California. Those are the -- I think, the
23 best evidence we have that competition is irreversible in the
24 sense that once 271 authority comes, we see more of it and
25 consumers are made better off.

1 In summary, the presence of competitors in local
2 markets is sufficient, but it's not necessary evidence that
3 competition is working. We have in Florida evidence that
4 competition is working because we have presence of competitors.
5 We didn't need that, according to the Act.

6 On the other hand, the benefits for customers, for
7 Florida consumers of 271 authority, are more than simply what's
8 happening additional choice for local service, it's what we've
9 seen in other states that 271 authority has brought to local
10 prices and to long-distance prices.

11 That concludes my summary.

12 MR. EDENFIELD: Dr. Taylor is available for cross
13 examination.

14 CHAIRMAN JACOBS: Ms. Masterton.

15 MS. MASTERTON: No questions.

16 CHAIRMAN JACOBS: Mr. Lamoureux.

17 MR. LAMOUREUX: I have just a few questions.

18 CROSS EXAMINATION

19 BY MR. LAMOUREUX:

20 Q Good afternoon, Dr. Taylor. I'm Jim Lamoureux, I
21 represent AT&T.

22 A Good afternoon, Mr. Lamoureux.

23 Q In your testimony and in your summary you make
24 reference to some statements by Doctors Mayo and Kaserman about
25 market share --

1 A Correct.

2 Q -- that were made during the non-dominance proceeding
3 at the FCC, correct?

4 A Yes.

5 Q Do you happen to know how much AT&T's market share
6 had fallen by the time Professors Kaserman and Mayo made those
7 statements about market share?

8 A Well, roughly -- let's see, this was when AT&T was
9 applying for non-dominant status having several changes in
10 regulatory from the FCC before that, but this was the final
11 step of non-dominance, and my understanding is that market
12 share would have fallen from about 90% to on the order of maybe
13 60, 65, somewhere like that.

14 Q Okay. So, it had lost 35 percentage points in terms
15 of its market share at the time that those statements were
16 made?

17 A Well, it depends on where you measure the start of
18 its loss of market share. If you go back to 1978 when MCI
19 began authority, it would be less than that, but market share
20 was roughly in the '60s, if memory serves.

21 Q Okay. At Page 16 of your surrebuttal testimony, you
22 say that "while the 1996 Act imposes a duty on ILECs like
23 BellSouth to perform market-opening functions, there is no
24 corresponding or reciprocal duty on long-distance carriers,"
25 correct. That's part of the sentence, and I'm looking at Lines

1 16 and 17 of Page 16 of your testimony.

2 A What paragraph does that begin?

3 Q Sure. The paragraph begins with, "Economic
4 incentives..."

5 A Oh, sorry.

6 Q And then sentence starts, "The difference, of course,
7 is..."

8 A I'm with you. Yes.

9 Q Now, there are, of course, obligations on AT&T that
10 have been imposed upon AT&T since divestiture in terms of
11 allowing for resale and things such as that, correct?

12 A Well, resale itself, yes, was an obligation imposed
13 on all telecommunications carriers, including AT&T.

14 Q Well, at the time all long-distance
15 telecommunications carriers are obligated to offer resale?

16 A Yes, MCI and Sprint.

17 Q So, there is a duty on long-distance carriers
18 designed to open up the long-distance market to competition,
19 correct?

20 A No. In fact, the resale obligation was different.
21 The resale obligation was a negative obligation in the sense
22 that AT&T and other long-distance carriers were forbidden from
23 preventing customers from reselling what they bought out of
24 their tariff from AT&T. It's very different. AT&T was
25 offering service to a customer at 10 cents a minute, to make up

1 a number; some -- to make up a different -- 10 cents a minute
2 for a large business customer, and some resellers thought they
3 could make money packaging AT&T's services and selling them one
4 at a time to smaller users.

5 And what that rule -- what AT&T's obligation said was
6 AT&T couldn't prevent someone from doing that, but all AT&T was
7 doing and all it was required to do was to sell to everybody at
8 its tariff rate and not prevent them from doing something.

9 What my testimony talks about is something very
10 different. It's, for example, resale at a regulated discount,
11 and that's something that AT&T was not required to do and
12 didn't do.

13 Q Are you saying that AT&T has no legal obligation to
14 offer long-distance minutes for resale to anyone who wants to
15 be able to resale them?

16 A No, that's not what I'm saying at all. What I'm
17 saying is, in fact, the opposite, that the resale obligation
18 that AT&T was under was not to put restrictions on what they
19 sold out of their normal tariff. What they could have done,
20 didn't do -- what they could have done, absent that rule, would
21 have said I'm going to sell your large business customer a
22 watts line, for example, but if you try to resell that to a
23 bunch of little small businesses, I'm going to take that as a
24 violation of the tariff, and I'm going to take away your watts
25 line. That's what the rule forbade.

1 What it didn't do was say if you want to offer a
2 watts line, AT&T, that's fine, but you're going to have to
3 offer to resell it at a 20% discount to anyone who wants to
4 resell that watts line.

5 Q So, I just want to make sure I understand. We have
6 an obligation to offer for resale, we just don't have a
7 particular rate at which we have to offer the discount; is that
8 correct?

9 A Well, you've phrased it a little bit differently, to
10 offer for resale; no, you have an obligation to offer it at the
11 tariff rate, and you're not allowed to restrict resale.

12 Q We are prohibited from prohibiting people from
13 reselling our service, correct?

14 A Just so.

15 Q And the reason that that obligation exists is to
16 allow for competition in the long-distance market, correct?

17 A In a very -- perhaps, but in a very different way
18 than we have done it in the local market.

19 Q It's a different way, but the end purpose is still
20 the same, correct?

21 A Well, yes. I mean, the end purpose is not to put
22 restrictions on what telecommunications carriers sell. And, in
23 fact, I believe, the local exchange carriers are under that
24 same obligation, irrespective of their additional obligations
25 that come from the Telecommunications Act.

1 Q And the whole point of divestiture was to allow for
2 competition in the long-distance market to develop; was it not?

3 A Yes, at least one purpose.

4 Q And I believe, you, yourself, have even testified
5 before that the long-distance market is competitive; is that
6 correct?

7 A Well, I doubt that I ever said that in a flat
8 sentence. It is certainly more competitive than the local
9 market. The business market is probably workably competitive.
10 Remember, I'm the one that's argued for years that for the
11 residential market we haven't seen the sort of price
12 competition that we would have expected to see.

13 And -- well, how competitive can it be when New York
14 Tel and SBC in Texas get into the business and long-distance
15 rates fall 25%? That may be competitive, but it's got some
16 room to get better.

17 Q Let me talk about the study that you reference in
18 your testimony by Professor Hausman. You've not attached a
19 copy of that study to your testimony, right?

20 A Correct, I believe, the attachment is the press
21 release, which is the public version of that.

22 Q And that's not a published study anywhere, as near as
23 I can tell; is that correct?

24 A I believe that's correct.

25 Q All right. And do you know who commissioned that

1 study?

2 A I believe, from the press release that it's an
3 organization in Iowa, which I wouldn't be surprised was funded
4 by -- could be funded by ILECs.

5 Q In fact, that study was funded by or originally
6 commissioned by ILECs; was it not?

7 A Well, all I know is what I read, and it's the name of
8 some organization in Iowa, and it is not uncommon for
9 long-distance carriers and local carriers and CLECs to have
10 organizations through which they perform research and public
11 policy debate.

12 Q Okay. Since it's not attached to your testimony, I
13 guess, would you agree with me there's no way to know what sort
14 of statistical techniques were employed by that study, what
15 sorts of controls, other than what you've described in your
16 testimony?

17 A Well, except what you get by reading what's attached
18 to my testimony, that's all you can know, yes.

19 Q Which is just the press release, not the study
20 itself.

21 A That's correct.

22 Q In your testimony, you agree that it is possible that
23 BellSouth's behavior could have an effect on the state of local
24 competition in Florida, right?

25 A Sure, that that was a logical possibility.

1 Q And you've testified in several performance measures
2 proceedings in the southern region; have you not?

3 A Yes.

4 Q And, I think, you agreed with me, at least in one of
5 those hearings, that the purpose of a performance measure's
6 plan is to deter BellSouth from engaging in potentially
7 discriminatory behavior towards ALECs, right?

8 A That's part of it. I think, what I probably said
9 more carefully was that it was to give, in my view, the ILEC
10 the incentive to sort of set the discriminating dial at zero so
11 that it had neither an incentive to discriminate in its retail
12 favor or in the retail favor of CLECs.

13 Q Dr. Taylor, what I'm handing out is a copy of the
14 transcript from the performance measures hearing in Tennessee
15 on August 20th. And just to shorten things up, I'm going to
16 ask you just a couple quick questions on Page 39 and 40, but
17 feel free to look through as much of this as you'd like.

18 In particular, on Page 39, beginning at Line 19, do
19 you see there that I asked, "Now, I think, you would agree with
20 me generally that the purposes of establishing performance
21 measures in a plan and remedies is to deter BellSouth from
22 providing potentially discriminatory treatment to CLECs." And
23 in fact, your answer in this case was a pretty flat yes,
24 correct?

25 A Okay. Yes. Yes, it was.

1 Q And if I recall correctly, the reason I asked you
2 that was that in your testimony in that performance measures
3 case and in some other cases you, in fact, yourself, have used
4 the word deterrence in your own testimony to describe the
5 purposes for which a performance measures plan is adopted,
6 right?

7 A That's correct.

8 Q Okay. And you agreed with me that by use of the word
9 deterrence that implies an economic incentive of something that
10 has a need to be deterred, correct?

11 A Well, yes. If you go down to Page 41, I would throw
12 the word potential in there, but absent that -- and, I guess,
13 the other thing I would point out is towards the bottom of Page
14 40, we discuss, you and I in Tennessee, the deterrence in
15 particular was to offset the reduction in incentive to provide
16 parity service caused by granting of 271 authority.

17 Q Right. And I thought I kept the word potential in my
18 question. And if I omitted it, I apologize, but the deterrence
19 is deterrence of potentially discriminatory behavior that
20 BellSouth may engage in towards ALECs, correct?

21 A Yes, in economic theory there are circumstances under
22 which an ILEC, if it controls essential facilities may have an
23 incentive in the sense that its profits would be higher, if it
24 provided discriminatory service to dependent competitors; not
25 all circumstances, but there are circumstances, and that's what

1 gives rise to a performance plan such as the one we were
2 discussing in Tennessee.

3 Q And that incentive that exists for the possibility
4 which sets up a need for deterrence, that incentive essentially
5 arises from the fact that BellSouth acts as both a wholesale
6 provider to and a retail competitor of ALECs, correct?

7 A That's correct. What mitigates that incentive is if
8 you use -- look at it from the other perspective. CLECs are a
9 way -- a marketing channel through which BellSouth can sell its
10 services. So, if CLECs, ALECs, can do that more profitably
11 than BellSouth can do itself, it's better off at the end of the
12 day in terms of its own profit, by encouraging ALECs as opposed
13 to doing it itself.

14 And the concatenation of that set of assumptions and
15 the opposite set of assumptions says what I said earlier, that
16 there are conditions under which BellSouth may have an
17 incentive to provide discriminatory service against ALECs; not
18 necessarily, but it's possible.

19 MR. LAMOUREUX: Okay. That's all I have. Thank you
20 very much, Dr. Taylor.

21 THE WITNESS: Thank you.

22 CHAIRMAN JACOBS: Mr. Melson?

23 MR. MELSON: No questions.

24 CHAIRMAN JACOBS: Ms. Kaufman?

25 MS. KAUFMAN: Thank you, Mr. Chairman.

CROSS EXAMINATION

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BY MS. KAUFMAN:

Q Good afternoon, Dr. Taylor. I want to ask you some questions on behalf of the FCCA.

A Sure.

Q And really the subject of my cross examination is going to be Mr. Gillan's Exhibit Number 7, and you're familiar with that, aren't you?

A Yes.

Q And you take issue with his analysis on Pages 35 and 36 of your surrebuttal, correct? Actually, I think, you begin to take issue with it on Page 34?

A Okay. Our pagination may be different, but yes, I certainly take issue with it somewhere around there.

Q Well, okay, we have our first area of agreement.

Now, Dr. Taylor, if Mr. Gillan's exhibit is correct, okay, what it shows is that if BellSouth were to operate in Florida by leasing UNEs at the current rate it, essentially, would be operating in the red, correct?

A That's what it purports to show.

Q Okay. And you say -- and let's see if we can match up our page and line numbers -- but you say at Page 36 of at least my copy, Line 7 to 9, that if Mr. Gillan's correct, it means that the Telric-based UNE rates here in Florida are even higher than Telric levels, right?

1 A I believe, your statement's correct, but let's see,
2 what paragraph does --

3 Q It's Page 36, the paragraph begins, "Mr. Gillan's
4 demonstration....," but the sentence I'm talking about starts at
5 Line 7.

6 A Okay.

7 Q Do you see where I am? It starts, "Thus,
8 Mr. Gillan's claim...?"

9 A Yes.

10 Q So, all I'm saying to you is what you say there is if
11 Mr. Gillan is correct, it means that Telric-based UNE rates are
12 even farther above Telric rates?

13 A Yes. There's another assumption in there, though, at
14 the beginning of the paragraph. What I say is, hey, we've got
15 an additional red flag here that causes one to think
16 something's wrong, because we often expected the Telric, for
17 some network element, to be less than imbedded cost, because
18 imbedded cost is just the sloppy old cost that BellSouth has on
19 its books, not necessarily any particular efficiency criteria,
20 except its own internal efficiency; whereas, Telric is designed
21 by the best minds today to make that cost as low as possible.

22 So, we would expect the Telric cost to be less than
23 imbedded cost. And if that's the case, then Mr. Gillan's
24 observation that Telric-based UNE rates are higher than
25 imbedded costs must mean either something very surprising is

1 going on or Mr. Gillan made a mistake or that UNE rates are
2 above Telric levels.

3 Q Okay. So, at least one conclusion you can draw,
4 assuming he is correct, is basically that Telric rates are too
5 high, correct? And that's what you say in Lines 7 through 9
6 there.

