

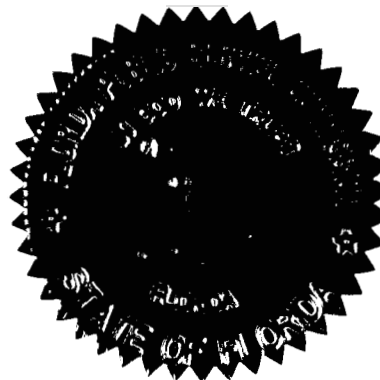
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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030851-TP

In the Matter of

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



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VOLUME 1

Pages 1 through 201

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: Tuesday, February 24, 2004

TIME: Commenced at 9:35 a.m.

DOCUMENT NUMBER - DATE
02973 MAR -1 0
FPSC-COMMISSION CLERK

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1 I N D E X

2 WITNESSES

3	NAME:	PAGE NO.
4	RANDALL S. BILLINGSLEY	
5	Prefiled Direct Testimony Inserted	69
6	Prefiled Surrebuttal Testimony Inserted	100
7	ERIC FOGLE	
8	Prefiled Rebuttal Testimony Inserted	120
9	Prefiled Surrebuttal Testimony Inserted	142
10	TERRY L. ALLEMAN	
11	Prefiled Direct Testimony Inserted	150
12	CHERYL L. BURSH	
13	Prefiled Rebuttal Testimony Inserted	164
14	Prefiled Surrebuttal Testimony Inserted	176
15	MARK NEPTUNE	
16	Prefiled Rebuttal Testimony Inserted	187
17		
18		
19		
20	CERTIFICATE OF REPORTER	201
21		
22		
23		
24		
25		

	EXHIBITS		ID.	ADMTD.
1	NUMBER:			
2	1	Access Stip-1	30	52
3	2	Allegiance Stip-1	30	52
4	3	Granite Stip-1	31	52
5	4	ITC^DeltaCom/BTI Stip-1	31	52
6	5	Network Stip-1	31	52
7	6	NewSouth Stip-1	32	52
8	7	Xspedius Stip-1	32	52
9	8	(Confidential) BellSouth Stip-1	32	52
10	9	(Confidential) Sprint Stip-1	32	52
11	10	(Confidential) Verizon Stip-1	32	52
12	11	(Confidential) Data Request Responses	33	47
13	12	(Confidential) Miscellaneous-1	33	
14	13	(Confidential) Miscellaneous-2	34	52
15	14	RJW-D	34	52
16	15	MB-D	34	52
17	16	KLA-D	34	52
18	17	TJA-D	35	52
19	18	DJA-D	35	52
20	19	JB-D	35	52
21	20	KWD-D	35	52
22	21	MME-D	36	52
23	22	MPG-D	36	52
24	23	(Confidential) JPG-D	36	52
25	24	JEJ-D	36	52

	EXHIBITS		
	NUMBER:	ID.	ADMTD.
1			
2	25 (Confidential) SL-D	37	52
3	26 ODF-D	37	52
4	27 WKM-D	38	52
5	28 DAN-D	38	52
6	29 PAT-D	39	52
7	30 CJP-D	39	52
8	31 BKS-D	39	52
9	32 (Confidential) JWS-D	39	52
10	33 GT-D	39	52
11	34 RMP-D	40	52
12	35 ST-D	40	52
13	36 MVDW-D	40	52
14	37 AJV-D	40	52
15	38 VPANEL-D	40	52
16	39 JDW-D	40	52
17	40 DW-D	40	52
18	41 NCDR-1	40	52
19	42 Allegiance Stip-2	41	52
20	43 NewSouth Stip-2	41	52
21	44 BellSouth Public Responses to all Parties through and including 2/23/04	53	
22	45 Deposition of Cheryl Bursh	53	
23	46 Deposition of Mr. Gaynor	54	
24	47 Verizon's Public Discovery Responses	57	
25			

	EXHIBITS		
	NUMBER:	ID.	ADMTD.
1			
2	48 FDN's Public Responses to Discovery Requests of all Parties	57	
3			
4	49 Sprint's Public Responses to all Parties	57	
5	50 FCCA Public Responses to Staff and BellSouth	58	
6	51 Covad's Public Responses to Staff, Verizon and BellSouth	58	
7			
8	52 AT&T's Public Responses to BellSouth	58	
9	53 AT&T's Public Responses to Staff	58	
10	54 Deposition of John Ruscilli	59	
11	55 Deposition of Debra Aron Dated 2/19/04	60	
12	56 MCI Public Responses to Staff and BellSouth	60	
13			
14	57 KMC's Public Responses to Staff and BellSouth	61	
15	58 Z-Tel's Public Responses to all Parties	62	
16	59 Supra's Public Responses to Staff and BellSouth	62	
17			
18	60 Exhibits to Prefiled Testimony of Witness R. Billingsley as Indicated in the Prehearing Order	147	
19			
20	61 Exhibits to Prefiled Testimony of Witness E. Fogle as Indicated in the Prehearing Order	147	
21			
22	62 Exhibits to Prefiled Testimony of Witness M. Neptune as Indicated in the Prehearing Order	186	
23			
24			
25			

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
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CHAIRMAN BAEZ: We'll call this hearing to order.

Good morning everybody, and Happy Fat Tuesday. I guess judging from the dearth of beads around here, we know what you all have been up to.

Counsel, will you read the notice?

MR. SUSAC: Yes, Chairman. Pursuant to notice published January 23rd, 2004, this time and place has been set for hearing in Docket 030851-TP.

CHAIRMAN BAEZ: Thank you, Mr. Susac. And we're going to start taking appearances, and go slow and we'll start stage left.

MS. MAYS: Good morning. This is Meredith Mays on behalf of BellSouth. There are also several other attorneys who will be representing BellSouth in this proceeding: Nancy White, Jim Meza, Andrew Shore, William Ellenberg, Lisa Foshee.

MR. LACKEY: And Doug Lackey.

MS. MAYS: And Doug Lackey.

CHAIRMAN BAEZ: We almost got away with it; right? Oh, well. Okay.

Go ahead, Mr. Chapkis.

MR. CHAPKIS: Richard Chapkis on behalf of Verizon. Also representing Verizon will be Leigh Hyer and Janis Kestenbaum.

MR. FEIL: Matthew Feil on behalf of FDN

1 Communications.

2 MR. MOYLE: Jon Moyle, Jr., Moyle, Flanigan Law Firm,
3 on behalf of NewSouth. Diana Shumans is also on the pleadings.

4 MS. MASTERTON: Susan Masterton on behalf of
5 Sprint-Florida, Incorporated, and Sprint Communications Company
6 Limited Partnership. And with me I also have Ed Phillips on
7 behalf of Sprint.

8 MS. KAUFMAN: Good morning. Vicki Gordon Kaufman of
9 the McWhirter, Reeves Law Firm. I'm appearing on behalf of the
10 Florida Competitive Carriers Association. I'm also appearing
11 on behalf of Covad Communications Company. And for Covad I'd
12 like to enter an appearance also for Mr. Gene Watkins.

13 MR. MAGNESS: Bill Magness from the law firm of Casey
14 & Gentz also representing Florida Competitive Carriers
15 Association.

16 MR. MCGLOTHLIN: Joe McGlothlin, McWhirter, Reeves
17 Law Firm appearing for the Florida Competitive Carriers
18 Association and also for Z-Tel Communications, Inc.

19 MR. HATCH: Tracy Hatch appearing on behalf of AT&T
20 Communications of the Southern States, LLC. Also appearing
21 with me will be Michael J. Henry, Suzy Ockleberry and Martha
22 Ross-Bain of AT&T, and also Tami Azorsky of the McKenna, Long
23 Law Firm, and Tammy Reese -- or Lori Reese Patton of the Womble
24 Carlyle Law Firm.

25 COMMISSIONER BRADLEY: I need Mr. Hatch to speak into

1 the microphone. He's fading.

2 MR. HATCH: I was almost swallowing the mike.

3 CHAIRMAN BAEZ: You make sure to do that later.

4 Go ahead, Mr. Self.

5 MR. SELF: Thank you, Mr. Chairman. I'm Floyd Self
6 of the Messer, Caparello & Self Law Firm. I'm appearing on
7 behalf of MCI Metro Access, MCI WorldCom, KMC Telecom,
8 ITC^DeltaCom and Xspedius. I also need to enter appearances on
9 behalf of MCI for Donna Canzano McNulty, Dulaney O'Roark and
10 Ken Woods. I also need to enter an appearance for Nanette
11 Edwards on behalf of ITC^DeltaCom. I also need to enter
12 appearances for Marva Brown Johnson on behalf of KMC Telecom,
13 and also Andy Klein of the Kelley Drye Law Firm on behalf of
14 KMC Telecom. And I also need to enter an appearance for my
15 partner Doc Horton, who is appearing on behalf of Xspedius.

16 CHAIRMAN BAEZ: All right. And I know that we have
17 people in the jump seat ready to enter appearances.

18 Mr. Cruz.

19 MR. CRUZ-BUSTILLO: Good morning, Chairman. Jorge
20 Cruz-Bustillo, Supra Telecom.

21 MR. BECK: Good morning. My name is Charlie Beck.
22 I'm with the Office of Public Counsel appearing on behalf of
23 Florida citizens.

24 MR. TWOMEY: Mr. Chairman, Commissioners, Mike Twomey
25 on behalf of AARP.

1 MR. CRUZ-BUSTILLO: Mr. Chairman, I'd like to enter
2 an appearance with two other counsel I have from Supra Telecom,
3 and that's Paul Turner and Steve Chaiken.

4 CHAIRMAN BAEZ: Does that take care of everybody?
5 All right. A long list of attorneys appearing. A lot of you
6 are not from around these parts, so if I mess up your names,
7 please forgive me ahead of time.

8 Moving on. Preliminary matters -- I'm sorry. Staff,
9 why don't you introduce yourself, too.

10 MR. SUSAC: I'd like to make an appearance on behalf
11 of Jeremy Susac, Adam Teitzman and Jason Rojas for the
12 Commission.

13 With that, preliminary matters. Two preliminary
14 matters were brought to my attention this morning, the first of
15 which was a filing made by BellSouth yesterday afternoon to
16 staff's discovery. There were some supplemental responses that
17 the other parties have not had an opportunity to review. With
18 this I think we may have a resolution. This was in regards to
19 Witness Tipton's exhibit. Although filed as confidential,
20 we're not certain if it's controversial. However, we would
21 like the opportunity for the parties to be able to depose
22 Ms. Tipton tonight and perhaps resolve this issue.

23 CHAIRMAN BAEZ: And is that something that we need to
24 have the opposition registered right away or is this -- I'm
25 sorry, Mr. Susac. I mean, is this something that we have to

1 take up a little later or we need to resolve this right now?

2 MR. SUSAC: If we could, we could just resolve it
3 with a few, I think, maybe a minute of our time.

4 CHAIRMAN BAEZ: That's fine. Please. Ms. Mays.

5 MS. MAYS: Thank you, Mr. Chair. Just a couple of
6 things to make clear what we're talking about here. When staff
7 served discovery on BellSouth on January 8th, BellSouth filed
8 its responses within the 15-day time frame and in those
9 responses noted that there would be a supplement. The
10 information asked for required time to develop. That
11 supplement was filed yesterday, and we recognize that parties
12 have not had an opportunity to see it.

13 I would note, however, that there were many
14 supplements and many filings made yesterday, and our position
15 on this matter is this. If staff wishes to include this
16 supplemental discovery in the record and the FCCA wishes to
17 depose Ms. Tipton about that, then we need to note two things.
18 One is that in the original response we noted that there would
19 be a supplemental. I'm not aware of FCCA asking in the
20 original deposition about the supplemental or raising an issue
21 as to that.

22 The other issue is if there is to be another
23 deposition today, that it needs to be very clear that the
24 deposition be limited only to the supplemental discovery that
25 was filed. And with that -- that is BellSouth's position on

1 the supplemental discovery.

2 CHAIRMAN BAEZ: Thank you, Ms. Mays.

3 Mr. Magness.

4 MR. MAGNESS: Thank you, Mr. Chairman. If I could
5 just briefly address this for FCCA, maybe put it in a bit of
6 context.

7 In Ms. Tipton's deposition, it's a 148-page
8 transcript, and starting at Page 89 to Page 148 it's all about
9 attempting to sort through the data sources that she used to
10 justify triggers, and we went through it on a blow-by-blow,
11 page-by-page basis. That is not something we want to spend
12 cross time in front of this Commission rehearsing with another
13 over 100 pages of documents.

14 Our concern is that these documents reference in
15 particular her attachments to testimony. And to respond to Ms.
16 Mays' point, in our deposition, the final question I asked her,
17 and I have it here, I don't need to read it, I don't think, but
18 we have it, is that "Have we captured the entire universe of
19 data that you looked at? Can we look at everything that you
20 looked at?" And her answer was, "Yes." So if this is stuff
21 that she's going to be relying on, that's something we should
22 be able to ask her questions about in the deposition.

23 I am completely willing, in fact, would not want to
24 do it the other way when it comes to limiting the deposition to
25 just what was filed. But I think just due process and fairness

1 at this point requires that we get a chance to talk to her
2 about that, and we'd rather do it tonight instead of in front
3 of you in real time.

4 CHAIRMAN BAEZ: That seems fair to me. Mr. Susac, a
5 question: Is FCCA the only party that's involved on the other
6 side of this issue that you know of?

7 MR. SUSAC: To my knowledge, that was brought --
8 those were the two parties at issue this morning.

9 CHAIRMAN BAEZ: Would now be a good time to ask if
10 there is anyone else that has comment? Well, that's a yes or
11 no question.

12 MR. SELF: I'm sorry, Mr. Chairman. What was your
13 question?

14 CHAIRMAN BAEZ: Fair enough. Go ahead, Mr. Self.
15 Are any other parties in the same posture as, as FCCA at this
16 point or are we going to cover -- we're going to cover -- we're
17 going to cover everything with whatever ruling we give in
18 regards to Mr. Magness's comments.

19 MR. SELF: Yes.

20 CHAIRMAN BAEZ: Okay. All right. Seeing, seeing no
21 other objections -- Ms. Masterton, were you going to say
22 something?

23 MS. MASTERTON: No.

24 CHAIRMAN BAEZ: No? Okay. Great. Ms. Mays, it does
25 seem, it does seem fair that if there has been supplemental

1 testimony, that Ms. Tipton should be deposed. I think the way
2 that the hearing is structured, there is, there is ample time,
3 not just to accommodate even that but to accommodate some
4 discussion amongst yourselves, should there, should there be
5 any need for it. I don't know how the scheduling, how the time
6 line goes, if it's imperative that it happens by tonight. I'm
7 thinking, and correct me if I'm wrong, there's some, there's
8 still some time before cross-examination has to start. But --

9 MR. MAGNESS: Mr. Chairman, I'd suggest that we,
10 we -- I think the way we have the day structured is to handle
11 preliminary matters, then the BellSouth side of the case will
12 give its opening.

13 CHAIRMAN BAEZ: Exactly.

14 MR. MAGNESS: We may move into witnesses. Ms. Tipton
15 was scheduled to be our second witness to cross. I suggest
16 that maybe we break after the first witness, conduct the
17 deposition, and then we just start up tomorrow with her.
18 Alternatively, we could move to the next witness and just move
19 Ms. Tipton down.

20 CHAIRMAN BAEZ: Yeah. We're going to have to see.
21 We're going to have to see about that suggestion as to how, how
22 the timing moves along. But can you explain to me something,
23 and I'm -- forgive me. I need to get this clear. We've got --
24 and judging from the timing that, that the prehearing order has
25 set out, there's a whole direct case to be put on before any

1 cross takes place, but for whatever staff's flexibility is on
2 that. Is that -- am I correct or --

3 MR. SUSAC: You are correct.

4 CHAIRMAN BAEZ: Okay. Ms. Mays, I'm sorry.

5 MS. MAYS: No. I just want to clarify for the
6 record.

7 CHAIRMAN BAEZ: Yes.

8 MS. MAYS: This is not supplemental testimony of Ms.
9 Tipton. This is a supplemental discovery response that
10 references an exhibit.

11 CHAIRMAN BAEZ: Does it reference, does it reference
12 information that was available to, or before FCCA at the time
13 that the original deposition -- I mean, is there any new or
14 different information?

