

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

IMPLEMENTATION OF REQUIREMENTS
ARISING FROM FEDERAL COMMUNICATIONS
COMMISSION'S TRIENNIAL UNE REVIEW:
LOCAL CIRCUIT SWITCHING FOR MASS
MARKET CUSTOMERS.

DOCKET NO. 030851-TP

IMPLEMENTATION OF REQUIREMENTS
ARISING FROM FEDERAL COMMUNICATIONS
COMMISSION'S TRIENNIAL UNE REVIEW:
LOCATION-SPECIFIC REVIEW FOR DS1,
DS3 AND DARK FIBER LOOPS, AND
ROUTE-SPECIFIC REVIEW FOR DS1, DS3
AND DARK FIBER TRANSPORT.

DOCKET NO. 030852-TP



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: PREHEARING CONFERENCE
BEFORE: COMMISSIONER CHARLES M. DAVIDSON
 Prehearing Officer
DATE: Monday, February 09, 2004
TIME: Commenced at 9:30 a.m.
 Concluded at 12:30 p.m.
PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida
REPORTED BY: LINDA BOLES, RPR
 Official FPSC Reporter
 (850) 413-6734

1 APPEARANCES:

2 CHARLES GERKIN, JR., ESQUIRE, MARK A. STACHIW,
3 ESQUIRE, and JAMES I. HARLAN, ESQUIRE, Allegiance Telecom,
4 Inc., 9201 North Central Expressway, Dallas, Texas 75231,
5 appearing on behalf of Allegiance Telecom, Inc.

6 TRACY HATCH, ESQUIRE, AT&T, 101 North Monroe Street,
7 Suite 700, Tallahassee, Florida 32301-1549, appearing on behalf
8 of AT&T Communications of the Southern States, LLC.

9 MICKEY HENRY, ESQUIRE, AT&T, 1200 Peachtree Street
10 N.E., Suite 8100, Atlanta, Georgia 30309-3579, appearing on
11 behalf of AT&T Communications of the Southern States, LLC.

12 DOUGLASS R. LACKEY, ESQUIRE, and MEREDITH MAYS,
13 ESQUIRE, BellSouth Telecommunications, Inc., c/o Ms. Nancy H.
14 Sims, 150 South Monroe, Street, Suite 400, Tallahassee, Florida
15 32301-1556, appearing on behalf of BellSouth
16 Telecommunications, Inc.

17 BILL MAGNESS, ESQUIRE, Casey & Gentz, L.L.P., 919
18 Congress Avenue, Suite 1060, Austin, Texas 78701, appearing on
19 behalf of Florida Competitive Carriers Association.

20 CHARLES E. WATKINS, Covad Communications Company,
21 1230 Peachtree Street, NE, 19th Floor, Atlanta, Georgia
22 30309-3574, appearing on behalf of Covad Communications
23 Company, participating by telephone.

24

25

1 APPEARANCES CONTINUED:

2 JOSEPH McGLOTHLIN, ESQUIRE, and VICKI GORDON KAUFMAN,
3 ESQUIRE, McWhirter Law Firm, 117 S. Gadsden St., Tallahassee,
4 Florida 32301, appearing on behalf of Covad Communications
5 Company, Florida Competitive Carriers Association and Z-Tel.

6 MATTHEW FEIL, ESQUIRE, and SCOTT KASSMAN, ESQUIRE,
7 FDN Communications, 390 North Orange Ave., Suite 2000, Orlando,
8 Florida 32801-1640, appearing on behalf of FDN Communications,
9 with Mr. Kassman participating by telephone.

10 FLOYD SELF, ESQUIRE, Messer Law Firm, P.O. Box 1876,
11 Tallahassee, Florida 32302-1876, appearing on behalf of MCI,
12 KMC and ITC^DeltaCom.

13 NORMAN H. HORTON, JR., Messer Law Firm, P.O. Box
14 1876, Tallahassee, Florida 32302-1876, appearing on behalf of
15 Xspedius Communications.

16 DONNA C. MCNULTY, ESQUIRE, MCI WorldCom
17 Communications, Inc., 1203 Governors Square Boulevard, Suite
18 201, Tallahassee, Florida 32301-2960, appearing on behalf of
19 MCI WorldCom Communications, Inc.

20 DULANEY L. O'ROARK, III, ESQUIRE, and KEN WOODS,
21 ESQUIRE, MCI WorldCom Communications, Inc.(GA), Six Concourse
22 Parkway, Suite 600, Atlanta, Georgia 30328, appearing on behalf
23 of MCI WorldCom Communications, Inc.

24

25

1 APPEARANCES CONTINUED:

2 JON MOYLE, JR., ESQUIRE, Moyle, Flanigan Law Firm,
3 The Perkins House, 118 North Gadsden Street, Tallahassee,
4 Florida 32301, appearing on behalf of NewSouth Communications
5 and Nuvox Communications, Inc.

6 SUSAN MASTERTON, ESQUIRE, Sprint-Florida/Sprint
7 Communications Company, P. O. Box 2214, Tallahassee, Florida
8 32316-2214, appearing on behalf of Sprint-Florida and Sprint
9 Communications Company, LLC.

10 H. EDWARD PHILLIPS, III, ESQUIRE, 14111 Capital
11 Boulevard, Wake Forest, North Carolina 27587-5800, appearing on
12 behalf of Sprint-Florida and Sprint Communications Company,
13 LLC.

14 J. JEFFRY WAHLEN, ESQUIRE, Ausley & McMullen, 227 S.
15 Calhoun Street, Tallahassee, Florida 32302, appearing on behalf
16 of Sprint-Florida and Sprint Communications Company, LLC.

17 RICHARD CHAPKIS, ESQUIRE, Verizon Florida Inc., P.O.
18 Box 110, FLTC0007, Tampa, Florida 33601-0110, appearing on
19 behalf of Verizon Florida, Inc.

20 JORGE L. CRUZ-BUSTILLO, ESQUIRE, 2620 S.W. 27th
21 Avenue, Miami, Florida 33133-3005, appearing on behalf of Supra
22 Telecom.

23

24

25

1 APPEARANCES CONTINUED:

2 CHARLES BECK, ESQUIRE, and H.F. "RICK" MANN, ESQUIRE,
3 Office of Public Counsel, c/o The Florida Legislature, 111 West
4 Madison Street, Room 812, Tallahassee, Florida 32399-1400,
5 appearing on behalf of the citizens of the state of Florida.

6 MICHAEL B. TWOMEY, ESQUIRE, P.O. Box 5256,
7 Tallahassee, Florida 32314-5256, appearing on behalf of the
8 American Association of Retired Persons, participating by
9 telephone.

10 ADAM TEITZMAN, ESQUIRE, JASON ROJAS, ESQUIRE, and
11 JEREMY SUSAC, ESQUIRE, FPSC General Counsel's Office, 2540
12 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,
13 appearing on behalf of the Commission Staff.

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2 COMMISSIONER DAVIDSON: Call the prehearing
3 conference to order.

4 Staff, please read the notice.

5 MR. SUSAC: Pursuant to notice issued January 8th,
6 2004, this time and place has been set for prehearing
7 conference in Docket Number 030851-TP and 030852-TP.

8 COMMISSIONER DAVIDSON: Let's take appearances
9 starting with those present in the room beginning on my left,
10 and then those appearing by phone.

11 MR. LACKEY: My name is Doug Lackey. I'm an attorney
12 for BellSouth, 675 West Peachtree Street, Atlanta, Georgia.
13 With me is Meredith Mays.

14 MR. CHAPKIS: Richard Chapkis for Verizon.

15 MR. FEIL: Matthew Feil with FDN Communications. On
16 the phone should be Mr. Kassman, Scott Kassman, with FDN
17 Communications, also.

18 MR. MOYLE: Jon Moyle, Jr., Moyle, Flanigan Law Firm.
19 I'm representing NewSouth Communications in both dockets and
20 Nuvox Communications in the 52 loops docket.

21 MS. MASTERTON: Susan Masterton on behalf of Sprint
22 Communications Company Limited Partnership and Sprint-Florida,
23 Incorporated. And I'm also making an appearance in Docket
24 Number 851 for Ed Phillips, and in Docket 852, Jeff Wahlen with
25 the Ausley Law Firm on behalf of Sprint.

1 MR. HATCH: Tracy Hatch appearing on behalf of AT&T
2 Communications of the Southern States, LLC. Also appearing
3 with me is Mickey Henry.

4 MR. McGLOTHLIN: Joseph McGlothlin, McWhirter, Reeves
5 Law Firm, Tallahassee, appearing for the FCCA in Docket
6 Number -- in the 851 docket and the 852 docket. Also, I also
7 appearing for Z-Tel in the 851 docket.

8 I'd like to enter the appearance of Vicki Gordon
9 Kaufman of our firm representing the FCCA in both dockets and
10 representing Covad in both dockets.

11 Also, Bill Magness of the firm of Casey & Gentz
12 representing the FCCA in the 851 docket.

13 MS. McNULTY: Good morning. I'm Donna McNulty with
14 MCI. I'm also entering an appearance for D. O'Roark and
15 Ken Woods, and all three of us will be representing MCI in both
16 dockets.

17 MR. SELF: Good morning, Commissioner. I'm Floyd
18 Self of the Messer, Caparello & Self Law Firm. I'm appearing
19 in both dockets on behalf of MCI, KMC, and ITC^DeltaCom.

20 MR. HORTON: I'm Norman H. Horton, Jr., Messer,
21 Caparello & Self, and I'm appearing in both dockets on behalf
22 of Xspedius Communications.

23 MS. KAUFMAN: Commissioner Davidson, as
24 Mr. McGlothlin said, I'm appearing on behalf of the FCCA and
25 Covad. And I also need to enter an appearance for Mr. Gene

1 Watkins of Covad Communications.

2 MR. GERKIN: Commissioner, I'm Charles Gerkin with
3 Allegiance Telecom, Inc., 9201 North Central Expressway,
4 Dallas, Texas. Also entering an appearance for Mark Stachiw
5 and James Harlan.

6 MR. BECK: Commissioner, my name is Charlie Beck, and
7 with me is Rick Mann, Office of the Public Counsel, appearing
8 on behalf of the citizens of Florida.

9 MR. CRUZ-BUSTILLO: And, good morning, Commissioner.
10 George Cruz-Bustillo, Supra Telecom in both dockets.

11 COMMISSIONER DAVIDSON: And those participating by
12 telephone, please appear and identify yourself.

13 MR. TWOMEY: Mike Twomey on behalf of AARP,
14 Commissioner. Good morning.

15 COMMISSIONER DAVIDSON: Good morning.

16 MR. WATKINS: Good morning, Commissioner. This is
17 Gene Watkins with Covad Communications.

18 COMMISSIONER DAVIDSON: Any other appearances on the
19 telephone?

20 I'd like to note that we've got a very special guest
21 in the audience today, former Representative Chris Hart. If
22 you could stand and take a bow for us, please. You can just --

23 MR. HART: Thank you, Commissioner.

24 COMMISSIONER DAVIDSON: For those of you that didn't
25 know, I worked with Chris over in the House. So any faux pas

1 or errors today you can blame on his training.

2 MR. SUSAC: Commissioner, may I interrupt real quick?

3 Staff did not take appearances.

4 COMMISSIONER DAVIDSON: Staff.

5 MR. SUSAC: That's Jeremy Susac, Adam Teitzman, Jason
6 Rojas, Pat Lee and David Dowds on behalf of staff.

7 COMMISSIONER DAVIDSON: Thank you.

8 Start with a couple of preliminary preliminary
9 matters. I note that I've been handed "AARP Adoption of
10 Citizens Prehearing Statement." Mr. Twomey, if you could just
11 take a moment and explain that document, and we'll go ahead and
12 make sure staff treats that appropriately.

13 MR. TWOMEY: Pardon me. Yes, sir, Commissioner
14 Davidson. The AARP, as stated, is adopting the basic positions
15 of -- taken by Public Counsel, as well as the positions on the
16 specific issues they've taken issues upon. So it's fairly
17 straightforward, I think. The -- we're not taking positions
18 where they're not and are in those cases where they have today.

19 COMMISSIONER DAVIDSON: Thank you, Mr. Twomey.

20 We also have, and if you all can let me know if all
21 the parties have this, a proposed framework for the conduct of
22 the hearings in Docket 030851 based on an equitable division of
23 time, noted in the heading that it was sent to Mr. Lackey by
24 Mr. Henry on February 8th at 4:10 p.m. Do all the parties have
25 that document?

1 MR. TWOMEY: Commissioner Davidson, Mike Twomey. I'm
2 not sure that I do. Was that, was that E-mailed?

3 COMMISSIONER DAVIDSON: Yes. Mr. Hatch with,
4 representing AT&T says, yes, it was. So if, if, if at some
5 point -- actually, if staff, if you've got this in an E-mail,
6 if you could get that E-mailed out to Mr. Twomey.

7 And, Mr. Watkins, you are represented here, so I'm
8 assuming that Covad will have it. But if someone can get
9 Mr. Watkins a copy also by E-mail, that would be useful.

10 MR. WATKINS: Thank you, Commissioner.

11 COMMISSIONER DAVIDSON: And we will be taking, we
12 will be taking up these recommendations at an appropriate point
13 in the agenda where we were going to discuss how to distribute
14 the time at the hearing. So let's just keep that aside and for
15 now move on to pending motions.

16 The first one we have on the table, which applies to
17 both dockets, is Sprint's motion to compel BellSouth's
18 production of the BACE model.

19 First let me ask, have the parties reached an
20 agreement on this issue?

21 MS. MASTERTON: Commissioner Davidson, this is Susan
22 Masterton for Sprint. And, no, the parties have not yet been
23 able to reach agreement.

24 COMMISSIONER DAVIDSON: All right. The parties are
25 each granted ten minutes to address the merits of this motion.

1 So go ahead and, Sprint, address your motion, then, BellSouth,
2 your response.

3 MS. MASTERTON: Commissioner, what Sprint is asking
4 for and the subject of Sprint's motion to compel is a visible
5 executable version of the BACE model source code that would
6 allow Sprint to see the inputs and the calculations that
7 produced the results that support BellSouth's claims of no
8 impairment. And what we need is an executable version that
9 would allow interactivity of the inputs and the codes so that
10 Sprint can conduct the necessary review and analyses, including
11 sensitivity analyses, to assess the validity of the model's
12 results.

13 And BellSouth has said that Sprint wants the model so
14 that it can change it, and that is true only to the extent that
15 in order to validate it, sensitivity analyses include changing
16 some of the inputs to see how that affects the model's results.
17 Contrary to what BellSouth has alleged, Sprint does not want to
18 take the model to use it to make its own model or do anything
19 other than examine and assess the validity of BellSouth's
20 proposals.