7 A Well, that -- yes, that UNE rates are actually above
8 the forward-looking economic costs of the company; yes, that is
9 one logical conclusion. However, of the three possibilities
10 that we're talking about, that's the one that has been recently
11 subjected to Commission scrutiny, and that would be my last
12 choice, in fact. I mean, my first choice, obviously, since
13 Mr. Gillan has a cost study, in essence, on six lines of a
14 piece of paper, my inclination is to doubt Mr. Gillan, but --

15 Q And you'd be pleased to know, we're going to get to
16 that --

17 A Good.

18 Q -- but we're going to try to go in order here.

19 And I'm going to go through the exhibit and talk to
20 you about it, but first I want to talk to you about your
21 statement on Line --

22 COMMISSIONER DEASON: Let me interrupt for just a
23 second. I'm right over here.

24 MS. KAUFMAN: I'm sorry.

25 THE WITNESS: Sure.

1 COMMISSIONER DEASON: As an economist, do you believe
2 that appropriately determined Telric costs are above imbedded
3 costs, historical imbedded costs?

4 THE WITNESS: It's conceivable, but it's not likely.
5 An example might be something like maybe electrical -- electric
6 power -- not distribution, but transmission where something has
7 happened to cause basic prices to increase a great deal so that
8 the rates that you have on your costs you have on your books
9 are less than the current costs of replacing something. If you
10 were to build a new transmission network for power in Florida,
11 the cost would be outrageous, compared with the costs that's on
12 the books for what's there today. In an example like that,
13 you'd find that forward-looking costs are, indeed, higher than
14 imbedded costs.

15 Going against that are things, like in
16 telecommunications, where technology is moving the other
17 direction, that what's on the books are old analog, copper
18 systems. And what Telric is estimating is not just
19 forward-looking digital fiber, but also the most efficient way
20 of putting that in irrespective of how the company ever, you
21 know, put it in over time, so I would expect the opposite to
22 hold for Telric and telephony.

23 COMMISSIONER DEASON: But wouldn't one of the factors
24 that would affect that outcome be the depreciation allowances
25 that this Commission allowed when this company was a rate-based

1 regulated entity and what depreciation practices they've
2 incurred since they've come out from under rate-based
3 regulation?

4 THE WITNESS: Sure. That is, if you got the -- if
5 you were using economic depreciation from day one and, thus,
6 carefully valuing at forward-looking costs, the stock of
7 capital that was actually in place, then my comment would
8 disappear. The fact that Bell has a whole lot of analog
9 equipment wouldn't be detrimental to its booked cost, because
10 it would be valued very low at the efficient forward-looking
11 cost of digital, but I don't think that's the way it's been
12 done.

13 BY MS. KAUFMAN:

14 Q I think, where we were before, Mr. Chair-- excuse me,
15 Commissioner Deason asked you some questions is I think that
16 you agreed with me that one of the possible views shown by
17 Mr. Gillan's analysis is simply that Telric rates here in
18 Florida are just too high, that is one conclusion to draw from
19 his exhibit, correct?

20 A With all the other assumptions that we've just been
21 through, that we are quite surprised to find Telric rates which
22 are higher than imbedded costs, that's unusual.

23 Q And you understand don't you, Dr. Taylor, because I
24 think you've been here for most of the proceeding, but
25 certainly at issue in this case is whether or not the Telric --

1 whether the rates that Bell's proffered are set at Telric,
2 correct? You understand that to be an issue in this case.

3 A You're exceeding my authority. I didn't understand
4 that. My understanding was that there are other proceedings --
5 there have been other proceedings which have been -- in which
6 Telric studies have been done and the Commission has set UNE
7 rates. There may be one or two UNE rates floating around in
8 this proceeding, but by and large I think those are already in
9 another proceeding.

10 Q Were you here for the testimony cross examination of
11 Ms. Caldwell?

12 A Yes.

13 Q Okay. So, you would agree with me that there are
14 rates here that are being questioned as to whether or not they
15 are Telric-based?

16 A Well, I don't mean to be obstreperous, but when we
17 have a Telric case, and I've been involved in a number of them,
18 we usually spend a week or two going over the model, competing
19 models, and look at each rate, reach a rate element, and decide
20 what the Telric costs would be. We aren't doing that in this
21 docket.

22 Q Dr. Taylor, you know, you're making my questions --
23 you're reading more into them than I'm intending. It's really
24 a simple question, and it's just that the ALECs have put at
25 issue in this case whether some of the rates that Bell has

1 proffered are Telric, and that's an issue that the ALECs have
2 raised. Do you not understand that to be the case?

3 A Well, I just explained what I understood. If it is
4 an issue in the case, then it is, and my saying I'm not aware
5 of it doesn't affect it, but --

6 Q Thank you. I think, you're right. I think, the
7 record will speak for itself on that.

8 Let's take a look at Page 35 of your testimony
9 continuing with your criticism of Mr. Gillan's Exhibit 7 and at
10 Line 4 there you say quote, "I find it inconceivable that any
11 local exchange carrier would attempt to serve BellSouth's
12 current level of demand in Florida by using UNEs alone with no
13 facilities of its own," correct? I'm sorry, that's Page 35,
14 Line 4.

15 A Yes. My lines and pages are different, but I'm with
16 you.

17 Q Okay. Well, Dr. Taylor, isn't that exactly what
18 BellSouth does? I mean, aren't we talking about the same
19 network here and aren't the UNEs competitors leased from
20 BellSouth's own network with which it is serving its own level
21 of demand?

22 A No. I mean, I've never understood it that way. UNEs
23 are not BellSouth's network. These are elements which are
24 broken out for competitors to purchase and to use, but I've
25 never accepted, and I don't think it's actually correct, to say

1 that BellSouth uses its own UNEs. I don't believe that's the
2 way the network is set up and, I think, you can get into a lot
3 of logical mistakes if you think that way.

4 Q Okay, well --

5 A It provides retail services in an integrated network.

6 Q Okay. Well, the UNEs that competitors are purchasing
7 from BellSouth are the components of BellSouth's network,
8 correct?

9 A Correct.

10 Q And it's those same components that BellSouth uses to
11 serve its own customers, correct?

12 A BellSouth uses its network to provide an integrated
13 retail service. It also breaks up the loops, the switches,
14 sometimes does a little different things to them to make them
15 so that a competitor can use it and sells them to competitors
16 to use. I think that's the right description.

17 Q Okay. And again, maybe you're just making more out
18 of my question, but BellSouth uses its own network to serve its
19 own customers at the current level of demand that it has,
20 correct?

21 A Sure.

22 Q Okay, great.

23 SPEAKER: Are you sure?

24 MS. KAUFMAN: I hope so, otherwise, I really am in
25 trouble here.

1 BY MS. KAUFMAN:

2 Q Next, Dr. Taylor, on Page 35, in my copy, Lines 6
3 through 8, and let me read you the sentence since you say your
4 pages are a little different. You say, "Also, Mr. Gillan does
5 not explain, beyond claiming they were developed, where the
6 assumptions underlying usage by the averages came from,"
7 correct? This is at the paragraph that begins, "First...", and
8 it's the same one we were just looking at.

9 A Yes, I'm with you.

10 Q So, what you're saying there is he didn't explain to
11 you the assumptions underlying his average user, correct?

12 A Correct.

13 Q And then later on you say that you would need more
14 information on his calculations to make any sort of judgment
15 about them, correct?

16 A Yes.

17 MS. KAUFMAN: Mr. Melson's going to distribute two
18 documents. One of them is simply an excerpt from Mr. Gillan's
19 testimony, it's just for ease of reference with the Exhibit 7
20 we're talking about, but the second one, Commissioner Deason, I
21 would need an exhibit number for.

22 COMMISSIONER DEASON: Exhibit 29.

23 (Exhibit 29 marked for identification.)

24

25 BY MS. KAUFMAN:

1 Q Dr. Taylor, as I said, what I've handed you is Page
2 20 from Mr. Gillan's rebuttal testimony and then a copy of his
3 Exhibit 7 so we'll all have the same reference.

4 And if you will look with me on the excerpt from
5 Mr. Gillan's testimony, beginning at Line 5, there he states,
6 doesn't he, that the usage assumptions needed to calculate the
7 UNE-P cost, and he specifically states "The cost of the
8 platform was developed assuming 1,000 local minutes, 50
9 intraLATA toll minutes, 200 interLATA toll minutes with 290
10 local calls and 45 toll access calls," correct?

11 A Yes.

12 Q And he also says that he used the ARMIS reports
13 detailing Bell's dial equipment minutes and local calling as
14 the basis for those assumptions, correct?

15 A It says that, yes.

16 Q Okay. And the document that we've marked as Exhibit
17 29 are excerpts from BellSouth's ARMIS report for 2000. You
18 have those in front of you now?

19 A Yes.

20 Q Okay. Do you have a calculator with you?

21 A No.

22 Q Well, you are in luck.

23 MS. KAUFMAN: Chairman Jacobs, if I might, I think,
24 it'll go quicker, it'll be easier, I wanted to use the easel to
25 do -- I've got some calculations that hopefully we can run

1 through fairly quickly.

2 BY MS. KAUFMAN:

3 Q Okay, Dr. Taylor, you've got the excerpts from the
4 ARMIS report in front of you?

5 A Yes.

6 Q And I did take a page here from Mr. Feil's book, and
7 I numbered them in the bottom right-hand corner and, again, so
8 I hope we can move through this fairly quickly.

9 Okay. Dr. Taylor, look at the ARMIS report that's
10 numbered number one down in right-hand corner, if you would.

11 A Yes.

12 Q And Bell reported there, didn't it, that -- first of
13 all, this is for the year 2000, correct?

14 A Yes.

15 Q And Bell reported on Page 1 of that ARMIS report for
16 Florida that they had 6,611,456 total switched access lines,
17 correct?

18 A Yes.

19 Q And I don't know if I'm coordinated enough to write
20 and hold this at the same time, but I'm going to write that up
21 here. And that's the number of total switch access lines,
22 correct?

23 A That's what this report says.

24 Q Okay. If you'd turn over to numbered Page 2, this is
25 the number of local calls that Bell had in Florida for year

1 2000, correct?

2 A Yes, appears to be.

3 Q And this is in billions, sir, so, it's 23,027,888,000
4 local calls for Bell in Florida for the year 2000, correct?

5 A I'm going to have to take your word for the thousand.

6 Q Okay. Well, if you'd accept that, subject to check,
7 it's in billions is what I said.

8 A No, it's in thousands is what you should have said, I
9 think.

10 Q No, we're talking about the number of local calls
11 which, I believe, is in billions.

12 A I'm sorry, if it's in billions, then we have -- no,
13 it can't be in billions, it's in thousands.

14 Q We're on Page number 2.

15 A Correct.

16 Q Number of local calls, correct?

17 A Yes.

18 Q Okay. And I'd ask you to accept, subject to check,
19 that that is in billions.

20 A I'm sorry, I cannot accept it.

21 CHAIRMAN JACOBS: Millions with an "M" or billions
22 with a "B"?

23 MS. KAUFMAN: It's with a "B."

24 A And it isn't even that. I believe, what you're
25 trying to tell me is the number there is 23 billion.

1 BY MS. KAUFMAN:

2 Q Right, because the zeros have been dropped off just
3 for ease?

4 A Yes, but in English it says this number is in
5 thousands; that is, there are three zeros missing, not nine
6 zeros missing, but three.

7 Q I'm sorry, you're correct. I'm sorry.

8 A All right.

9 Q I never said math was my strong suit.

10 CHAIRMAN JACOBS: You should have accepted that from
11 an economist automatically.

12

13 BY MS. KAUFMAN:

14 Q Okay. So, I'm going to write that number up here,
15 and you're going to check me that I put the correct number of
16 zeros; how's that? And three zeros, correct?

17 A Right.

18 Q Okay. So, if we wanted to get the number of local
19 calls per line, we would simply divide the number of calls by
20 the number of lines, correct?

21 A Yes.

22 Q Would you do that for us?

23 A You're taking a big chance.

24 Q Well, I've worked this out, so I hope we get the same
25 number.

1 A I have the answer.

2 Q Okay. And the answer is?

3 CHAIRMAN JACOBS: Wait a minute. Who is the weakest
4 link here?

5 MS. KAUFMAN: That's not fair. I don't think we want
6 to go there.

7 BY MS. KAUFMAN:

8 Q Okay, Dr. Taylor. I said I was going to try to do
9 this quickly?

10 A The answer is 3,483, and that would be minutes per
11 line per year.

12 Q No, this is calls per line per year, correct?

13 A Yes, sorry, calls per line.

14 Q Gotcha, okay. I get one now. Okay. So, that is the
15 number of local calls per line per year for BellSouth for the
16 year 2000 in Florida, correct?

17 A Correct.

18 Q And since Mr. Gillan used -- his average user was
19 using on a monthly basis, so to get monthly we need to divide
20 by 12, correct?

21 A Correct.

22 Q What do you get when you do that?

23 A 290.

24 Q Okay. And 290 calls is exactly what Mr. Gillan used
25 on Page 20, Line 10, correct, for his assumption?

1 A Yes, 290 local calls.

2 Q All right. Let's turn over to Page 3 of the ARMIS
3 report?

4 A Yes.

5 Q And on Page 3, we've got the number of intraLATA
6 calls, correct?

7 A IntraLATA toll, yes.

8 Q IntraLATA toll. Okay. And in order to get the
9 number of intraLATA call tolls per line, we're going to do the
10 same math that we did before, correct, except we're going to
11 use the 417 million number.

12 A Yes, we can do that.

13 Q And we're going to divide that by the number of
14 lines, and what do you get when you do that? I'm sorry, I'm
15 standing right in front of it.

16 A I get the wrong answer. I get .018.

17 Q No. What you're supposed to do, Dr. Taylor is
18 just --

19 A I'm sorry. Let me do it right.

20 Q We should have rehearsed this before, but --

21 A I used the wrong lines number.

22 Q Okay.

23 A How about 63?

24 Q 63 works for me, and that is the number of intraLATA
25 calls per line per year, correct?

1 A Correct.

2 Q And then, to get monthly you're going to divide it by
3 12, right?

4 A Right.

5 Q And what do you get?

6 A 5, 5 1/4.

7 Q Okay. Well, let's -- we'll just round down to 5.

8 And I want you to remember the 5, we've got it circled up here.

9 Now, let's look at Page 4. This is the number of
10 interLATA calls for Bell in the year 2000, correct? Again,
11 with the three zeros on the end.