15 MS. MAYS: I believe the information is new in the
16 sense that it was not available in the original filing.
17 However, this is not something that BellSouth is representing
18 Ms. Tipton relied upon. There is simply a reference to the
19 trigger candidates in that discovery. So this is not something
20 that Ms. Tipton has looked at and relied upon in her triggers
21 evaluation. This is simply a breakout of information that was
22 provided in response to staff that they requested. So just to
23 make clear in terms of the resolution, the resolution, as I
24 understand it, is either staff doesn't want the supplemental
25 discovery at all, it doesn't go in the record, which is fine

1 with BellSouth, or if staff wants the supplemental discovery,
2 then the FCCA has said that is where they object and that is
3 where they are asking for an opportunity.

4 CHAIRMAN BAEZ: And, and, Mr. Magness, is that, is
5 that a fair representation of what on initial determination has
6 to be made by staff whether they're going to want to use that
7 supplemental information or not?

8 MR. MAGNESS: Almost, Mr. Chairman.

9 CHAIRMAN BAEZ: Okay. Then could you do your best to
10 clear it up as you think.

11 MR. MAGNESS: The reason I say almost is that one of
12 the things that was filed yesterday was an additional response
13 to an AT&T/MCI subpoena. And this subpoena response is the,
14 the prior responses to that subpoena were what Ms. Tipton and I
15 spent several hours last Tuesday afternoon discussing in
16 deposition. And there was an additional filing made yesterday
17 for that, as well as the additional supplemental responses
18 filed to staff's request for production.

19 So to kind of put a fine point on it, if staff says
20 we don't care if this comes in and we can be assured that this
21 is not going to be in the evidentiary record, can't be argued,
22 can't be briefed or otherwise relied upon, we only need to talk
23 to Ms. Tipton about her supplemental response to this subpoena.
24 If BellSouth withdraws the subpoena, we may not need to go
25 through this exercise. If everything is withdrawn and it's not

1 going to be on the record, we can move forward.

2 CHAIRMAN BAEZ: Very well. Mr. Susac, I guess we
3 need to hear from you at this point.

4 MR. SUSAC: Yes. If I may just throw out a
5 suggestion. How about we have someone look into this right
6 now. At the first break we'll be able to determine whether
7 this is relevant or not, whether we want to put it into the
8 record. If it's not, then this is a moot issue and we don't
9 have to go forth with it.

10 CHAIRMAN BAEZ: That sounds fine to me. So you all
11 take some time and decide what it is that you want to do with
12 it, and we'll revisit, we'll revisit the entirety of the issue
13 later.

14 You said you had another preliminary matter?

15 MR. SUSAC: Yes, I do, Chairman. Two counselors, one
16 for NewSouth and one for Z-Tel, have asked the Commission due
17 to their limited role in this case that attendance not be
18 mandatory throughout the hearing.

19 CHAIRMAN BAEZ: I'm sorry. Say that again.

20 MR. SUSAC: Due to their limited role in this, in
21 this proceeding, that their attendance, and I can let
22 counselors for each company speak on behalf of themselves, but
23 they request that attendance not be mandatory through this
24 hearing.

25 CHAIRMAN BAEZ: Throughout this hearing or for this

1 hearing?

2 MR. SUSAC: For this hearing.

3 CHAIRMAN BAEZ: Okay. Go ahead, Mr. Moyle.

4 MR. MOYLE: Yeah. And part of this is my request and
5 prompted by, I think, one party has been excused by the
6 prehearing officer. The way this case is being presented is
7 somewhat unique with blocks of time being allocated to both
8 sides and it's a pretty tight case. To the extent that certain
9 lawyers don't have starring roles in that and are able to, you
10 know, have other, other issues that they need to attend to and
11 what not, I just, with no disrespect, wanted to make sure that
12 that wasn't a problem if we had to, had to bug out for a few
13 hours.

14 CHAIRMAN BAEZ: Certainly the Chair has no objection
15 to attorneys bugging out, as you say.

16 I will ask the -- you know, I feel -- in fairness,
17 let's ask the Commissioners if they have any, any different
18 feelings. But as far as I'm concerned, you know, I think we
19 can maximize efficient use of everybody's time. Be here when
20 you need to be here. If you need to be here and you're not
21 here, then that's a whole matter entirely. But as to you, and
22 I guess who was the -- Mr. McGlothlin, is that you they were
23 talking about?

24 MR. MCGLOTHLIN: That's correct.

25 CHAIRMAN BAEZ: Okay.

1 MR. MCGLOTHLIN: Yeah. Z-Tel will be sponsoring a
2 brief testimony probably on Thursday, but I'm not involved in
3 the cross-examination phase, and so efficiency suggests that I
4 be allowed to not be here during that time.

5 CHAIRMAN BAEZ: The Chair will recognize and allow
6 it, again with the same caveats, you know, there is no, this is
7 pretty fluid. Even though we have blocks of time, you know,
8 things may change, and it's your responsibility to be on top of
9 whatever changes there may be.

10 MR. MCGLOTHLIN: Understood.

11 CHAIRMAN BAEZ: All right. Very well. And I guess I
12 would extend that to the rest, to the rest of the attorneys as
13 well. This is a very long process. We want to try and be as
14 accommodating as possible. But at the same time, you know, you
15 know what your responsibilities are. And for my purposes, the
16 less people that are around, the less cell phones that can go
17 off. How about that? So, Mr. Susac, is there anything else
18 along those lines?

19 MR. SUSAC: That, that concludes the preliminary
20 matters.

21 CHAIRMAN BAEZ: Okay. Great. I have next up is some
22 general matters of confidentiality.

23 MR. SUSAC: Yes. There are a few outstanding
24 requests for confidential treatment at this time. Parties have
25 been made aware of their responsibilities for folders and red

1 folders. We've endeavored to make sure that everyone is fully
2 aware of the process, particularly those that are unfamiliar
3 with the Commission practice. However, due to the large amount
4 of confidential information, additional cautions may be
5 worthwhile noting here.

6 CHAIRMAN BAEZ: Did everybody get that? I hope you
7 did.

8 Next up we have some specific objections or -- I'm
9 sorry. I'm moving on to stipulated exhibits.

10 MR. SUSAC: Yes. As usual, staff has tried to work
11 with the parties to see what discovery in this case can be
12 entered into the record by stipulation.

13 CHAIRMAN BAEZ: Uh-huh.

14 MR. SUSAC: We've reached agreement with the parties
15 on a number of discovery exhibits that can be entered into the
16 record by stipulation, subject to any objections that may have
17 been interposed during the depositions. Due to the large
18 volume of material, however, staff has a somewhat different
19 approach that is being used for submitting these exhibits
20 today. Staff has a list of stipulated exhibits that it will be
21 offering, while the remaining discovery exhibits will be
22 offered by each respective party that actually produced the
23 discovery.

24 CHAIRMAN BAEZ: All right. A new and novel approach,
25 and let's see if we can slog through this. I'm holding, I'm

1 holding a list, and perhaps this is not something that we need
2 to -- do we need to take up later the admission of the
3 stipulated exhibits and just move through this or now is the
4 time to address them?

5 MR. SUSAC: I think now would be the appropriate time
6 to address them.

7 CHAIRMAN BAEZ: Okay. I'm holding, I'm holding a
8 list that staff provided of the first classification of
9 stipulated exhibits. This is, my understanding, is not a
10 complete list.

11 MR. SUSAC: This is not a complete list. It is a
12 complete list by staff.

13 CHAIRMAN BAEZ: By staff.

14 MR. SUSAC: But not a complete list for --

15 CHAIRMAN BAEZ: Have you provided the rest of the
16 Commissioners with copies?

17 MR. SUSAC: This has been provided to the parties. I
18 do have extra copies for the Commissioners.

19 CHAIRMAN BAEZ: If you wouldn't mind so the
20 Commissioners -- and, I'm sorry, Commissioners on the line, the
21 magic of telecommunications does not allow us to have the list
22 provided to you.

23 COMMISSIONER JABER: But we're getting there. We're
24 getting there. That's the good news.

25 CHAIRMAN BAEZ: Yeah. We're getting closer every

1 day.

2 COMMISSIONER BRADLEY: I'm visualizing.

3 CHAIRMAN BAEZ: A question to the parties. Do you
4 all have lists that, that look like this or something to make,
5 something to make this a little easier?

6 MS. MAYS: Mr. Chairman, if I could, I believe that
7 staff has identified to some extent on the list each party's
8 discovery responses to other parties, if that's the list that
9 was sent out to everybody.

10 MR. SUSAC: Yes, that was the list.

11 MS. MAYS: Then BellSouth's stipulated exhibits would
12 be included.

13 CHAIRMAN BAEZ: Will be included? Mr. Chapkis?

14 MR. CHAPKIS: That holds true for Verizon as well.

15 CHAIRMAN BAEZ: Mr. Feil.

16 MR. FEIL: I hope we're talking about the same list
17 as from three or four days ago. Assuming that is the case,
18 then --

19 CHAIRMAN BAEZ: Confirm or deny, Mr. Susac?

20 MR. SUSAC: Yes. I believe that's the same list.

21 Let me just double-check. Yes. I would just like to point out
22 that the parties will be entering exhibits on behalf of their
23 selfs today, too. Am I clear on that?

24 CHAIRMAN BAEZ: But that's going to get taken up on a
25 real-time basis. I'm sorry. I interrupted. Go ahead, Mr.

1 Feil.

2 MR. FEIL: No. My understanding was that we simply
3 prepared the exhibits that the staff designated that we
4 prepare. I brought copies, the other parties brought copies.
5 I just wanted to make sure that I coincided with what's on the
6 list, and not having the benefit of the list --

7 CHAIRMAN BAEZ: Can we, can we have Mr. Feil's -- can
8 we give Mr. Feil the benefit of a list? Ms. Masterton.

9 MS. MASTERTON: I don't think I have it either.

10 MR. SUSAC: Okay. We have extra copies here that we
11 can --

12 CHAIRMAN BAEZ: All right. If you, if you wouldn't
13 mind. I think it would be a lot easier just to confirm that
14 everybody's exhibits are on this master list or we can make the
15 adjustments as necessary. Take a minute or so. Ms. Mays, you
16 had --

17 MS. MAYS: Yes, Mr. Chairman. Just, just in terms of
18 the preliminary period and then the direct case period, in
19 order that the record is clear, we had anticipated admitting
20 into the record all of the testimony and these exhibits now
21 prior to our presentation so that when we talk in our
22 presentation, we are referring to evidence in the record.

23 CHAIRMAN BAEZ: Okay. That's fair. And, again, in
24 light of this newfangled procedure, you guys lead me through
25 it. I'll try and be as receptive as possible.

1 Go ahead, Ms. Kaufman.

2 MS. KAUFMAN: Mr. Chairman, if I could just inquire
3 of Mr. Susac, is this the list that was E-mailed around, I
4 guess, Sunday from Ms. Lee? I have a list. I just want to be
5 sure it's the right one.

6 MR. SUSAC: Yes. There has been some updated, but
7 not much. I would just like to clarify that this is what staff
8 is responsible for. This is not anything that the parties are
9 responsible for.

10 MS. KAUFMAN: I understand. And I do have two
11 objections to raise. I just wanted to be sure I had the right
12 list.

13 CHAIRMAN BAEZ: Let's hold off on the objections
14 until we get through whatever else we --

15 MS. MASTERTON: Mr. Chairman, I just haven't seen it
16 before. And just looking at it, I can't be absolutely certain
17 that everything is on it. Can I just reserve the right to come
18 back after I get a chance to --

19 CHAIRMAN BAEZ: Take a minute. Let's see if we can
20 find someone else that's more comfortable.

21 Mr. Hatch.

22 MR. HATCH: I need to -- this mike is bad. I'll
23 speak as loud as I can.

24 CHAIRMAN BAEZ: Borrow Mr. Self's. Perhaps that --

25 MR. HATCH: This list doesn't have the stuff on it

1 that staff apparently expects us to enter on our own to be our
2 own discovery responses presumably.

3 CHAIRMAN BAEZ: Okay. And that is -- and that's what
4 I'm trying to confirm in case there's, you know, we need to
5 talk to a new --

6 MR. HATCH: That's what this looks like.

7 CHAIRMAN BAEZ: Okay. Mr. Self. And I think that's
8 what staff said as well. Mr. Self.

9 MR. SELF: Yes, that's correct, Mr. Chairman. And I
10 guess when we get to the appropriate spot, we'll need to
11 retrieve at least one of the copies of the 30 copies that we've
12 given to the staff so we can properly identify those exhibits
13 when we get to them. I guess that's the easiest way to do it.

14 MR. SUSAC: That sounds logical to me. Staff -- I
15 mean, after staff enters those exhibits, we'll go party by
16 party.

17 CHAIRMAN BAEZ: All right. And I think we can --
18 yes. No? All right. You looked like you were at the ready
19 with something.

20 Mr. Susac, I think at this point we can go ahead and
21 address, and address what staff is responsible for, and in the
22 meantime give the rest of the parties an opportunity to review
23 the list and see if they have anything to add.

24 MR. SUSAC: For those of you that have the list, I'm
25 just going to go one by one down the list.

1 Exhibit 1 is Access Stip. I would request that it be
2 marked and entered into the record.

3 CHAIRMAN BAEZ: We're going to mark the exhibit
4 marked as Access Stip-1 proffered by staff as Exhibit Number 1.

5 (Exhibit 1 marked for identification.)

6 MR. SUSAC: I'd ask that the second exhibit be
7 Allegiance Stip-1.

8 CHAIRMAN BAEZ: We have Allegiance Stip-1 proffered
9 by staff.

10 (Fire alarm sounded.)

11 CHAIRMAN BAEZ: You've got to be kidding me.

12 COMMISSIONER JABER: Mr. Chairman, Commissioner
13 Bradley and I had nothing to do with that.

14 COMMISSIONER BRADLEY: What was that, a fire drill?

15 CHAIRMAN BAEZ: That remains to be seen, but I'll
16 take your word for it. Now can somebody run that down and see
17 what all -- it doesn't sound like it's serious, and, besides,
18 it started over that way. We've got a long way to --
19 Allegiance Stip-1 will be marked Exhibit Number 2.

20 (Exhibit 2 marked for identification.)

21 MR. SUSAC: Yes. Staff asks that Granite Stip-1 be
22 marked as Exhibit 3.

23 CHAIRMAN BAEZ: Okay. You're skipping over one in my
24 list; is that correct? I have next up is Covad, the Covad
25 Stip-1.

1 MR. SUSAC: No. No.

2 CHAIRMAN BAEZ: No? Okay. All right. Granite
3 Stip-1?

4 MR. SUSAC: Yes. Granite Stip-1 is Exhibit Number 3.

5 CHAIRMAN BAEZ: Oh, maybe -- then you've given me a
6 list that's not -- I'm holding a different list. I'm sorry.

7 MR. SUSAC: Here, let me give you my list, Mr.
8 Chairman.

9 CHAIRMAN BAEZ: Okay. I think everything else is
10 looking, looking the same. I think I had just a different lead
11 page. Granite Stip-1 will be marked Exhibit Number 3.

12 (Exhibit 3 marked for identification.)

13 CHAIRMAN BAEZ: Next up I have, Mr. Susac,
14 ITC^DeltaCom/BTI Stip-1.

15 MR. SUSAC: Yes, Chairman. We're on the same page
16 now.

17 CHAIRMAN BAEZ: Okay. That'll be marked as Exhibit
18 Number 4.

19 (Exhibit 4 marked for identification.)

20 CHAIRMAN BAEZ: Next I have Network Stip-1.

21 MR. SUSAC: Yes. Staff asks that that be Exhibit 5.

22 CHAIRMAN BAEZ: Mark that as Exhibit 5 without
23 objection.

24 (Exhibit 5 marked for identification.)

25 CHAIRMAN BAEZ: NewSouth Stip-1.

1 MR. SUSAC: Yes. Staff asks that that exhibit be
2 marked and moved as Exhibit 6.

3 CHAIRMAN BAEZ: Okay. That'll be marked as Exhibit
4 6.

5 (Exhibit 6 marked for identification.)

6 CHAIRMAN BAEZ: Xspedius Stip-1.

7 MR. SUSAC: Staff asks -- Stip-1, we ask that be
8 marked as Exhibit 7.

9 CHAIRMAN BAEZ: Xspedius Stip-1 marked as Exhibit 7.

10 (Exhibit 7 marked for identification.)