21 To date, contrary to what BellSouth claims, what
22 BellSouth has given Sprint is not sufficient to conduct the
23 necessary review. Sprint has received hard copies of some, but
24 not all, of the input tables and a soft copy that's not able to
25 be printed of the source code.

1 In addition, on Friday Sprint (sic.) offered to let
2 Sprint come to BellSouth's premises and access the model,
3 including BellSouth's inputs on BellSouth's computers.
4 However, given the scope of the inputs and calculations in the
5 model that have to be reviewed, and it must be remembered that
6 what the model represents is a model of all facets of a
7 start-up telecommunications company, none of the offers that
8 BellSouth has made and none of the information that BellSouth
9 has provided to date is sufficient to allow Sprint to analyze
10 the model in the way that is needed to assess the validity of
11 BellSouth's case and for Sprint to make its case. In fact, at
12 this late point in time with only two weeks remaining until the
13 hearing, even with access to the model, Sprint is going to be
14 impeded in its ability to conduct the necessary analysis and at
15 the same time prepare for the, for its case at the hearing.

16 What Sprint is requesting, there's no question that
17 what we're requesting is relevant and within the scope of
18 discovery, as is set forth in the Florida Rules of Civil
19 Procedure. And, in fact, BellSouth has not attempted to deny
20 that the information is relevant. Rather, BellSouth's
21 objection is based on the proprietary nature of the model as
22 BellSouth's intellectual property.

23 The rules of procedure and the rules of discovery
24 allow the prehearing officer to issue orders to protect
25 otherwise discoverable information that is proprietary.

1 There's a protective order already issued in this case, and
2 Sprint has entered into a protective agreement with BellSouth
3 in order to exchange other proprietary information. However,
4 because Sprint is sensitive to the intellectual property
5 concerns that BellSouth has expressed, we have offered to take
6 extraordinary measures to protect the model while it's in
7 Sprint's possession, and we've even provided an agreement that
8 Sprint used in Nevada when it was required to allow parties
9 access to a model that it had developed for its UNE rates, a
10 special agreement relating to the protection of the
11 information.

12 The finding of no impairment that BellSouth is asking
13 of this Commission will substantially affect Sprint's economic
14 interest, as well as the status of competition in Florida.
15 Sprint is entitled to a full and fair review of the model that
16 BellSouth is relying on to support its claims and, to
17 accomplish this, Sprint asks that its motion to compel be
18 granted. Thank you, Commissioner.

19 MR. LACKEY: Thank you, Mr. Commissioner. Let me be
20 clear about what Sprint has asked us for. Sprint has asked us
21 for an executable copy of the source code for the BACE model.
22 It's probably not exactly a fair comparison, but it's like
23 asking Bill Gates for an executable copy of the source code for
24 the Microsoft Windows systems. Giving up the source code for
25 these computer programs is not something that's done; it hasn't

1 been done in the past. The specific issue has been brought
2 before this Commission in the past in the UNE cost docket when
3 AT&T and MCI wanted the source code for the model that was
4 being used there, the loop model. And the Commission in
5 response to that said that while they were entitled to a
6 fair -- well, let me get the exact language. "While we believe
7 that BellSouth was obligated to provide parties with the
8 ability to review and critique the model, we do not believe it
9 was required to provide the actual source code."

10 That's the situation here. The reason they want this
11 source code is so that they can change it. There is no other
12 reason to have the executable source code. They have the
13 model. You can change the inputs into the model, you can
14 adjust the various things that go into it. You don't need the
15 source code to do that.

16 We have given them a copy of the source code in .PDF
17 format. Any competent code writer could read that code and
18 could follow the logic of it and could determine how the model
19 works and whether the model works properly. That's what we
20 used in the UNE docket. That was satisfactory there. It ought
21 to work here as well. Now that's the nut of the argument.

22 We also have a problem with the timing of all of
23 this. This model was first rolled out in early November at
24 NARUC. We demoed it in several of the states. We know that
25 the Sprint people were at the demo in South Carolina in the

1 first part of November.

2 We filed this on December 4th. Sprint didn't ask us
3 for this until December 19th, a Friday. On Monday the 22nd we
4 gave them the .PDF file. On that same day they told us they
5 wanted this executable code. The next day, on the 23rd, we
6 told them we wouldn't give it to them. They served us with
7 discovery on the 24th and didn't say anything about this; they
8 served us with discovery on the 30th or 31st of December and
9 didn't say anything about this; they filed their rebuttal
10 testimony; and finally on the 13th they come up with this
11 motion to compel and they asked us for the source code. I
12 think there's a procedural problem with the way they have
13 approached this.

14 I also think there's a matter of equity here. If
15 this thing had just been so important, so important that they
16 just had to have it, why did they wait until the 13th of
17 January to ask for it? According to the information that
18 they've given you and given us, their expert wants 30 days to
19 review this. There aren't 30 days left before the hearing. If
20 it were that important, how come we didn't hear about this on
21 December 23rd or how come we didn't hear about this on
22 December 5th?

23 The point of the matter is there's no equity in their
24 position. The point of the matter is that they don't need the
25 executable source code in order to examine the logic.

1 We have, by the way, produced copies of the files,
2 the P, Q and D files. We have made the files, the D file,
3 which is the important one, the demographic file, available in
4 our office for their review. We have given them a demo model
5 with dummy files so that they could run it through the model
6 and see how the model worked. They've got everything they need
7 to figure out whether this thing works logically. They've got
8 everything they need to do sensitivity tests. I'll remind you
9 that several of the witnesses in this proceeding, MCI and AT&T
10 witnesses have talked about the sensitivity of this model.
11 It's one of these deals where one of them is claiming it's too
12 sensitive and the other is saying it's not sensitive enough.
13 But the point of the matter is they've been able to test the
14 sensitivity of this model without the source code.

15 Again, I don't know exactly what's behind it, what's
16 going on, but the source code is generally something that's not
17 produced, this Commission has not required it in the past. We
18 don't think this is the appropriate point for the Commission to
19 change its past practice. Thank you.

20 COMMISSIONER DAVIDSON: Mr. Lackey, do you agree,
21 aside from the, the source code issue, that the model itself is
22 clearly relevant and information regarding to the model is
23 clearly within the scope of discovery?

24 MR. LACKEY: Absolutely.

25 COMMISSIONER DAVIDSON: For both parties, is there

1 any way to have this model tested perhaps by an independent
2 code writer, for example, where the code would not be produced,
3 but we have more to go on than just Sprint saying it doesn't
4 work and BellSouth saying it does work; just actually get an
5 independent out there, presumably Sprint would bear the
6 expense, and, and, and get it tested? I'm not saying divulge
7 the code. I'm saying BellSouth's claim is that, that you can
8 do everything you need to do to test this model by the
9 information that's been produced. That argument is, is --
10 would be stronger, in my view, if there was at least some
11 third-party independent person that says, yes, you can do this.
12 You mentioned the code writers are out all over the place. If
13 there was someone that said, yes, this can be done with this
14 information, I would be somewhat more comforted.

15 MR. LACKEY: We offered to allow them to come to our
16 premises and our computers. Actually we probably would have to
17 send them to Mr. Stegeman's premises in Cincinnati, Ohio, and
18 let them go through it on one of our computers at our offices,
19 that we would unlock it.

20 COMMISSIONER DAVIDSON: That sounds like a good idea.
21 Sprint?

22 MS. MASTERTON: Well, I mean, the objection that we
23 had to that is that because of the scope of the model, the time
24 that's required to review it and the people that would have to,
25 you know, go to BellSouth's location would be prohibitive for

1 Sprint. But especially with just two weeks left to the
2 hearing, and those same people like Mr. Dickerson needing to be
3 involved in case preparation to have to go to, I presume,
4 Atlanta and basically camp out for the next two weeks just
5 would not, you know, be viable for us.

6 COMMISSIONER DAVIDSON: Has the Commission, to your
7 knowledge, ever required the production of an actual source
8 code? And, if so, in what case?

9 MS. MASTERTON: Well, I'm only aware of two cases
10 that I could find where this kind of an issue was addressed.
11 And the first one is the one cited by Mr. Lackey. And I would
12 say that I don't think there, there was a motion to compel and
13 there was a discovery issue. I wasn't involved and it was a
14 while ago, so I wasn't able to get all the documents submitted.
15 But I think that was an issue that came up more in testimony,
16 and then the Commission ruled in their final order that that
17 was not a reason to disprove the model.

18 But there was also a case with AT&T and some
19 information in a model that they had produced. And there was
20 an issue of the, the information that was attempting to be
21 accessed actually in the possession of a third-party. And in
22 that case, the Commission did -- it was a motion to compel by
23 the ILECs, and the Commission did order AT&T to make that model
24 available at a, at a location, at its location and let them
25 come to see it. So similar to what you're proposing.

1 And I think the difference here for us is that it's
2 just unworkable to try to analyze the model in Atlanta during
3 the two weeks that we have left for the hearing and the time
4 and the expense and the number of people that we would have to
5 locate down there to do it.

6 COMMISSIONER DAVIDSON: When did Sprint -- what was
7 the date of Sprint's first request for production of documents?

8 MS. MASTERTON: It's true that we did not file our --
9 our first ever?

10 COMMISSIONER DAVIDSON: Your first ever in this case.

11 MS. MASTERTON: I think it was like the 16th of
12 December. I'm not -- I don't have that with me. But our first
13 request -- well, actually our first request to BellSouth was
14 really related to the triggers, and then we had a subsequent
15 one mid-December.

16 COMMISSIONER DAVIDSON: Why wasn't this item asked
17 for in your first request?

18 MS. MASTERTON: We had attempted to work with
19 BellSouth through their informal process. We'd had discussions
20 with their experts as they had offered and we had requested
21 through E-mails. And, you know, I think the idea that because
22 we got the model on December 4th, somehow waiting two weeks
23 until December 19th, I mean, just to go through it and analyze
24 it and know what we needed, I don't think two weeks is an
25 unreasonable amount of time. In fact, I think we acted

1 somewhat expeditiously given the scope of the model and what
2 was needed to review. But that was why we did not do the
3 formal request until later. We had attempted to get it
4 informally and we were denied. And then we got the .PDF
5 version, which we attempted to work with and found unworkable.
6 Not only because it's a .PDF version on a computer, and .PDF is
7 a difficult file to work with, toggling back and forth, we
8 couldn't print it. It's not able to be printed. So it took us
9 a while to realize that even though we wanted the executable
10 source code to begin with, that we absolutely couldn't work
11 with the .PDF version that was provided.

12 COMMISSIONER DAVIDSON: I'll tell you, I'm not going
13 to rule on this motion from the bench today. I've got a
14 follow-up -- I will issue an order shortly, but I've got a
15 follow-up question for Mr. Lackey.

16 Staff has indicated to me that it's had some
17 difficulties, too, working with some of the materials. The
18 options that we have, if we were just faced with staff, would
19 be either produce the source code so that they could work with
20 it or make the same model available to staff at your premises.
21 That, however, entails a fairly substantial expense to the
22 state, which, frankly, I would like to avoid. So if, if you
23 all can work with the parties -- if there's an option by which
24 that same type of scenario can be made available to staff in a
25 manner that works for staff, I would like to see that discussed

1 as well. I'm not saying that that's how I am going to rule,
2 but I need to get some options here. Because if staff is
3 having problems as well, the option is either produce the
4 source code or an alternative that will allow staff to
5 manipulate the model such that it can test its underlying
6 assumptions, inputs, outcomes.

7 MR. LACKEY: I wasn't aware that the staff was having
8 a problem or that they had asked for the source code. You
9 know, I can make the same offer we made with regard to Sprint.
10 If, if somebody has got to bear an expense of moving this
11 stuff, I guess it's us, and we can bring it to Tallahassee.
12 You know, I can set it up on a computer in our offices downtown
13 and do whatever they need to do. It's letting it get out of
14 our possession, custody and control is what the problem is, if
15 I understand correctly. We'll do whatever we've got to do,
16 obviously. Like I said, I did not realize that we had a
17 request from the staff or that there was an issue regarding the
18 operation of the model from the staff.

19 COMMISSIONER DAVIDSON: Staff?

20 MR. SUSAC: Staff is currently unable to audit and
21 verify the integrity of the model, just as well as Sprint. So
22 we would have to exercise that option as well.

23 COMMISSIONER DAVIDSON: Who is auditing on behalf of
24 staff?

25 MR. SUSAC: Kit Kennedy.

1 COMMISSIONER DAVIDSON: All right. So, staff, if you
2 can work with, if you can work with Bell, and, Ms. Masterton,
3 if you can work with Bell and, and at least help staff in a
4 position to articulate to me what the options are short of
5 producing the code, even though those options might not be
6 acceptable to Sprint in terms of Sprint going to where the
7 computer is now, the computer being moved to Tallahassee for
8 Sprint and staff to, to view that. If there are any other --
9 you had mentioned in your argument that you received hard
10 copies of some, but not all, input tables. So if there are
11 additional things that are needed, let's flesh those out. And
12 I will work with staff after this prehearing to, to come up
13 with an appropriate order.

14 MS. MASTERTON: Certainly, Commissioner. We'll work
15 with BellSouth and staff.

16 MR. TEITZMAN: Commissioner, if I may interrupt
17 before we move on to the next matter just briefly. The
18 proposed framework handed out by AT&T this morning, staff
19 checked and it was not in our E-mail, but we have since faxed a
20 copy to Mr. Twomey.

21 COMMISSIONER DAVIDSON: And what about Mr. Watkins,
22 Gene Watkins representing Covad?

23 MR. TEITZMAN: I don't think we realized that
24 Mr. Watkins needed a copy, but we'll take care of that as well
25 right now.

1 COMMISSIONER DAVIDSON: Mr. Watkins, do you have a
2 copy of this?

3 MR. WATKINS: Commissioner, I do not.

4 COMMISSIONER DAVIDSON: Okay. Yeah. If you could go
5 ahead and fax that to Mr. Watkins. Thanks.

6 MR. TWOMEY: Commissioner Davidson, I'm going to have
7 to ask staff to try and fax it again since I've been listening
8 to the meeting on the same line as my fax machine.

9 COMMISSIONER DAVIDSON: Well, Mr. Twomey, if you
10 would like, we will probably be taking a short break before we
11 get to this item.

12 MR. TWOMEY: Yes, sir.

13 COMMISSIONER DAVIDSON: If you like, we can hold off
14 until the break.

15 MR. TWOMEY: That would be fine.

16 COMMISSIONER DAVIDSON: And have a secretary on
17 standby at the fax machine.

18 MR. TWOMEY: Thank you much.

19 COMMISSIONER DAVIDSON: All right. Thank you.

20 MR. HATCH: Commissioner Davidson, just to clarify, I
21 received it electronically, didn't look at the address list.
22 It was an internal address list. It is now being faxed to all
23 of the, I mean, E-mailed to all of the parties.