12 A Yes, it is.

13 Q And in order to get the number of interLATA calls per
14 year for Bell we're also going to divide by the number of
15 lines, correct?

16 A Sure.

17 Q And what do you get when you do that?

18 A 47 1/2.

19 Q Let's just round down 47.5, that's per year. And if
20 we divide it by 12, what do you get?

21 A Call it 4, 3.96.

22 Q Or 40, correct, 39.6?

23 A Well, I got 3.96, but I'm really to concede I dropped
24 a zero.

25 Q Okay. So, we've got the 5 from the prior calculation

1 and the 40, and we add those together, we're going to get 45,
2 correct?

3 A 40 plus 5 is 45, yes.

4 Q The number of toll and access calls per line per
5 month for Bell in Florida, correct?

6 A 40 plus 5 is 45, yes.

7 Q Okay. And that's the assumption that Mr. Gillan used
8 in -- let's see, on Line 11 of his testimony, correct?

9 A Correct.

10 Q All right. Let's turn over to Page 5. And Page 5,
11 what we've got is the dial equipment minutes intrastate,
12 correct, and this is also in billions. If you look under Row
13 Title --

14 A Its Row Title is "Dial Equipment Minutes Factor," and
15 I'm not -- I'm not sufficiently familiar -- are you talking
16 about Page 5?

17 Q Yes, sir.

18 A I mean, subject to check that could be intrastate
19 dial equipment minutes.

20 Q Okay. If you'd accept that, subject to check. And
21 would you agree with me that dial equipment minutes are all the
22 minutes that are -- all the intrastate minutes going through
23 the switch?

24 A Dial equipment minutes are measured at the switch,
25 yes.

1 Q Okay. But these are all minutes, and what we're
2 talking about for purposes of the analysis that I keep standing
3 in front of are the local minutes, so we would have to subtract
4 out the intrastate access minutes, right, if we wanted to just
5 get to local minutes only?

6 A Well, I'm lost in the calculation. I mean, yes, we
7 can go through that, but I thought we had what local calls
8 were.

9 Q Okay. We're on minutes now.

10 A I understand.

11 Q We're looking at the minutes.

12 A Why can't we simply divide local calls by a holding
13 time and we're done?

14 Q Well, because we're going to go through these pages,
15 and I don't think I have one for holding time.

16 A Okay.

17 Q Okay. So, we've got the dial equipment minutes and,
18 I think, you've agreed that's all intrastate minutes. We want
19 to get to local, so if you'd turn to the next page, which is
20 Page 6, we see the intrastate access minutes, correct?

21 A No. If we're talking about Page 6, the title of it
22 is, "Inter Bill Access Minutes Intra."

23 Q Okay, but it's intra -- the last block to the right,
24 it says, "Intra," and ei is just the line on the form that it
25 came from.

1 A Right.

2 Q These are intrastate access minutes.

3 A It may well be. The first phrase is Inter, the last
4 phrase is Intra. Subject to check, I'm willing to accept that
5 we should go by the last instead of the first, --

6 Q Okay.

7 A But...

8 Q I appreciate that. So, if we want to subtract out
9 the intrastate access so that we just end up with the local
10 calls, we're going to subtract that from the dial equipment
11 minutes, right, which is all minutes?

12 A Well, yes. I mean, you can subtract -- well, I'm not
13 sure the accounting is quite right. I mean, this is supposedly
14 intrastate access minutes on Page 6?

15 Q Yes, sir.

16 A Where are intrastate toll minutes?

17 Q Well, we haven't gotten to intrastate toll minutes
18 yet. We're on intrastate access.

19 A So, then, if I subtract intrastate access minutes
20 from toll, I'm not going to get local. I've still got toll in
21 there.

22 Q I'm sorry. These are the intrastate access minutes.
23 I do not believe there are any toll minutes in here.

24 A By these, you mean Page 5?

25 Q Page -- no. Page 5 is the dial equipment minutes.

1 That's all intrastate minutes.

2 A Okay. So, it's intrastate access, intrastate toll,
3 intrastate local.

4 Q And we are subtracting out the intrastate access.

5 A Correct, leaving us with toll and local.

6 Q Okay. Can you do that calculation, please?

7 A Probably. Well, --

8 Q The 206 billion minus the number on Page 6.

9 A Well, the number on Page 6, we must have dropped the
10 thousands again?

11 Q Again, yes, it's three zeros at the end.

12 A Well, no, it isn't, because that's bigger. I mean,
13 I'm happy to try to subtract from --

14 Q It's 8,898,945,000.

15 A Okay. One is 8 billion -- no, I'm sorry, I can't.
16 There must have been something that didn't print when you --

17 Q Well, only because, again, they have dropped off the
18 zeros.

19 A Well, I understand, but it must be a different number
20 of zeros. I mean, look on Page 5. The number -- in fact,
21 let's do it where we can see. The number is 206,713 on my
22 copy.

23 Q Exactly. And it's billions. Let me put in my comma.

24 A Right. And from that you want me to subtract -- I
25 mean, that's got --

1 CHAIRMAN JACOBS: Are we okay with the microphone?

2 COURT REPORTER: So far.

3 MS. KAUFMAN: I'm sorry.

4 A I know the problem. There are six zeroes missing on
5 Page 5, not just three.

6 BY MS. KAUFMAN:

7 Q Right, it's in billions, yes, sir. I said it was in
8 billions when we started down this path.

9 A Well, no, it's not in billions, it's in millions, and
10 the other is in thousands.

11 Q Okay. Dr. Taylor, what I need you to do is to
12 subtract the 8,898,945,000 from the 206,713,000,000.

13 A That I can do; though, let the record reflect the
14 numbers in 5 and 6 have unstated and different numbers of zeros
15 attached to them, but the advantage of doing it your way is
16 that we don't get a negative number.

17 Q Well, a negative number wouldn't make any sense,
18 would it?

19 A Well, it's an advantage.

20 COMMISSIONER JABER: I just want you all to know that
21 this is the most fun I've had all day, and I love ending a
22 Friday like this.

23 MS. KAUFMAN: Commissioner Jaber, I try to do what I
24 can.

25 MR. EDENFIELD: Do ya'll have any idea how much I'm

1 paying him to run a calculator?

2 THE WITNESS: Millions and billions.

3 MS. KAUFMAN: Billions and billions.

4 BY MS. KAUFMAN:

5 Q And I sure hope this number comes out to the same one
6 that I have.

7 A Well, we'll keep at it until it does. I get 197
8 somethings 814.

9 Q Okay. 197,814,055,000?

10 A Yes.

11 Q And that's an annual number as we discussed before,
12 correct?

13 A Yes.

14 Q Okay. And also, I saw you did that too quickly. You
15 probably divided it by 12, but we're not ready for that yet.
16 This number is originating and terminating minutes, correct?
17 If you would accept that subject to check.

18 A Yes.

19 Q Okay. So, we're only interested in this calculation
20 in originating minutes and just for -- to continue to amuse
21 Commissioner Jaber, but for the sake of ease, let's divide it
22 by 2 so that we just are dealing with originating minutes.

23 A Recognizing that 2 is probably not exactly the right
24 number --

25 Q Right.

1 A -- but close enough for regulatory work.

2 Q Okay. What did you get when you did that?

3 A 98,907,027,499, probably.

4 Q Okay. That's right. And that is the minutes per
5 line per year, correct? Again, still an annual number.

6 A In principle, it's originating intrastate minutes per
7 line per year.

8 Q Okay. And now, to get to monthly we just want to
9 divide it by 12.

10 A And I get 8,242,252,291, so 8 billion 242 million.

11 Q I don't think you did that correctly.

12 A Of course, I did.

13 Q What we want to do is we want to divide by the number
14 of lines, as we did in the previous ones.

15 A Oh, I'm sorry. I was dividing by 12.

16 Q We're not there yet.

17 A Not there yet. Divide by the number of lines --

18 Q Because we're trying to get number of calls per line.

19 A No, we're trying to get the number of minutes.

20 Q Minutes, I'm sorry, you're correct.

21 A And I get 14959, which must be -- well, 14,959.

22 Q Right. And we'll just round it up to 60, 14,960,
23 okay?

24 A 14,960.

25 Q Which is the minutes per line per year.

1 A Minutes per line per year.

2 Q And now to do what you've been aching to do, we would
3 divide that by 12, we'll get the monthly minutes, correct?

4 A Yes.

5 Q And that is what?

6 A 1,247.

7 Q Okay. I guess, I must have rounded down, but 1,246,
8 1,247.

9 A Right.

10 Q And the number that Mr. Gillan used, to bring us back
11 to why we've gone through all these calculations is on Line 9
12 he used 1,000, correct?

13 A Yes.

14 Q Okay. And, you know, --

15 A No. Whoa, whoa, stop. He used a thousand local
16 minutes.

17 Q Right.

18 A We weren't talking about local here. We've got
19 intraLATA, toll, and local is what this calculation is.

20 Q Okay. Well, would you assume for me that the toll is
21 a minuted portion of the 1,000.

22 A Well, let's see, I guess, we know what it is -- no,
23 we have 50 intraLATA -- we calculated this a minute ago.

24 Q No, we calculated 290 calls and 45 toll access calls
25 per month, right?

1 A Yes.

2 Q And now we're talking about minutes?

3 A All right. So, is it minute? No. If it's 45 toll
4 in access that don't belong in there, and you're talking about
5 a 5-minute holding time, it's at least half.

6 Q No, we're -- I think that you are confusing on one
7 part here we're talking about minutes and on the other part
8 we're talking about number of calls.

9 A Oh, okay. So, in fact, I should be dividing if I
10 have -- you said there were 45 minutes?

11 Q No, 45 calls, which are made up of the 40 and the 5.

12 A All right. But say, in 5-minute durations, so we're
13 talking about 200 minutes there. So, it's 200 minutes out of
14 your 1,246, it's not big, but it's not minute.

15 Q Okay, I can accept that. So, you would want to
16 subtract 200 from the 1,246, correct?

17 A Well, some unknown number, but yes, something of that
18 nature.

19 Q And if we used your suggestion, we'd come up with
20 about 1,000, correct?

21 A Could be.

22 Q And that is exactly the number that Mr. Gillan used
23 for his assumption on Line 9, correct, 1,000 local minutes?

24 A He said he used 1,000 local minutes, yes.

25 Q Okay. And coming to the last page, I believe, of the

1 ARMIS report -- I'm wrong, two more pages, Commissioners, but
2 this is going to be the last calculation, Dr. Taylor, and this
3 is going to relate to the interLATA toll minutes that
4 Mr. Gillan talks about on Line 10. If you look at Page 7, you
5 see the interLATA minutes that Bell reported -- interLATA toll
6 minutes Bell reported in Florida for 2000, correct, with three
7 zeros dropped off at the end?

8 A Yeah. I understand the three zeros dropped off the
9 end, but I think -- well, if I compare the title of those
10 things, Inter Bill Acc M Total with the title of the one we saw
11 before, Inter Bill Acc M Intra, I would have said what you
12 showed me on Page 7 was toll somethings.

13 Q Well, how about if you accept, subject to check, that
14 these are the interLATA toll calls on Page 7?

15 A InterLATA?

16 Q Yes, sir.

17 A Well --

18 Q I'm sorry, not calls, minutes, interLATA toll
19 minutes.

20 A I can, obviously, take it subject to check, but that
21 means that the title system is inconsistent. What was the
22 previous page was Inter Bill Acc M Intra, which you told me was
23 intrastate calls, I think, going off of the last, the Intra
24 just before the ei, and now you're telling me even though it
25 says Total just before the ej, it really means interLATA. I'm

1 willing to accept it subject to check, but it doesn't make
2 sense.

3 Q I guess, I can't take credit for how the FCC
4 delineates this, but I would ask you to accept it subject to
5 check. And now, we're on Page 7, interLATA toll minutes,
6 correct?

7 A Calls.

8 Q Calls. No, I'm sorry, it's --

9 A It says Calls at the top of the page.

10 Q Okay. And this is going to be an easy calculation.
11 We're simply going to divide that by 12, which is the
12 31,938,595 with three zeros, and we're going to get --

13 A 2661.

14 Q I'm sorry, what did you get?

15 A Two thousand --

16 Q The -- go ahead.

17 A 2661. 549,583 -- did I do something wrong?

18 Q I think, you did. We're going to divide the 31
19 billion number by the 6 million number of lines.

20 A Oh, oh, I'm sorry. You told me by 12.

21 Q Sorry, we want to always do that 12, but we're not to
22 that yet.

23 A Divided by 6611456. All right. So, that's 4,831.

24 Q And that's per year, so now we're going to divide it
25 by 12 and we're going to get?

1 A 402.

2 Q And again, if we only want to look at originating
3 we're going to divide by 2.

4 A That's close.

5 Q Okay. And get about 200, correct, 201.

6 A 201, yes. And you're going to call that interLATA
7 calls per line per month.

8 Q Right. And now, now, I am almost done with the ARMIS
9 report, Dr. Taylor. And I want you to just look at the last
10 page, and you don't have to do any calculation whatsoever, so
11 I'm sure everybody will be glad about that. This page, would
12 you agree, shows the expenses that BellSouth reported for the
13 year 2000, correct?

14 A No, it shows the tiny subset of the expenses they
15 reported. These are just some categories of expenses.

16 Q So, it's not all the expenses, but it's some of them?

17 A Yes.

18 Q And these numbers that Mr. Gillan used in his Exhibit
19 7 for expenses are the identical numbers that appear on Page 8,
20 correct?

21 A They appear to be, yes.

22 Q Now, Dr. Taylor, you're familiar with the ARMIS
23 reports, aren't you?

24 A Yes. Well, I've used them, I'm not an expert on
25 them.

1 Q That was exactly what I was going to say. You've
2 used them and you've had occasion to use them in your practice
3 as an economist?

4 A Yes.

5 Q And these are available on the FCC's web site,
6 correct, so you could have gone there and pulled them down?

7 A Correct.

8 MS. KAUFMAN: Thank you, Dr. Taylor.

9 CHAIRMAN JACOBS: Staff?

10 MS. BANKS: Staff has no questions.

11 COMMISSIONER DEASON: Let me ask a question.

12 Dr. Taylor, I'm looking now at what was handed out, which is
13 JPG-7 --

14 THE WITNESS: Yes.

15 COMMISSIONER DEASON: -- which ends up with a
16 negative number for operating income.

17 THE WITNESS: Yes.

18 COMMISSIONER DEASON: To get that negative number you
19 have to deduct the various expense categories which were, I
20 guess, taken from the last page of the ARMIS exhibit, which was
21 handed to you, correct?