11 CHAIRMAN BAEZ: We have BellSouth Confidential
12 Stip-1.

13 MR. SUSAC: Yes. Staff asks that that be marked
14 Exhibit 8.

15 CHAIRMAN BAEZ: So marked Exhibit 8.

16 (Exhibit 8 marked for identification.)

17 CHAIRMAN BAEZ: Sprint Confidential Stip-1.

18 MR. SUSAC: Yes. Staff asks that that be Exhibit
19 Number 9.

20 CHAIRMAN BAEZ: Show it marked as Exhibit 9.

21 (Exhibit 9 marked for identification.)

22 CHAIRMAN BAEZ: Verizon Confidential Stip-1, show
23 that marked as Exhibit 10.

24 (Exhibit 10 marked for identification.)

25 CHAIRMAN BAEZ: I'm sorry. I'm not familiar with the

1 abbreviation, but I guess it's confidential direct responses,
2 is that --

3 MR. SUSAC: Yeah. Data request responses.
4 Exhibit -- we ask that be Exhibit 11.

5 CHAIRMAN BAEZ: That will be marked as Exhibit 11.
6 (Exhibit 11 marked for identification.)

7 MS. KAUFMAN: Mr. Chairman, I'm sorry. Did you want
8 me to hold my objections until you've numbered them all?

9 CHAIRMAN BAEZ: If you wouldn't mind.

10 MS. KAUFMAN: I just didn't want to miss my
11 opportunity.

12 CHAIRMAN BAEZ: I don't want to get sidetracked, and
13 I'm not going to deprive you of that opportunity. If we could
14 just --

15 MS. KAUFMAN: Thank you.

16 CHAIRMAN BAEZ: Miscellaneous Confidential-1.

17 MR. SUSAC: We ask that that be marked as Exhibit
18 Number 12.

19 CHAIRMAN BAEZ: Show it marked as Exhibit 12.
20 (Exhibit 12 marked for identification.)

21 CHAIRMAN BAEZ: Next I have RJW-D, deposition of
22 Richard Walsh.

23 COMMISSIONER DAVIDSON: I had a Miscellaneous
24 Confidential 2.

25 CHAIRMAN BAEZ: You still have another one?

1 COMMISSIONER DAVIDSON: Number 2 for Miscellaneous
2 Confidential.

3 CHAIRMAN BAEZ: Okay. Also confidential?

4 MR. SUSAC: Yes. We ask that that Miscellaneous
5 Confidential 2 be marked as Exhibit Number 13.

6 CHAIRMAN BAEZ: Very well.

7 (Exhibit 13 marked for identification.)

8 CHAIRMAN BAEZ: I'm sorry. Just so that I can --
9 well, never mind. Okay.

10 Next we have RJW-D, deposition of Richard Walsh.

11 MR. SUSAC: Yes, Chairman. We ask that that be
12 marked as Exhibit 14.

13 CHAIRMAN BAEZ: So marked.

14 (Exhibit 14 marked for identification.)

15 CHAIRMAN BAEZ: Next we have deposition of Mark
16 Bryant MB-D.

17 MR. SUSAC: Yes. We ask that that be marked as
18 Exhibit 15.

19 CHAIRMAN BAEZ: Shown as Exhibit 15.

20 (Exhibit 15 marked for identification.)

21 CHAIRMAN BAEZ: Deposition of Kenneth Ainsworth.

22 MR. SUSAC: Yes. We ask that that be marked as
23 Exhibit 16.

24 CHAIRMAN BAEZ: Show it marked as Exhibit 16.

25 (Exhibit 16 marked for identification.)

1 MR. SUSAC: TJA-D.

2 CHAIRMAN BAEZ: Deposition of Terry Alleman marked as
3 Exhibit 17.

4 (Exhibit 17 marked for identification.)

5 CHAIRMAN BAEZ: And I'm showing a deposition of Debra
6 Aron, DJA-D.

7 MR. SUSAC: Staff asks that that be marked as Exhibit
8 18.

9 CHAIRMAN BAEZ: Show it marked as Exhibit 18.

10 (Exhibit 18 marked for identification.)

11 CHAIRMAN BAEZ: Deposition transcript of Jay
12 Bradbury, JB-D.

13 MR. SUSAC: Staff asks that that be marked as Exhibit
14 19.

15 CHAIRMAN BAEZ: Show it marked as Exhibit 19.

16 (Exhibit 19 marked for identification.)

17 CHAIRMAN BAEZ: Next we have the deposition of Kent
18 Dickerson, KWD-D.

19 MR. SUSAC: Staff asks that that be marked as Exhibit
20 20.

21 CHAIRMAN BAEZ: Show that marked as Exhibit 20.

22 (Exhibit 20 marked for identification.)

23 CHAIRMAN BAEZ: Next is the deposition transcript of
24 Milton McElroy.

25 MR. SUSAC: Staff asks that that be marked as Exhibit

1 21.

2 CHAIRMAN BAEZ: Show Exhibit MME-D marked as Exhibit

3 21.

4 (Exhibit 21 marked for identification.)

5 CHAIRMAN BAEZ: Next is the deposition of Michael
6 Gallagher, MPG-D.

7 MR. SUSAC: Staff asks that that be marked as Exhibit
8 Number 22.

9 CHAIRMAN BAEZ: Show it marked as Exhibit 22.

10 (Exhibit 22 marked for identification.)

11 CHAIRMAN BAEZ: Deposition of Joseph Gillan, JPG-D.

12 MR. SUSAC: Staff asks that that be marked as Exhibit
13 Number 23.

14 CHAIRMAN BAEZ: Show it marked as Exhibit 23.

15 (Exhibit 23 marked for identification.)

16 CHAIRMAN BAEZ: Next, the deposition transcript of
17 Jake Jennings.

18 MR. SUSAC: Staff requests that that be marked as
19 Exhibit Number 24.

20 CHAIRMAN BAEZ: Show Exhibit JEJ-D marked as Exhibit
21 24.

22 (Exhibit 24 marked for identification.)

23 CHAIRMAN BAEZ: I'm showing the deposition transcript
24 of Sherry Lichtenberg as SL -- and it's a confidential exhibit;
25 is that right?

1 MR. SUSAC: Yes.

2 CHAIRMAN BAEZ: Okay. SL Confidential-D, deposition
3 transcript of Sherry Lichtenberg, show that marked as --

4 MR. SUSAC: As Exhibit Number 25.

5 CHAIRMAN BAEZ: -- Exhibit 25.

6 (Exhibit 25 marked for identification.)

7 MR. SELF: Excuse me, Mr. Chair. I'm sorry.

8 MR. SUSAC: Although that was marked confidential
9 right now, we do have a redacted version that we could not get
10 copied in time for the hearing.

11 CHAIRMAN BAEZ: Okay.

12 MR. SUSAC: It will be later.

13 CHAIRMAN BAEZ: Mr. Self.

14 MR. SELF: It's my understanding, Mr. Chairman, that
15 that deposition transcript is not confidential.

16 MR. SUSAC: Right. Only one exhibit, and I believe
17 Exhibit 3 to that is confidential.

18 MR. SELF: Okay. Thank you.

19 CHAIRMAN BAEZ: Okay. Next we have the deposition
20 transcript of Orville Fulp, ODF-D.

21 MR. SUSAC: Staff asks that this be marked as Exhibit
22 Number 26.

23 CHAIRMAN BAEZ: Shown as Exhibit 26.

24 (Exhibit 26 marked for identification.)

25 CHAIRMAN BAEZ: Next, W. Keith Milner deposition

1 transcript, WKM-D, show that marked as --

2 MR. SUSAC: Staff asks that this be marked as Exhibit
3 Number --

4 CHAIRMAN BAEZ: -- Number 27. Okay.

5 (Exhibit 27 marked for identification.)

6 CHAIRMAN BAEZ: David A. Nilson, deposition
7 transcript.

8 MR. SUSAC: Staff requests that this be marked as
9 Exhibit Number 28.

10 CHAIRMAN BAEZ: Show it marked as Exhibit 28.

11 (Exhibit 28 marked for identification.)

12 Next we have Pamela --

13 MR. CRUZ-BUSTILLO: Mr. Chairman.

14 CHAIRMAN BAEZ: Yes, Mr. Cruz.

15 MR. CRUZ-BUSTILLO: That's currently marked
16 confidential. Only a few pages of, of the deposition is
17 confidential, so we're currently --

18 CHAIRMAN BAEZ: I'm not showing any notation of it
19 being marked confidential, but --

20 MR. SUSAC: If we can get a redacted copy in time --
21 we're just waiting for the redacted copy.

22 MR. CRUZ-BUSTILLO: Right. And we're just stating
23 we'll provide you a copy by today or tomorrow of a redacted
24 version.

25 MR. SUSAC: Okay.

1 CHAIRMAN BAEZ: Thank you, Mr. Cruz. Moving right
2 along.

3 Deposition transcript, Pamela Tipton, PAT-D, show it
4 marked as Number 29.

5 MR. SUSAC: Staff requests 29.

6 (Exhibit 29 marked for identification.)

7 CHAIRMAN BAEZ: Okay. Christopher Pleatsikas
8 deposition transcript, CJP.

9 MR. SUSAC: Staff requests that this be marked as
10 Exhibit Number 30.

11 CHAIRMAN BAEZ: Show it as Exhibit 30.

12 (Exhibit 30 marked for identification.)

13 CHAIRMAN BAEZ: Next, deposition transcript of Brian
14 Staihr, BKS-D. Show it marked as deposition -- as, I'm sorry,
15 as Exhibit 31.

16 (Exhibit 31 marked for identification.)

17 CHAIRMAN BAEZ: We've got confidential depositions.
18 Deposition transcript of James Stegeman, JWS-Confidential-D;
19 show that marked as Exhibit 32.

20 (Exhibit 32 marked for identification.)

21 CHAIRMAN BAEZ: Deposition transcript of Gary
22 Tennyson, GT-D; show that marked as Exhibit 33.

23 (Exhibit 33 marked for identification.)

24 CHAIRMAN BAEZ: Deposition transcript of Ronald Pate,
25 RMP-D; show that marked as Exhibit 34.

1 (Exhibit 34 marked for identification.)

2 CHAIRMAN BAEZ: Deposition transcript of Steve
3 Turner, ST-D; show that marked as Exhibit 35.

4 (Exhibit 35 marked for identification.)

5 CHAIRMAN BAEZ: Deposition transcript of Mark Van de
6 Water, MVDW-D; show it marked as Exhibit 36.

7 (Exhibit 36 marked for identification.)

8 CHAIRMAN BAEZ: Deposition transcript of Alphonso
9 Varner, AJV-D; show that marked as deposition -- as Exhibit 37.

10 (Exhibit 37 marked for identification.)

11 CHAIRMAN BAEZ: We have a deposition transcript of a
12 panel involving Canny, Loughridge, White, Richter, McLaughlin,
13 Maguire and Langstine, VPANEL-D; show that marked as Exhibit
14 38.

15 (Exhibit 38 marked for identification.)

16 CHAIRMAN BAEZ: We have the deposition transcript of
17 James D. Webber, JDW-D; show that marked as Exhibit 39.

18 (Exhibit 39 marked for identification.)

19 CHAIRMAN BAEZ: We have a deposition transcript of
20 Don Wood, DW-D; show that marked as Exhibit 40.

21 (Exhibit 40 marked for identification.)

22 CHAIRMAN BAEZ: A nonconfidential -- I'm showing
23 nonconfidential responses to staff data requests from various
24 parties. We have NCDR-1, show that marked as Exhibit 41.

25 (Exhibit 41 marked for identification.)

1 CHAIRMAN BAEZ: Now I'm showing Allegiance Stip-2.

2 MR. SUSAC: Correct.

3 CHAIRMAN BAEZ: Okay. Show that marked as Exhibit
4 42.

5 (Exhibit 42 marked for identification.)

6 CHAIRMAN BAEZ: NewSouth Stip-2, show that marked as
7 Exhibit 43.

8 (Exhibit 43 marked for identification.)

9 CHAIRMAN BAEZ: Am I missing -- have I missed
10 anything?

11 MR. SUSAC: That concludes my list.

12 CHAIRMAN BAEZ: That concludes your list? All right.

13 Ms. Kaufman, you had -- please refer to them by
14 number now that we have them numbered.

15 MS. KAUFMAN: Well, I have one correction to the list
16 and then two objections, so let me do the correction first.

17 CHAIRMAN BAEZ: Okay.

18 MS. KAUFMAN: And that is Mr. Gillan's deposition,
19 JPG-D, which you've labeled Exhibit 23. He does not have a
20 Late-Filed Exhibit Number 2, so I think that should be omitted.
21 He has two exhibits, Exhibit Number 2 is confidential, but both
22 were attached and provided at the deposition.

23 CHAIRMAN BAEZ: So Exhibit 23 only contains
24 deposition exhibits -- the deposition transcript obviously, and
25 then Deposition Exhibit 1 and Confidential Deposition Exhibit

1 2.

2 MS. KAUFMAN: Yes, sir.

3 CHAIRMAN BAEZ: Show the listing of a Late-Filed
4 Exhibit 2 deleted. That's the end of your corrections?

5 MS. KAUFMAN: That's the end of my corrections.

6 Now if we could go back to what you have denominated
7 Exhibit Number 11, confidential data responses. The FCCA -- we
8 brought this up at the prehearing conference. We do not agree
9 to stipulate this exhibit into the record, and so, first of
10 all, I think it's inappropriately denominated as a stipulated
11 exhibit, and I'll just take a brief moment to explain why.

12 This data request, as I understand it, was sent out
13 by staff in an effort to get information from nonparties, and
14 we all realize the challenge that that was in this case.
15 Before the data request was sent out, staff asked the parties
16 to the case for input as to the questions that were being
17 asked. The FCCA was very concerned about the way some of the
18 questions were worded. We provided our input to staff, and the
19 majority of our changes were not incorporated into the request
20 that was sent. And particularly on the switching trigger
21 question, it was our view that the questions that were being
22 asked were not eliciting the appropriate information which we
23 thought should have been requested in terms of analog lines
24 versus digital lines at the switch. Instead, the staff asked
25 for voice grade equivalent lines. So our objection to this

1 exhibit, particularly the switching portion from the nonparties
2 that will not be here to be cross-examined about it, is that it
3 does not elicit relevant information upon which you may base
4 your decision. And that's our objection to confidential data
5 response number 11.

6 CHAIRMAN BAEZ: Was there anything that kept you from
7 asking the questions in your manner yourself? And I guess I'm
8 trying to understand where, where it is that --

9 MS. KAUFMAN: Well, I guess, I guess as we started
10 down this path, as I said, this was questions that were sent to
11 nonparties to the case. And the reason, as I understand it,
12 that the staff sent the request was because under your
13 authority under Chapter 364 you have the ability to seek
14 information from nonparties. And we thought -- we viewed it as
15 a collaborative process as we started down the road of framing
16 the responses.

17 CHAIRMAN BAEZ: And so -- and I guess I'm trying to
18 understand what the, the gist of your objection is is that
19 somehow the questions didn't elicit enough information?

20 MS. KAUFMAN: Did not elicit appropriate or relevant
21 information. The information they elicited, in our view, is
22 irrelevant to what you're going to decide in this case, and
23 that's the basis for our objection. I just gave you the sort
24 of background as to how we got to the questions that were
25 actually sent.

1 CHAIRMAN BAEZ: Okay. Mr. Susac.

2 MR. SUSAC: The, the data requests that were sent out
3 to the certified CLECs and AABs were very relevant, they were
4 very strong, they were very comprehensive. In fact, they were
5 based on two other Commissions: New York and California.
6 However, the suggestions that FCCA is now bringing to light, as
7 she did back this fall, we did incorporate one of the
8 suggestions and we did take a more granular approach than even
9 New York and California. We feared that incorporating the
10 other two suggestions would have jeopardized the neutrality of
11 the data request and may have been geared more to one side's
12 theory of the case as opposed to a neutral data request from
13 this Commission. That is why we didn't incorporate the other
14 two suggestions.

15 Also, like, as you mentioned, parties were free to
16 subpoena the appropriate certified CLECs and AABs, and, in
17 fact, one party to this case did do that to elicit information,
18 if they felt that our data request was insufficient.