24 COMMISSIONER DAVIDSON: Perfect. Thank you,
25 Mr. Hatch.

1 And turning back just for a moment to the Sprint
2 motion to compel. Ms. Masterton, I just wanted to let you know
3 that I may be considering, depending on what expense is
4 involved, allocating the expense of BellSouth's moving that to
5 Tallahassee in order to accommodate all of the parties amongst
6 the parties. So we'll see. So consider what you all would
7 propose, what you would choose to do if you were going to have
8 to bear a part of the expense of having that model moved here
9 versus being able to view it on BellSouth's premises without
10 any of that expense.

11 MS. MASTERTON: Okay.

12 COMMISSIONER DAVIDSON: Just think about those
13 issues.

14 MS. MASTERTON: Okay. Thank you.

15 COMMISSIONER DAVIDSON: Thanks. In both dockets
16 we've got a number of requests for confidentiality. Staff is
17 aware that there are outstanding requests in both dockets, and
18 orders on these requests will be issued prior to the hearing.

19 Staff data request. At the hearing, staff will be
20 entering into the record all data request responses as a
21 composite hearing exhibit. I note that at the time the data
22 requests were prepared, all parties of record at the time of
23 those requests had an opportunity to review and comment prior
24 to the request being sent out. I also note that there was
25 fairly general agreement amongst the parties to use, to use the

1 New York model. The confidentiality of these requests will be
2 addressed in a later order. If a party wishes to utilize
3 confidential responses, for example, on cross-examination or in
4 your briefs, please notify staff prior to the hearing so
5 appropriate copies can be made.

6 A second protective order is being drafted to allow
7 the parties to obtain, upon request of staff counsel, a copy of
8 the confidential data request responses. The use and handling
9 of the information by the parties will be subject to specific
10 restrictions and sanctions that will be defined in the order
11 which will be issued in a week. Of course, you will have an
12 opportunity to, to question the data responses and inquire into
13 them at the, at the hearing.

14 Mr. Susac, if you would, please outline the proposed
15 procedure for handling of these data requests.

16 MR. SUSAC: Thank you. If the parties could notify
17 staff in writing which data request they need, that would be
18 great. Staff is then willing to make them available. You can
19 either pick them up here at the Commission or we can mail them
20 to you. However, we will need the data responses back for
21 destruction of the confidential matters.

22 COMMISSIONER DAVIDSON: All right. Thank you. Thank
23 you, staff.

24 At this point we are actually up to the, the
25 scheduling of the hearing. Mr. Hatch, you mentioned that that

1 document was being E-mailed out to all parties. Has that -- do
2 you know if that's occurred yet?

3 MR. HATCH: It was occurring as we were speaking.
4 I'm assuming it has been done.

5 MR. TWOMEY: Commissioner Davidson, Mike Twomey.
6 I've received it, so I've got it now by E-mail. Thank you.

7 COMMISSIONER DAVIDSON: Perfect. All right. Well,
8 this lays out in much greater detail some recommendations as to
9 how to allocate the time in this hearing. Let me, let me sort
10 of get through the ideas that we have here, let AT&T then
11 present this document, and then sort of open it up to the
12 parties and to staff to try and get this procedure mapped out.
13 Obviously, the Commission encourages the parties to work
14 together to reach a stipulation of witnesses and the order in
15 which they will be occurring.

16 A couple of ideas for counsel to further consider.
17 If possible, designate a lead counsel to handle the cross of
18 particular witnesses. In addition, although the Commission
19 will not order any equitable time limits for cross-examination,
20 the Commission encourages the parties to work together to reach
21 an informal agreement with regard to how cross-exam will be
22 conducted. I know it's tempting at times to have every
23 attorney cross every witness, but given that we only have four
24 days for this hearing, it would make sense that if the parties
25 on sort of the, both of the broad sides of this case can, can

1 come up with -- for example, Mr. Hatch would be doing,
2 conducting the cross on this issue, and then, you know, slip
3 Mr. Hatch some questions. Mr. Chapkis may be conducting cross
4 for a particular witness.

5 Staff has recommended that the hearing be split into
6 this time frame. The first two days would allow the ILECs to
7 present their case of no impairment, and it would allow for
8 cross-examination of that case and their witnesses. The
9 following two days would be utilized for the CLECs'
10 presentation of their case of no impairment and for
11 cross-examination of that case and the witnesses. This
12 procedure is designed to allow both sides an equal amount of
13 time within which to present their case, but also the
14 flexibility to organize their case as they see fit. Intervenor
15 witnesses, including OPC and AARP witnesses, would, as a matter
16 of course, be taken up in the two days allotted for the
17 impairment side, unless a particular witness is testifying on
18 an element of the ILECs' case. If OPC or AARP presents a
19 witness that is supportive of an element of the ILECs' case,
20 that would be presented during the case in chief. I'm assuming
21 that that case will go to -- will argue impairment and would
22 fit conceptually in the time frame for the CLECs. If
23 necessary, the mass market docket may continue through
24 Saturday, and parties should also be prepared to stay into the
25 evening each day.

1 We really don't need friendly cross-examination
2 unless you have, see a real substantial reason to do so.
3 Summaries of witnesses' testimony should be limited to no more
4 than five minutes and should, in fact, be limited to
5 summarizing the testimony. In other words, no new matter is
6 addressed in the summaries.

7 Again, cross-examination would be up to each side,
8 and, and hopefully the parties can reach some agreement on a
9 lead attorney to conduct cross of a particular witness.

10 Opening arguments, 30 minutes to each side. And
11 additional time on that first day will be provided to the ILECs
12 to account for the time spent on opening and initial procedural
13 matters. And the same would hold true in the latter two days;
14 if time is needed during the CLECs' presentation of their case
15 for procedural matters that relate to this whole docket, it's
16 the intent that additional time would be provided at the end of
17 those days so that no one loses time as a result of procedural
18 matters.

19 That, that are our thoughts -- those are our
20 thoughts. And, Mr. Hatch, if you could go through the document
21 that you provided us on the equitable division of time.

22 MS. KAUFMAN: Commissioner Davidson, I don't want to
23 interrupt, but would it be possible to just go back for one
24 moment to the staff data request? I know that you've already
25 ruled.

1 COMMISSIONER DAVIDSON: Not at this point. We'll go
2 back at an appropriate time, but not now.

3 MS. KAUFMAN: Okay. Thank you, Commissioner.

4 MR. HENRY: Commissioner Davidson, Mickey Henry with
5 AT&T. Basically what you just outlined is somewhat what we had
6 come up with ourselves. Just to give you a little background,
7 I was speaking with Doug Lackey a couple of weeks ago, you
8 know, on our routine discovery dispute matters, and basically
9 the question was posed, how are we going to do this in four
10 days? Because I think we have -- there are 47 witnesses. But
11 if you count the panel of six Verizon, I think it gets you down
12 to 37. And it did look quite daunting to try and do that in
13 four days.

14 What we started developing was a -- try and come up
15 with some ground rules amongst ourselves, and then what we have
16 subsequently done is taken that -- I have taken the concept
17 back in to the FCCA members, as well as I've discussed this
18 with Sprint, and Mr. Lackey has done the same with Verizon and
19 has also, I think, spoken with Mr. Feil.

20 What occurred to us is that if you, if you were to
21 just simply go sequentially, obviously you would have the ILECs
22 going first or the folks in favor of no impairment going first,
23 and the CLECs or the folks in favor of impairment going second.
24 But if you simply went through this sequentially and got five
25 minutes of opening or of summary and then 30 minutes of a

1 cross-examination, the Commission would not get the full story.

2 What we have come up with is that, and what this
3 document reflects is that both sides would have basically four
4 hours to put on a direct case, and you could do that in any
5 manner you wanted. You could take four hours for an opening
6 argument, if you wanted to, or you could take four hours
7 summarizing your testimony, or you could do a demonstration,
8 you could -- in any manner you wanted to, your time for your
9 direct case would be four hours. And during that time it would
10 be -- the questioning would be limited to the Commissioners,
11 and then the counsel for the side presenting would do something
12 in the form of a direct examination. But I would foresee that
13 more of just a prompt the party or the witness to explore an
14 area that they had forgotten about or something. So I would
15 see this more as witness presentations to the Commission and
16 the Commission being able to ask questions of that
17 presentation.

18 Obviously what we would have to do there is the folks
19 on the side of no impairment would have to gather up amongst
20 themselves and determine how they wanted to put on that direct
21 case within the four hours, and the same thing for the other
22 side.

23 COMMISSIONER DAVIDSON: There would be no cross in
24 that four hours.

25 MR. HENRY: That's right.

1 COMMISSIONER DAVIDSON: And no objections.

2 MR. HENRY: The only objection would be that if the
3 party putting on the direct case, if their witness went outside
4 of the prefiled record. And the agreement there that we've
5 reached is that if we were -- on our side, say we have 17
6 witnesses and we're only going to put up five, or on their
7 side, the example that Mr. Lackey and I kept using is if
8 Dr. Aron wants to refer to Dr. Billingsley's cost of capital,
9 as long as it's within his testimony. The only objection would
10 be is if a side's presentation went outside of the prefiled
11 testimony of that side.

12 To back up one step, obviously, at the -- you know,
13 we would need to basically put the prefiled testimony into the
14 record at the, at the start of the hearings. So, yes, there
15 would be no direct examination of the direct case. There would
16 only be examination by Commissioners.

17 And then, then you would go into ten hours' worth of
18 cross-examination of -- the impairment side would cross-examine
19 the no impairment side for, for ten hours. And we have put a
20 schedule here to -- this isn't written in stone, but it was
21 just a way to try and organize the schedule to show where the
22 direct examination would go, where the cross-examination would
23 come.

24 And then in the middle of that we have the -- we have
25 suggested the division of the, or the alignment of the parties

1 here as being those in favor of impairment, those in favor of
2 no impairment and the public witnesses, which would be OPC,
3 AARP, the AG, whomever. The -- we also allow for a 30-minute
4 redirect examination after cross-examination. And if --
5 Commissioner, if you could turn to the schedule on the second
6 page, you can kind of see how it all flows out.

7 The only -- I guess on the cross-examination, given
8 that we're limiting ourselves, obviously, as you suggested, you
9 know, there needs to be -- we need to organize amongst
10 ourselves who is going to be the principal lawyer for that
11 cross. But then again, if, if Mr. Lackey put on Mr. Varner and
12 everybody on the no impairment or on the impairment side
13 cross-examined him for ten hours, that would, you know, we
14 would just be out of luck. The clock would run out. And the
15 same thing on their side. So that's the concept.

16 As I've said, I have spoken with the FCCA members and
17 the, and Sprint, who is also on the side of impairment, and I
18 think Doug has spoken with Mr. Chapkis and also Mr. Feil. So
19 I'll stop at this point and, you know, open it up for
20 questions.

21 COMMISSIONER DAVIDSON: I have no questions right
22 now. I'd just like to hear from the ILECs' side as to their
23 thoughts on this proposal.

24 MR. LACKEY: If I could begin, Commissioner, since I
25 have been involved with Mr. Henry in this. Our concern is like

1 yours and everybody else's; we didn't know how we were going to
2 try this in four days. There are actually, I think, 37
3 witnesses.

4 MR. WATKINS: Mr. Lackey, this is Gene Watkins on the
5 phone. I can't hear you.

6 MR. LACKEY: It's on. Can you hear me now?

7 MR. WATKINS: I can now.

8 MR. LACKEY: Usually I'm not that soft-spoken.

9 MR. WATKINS: Yes, I know. Thank you.

10 MR. LACKEY: Our concern is how we're going to try
11 this in four days. And we've got 37 witnesses in this case and
12 another ten in the case the next week. One of the concerns we
13 had about inequitable division of the time, and we've reached
14 agreement like that in Tennessee, the Commission, the authority
15 required us to do so in order to fit it all into the week we
16 wanted. The problem we had, if we don't do something like what
17 we're proposing, if we just started our case on day one,
18 depending on the length of the cross-examination, we might get
19 to the end of our time and not have put up our entire case. We
20 might run out of time to put up our last three or four
21 witnesses, depending on the length of the cross, and that was
22 our concern.

23 So the idea of moving to a direct block of four hours
24 of time to put on our case in an uninterrupted fashion from
25 soup to nuts is attractive to us because it allows us to ensure

1 that we'll get the whole case out there in front of the
2 Commission for you all to consider. What we're trading for
3 that is a ten-hour limitation on cross. We're going to have to
4 force our cross-examination of the other side's witnesses into
5 ten hours. And if we can't get everything done we want done in
6 the ten hours, that's just too bad for us. That's, that's the
7 tradeoff.

8 I've talked to Mr. Chapkis about it, and I think he's
9 in agreement. He can speak for himself, but I think he's in
10 agreement with this approach. I've talked to Mr. Feil about
11 it, and he's as uncomfortable being on our side as I am having
12 him on our side. But since he is clearly at least in favor of
13 no impairment on the main issue, it seems logical that he would
14 fall with us, although we have hot cut disagreements.

15 MR. CHAPKIS: I have nothing to add, other than we
16 concur on this proposal. And he has spoken to me, and Verizon
17 is onboard.

18 COMMISSIONER DAVIDSON: Mr. Feil?

19 MR. FEIL: FDN didn't have to be into this case. We
20 could have sat on the sidelines and said nothing and just
21 turned in our staff data response. The reason that we're in
22 this case is because we wanted the Commission to have a
23 complete and balanced record.

24 That said, my discomfort in being on a side stems
25 primarily from, I think, pigeonholing me into crossing certain

1 witnesses in certain time frames when, for example, there are
2 BellSouth and Verizon witnesses that I need to cross because of
3 a disagreement with BellSouth and Verizon on certain issues.
4 I'm ready, willing, able to cooperate on allocation of time in
5 any reasonable manner.

6 It is true that FDN -- Mr. Gallagher's testimony is
7 that FDN is a trigger company, so to that extent -- to the
8 extent that that supports the ILECs' point of view, then so be
9 it. But we do have disagreement with the ILECs on other
10 certain issues, and that is why I'm a little concerned about
11 being pigeonholed to a side and having my ability to cross
12 limited. I don't know that I've ever cross-examined a witness
13 at a hearing for more than 20 minutes anyway. I have no
14 problem cooperating on getting a one-minute for opening
15 statement or anything like that. Those are -- having just seen
16 this now and talked with Mr. Lackey and Ms. May about it
17 briefly a day or so ago, those are my intuitive reactions.

18 COMMISSIONER DAVIDSON: Mr. Hatch, did you speak --
19 I'm sorry. Not Mr. Hatch.

20 Sir, did you speak for all of the, all of the
21 impairment side participants in this issue? Is there anyone
22 else that would like to address this issue?