22 THE WITNESS: Correct.

23 COMMISSIONER DEASON: I guess, my question is just
24 trying to understand such expenses as customer service expense,
25 general administrative, are those somehow calculated in as part

1 of UNE cost or are they not part of UNE cost? When we go
2 through a cost study to determine forward-looking cost for
3 UNEs, are there provisions for allocating GNA to those? Are
4 there provisions for allocating customer service expense or do
5 you know?

6 THE WITNESS: No, I believe, there are not; that is,
7 I think, the two processes are completely separate. The
8 expenses, the uniform system of accounts, simply takes the
9 costs that are on the books and puts them into a bunch of pots,
10 and among them are these, there are a lot of other ones.

11 There's no explicit connection made between, for
12 example, the marketing expense account 6610 and whatever
13 marketing expense might find its way into a Telric study for an
14 unbundled network element; that is, the forward-looking cost of
15 a loop includes an overhead factor, which calculate and look at
16 which arguably marketing expense might be part of, but these
17 are done entirely separately and independently, they have
18 nothing really to do with one another.

19 COMMISSIONER DEASON: Well, I guess, what JPG-7 is
20 supposed to show is that if BellSouth had to pay UNE lease
21 payments to run its company and provide the same level of
22 service that it's providing now that it would -- it would
23 operate at a deficit.

24 THE WITNESS: That's what it purports to show, yes.

25 COMMISSIONER DEASON: And, I guess, my question is

1 are we double counting some expenses in the sense that UNE
2 lease payments contain some general administrative already?

3 THE WITNESS: Sure.

4 COMMISSIONER DEASON: So, you would say that there
5 maybe is some double counting of expenses?

6 THE WITNESS: Well, there's double counting in that
7 sense. In what I take to be Mr. Gillan's thought experiment,
8 I'm not sure there is. I think, what he says or his
9 experiment, in my mind, was suppose BellSouth had to serve the
10 number of loops it serves and it calculated its -- and we
11 calculate what it would have to pay in UNEs for those loops and
12 for transport, these are all parts of the study that we haven't
13 been through yet and we know nothing about, we would end up
14 with BellSouth paying \$2 billion for that.

15 And in addition, in Mr. Gillan's world, he takes
16 these other expenses, some of which might be, arguably,
17 included in the UNE lease payment, I think, you're probably
18 right, but I'm not sure that -- that's not the worst thing
19 about this calculation. The worst thing about the calculation,
20 I think, from my perspective is I don't know where the lease
21 payment calculation comes from and I don't know what other
22 expenses would be involved in this hypothetical thought
23 experiment that Mr. Gillan has of BellSouth supplying all of
24 its needs through UNEs.

25 I mean, that's a pretty complex kind of a model. I'm

1 sure he could write it down, but I'm sure he didn't. It's all
2 contained in probably in the UNE lease payment breakdown,
3 because that would tell us how many loops he's got, how much
4 transport he thinks he's got, how much switching he's buying.

5 And then, I suppose we could do as you suggest and
6 try to back out some of the marketing expenses, some of the
7 executive and planning, general and administrative, which is
8 already contained in the UNE lease payment. You know, those
9 are ways of beginning to try to correct this calculation. Of
10 course, my main point, which I made in my summary was that even
11 if this were correct this doesn't tell me anything about
12 whether UNEs accurately reflect the forward-looking cost of
13 doing business.

14 COMMISSIONER DEASON: Okay, thank you.

15 COMMISSIONER JABER: Dr. Taylor, I have a couple of
16 questions on your Exhibit WET-2. The second page says
17 effective BOCC entry to intraLATA and interLATA service.

18 THE WITNESS: Okay. Actually, I don't have a copy of
19 that with me.

20 COMMISSIONER JABER: WET-2.

21 THE WITNESS: Yes.

22 COMMISSIONER JABER: Is this something you prepared,
23 Dr. Taylor?

24 THE WITNESS: No.

25 COMMISSIONER JABER: Who prepared this and for what

1 purpose was it prepared?

2 THE WITNESS: This is a press release by the Iowa
3 Competitive Telecommunications Coalition reporting on a study
4 that Jerry Hausman, an economist at M.I.T., did studying the
5 effects of 271 relief on prices and competition.

6 COMMISSIONER JABER: So, all three pages were part of
7 the press release? I'm specifically looking --

8 THE WITNESS: Yes. I believe, the press release
9 consisted of Page 1 and an executive summary.

10 COMMISSIONER JABER: It seems that this person puts
11 an emphasis on a decrease in prices with the local service
12 bills after 271 entry, and my question is simply this: Where
13 did the local service prices start? And I'll tell you why I'm
14 asking so that your answer can be as direct as possible. There
15 is a school of thought that perhaps there isn't adequate
16 competition in Florida in the local market because local rates
17 are low, quote, unquote. So, my question is where were the
18 rates in Texas, New York, and Pennsylvania --

19 THE WITNESS: And California.

20 COMMISSIONER JABER: -- and California when 271 entry
21 was had?

22 THE WITNESS: Well, I could take that as a request.
23 I don't know. And the study -- I don't have the study that
24 would show me what the levels were. Let me just explain
25 quickly what the study actually showed. What it was doing was

1 comparing the change in local rates, both line rates and total
2 bill for local, in Texas and California over time and in New
3 York and Pennsylvania over time. And what it found was
4 actually that the basic exchange rates were higher after 271,
5 but the total bill fell. And the conclusion was it was not a
6 statistically significant difference, but it was a positive
7 difference.

8 COMMISSIONER JABER: Total bill, are you including
9 long distance?

10 THE WITNESS: No, just local.

11 COMMISSIONER JABER: Just local.

12 THE WITNESS: Correct. The long-distance effect was
13 a huge one, it was the 10 to 25% reduction in price.

14 COMMISSIONER JABER: All right. And on Form 477,
15 your WET-3 --

16 THE WITNESS: Yes.

17 COMMISSIONER JABER: -- companies have to respond to
18 this form and submit data on DSL deployment, among other
19 things, but you agree that DSL deployment is reported using
20 this form, right?

21 THE WITNESS: Yes.

22 COMMISSIONER JABER: Do you know what the percentage
23 of DSL penetration is for ALECs?

24 THE WITNESS: No.

25 COMMISSIONER JABER: So, you included this form, but

1 you haven't included the results?

2 THE WITNESS: Oh, these are the results that underlie
3 the FCC annual competition report, and I only included the form
4 to show what was actually being requested, what kind of lines,
5 because Mr. Gillan and I were having a debate about what kind
6 of lines were being asked for. The FCC, for whatever reason,
7 to my knowledge, has not revealed the broadband numbers in
8 their competition report, and I have their competition report.
9 That's a public document.

10 COMMISSIONER JABER: What is that date?

11 THE WITNESS: The last competition report, I think,
12 is December of 2000.

13 COMMISSIONER JABER: And you don't know if that
14 report contains the level of DSL deployment by ALECs?

15 THE WITNESS: I don't remember that it does. I have
16 it in front of me.

17 COMMISSIONER JABER: Do you mind taking a few minutes
18 to look at it?

19 THE WITNESS: Sure. And precisely, you're looking
20 for the proportion of the CLEC penetration in the DSL market?

21 COMMISSIONER JABER: DSL market, mm-hmm.

22 THE WITNESS: No. In their printed report they break
23 it down in a number of ways, residential and small business, a
24 lot of different ways, but they don't break out anything like
25 broadband or any data description like that. They do say, As

1 other information from the form becomes available, it will be
2 routinely posted on the Commission's Internet site." It says
3 that in the beginning.

4 COMMISSIONER JABER: So, you're not familiar with any
5 FCC report that would give data on broadband deployment, you
6 wouldn't know of anything?

7 THE WITNESS: Well, there is a second report; that
8 is, they do an annual advanced services broadband report, and
9 there is one that came out, I think, over the summer, but I
10 don't remember from that trying to distinguish between CLEC or
11 DLEC and ILEC presentation. They were just arguing how many --
12 how much broadband access was available, and I don't think they
13 tried to distinguish by type of carrier.

14 COMMISSIONER JABER: Okay. Let me ask you a broader
15 question, and I'm trying to remember here as we go through
16 today and next week the purpose of why we're here. How
17 critical is the level of DSL deployment by ALECs to the 271
18 process?

19 THE WITNESS: Well, to my thinking, the level of
20 penetration, if you'd like, by CLECs or DLECs, is important
21 only insofar as it is one piece of information about
22 availability; that is, as I understand your task it's to look
23 at the checklist and to make sure that the market is open.

24 And there's no rule in the Act or in the FCC's orders
25 that say how much competition has to take place. On the other

1 hand, as pragmatists you recognize that if a company came
2 before you arguing that the checklist was satisfied 10 years
3 ago, but we didn't have anybody in market, it was probably
4 something wrong. So, to my view, it's a statement about
5 whether the pipeline is open, whether someone has actually
6 gotten through and is actually providing service.

7 COMMISSIONER JABER: And would that analysis be
8 relative to how much penetration the ILEC maintains?

9 THE WITNESS: That I don't think so. It is if you're
10 measuring trying to thing about, perhaps deregulating, of
11 course, you don't regulate that service, but asking how
12 competitive the service is, but that's not where you would go
13 to find out how competitive Internet or data services are,
14 because the main competition for both CLECs and ILECs in the
15 DSL market is from cable modems.

16 I mean, they're the ones that have the bulk of the
17 business. That's where the head-to-head competition is taking
18 place. So, if it's simply competition for data access, you've
19 got a whole another area to look for competitors, it's not
20 simply the DLECs. This is a small piece of the competitive
21 puzzle.

22 COMMISSIONER JABER: Okay. Thank you.

23 CHAIRMAN JACOBS: Dr. Taylor, in the analysis that
24 Dr. Gillan gave to the reason why resale is declining -- let me
25 step back for a moment. I think, in earlier testimony, I

1 believe, Ms. Cox, she explained that this is a natural
2 progression, that you would expect that as more providers go
3 towards facilities that they go away from resale.

4 He says that -- Mr. Gillan says that, yeah, the
5 economics are declining, but it's not so much a natural
6 progression increasing for facilities; in fact, he says that
7 the decline in resale lines greatly exceeds the increase in any
8 other kind of method of access. Is that consistent with your
9 analysis?

10 THE WITNESS: No. I think, there's a dispute about
11 Mr. Gillan's calculation of resale lines and, I think, it's not
12 something that I know much about, but I think that's in
13 question in the -- on the record. I don't agree that he has
14 the right change in resold lines. I think, the biggest
15 difference -- I mean, it's partly what Ms. Cox said, but I
16 think more than that is the presence and the implementation of
17 UNE-P.

18 Remember back when we were talking about what UNE-P
19 was and whether it was the right thing to do, the big argument
20 that at least I was making was that UNE-P was simply cheap
21 resale; that is, if you can get both the loop and the port all
22 together at cost base rate, you are essentially reselling local
23 exchange service only for, under some circumstances, a lower
24 rate.

25 And so, what I interpret whatever Mr. Gillan's --

1 whatever the truth is about the rate at which resale is
2 progressing in Florida, I take it to be reduced by substitution
3 of UNE-P access for resale, because they're very similar and,
4 at least for business customers, UNE-P is a lot cheaper.

5 CHAIRMAN JACOBS: That takes me really to my
6 essential question. You can talk about presence in the
7 marketplace, but I kind of agree with your earlier analysis.
8 It really has to do with entry and ultimately with activity;
9 i.e., revenues -- actually, not revenues, profits.

10 THE WITNESS: Yes. Ultimately, if local competition
11 is going to survive on its own, there has to be a profit -- a
12 business case has to look profitable for an entrant.

13 CHAIRMAN JACOBS: Okay. And so, if we do agree with
14 the idea that the tendency would be for new entrants to move
15 away from resale to UNE, then we do have to be concerned with
16 the analysis that UNEs -- the profit on UNEs appears to be --
17 how should I say, at best pinched, if not fleeting.

18 THE WITNESS: Well, you have to be careful. By
19 profit on UNEs, I trust you mean the profit of a firm that's
20 using UNEs --

21 CHAIRMAN JACOBS: Right.

22 THE WITNESS: -- to get into the business.

23 CHAIRMAN JACOBS: Right.

24 THE WITNESS: Well, it's certainly the case,
25 particularly for a residence customer, that you can't simply

1 sell basic local exchange service to a residential customer who
2 does nothing else but buys residential exchange service; no
3 toll, no vertical services. You can't serve that customer
4 profitably using UNEs, because the UNE rate is above the basic
5 exchange rate, that's true.

6 But two things; one is, it still may be profitable,
7 particularly for an ALEC, to compete for some customers because
8 of the other services that come with them, because of toll,
9 because of vertical services, because of carrier access, that
10 they make money on the customer, but they don't make money
11 simply selling the basic line.

12 And the second point I would make is if you've
13 actually got the Telric rate set correctly, I mean, if that
14 really is BellSouth's forward-looking cost of providing the
15 loop, say, then the ALEC is in exactly the same competitive
16 position that BellSouth is; that is, it loses money on the
17 loop, too, but it makes it up in toll and in vertical services
18 and other things for good customers.

19 CHAIRMAN JACOBS: That seems counterintuitive to the
20 whole idea of bringing competition; i.e., let me put it this
21 way. I've always understood that one of the important aspects
22 of introducing competition was also to introduce efficiency and
23 innovation. And so, I followed the logic because I think,
24 right, we do want to encourage people to move away from resale
25 because, obviously, the economics of it, as acknowledged in the

1 testimony, are very limited in terms of innovation, in terms of
2 expanding the services that a company can offer in that
3 arrangement.

4 And so, my thought is there would be this paradigm,
5 and we would move along it from basic resale to UNE-Ps to
6 facilities base. And along that paradigm, I'd expect to see
7 innovation coming from the new entrants that would challenge
8 the incumbent companies. And always the frustrating point I
9 come to is kind of what, I think, I heard you just say is that
10 if the incumbent company is in a losing proposition, then the
11 interim companies ought to just have to accept that that's the
12 way of the world and deal with it, And that just simply seems
13 counterintuitive to how we want to see the markets operate.