19 CHAIRMAN BAEZ: Answer me this. The fact, you know,
20 the fact that a party, any party has a right not to, not to
21 accept -- I mean, no matter what a ruling on, on objections
22 ultimately is on certainly Ms. Kaufman's objections, they don't
23 want to be included in this stipulation and I don't think we
24 can compel that. What's the appropriate treatment of the
25 exhibit then?

1 MR. SUSAC: Section 120.80(13)(d), Florida Statutes,
2 allows this Commission to employ procedures consistent with the
3 Telecommunications Act of 1996. The provision allows the
4 Commission to step outside specific procedural provisions
5 applicable to hearings set forth in Section 120.57, Florida
6 Statutes, when necessary to implement the Act. In this
7 instance, the information obtained through the data request is
8 integral to the proceeding of this case, and thus is necessary
9 to implement the Act.

10 CHAIRMAN BAEZ: Well, and, again, I'm not -- I guess
11 I don't have a problem with the relevance of it, with all due
12 respect, Ms. Kaufman. I think what I am, what I'm trying to
13 address is how, how your right is respected as a party at this
14 point.

15 MS. KAUFMAN: Mr. --

16 COMMISSIONER DAVIDSON: Chairman, perhaps it could
17 be -- the data request could be just moved into the record as
18 evidence just noting that FCCA objects.

19 CHAIRMAN BAEZ: Merely what I'm asking at this point
20 is --

21 MR. SUSAC: I'm sorry. I misinterpreted --

22 CHAIRMAN BAEZ: I'm not trying, I'm not trying to
23 rope Ms. Kaufman's client into agreeing to anything it doesn't
24 want to agree to. That wouldn't be fair now, would it?

25 MR. SUSAC: No, it would not be fair.

1 CHAIRMAN BAEZ: So I guess at this point we're at the
2 stage where how do we, how do we deal with entering it into the
3 record in an appropriate manner?

4 MR. MAGNESS: Mr. Chairman, if I could just add one
5 note --

6 CHAIRMAN BAEZ: You've got, you've got one shot, Mr.
7 Magness.

8 MR. MAGNESS: -- to what Commissioner Davidson said.
9 I think to get a path to completing this issue, if, if it is
10 entered in, obviously our objection has been noted. And I
11 think one of the main reasons we wanted to note an objection
12 here, which I know is rather unusual, is so that as, as
13 witnesses are crossed concerning that data, there's an
14 understanding that we have a problem with some of the
15 underlying foundation of the data. We'll note that in cross.
16 Our objection has been noted, and we think if staff --

17 CHAIRMAN BAEZ: Your objection has been noted. I
18 think you've achieved, you've achieved your purposes. I can
19 tell you in terms of relevance, Mr. Magness, I don't -- again,
20 as when I mentioned before, some of you don't practice before
21 us every day. We do have a little bit more liberal
22 interpretation of what's relevant and we wind up taking a lot
23 of responsibility to figure out, you know, separating wheat
24 from chaff at the end of the day. So but your objection is
25 noted and I think that's fair to you.

1 MR. MAGNESS: We'll work on the wheat and chaff in
2 argument.

3 CHAIRMAN BAEZ: Exactly.

4 MR. MAGNESS: Thank you. Thank you, Mr. Chairman.

5 CHAIRMAN BAEZ: Okay. Mr. Susac, so then at this
6 point we can -- you know, I don't know if it's as simple as
7 changing a name, but you tell me what to do.

8 MR. SUSAC: Staff recommends that we move this
9 exhibit into the record over the objection of FCCA.

10 CHAIRMAN BAEZ: And having noted -- Mr. Moyle, yes.

11 MR. MOYLE: Just to register an objection on hearsay
12 grounds and authenticity as to the document.

13 CHAIRMAN BAEZ: Okay. And I'm going to overrule the
14 objection.

15 Ms. Kaufman.

16 MS. KAUFMAN: Mr. Chairman, I was just going to say,
17 as long as the record is clear that we object and we don't
18 stipulate to the exhibit, that will be fine.

19 CHAIRMAN BAEZ: I think we've made that, we've made
20 that clear. And without further objection, we're going to move
21 Exhibit 11 into the record ahead of ten other exhibits. Okay.

22 (Exhibit 11 admitted into the record.)

23 COMMISSIONER DAVIDSON: Mr. Chairman, may I offer
24 just a comment before we move off this?

25 CHAIRMAN BAEZ: Yes, Commissioner.

1 COMMISSIONER DAVIDSON: Thank you, Chairman. I would
2 just like to note for the record that sort of any party in this
3 case has had the opportunity over several months to take
4 third-party discovery. Those provisions are available under
5 the Florida Rules of Civil Procedure, and it didn't occur. I
6 would just -- I'd like the record to note that FCCA had the
7 opportunity to solicit additional information to pose
8 witnesses, if it chose.

9 CHAIRMAN BAEZ: And that's -- and I agree with you,
10 but I'm not sure that that's the grounds for overruling Ms.
11 Kaufman's objection, at least that's not my grounds. I think
12 they objected on the grounds of relevance, and I don't think we
13 need to talk anymore about that.

14 Next up, we can go through -- any other objections?

15 MS. KAUFMAN: I'm sorry. I had one more.

16 CHAIRMAN BAEZ: Oh, I'm sorry, Ms. Kaufman. Go
17 ahead. Let's finish with you then.

18 MS. KAUFMAN: I'm sorry I'm not getting off to a very
19 good start this morning.

20 CHAIRMAN BAEZ: No, not at all.

21 MS. KAUFMAN: I did have one more objection.

22 CHAIRMAN BAEZ: I think this is going rather
23 smoothly, all things considered. But you go ahead.

24 MS. KAUFMAN: Okay. Thank you, Mr. Chairman. And
25 that has to do with a portion of Miscellaneous Confidential-1,

1 which you denominated Exhibit 12.

2 CHAIRMAN BAEZ: Right.

3 MS. KAUFMAN: And it's a part of that. And
4 particularly it relates to the confidential responses that have
5 been filed by Allegiance in this case, and I discussed this
6 with staff some yesterday. And my objection is that the staff
7 has moved to put these documents in the record. They're
8 confidential. We have not been provided with nor have we seen
9 the confidential responses. When the items have been served on
10 us by Allegiance, we have been provided with redacted copies.
11 And so basically it's a pretty fundamental due process
12 objection that we have not seen the information that staff
13 wants to move into the record.

14 I attempted to contact counsel for Allegiance, who I
15 know has been excused from this proceeding, so unfortunately
16 he's not here today, and I have been unable to do so.

17 If arrangements can be made for us to look at this
18 information -- as I said, I discussed it with staff, but there
19 has not been a resolution to that issue. Thus far we don't
20 know what these Allegiance confidential responses are. And I
21 believe some additional discovery was filed by Allegiance
22 yesterday also in redacted format.

23 CHAIRMAN BAEZ: Mr. Susac, can you clarify -- first
24 of all, the obvious question. Is there anything going to be
25 resolved -- can this issue be resolved by --

1 MR. SUSAC: I have two avenues in which we could
2 pursue. One, I believe counsel stated that if she would like
3 to view the material, we could open the material up to her
4 during the course of this hearing. She would be -- she could
5 gladly come and look at it.

6 I would just like to point out for the record that
7 the first Allegiance response served back, I believe, in
8 October, Counsel, if I'm correct, you did receive a redacted
9 copy of that. At that point in time I believe it's incumbent
10 upon the counsel to follow up as to why she wasn't served. She
11 was on the certificate of service. There's no way that this
12 Commission could know that she wasn't served or that she did
13 not see this information. To bring it up at this hour, I
14 believe, discredits her objection.

15 CHAIRMAN BAEZ: Well, and I guess the point is, Ms.
16 Kaufman, let's try and correct whatever oversight may have
17 happened. I'm sure that after you see the confidential
18 documents that you're referring to, maybe, maybe the objection
19 goes away.

20 MS. KAUFMAN: We'll be happy to review the documents.
21 I, you know, I would just point out that staff wants to sponsor
22 this exhibit. And, again, as a party, I think we need to be
23 able to look at it before we could agree that it could come
24 into the record. We're happy to make arrangements to view it,
25 if that's what's being offered.

1 CHAIRMAN BAEZ: Can you --

2 MR. SUSAC: That's one avenue of stipulating it. The
3 other, if they -- if the objection still remains, we request
4 that it moves into the record over the objection.

5 CHAIRMAN BAEZ: Well, let's -- can, can we at least
6 see if there is, in fact, a basis for objection other than lack
7 of access? And if we can take care of that, then maybe all
8 this goes away and we don't have to --

9 MR. SUSAC: Yes.

10 CHAIRMAN BAEZ: All right. Thank you, Mr. Susac.
11 You guys get together off-line and figure out what is an
12 appropriate time to see it.

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

14 CHAIRMAN BAEZ: Are there any other objections at
15 this point before we take up what is the -- this list of
16 stipulated exhibits that staff has provided? Seeing none,
17 without objection we're going to move --

18 MS. MAYS: I'm sorry, Mr. Chairman. Not an
19 objection, just a note for the record. Meredith Mays for
20 BellSouth.

21 CHAIRMAN BAEZ: Yes.

22 MS. MAYS: We would simply note that we will be
23 filing erratas to some of the depositions. We have no
24 objection to them being admitted, subject to our right to file
25 erratas.

1 CHAIRMAN BAEZ: Subject to erratas. That's fine. So
2 I'm looking at Exhibits 1 through -- what's the magic number
3 here? 40 -- well, hold on. 1 through 43, with the exception
4 of Exhibits 11, and what was the other Exhibit, 23, I think it
5 was, that was already moved? Moved into the record without
6 objection. I think I got that right. No, not 23. Forgive me.

7 COMMISSIONER JABER: I think, Chairman Baez, my notes
8 say Exhibits 11 and 12.

9 CHAIRMAN BAEZ: Is it 11 and 12? Okay.

10 COMMISSIONER JABER: So 11 you moved into the record,
11 and 12 is what you've got on hold.

12 CHAIRMAN BAEZ: 12 we're holding off. So 1 through
13 43, with the exception of 12, are moved into the record.

14 (Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15,
15 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
16 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 admitted into
17 the record.)

18 CHAIRMAN BAEZ: Now we get to the parties. Ms. Mays.

19 MS. MAYS: Thank you, Mr. Chairman. What we would
20 ask to have marked as additional exhibits, I believe staff has
21 indicated theirs was a BellSouth confidential, so we would ask
22 that the next exhibit, which I believe would be Number 44,
23 would be all of BellSouth's public disclosure discovery
24 responses, and we would ask that that be marked as such. We
25 have copies here for staff.

1 CHAIRMAN BAEZ: Exhibit Number 44, BellSouth's public
2 responses to staff's --

3 MS. MAYS: Actually it's responses to all parties.

4 CHAIRMAN BAEZ: To all parties? Okay. Public
5 responses to all parties; show that marked as Exhibit 44.

6 (Exhibit 44 marked for identification.)

7 MS. MAYS: We would then ask for the next exhibit to
8 be marked as the deposition of Cheryl Bursh. This was a
9 deposition that BellSouth noticed. We will be providing copies
10 of the deposition.

11 CHAIRMAN BAEZ: Can you spell the last name? I'm
12 sorry.

13 MS. MAYS: It is B-U-R-S-H, I believe.

14 CHAIRMAN BAEZ: Show the deposition of Cheryl Bursh
15 marked as Exhibit Number 45.

16 (Exhibit 45 marked for identification.)

17 MS. MAYS: The next exhibit, Mr. Chairman, would be
18 the deposition of Mr. Gaynor. This was not a deposition that
19 BellSouth noticed, but we do want this deposition to be
20 admitted into the record.

21 CHAIRMAN BAEZ: That's G-A-Y-N-O-R.

22 MS. MAYS: Yes, sir. And I believe those are the
23 only exhibits we would -- we will get to our testimony at the
24 appropriate time.

25 CHAIRMAN BAEZ: Right. Show the deposition of

1 Witness Gaynor or Mr. Gaynor marked as Exhibit 46.

2 (Exhibit 46 marked for identification.)

3 CHAIRMAN BAEZ: Mr. Chapkis.

4 MR. SELF: Mr. Chairman.

5 CHAIRMAN BAEZ: Mr. Self. I'm sorry, Mr. Chapkis.

6 MR. SELF: I apologize for interrupting. I have no
7 objection to those exhibits.

8 With respect to what's been identified as BellSouth
9 44 --

10 CHAIRMAN BAEZ: Yes.

11 MR. SELF: -- BellSouth, like a lot of parties, has
12 made a lot of discovery responses. Do we need to at some point
13 itemize which particular discovery responses we're talking
14 about, particularly since stuff is being served last night,
15 today possibly?

16 CHAIRMAN BAEZ: You have a point. When you are
17 providing it physically there should be a summary of, of what's
18 been marked, and I'm assuming there will be.

19 MS. MAYS: Yes, Mr. Chairman. Just to make the
20 record clear, what we will include as Number 44 will be all
21 public discovery responses, with the exception of the two
22 supplemental responses that were filed yesterday, which was a
23 supplement to staff's fourth and a supplement to the AT&T and
24 MCI subpoena.

25 CHAIRMAN BAEZ: So then responses through

1 February 23rd?

2 MS. MAYS: Yes.

3 CHAIRMAN BAEZ: Through and including February 23rd?

4 MS. MAYS: Through and including February 23rd with
5 the two exceptions noted.

6 I just need to clarify one question for staff. Did
7 we already address the -- in the list the subpoena responses?
8 Was that one of the miscellaneous items?

9 MR. SUSAC: Yes, we have.

10 MS. MAYS: Then BellSouth has no additional exhibits.

11 CHAIRMAN BAEZ: All right. Thank you, Mr. Self.

12 Mr. Chapkis.

13 MR. CHAPKIS: Verizon has only one exhibit. Verizon
14 would like marked as Exhibit Number 47 all of Verizon's public
15 discovery responses.

16 CHAIRMAN BAEZ: You don't have supplemental
17 responses? You're not dealing with any supplementals?

18 MR. CHAPKIS: No, sir.

19 MS. KAUFMAN: Mr. Chairman, if I could interrupt for
20 a moment, just continuing on.

21 CHAIRMAN BAEZ: Go ahead, Ms. Kaufman. I'm
22 listening.

23 MS. KAUFMAN: I'm concerned, as Mr. Self is, about
24 knowing exactly what's going into the record. And I know that
25 the staff --

1 CHAIRMAN BAEZ: We're not admitting anything into the
2 record just yet until, until there's, until there are lists
3 provided itemizing or at least identifying what is supposed to
4 be moved into the record. We can't do it blindly, and I know
5 that you understand that. Does that address your question or
6 your --

7 MS. KAUFMAN: Yes. And I was just going to maybe
8 have a suggestion that might make it easier. I know staff
9 asked everybody to make cover sheets for their exhibits which
10 itemized everything, and it might be as simple as the parties
11 exchanging those sheets so that we have a record of what
12 discovery is actually being introduced.

13 CHAIRMAN BAEZ: That's exactly, that's exactly --
14 maybe I wasn't clear what was suggested. Obviously you have to
15 provide it officially, otherwise it doesn't work. But
16 certainly that copies be available just of the title, of the
17 cover sheets so that you all can register whatever objections
18 there may be, hopefully none, but whatever there may be can get
19 ironed out off of those lists. Ms. Mays --

20 MS. MAYS: Yes, Mr. Chair. We have cover sheets to
21 each of our copies.

22 CHAIRMAN BAEZ: Great. Thank you. Poor trees.
23 Mr. Chapkis, you said you only had one?

24 MR. CHAPKIS: That's correct.

25 CHAIRMAN BAEZ: Okay. And the same goes for, the

1 same goes for you all.

2 MR. CHAPKIS: Yes, sir.

3 (Exhibit 47 marked for identification.)

4 CHAIRMAN BAEZ: Mr. Feil.

5 MR. FEIL: Mr. Chairman, FDN has one exhibit, FDN's
6 public responses to the discovery requests of staff and all
7 parties. And there is a cover sheet attached to the exhibit
8 which itemizes the responses.

9 CHAIRMAN BAEZ: Very well. Show that marked as
10 Exhibit Number 48.

11 MR. FEIL: Thank you.

12 (Exhibit 48 marked for identification.)