23 MR. WATKINS: This is Gene Watkins with Covad. We're
24 not listed on there, but we would like to be listed on the
25 impairment side, and support the efforts of Mr. Henry and

1 Mr. Lackey in simplifying these matters.

2 COMMISSIONER DAVIDSON: I think on this issue, I'll
3 tell you, I mean, ten hours seems tight for cross, but it is,
4 it is what it is. I would actually be inclined, if the
5 Chairman's office would, would agree up-front, to try and
6 squeeze in an extra four hours of hearing time to bump the
7 cross up to 12 hours just to have a little, a little leeway.
8 And if it really appears that -- and either time the parties
9 need to go -- I mean, folks should be prepared to go late.

10 My concern comes, and there's just no way of
11 controlling this now, with the Commissioner questions. As you
12 know, we -- I mean, if we get wrapped up in questions, I can
13 sit there and question for an hour. So I will have to try and
14 restrain myself at some point.

15 But what would be good, I'll tell you -- yes, sir.

16 MR. GERKIN: Yes, Mr. Commissioner. Charles Gerkin
17 for Allegiance. Just to clarify, Allegiance is somewhat in the
18 same position as FDN. Allegiance really cannot be considered
19 an impairment or nonimpairment party. We have some
20 disagreements with the ILECs, but we don't disagree with some
21 portions of their case. I don't think we feel quite as
22 strongly about this as FDN does. We do not have a witness.
23 We'd like the opportunity to participate in cross. We'd rather
24 not be pigeonholed into an impairment or nonimpairment side.

25 COMMISSIONER DAVIDSON: That's fine. And, Mr.

1 Gerkin, let me ask, did you make an appearance initially?

2 MR. GERKIN: I made an appearance. I was at the
3 other end of the bench.

4 COMMISSIONER DAVIDSON: Okay.

5 MR. HENRY: Commissioner Davidson, Mickey Henry again
6 with AT&T. I wanted to clarify that what -- I mean, this thing
7 has kind of come together pretty quickly, and we were trying to
8 put it together. And as you can see, one of the reasons I
9 didn't get this to staff and people is I sent this to
10 Mr. Lackey yesterday, Sunday, at 4:10. So the intent was not
11 to suggest where Allegiance or Covad or anybody else would
12 fall. We were simply dealing with the, the parties who had
13 witnesses. Obviously, we would work with Mr. Gerkin and Mr.
14 Watkins and anyone else who needed to conduct cross-examination
15 of the no impairment side. I mean, I would see that as our
16 obligation, if we go forward with something like this, is to
17 try to in effect get everybody in a room and say, look, this is
18 our time, let's look at what the issues are, let's figure out
19 what's important and try and get it done.

20 COMMISSIONER DAVIDSON: I tell you, just from taking
21 a read of this document here, and it's not that long, I like, I
22 like the proposal, the division of the case. It seems to make
23 sense in terms of just how to equitably divide the time fairly
24 between both sides, and it also encourages the identification
25 of lead counsel on certain witnesses for purposes of cross.

1 So what I would propose is, staff, I'm comfortable
2 with this proposal. I also think it's consistent with the
3 comments made on how you wanted to divide the hearing. What I
4 would propose is, is that we try perhaps by the end of the day
5 to reach just an agreement on this procedure that we can then
6 reflect in the, in the, in the prehearing order.

7 And the, the actual flow of the case is good without
8 the time limits because who knows how that works. There may be
9 preliminary matters that shift the first day by two hours. We
10 may be here 12 hours that first day. So in terms -- break out
11 your proposal without the breaks and items that are for the
12 discretion of the Chair in terms of scheduling, but break it
13 out in terms of, you know, preliminary matters, opening
14 statement, cross, et cetera, just in terms of the block time
15 frames, and submit your agreed upon joint proposal with staff
16 input.

17 Yes, Mr. Susac.

18 MR. SUSAC: Commissioner, staff has two quick
19 concerns, the first of which is we didn't see a time allocated
20 for staff to cross-examine any witnesses in this proposal.
21 Also, we would --

22 COMMISSIONER DAVIDSON: That would be, I'm assuming,
23 included in the, in the time frame. Is that accurate or not,
24 parties?

25 MR. HENRY: Jeremy, what we had said on the

1 cross-examination was just each side will need to coordinate.
2 And then the participants, the Commissioners, staff, OPC, AARP
3 also can pose questions during this time period. We didn't --
4 as we were doing this, I didn't have a sense of how much cross
5 the staff was going to have, but obviously the staff and the
6 Commissioners can engage in the cross-examination. The
7 critical point in my mind was getting that block to set up the
8 direct case. And so at that point you would have what we had
9 anticipated was Commissioner questions. I guess the staff
10 could be in there as well. The only problem there is with the
11 four hours -- I mean, as Commissioner Davidson indicated, I've
12 seen some Commission inquiries go for a couple of hours anyway.
13 So it would just have to go within the -- we would just have to
14 work that out.

15 MR. SUSAC: Okay. Thank you. Also, I'd just like to
16 remind the parties that any restraints that they put upon these
17 other parties for limiting time of cross will obviously have to
18 be enforced and policed by the parties and that the Commission
19 will not police those time restraints.

20 COMMISSIONER DAVIDSON: And on that as well, what I
21 would hope here -- Mr. Moyle, I see you about ready to speak --
22 if we -- on this, hopefully this is something that, you know,
23 Mr. Twomey, if you're on the line, Mr. Watkins, you all will be
24 able to review and come to some type of an agreement amongst
25 the parties. And that helps take care of the, the time issue

1 regarding cross-examination because if the parties have all
2 agreed to a specific schedule, that will then be enforced by
3 the parties as well as the Commission. The argument that
4 somehow a party didn't have an opportunity to cross is, is
5 somewhat lessened, especially given the encouragement that the
6 sides have to designate a lead counsel to, to conduct the
7 cross. So, Mr. Moyle.

8 MR. MOYLE: I applaud both, both lawyers for spending
9 time, trying to get together and put this type of framework
10 together. It is daunting to try to handle a case with this
11 many witnesses in a limited time frame.

12 I guess a question that I would have, just having had
13 an opportunity to review the document, is related to your point
14 about policing. Is it envisioned that the time frames are
15 going to be real strict time frames, and once that clock runs,
16 whatever may happen during that course of the proceeding,
17 you're kind of, you're kind of stuck, or are the parties
18 talking about, well, having some flexibility if all of the
19 sudden, you know, a Commissioner goes off or staff asks an
20 hour's worth of questions? And that's kind of the thing,
21 because if it's a hard time frame and you don't have some of
22 your case in, you're kind of stuck. So I --

23 COMMISSIONER DAVIDSON: I mean, that would be my
24 intent to bring some degree of flexibility to this so that if a
25 party's time is somehow limited by an act of this Commission or

1 of staff on particular issues, that the Chair would have the
2 discretion then to extend the hearing so that if we've, if
3 we've spent an additional two hours on a certain matter, we can
4 extend, and thus extend the cross time to the other side as
5 well. I mean, one side is not going to get, you know, 13 hours
6 of cross and the other side get ten. So we'll just have to
7 work this out day by day. It's impossible, I think, at this
8 point to say ten hours, that's it, no more, everybody has to
9 fit all of their questions into that, into that time frame.

10 MR. HENRY: Commissioner, that was -- all we were
11 really trying to do is put a framework forward. And obviously,
12 you know, we were not going to put in here that, you know, the
13 Chair was supposed to sit up here with --

14 MR. TWOMEY: Mike Twomey. Did we lose the rest of
15 the folks?

16 MR. WATKINS: This is Gene Watkins with Covad. I'm
17 still here.

18 COMMISSIONER DAVIDSON: Okay. You're back on. I
19 think you were disconnected, Mr. Twomey.

20 Who is your service provider?

21 MR. HENRY: The anticipation was not that you have
22 a -- for example, if you look at our schedule, we don't have
23 any breaks in here, and you also have the transition of getting
24 people up and on. So I think, as you suggested, within blocks
25 of time, and if the Commission Chair can kind of be the referee

1 on that. But the concept was that both sides get a set amount
2 of time for their direct case and a set amount of time for
3 cross.

4 COMMISSIONER DAVIDSON: Mr. Lackey.

5 MR. LACKEY: If I could fill in just a couple of
6 things that I think are pretty important and I want to make
7 sure that we're clear on.

8 What we were talking about, for instance, is I've
9 got, I think I've got 15 witnesses. And during my portion of
10 the four hours that Verizon has and that I have and that, if
11 FDN aligns on our side, that FDN has, I might just put up six
12 of those witnesses to tell our story. That is, we wouldn't
13 summarize for the other nine witnesses. The six I would put up
14 would tell the story, wouldn't be limited to a five-minute
15 summary. They could, they could explain what our view of this
16 case was: Triggers, potential deployment, hot cuts. Then
17 during the ten hours of cross or 12 hours of cross or whatever
18 it is, we would put up the witnesses that people wanted to
19 cross. For instance, if I didn't put up Dr. Billingsley, my
20 cost of capital witness, during the four hours to summarize his
21 testimony but somebody wanted to cross Dr. Billingsley, then
22 I'd put him up and he could stay and cross. He wouldn't
23 summarize. He'd just get up and whoever wanted to cross him
24 would cross him. We didn't really have -- don't have all the
25 nuances of this. Perhaps -- we believe that the nonimpairment

1 side gets ten hours or 12 hours and the impairment side gets 12
2 hours. It may well be that when the -- I guess if we go first,
3 we're the nonimpairment. When the impairment side is through
4 crossing at the end of their 12 hours, maybe that's when the
5 staff takes however long they want to do their cross and maybe
6 that's when the nonaligned parties take their time to do their
7 cross. And then we move into the next phase, which may
8 actually throw this thing over into Saturday, if they go that
9 long.

10 COMMISSIONER DAVIDSON: Which I think is fine.

11 MR. HENRY: But that's what we're thinking.

12 COMMISSIONER DAVIDSON: Well, that's -- those are all
13 good suggestions. Whatever the parties decide, I think, is six
14 in one hand, half a dozen in the other in terms of that. Those
15 were good ideas.

16 Your point about the discretion to present the
17 witness as you see fit is well taken. I think built into that
18 four hours really is the notion of present, present the no
19 impairment case as you see fit. Personally, summaries don't do
20 anything for me at all, nothing. It's -- for me personally
21 they're a waste of time. I just -- I'm reading the witness's
22 testimony. It's the cross-exam that really is important.
23 That's when I start reading line by line the testimony. So I
24 would suggest considering eliminating the summaries and just
25 using the four hours as you see fit. It may be that somebody

1 wants two hours of just an opening statement as in a trial that
2 says you will see that the evidence shows this. Witness Boone
3 has testified this at pages blah, blah of the testimony. I
4 mean, you can really go through and lay out your case for
5 impairment and for no impairment in a meaningful way, or you
6 may want to start and present all the witnesses. That's
7 totally up to the practitioners to decide how to do that. But
8 I think eliminating summaries would be a good idea. Having the
9 time, a specific time for direct and cross is good. And that
10 idea, if it works for the parties, of having a certain time at
11 the end of parties' cross to have staff cross works well, too.

12 I think this is the first time we're really going
13 through this procedure, so it's what makes you all the most
14 comfortable in terms of presenting the case. Staff typically
15 goes at a, at a time after the parties, so that could be done
16 collectively as well. Commissioners will have questions
17 probably throughout the direct case, cross, and may, and may
18 ask some during, during staff's cross as well. So that -- if
19 that works for the parties, that, that works, I think, for me,
20 and I think it will be, work for the Commission as well.

21 Do you think we can reach agreement on a, a rough
22 procedure with time frames by the end of today?

23 MR. LACKEY: We believe we can. Sure.

24 COMMISSIONER DAVIDSON: Perfect. And hopefully this
25 will be a good model for other commissions to use as they

1 proceed in other hearings.

2 When are the hearings in some of the other southern
3 states?

4 MR. LACKEY: They start with -- they start in Florida
5 on the 24th, and they continue every week except the week of
6 NARUC all the way through May 15th.

7 COMMISSIONER DAVIDSON: Got to love NARUC. Everybody
8 is going to love NARUC this year. A break.

9 How, how many hearings is AT&T participating in?

10 MR. HENRY: All nine. The, the Commission's --
11 beginning on the Tuesday is the beginning of the death march
12 through the southeast.

13 COMMISSIONER DAVIDSON: And what about, what about
14 the whole country, how many is AT&T participating in?

15 MR. HENRY: Oh, every state -- there's some states
16 where they're not having hearings either because it's paper,
17 there's some states where the ILECs did not challenge the, the
18 finding of, of impairment. But I would say fully -- I don't
19 know, Richard, between -- with Verizon's, SBC territory, I
20 would say, you know, at least two-thirds of the states will be
21 having hearings.

22 COMMISSIONER DAVIDSON: What about Sprint, Ms.
23 Masterton? How many hearings are you all participating in?

24 MS. MASTERTON: I'm not -- I don't know if I know the
25 exact number. I think 16 states that we had identified to

1 participate fully in throughout the country.

2 COMMISSIONER DAVIDSON: Are you half ILEC, half CLEC,
3 or --

4 MS. MASTERTON: We're pretty much CLEC, except in
5 certain circumstances.

6 COMMISSIONER DAVIDSON: Okay. Got it. All right.
7 So, staff, if you can get with the parties, we'll take perhaps
8 a bit of a longer break, we've got a break coming up somewhere
9 here, and hopefully work out that schedule.

10 MR. McGLOTHLIN: Commissioner Davidson, Joe
11 McGlothlin.

12 COMMISSIONER DAVIDSON: Yes.

13 MR. McGLOTHLIN: This proposal has been fleshed out
14 to a large degree for the 851 case. With respect to the
15 852 case, the FCCA would just offer to the other parties to
16 explore the possibility of applying the same concept. Probably
17 the 852 case is somewhat less daunting in terms of the sheer
18 number of witnesses. But we think that this proposal that
19 Mr. Henry and Mr. Lackey worked on has a lot of appeal for that
20 case as well.

21 And just as a starting point, if each side had
22 one-half day for presentations and with one day being available
23 for cross-examination, that might lend itself to some similar
24 approach.

25 COMMISSIONER DAVIDSON: Makes sense. Thank you,

1 counsel.

2 Before we move on to some specific issues in mass
3 market switching, procedural matters for both dockets, handling
4 of confidential materials, just, of course, be prepared to
5 conduct cross-examination regarding confidential matter in a
6 way that doesn't reveal the confidential information. Also,
7 make sure you've got copies for the parties and the Commission
8 of witnesses' prefiled confidential exhibits that are used
9 throughout the course of the cross.