14 Let me give you a specific example, maybe you can
15 speak to it. What I have been encouraged to see is when I've
16 seen in other cases where companies come in and they design
17 their networks; we've seen it, they design their networks so
18 that they don't have to follow the -- the facility becomes
19 facilities-based, they design their network so that they don't
20 have to follow the strict guidelines of the incumbent network.

21 But in their attempt to really sell to this
22 marketplace, and I'm not espousing all the positions that are
23 taken in an effort for them to become facilities-based, but
24 what I see are challenges, real challenges, to them setting up
25 an ongoing sustained business as a facilities-based company.

1 And so, I, as a policymaker, I want to step back and
2 say, well, do I want to continue to say, well, stay in resale;
3 do I want to try to break down all the barriers to getting a
4 cost-based UNE rate, or do I want to try and incent some kind
5 of facilities-based provider? And if I do that, shouldn't I
6 balance some of these issues I hear coming up in facilities
7 base to favor that market in that way? I'd be interested in
8 your thoughts on that.

9 THE WITNESS: Well, that was one of the big thoughts
10 and sort of careful balancing act in the First Report and Order
11 at the FCC. If you remember Paragraphs 683 to 685, you
12 probably don't, but I once had them on a t-shirt, it carefully
13 talked about what forward-looking costs would be in a perfect
14 network and how important it is for competition that little new
15 companies be able to take advantage of the economies of scale
16 and scope that the incumbent has.

17 And it says, but trading off against that, that would
18 say look at the most efficient network you could have, lower
19 the UNE rates to provide all of that benefit to every entrant
20 and said, well, but looking against that do we really want to
21 do that? Because that will mean, for some long period of time,
22 that no competitor is going to have any incentive to build his
23 own network.

24 And then what the FCC finally came up with was a
25 mixing of those two incentives so that, yes, the advantages of

1 the economies of scale and scope would get passed through in
2 the UNE rates, but that they would be close enough to cost that
3 an efficient CLEC, ALEC, would still have an incentive to build
4 its own network.

5 Let me throw one other sort of thing at you, which is
6 just a little bit of history. Where the Act comes from and
7 where the FCC's Report and Order comes from, I think, is partly
8 our experience in long distance where, if you remember, AT&T
9 had a national network, MCI had a little microwave network that
10 they built for some other purpose and Sprint had a railroad,
11 which had a right of way. They all had facilities, the new
12 entrants had facilities, but very limited facilities.

13 The way competition worked in long distance was by
14 permitting resale, permitting Sprint and MCI to resell AT&T's
15 service they could advertise nationally. I don't know if you
16 remember the ads then. Sprint used to have an ad going over
17 names of little cities all over the place. They used
18 Frostproof in Florida, frostproof -- is that the -- or
19 frost-free, I forget.

20 COMMISSIONER DEASON: Frostproof.

21 THE WITNESS: It's where the ex-commissioner chairman
22 came from, but at any rate --

23 CHAIRMAN JACOBS: It's Frostproof.

24 THE WITNESS: Frostproof. To illustrate that they
25 could serve everywhere; if you wanted to sign up with MCI,

1 you'd have MCI service everywhere, even though at the beginning
2 88% of it would be going over AT&T's network. I think that was
3 -- the way that worked was very good.

4 It permitted marketing, which is one of the biggest
5 problems these guys face, to be global, you know, national as
6 far as long distance is concerned and, I think, the application
7 for local service is sort of the same, that a carrier can come
8 into Florida, it can advertise throughout Florida that it's
9 providing service, even if it doesn't have a dream of a
10 facility anywhere outside of Jacksonville.

11 And if it ever is so lucky as to get a customer in
12 Fort Myers, well, it can resell service there; it's not its
13 first choice, it may not even be profitable at the margin, but
14 the fact that it can advertise I can serve anybody in Florida
15 means that, at least in short run, it's a good way to get its
16 message out and to grow.

17 I think, in my mind, at least that's the main use of
18 both resale and actually of UNEs, because another thing, when
19 you go to large business solutions and all of that, you begin
20 to hear the same companies, ILECs and CLECs alike, advertising
21 how much of their service is on net; that is, that they have
22 control over it end to end. And if they can tell you, you
23 know, we're 88% on net, that's a pretty good thing, because
24 they can advertise the quality of service and control it and
25 that's a big marketing point.

1 So, you know, I think, we're in an evolutionary
2 phase. It's good to be able to use BellSouth facilities early
3 on to expand your base, but when push comes to shove, you're
4 going to be thought of as a higher-quality carrier to the
5 extent that you can brag that, you know, some large fraction of
6 your traffic is going to be served entirely on net.

7 CHAIRMAN JACOBS: Thank you. And I would have no
8 reason to dispute that. When I to get that point, it sounds to
9 me like there's going to be some trade-offs. We may -- and how
10 should I say this -- there was an example that came across a
11 few minutes ago, there was a charge that was put on every line.
12 It may very well be -- as a UNE charge. It may very well be
13 that the thought becomes rather than trying to do cost recovery
14 at that minute a level, we start to look at, okay, if the
15 company gives up that level of revenue for that, will they gain
16 overall activity from that wholesale customer that they're
17 getting?

18 And/or should we look at the idea that they could
19 sell that wholesale customer additional service, such as ADSL
20 that they choose not to use now and begin to determine is that
21 an effective incentive to move us along that line? Because,
22 otherwise, it sounds like we're stuck in this middle position
23 and we're not moving very far to the far end.

24 THE WITNESS: Right. If I follow your concern -- I
25 mean, I think, it's a valid one. Once there is true

1 facilities-based competition; that is, when the metropolitan
2 area networks, I mean, as there is in large cities. In Miami,
3 there are, I don't know how many, metropolitan area networks
4 sitting there, lots of capacity owned and controlled by people
5 other than BellSouth. And that capacity can be used to provide
6 retail services to large banks and stuff, which is what it's
7 done today, but equally it can be used to provide backbone
8 capacity or high-capacity facilities for other retail carriers.

9 And this used to be the business plan of the CAPS,
10 people like MFS, like Brooks Fiber, that thought of themselves
11 as wholesalers, didn't want retail customers particularly,
12 wouldn't turn one away, but whose raison d'etre was to provide
13 high-capacity access to large business customers for
14 long-distance carriers and people like that.

15 And those things are still out there. Most of them
16 have been bought up by the long-distance carriers. I mean,
17 Metropolitan Fiber is part of Worldcom, Teleport is part of
18 AT&T, you know, but the principle is still there, and the
19 business case is probably still there, and once you have that
20 kind of competition, then you're in the position where
21 BellSouth doesn't have market power in the wholesale market,
22 that if people want capacity in Miami, if they don't like the
23 Telric rate, they can buy it from BellSouth, they can go
24 someplace else, and then you can drop Telric and get out of the
25 regulating business.

1 CHAIRMAN JACOBS: Thank you. I've taken up far too
2 much time.

3 COMMISSIONER BAEZ: Mr. Chairman, I just have one
4 question.

5 CHAIRMAN JACOBS: Okay, go ahead.

6 COMMISSIONER BAEZ: Dr. Taylor, in your testimony
7 here on Page 16, you mentioned or you use the term reciprocal
8 or the notion of reciprocal entry.

9 THE WITNESS: Yes.

10 COMMISSIONER BAEZ: And when I read it I just got
11 this image of, like, parallel universes. Are you trying to
12 draw a picture where RBOCs, specifically, are not allowed to
13 enter or have trouble entering because of, you know, legal
14 impediments, but have problems entering the long distance in
15 comparison to perhaps the CLECs trouble or the ALECs trouble
16 entering into -- I mean, is that some parallel that you're
17 trying to draw?

18 THE WITNESS: Yes, that's part of it. I guess, the
19 second part, probably the more relevant part, is the idea that
20 once we're in a 271 world, I mean, the world that's going to
21 come at some point, it's very to tell the incumbent from the
22 entrant, in some sense; that is, AT&T, MCI, and Sprint together
23 in Florida, presumably, have 90% of the interLATA long-distance
24 business -- I'm just making that up -- but among them, you
25 know, they have a business relationship of the bulk the

1 long-distance customers in Florida. The ILECs have 100% or
2 90%, some number like that, of the local customers.

3 But now, when you come to competition where everybody
4 is providing both, and we don't make this kind of artificial
5 regulatory distinction between long-distance and regular usage,
6 who is the incumbent? I mean, AT&T puts on its little bill,
7 hey, you want local service from us? Check the box right here;
8 you know, you're our customer, you know us, you love us, you
9 trust us, we'll provide you local service. That's an easy
10 sell.

11 BellSouth does the same thing, sort of, with whatever
12 rules you have for them. Check the box and we'll provide
13 long-distance service; you know us, you love us. You know,
14 who's the entrant and who is the incumbent when you're selling
15 a package of both?

16 COMMISSIONER BAEZ: So, is the point that you're
17 trying to make, is it the relative advantages of each sector?
18 I mean, obviously, AT&T and MCI already compete with each
19 other, so even in the long-distance sector there is
20 competition, but there's a relative advantage and that those
21 relative advantages are equal?

22 THE WITNESS: Equal would be a stronger word. I'm
23 just --

24 COMMISSIONER BAEZ: Or similar?

25 THE WITNESS: Yes. I mean, if you take your yellow

1 page and divide it up into benefits and costs, there are
2 benefits on both sides. There's comparable benefits on both
3 sides. The IXCs have a customer base that they can sell local
4 service to, the ILECs have a customer base that they can sell
5 long-distance service to and, in the future, you're going to be
6 selling them as a package. I don't think we're going to see
7 niche long-distance carriers or niche local carriers.

8 COMMISSIONER BAEZ: But a lot of the disputes that we
9 deal with here seem to know they absolutely center around at
10 least making a point of who's controlling the network.

11 THE WITNESS: Yes, I take that point. That is -- at
12 least in the short run that is a difference, which the
13 Telecommunications Act recognized and which is why, before this
14 competition takes place, BellSouth has to show that it meets
15 the 14-point checklist.

16 COMMISSIONER BAEZ: And the last one -- I know I said
17 I was going to have one question, but it turned into a few
18 more. And going back to what you identified as having, you
19 know, equal or having two parties with both opportunities and
20 problems, and I'm trying to get away from or I'm trying to look
21 at it less from a numbers game into something a little bit more
22 fluid, I mean, is it possible that you can't be on top of
23 everything? I mean, is it a zero-sum game?

24 I'm trying to find some explanation for the claim or
25 some logic behind the claim that as soon as a local exchange

1 company or the ILEC is allowed into a long-distance market,
2 then, low and behold, a local market is going to be created
3 where they may have been less of one before, and I'm having
4 trouble making that connection. And the only thing I can come
5 up with is that somehow people are going to be stretched so
6 many different ways you can't --

7 THE WITNESS: I wouldn't say that.

8 COMMISSIONER BAEZ: The flank is exposed.

9 THE WITNESS: Oh, yes. I think, that's exactly it,
10 your flank is exposed. I mean, if I were AT&T or MCI or
11 Sprint, I would be very concerned. Yesterday, I really didn't
12 have to compete in the local market, particularly, say, for
13 residential customers where maybe I can make money, maybe I
14 can't, but it's not the best thing I can do with my investment
15 dollars. But tomorrow, if I want to keep my long-distance
16 customers, I'm going to have to be able to provide them local
17 service, because BellSouth is going to be in the market saying
18 "Come here, one-stop, sign up with me, local, schmocal, it's
19 all the same.

20 And, I think, in my sort of economic point of view
21 that is more than anything what's driving the results that we
22 see in, you know, in New York and in Texas, that to keep the
23 customers that they have, which are very valuable customers to
24 them, the IXCs find that they have to be able to provide local
25 service, and so they do.

1 COMMISSIONER BAEZ: It's funny that you take the
2 point of the long-distance or the IXCs or the ALECs' flanks
3 being exposed. I guess, my question went more the other way, I
4 guess, is there a flank to expose on the ILEC side? I mean, is
5 the same true for the ILEC?

6 THE WITNESS: Well, yes. I mean, the ILEC's flank
7 has been exposed, essentially, since the Telecommunications Act
8 was passed in the sense that they were obliged to open their
9 local market, but until they met the 271 requirement, they
10 weren't permitted to provide the entire bundle so that if a
11 long-distance carrier wanted to, and not many did, you know, in
12 1996, 1997, could have provided a bundle of services and taken
13 away ILEC-profitable local business customers.

14 There, obviously, was some of that, but I guess it's
15 not until the prospect that the IXCs would lose toll business,
16 that they decided -- the IXCs decided to make a strong
17 marketing push. It hasn't really affected ILEC business that
18 much. You see the results in the FCC report. We have
19 significant competition in local markets, particularly local
20 business markets, but nothing like what we see in Texas and in
21 New York.

22 COMMISSIONER BAEZ: Thank you.

23 CHAIRMAN JACOBS: Okay. Redirect.

24 MR. EDENFIELD: I'm sorry, I thought Mr. Klein had
25 some questions.

1 CHAIRMAN JACOBS: Oh, Mr. Klein, do you want to
2 cross?

3 MR. KLEIN: Mr. Chairman, I do have questions, if
4 it's okay.

5 CHAIRMAN JACOBS: Go right ahead. That's okay with
6 you, Mr. Edenfield?

7 MR. EDENFIELD: Oh, that's perfectly fine. I figured
8 I would go after everybody else did. I'm sorry, I didn't mean
9 to disrupt the process.

10 CROSS EXAMINATION

11 BY MR. KLEIN:

12 Q I guess, Dr. Taylor, in the intervening questions,
13 some of my questions may have been answered, so I'll try to
14 abbreviate them. Andy Klein for KMC Telecom.

15 What's -- if you could just repeat, I believe, you
16 just answered this, but what's the prerequisite for an
17 interlATA bell operating company?

18 A 14-point checklist.

19 Q What's the intent of the 14-point checklist?

20 A Oh. To ensure that the local exchange market is open
21 to competition.

22 Q Okay. And the FCC and Department of Justice have
23 phrased that as fully and irreversibly open to competition;
24 have they not?

25 A Well, fully -- it's probably in there somewhere,

1 irreversible is a phrase that the Justice Department
2 consultants, as intervenors, added to it, but I don't think
3 that's part of the law, but I don't mind it.

4 Q Okay. And the bell operating companies have asked
5 the state Commissions and the FCC for interLATA authority as
6 soon as they believe they've opened the markets to local
7 competition and as soon as they believe they can approve that,
8 haven't they?