13 CHAIRMAN BAEZ: Ms. Masterton.

14 MS. MASTERTON: Mr. Chairman, I think Sprint did it a
15 little differently. We had five different cover sheets, but we
16 should probably do them as a composite exhibit. They represent
17 the same thing, Sprint's public responses. We just separated
18 them out by party.

19 CHAIRMAN BAEZ: All right. Show composite Number 49,
20 Sprint's public responses to all parties, including staff.

21 (Exhibit 49 marked for identification.)

22 CHAIRMAN BAEZ: Ms. Kaufman.

23 MS. KAUFMAN: Yes, Chairman. The FCCA also has a
24 composite exhibit of its responses to staff and BellSouth's
25 discovery, the public version.

1 CHAIRMAN BAEZ: All right. FCCA, public responses,
2 show that marked as Exhibit 50.

3 (Exhibit 50 marked for identification.)

4 MS. KAUFMAN: And on behalf of Covad, Covad has an
5 exhibit comprised of its responses to staff, Verizon, and
6 BellSouth.

7 CHAIRMAN BAEZ: Show that marked as Exhibit 51.

8 (Exhibit 51 marked for identification.)

9 Mr. Hatch, I think you're next.

10 MR. HATCH: Mr. Chairman, AT&T would have, I guess
11 the next one is Exhibit 52, would be AT&T's public responses to
12 BellSouth's discovery.

13 CHAIRMAN BAEZ: Show that marked as Exhibit 52.

14 (Exhibit 52 marked for identification.)

15 MR. HATCH: And our next one would be AT&T's
16 responses to staff's discovery.

17 CHAIRMAN BAEZ: Show that marked as 53.

18 (Exhibit 53 marked for identification.)

19 MR. HATCH: And we have on our list, also, the
20 deposition transcripts of Mr. Ruscilli, Ms. Aron and Gaynor.

21 MR. SUSAC: Could you repeat that, please? I just
22 couldn't hear.

23 CHAIRMAN BAEZ: Can you -- yeah. I didn't get that
24 last part.

25 MR. HATCH: The next one would be the deposition

1 tran -- we can do these separately. The deposition transcript
2 of Mr. Ruscilli from BellSouth.

3 CHAIRMAN BAEZ: Show that marked as Exhibit 54.

4 (Exhibit 54 marked for identification.)

5 MR. HATCH: And Ms. Aron, her deposition transcript.

6 CHAIRMAN BAEZ: Show that marked as Exhibit 55.

7 MR. FEIL: Excuse me, Mr. Chair. Isn't Ms. Aron's
8 deposition transcript already marked as 18?

9 CHAIRMAN BAEZ: I think -- yeah. I want to say
10 that's, that's already been entered.

11 MS. MAYS: That's a second deposition.

12 CHAIRMAN BAEZ: Oh, that's a second deposition?

13 MS. MAYS: Yes.

14 CHAIRMAN BAEZ: Okay. Can you identify the date for
15 me?

16 MR. HATCH: No, but I'll get it for you.

17 CHAIRMAN BAEZ: Okay. What do you mean "no"? While
18 that's, while that's being gotten, you had another one of
19 Mr. Gaynor?

20 MR. HATCH: That's correct.

21 MS. MAYS: Actually, Mr. Chairman, if I could just
22 jump in. The Aron, the second deposition should be dated
23 February 19th, 2004, and I believe we've already identified the
24 Gaynor deposition as Number 46.

25 CHAIRMAN BAEZ: That was going to be my next

1 question. Show the Aron deposition, Exhibit 55, date 2/19/04.

2 (Exhibit 55 marked for identification.)

3 CHAIRMAN BAEZ: Mr. Hatch, we have an Exhibit 46. Is
4 that the same depo that we're talking about?

5 MR. HATCH: I believe that's correct.

6 CHAIRMAN BAEZ: Very well. So then we don't need to
7 reidentify it. Mr. Self -- there's enough numbers already.

8 MR. SELF: Thank you, Mr. Chairman. The AT&T
9 public -- excuse me. The MCI public discovery responses, we
10 have them as two separate sets, but I would just make them one
11 composite. So Exhibit 56 would be the MCI public responses to
12 the staff and BellSouth discovery. MCI has discovery responses
13 that were filed yesterday to both staff and BellSouth that we
14 would like included. I've included copies of those in the 30
15 copies to staff, but I will get an updated cover sheet and
16 distribute that to all of the parties.

17 CHAIRMAN BAEZ: But those, those late responses are
18 included in C-56?

19 MR. SELF: Yes.

20 CHAIRMAN BAEZ: Okay.

21 (Exhibit 56 marked for identification.)

22 MR. SELF: And then I would also like to identify on
23 behalf of KMC its public responses to BellSouth and staff
24 discovery. I guess that would be Exhibit 57.

25 CHAIRMAN BAEZ: Show it marked as Exhibit 57.

1 (Exhibit 57 marked for identification.)

2 MR. SELF: And not to beat a dead horse, Mr.
3 Chairman, but --

4 CHAIRMAN BAEZ: Please don't. Go ahead anyway, I
5 guess.

6 MR. SELF: I just want to make clear, I know all the
7 parties agreed not to provide additional copies to each other,
8 which is fine. But based upon your earlier statement, if each
9 party sometime today or tomorrow could give a copy of the cover
10 sheet for its discovery that's now been identified as an
11 exhibit -- I believe that's what you said; correct?

12 CHAIRMAN BAEZ: I believe that's what I said, too.

13 MR. SELF: Thank you.

14 CHAIRMAN BAEZ: And the same holds true for, for
15 everyone, mind you.

16 MR. SELF: Yes. Thank you.

17 CHAIRMAN BAEZ: Okay. Who's next?

18 MR. MCGLOTHLIN: I believe I am, Chairman.

19 CHAIRMAN BAEZ: Mr. McGlothlin.

20 MR. MCGLOTHLIN: At staff's request we provided
21 copies of Z-Tel's responses to parties' discovery. If it's
22 appropriate to assign a composite exhibit to Z-Tel's responses.

23 CHAIRMAN BAEZ: Okay. Z-Tel responses, show a
24 composite 58. These are public responses as well?

25 MR. MCGLOTHLIN: Yes, sir.

1 (Exhibit 58 marked for identification.)

2 CHAIRMAN BAEZ: Okay. Mr. Cruz.

3 MR. CRUZ-BUSTILLO: Thank you, Mr. Chairman. Supra
4 would like to introduce as a composite Exhibit Number 59 all
5 responses to BellSouth and staff discovery.

6 CHAIRMAN BAEZ: Show that marked as Composite 59.

7 (Exhibit 59 marked for identification.)

8 CHAIRMAN BAEZ: Have I left anyone out?

9 Okay. Mr. Susac.

10 MR. SUSAC: With that, I believe we can move on to
11 the list of witnesses.

12 CHAIRMAN BAEZ: Very well.

13 MR. SUSAC: As you are aware, Mr. Chairman, in view
14 of the number of witnesses in this proceeding, a framework has
15 been established in an effort to ensure that the party has
16 adequate time to present their case. The following is a list
17 of witnesses identified to be called to the stand to present
18 the parties' direct cases, as well as witnesses identified to
19 be called to the stand on cross-examination.

20 The witnesses to take the stand on the no impairment
21 phase of the direct case are Dr. Chris Pleatsikas, Ms. Pam
22 Tipton, Dr. Debra Aron, Mr. James Stegeman, Mr. Al Varner,
23 Mr. Keith Milner, Mr. Michael P. Gallagher, Mr. Orville D.
24 Fulp, Mr. William E. Taylor, Mr. James L. McLaughlin,
25 Mr. Thomas Maguire.

1 The list of witnesses in the no impairment are John
2 Ruscilli, and these are the witnesses to be crossed, John
3 Ruscilli, Pamela Tipton, Michael Gallagher, James Stegeman,
4 Debra Aron, Christopher Pleatsikas, Alfred Heartley, Ken
5 Ainsworth, Wayne Gray, Gary Tennyson, Keith Milner, Ronald
6 Pate, Milton McElroy, the Verizon Hot Cut Panel, Orville Fulp.

7 As for OPC and AARP's direct case, they'll be putting
8 forth Witness Dr. Ben Johnson.

9 As for the impairment phase of the direct case, we
10 have the witnesses that will take the stand are Joe Gillan,
11 Mike Reith, Kent Dickerson, Brian Staihr, Mark Bryant, Don
12 Wood, Mark Van de Water, David Nilson, Sherry Lichtenberg,
13 Steve Turner, Joe Gillan.

14 The cross of impairment witnesses will be Mr. Richard
15 Walsh, Ms. Sherry Lichtenberg, Mr. James Webber, Mr. Mark Van
16 de Water, Joe Gillan, David Nilson, Jay Bradbury, Dr. Mark
17 Bryant, Mr. Don Wood, Dr. Brian K. Staihr.

18 And the no impairment parties also reserve the right
19 to cross-examine those witnesses offered by neutral parties for
20 the impairment side in the direct presentation such as Mr. Mike
21 Reith, Kent Dickerson and Steve Turner.

22 The no impairment case will be set out first. Their
23 direct will be allocated to four hours. Cross-examination will
24 then be taken up for 11-and-a-half hours, with the consumer
25 advocates and staff then getting two hours. And after the

1 consumer advocates and staff, the party will then have a
2 half-hour for redirect.

3 OPC and AARP and staff will be given two hours for
4 their direct, and then the impairment side will have the same
5 time allocated to present their case as the no impairment.

6 CHAIRMAN BAEZ: Very well. Just as an aside, I want
7 to commend all the parties on, on reaching agreement to this,
8 this kind of structure. I think it might keep people focused
9 and make best use of the very little time, relatively speaking,
10 that we have to, to take this, this hearing out. If there's
11 nothing more on this hearing framework, Mr. Susac, I think I'd
12 like to take a five- or ten-minute break. Let's call it ten
13 minutes.

14 COMMISSIONER JABER: Mr. Chairman.

15 CHAIRMAN BAEZ: I'm sorry. Ms. Masterton, hold on a
16 second. Yes, Commissioner.

17 COMMISSIONER JABER: In that same vein, if you could
18 just indulge me for just a few seconds. Last year when this
19 case was opened, I went to Commissioner Davidson and asked him
20 if he would graciously agree to take this on. And in an effort
21 to, to use a good point to commend the parties, I also want to
22 commend Commissioner Davidson for the leadership he's shown as
23 prehearing officer in structuring the case the way he did. It
24 really is an excellent framework, and I hope that we use this
25 more often. And I just wanted to personally say thank you in

1 closing the loop from last year, and obviously to commend the
2 staff for putting all the information together that we have in
3 front of us today.

4 CHAIRMAN BAEZ: Well, and I would, I would join you
5 in those comments, although I was going to reserve my judgment
6 whether this worked or not until the end of the hearing. But
7 --

8 COMMISSIONER DAVIDSON: That would be a wise move.
9 Thank you, Commissioner Jaber.

10 COMMISSIONER JABER: I don't have that luxury. I'm
11 going minute by minute.

12 CHAIRMAN BAEZ: No. I know, I know you're in the red
13 zone, Commissioner Jaber. You've got to get it out while you
14 can, so.

15 COMMISSIONER JABER: I have to get it out while I
16 can. But the second thing --

17 COMMISSIONER DAVIDSON: No pun intended.

18 COMMISSIONER JABER: The second thing I wanted to ask
19 you -- I may have missed it. Did you move Exhibits 44 through
20 59?

21 CHAIRMAN BAEZ: No, Commissioner Jaber. We're
22 holding off until we can get an exact itemization list to the
23 rest of the parties so that they can go over it.

24 COMMISSIONER JABER: Okay.

25 CHAIRMAN BAEZ: So we have not moved those in, and we

1 will be doing so hopefully after the break, if not -- if
2 everything goes well. Someone had -- before we break for ten
3 minutes -- oh, Ms. Masterton, yes.

4 MS. MASTERTON: Yeah. I just had a quick thing. We
5 filed some supplemental testimony on Friday; it was Kent
6 Dickerson and Christy Londerholm. And so for that list of
7 witnesses, I just wanted to say that to the extent that Kent
8 Dickerson was on the list for presentation, Christy Londerholm
9 will be accompanying him and should be included on the list.

10 CHAIRMAN BAEZ: Can we let the witness list reflect
11 that be noted.

12 Okay. Seeing nothing else, we're going to break for
13 ten minutes. We'll be back at 5 'til 12:00. My intention is
14 -- oh, I'm sorry. Five 'til 11:00. Wishful thinking. My
15 intention is to try and -- we're only going to break around
16 1:00 for about a half-hour of lunch, so get your orders in
17 early. This is a really brutal first day, and hopefully the
18 tough part at the beginning makes it easier on the back end, at
19 least that's what I'm hoping. So we're in recess for ten
20 minutes. Thank you.

21 (Recess taken.)

22 CHAIRMAN BAEZ: All right. We'll reconvene the
23 hearing.

24 Mr. Susac, at this point I guess we had discussed the
25 possibility of having some witnesses excused. I don't know if

1 we've made any progress on nailing down who those might, who
2 the lucky ones might be.

3 MR. SUSAC: Yes, Chairman. If I could ask the
4 parties to, to the extent they know that their witness has not
5 been called by either side, present that to you for your, your
6 approval.

7 CHAIRMAN BAEZ: All right. Let's do that really
8 quickly.

9 Ms. Mays.

10 MS. MAYS: Yes, Mr. Chairman. If we could, would it
11 be possible to simply identify all the testimony at this time,
12 admit it, and then identify the witnesses who have not been
13 noticed, or would you prefer to just go through the witnesses
14 that --

15 CHAIRMAN BAEZ: Well, what I had, what I had in mind,
16 unless you have a good reason for doing it that way that I
17 haven't seen, what I'd, what I'd like to do is to excuse
18 witnesses, then swear those that got in, and start moving,
19 moving testimony in that order, unless you have a really -- you
20 know, if there's something I'm missing.

21 MS. MAYS: The only thing that we wanted to be clear
22 on is we wanted to admit all of our witnesses' testimony into
23 the record prior to beginning our presentation. And, and we
24 envision that all the testimony would be admitted into the
25 record so that it's clear the presentation addresses evidence

1 in the record.

2 CHAIRMAN BAEZ: Well, and, again, my understanding is
3 that the presentation is on the record, so I think we would
4 have to do that just out of hand.

5 MS. MAYS: Okay.

6 CHAIRMAN BAEZ: If you can go ahead and identify
7 witnesses that haven't, that aren't planned on being called by,
8 by any of the parties as well as you understand it, we can get
9 started that way.

10 MS. MAYS: Certainly, Mr. Chairman. BellSouth has
11 witness, Mr. Billingsley. He has prefiled direct, rebuttal
12 (sic.) and surrebuttal testimony. He has no errata to his
13 testimony. He is not -- he has not been identified on either
14 for the direct presentation or for the cross-examination, so we
15 would ask that his testimony be admitted into the record and he
16 be excused, unless --

17 CHAIRMAN BAEZ: Without objection, Witness, BellSouth
18 Witness Billingsley's testimony will be entered into the record
19 as though read. And seeing no cross-examination, the witness
20 will be excused.

21

22

23

24

25

1 **BELLSOUTH TELECOMMUNICATIONS, INC.**

2 **BEFORE THE**

3 **FLORIDA PUBLIC SERVICE COMMISSION**

4 **DOCKET NO. 30851-TP**

5 **DIRECT TESTIMONY OF**

6 **DR. RANDALL S. BILLINGSLEY, CFA**

7 **DECEMBER 4, 2003**

8 **I. INTRODUCTION**

9
10 **Q. Please state your name, occupation, and business address.**

11
12 **A.** My name is Randall S. Billingsley. I am a finance professor at Virginia Polytechnic
13 Institute and State University. I also act as a financial consultant in the areas of cost of
14 capital analysis, financial security analysis, and valuation. More details on my
15 qualifications may be found in Billingsley Exhibit No. RSB-1. My business address is:
16 Department of Finance, Pamplin College of Business, Virginia Polytechnic Institute and
17 State University, Blacksburg, Virginia 24061-0221.

18
19 This testimony presents my independent professional opinions and is not presented by me
20 as a representative of Virginia Polytechnic Institute and State University.