10 Also, let me mention, even though we're approaching
11 the hearing in this case, in terms of copying for the parties,
12 please make sure that anything that you're copying in terms of
13 deposition exhibits, hearing exhibits, briefs, motions, that
14 you provide, obviously, all the parties' copies, but you also
15 provide the Commission with copies. And I know that staff has
16 worked with you on this issue and you all have agreed to
17 provide copies. That actually -- it surprised me to learn what
18 amount of copying that the Commission actually does for parties
19 in cases. So for those of you here on additional telecom
20 cases, I intend to have parties manage the copying for parties
21 and the Commission in all matters. That's something that is
22 typically done in private practice; you get enough copies for
23 the parties and enough for the court, the judges, the law
24 clerk, et cetera. And so that's going to be my intent going
25 forward.

1 Let's move on to issues specifically in Docket
2 030851. First preliminary matter. Verizon -- I'm sorry, Ms.
3 Kaufman. Let's move back to staff data request. You had
4 wanted to make a comment on that issue.

5 MS. KAUFMAN: Thank you, Commissioner Davidson. I
6 just want to do this for purposes of preserving the record, and
7 that is when staff was discussing the entry of the data
8 request, we've had some conference calls or whatnot with staff,
9 and then staff asked us to respond in an E-mail.

10 The FCCA would like to state its objection to one
11 portion of the data request, which is what I think is commonly
12 known as the switching spreadsheet. When the data requests
13 were sent out, we understand the challenge of collecting all
14 this information from a lot of companies that are not parties
15 to this case. Staff asked for input from the parties as to the
16 framing of the request and the FCCA did provide its input, and
17 it had some serious concerns with how some of the questions in
18 the switching spreadsheet were asked. We still have those
19 concerns. Staff sent the spreadsheet out without incorporating
20 most of the concerns that we had raised, and so we want to
21 preserve for the record our objection to the entry of that
22 spreadsheet.

23 COMMISSIONER DAVIDSON: Thank you. Moving on to
24 matter specific to Docket 030851, the mass market switching
25 document. The first preliminary matter, Verizon has a motion

1 for a clarification and oral argument has been requested. I
2 wanted to let the parties know that it's my intent that an
3 order on this motion will be forthcoming this week. At this
4 point, parties, you each have ten minutes for oral argument.

5 MR. CHAPKIS: Thank you, Commissioner. I'll try to
6 be brief. I think our side is fairly succinctly stated in our
7 papers, and I'll try to use maybe 30 seconds of my ten minutes.

8 The FCC has established a streamlined triggers
9 process whereby a carrier such as Verizon can prove
10 nonimpairment. And the FCC has made clear that you have
11 automatic establishment of nonimpairment if the carrier meets
12 the triggers analysis.

13 Verizon has made clear in Florida that it is only
14 filing the triggers case during the nine-month proceeding, and
15 it would render meaningless that streamlined triggers process
16 in Verizon's commitment if the Commission were to allow
17 discovery and evidence of Verizon regarding the potential
18 deployment case.

19 The potential deployment case only comes up to the
20 extent that Verizon cannot prove the triggers case and Verizon
21 were to go forward with the potential deployment case, which it
22 has already stated it's not going to do. And in light of those
23 simple facts, Verizon would request that its motion be granted.

24 COMMISSIONER DAVIDSON: Who's -- who is arguing on
25 the -- yes, Mr. Self.

1 MR. SELF: Thank you, Commissioner.

2 Commissioner, I'll also be very brief. I think the
3 pleading that AT&T and MCI filed in response probably does a
4 better job than I can.

5 Basically two points. First, the issues that Verizon
6 has raised here are identical to what they raised in their
7 prior proceeding, prior pleadings, and this is simply an
8 unauthorized motion for reconsideration of your procedural
9 order. And on that basis alone, this ought to be denied.

10 Going to the substance of Verizon's motion, Verizon's
11 efforts to make this case a mere mathematical exercise is based
12 upon a very selective reading of what the TRO says. It's clear
13 from the order when read in its entirety and has been well
14 discussed in the testimony that's been prefiled, the trigger
15 analysis cannot be conducted in a vacuum. The issues are very
16 complex and they're very interrelated. Indeed, in some of its
17 pleadings Verizon has admitted that the Commission's analysis
18 of the trigger issue must extend beyond a simple mathematical
19 calculation.

20 In the final analysis, the issues raised by Verizon
21 read in its most favorable way for Verizon really goes to the
22 accuracy and relevancy of the CLEC testimony, and these are
23 matters that can be well explored and examined on
24 cross-examination at the hearing. Accordingly, the motion
25 should be denied.

1 COMMISSIONER DAVIDSON: Thank you, counsel.

2 As I mentioned, it's my intent to have an order on
3 this motion forthcoming this week.

4 Next on the list is BellSouth's motion to strike
5 direct testimony of Z-Tel and Supra. An order has been drafted
6 granting in part and denying in part this motion. Mr. Susac,
7 would you elaborate?

8 MR. SUSAC: Yes. With respect to Z-Tel's testimony,
9 the motion is denied, therefore rendering Z-Tel's request for
10 oral argument today moot and not necessary. An order, as you
11 stated, has been drafted and will be issued later on this week.

12 COMMISSIONER DAVIDSON: The FCCA's motion for leave
13 to file supplemental rebuttal testimony and exhibits of Joseph
14 Gillan, just so the parties know, an order has been drafted
15 granting the motion.

16 Staff's motion for leave to file the prehearing
17 statements, I'm denying that motion. No, I'm kidding. The
18 order is drafted granting the motion.

19 MR. CRUZ-BUSTILLO: Commissioner?

20 COMMISSIONER DAVIDSON: Yes.

21 MR. CRUZ-BUSTILLO: What was the part of the motion
22 with respect to Supra? You just said Z-Tel.

23 COMMISSIONER DAVIDSON: Mr. Susac.

24 MR. SUSAC: The details will be laid out in the order
25 that will be issued at a later date. I can tell you that the

1 standard that we are using, so long as it, prejudicial effect
2 does not go to the parties -- it will be, it will be denied if
3 it's not prejudicial or inflammatory. Put it that way. That's
4 the standard that we're using.

5 MR. CRUZ-BUSTILLO: Okay. Was all of it stricken or
6 some of it stricken or --

7 COMMISSIONER DAVIDSON: I believe the answer to that
8 is, no, it wasn't all stricken.

9 MR. SUSAC: It was not all stricken. I think there
10 were four parts that were referred to in BellSouth's motion.
11 Out of the four, I believe only one portion was stricken.
12 Three out of four come in.

13 MR. CRUZ-BUSTILLO: Thank you very much.

14 COMMISSIONER DAVIDSON: Will that order be ready
15 today, counsel?

16 MR. SUSAC: The order is already drafted.

17 COMMISSIONER DAVIDSON: Thanks.

18 MR. CRUZ-BUSTILLO: Thank you, Commissioner.

19 COMMISSIONER DAVIDSON: Turning to additional
20 procedural matters. Depositions. In order to avoid the
21 potential coloring of a witness's testimony by that which he or
22 she may have heard from other witnesses, no witness in this
23 proceeding may be present during the deposition of another
24 witness. I issued this ruling on February 6th, and a written
25 order reflecting that ruling will be forthcoming shortly.

1 Turning now to the prehearing order in Docket 030851.
2 And I'm just going to proceed on this section by section,
3 possibly lumping some sections together.

4 Sections I through III, which addresses conduct, case
5 background and attendance, are there any corrections or
6 concerns?

7 MS. KAUFMAN: Commissioner Davidson, on the very
8 first page, the entrance of appearances, I believe that, though
9 we appreciate it, Mr. McGlothlin and I represent the FCCA, and
10 a number of the parties that are listed there have their own
11 individual counsel that should be reflected. We did file a
12 joint prehearing statement in an effort to reduce the amount of
13 paper. I think if staff counsel refers to that, they'll see
14 each of the parties and their appropriate counsel.

15 COMMISSIONER DAVIDSON: And if, if counsel would just
16 make clear to staff, also, what corrections need to be made to
17 that, we should be able to take care of that fairly, fairly
18 quickly.

19 MS. KAUFMAN: That would be fine. And I guess if you
20 want me to continue, I've got just a few more things.

21 COMMISSIONER DAVIDSON: Sure.

22 MS. KAUFMAN: On Page 8 where the confidential
23 matters are listed under Covad, Covad has a, filed a
24 supplemental response on February 3rd. It's not listed there.
25 It's a supplemental response to Bell's first set of

1 interrogatories 31 and 35.

2 I may have jumped ahead. I guess you just said the
3 first three sections.

4 COMMISSIONER DAVIDSON: Yeah. I think you did.

5 All right. The first three sections: Conduct, case
6 background, attendance. Any other corrections? Comments from
7 the parties?

8 Section IV, pending motions, which we've previously
9 covered.

10 MR. GERKIN: Commissioner --

11 COMMISSIONER DAVIDSON: Yes.

12 MR. GERKIN: -- on the appearances. Allegiance has
13 filed a request for authorized representatives, for myself and
14 James I. Harlan. Because of scheduling issues, we're not sure
15 which one of us would be attending the hearing. I would just
16 like to get his name in the record.

17 COMMISSIONER DAVIDSON: Staff, did you get that?

18 MR. GERKIN: That was filed late last week.

19 MR. SUSAC: Could you repeat that for me?

20 MR. GERKIN: Myself and James I. Harlan, H-A-R-L-A-N.

21 MR. MOYLE: Commissioner, I need to get an appearance
22 in there as well, but I'll just, I'll just get with staff
23 after -- when we take a break.

24 COMMISSIONER DAVIDSON: Okay.

25 MR. LACKEY: Commissioner, we can add to that part at

1 the break. We don't need to do it now.

2 COMMISSIONER DAVIDSON: Okay. Perfect.

3 MS. McNULTY: And, Commissioner Davidson, Donna
4 McNulty with MCI. Under the pending motion section, I believe
5 there's MCI's motion to accept supplemental rebuttal testimony
6 in the exhibits of MCI Witness Lichtenberg that was filed on
7 January 22nd that has yet to be addressed.

8 COMMISSIONER DAVIDSON: All right. Repeat that
9 motion again, please.

10 MS. McNULTY: MCI's motion to accept supplemental
11 rebuttal testimony in the exhibits of MCI Witness Lichtenberg
12 that was filed January 22nd, and there were no objections to
13 that.

14 COMMISSIONER DAVIDSON: Staff?

15 MS. McNULTY: It's on Page 4 of the draft that was
16 E-mailed to us.

17 COMMISSIONER DAVIDSON: I've got it here. It's
18 Item C under joint CLEC.

19 MS. McNULTY: Uh-huh. Yes.

20 MR. SUSAC: Referring to Subsection C under the joint
21 CLEC?

22 MS. McNULTY: Yes.

23 MR. SUSAC: Could you repeat your question again?
24 I'm sorry, Donna.

25 MS. McNULTY: Yes. I just haven't heard a -- that

1 something would be ruled on on MCI's motion to accept
2 supplemental rebuttal testimony and exhibits of Witness Sherry
3 Lichtenberg.

4 MR. SUSAC: Staff has not made a determination yet,
5 but I can see no prejudicial effect from granting it at this
6 stage.

7 MR. LACKEY: BellSouth had no objection to the filing
8 of the supplemental testimony.

9 COMMISSIONER DAVIDSON: All right. Let's just go
10 ahead and get an order prepared allowing the filing.

11 MS. MAYS: Commissioner Davidson, Meredith Mays on
12 behalf of BellSouth. We also filed a new motion that was
13 E-mailed to parties yesterday. It's not on this draft. It was
14 a motion to strike Supra's surrebuttal exhibits and a motion
15 for protective order. We would like to raise this issue,
16 because it relates to a 2:00 p.m. deposition today, at the
17 appropriate time.

18 COMMISSIONER DAVIDSON: You have a motion for a
19 protective order and a motion to strike?

20 MS. MAYS: Yes, Commissioner Davidson.

21 MR. SUSAC: Can we have clarification that it was
22 filed this morning; correct?

23 MS. MAYS: Yes. It was served by E-mail yesterday
24 evening, and it was filed with the Commission this morning.
25 Excuse me.

1 COMMISSIONER DAVIDSON: And the motion to strike
2 portions of -- how is it captioned?

3 MS. MAYS: It is captioned "BellSouth's Motion to
4 Strike Supra's Surrebuttal Testimony and Exhibits and Motion
5 for Protective Order."

6 COMMISSIONER DAVIDSON: Well, let me ask here, how,
7 how does a motion to strike portions of Supra surrebuttal
8 testimony exhibits relate to a deposition today?

9 MS. MAYS: Yes, Commissioner. What has happened is
10 Supra's surrebuttal testimony of one of their witnesses
11 referred to three exhibits. BellSouth did not receive those
12 exhibits until late yesterday. The exhibits purport to rebut
13 the testimony of BellSouth Witness Ainsworth, who is being
14 deposed at 2:00 p.m. So the first part of the motion asks that
15 the, the late received exhibits be stricken.

16 In the alternative, the second part of the motion
17 asks that Mr. Ainsworth not be required to respond to questions
18 about exhibits that he has not had an opportunity to study, and
19 that part of the motion relates directly to the 2:00 p.m.
20 deposition of Mr. Ainsworth. If Supra is intending to
21 participate in that deposition, we do not believe they should
22 be permitted to ask Mr. Ainsworth any questions about these
23 exhibits.

24 COMMISSIONER DAVIDSON: Well, hold on. I'll let
25 Mr. Cruz-Bustillo respond in a moment.

1 But as I sit here, and I want staff to talk to the
2 parties at an appropriate time during break, late-filed
3 exhibits are what they are; they come in late often by all the
4 parties. And it's certainly for, it's certainly for the
5 parties to explore why they've come in late. As I sit here,
6 I'm not going to make a ruling on this from the bench.

7 With regard to the deposition, there are really two
8 options: Try and work out a rescheduling of the deposition for
9 a time that makes sense, or simply just have your witness --
10 your witness is free to say what he does and does not
11 understand. It doesn't -- that an exhibit was late is not
12 relevant to his testimony relating to that exhibit. It does
13 impact his ability to really have, have, have had an
14 opportunity to analyze and study the, the exhibit and be able
15 to comment on it. At this point though, the witness, I
16 believe, would be free to simply say, I haven't had an
17 opportunity to review that, I do not know, and I just received
18 this at whatever time he received it. So I'm, I am -- is the
19 motion to strike portions of Supra's surrebuttal testimony and
20 exhibits simply based upon the timing of that?

21 MS. MAYS: Yes, Commissioner.

22 COMMISSIONER DAVIDSON: And the motion for a
23 protective order is based on the assertion that the witness
24 would not have time, is not prepared to address --

25 MS. MAYS: The witness is not prepared.

1 COMMISSIONER DAVIDSON: All right. I am going to
2 deny the protective order and the motion to strike portions of
3 Supra's surrebuttal testimony exhibits. That will be ruled
4 upon once staff has had an opportunity to, to, to review the
5 testimony and the exhibits.