9 A Subject to other regulatory restrictions, sure.

10 Q Okay. Now, once the FCC finds a bell operating
11 company has fully opened its market, it permits in-region
12 interLATA entry, doesn't it?

13 A As far as I know, yes.

14 Q Okay. So, isn't it reasonable to conclude that the
15 increase in local competition following interLATA entry that
16 you cite are primarily attributable to the fact that the local
17 markets in those states were finally fully and irreversibly
18 open to competition at the point at which interLATA authority
19 was granted and not before?

20 A Well, I don't think I have any evidence that
21 completely refutes that point of view, but on the other hand, I
22 think it's wrong, because all bell operating -- previously bell
23 operating -- let's call them bell operating companies are
24 trying at the same rate of speed to gain interLATA authority.

25 Many of them are tied together; for example, all of

1 the BellSouth states depend upon the same set of OSS and
2 mechanisms like that, they will all get -- you can't argue that
3 one is ahead of another, and yet I'll bet you a nickel that
4 there'll be a year, at least between when the first one gets
5 authority and the second.

6 So, my view of it is all of the bell companies are
7 running as fast as they can. And the evidence we see, namely
8 holding everything else constant, prices go down and
9 competition goes up when authority is given, cannot in that
10 case, be due to fact that it's only the runs who are running
11 fastest and whose markets are most open who actually win the
12 prize, I don't think that's true.

13 Q But your answer assumes a lot of variables that would
14 have to remain constant among each of the various bell
15 operating company states. You're assuming that the procedures
16 are followed with the same levels of compliance in New York as
17 they are in Pennsylvania, for example.

18 A Well, yes, that's probably not a grand example,
19 however, Florida, Georgia, is a good example. I mean,
20 Pennsylvania and New York isn't, because there are different
21 systems that are involved in Pennsylvania and New York, despite
22 it being Verizon, but within the BellSouth states across the
23 Qwest states, for example, you'll find there's going to be a
24 wide range of times when people are going to be -- companies
25 are going to be allowed -- going to be certified as having

1 satisfied the 271 requirements, even though the systems are
2 identical in each state.

3 Q Okay. Bringing you back to a higher level, I read
4 your testimony as saying, and what you've heard here today --
5 what I've heard you saying here today is that interLATA entry
6 leads to more competition, because other folks are then forced
7 to enter into the market to preserve their long-distance
8 customer base. And I'm saying maybe there's another factor at
9 work here, and maybe that other factor is that the market
10 wasn't even open to competition until that interLATA authority
11 was granted. Isn't that reasonable?

12 A Well, no, I understand your point. That's the one I
13 just answered. No, I don't think it's correct, and the
14 counterexample I gave you is circumstances, for example, across
15 the BellSouth to states where the conditions are the same,
16 roughly the same; that is, common systems across the state, and
17 yet very, very different times of entry for whatever reason.

18 So, you have the circumstance there that if I'm right
19 and you're wrong, what we'll see if Florida goes first or
20 Georgia goes first, for example, we'll see a rush of local
21 competition into Georgia and a year from now, if Mississippi is
22 last, and I'm just making this up, you won't see that rush of
23 local competition into Mississippi. I think, that's a fairly
24 safe bet.

25 Q Are the same people working for BellSouth

1 provisioning loops here in Florida as they are in Georgia?

2 A For some pieces of it, yes, for some pieces of it no;
3 that is, the systems that are used for ordering and
4 pre-ordering and all of that, the answer's yes. People who
5 actually go out and turn the screws, no, I don't think so, but
6 some of them are regional, some of them are not.

7 Q Okay. But the systems that are not regional, you
8 would be assuming that the level of compliance with all the
9 procedures is the exact same, people are doing the work at the
10 exact same interval, and everything else is being done in the
11 exact same manner across each state from one to another?

12 A For the counterexample in my mind that I'm explaining
13 to you, yes. I would subtract the word exact; there's nothing
14 exact in this world, but we're talking about a huge phenomenon.
15 I mean, we're talking about states that have 4 or 5, 6% CLEC
16 penetration going up to 12, to 18, to big numbers overnight;
17 that is, in a year and in six months, And you have to look at
18 something big to explain that.

19 And the biggest thing in town, obviously, is the
20 change in status; plus, as you, yourself, explained it, I
21 couldn't say it any better, that once the stage has been opened
22 to long-distance competition, whether it wants to or not, the
23 ILEC's business plan for local service has suddenly changed,
24 because its toll revenue is at risk.

25 Q Let me ask you this: If the rates were appropriately

1 set in a particular state to permit profitable local
2 competition and the local market was, otherwise, open to
3 competition, wouldn't you expect competitors to enter that
4 market regardless of the Bell's interLATA status?

5 A I guess, since you used the word appropriate, the
6 answer has to be yes. Certainly if basic exchange rates were
7 set at roughly market-clearing prices, whatever those are, and
8 if UNE rates were set at Telric, which they roughly are, we
9 would see probably more entry than we see today.

10 However, even in that world, we would see a big
11 difference when Bell entry came in solely because there's now
12 another very large, very sophisticated competitor out there,
13 namely the Bell Company, with large number of customer
14 relationships, large fraction of customer relationships that it
15 can sell toll to and, our experience has been, sells it very
16 successfully. They grab a quarter of the market in the first
17 year or so.

18 Q Where, in your analysis, do the smaller carriers fit
19 in? You discuss the large IXCs, you discuss the incumbent
20 company, where does a company like KMC Telecom, where do they
21 fit in in the longer term in your view?

22 A Well, I don't own stock.

23 Q We're privately held.

24 A Yes. Well, in good days you might get bought up by a
25 large company, the sort of MFS, Teleport end game. There may

1 be -- you may be the sort of FOX network of telecommunications
2 and become a full-service provider nationally yourself; there
3 is a chance of that. There may be, though we haven't seen it
4 yet, a role for a niche player; that is, serves small business,
5 provides local, resells long-distance, provides enough unique
6 customer service of the sort that big companies, Bell
7 companies, AT&T, MCI, don't have the time or inclination, and
8 there might be an equilibrium there in which a number of people
9 of your sort last in the long run. I mean, that's sort of my
10 best guest as to what the future of small companies like yours
11 might be.

12 Q So, you're guessing that there might be opportunities
13 for players, other than the large behemoths, to compete in this
14 new market you're advocating, but it seems like what you're
15 recommending to this Commission is just let BellSouth in long
16 distance, let the big guys just fight it out and let the little
17 guys go by the wayside?

18 A Well, it may sound that way, that's why economics is
19 the dismal science. The concern is for the customer, and if
20 you can provide niche service to the customer so that they'll
21 miss you when you're gone, then you've earned your right to
22 exist. But if you can't, you know, if you're just another
23 clone of AT&T or Bell at the end of the day, but not as big,
24 higher costs, smaller fraction of your minutes stay on net, or
25 whatever the measures of quality that people look at are, you

1 know, then you will -- then, yes, I am recommending that you --
2 or not recommending. I'm not concerned that what I am
3 recommending, namely efficient cost-based rates and lots of
4 competition, may drive you out of the market.

5 Q I guess, in your scenario if there are only two or
6 three companies left, how is that competition? Isn't that more
7 an oligopoly?

8 A Well, yes, technically, it is an oligopoly, that's
9 what the word means, but it is also competition. Whether it's
10 enough competition that we can deregulate the whole mess and be
11 done with it is an experiment that nobody knows the answer the
12 to.

13 Remember that two basic facilities-based carriers in
14 wireless was enough for a long time to generate a great deal of
15 competition. I mean, we have five or six now, and that's even
16 more. I mean, no one would argue that wireless, including PCS,
17 requires regulation, not that anyone has market power in that
18 market, and that's a small number of competitors. It would be
19 nice if we ended up with more; people like choice.

20 On the other hand, if people really like choice, then
21 if BellSouth doesn't give them choice, they'll go to someone
22 smart enough to give them choice. I mean, I think, even AT&T
23 when it was still owned Western Electric, manufactured things
24 other than black bake-alike telephones, because they finally
25 realized that people wanted choice.

1 Q Assuming the Act is intended to promote deregulation
2 in the longer term and that deregulation requires multiple
3 competitors, aside from cozy oligopoly, how does your scenario
4 play out? I mean, don't we need more than two or three large
5 players? Don't we need more than cable companies and BellSouth
6 in a DSL market, for example?

7 A Well, not necessarily; that is, the example I gave
8 you is two, three, four competitors are enough that you can
9 deregulate them from the wireless example. So, you said cozy
10 oligopoly, I'll say fiercely competitive oligopoly, and there
11 are such things the world. How many automobile manufacturers
12 do we have that sell automobiles in the United States? It's
13 not a hundred, so you don't need -- it's not obvious that you
14 need large numbers of competitors.

15 But second, what we have is sort of overlapping
16 markets. I mean, you raised another, you know, cable
17 competition, you raise the prospect of competition from
18 wireless and from wire line telephone. All of these are
19 competitors for certain services under certain circumstances,
20 and different technologies are coming in to compete.

21 I think, if I were the Commission, the last thing I
22 think I would worry about in this sort of very long-run view
23 that you and I are arguing about is where competition is going
24 be, simply because it's big bucks; that is, this is an
25 information technology, the traffic is growing by leaps and

1 Staff, I'd offer to make that available as a late-filed
2 exhibit.

3 BY MR. EDENFIELD:

4 Q At the risk of taking us very quickly through math
5 purgatory, were there any concerns that you had about the
6 little analysis you and Ms. Kaufman did on the board that you
7 haven't already talked about, via questions from the
8 Commissioners?

9 A Just one and very quickly. I mean, my argument with
10 Mr. Gillan isn't his arithmetic. I'm sure his is better than
11 mine. My argument is with the structure of the study and, I
12 think, I went over that with Mr. Deason about what I would do
13 differently and the problems I have with what I see, and they
14 weren't answered by calculating what the volumes of demand
15 actually were.

16 MR. EDENFIELD: Okay. That's all I have. Thank you.

17 CHAIRMAN JACOBS: Exhibits.

18 MR. EDENFIELD: BellSouth -- Dr. Taylor has my book.
19 I forgot what number it was.

20 CHAIRMAN JACOBS: 28.

21 MR. EDENFIELD: BellSouth would move in Exhibit 28.

22 CHAIRMAN JACOBS: Without objection, show Exhibit 28
23 is admitted.

24 (Exhibit 28 admitted into the record.)

25 MS. KAUFMAN: The FCCA would move Number 29.

1 CHAIRMAN JACOBS: Without objection, show Exhibit 29
2 is admitted.

3 (Exhibit 29 admitted into the record.)

4 CHAIRMAN JACOBS: Thank you. You're excused,
5 Dr. Taylor.

6 (Witness excused.)

7 CHAIRMAN JACOBS: Given the hour, I'm assuming that
8 Mr. Scollard will take some time.

9 MR. EDENFIELD: I'm not real sure. I have not had a
10 chance to talk to the Staff or the ALECs about how much cross
11 they have for Mr. Scollard. I'm sure it will be significantly
12 less than there will be for Mr. Milner, but I don't know.

13 MS. KAUFMAN: Mr. Chairman, I'm sorry, before we go
14 to that, I think that -- I'm not sure we had the exhibit
15 numbers correct. I think, the FCCA's Exhibit was Number 30
16 and, I think, AT&T --

17 CHAIRMAN JACOBS: Actually, it was 29, but that
18 brings up the point because, I believe, Mr. Lamoureux, you
19 passed out this transcript from Tennessee that was not marked.

20 MR. LAMOUREUX: I don't need to have that marked.

21 MS. KAUFMAN: Okay, thank you.

22 MR. MELSON: We may be able to finish Mr. Scollard.
23 Worldcom's got no cross.

24 MR. LAMOUREUX: AT&T has no questions for
25 Mr. Scollard.

1 MR. KLEIN: I have no questions for Mr. Scollard.

2 MS. KAUFMAN: I just have one or two.

3 CHAIRMAN JACOBS: Okay. Let's -- and Staff?

4 MS. BANKS: Staff has no questions for Mr. Scollard.

5 CHAIRMAN JACOBS: Well, let's go ahead and finish Mr.
6 Scollard, and --

7 MR. EDENFIELD: Thank you. I'm sure Mr. Scollard
8 appreciates not having to make another trip from Birmingham.

9 CHAIRMAN JACOBS: Let's take a short break. We'll
10 come back in ten minutes.

11 (Recess taken.)

12 CHAIRMAN JACOBS: You may proceed, Mr. Edenfield.

13 MR. EDENFIELD: Thank you, sir.

14 Mr. Scollard, will you confirm that you were
15 previously sworn?

16 THE WITNESS: Yes, I was.

17 DAVID P. SCOLLARD

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

21 DIRECT EXAMINATION

22 BY MR. EDENFIELD:

23 Q State your name and position with BellSouth, please?

24 A David Scollard, Manager of Wholesale Billing.

25 Q And did you cause to be filed in this proceeding ten

1 pages of direct testimony with two exhibits and five pages of
2 revised surrebuttal testimony with no exhibits?

3 A Yes.

4 Q Do you have any changes to that direct or revised
5 surrebuttal testimony?

6 A No.

7 Q If I ask you the questions that appear in your direct
8 and revised surrebuttal testimony today would your answers we
9 be the same?

10 A Yes.

11 MR. EDENFIELD: With that, I would move
12 Mr. Scollard's direct testimony and his revised surrebuttal
13 testimony inserted into the record as if read.

14 CHAIRMAN JACOBS: Without objection, show
15 Mr. Scollard's direct and surrebuttal testimony entered into
16 the record as though read.

17

18

19

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21

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25

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF DAVID P. SCOLLARD
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 960786-TP
5 MAY 31, 2001
6

7 Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH
8 BELLSOUTH TELECOMMUNICATIONS, INC.
9

10 A. I am David P. Scollard, Room 28A1, 600 N. 19th St., Birmingham, AL 35203.
11 My current position is Manager, Wholesale Billing at BellSouth Billing, Inc., a
12 wholly owned subsidiary of BellSouth Telecommunications, Inc. In that role, I
13 am responsible for overseeing the implementation of various changes to
14 BellSouth's Customer Records Information System ("CRIS") and Carrier
15 Access Billing System ("CABS").
16

17 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.
18

19 A. I graduated from Auburn University with a Bachelor of Science Degree in
20 Mathematics in 1983. I began my career at BellSouth as a Systems Analyst
21 within the Information Technology Department with responsibility for
22 developing applications supporting the Finance organization. I have served in a
23 number of billing system design and billing operations roles within the billing
24 organization. Since I assumed my present responsibilities, I have overseen the
25 progress of a number of billing system revision projects such as the billing of

1 unbundled network elements (“UNEs”), as well as the development of billing
2 solutions in support of new products offered to end user customers. I am
3 familiar with the billing services provided by BellSouth Telecommunications
4 to local competitors, interexchange carriers and retail end user customers.