21
22 **II. PURPOSE OF DIRECT TESTIMONY AND SUMMARY OF CONCLUSIONS**

23
24 **A. PURPOSE OF TESTIMONY**

1 **Q. What issues in this proceeding are you addressing?**

2

3 A. My testimony furnishes a part of the information necessary to do the economic analysis to
4 determine whether there are economic barriers to CLEC entry into particular geographic
5 markets without access to unbundled local switching. The issues most directly affected by
6 my testimony are Issues 5(d) and 5(e).

7

8 **Q. Would you elaborate on the purpose of your direct testimony in this proceeding?**

9

10 A. Yes. My purpose is to provide the Florida Public Service Commission (Commission) with
11 an estimate of the forward-looking costs of capital for the representative competitive local
12 exchange company (CLEC) modeled in the BellSouth Analysis of CLEC Entry (BACE)
13 model. My testimony provides the appropriate costs of capital to be used in the BACE
14 model, which determines whether any lack of access to BellSouth Telecommunications'
15 (BST) switch unbundled network element (switch UNE) makes entry by a CLEC
16 uneconomical. These costs of capital can be used by the Commission in its response to the
17 Federal Communication Commission's (FCC's) Triennial Review Order (In Re Review of
18 the Section 251, Unbundling Obligations of Incumbent Local Exchange Carriers, First
19 Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36,
20 released August, 21, 2003, hereinafter TRO).

21

22 More specifically, the costs of capital presented in my testimony are for use in calculating
23 the net present value (NPV) of the cash flows generated by the products of the
24 representative CLEC entering the Florida market, as measured in the BACE model.
25 Accordingly, I provide evidence concerning the representative CLEC's forward-looking

1 cost of equity, cost of debt, and overall cost of capital. It is essential to note that the capital
2 cost estimates I provide are all stated on a before-tax basis. The after-tax cash flows
3 produced by the BACE model must all be discounted at after-tax capital costs.
4

5 **B. SUMMARY OF THE REPRESENTATIVE CLEC'S COST OF CAPITAL**
6 **ANALYSIS**
7

8 **Q. Please describe your approaches to determining the representative CLEC's capital**
9 **costs.**
10

11 **A.** Given the data problems resulting from the current troubled environment facing the CLEC
12 industry, I essentially provide "ceiling" and "floor" estimates of the industry's capital costs.
13 Thus, I use two surrogates to measure the representative CLEC's capital costs. As described
14 below, I use the Standard & Poor's Composite 500 Index (S&P 500) as a lower-bound
15 estimate of the representative CLEC's cost of capital and I also use a sample of publicly-
16 traded CLECs that provides an upper-bound estimate of the representative CLEC's cost of
17 capital. I then provide a reasonable estimate of the industry's overall capital costs by
18 averaging the results of my two approaches.
19

20 It is important to emphasize that estimating the capital costs of a representative CLEC is
21 challenging. The majority of firms in the CLEC industry are either privately-held or are
22 wholly-owned subsidiaries of much larger, often diversified firms. While there are some
23 publicly-traded CLECs, many have declared bankruptcy over the last two years and a
24 significant number of the others operate under severe financial distress. The CLEC firms
25 for which data are available therefore do not, by themselves, provide a reliable picture of

1 the industry's sustainable capital structure and optimal financing costs.

2
3 With regard to the S&P 500 surrogate, I apply the discounted cash flow (DCF) model to the
4 firms in the S&P 500 to measure the cost of equity of average-risk firms operating in a
5 competitive environment. As discussed below, reliance on the S&P 500 is based largely on
6 the FCC's recent clarification that the index is a "... useful benchmark for the risk faced on
7 average by established companies in competitive markets" (Verizon Arbitration Order, p.
8 41, §90, full citation below). Thus, I apply the DCF model to the S&P 500 to provide a
9 conservative, market-determined cost of equity capital estimate for the representative
10 CLEC. This is the derivation of the cost of capital that I believe should form the floor for
11 any analysis of the cost of capital for the representative CLEC.

12
13 With regard to the surrogate composed of a group of publicly-traded CLECs, I apply the
14 capital asset pricing model (CAPM) to estimate the cost of equity capital. Because the
15 average cost of equity for this sample reflects the severe financial distress of the industry, it
16 provides an upper-bound estimate of the representative CLEC's sustainable, efficient cost
17 of equity. I cannot use the DCF method on this sample because these CLECs do not pay
18 dividends.

19
20 The appropriate cost of debt is determined for each of my two surrogates. First, I determine
21 the cost of debt for the representative CLEC using the current yield on the average bond
22 rating category of firms in the S&P 500. Second, I estimate the cost of debt using the
23 average bond rating for firms operating in the CLEC industry. I rely on the average market
24 value-based capital structure for each of the two surrogates. Averaging the costs of equity,
25 the costs of debt, and the capital structures of the two surrogates provides a reasonable

1 estimate of the overall pre-tax cost of capital for the representative CLEC that should be
2 used in the BACE business case model.

3
4 **Q. Would you please summarize your findings concerning the representative CLEC's**
5 **capital costs?**

6
7 A. Yes. Analysis of the S&P 500 produces an average cost of equity between 14.27% and
8 14.35% using the DCF model approach, or an average of 14.31%. The CAPM approach
9 applied to a sample of publicly-traded CLECs indicates that the representative CLEC's cost
10 of equity capital is between 20.71% and 20.84%, or an average of 20.78%. The average
11 cost of equity for the two approaches is consequently 17.55%.

12
13 Analysis of the firms composing the S&P 500 indicates that the average Standard & Poor's
14 bond rating is BBB (or Baa using the *Mergent Bond Record* equivalent). This indicates a
15 pre-tax cost of debt for the representative CLEC of 6.79%. The average bond rating on a
16 sample of publicly-traded CLECs is CCC+/CCC (or Caa+/Caa using the *Mergent Bond*
17 *Record* equivalent), which has a current pre-tax yield of 13.04%. Thus, the average cost of
18 debt for the two approaches is 9.92%.

19
20 The average market value-based capital structure of firms in the S&P 500 is 29.50% debt
21 and 70.50% equity while the average for the portfolio of publicly-traded CLEC firms is
22 87.43% debt and 12.57% equity. The average capital structure is thus 58.50% debt and
23 41.50% equity. Combining this average capital structure with the above average costs of
24 debt and equity produces an average pre-tax overall cost of capital for the representative
25 CLEC of 13.09%. Thus, this overall cost of capital, after being adjusted to be on an after-

1 tax basis, should be used to produce the NPVs in the BACE model.

2
3 **C. ORGANIZATION OF DIRECT TESTIMONY**

4
5 **Q. How is the rest of your testimony organized?**

6
7 **A.** Section III of my testimony overviews the status of competition in the telecommunications
8 industry in the United States and describes the structure of the CLEC industry to provide
9 insight into the context in which capital costs are estimated. Section IV discusses recent
10 FCC clarifications concerning the cost of capital that are relied on in my analyses and
11 relevant to the current proceeding. Sections V-VII describe the methods that I use to
12 estimate the representative CLEC's current capital costs and present my specific findings.
13 Finally, section VIII presents my estimate of the representative CLEC's overall cost of
14 capital and summarizes my recommendations to the Commission.

15
16 **III. CURRENT STATUS OF COMPETITION IN THE LOCAL**
17 **TELECOMMUNICATIONS MARKET AND CONDITION OF THE CLEC**
18 **INDUSTRY**

19
20 **A. CURRENT STATUS OF COMPETITION IN THE LOCAL**
21 **TELECOMMUNICATIONS MARKET**

22
23 **Q. What are the key points in this section that are relevant to your determination of the**
24 **representative CLEC's capital costs?**

1 A. In this section I cite evidence that supports the following key points:

- 2 • Local telecommunications market competition has increased significantly and the
- 3 CLEC industry is playing a key role in that increase.
- 4 • Incumbent local exchange companies face significant and growing competition from
- 5 CLECs.
- 6 • Recent technological developments like softswitches are making local market entry
- 7 easier and more profitable for CLECs.
- 8 • The current compromised financial condition of the average CLEC does not provide
- 9 reliable evidence concerning the industry's sustainable, long-run optimal capital
- 10 structure or associated efficient capital costs, on a stand-alone basis.

11

12 **Q. What is the current status of competition in local telecommunications markets?**

13

14 A. Competition in the local telecommunications industry has increased dramatically in recent
15 years. The sources of that increased competition include a greater number of new entrants
16 in the industry, a significant increase in the number of existing competitors, a greater
17 number of substitute telecommunications products and services, more intense competition
18 among existing firms in the industry, and enhanced regulatory risk at both the state and the
19 federal levels. Thus, both actual and potential competition has increased and the risk level
20 of the industry has consequently increased.

21

22 **Q. Is there any empirical evidence indicating a significant increase in local**
23 **telecommunications market competition?**

24

25

1 A. Yes. A recent study by the FCC documents the significant and growing trend toward greater
2 competition in the local telephone exchange market by observing the following (*Local*
3 *Competition: Status as of December 31, 2002*, Industry Analysis Division, Wireline
4 Competition Bureau, Federal Communications Commission, June 2003, pp. 1 - 3):

- 5 • Competitive local exchange carriers (CLECs) reported 24.8 million (or
6 13.2%) of the approximately 188 million nationwide end-user switched
7 access lines in service at the end of December 2002, compared to 21.6
8 million (or 11.4% of nationwide lines) in June 2002. This represents a
9 14% growth in CLEC market size during the second half of 2002.
- 10 • Since December 1999, the percentage of nationwide CLEC switched
11 access lines reported to be provisioned by reselling services has declined
12 steadily, to 19% at the end of December 2002, and the percentage
13 provisioned over UNE loops has grown, to 55%.
- 14 • The Commission's data collection program requires CLECs and ILECs to
15 identify each zip code in which the carrier provides local telephone service
16 to at least one end-user customer. As of December 31, 2002, at least one
17 CLEC was serving customers in 69% of the nation's zip codes. About
18 94% of United States households resided in these zip codes. Moreover,
19 multiple carriers reported providing local telephone service in the major
20 population centers of the country.

21

22 Thus, the FCC documents that competitors are making enormous strides in taking local
23 telecommunications business away from the ILECs.

24

25

1 Similarly, Standard & Poor's (*Industry Surveys, Telecommunications: Wireline*, May 31,
2 2001, p. 19) emphasizes the risks brought by increasing competition:

3 For local telephone companies, long-distance carriers, and cable providers
4 alike, the Telecom Act's sweeping deregulation is a double-edged sword. On
5 the one hand, a company can gain new revenue sources by providing extra
6 services and entering markets that previously were out of reach. On the other
7 hand, the added competition in all segments will result in tighter profit
8 margins for all players.

9
10 **Q. Specifically what effects does the analyst community expect these increasing**
11 **competitive risks and the growth of the CLEC industry to have on the ILECs in**
12 **general and BST in particular?**

13
14 **A.** The following recent comments by Marc Crossman of J. P. Morgan explain how increasing
15 competition is pressuring ILECs like BST ("Company Report: BellSouth,"
16 *Telecommunications Wireline Services Equity Research*, March 15, 2002, p. 4):

17 ... The company is facing increasing facilities-based competition from cable
18 operators on the consumer side and the CLECs controlled by WorldCom ...
19 and AT&T ... on the business side. BellSouth also faces growing competition
20 in both the consumer and business customer segments from non-facilities
21 based wholesale competitors, which lease elements of BellSouth's network to
22 provide service. We estimate that BellSouth will have lost 10% of access lines
23 to wholesale competition by year-end 2002. ... Access line loss also places
24 pressure on margins due to the high proportion of fixed versus variable costs
25 associated with providing service.

1 Technology substitution exacerbates share loss for wireline voice. On the
2 consumer side, wireless is replacing both primary and secondary lines at an
3 accelerating rate, while cable and DSL broadband are eliminating demand for
4 second lines used for dial-up Internet access. On the business side, DSL is
5 replacing ISDN BRI, while ISDN PRI and fiber are replacing copper-based
6 access lines. In many instances, BellSouth becomes the provider of the
7 substitute technology and retains the customer; however, the revenue
8 generated by the replacing technology tends to be lower ...
9

10 The point that one can draw from all of this is that the entire telecommunications industry
11 is competitive and risky, and is growing more so with the passage of time.
12

13 **B. CONDITION OF THE CLEC INDUSTRY**

14

15 **Q. Why would it not be appropriate to determine the representative CLEC's capital**
16 **costs for application in the BACE model using information solely from currently**
17 **operating CLECs?**
18

19 **A.** That would be an acceptable approach if currently operating CLECs had demonstrated an
20 ability to maintain a sustainable presence in the market and had done so over some time.
21 Unfortunately, the CLECs as a whole continue to demonstrate some degree of financial
22 instability. While that condition should improve in the future, CLEC data are not sufficient
23 today to rely on exclusively in determining the capital costs for a representative CLEC.
24
25

1 **Q. What is expected to happen to the CLEC industry over the next few years?**

2

3 A. Recent research by International Data Corporation (IDC) projects that:

4 ... the competitive local exchange carriers (CLECs) will continue to win
5 access lines from the incumbent carriers, based on flexible pricing and
6 packaging and personalized customer service. While CLEC access lines will
7 grow at 12.2% compound annual growth (CAGR) through 2007, their revenue
8 growth will be in low single digits because of falling prices for both voice and
9 data services. Other key findings include:

- 10 • Regulatory uncertainty is still a problem for the CLEC market, but
11 preservation of the UNE system is good for the CLECs.
- 12 • New technologies, such as softswitches and electronic ordering and
13 bonding of operational support systems (OSSs), will continue to reduce
14 CLECs' cost of doing business.
- 15 • Prior capital expenditures will continue to drive a steady increase in
16 switched lines, though IDC assumes that this growth will decline during
17 2001-2003 then increase as the economy and capital markets improve.
18 (Adcock, Barbara, Kaplan, Ron, and Stofega, William. "U.S. CLEC
19 Forecast, 2002-2007," IDC, Study #29661, June 2003, p. 1).

20

21 **Q. What factors explain the broad financial distress and bankruptcies experienced by**
22 **the CLEC industry in the last two years?**

23

24 A. The generally accepted explanation follows:

25 Just as the fact that a number of CLECs have filed for Chapter 11 has become

1 common knowledge, the reason for their bankruptcies is well known. In the
2 1990s, the CLECs acquired billions of dollars in financing to invest in
3 telecommunications infrastructure with the assumption that the demand for
4 their services would continue to experience accelerating growth. When this
5 demand did not materialize, the CLECs were left with billions of dollars in
6 debt and no way to pay it off. Some of these CLECs were forced into Chapter
7 11 to recapitalize their financial structure. Some of these CLECs finally
8 succumbed to Chapter 7 bankruptcy after exhausting all efforts to reduce their
9 debt loads. (New Paradigm Resources Group, Inc., *CLEC Report 2003:
10 Competitive Last Mile Providers*, 17th edition, volume 1, chapter 2, 2003, p. 3
11 of 20).

12
13 **Q. In light of the recent high number of bankruptcies and general financial distress, is it
14 fair to conclude that the CLEC industry does not currently exhibit a sustainable long-
15 run structure and the implied optimal, efficient capital structure that can be relied
16 upon by itself to estimate capital costs for the representative CLEC?**

17
18 **A. Yes.** The following observations reinforce the above-noted cause of the industry's current
19 problems and emphasize the state of flux the industry currently operates within:

- 20 、 Much has been written in the press about the demise of the CLEC industry.
21 True the past two years have seen several stronger players shut their doors
22 because of high levels of debt. The overall economic slump has further
23 depressed the outlook for CLECs going forward. Despite these facts, New
24 Paradigm Resources Group, Inc. (NPRG) has seen evidence in 2002 that the
25

1 CLEC industry is nearing its bottom and should stabilize in 2003 and early
2 2004.

3
4 The CLEC industry continued to shrink in 2002 as several competitive
5 providers with weak business plans, excessive amount of debt, and lackluster
6 management have gone bust. At the same time, large portions of their assets
7 have been acquired by other CLECs, serving to strengthen these companies'
8 operations. The CLECs that continue to do business in late 2002 have reduced
9 their capital spending, scaled back expansion plans, and fortified their
10 management teams, all with an eye toward future growth. Indeed, despite the
11 ongoing drought in the capital markets, 2002 has seen a handful of
12 competitive providers receive new capital investments ...