6 If there's a case to be made that this witness is
7 simply not going to have an ability to comment on these
8 exhibits, then I suggest the parties work out hopefully an
9 alternative time for a deposition. If you think he needs a
10 couple of days to be able to get up to speed, then raise that
11 with counsel. But that's for counsel to decide.

12 Mr. Cruz-Bustillo.

13 MR. CRUZ-BUSTILLO: Yeah. Today's deposition is
14 staff's deposition, and so we were just going to ask questions
15 on what Mr. Ainsworth has said in his testimony. So it has
16 nothing to do with Mr. Nilson's testimony. I'm asking him what
17 he said.

18 With respect to the exhibits, I have an E-mail that I
19 sent to BellSouth on Friday at 5:43, and then I provided the
20 same exhibits to Jeremy Susac at the same time. And I have a
21 copy of the E-mail, too. And on Friday I had reached an
22 agreement with Mr. Meza that if I provided them the exhibits on
23 Friday, which our attorney was tied up in bankruptcy
24 proceedings, that they wouldn't file a motion to strike or a
25 protective order. I sent it on Friday, and this morning I got

1 a motion to strike.

2 COMMISSIONER DAVIDSON: Well, I've denied the, I've
3 denied the motion. You can take up that issue with counsel as
4 well. And I think with Mr. Cruz-Bustillo's statement that this
5 is staff's deposition and they intend to ask him questions
6 about his, his testimony, I think you'll be fine in your
7 deposition. Thank you.

8 MR. CRUZ-BUSTILLO: Thank you.

9 COMMISSIONER DAVIDSON: So for BellSouth we have two
10 additional motions, one of which has been resolved here, the
11 motion for a protective order. We also have the motion to
12 strike portions of Supra's surrebuttal testimony and exhibits,
13 which staff will address.

14 FDN, you have no additional, no pending motions other
15 than the motions for confidential treatment of information
16 produced in discovery.

17 MR. FEIL: Yes, sir.

18 COMMISSIONER DAVIDSON: Sprint, Page 4, does that
19 accurately reflect?

20 MS. MASTERTON: Yes, Commissioner.

21 COMMISSIONER DAVIDSON: Verizon?

22 MR. CHAPKIS: Yes, Commissioner.

23 COMMISSIONER DAVIDSON: Joint CLEC, I granted, and
24 staff will prepare an order reflecting that, MCI's motion to
25 accept supplemental rebuttal and exhibits of MCI Witness Sherry

1 Lichtenberg.

2 MS. McNULTY: Thank you, Commissioner.

3 MS. KAUFMAN: Commissioner, there are those several
4 requests for qualified representative status that I believe are
5 still pending as well.

6 COMMISSIONER DAVIDSON: Staff, do you -- staff, do
7 you have those requests?

8 MR. SUSAC: We do have those requests, and they will
9 be addressed before the hearing.

10 MS. KAUFMAN: Thank you.

11 COMMISSIONER DAVIDSON: Section V, proposed
12 stipulations.

13 MR. LACKEY: Excuse me, Commissioner. I'm sorry.

14 COMMISSIONER DAVIDSON: Yes, Mr. Lackey.

15 MR. LACKEY: We have one additional motion that was
16 just filed this morning. Again, it's a discovery motion
17 involving a motion to compel answers to certain
18 interrogatories, requests for admissions and PODs that we had
19 served on AT&T. We have been talking to AT&T about it. I
20 don't even know that they've had an opportunity -- I don't know
21 that they've seen the motion that we filed yet, and I don't
22 know what you want to do about waiting to get a response from
23 them on that, but that one is still out there.

24 COMMISSIONER DAVIDSON: Staff, if you can take up
25 this issue during a break as well and come back with a

1 recommendation on BellSouth's motion to compel. And talk, talk
2 to, talk to the parties, and hopefully a time frame for a
3 response can be worked out that allows the, the motion to be
4 resolved in as expeditious a way as possible since we've just
5 got a short amount of time before the hearing. Any other items
6 on pending motions from any of the parties?

7 Proposed stipulations. Are there any proposed
8 stipulations on the table now or are any expected prior to the
9 hearing? Staff, do we have any stipulations?

10 MR. TEITZMAN: There are no stipulations at this
11 time. However, we certainly encourage if the parties would
12 like to stipulate any of the witnesses.

13 MR. FEIL: Commissioner, this is Matt Feil with FDN.
14 If I may kibitz for a moment. I'm not sure whether or not
15 there is a stipulation on Issue 4B, which is the wholesale
16 trigger test.

17 COMMISSIONER DAVIDSON: What -- is your understanding
18 that there is a stipulation on this issue or is one being
19 discussed?

20 MR. FEIL: One has not been discussed. But it seems
21 to me from looking at the positions of the parties is nobody is
22 presenting a case on wholesale triggers, nobody is opposing a
23 case on wholesale triggers because none has been presented. So
24 it just seems to me that it's a nonissue.

25 COMMISSIONER DAVIDSON: I think --

1 MR. FEIL: Again, I'm just kibitzing, so.

2 COMMISSIONER DAVIDSON: That's fine. I would, I
3 would suggest if, if any of the parties think, taking off their
4 partisan hats, that there actually is a consensus on any of the
5 issues, raise that issue with the other parties and with, and
6 with staff. And if, staff, in your analysis you feel the same,
7 raise that issue with the parties. And that's probably the
8 best way to determine if there are any stipulations.

9 Section VI, open proceedings and procedure for
10 handling confidential information. Are there any comments or
11 questions?

12 Section VII, pending confidentiality matters. Any
13 questions or comments?

14 MR. LACKEY: Just to be clear, Commissioner, we
15 didn't list all the pending RCCs. We understood that the staff
16 was taking those up and you'd be issuing an order on them, so
17 we, we would have had to have killed a couple of more forests
18 to list them all, I suspect. I didn't want our nonstated to be
19 taken as meaning there were none.

20 COMMISSIONER DAVIDSON: Staff, if you could, either
21 in Section VI or VII or VI and VII address with some general
22 language that perhaps not all, not all RCCs have been listed
23 here; to the extent some have not been, that they are subject
24 to staff's general treatment of this issue.

25 MR. SUSAC: Certainly.

1 COMMISSIONER DAVIDSON: Yes, sir.

2 MR. GERKIN: In a similar vein, Allegiance currently
3 has three data requests that we have not yet answered, the
4 response is not yet due, and we anticipate there will be some
5 requests for confidentiality on some of those.

6 MS. McNULTY: Commissioner Davidson, that may be true
7 for many of the parties sitting at the table.

8 COMMISSIONER DAVIDSON: Staff, if you can just come
9 up with, draft some general language that will cover any
10 existing specific request for confidentiality and any future
11 general request just so we lay out the procedure. And I
12 believe we've, I believe we have, we have done that.

13 Anything else on Item VI or VII relating to
14 confidentiality?

15 Section VIII, opening statements. We have -- well,
16 let me ask the parties, is it the intent that there shall be an
17 opening statement by each side that is not included in the four
18 hours' presentation, meaning --

19 MR. HATCH: No.

20 MR. LACKEY: No.

21 COMMISSIONER DAVIDSON: So four hours, and it can be
22 a four-hour opening, a four-hour summary, four hours of
23 witnesses, et cetera, and that's it. So got it.

24 MR. LACKEY: You might have to listen to me for four
25 hours.

1 COMMISSIONER DAVIDSON: I object.

2 MR. LACKEY: That would kill the deal, wouldn't it?

3 COMMISSIONER DAVIDSON: Objection granted or
4 sustained.

5 So opening statements, staff, modify Section VIII to
6 reflect what will by the end of the day be an agreement upon
7 the procedure. And we'll just provide that that will be
8 opening statements, if any, are at the discretion of the
9 parties to include in whatever amount of time has been allotted
10 for their direct case.

11 On Items IX and X, let's take a 20-minute recess at
12 this time so that staff and the parties can address scheduling
13 issues, see if an order of the witnesses can be, can be arrived
14 at at this time. Given the schedule that's going to, to be
15 agreed to by the parties, it may be that you all don't know
16 which witnesses you're going to be putting on in this order,
17 but let's go ahead and take a 20-minute recess and work, work
18 on any issues with, with staff.

19 Well, before we take that recess, let me, let me get
20 from staff and the parties, in view of the new schedule that is
21 going to be adopted, what, if anything, can be done here in
22 Sections IX and X prior to the issuance of this order?

23 MR. LACKEY: I'd just leave it like it is. You know,
24 I think it lists the issues the witnesses are testifying about.
25 We've got some testimony that's been omitted that we need to

1 add in, but at least it'll help keep track of exhibits and
2 things like that. And on top of that, we were talking about at
3 the beginning, during that two-hour procedural break at the
4 beginning of the process, just stipulating all of the testimony
5 in. So this would help keep track of where it was if we kept
6 it listed like this. I mean, that would be my take on it.

7 COMMISSIONER DAVIDSON: It seems to me that -- well,
8 from my, from my vantage as just one of five Commissioners, I
9 don't have -- strike that.

10 I have an interest in knowing at some point before
11 the hearing what your likely order of witnesses on the direct
12 case will be simply so I can pull and focus on those witnesses'
13 testimony. I would also like to know on the cross side what
14 witnesses you would intend to cross so I can pull and focus on
15 that testimony. That's not something that has to be determined
16 in this prehearing order, and that's also not something you
17 have to know tomorrow or the next day. But work with staff and
18 come up with some deadline by which you have a pretty good call
19 on who you will present on your case in chief and who you will
20 be calling as cross irrespective of who may be called by the
21 other side simply so we will have a heads up as to who's going
22 to be here.

23 Staff, on Item X, we're going to need general
24 language in the final prehearing order that basically again
25 reflects the schedule that the parties will have agreed to, and

1 that the parties have discretion to call some, but not all,
2 witnesses for their direct case. Testimony may be stipulated,
3 parties have discretion to call witnesses for cross, and that
4 the fact that a witness may not be called for direct, verbal
5 direct, does not limit a party's ability to call that witness
6 for cross.

7 So at some point in time here's what we're going to
8 need from the parties and staff: Which witnesses will be
9 stipulated to; are there any witnesses you're just going to
10 submit the testimony on and not call, at some point will you
11 know that; then what, what witnesses will you call verbally for
12 your case in chief and what witnesses will you call for your
13 cross? And obviously if you're going to call a witness for
14 either, that witness can't be stipulated to. The witness needs
15 to, needs to be here. But hopefully both sides will make a
16 good-faith effort to find some witnesses that can be stipulated
17 to so that a witness isn't here just to sit here through the
18 whole proceeding if he or she is not going to be called for a
19 direct or cross. There are a lot of folks out there. You've
20 got to sort of do this dog and pony show across the country,
21 and I think it would help save costs if you can eliminate a few
22 witnesses here and there from actually, from actually
23 appearing.

24 MS. KAUFMAN: Commissioner Davidson, if I might make
25 a suggestion along those lines.

1 COMMISSIONER DAVIDSON: Sure.

2 MS. KAUFMAN: It would seem to me that if the parties
3 can agree by the end of the day as to the broad framework that
4 we've discussed, perhaps that could be attached to the
5 prehearing order so everyone is sort of on notice of the
6 general parameters. And then I think in our proposal we have
7 suggested a date certain to do the specific witness
8 identification that you've asked for. And whether that's done
9 as a supplement or whatever to -- so that the Commissioners, of
10 course, would have it and have that as a little bit of a road
11 map to the proceeding.

12 COMMISSIONER DAVIDSON: Both good ideas. My plan was
13 to, in the final prehearing order, actually put in the agreed
14 to procedure so that everyone does understand the parameters.
15 And having a deadline or time certain by which witnesses for
16 direct and cross are identified would be, would be helpful, and
17 hopefully you all can reach a date on that. If you can't, I'm
18 fine just picking one. But I'm more comfortable if you all can
19 reach a date that allows us time to pull together the, the
20 information.

21 So is there anything else other than the general
22 language that needs to be done now?

23 MS. McNULTY: Commissioner Davidson, Section X for
24 Witness Mark Bryant, he also addresses Issue 4.

25 COMMISSIONER DAVIDSON: For witness who, Ms. McNulty?

1 MS. McNULTY: Mark Bryant. And I think I've spoken
2 to staff about this already.

3 COMMISSIONER DAVIDSON: He addresses Issue 12, also?

4 MS. McNULTY: 4.

5 COMMISSIONER DAVIDSON: 4.

6 MR. LACKEY: Commissioner, we've -- some of our
7 testimony has been omitted, and I'm sure while the witness
8 would like that, we need to add it back in. But we'll just get
9 with staff on that.

10 COMMISSIONER DAVIDSON: Sure. If you see any gaps
11 here in terms of omitted testimony, omitted witnesses, issues,
12 just work with, work with staff on this. We will try and get
13 this prehearing order out fairly soon, but everyone sees where
14 we're going. And I'd rather just have it sort of complete, so
15 if you need a day or two to work through this and just make
16 sure you have your issues identified and your witnesses
17 identified, do that work with staff, get the information to
18 them.

19 MS. McNULTY: Would that also be true for the next
20 section, the exhibits list as well?

21 COMMISSIONER DAVIDSON: That's very true for that.

22 MS. McNULTY: Thank you.

23 COMMISSIONER DAVIDSON: Thanks. Let's take a
24 10-minute recess before we turn to --

25 MR. SUSAC: Commissioner, could we have additional

1 time to go over the other issues as well?

2 COMMISSIONER DAVIDSON: Sure. How much time do you
3 need, staff?

4 MR. SUSAC: Probably about 40 minutes.

5 COMMISSIONER DAVIDSON: 40?

6 MR. SUSAC: Sure.

7 COMMISSIONER DAVIDSON: All right. 40-minute recess.

8 (Recess taken.)

9 COMMISSIONER DAVIDSON: Prehearing conference called
10 back to order. On that issue, I've been listening to the
11 discussion, I'm not as concerned with the order of the
12 witnesses as I am with just the identification of the witnesses
13 you intend to call in your direct case and the witnesses on
14 cross. That will allow staff and the parties to then pull
15 those witnesses' testimony and make sure that they have it here
16 while the witnesses are here live. I don't think the order is
17 especially important. We'll be able to flip through the, to
18 flip through our notes depending on what witness you call.
19 Given that this is sort of a unique procedure and the first
20 time something like that, something like this procedure is
21 being used, it's going to be important that, I think, you
22 parties have the flexibility to, if you have to change the
23 order of a witness based on night-before discussions, then
24 you're free to do that. We just need to know who those
25 witnesses are going to be. And if you know the order, great,

1 but the focus is really on the identification of the witnesses.
2 Staff, where are we? What was resolved in the
3 recess?

4 MR. TEITZMAN: Well, Commissioner, if I may, I
5 just -- there was one other item that I wanted to mention,
6 which is we've been discussing 851. However, there is 852 as
7 well. I know the parties indicated briefly that they would be
8 interested in following a similar framework, and I have no
9 problem with that.