5

6 Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE ANY STATE PUBLIC
7 SERVICE COMMISSION? IF SO, BRIEFLY DESCRIBE THE SUBJECT
8 OF YOUR TESTIMONY.

9

10 A. I have testified before the state Public Service Commissions in Alabama,
11 Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina, the
12 Tennessee Regulatory Authority, and the Utilities Commission in North
13 Carolina on issues regarding the capabilities of the systems used by BellSouth
14 to bill for services provided to retail customers, Interexchange Carriers (IXCs)
15 as well as Alternative Local Exchange Companies (ALECs).

16

17 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS
18 PROCEEDING?

19

20 A. The purpose of my testimony is to address the issues set forth by the Florida
21 Public Service Commission (the Commission) in this proceeding dealing with
22 the capabilities of the systems used by BellSouth to bill ALECs.

23

24 Q. IDENTIFY THE SYSTEMS BELL SOUTH USES TO PROVIDE BILLING
25 TO ALECS FOR SERVICES ORDERED FROM BELL SOUTH.

1

2 A. The systems BellSouth uses to provide bills to ALECs have no meaningful
3 differences from those used to provide bills to its retail and interexchange
4 access customers. The systems BellSouth uses to accumulate, rate and format
5 ALEC billing transactions vary depending on the services being ordered. If an
6 ALEC orders a service for resale, the service request is channeled to CRIS to
7 maintain a record for the ALEC of the services that BellSouth has provided.
8 Likewise, usage events (toll calls, local calls, vertical service activations that
9 are billed on a per use basis, etc.) associated with the resold services are also
10 sent through CRIS.

11

12 For facilities-based ALECs, CRIS is used to maintain a record of service
13 requests and resulting billing transactions for unbundled switch ports and
14 unbundled loops (service level 1 loops). Service requests for all other UNEs
15 and interconnection services are channeled through CABS. Therefore, all of the
16 billing transactions related to all other UNEs and interconnection services are
17 accumulated in CABS for preparing bills to the ALEC.

18

19 These two systems (CRIS and CABS) are the same systems used to bill
20 BellSouth retail customers and interexchange carriers for the services provided
21 by BellSouth. Regardless of which of the two systems are being used,
22 BellSouth performs the same billing processes to prepare an invoice for an
23 ALEC as it does for a retail customer.

24

25 Q. GENERALLY, HOW DOES THE BILLING PROCESS WORK?

1

2 A. Any billing process is designed to perform two basic functions. First, there are
3 the daily processes that are performed to input customer transactions, edit them
4 and prepare them as much as possible for creation of the bill. The types of daily
5 transactions accumulated and processed in CRIS and CABS are quite
6 numerous but generally include service orders (which provide information
7 about customer order activity), switch recordings (which provide records of
8 billable call events), payments received from customers, and other
9 miscellaneous types of transactions such as adjustments for previously billed
10 amounts. Second, at the end of each bill period (generally each month) the
11 events for a given customer are extracted, formatted in a manner that is
12 expected by the customer and distributed either via some type of postal carrier
13 or sent electronically to the customer.

14

15 Q. HOW MANY ALECS DOES BELLSOUTH BILL EACH MONTH?

16

17 A. Exhibit DPS-1 provides a summary of the ALECs that currently have billing
18 accounts with BellSouth along with a total of the different types of bills that
19 BellSouth produces. In its nine-state region, BellSouth produces
20 approximately 5,500 bills each month for approximately 338 different ALECs
21 using the various billing options available to them. In Florida, BellSouth
22 produces 1,435 bills each month for approximately 182 ALECs operating in
23 the state.

24

25 *Issue 2: Does BellSouth currently provide interconnection in accordance with the*

1 *requirements of Sections 251 (c) (2) and 252 (d) (1) of the Telecommunications Act*
2 *of 1996, pursuant to Section 271 (c) (2) (B) (I) and applicable rules promulgated by*
3 *the FCC?*

4 *(d) Does BellSouth currently permit the use of a Percent Local Usage (PLU)*
5 *factor in conjunction with trunking?*

6

7 Q. DOES BELL SOUTH ALLOW FOR THE USE OF A PERCENT LOCAL
8 USAGE FACTOR (PLU) IN BILLING FOR INTERCONNECTION
9 TRUNKING?

10

11 A. Yes. BellSouth can and does bill ALECs for usage and other charges for an
12 ALEC's use of two-way trunks using the appropriate PLU factor as it does with
13 other types of trunks. The issue has been that the facility charges (monthly and
14 one time installation charges) for these trunks and facilities must be allocated
15 between both the ALEC and BellSouth because the traffic of both is sent across
16 the trunks. Currently, BellSouth handles this using a manual method in which
17 the full charge is billed to the ALEC and a subsequent credit is applied to
18 represent the fact that BellSouth is using a portion of the trunk.

19

20 At a future point in time when the process has the potential to become too
21 cumbersome, a mechanized means to calculate the percent usage for each
22 company and to allocate the charges based on that calculation will be created.
23 At the present time, given the number of accounts involved, the cost of making
24 this change is not warranted. BellSouth's current process is more than adequate
25 to address this issue. As a further safeguard, any adjustments relating to

1 inaccurate billing for two way trunking will be included in the invoice accuracy
2 measures set forth by the Commission.

3

4 *Issue 2: Does BellSouth currently provide interconnection in accordance with the*
5 *requirements of Sections 251 (c) (2) and 252 (d) (1) of the Telecommunications Act*
6 *of 1996, pursuant to Section 271 (c) (2) (B) (I) and applicable rules promulgated by*
7 *the FCC?*

8 (e) *Does BellSouth currently provide ALECs with meet point billing*
9 *data?*

10

11 Q. WHAT IS MEET-POINT BILLING?

12

13 A. On occasion two local exchange companies will jointly provide a
14 telecommunications service to a third company. For example, suppose an
15 ALEC and an interexchange company are both interconnected with BellSouth
16 at an access tandem in Miami. If a customer of the IXC places a call to an end
17 user of the ALEC then BellSouth and the ALEC have jointly provided
18 terminating access to the IXC. In this example BellSouth is providing the
19 tandem and perhaps some portion of interoffice transport and the ALEC is
20 providing the end office switching and perhaps some portion of the transport.
21 Meet-point billing is the set of guidelines that BellSouth and the ALEC will
22 use to bill the IXC for the portion of the access service that each has provided
23 to the IXC. These guidelines have been developed and are maintained by the
24 industry at the Ordering and Billing Forum (OBF) and covers such topics as

25

1 which provider is to record for the calls, which provider is responsible for
2 sending to the other the call records, etc.

3

4 Q. HOW IS MEET-POINT BILLING USAGE SENT BETWEEN CARRIERS?

5

6 A. In the example stated above, BellSouth, as the tandem provider, would send to
7 the ALEC a call detail record the ALEC would use to bill the IXC. The ALEC
8 would need to select a vendor to act as its intermediary to collect from all of
9 the industry participants usage data that the ALEC needs to perform the meet-
10 point billing functions. The company so selected as its intermediary is termed
11 the "Revenue Accounting Office (RAO) Host". Sometimes an ALEC chooses
12 BellSouth as its RAO Host and sometimes they do not. All local exchange
13 carriers (ILECs and ALECs alike) will send data bound for another local
14 exchange carrier via the RAO Host selected by that LEC.

15

16 Q. DOES BELLSOUTH ABIDE BY THE MEET POINT BILLING PROCESSES
17 DEVELOPED AT OBF AND PROVIDE ALECS WITH USAGE RECORDS
18 TO SUPPORT MEET POINT BILLING?

19

20 A. Yes. In April 2001, BellSouth provided over 134 million meet point billing
21 usage records to ALECs in the region either directly as an RAO Host company
22 or to ALECs through the RAO Host selected by those ALECs. BellSouth has
23 complied with, and will continue to abide by, the meet-point billing guidelines
24 maintained by OBF.

25

1 *Issue 6: Does BellSouth currently provide unbundled local transport on the trunk*
2 *side of a wireline local exchange carrier switch from switching or other services,*
3 *pursuant to Section 271 (c) (2) (B) (v) and applicable rules promulgated by the*
4 *FCC?*

5 (a) *Does BellSouth currently provide billing for usage-sensitive UNEs?*

6

7 *Issue 7: Does BellSouth currently provide unbundled local switching from*
8 *transport, local loop transmission, or other services, pursuant to Section 271 (c) (2)*
9 *(B) (vi) and applicable rules promulgated by the FCC?*

10 (a) *Does BellSouth bill for unbundled local switching on a usage-sensitive*
11 *basis?*

12

13 Q. CAN BELLSOUTH CURRENTLY PROVIDE BILLS TO ALECS FOR
14 UNBUNDLED SWITCHING, UNBUNDLED TRANSPORT AND OTHER
15 USAGE-BASED NETWORK ELEMENTS?

16

17 A. Yes. BellSouth began to bill ALECs for usage sensitive based UNEs as early as
18 August 1997. Thus, this concern should be alleviated. Since that time
19 enhancements have been made to improve the system's capabilities. The latest
20 change has been to implement the OBF UNE bill formats. A significant
21 number of the changes made to the bill formats deal with usage sensitive
22 charges. Exhibit DPS-2 of my testimony provides a copy of one of the CABS-
23 Formatted UNE bills provided to an ALEC in Florida in November, 2000. The
24 usage section of this bill reflects the quantities, prices and charges for usage
25 sensitive elements such as unbundled local switching, unbundled shared

1 interoffice transport, unbundled operator services, unbundled directory
2 assistance, unbundled 800 data base queries, etc. This bill was mechanically
3 generated from the billing transactions collected from BellSouth's switching
4 equipment for calls originating from or terminating to the ALEC's unbundled
5 switch ports.

6

7 Q. HOW ARE USAGE-BASED TRANSACTIONS PROCESSED FOR ALECS?

8

9 A. As calls are routed through BellSouth's network, usage records are created in
10 the switches and other database elements incorporated into the network.
11 Several times each day, these usage records are transmitted from the network to
12 a collection system that is used by the billing system. The collection system
13 then sends the records to a process that identifies where each record should be
14 sent for billing the customer. If the record is associated with an access call or a
15 call associated with an ALEC's interconnection service, it is sent to CABS. If
16 the record is associated with a resale service then it is sent to CRIS for
17 handling. If the record is associated with an unbundled switch port then it is
18 sent to the UNE usage billing process (referred to as the BellSouth Industrial
19 Billing System or BIBS). Switch port usage is neither billed on a call-by-call
20 detail as is done for end users in CRIS nor summarized in the way that access
21 usage is billed in CABS. Therefore, BIBS was developed to meet the unique
22 billing requirements for UNE usage.

23

24 Once in CRIS, CABS or BIBS, the usage records are edited, rated and stored
25 until the close of the customer's billing period. In addition, each day, the usage

1 records for those ALECs which have elected to receive daily usage information
2 via the Optional Daily Usage File (ODUF) or the Access Daily Usage File
3 (ADUF) are copied and included on the files and transmitted to the ALEC.
4 Finally, at the appropriate time, the edited and rated usage is placed on the
5 customers invoice in the format that the customer has selected.

6

7 Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

8

9 A. Yes. BellSouth provides ALECs with bills for usage-based UNEs such as
10 unbundled local switching and unbundled shared transport. In addition
11 BellSouth provides accurate and complete billing for local trunking including
12 the use of PLUs for trunks and facilities. Lastly, BellSouth provides usage
13 records so that ALECs can bill pursuant to the meet point billing guidelines
14 developed by the industry.

15

16 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

17

18 A. Yes.

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REPORTER'S NOTE: Page 994 not needed in numbering prefiled testimony.

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 **REVISED SURREBUTTAL TESTIMONY OF DAVID P. SCOLLARD**
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 960786A-TL
5 OCTOBER 3, 2001
6

7 Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH
8 BELLSOUTH TELECOMMUNICATIONS, INC.

9
10 A. I am David P. Scollard, Room 28A1, 600 N. 19th St., Birmingham, AL 35203.
11 My current position is Manager, Wholesale Billing at BellSouth Billing, Inc.
12 ("BBI"), a wholly owned subsidiary of BellSouth Telecommunications, Inc.
13 ("BellSouth"). In that role, I am responsible for overseeing the implementation
14 of various changes to BellSouth's Customer Records Information System
15 ("CRIS"), Carrier Access Billing System ("CABS"), and BellSouth Industrial
16 Billing System ("BIBS").

17
18 Q. ARE YOU THE SAME DAVID SCOLLARD THAT FILED DIRECT
19 TESTIMONY IN THIS PROCEEDING?

20
21 A. Yes.

22
23 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS
24 PROCEEDING?

25

1 A. The purpose of my testimony is to reply to the testimony of Alternative Local
2 Exchange Carrier ("ALEC") witnesses in this proceeding pertaining to the
3 systems and processes BellSouth uses to bill ALECs for the services ordered
4 from BellSouth.

5

6 **Checklist Item (i): Interconnection**

7

8 Q. ON PAGES 11 THROUGH 13 OF HIS REBUTTAL TESTIMONY,
9 WORLDCOM WITNESS MR. ARGENBRIGHT BRINGS UP AN ISSUE
10 HE DESCRIBES AS THE "TRUNK FRAGMENTATION" ISSUE. IS THIS
11 STILL AN ISSUE BETWEEN BELLSOUTH AND WORLDCOM?

12

13 A. No. As Mr. Argenbright himself describes, BellSouth makes available to
14 ALECs the "super group" which can accommodate the trunking that
15 WorldCom is seeking. The Florida Commission found in the MCI arbitration
16 proceeding (PSC Order page 82 - 83) that the proposal from BellSouth should
17 be adopted. In any event, BellSouth is at a loss as to why WorldCom continues
18 to raise issues that the companies have worked diligently with the Commission
19 to resolve.