13
14 ... The CLEC industry is a relatively young one, and has undergone a variety
15 of growing pains over the last seven years. Considering that total CLEC
16 switched access lines increased by 16% to 27.4 billion during 2001, NPRG
17 continues to assert the difficulty that the industry has faced in the past does not
18 portend the downfall of the entire CLEC market. (New Paradigm Resources
19 Group, Inc. *CLEC Report 2003: Competitive Last Mile Providers*, 17th edition,
20 volume I, chapter 2, 2003, p. 1 of 20).

21
22 **Q. Have there been any recent specific technological advances that favorably affect**
23 **forward-looking ability of the CLEC industry to generate profits?**

24

25

1 A. Yes. Industry observers note the importance of so-called softswitches in reducing the
2 barriers to entering the local telecommunications market and increasing the ability of
3 CLECs to compete profitably in it. They observe that one of the trends in 2002 was that:

4
5 ... at least 25% of the voice-focused pure-play CLECs – that is, of the CLECs
6 in this Report – had an ongoing softswitch initiative in place. The world
7 continues to move toward a packetized infrastructure.

8
9 This is an important trend, carrying significant implications for the future of
10 local competition. To the extent local voice can be readily deployed over
11 softswitches going forward, the expense of deploying a Class 5 switch as an
12 entry barrier will be diminished. This suggest that many more CLEC resellers
13 and ISPs will ultimately migrate to facilities-based CLEC status, deploying
14 voice as an application. (New Paradigm Resources Group, Inc., *CLEC Report*
15 *2002: Competitive Last Mile Providers*, 15th edition, volume I, 2002, chapter
16 2, p. 3 of 22.)

17
18 All of this suggests that while there is useful information in relying in part on information
19 about publicly-traded CLECs, such information cannot reliably reflect, by itself, the capital
20 costs of a representative CLEC.

21
22 **IV. RECENT FCC CLARIFICATIONS CONCERNING COST OF CAPITAL**
23 **ESTIMATION**

24
25 **A. TRIENNIAL REVIEW ORDER CLARIFICATIONS**

1 **Q. What are the key points in this section that are relevant to your determination of the**
2 **representative CLEC's capital costs?**

3

4 A. The recent clarifications made by the FCC in the TRO support the following key points that
5 influence my approaches to estimating the representative CLEC's capital costs:

- 6 • The cost of capital should rely on data that reflect competitive markets.
- 7 • The cost of capital should reflect the assumption of a forward-looking, technologically
8 efficient network. This implies that the cost of capital should reflect forward-looking,
9 efficient capital structure, equity costs, and debt costs.
- 10 • The appropriate capital structure in cost of capital analysis is market value- rather than
11 book value-based.
- 12 • The S&P 500 is a useful benchmark for assessing the average risk of firms operating in
13 competitive markets, which is relevant in the telecommunications market.

14

15 **Q. What clarifications does the FCC's TRO provide concerning the appropriate method**
16 **for computing capital costs?**

17

18 A. The TRO clearly indicates that the cost of capital should reflect the risks of a competitive
19 rather than a regulated market. Indeed, the FCC states:

20 To ensure that UNE prices set by the states appropriately reflect the risks
21 associated with new facilities and new services, we think it would be helpful
22 to clarify two types of risks that should be reflected in the cost of capital. First,
23 we clarify that a TELRIC-based cost of capital should reflect the risks of a
24 competitive market. The objective of TELRIC is to establish a price that
25 replicates the price that would exist in a market in which there is facilities-

1 based competition. In this type of competitive market, all facilities-based
2 carriers would face the risk of losing customers to other facilities-based
3 carriers, and that risk should be reflected in TELRIC prices. (TRO, p. 419,
4 §680).

5
6 This implies that the FCC believes that the cost of capital should be measured using data
7 from competitive rather than just regulated markets.

8
9 **Q. What assumptions does the FCC make concerning the underlying telecommunications
10 network for the purpose of computing the cost of equity capital?**

11
12 **A.** As noted below, the FCC advocates calculating the cost of capital under the assumption of
13 a forward-looking network using the most efficient technology:

14
15 ... To calculate rates based on an assumption of a forward-looking network
16 that uses the most efficient technology (i.e., the network that would be
17 deployed in a competitive market), without also compensating for the risks
18 associated with investment in such a network, would reduce artificially the
19 value of the incumbent LEC network and send improper pricing signals to
20 competitors. Establishing UNE prices based on an unreasonably low cost of
21 capital would discourage competitive LECs from investing in their own
22 facilities and thus slow the development of facilities-based competition.
23 (TRO, pp. 419-420, §682.)

24
25 The FCC's assertion that the cost of capital should reflect a forward-looking efficient

1 network presumably implies that the cost of capital should also reflect the assumption of an
2 optimal, sustainable capital structure and its associated forward-looking capital costs.
3 Unfortunately, the current financial problems being experienced by the CLEC industry
4 undermine the validity of such an assumption. It is consequently necessary to find market-
5 based evidence of optimal, sustainable capital structures and capital costs elsewhere.

6
7 **B. FCC CLARIFICATIONS PROVIDED BY THE VERIZON ARBITRATION**
8 **ORDER**

9
10 **Q. Does the FCC take a position in its recent Verizon arbitration order concerning the**
11 **appropriateness of market value- rather than book value-based capital structures in**
12 **cost of capital analysis?**

13
14 **A. Yes. In reviewing the cost of capital determination process applied to Verizon, the FCC**
15 **(specifically, the Wireline Competition Bureau) observes that:**

16 ... In calculating TELRIC prices, the theoretically correct capital structure is
17 based on market values of debt and equity, not book values. In section
18 252(d)(1) of the Act, Congress specifically prohibited the use of traditional
19 rate-base, rate-of-return ratemaking. The Commission has interpreted this
20 section to require prices based on forward-looking costs, because forward-
21 looking costs best replicate the costs a carrier would face in a market with
22 facilities-based competition. Under the Commission's TELRIC rules, we
23 calculate the investment necessary to build a network using the most efficient
24 technology currently available. The TELRIC rules provide for the recovery of
25 the investment in that efficient network through the use of economic

1 depreciation and they provide for a return on that investment through a risk-
2 adjusted cost of capital. The book value of Verizon's existing network is
3 irrelevant for these purposes. Investors would not earn the return that they
4 require if a cost of capital that is based on book value is applied to the
5 economic value of their assets, given that rational investors value these assets
6 at market value. Thus, the use of a capital structure based on market values,
7 rather than book values, represents a departure from traditional ratemaking,
8 but one that is entirely appropriate under the Act. (In the Matter of Petition of
9 WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for
10 Preemption of the Jurisdiction of the Virginia State Corporation Commission
11 Regarding Interconnection Disputes with Verizon Virginia Inc., and for
12 Expedited Arbitration, CC Docket No. 00-218, and In the Matter of Petition of
13 AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the
14 Communications Act for Preemption of the Jurisdiction of the Virginia
15 Corporation Commission Regarding Interconnection Disputes With Verizon
16 Virginia Inc., CC Docket No. 00-251, Memorandum Opinion and Order, DA
17 03-2738, released August 29, 2003, p. 45, §102, hereinafter Verizon
18 Arbitration Order.)

19
20 Thus, the FCC quite clearly supports the use of market value-based capital structures in
21 cost of capital estimation.

22
23 **Q. Has the FCC provided any guidance concerning the usefulness of the S&P 500 in**
24 **measuring equity capital costs?**

25

1 A. Yes. In the Verizon Arbitration Order the FCC observes that:

2 ... the overall beta of 1.0 for the S&P 500 companies for which Verizon
3 placed betas into the record does produce a useful benchmark for the risk
4 faced on average by established companies in competitive markets. (Verizon
5 Arbitration Order, p. 41, §90.)
6

7 The FCC consequently indicates that the S&P 500 market return is a reasonable proxy for
8 the average risk faced by firms operating in competitive markets.
9

10 **Q. By using the firms of the S&P 500 as a surrogate for the representative CLEC, does
11 this mean that the average CLEC has the same risk as any firm in the S&P 500?**
12

13 A. No. It may be tempting to single out one company in the S&P 500 and incorrectly attempt
14 to compare its various risk measures individually to those of the representative CLEC.
15 However, none of the individual companies in the S&P 500 are precisely like the
16 representative CLEC in every respect. The firms are alternative investment opportunities
17 that, *in the aggregate*, have average risk. This benchmark consequently provides insight
18 into the representative CLEC's long-term, sustainable capital costs in a fully competitive
19 market.
20

21 Some may also incorrectly argue that the S&P 500 is of low risk. Yet this is incorrect
22 because the index is, by definition, composed of firms that are, *as a group*, of average risk.
23 The assumption that the S&P 500 captures only lower risk firms is likely based on a
24 historical, rather than a forward-looking perspective. On a forward-looking basis there is
25 plenty of risk associated with S&P 500 companies. For example, Eastman Kodak is an S&P

1 500 firm, yet it recently lost a significant amount of its value as investors considered a
 2 future in which digital photography has in large part replaced traditional chemical-based
 3 photography. Thus, Eastman Kodak - and other S&P 500 firms - face considerable forward-
 4 looking risks from technological and market changes. In other words, a history of market
 5 dominance is no guarantee of such a future.

6
 7 **V. COST OF EQUITY ANALYSIS FOR THE S&P 500 SURROGATE**

8
 9 **Q. What method do you use to calculate the cost of equity for the S&P 500?**

10
 11 A. I use a standard DCF model.

12
 13 **Q. What form of the DCF model do you use to estimate the representative CLEC's cost
 14 of equity capital?**

15
 16 A. I use the constant growth form of the DCF model that assumes an indefinite or infinite
 17 holding period. I will first describe the general model that is commonly applied to
 18 individual firms and then I will describe how the model is refined for application to the
 19 S&P 500.

20
 21 Since most U.S. firms pay dividends quarterly, I use the quarterly form of the DCF model
 22 under the realistic assumption that such dividends are changed by firms once a year, on
 23 average in the middle of the year. Specifically, the cost of equity K is calculated as:

24
 25
$$K = [(D_0^q (1 + G)) / P_{mkt}] + G = [D_1^q / P_{mkt}] + G;$$

1 where G is the most recent average five-year earnings per share growth rate projected by
 2 analysts, as reported by either Zacks Investment Research Inc. (Zacks) or by the IBES, and
 3 P_{mkt} is the average of the three most recent months (July to September of 2003) of high and
 4 low prices for the equity. D_0^q and D_1^q reflect the most recent annual and the anticipated
 5 next year amount of quarterly dividends, respectively. D_1^q is calculated as:

$$6 \quad D_1^q = d_1 (1 + K)^{75} + d_2 (1 + K)^5 + d_3 (1 + K)^{25} + d_4 ;$$

8
 9 where d_1 and d_2 are the quarterly dividends paid prior to the assumed yearly change in
 10 dividends and d_3 and d_4 are the two quarterly dividends paid after the given change in the
 11 amount paid by a firm. Thus, dividend D_1^q captures the quarterly payment of dividends that
 12 grow at rate G . In order to reflect the effect of flotation costs on the cost of equity, I directly
 13 reduce the market price P_{mkt} used in my analysis by a conservative 5 percent. Billingsley
 14 Exhibit No. RSB-2 elaborates on the nature and applicability of the DCF model in
 15 estimating the cost of capital. It also discusses the importance of adjusting for both the
 16 payment of quarterly dividends and for flotation costs.

17
 18 The DCF model for the S&P 500 is estimated using essentially the same approach
 19 described above. However, the expected growth rate used in the quarterly version of DCF
 20 model is the market value-weighted mean of the five-year earnings per share estimates
 21 published by Zacks and IBES for the firms in the S&P 500. Similarly, the average closing
 22 values of the index for the three most recent months (July to September of 2003) are used.
 23 Dividend yield data are obtained from Standard & Poor's *The Outlook*, restated on a
 24 quarterly basis.

25

1 **Q. What cost of equity capital do you estimate for the representative CLEC applying the**
2 **DCF model to S&P 500 surrogate?**

3

4 A. Application of the DCF model to the S&P 500 index produces a cost of equity of 14.27%
5 using IBES growth rate estimates and a cost of equity of 14.35% using Zacks growth rate
6 estimates, or an average of 14.31%.

7

8 **VI. COST OF EQUITY ANALYSIS USING THE PUBLICLY-TRADED CLEC**
9 **SURROGATE**

10

11 **Q. For your other surrogate, the limited group of publicly-traded CLECs, did you use**
12 **the DCF model to estimate that surrogate's cost of equity?**

13

14 A. No, I did not. Because the CLECs do not generally pay dividends, it is not possible to use
15 the DCF approach. As a result, I have instead used the CAPM approach to estimate the cost
16 of equity for this surrogate.

17

18 **Q. What form of the CAPM do you use to estimate the representative CLEC's cost of**
19 **equity capital?**

20

21 A. I use the common form of the model, which calculates the risk-adjusted rate of return K as:

22

$$23 \quad K = R_f + \beta [R_m - R_f];$$

24

25 where R_f is the expected return on a risk-free security like a U.S. Treasury bond, β is the

1 expected beta or systematic risk of the equity security, and R_m is the expected return on a
2 broad index of equity market performance, which is the S&P 500 in my analysis.

3
4 **Q. How and where do you obtain the beta coefficient data needed to estimate the**
5 **representative CLEC's cost of equity capital using the CAPM?**

6
7 A. As discussed above, there is limited reliable market data with which to estimate the
8 representative CLEC's beta coefficient, which is required by the CAPM. However, there is
9 sufficient information to evaluate a sample of CLEC firms that do have traded equity and
10 therefore measurable beta coefficients. This sample is identified in Billingsley Exhibit No.
11 RSB-3. Specifically, the average beta of 1.66 for the group of firms is used in the CAPM
12 equation presented above.

13
14 The beta coefficients used in my CAPM analysis are the most recent prospective measures
15 supplied by BARRA, a widely recognized provider of financial data and decision support
16 systems for institutional investors. Billingsley Exhibit No. RSB-4 elaborates on the nature
17 and significance of using prospective rather than historical beta estimates.

18
19 **Q. How do you estimate the risk-free rate of return needed in the CAPM equation?**

20
21 A. In order to be consistent with the expectational emphasis of the CAPM, I use the 4.51%
22 average expected yield implied by the prices of the Treasury note futures contracts quoted
23 during September of 2003. The prices of these contracts reflect the market's consensus
24 forecast of long-term, low-risk interest rates. Billingsley Exhibit No. RSB-5 describes the
25 futures contracts used in the analysis in more detail and shows the calculations necessary to

1 derive the implied expected future risk-free rate of return.

2 **Q. How do you estimate the expected return on a broad index of equity market**
3 **performance for use in the CAPM?**

4

5 A. I use expectational data to estimate the return of the S&P 500 as my proxy for overall
6 equity market performance using the DCF method discussed above. The expected return
7 during the most recent month (September of 2003) for which data are available is used in
8 the CAPM analysis.

9

10 **Q. What cost of equity capital do you estimate for the representative CLEC under the**
11 **CAPM approach?**

12

13 A. Summarizing the results of the above analysis, I use a risk-free rate of return of 4.51%, an
14 average beta of 1.66 for firms comparable in risk to the representative CLEC, and IBES and
15 Zacks growth rate estimates that imply an expected return on the S&P 500 of 14.27% and
16 14.35%, respectively. These objective, market-determined data indicate that the
17 representative CLEC's cost of equity capital is 20.71% using the IBES growth rate and
18 20.84% using the Zacks growth rate forecast. Thus, the average cost of equity for the
19 representative CLEC using the CAPM approach is 20.78%.

20

21 **Q. What is your conclusion regarding the representative CLEC's cost of equity capital**
22 **on the basis of the DCF- and CAPM-based findings for your two surrogates?**

23

24 A. I believe that the DCF finding of 14.31% for the S&P 500 surrogate and the CAPM result
25 of 20.78% for the publicly-traded CLEC surrogate should be averaged to provide a

1 reasonable cost of equity capital estimate for the representative CLEC. The average cost of
2 equity capital is 17.55%.