10 COMMISSIONER DAVIDSON: Well, that's good, staff.
11 Neither do I.

12 MR. TEITZMAN: Well, I meant staff is fine with that.
13 My only thought is that hasn't been discussed yet. Could
14 parties work on that and respond to staff by Wednesday? I
15 think Wednesday was proposed.

16 MR. LACKEY: Yes.

17 MR. TEITZMAN: That was all. The 852 matter then,
18 Commissioner.

19 COMMISSIONER DAVIDSON: Back on, back on 851 just so
20 I'm clear where we are, in terms of the, in terms of the
21 procedure taking sort of a combination of the AT&T model with
22 the comments that were made, what is the -- have the parties
23 agreed and, staff, have you agreed to sort of a breakdown of
24 time frames, or is that still left to be done today?

25 MR. HENRY: Commissioner, I thought that we, based on

1 your suggestions, that we would have another two hours' worth
2 of cross, and I think you asked us to basically not put the
3 dates and the times in, which is fine. So, yeah, I would think
4 that the allotments have been agreed to.

5 COMMISSIONER DAVIDSON: Agreed to.

6 MR. HENRY: I think we've agreed to four hours and 12
7 hours on cross.

8 And did the staff want a specific allotment or -- I
9 think the other thing we agreed to was that staff, if they had
10 more than 10 minutes, would hold it until the end; is that
11 right?

12 COMMISSIONER DAVIDSON: Staff, is that consistent
13 with your understanding?

14 MR. SUSAC: That is consistent with my understanding
15 or our understanding.

16 MR. HENRY: Then I guess the other issue would be
17 Public Counsel, where they would want to --

18 COMMISSIONER DAVIDSON: Mr. Beck, is it, is it safe
19 to assume that Public Counsel will be arguing impairment for
20 the most part?

21 MR. BECK: I don't think we fit neatly into that
22 category or not.

23 COMMISSIONER DAVIDSON: How would you feel about sort
24 of conducting -- well, one, let me ask, is Public Counsel --
25 would Public Counsel be fine with an opportunity to make some

1 type of opening statement at some point and then conducting
2 cross? Because it seems the parties really sort of have the
3 burden of one, one side or the other in terms of proving the
4 case.

5 MR. BECK: Right. I'm fine the way that it's
6 outlined in the document. We do have a witness.

7 COMMISSIONER DAVIDSON: Okay.

8 MR. BECK: We have an hour slot on Thursday morning
9 at 9:00. As I understood the way Mr. Lackey was explaining it
10 is that after the parties did the cross, there would be an
11 opportunity for the nonaligned party to cross and then staff.
12 So my understanding is we would go after the aligned parties
13 but before staff. I don't expect any extensive cross at all.
14 It would be just a few minutes, I think, at least from our
15 side. I can't speak for the AARP.

16 COMMISSIONER DAVIDSON: Okay. Staff, is that your
17 understanding?

18 MR. SUSAC: Yes, that's our understanding.

19 COMMISSIONER DAVIDSON: Mr. Twomey, are you on the
20 phone?

21 MR. TWOMEY: Yes, sir, I am.

22 COMMISSIONER DAVIDSON: And does, does the scenario
23 that Mr. Beck outlined work for you?

24 MR. TWOMEY: Yes, sir, it does.

25 MR. BECK: So as I understand it, the Office of

1 Public Counsel would get together with the AARP, we have a
2 witness, and during that one hour we would decide how to make a
3 presentation, whether it's opening statements, putting the
4 witness on, summaries. You know, we would work together to
5 make that hour and we would do it all within that hour.

6 COMMISSIONER DAVIDSON: Great.

7 MR. LACKEY: The only issue left, now that I think
8 about it, what do we do, Mickey, about crossing his witness?

9 MR. BECK: As I understood it earlier when you
10 described it, you said that we would do it after the aligned
11 parties but before staff.

12 MR. LACKEY: No. Crossing your witness.

13 MR. BECK: Oh, you mean crossing our witness?

14 MR. LACKEY: Crossing your witness. What -- I
15 think --

16 COMMISSIONER DAVIDSON: I think we'll have to have
17 some type of time built in for cross of that witness's -- of
18 that witness at the time. I mean, it probably makes sense to
19 go ahead and just build in the cross while the witness is up on
20 the stand. And so, staff, if you -- what I'd like to see by
21 the, what I'd like to see by the end of the day today is that
22 section of the prehearing order amended or what will be
23 included in the prehearing order to reflect this schedule, the
24 blocks of times allocated, the order in which direct and cross
25 and intervenors would present their case, the time limits

1 allocated to that. And let's just go ahead and get that mapped
2 out, and that will sort of get that issue finalized.

3 MR. HENRY: Commissioner, could I raise one more
4 thing just to make sure everybody is clear? We also had in
5 here a 30-minute redirect at the end of ten hours of cross. So
6 if we could -- there may need to be a little cleanup. So if we
7 could get that slotted as well. We'd agreed to that with the
8 other side.

9 MR. LACKEY: Maybe we ought to put that, maybe we
10 ought to put that in the 12 hours. Make it 11-and-a-half hours
11 of cross and a half-hour redirect.

12 COMMISSIONER DAVIDSON: That's -- I'll tell you,
13 either one. I'm indifferent to that. It's really what the
14 parties think you've got. We've added the cross. We can have
15 a full, you know, 12 hours of cross and a half-hour of redirect
16 or 11-and-a-half and a half. It just, it doesn't matter.

17 All in favor of 11-and-a-half and a half, raise your
18 hand. All in favor of 12 plus a half, raise your hand.
19 11-and-a-half and a half has it. Staff, you can work that in
20 to the, to the schedule as well.

21 Before we get to Docket 030852, is there anything,
22 Mr. Susac, that I need to be aware of that was discussed during
23 the recess? Keep in mind that you all can work out the minor
24 details and changes. But anything major that I need to be
25 aware of?

1 MR. SUSAC: I'd just like to say we're still working
2 with the parties pertaining to Sprint's motion to compel the
3 source model for the BACE, for the BACE model. That's it.

4 COMMISSIONER DAVIDSON: All right. Thank you. I
5 think the two options on the table for that, short of, of a
6 production of the, ordering a production of the source code, is
7 a visit to work with the model in Atlanta versus -- or here.
8 And, parties, just work out those two different scenarios.

9 And turning to the --

10 MR. GERKIN: Commissioner Davidson, before we move to
11 852, this may be something I should have raised earlier, but
12 Allegiance would like to request leave to either attend or not
13 attend the 851 hearing. We do not have a witness.

14 Allegiance's situation right now is we're in
15 Chapter 11. There's an auction of our assets scheduled for
16 this week. And as I stand here today, I have no idea what
17 Allegiance's position is going to be on some of these issues as
18 of the date of the hearing.

19 COMMISSIONER DAVIDSON: Has Allegiance appeared in
20 the case?

21 MR. GERKIN: Allegiance has appeared in the case.
22 Allegiance has participated up to this point. We would like to
23 request leave to either attend or not attend as our interest
24 appears at the time, and to be able to file a brief, if we
25 don't attend.

1 COMMISSIONER DAVIDSON: I, frankly, think that's up
2 to, up to, up to the party to decide. If you have appeared in
3 the case, then you're in the case. And the extent of your
4 participation in the case is really up to you. I'm a little
5 uncertain about the request.

6 MR. GERKIN: Well, the prehearing order states that a
7 party that does not appear at the hearing can be dismissed from
8 the case, unless, unless we have permission from the hearing,
9 prehearing officer to not appear. So we're requesting
10 permission to not appear at the hearing and still be able to
11 file a brief.

12 COMMISSIONER DAVIDSON: I think I'm not going to be
13 able to rule on that verbally. You'll need to put down your
14 request in writing and we'll need to think about that. I mean,
15 you filed an appearance in the case. I don't want to sort of
16 off the cuff rule in a manner that would encourage parties to
17 appear in cases and then not participate in some aspects, but
18 participate in others. So go ahead and file your, your request
19 there, and I think, I think we'll get a ruling on that quickly.

20 MR. GERKIN: Thank you, sir.

21 MR. FEIL: Commissioner, one last thing or two things
22 quickly before we leave 851.

23 I'm supposed to get to staff the corrections and
24 additions for the draft. Did you want us to do that by
25 Wednesday morning? Was there a time certain by which you

1 wanted us to E-mail you that information?

2 COMMISSIONER DAVIDSON: I think, I think, I don't
3 know staff's view, but two days, two days provides ample notice
4 to the parties. Does close of business Wednesday work?

5 MR. SUSAC: It works for staff.

6 COMMISSIONER DAVIDSON: All right.

7 MR. FEIL: The other thing I wanted to comment on is
8 the last page of the draft prehearing order mentions mediation,
9 and I don't know whether or not that prospect has been raised
10 with any of the other parties. But I just wanted to call
11 attention to it in the event that all or some part of the case
12 can be resolved through mediation, FDN would be interested in
13 participating.

14 COMMISSIONER DAVIDSON: And I think the Commission
15 would be interested in having participation if there were
16 aspects that could be resolved.

17 Just briefly, prehearing order Sections XII through
18 XIII, positions, we won't go through those. But please, please
19 review those carefully and make sure that your clients'
20 positions are accurately reflected in those position statements
21 so that the day of the hearing we don't have a lot of, a lot of
22 changes to that.

23 Section XIV is the section titled "Decisions that May
24 Impact Resolution of Issues." We had a section like this in a
25 previous docket just to take note of FCC decisions that might

1 impact this docket. My view is that it's probably useful to
2 leave that in because we have no idea what's happening with the
3 TRO. And I think there is some chance that if this is punted
4 back to the FCC, there may be a subsequent decision that
5 impacts this docket. So while it may be superfluous, I think
6 it's probably useful to, to leave it in.

7 Section XV, posthearing procedures. Were there any
8 specific concerns that the parties had that are not addressed
9 in the prehearing order? All right. Thank you.

10 Mr. Susac, are there any other matters on Docket
11 030851?

12 MR. SUSAC: Yes. I'd just like to bring to your
13 attention, Commissioner, that while we deliberated, we did, I
14 believe, come to a resolution on stipulation of Issue 4B.
15 However, I would like Sprint's input because I fear that she
16 was not present during those discussions. In sum, the ILECs
17 have agreed upon general language which states that there's no
18 dispute at this time or attempt to make a showing for the
19 wholesale trigger.

20 MS. MASTERTON: Yeah. Sprint's okay with that.

21 MR. SUSAC: Sprint's okay with that?

22 COMMISSIONER DAVIDSON: So we'll have one proposed
23 stipulation on Issue 4B.

24 MR. SUSAC: Also, I would like to bring to the
25 parties' attention that as it currently states in this draft

1 prehearing order, that the briefs are to be no more than 40
2 pages. We don't know if that's an ample amount of pages to
3 address the parties' positions, but we'd like to have their
4 comments.

5 MR. HATCH: We were going to go there next.
6 Certainly from our perspective, at least in AT&T's perspective,
7 40 pages does not seem adequate with the magnitude of the
8 information and the decisions that have to be made. When we
9 did the very first round of arbitrations, I asked for 150
10 pages, they cut it to 100, and everybody that filed a brief
11 said it wasn't enough. So my question here is what everybody
12 thinks is an adequate amount. At least 100, preferably more
13 than that, in terms of a brief for pages.

14 MR. LACKEY: When does a brief stop becoming brief?
15 100 pages --

16 COMMISSIONER DAVIDSON: You might want to pull the
17 mike up for the benefit of those on the phone.

18 MR. LACKEY: I don't want Mr. Watkins yelling at me
19 again.

20 100 pages is just too much. I mean, who can, who can
21 assimilate what's in 100 pages of brief?

22 MR. CRUZ-BUSTILLO: Commissioner, I'm having a hard
23 time hearing him over here.

24 COMMISSIONER DAVIDSON: Who is that?

25 MR. CRUZ-BUSTILLO: Commissioner, Mr. Cruz-Bustillo.

1 COMMISSIONER DAVIDSON: You've been so quiet today.

2 MR. LACKEY: It must be the mike. It can't possibly
3 be me.

4 COMMISSIONER DAVIDSON: No. Mr. Cruz-Bustillo has
5 been so quiet today. That was my comment.

6 MR. LACKEY: Our position is that perhaps 40 pages is
7 insufficient, but certainly 60, 65 pages. If we get up over
8 100 pages, I don't know who's going to have time to read the
9 thing, to tell you the truth.

10 COMMISSIONER DAVIDSON: Well, I've been aware of this
11 issue. I mean, the parties have sort of raised this before.
12 And 40 pages strikes me as short; 100 is a bit long. My ruling
13 is 75 pages inclusive of everything but the table of contents.
14 Don't start counting just at the -- don't start counting after
15 your, your summary of, of argument. And given that most, most
16 folks only read the first few pages, you better have a
17 compelling summary, because I doubt much after page 50 will be
18 read by everyone.

19 Anything else in 030851?

20 MR. SUSAC: That concludes 030851.

21 COMMISSIONER DAVIDSON: Turning to 030852, high cap
22 loops and transport. Mr. Teitzman, preliminary matters.
23 There's a BellSouth motion to strike direct testimony of
24 NewSouth and FCCA. Parties should know that an order has been
25 drafted denying the motion.

1 There's an FCCA motion to strike direct testimony of
2 BellSouth. An order has been drafted denying the motion.

3 There's an FCCA motion to strike Verizon testimony.
4 An order has been drafted denying the motion.

5 There's an FCCA motion to compel BellSouth. As I
6 understand it, staff has spoken with BellSouth and believes
7 this motion may have been resolved. In short, FCCA seeks to
8 compel Bell to provide it the GeoLIT study Bell relies on in
9 its testimony. Bell has indicated it will provide one copy to
10 the Commission for all parties to view.

11 Bell and FCCA, if you could each take a couple of
12 minutes to address this issue. And then, Mr. Teitzman, if you
13 could follow up that discussion with any comments or options
14 that you have.

15 MR. McGLOTHLIN: Joe McGlothlin for the FCCA,
16 Commissioner. We have made some progress on this item. The
17 remaining question is whether the offer to make it available,
18 make the GeoLIT Plus Report available either at the Commission
19 or at BellSouth's Tallahassee office is adequate for our
20 consultant's purposes. We contend it is inadequate, and we'd
21 ask the prehearing officer to enter an order requiring
22 BellSouth to make a copy available to the consultant for his
23 review.

24 By way of quick background, while there's no question
25 about the relevancy of this, the, the GeoLIT Plus analysis or

1 the report was used by BellSouth's witness in the witness's
2 evaluation of whether there are any self-provisioned DS-3 or
3 dark fiber loops that qualify for triggers. The witness states
4 that she used the report in lieu of responses from CLECs where
5 no CLEC responses were available.