20

21 Q. HAS ANYTHING CHANGED SINCE THE COMMISSION'S ORDER TO
22 CHANGE THE FACT THAT ADVERSE BILLING IMPACTS WOULD BE
23 SEEN IF WORLDCOM'S POSITION IS ADOPTED?

24

25

- 1 A. Yes. BellSouth has determined that if MCI were to use a supergroup trunk,
2 then MCI may include local, intra-LATA toll and transit traffic for calls
3 originating from MCI's local customers in Florida on the same trunk group.
4 The interconnection agreement language has been revised to reflect this fact.
5
- 6 Q. MR ARGENBRIGHT, ON PAGES 14 THROUGH 17 OF HIS TESTIMONY,
7 TURNS HIS ATTENTION TO THE "TANDEM PROVIDER" ISSUE. DID
8 WORLDCOM RAISE THIS ISSUE IN ITS RECENT ARBITRATIONS
9 WITH BELLSOUTH IN FLORIDA?
10
- 11 A. Yes.
12
- 13 Q. WHAT WAS THE RESULTS OF THAT ARBITRATION?
14
- 15 A. The Commission agreed with BellSouth that the limitations inherent in mixing
16 local and access traffic on local trunk groups would render BellSouth unable to
17 bill MCI for any of the traffic (PSC Order at page 93). In light of that and other
18 issues, the Commission ordered that MCI use access facilities in order to route
19 access traffic to BellSouth's network.
20
- 21 Q. HAS ANYTHING CHANGED SINCE THE COMMISSIONS ORDER TO
22 CHANGE THE FACT THAT ADVERSE BILLING IMPACTS WOULD BE
23 SEEN IF WORLDCOM'S POSITION IS ADOPTED?
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25

1 A. No. Generally, the result would be that BellSouth would be unable to bill
2 WorldCom for its use of the local interconnection trunk. Each type of
3 interconnection facility carries with it unique characteristics with regard to the
4 recording of billing data for calls going across that facility. In the case of traffic
5 coming across WorldCom's local interconnection facilities, the call records do
6 not record information necessary to determine which calls are WorldCom's
7 local calls and which ones are access calls originating from another carrier. The
8 plain truth is that when WorldCom sends a call across its local interconnection
9 trunks, it is recorded in BellSouth's network as just that – a call originated
10 from WorldCom's local customer and sent to BellSouth. Therefore, BellSouth
11 cannot distinguish this access traffic from the other local traffic based on the
12 call records.

13

14 Q. MR. ARGENBRIGHT SUGGESTS ON PAGE 15 OF HIS TESTIMONY
15 THAT BELLSOUTH CAN ACCEPT SELF-REPORTED USAGE RECORDS
16 FROM WORLDCOM WITH WHICH TO BILL. WHAT IS BELLSOUTH'S
17 RESPONSE TO THAT PROPOSAL?

18

19 A. Mr. Argenbright's suggestion is merely a description of how the access traffic
20 could be billed to the interexchange carrier via some meet point billing
21 arrangement. What Mr. Argenbright fails to understand is that his proposal
22 would put a provider at the mercy of a customer to "self-report" usage for
23 billing back to the customer. As I mentioned earlier, when traffic is placed
24 across a local interconnection trunk, the usage records provide only enough
25 information to identify the ALEC which ordered the trunk and that a local call

1 was sent for completion. If WorldCom were allowed to mix access traffic
2 (which is to be billed to an interexchange carrier) with the local traffic (to be
3 billed to WorldCom), all of the usage records resulting from that traffic would
4 be corrupted and unusable. Therefore, BellSouth would be required to wait on
5 WorldCom to provide information as to what portion of the combined traffic is
6 real local traffic billable to WorldCom and the portion that is to be billed to the
7 other carriers. This type of "self reporting" of usage for billing creates
8 opportunities for abuse.

9

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

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13 A. Yes.

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1 MR. EDENFIELD: And I would ask that Mr. Scollard's
2 two exhibits be marked as a composite exhibit, and I'm having
3 an episode, I can't remember the numbers.

4 CHAIRMAN JACOBS: 30.

5 MR. EDENFIELD: Number 30 for identification.

6 CHAIRMAN JACOBS: That's correct.

7 (Exhibit 30 marked for identification.)

8 BY MR. EDENFIELD:

9 Q Mr. Scollard, did you prepare a summary of your
10 testimony?

11 A Yes, a brief summary.

12 Q Thank you. Would you give that now, please?

13 A Yes. The purpose of my testimony in this proceeding
14 is to address the issues set forth by the Commission dealing
15 with the capabilities of the systems used by BellSouth to build
16 ALECs. Additionally, I address trunking issues raised by MCI
17 as they relate to the ability for BellSouth to provide billing
18 information to ALECs, however, for the sake of the hour I will
19 just concentrate on the issues raised by the Commission itself.

20 First, Issue 2-D raises the question does BellSouth
21 currently permit the use of a Percentage Local Usage or PLU
22 factor in conjunction with trunking? The answer to that
23 question is yes. BellSouth can and does to apply factors to
24 allocate charges for trunks and facilities between local,
25 intrastate and interstate jurisdictions when billing ALECs.

1 Additionally, procedures have been created to allocate charges
2 for two-way trunks to recognize the fact that BellSouth also
3 uses those trunks to carry traffic.

4 Issue 2-E asks does BellSouth currently provide ALECs
5 with meet point billing data? Again, the answer is yes.
6 BellSouth provides meet point billing records to ALECs
7 necessary to bill interexchange carriers and other local
8 carriers for access or local interconnection services when they
9 are provided jointly with BellSouth.

10 Each month, BellSouth provides over 134 million meet
11 point billing usage records to ALECs in the region, either
12 directly or through a third party selected by the ALECs.
13 BellSouth has complied with and will continue to abide by the
14 meet point billing guidelines maintained by the industry.

15 And finally, Issues 6-A and 7-A question whether or
16 not BellSouth bills for use of unbundled elements, such as
17 unbundled switching? The answer again is yes. BellSouth began
18 to build ALECs for usage-sensitive unbundled network elements
19 as early as August of 1997. Since that time, enhancements have
20 been made to improve the systems capabilities. In August 1999,
21 for example, BellSouth implemented the industry developed bill
22 format specifically designed to bill usage charges associated
23 with unbundled services pursuant to the guidelines the bills
24 are made available in paper or electronic format at the option
25 of the ALEC.

1 And this concludes my summary.

2 MR. EDENFIELD: Thank you, Mr. Scollard.

3 Mr. Scollard's available for cross.

4 CHAIRMAN JACOBS: Before we do that, Mr. Edenfield, I
5 did not see exhibits for him nor are there any attached to his
6 testimony. We can come back to it, just to be sure.

7 MR. EDENFIELD: I'll see if I can -- I mean, I have
8 two on what's attached to mine. One's entitled -- it's a
9 one-page exhibit, entitled, "Bill Format Choices Provided to
10 ALECs by BellSouth."

11 CHAIRMAN JACOBS: That's attached to his direct?

12 MR. EDENFIELD: Right. And then I show another,
13 DPS-2 called "Billing Printouts CABS Formatted UNE Bills,"
14 Pages 1 to 155."

15 CHAIRMAN JACOBS: Everyone has that? If everyone has
16 that we'll go ahead and mark it. Give me the IDs again.

17 MR. EDENFIELD: I'm sorry. It's attached to
18 Mr. Scollard's direct testimony, it's DPS-1. It's entitled,
19 "Bill Format Choices Provided to ALECs by BellSouth," and that
20 is a one-page exhibit.

21 CHAIRMAN JACOBS: Okay.

22 MR. EDENFIELD: Did you get the DPS-2?

23 CHAIRMAN JACOBS: Right.

24 MR. EDENFIELD: Okay. And that's a 155-page exhibit.

25 CHAIRMAN JACOBS: Got it. Thank you.

1 MR. EDENFIELD: I apologize for that.

2 CHAIRMAN JACOBS: No, it probably just got missed.

3 MR. EDENFIELD: With this much paper, it's not
4 surprising.

5 COMMISSIONER JABER: Staff, one of the other things
6 that would be helpful to my office, because they constantly
7 struggle with this, if you don't list it in the prehearing
8 order, then we don't get copies. So, unless I'm missing it, I
9 don't see them listed in the prehearing order.

10 MS. KEATING: You're right, it's not listed in the
11 prehearing order, and I can go back and check the prehearing
12 statement, but I don't believe it was listed in the prehearing
13 statement. And if it wasn't picked up as a correction at the
14 prehearing, then it did not get reflected in the prehearing
15 order, but this is how the draft went out, and if I recall, it
16 wasn't in the prehearing statement, so if --

17 MR. EDENFIELD: I apologize. This looks like it's
18 probably a BellSouth error, that we didn't pick this up, and we
19 were looking through the draft prehearing order, and I
20 apologize.

21 CHAIRMAN JACOBS: Okay. Mr. Melson.

22 MR. MELSON: No cross.

23 CHAIRMAN JACOBS: I'm sorry. You just told me that,
24 didn't you?

25 Ms. Kaufman.

CROSS EXAMINATION

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BY MS. KAUFMAN:

Q Good evening, Mr. Scollard. I really just have one or two questions for you, and I'm personally going to be asking you about the exhibit that, I guess, the Commissioners just said they don't have, but I just want to ask you a question or two about DPS-1, which is a single-page exhibit, correct, and you reference it in your testimony at Page 4, Line 17. And what it's to illustrate are the types of different bills that you provide to the ALECs, correct?

A That's true.

Q Does this exhibit tell us anything about how many of these bills were correctly or incorrectly rendered to the ALECs?

A There's nothing about it as far as claims that a CLEC has on whether there's inaccuracies on there or not, no, it does not.

Q It's just supposed to represent the number of bills that BellSouth sends each month, correct?

A These are the physical number of bills that we mail out each month.

Q Do you know how many bill disputes Bell receives from ALECs in a month?

A For these bills or for bills in general? I do not know.

1 Q Do you know how many bill disputes BellSouth receives
2 nationwide in a month or in any other time period that you
3 might be aware of?

4 A Our office doesn't really do disputes, but I did hear
5 at our collaborative on Tuesday a number thrown out for all
6 disputes in the wholesale arena, that would be interexchange
7 carriers and CLECs, Claude Norton reported, who is the manager
8 of the Staff in the Collections and Disputes Center, that it
9 was 50,000. However, I want to point out, a CLEC or IXC can
10 dispute anything.

11 Q 50,000 disputes a month, correct?

12 A I don't remember if that was the monthly figure or
13 not.

14 Q Well, I guess, you'd agree with me that certainly
15 there are some disputes from CLECs in regard to their bill,
16 correct?

17 A Yes, I believe, probably every company that sends out
18 a bill receives disputes, whatever industry they're in.

19 Q And certainly at least a portion of those disputes
20 are valid disputes, correct?

21 A Yes, probably so, yes.

22 MS. KAUFMAN: Thank you. That's all I have.

23 CHAIRMAN JACOBS: Staff?

24 MS. BANKS: Staff has no questions.

25 MR. EDENFIELD: Nothing. No redirect from BellSouth.

1 CHAIRMAN JACOBS: And exhibits.

2 MR. EDENFIELD: BellSouth would move in Number 30
3 that, again, I apologize that nobody seems to have on the
4 Commission.

5 CHAIRMAN JACOBS: That's okay. The Court Reporter
6 has one though, right? We'll get her squared away.

7 (Exhibit 30 admitted into the record.)

8 CHAIRMAN JACOBS: And with that, thank you, Mr.
9 Scollard, you're excused.

10 THE WITNESS: Thank you, Mr. Chairman.

11 (Witness excused.)

12 CHAIRMAN JACOBS: That will do it for today. We will
13 recess and come back at 9:00 a.m. on Wednesday.

14 MR. LAMOUREUX: Mr. Chairman, just briefly before we
15 resume for next week, we've reached an agreement with the
16 parties and Staff that they don't have questions for one of our
17 witnesses, and we've agreed to put that witness' testimony into
18 the record without cross examination, and that's Mr. Guepe.

19 CHAIRMAN JACOBS: Very well. Would you like to do
20 that now?

21 MR. LAMOUREUX: Sure. I would just move Mr. Guepe's
22 testimony into the record. I guess, I can designate it either
23 now as an exhibit or at the point where our witnesses come up,
24 doesn't make a difference to me.

25 CHAIRMAN JACOBS: We can, without objection, move

1 Mr. Richard Guepe's testimony into the record as though read by
2 stipulation, and did he have a -- he didn't have an exhibit?

3 MR. LAMOUREUX: If we could do, for exhibit purposes,
4 that at the same point with the rest of our witnesses, that
5 probably would make sense, because they'll all be in the same
6 place.

7 CHAIRMAN JACOBS: Strike that, then, we'll do it
8 then. Is that all?

9 MR. LAMOUREUX: And then also, Ms. Seigler's
10 testimony from AT&T was responsive to testimony from
11 Mr. Ainsworth from BellSouth that has been stricken -- have
12 agreed to withdraw Ms. Seigler's testimony on behalf of AT&T.

13 CHAIRMAN JACOBS: Very well. Show Ms. Seigler's
14 testimony is withdrawn. Will that take care of it? Anything
15 else?

16 MS. KEATING: Mr. Chairman?

17 CHAIRMAN JACOBS: Yes.

18 MS. KEATING: Did you want to talk about the issue,
19 the phrasing of the issue to be briefed or do you want to hold
20 that until --

21 CHAIRMAN JACOBS: Let's give it some fresh thought,
22 and come back and talk --

23 MR. EDENFIELD: Chairman Jacobs, you may have done
24 this, but could I ask that Mr. Scollard be excused?

25 CHAIRMAN JACOBS: Yes, he is excused.

1 Very well. Thank you for everyone's attention.
2 We're in recess.

3 (Transcript continues in sequence in Volume 8.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, KORETTA E. FLEMING, RPR, Official Commission
6 Reporter, do hereby certify that a hearing was heard at the
time and place herein stated in Docket Number 960786-TL.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
9 transcript constitutes a true transcription of my notes of said
proceedings.

10 I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a relative
or employee of any of the parties' attorneys or counsel
12 connected with the action, nor am I financially interested in
the action.

13 DATED this Monday, October 15, 2001.

14 
15 KORETTA E. FLEMING, RPR
16 FPSC Official Commissioner Reporter
 (850) 413-6734

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