6 But in terms of the degree to which the analysis
7 should be protected, I'd like to very quickly read from the
8 witness's description of the GeoLIT Plus Report. BellSouth --
9 this is from Page 6 of Padgett's testimony, direct testimony.
10 "BellSouth purchased data from GeoResults, Inc., an independent
11 consulting firm specializing in national business and
12 residential databases, customized database marketing and
13 geo-mapping services, business level telecom bandwidth, demand
14 and spend estimates, a comprehensive set of telecom competitive
15 intelligence reports, proprietary wire center boundary products
16 and spatial analysis tools and services." The witness
17 describes the report as a list of buildings that contain
18 fiber-based equipment together with the names of the carriers
19 that own the equipment, and she says that the report was
20 further refined by BellSouth to exclude instances where a
21 carrier obtained the loop facility from another carrier on a
22 wholesale basis. But more importantly, she also says that the
23 report is a summary of locations that have been taken from the
24 CLONES or the Central Location Online Entry System database
25 provided by Telecordia, to which carriers self-report records

1 of their equipment as it is deployed. The database is widely
2 used in the industry to create, update and maintain common
3 language location codes. And she says that GeoResults uses
4 this database and then applies its proprietary and analytical
5 techniques. So even this report is derived from another
6 database which is widely used in the industry. And so I don't
7 believe it reaches the same status as, for instance, the
8 proprietary source code in terms of the degree of sensitivity
9 in that it is itself derivative.

10 Further, we suspect that it is voluminous in nature,
11 and that given the logistics of the case and the, the timing
12 considerations that bear on the ability to review it and then
13 use it for any useful purposes, our consultant, who's located
14 in Connecticut, by the way, needs more than a trip to either
15 the PSC office or the BellSouth office for an adequate chance
16 to review and evaluate its use in this case.

17 I'd like to add that in its response, supplemental
18 response BellSouth quotes from its contractual arrangements
19 with the vendor. And the material quoted requires BellSouth to
20 take, quote, all reasonably necessary measures, end quote, to
21 safeguard the, the information.

22 FCCA has already entered into a nondisclosure
23 agreement that limits access in terms of the persons who may
24 review it and also limits the use of the information to this
25 docket. This Commission has already entered a protective

1 order, and we simply don't see that this particular analysis,
2 given that it's going to be voluminous and given the nature of
3 the information included, is entitled to a more limited access
4 than the other proprietary information that's already, already
5 been disclosed on a confidential basis for purposes of this
6 case.

7 COMMISSIONER DAVIDSON: BellSouth.

8 MS. MAYS: Yes, Commissioner. There's a real simple
9 solution to what the FCCA is asking for, and that is if they
10 want this report, this is a commercially available report. We
11 have tried very hard to resolve this issue with the FCCA and
12 also with the entity from whom we purchased the report from and
13 we have been --

14 COMMISSIONER DAVIDSON: The GeoLIT study is a
15 commercially available report?

16 MS. MAYS: Yes, sir.

17 COMMISSIONER DAVIDSON: It's publicly available.

18 MS. MAYS: It is commercially available, meaning that
19 if FCCA wants to buy the report and take the time to study it
20 at its leisure, it can do so, but it would need to buy a copy
21 of it for its own use.

22 What BellSouth has obtained is a limited license
23 agreement to use the report, and that does not -- the folks
24 from whom we bought it have not given us permission to make a
25 copy and give it over to the FCCA's consultant. The FCCA can

1 buy a copy for itself, if it so chooses. But what we have
2 tried to do is live up to our contractual obligations and still
3 allow them access to the report, which is why we have offered
4 to -- we've already filed it with the Commission and we've
5 offered to make it available to them.

6 I would also note that to the extent the FCCA is
7 stating that it's voluminous and requires a great deal of time,
8 the surrebuttal testimony of BellSouth's witness Shelley
9 Padgett outlines further how much the report has been relied
10 upon versus discovery. And if, if that testimony is studied,
11 it is apparent that there are very few instances where
12 BellSouth is actually relying upon the report for those
13 locations, customer locations at which we contend there is no
14 impairment. So we believe we have done what we can do to allow
15 the FCCA access. Thank you.

16 MR. McGLOTHLIN: Commissioner, may I?

17 COMMISSIONER DAVIDSON: Well, one question first. Is
18 it accurate to state that FCCA could buy the GeoLIT report? Is
19 that commercially available to FCCA?

20 MR. McGLOTHLIN: My understanding is that is
21 commercially available. But I would add to that, it's probably
22 commercially available for any number of purposes. BellSouth
23 is the party that has decided to use it for purposes of
24 evidence in this case. And evidence in this case is the
25 subject of discovery without the necessity of our trying to,

1 our having to acquire it independently.

2 COMMISSIONER DAVIDSON: Staff?

3 MR. TEITZMAN: Commissioner, I'd like to just review,
4 I guess, what the options would be at this time. As BellSouth
5 has stated, they have filed the GeoLIT study with the
6 Commission on Friday, and I think they've also mentioned that
7 they would provide it at any one of their offices for FCCA to
8 examine. That would be one option.

9 An additional option, of course, would then be
10 BellSouth providing a copy of the study to FCCA, at which point
11 staff would recommend that FCCA, of course, would have to
12 return that item or return it to either BellSouth or to the
13 Commission for either destruction or, like I said, return it to
14 BellSouth.

15 And I guess a third option at this point would be the
16 discussion of whether or not the, the actual study is
17 commercially available and FCCA's purchase of that.

18 COMMISSIONER DAVIDSON: Question for BellSouth. I
19 note that you filed the GeoLIT study with the Commission.
20 Staff noted that you have offered to make this available to
21 FCCA at different offices. What, what offices could you make
22 this available to FCCA at for review?

23 MS. MAYS: Yes, Commissioner. We could make the
24 report available to them in any of our nine BellSouth offices
25 in the southeastern states. They could pick which one was most

1 convenient to them.

2 I would note with respect to staff's option of
3 producing the report to them and having them return it, that we
4 did ask the GeoLIT folks if there was any scenario that would
5 allow us to give them a copy of it, and they have stated very
6 strongly that because it is commercially available and due to
7 the, due to the sensitivity of the information in it, they do
8 not, they have not given us permission to make a copy to the
9 FCCA for them to later return.

10 COMMISSIONER DAVIDSON: I am, I'm prepared to rule on
11 this here. I'm going to deny in part and grant in part FCCA's
12 motion to compel BellSouth. I am granting in part to the
13 extent BellSouth is directed to make available to FCCA at any
14 of BellSouth's nine offices the GeoLIT study for, for review
15 by, by, by FCCA. I also note that the study has been filed
16 with the Commission, and the Commission should, of course, make
17 that GeoLIT study available for review by FCCA. And until
18 there are substantially changed circumstances, the GeoLIT study
19 should not be copied and disseminated to any parties, and
20 that's my ruling.

21 Next is Covad's motion for summary final order and
22 request for oral argument. I just wanted to let the parties
23 know an order will be issued at a later date on this.

24 In terms of additional procedural matters, I would
25 just like to note that the ruling with regard to deposition

1 witnesses not being present during the depositions of others,
2 that ruling applies to both dockets.

3 Prehearing order for Docket 852. Mr. Teitzman, in
4 terms of the sections, did you address any of these sections
5 with the parties during the recess?

6 MR. TEITZMAN: Parties did approach me during recess,
7 and I discussed with several parties some corrections that need
8 to be made. In light of those discussions, I would say we
9 could probably go through this quickly, but with all parties
10 providing staff with corrections, like in 851, by close of
11 business on Wednesday.

12 COMMISSIONER DAVIDSON: Okay. With that, good point,
13 Mr. Teitzman, changes in close of business Wednesday. Let's
14 quickly go through the prehearing order and address anything
15 that you feel should be brought to the Commission's attention
16 now prior to your edits coming in.

17 Sections I through III dealing with conduct, case
18 background and attendance.

19 Section IV, pending motions. We've previously
20 covered those. Is the prehearing order missing any pending
21 motions?

22 MR. CHAPKIS: Verizon is filing a motion today to
23 compel discovery from AT&T, and that motion is entitled "Motion
24 to Compel AT&T Discovery."

25 COMMISSIONER DAVIDSON: Thank you. And, staff, for

1 these, I won't say last minute motions, but for these motions
2 coming in sort of as we approach -- well, this is in the, the
3 loops and transport, so we're okay in terms of timing.

4 MR. TEITZMAN: Yes. And that can certainly be added
5 to the prehearing order before its issuance.

6 COMMISSIONER DAVIDSON: All right. Any proposed
7 stipulations in this docket?

8 Confidentiality, Sections VI and VII. I note that
9 the same discussion regarding confidentiality that we had in
10 851 would apply here, and if staff could make any necessary
11 changes to the prehearing order.

12 In terms of -- let's go ahead and cover Sections
13 VIII through X. Does the agreement that the same type of
14 schedule proposed for 851 in terms of presentation of case and
15 cross would apply in 852?

16 MR. HATCH: Yeah. We expect that that format could
17 apply. We are less further along with all of the folks in the
18 852 docket, so it's going to take some discussion with folks to
19 determine whether that would work.

20 I would say that there's less of an imperative in the
21 852 docket to do that because it's more of a manageable size in
22 terms of just the number of witnesses and the time that we've
23 got slotted. But we do anticipate that we should be able to
24 use that format then.

25 COMMISSIONER DAVIDSON: Mr. Teitzman, what is -- when

1 is the prehearing order in Docket 852 due to be finalized?

2 MR. TEITZMAN: It is to be issued on Friday. That
3 certainly could be modified at your discretion, of course.

4 COMMISSIONER DAVIDSON: Well, my suggestion is, and
5 since I have the discretion to do so, I may, is just modify the
6 date when this, when the prehearing order for Docket 852 is due
7 to give the parties a little bit more time to try and flesh out
8 a workable procedure for this docket. We need to get the
9 prehearing order out in the mass market docket ASAP since we're
10 coming to hearing. But we've got a little bit more time, so,
11 Mr. Teitzman, we can just work on a date for that.

12 MR. TEITZMAN: Yes, Commissioner.

13 MR. HATCH: Just as a comment, Commissioner Davidson,
14 like I said, we have not shopped this with the folks on the
15 852 docket for the most part. Do you want to go ahead and set
16 an order of witnesses now to get that out of the way on the
17 assumption that we're unable to reach agreement on this new
18 format with that group, just to save that detail? I don't know
19 if you want to do that now or not or just wait.

20 COMMISSIONER DAVIDSON: Staff, what do you recommend?

21 MR. TEITZMAN: Well, with the additional time being
22 added to the date by which this order needs to be issued, I
23 think the order of witnesses can be combined into the
24 discussion of whether or not we will go with the same format
25 being utilized in 851. So I would recommend that it need not

1 be discussed at this time.

2 COMMISSIONER DAVIDSON: Good. Let's do that.
3 Parties, if you would just work with staff on any corrections
4 to exhibits. The same with any corrections to positions,
5 Section XII and XIII.

6 Section XIV, decisions that may impact resolution of
7 issues. Same discussion in this docket. Given the appeal of
8 the TRO, there may be future decisions that, that impact this
9 docket.

10 For staff, do you have any other matters in this
11 docket?

12 MR. TEITZMAN: I believe there are no other matters.

13 Let me, let me, let me rethink that, Commissioner. I
14 think with regard to the briefs, I know we just ordered
15 75 pages in 851, as was briefly mentioned by Mr. Hatch. This
16 proceeding is a little bit smaller in scale.

17 COMMISSIONER DAVIDSON: I'm not inclined to extend
18 the brief limit in this case. I mean, we can perhaps revisit
19 that issue, but this case is more manageable. So I --

20 MR. TEITZMAN: Oh, no. I was talking about
21 shortening it.

22 COMMISSIONER DAVIDSON: Oh, okay. All right. Good.
23 Good.

24 MR. TEITZMAN: No. What I was saying was this was --
25 or what I was going to say was this is a smaller scaled

1 proceeding, so perhaps 60 pages as opposed to 75 or 50 pages.

2 COMMISSIONER DAVIDSON: Well, briefs, weren't they
3 originally set at --

4 MR. TEITZMAN: Oh, so you were saying 40 pages.

5 COMMISSIONER DAVIDSON: Keeping them at 40 pages.

6 MR. TEITZMAN: Okay. No problem.

7 COMMISSIONER DAVIDSON: Because this is a much more
8 manageable proceeding.

9 MR. TEITZMAN: I understand.

10 MR. MCGLOTHLIN: Commissioner, on the posthearing
11 matters, I don't, I don't ask to extend the page number of the
12 briefs, but I do ask for relief from the 50-word position
13 statement. I think experience by the lawyers involved in these
14 things has indicated that at 50 words it's very difficult to
15 communicate anything meaningful, and we find ourselves dropping
16 prepositions and doing other silly things to try to get some
17 substance within that confining limit. I suggest 75, and I
18 also ask that you consider making the same ruling for 851.

19 COMMISSIONER DAVIDSON: I'm fine with the 75-word
20 position statement. Did you get that?

21 MR. TEITZMAN: Yes, Commissioner.

22 COMMISSIONER DAVIDSON: All right. Thanks.

23 MR. HATCH: Was that for both dockets, Commissioner
24 Davidson?

25 COMMISSIONER DAVIDSON: Yes, for both dockets.

1 Parties, do you have any other matters in either
2 docket? Mr. Watkins? Mr. Twomey?

3 MR. WATKINS: Covad has no additional matters.

4 MR. TWOMEY: Nothing from me, Commissioner.

5 MS. MAYS: Commissioner Davidson, just one matter; it
6 does not require the prehearing officer. Just if we could go
7 over the deposition schedule perhaps with everybody.

8 COMMISSIONER DAVIDSON: Well, let me -- I'll finish
9 up with just a couple of critical dates, and then the staff can
10 remain to, to talk about the deposition schedule.

11 According to the order establishing procedure,
12 discovery shall be completed by February 17 in 851 and by
13 February 25th in 852.

14 The 851 hearing is scheduled for February 24th
15 through 27th, and the 852 hearing is scheduled for March 3rd
16 through 5th. And with this, I'm going to adjourn the
17 prehearing conference, and the parties are free to remain and
18 discuss with staff any issues including the deposition
19 schedule. Any other business? Adjourned.

20 (Prehearing Conference adjourned at 12:30 p.m.)

21

22

23

24

25

1 STATE OF FLORIDA)
2 COUNTY OF LEON):


CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
9 transcribed under my direct supervision; and that this
10 transcript constitutes a true transcription of my notes of said
11 proceedings.

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

17 DATED THIS 13th DAY OF FEBRUARY, 2004.

18
19
20
21
22
23
24
25


LINDA BOLES, RPR
FPSC Official Commission Reporter
(850) 413-6734