3 4 **VII. COST OF DEBT**

5
6 **Q. How can the representative CLEC's forward-looking cost of debt be empirically**
7 **estimated?**

8
9 A. Two approaches are used to estimate the cost of debt. First, the representative CLEC's
10 forward-looking cost of debt is estimated by examining the yields on bonds with the same
11 rating as the average issued by firms in the S&P 500. Using a numerical dummy coding of
12 bond rating categories, the average corporate bond rating for members of the S&P 500 is
13 BBB or Baa. As of September of 2003, the average yield on such bonds is 6.79% (*Mergent*
14 *Bond Record*, October 2003, p. 63). Second, the representative CLEC's cost of debt is
15 estimated by examining the average bond rating of firms in the industry. As noted above
16 and portrayed in Billingsley Exhibit RSB-6, the average bond rating is CCC+/CCC. That
17 exhibit also shows that the average yield on such bonds in September of 2003 is 13.04%.
18 While this is the rating and associated average yield of a financially troubled industry, I use
19 it to estimate a ceiling debt cost for the industry.

20
21 **Q. What is your estimate of the representative CLEC's forward-looking cost of debt?**

22
23 A. Based on my analysis, I believe that a reasonable estimate of the representative CLEC's
24 forward-looking cost of debt is the average of the two estimates of 6.79% and 13.04%,
25 which are the estimates provided by the S&P 500 firms' debt and the sample of publicly-

1 traded CLEC debt. The average cost of debt for the two approaches is 9.92%.

2
3 **VIII. OVERALL COST OF CAPITAL FOR THE REPRESENTATIVE CLEC AND**
4 **SUMMARY OF RECOMMENDATIONS**

5
6 **Q. What capital structure, component costs of capital, and overall cost of capital do you**
7 **use in estimating the representative CLEC's overall cost of capital directly?**

8
9 A. I use my estimated costs of equity and debt for the representative CLEC along with the
10 average market value-based capital structure for both the S&P 500 and the above-noted
11 sample of publicly-traded CLECs. The average market value-based capital structure of
12 firms in the S&P 500 is 29.50% debt and 70.50% equity while the average for the sample
13 of publicly-traded CLECs is 87.43% debt and 12.57% equity (see Billingsley Exhibit No.
14 RSB-3). Averaging these capital structure weights and combining them with the above
15 average cost of debt and cost of equity estimates produces a pre-tax overall cost of capital
16 for the representative CLEC of 13.09%.

17
18 **Q. What practical and theoretical arguments support reliance on market value-based**
19 **rather than on book value capital structures in cost of capital analysis?**

20
21 A. Book value capital structures do not recognize the reality the representative CLEC
22 obtaining capital in today's financial marketplace. The use of market values is both
23 practically as well and theoretically appropriate and consistent with establishing a
24 prospective cost of capital for use in a proceeding such as this one. Market values should be
25 used exclusively because they are dynamically determined in the marketplace by investors,

1 while book values are the result of historical accounting practices. One-time accounting
2 events that do not change market values can significantly alter book values. Additionally,
3 the point in time at which a company issued stock in the past can influence book values,
4 while prospective market values are not affected. Current market values are determined by
5 investors' most up-to-date expectations for the future. These expectations are based on a
6 variety of factors, many of which are external to a CLEC. Book values look at a firm
7 largely in dated isolation, while market values consider the firm's expected performance in
8 light of its external competitive environment as well.

9
10 Over time, market values vary from book values as investors change stock prices in
11 response to new company announcements as well as to announcements concerning their
12 competitors for investors' dollars. If an event or announcement significantly enhances or
13 detracts from shareholder value, that change is immediately translated into a market value
14 change by investors, while there is likely to be no immediate change in book value. It is
15 obvious that relying on book values is unrepresentative of the investor's perspective in
16 today's capital markets from which the representative CLEC must obtain capital. The
17 impact of relying on book values is a downward bias in overall cost of capital estimates.

18
19 **Q. Would you elaborate on how market value-based capital structures reflect investors'**
20 **expectations and how capital structures are commonly measured in accepted financial**
21 **practice and theory?**

22
23 **A.** Yes. Market value-based capital structures reflect the most up-to-date expectations of
24 investors in the capital markets. In contrast, book value-based capital structures reflect
25 accounting conventions and historical costs. It is important to stress that capital costs

1 inherently involve market-based expectations no matter what type of cost estimation model
2 is used. Therefore, the capital structure that is matched with expected capital costs must
3 also be measured in market value terms that capture investors' expectations. In order to be
4 consistent with well-established financial practice and theory, market-determined capital
5 costs must be matched with market-determined capital structures. Indeed, the use of market
6 value-based capital structures in cost of capital and capital budgeting analysis is the
7 standard approach taken in modern corporate finance textbooks (e.g., see S. A. Ross, R. W.
8 Westerfield, and B. D. Jordan, *Essentials of Corporate Finance*, Irwin: 1996, pp. 316-317
9 or R.A. Brealey and S.C. Myers, *Principles of Corporate Finance*, McGraw-Hill: 1996, 5th
10 ed., pp. 214, 517).

11
12 Many people mistakenly believe that there are three different costs of capital: historical,
13 current, and expected. Actually there is only one relevant measure, which is the *expected*
14 cost of capital that is based on market values. This is consistently updated every day in the
15 financial markets and exists at any given point in time. Thus, market value-based capital
16 structures are more appropriate than accounting-based capital structures in cost of capital
17 analysis

18
19 **Q. Is the use of market value-based capital structures in cost of capital analysis**
20 **consistent with well-accepted legal and regulatory standards?**

21
22 A. Yes. In addition to being consistent with well-established financial practice and theory, I
23 believe that the use of market value-based capital structures is consistent with the
24 universally-accepted Supreme Court precedents concerning what characterizes a reasonable
25 rate of return for a regulated public utility (see Bluefield Water Works & Improvement Co.

1 v. Public Service Commission of West Virginia, 262, U.S. 679, 692-3, (1923) and Federal
2 Power Commission v. Hope Natural Gas Co. 320, U.S. 591, (1944)).

3 Market value-based capital structures are also consistent with the FCC's standard of
4 considering the expected cost of capital (see First Report & Order, FCC 96-325, released
5 August 8, 1996, paragraph 700). Because the expected cost of capital is, by definition,
6 based on investors' expectations, all of its components must be based on expectations. The
7 FCC's standard implies that the CLECs' costs of debt, costs of equity, and capital structures
8 must all rely on the expectations reflected in market values. Thus, well-accepted financial
9 practice and theory as well as the FCC's espoused principle indicate that market value-
10 based capital structures are more appropriate than accounting-based capital structures in
11 cost of capital analysis.

12
13 **Q. Similarly, is the use of market value-based capital structures in cost of capital analysis**
14 **consistent with the recent clarifications concerning the estimation of capital costs that**
15 **you discuss above in your testimony?**

16
17 **A. Yes.** As discussed above in Section IV of my testimony, the FCC clearly states that "... the
18 use of a capital structure based on market values, rather than book values, represents a
19 departure from traditional ratemaking, but one that is entirely appropriate under the Act"
20 (Verizon Arbitration Order, p. 45, §102).

21
22 **Q. Would you please elaborate on why it is necessary to adjust your overall cost of**
23 **capital estimate for taxes before using it to discount the representative CLEC's cash**
24 **flows in the BACE model?**

25

1 A. Yes. The representative CLEC operates in a competitive marketplace that is fully subject to
2 state and federal taxation. Thus, it is important to adjust all estimated capital costs for the
3 effects of such taxation. Interest expenses are typically deducted from taxable income.
4 Thus, each dollar of interest paid reduces the amount of a CLEC's income that is subject to
5 tax. For example, if a CLEC pays a before-tax interest cost of 6.79% and faces a 32% tax
6 rate, it's effective after-tax cost of debt will be 6.79% (1 - 32%) = 4.62%. In contrast, a
7 CLEC must meet equity holders' return requirements as an expense that is not tax-
8 deductible. Thus, for example, the before-tax cost of equity on the S&P 500 of 14.31% is
9 equal to the after-tax cost. In other words, the cost of equity receives no favorable tax
10 treatment.

11
12 In evaluating potential investments it is necessary to discount after-tax cash flows at after-
13 tax capital costs. The BACE model generates after-tax cash flows that consequently must
14 be discounted at an after-tax overall cost of capital in order to produce a reliable NPV
15 estimate.

16
17 **Q. Would you please summarize your recommendations to the Commission concerning**
18 **the appropriate capital costs that should be used in the BACE business case model to**
19 **assess whether any lack of access to BST's switch UNE makes entry by a CLEC**
20 **uneconomical?**

21
22 A. My analysis indicates that a forward-looking cost of equity estimate for the representative
23 CLEC using the DCF and CAPM approaches is an average of 17.55%. I also find evidence
24 that the cost of debt of the representative CLEC is an average of 9.92%. The average
25 market value-based capital structure of firms is 58.50% debt and 41.50% equity.

1 Combining this average capital structure with the above average costs of debt and equity
2 produces an average pre-tax overall cost of capital for the representative CLEC of 13.09%.
3 In summary, I recommend that the Commission use a *before-tax* overall cost of capital of
4 13.09% to discount the cash flows produced by the BACE CLEC business case model. As
5 noted above, the capital cost estimates I provide are all stated on a before-tax basis. The
6 after-tax cash flows produced by the BACE model must be discounted at after-tax capital
7 costs so as to produce a reliable NPV estimate.

8

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

10

11 **A. Yes, it does.**

12

13

14

15

16

17

18

19

20

21

1 **BELLSOUTH TELECOMMUNICATIONS INC.**

2 **BEFORE THE**

3 **FLORIDA PUBLIC SERVICE COMMISSION**

4 **DOCKET NO. DOCKET NO. 30851-TP**

5 **SURREBUTTAL TESTIMONY OF**

6 **DR. RANDALL S. BILLINGSLEY, CFA**

7 **JANUARY 28, 2004**

8
9 **I. INTRODUCTION**

10
11 **Q. Please state your name, occupation, and business address.**

12
13 A. My name is Randall S. Billingsley. I am a finance professor at Virginia Polytechnic Institute and
14 State University. I also act as a financial consultant in the areas of cost of capital analysis, financial
15 security analysis, and valuation. My business address is: Department of Finance, Pamplin College
16 of Business, Virginia Polytechnic Institute and State University, Blacksburg, Virginia 24061-0221.

17
18 This surrebuttal testimony presents my independent professional opinions and is not presented by
19 me as a representative of Virginia Polytechnic Institute and State University.

20
21 **Q. Have you previously submitted testimony in this proceeding on behalf of BellSouth**
22 **Telecommunications Corporation (BST)?**

23
24 A. Yes.

25
26 **II. PURPOSE OF SURREBUTTAL TESTIMONY AND SUMMARY OF**

1 **CONCLUSIONS**

2 **A. PURPOSE OF SURREBUTTAL TESTIMONY**

3
4 **Q. What is the purpose of your testimony in this proceeding?**

5
6 A. My purpose is to critically evaluate the testimonies of four witnesses filing rebuttal testimony in this
7 proceeding concerning the cost of capital. First, I evaluate Mr. Don J. Wood's rebuttal testimony
8 on behalf of AT&T Communications of the Southern States, L.L.C. (AT&T), which is dated
9 January 7, 2004. I show that his testimony provides no insight into the current capital costs faced
10 by competitive local exchange providers (CLECs) in general or any specific insight into the
11 appropriate discount rate to be used in the BellSouth Analysis of CLEC Entry (BACE) model.
12 Second, I examine the unfounded and unsupported cost of capital assumptions made in the
13 rebuttal testimony of Mr. David A. Nilson, filing on behalf of Supra Telecommunications and
14 Information Systems, Inc. (Supra) on January 7, 2004. Third, I evaluate Dr. Brian K. Staihr's
15 rebuttal testimony filed on behalf of Sprint Communications Limited Partnership and Sprint-
16 Florida, Inc. (Sprint) on January 7, 2004. I discuss his misunderstanding of my recent CLEC
17 capital cost analysis and his incorrect observations concerning CLEC capital costs. Fourth and
18 finally, I discuss Mr. Kent W. Dickerson's rebuttal testimony filed on behalf of Sprint/United
19 Management Company (Sprint/United) on January 7, 2004. I point out the inconsistency between
20 his cost of capital conclusions and those of Dr. Staihr and explain why his internal rate of return
21 analysis provides no useful information on the reasonableness of the BACE model. Below I
22 summarize my analysis of each of the above-noted witness' rebuttal testimonies.

23

1 **B. SUMMARY OF SURREBUTTAL OF MR. DON J. WOOD'S**
2 **REBUTTAL TESTIMONY ON BEHALF OF AT&T**
3 **COMMUNICATIONS OF THE SOUTHERN STATES, L.L.C.**
4

5 **Q. What issues does your surrebuttal focus on in Mr. Wood's rebuttal testimony concerning**
6 **the CLEC industry's capital costs?**

7
8 A. My surrebuttal shows that most of Mr. Wood's testimony provides nothing more than
9 unsupported speculations concerning CLEC capital costs and the rest presents inconsistent and
10 incorrect arguments that leave us with no evidence on current CLEC capital costs. Importantly,
11 Mr. Wood provides *absolutely no estimates* of CLEC capital costs. I identify numerous
12 examples of his unsupported personal opinions in my surrebuttal. Further, I focus on Mr. Wood's
13 inconsistent and incorrect argument that currently operating CLECs possess inefficient, sub-
14 optimal capital structures and yet at the same time somehow are economically efficient. This
15 contradictory argument dramatizes his misunderstanding of the information provided by currently
16 operating, market-traded CLECs concerning their capital costs. I also evaluate Mr. Wood's
17 misguided projection that past CLEC infrastructure investments and associated bankruptcies will
18 necessarily be repeated in the future. In summary, Mr. Wood's unsupported and incorrect
19 observations tell us nothing meaningful about the appropriate discount rate that should be used in
20 the BACE model.

21
22 **C. SUMMARY OF SURREBUTTAL OF MR. DAVID A. NILSON'S**
23 **REBUTTAL TESTIMONY ON BEHALF OF SUPRA**
24 **TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.**
25

26 **Q. What issues does your surrebuttal focus on in Mr. Nilson's rebuttal testimony**

1 **concerning the CLEC industry's capital costs?**

2

3 A. I focus on Mr. Nilson's extreme, incorrect argument that CLECs are currently unable to obtain
4 capital "at any cost." I note that Mr. Nilson provides no evidence to support his argument and I
5 provide some examples of CLECs that have recently obtained capital in the financial markets. In
6 short, Mr. Nilson's unsupported and incorrect opinion is irrelevant to estimating CLEC capital
7 costs and provides nothing of use in determining the appropriate discount rate to be used in the
8 BACE model.

9

10 **D. SUMMARY OF SURREBUTTAL OF DR. BRIAN K. STAIHR'S**
11 **REBUTTAL TESTIMONY ON BEHALF OF SPRINT**
12 **COMMUNICATIONS LIMITED PARTNERSHIP AND SPRINT-**
13 **FLORIDA, INC.**

14

15 **Q. What issues does your surrebuttal focus on in Dr. Staihr's rebuttal testimony concerning**
16 **the CLEC industry's capital costs?**

17

18 A. I evaluate Dr. Staihr's misunderstanding of the averaging process I use to estimate the CLEC
19 industry's current capital costs. In so doing, I emphasize that the CLEC industry currently
20 operates in the wake of a period of financial distress. Thus, the current capital cost estimates
21 provided by a sample of publicly-traded CLECs are not representative of sustainable, efficient
22 equilibrium. These capital cost estimates consequently constitute an *upper-bound* or maximum in
23 estimating CLEC capital costs in my analysis. Similarly, the capital costs associated with the
24 Standard & Poor's Composite 500 Index (S&P 500) provide a benchmark of average market
25 risk, which reasonably functions as a *lower-bound* or minimum in estimating current CLEC costs.
26 Contrary to Dr. Staihr's misunderstanding, given the current state of the CLEC industry it is

1 perfectly reasonable and indeed necessary to provide a bounded estimate of CLEC capital costs
2 using an averaging process.

3 My surrebuttal also focuses on Dr. Staihr's incorrect attempts to modify my cost of capital
4 estimates for the CLEC industry *without performing any additional data analysis himself*.
5 Surprisingly, he picks and chooses among various inputs in my estimation approach while ignoring
6 the *relationship among* those inputs. For example, Dr. Staihr apparently likes my *upper-bound*
7 *cost* of equity estimate derived from a sample of market-traded CLECs, accepts the *average* of
8 the cost of debt estimates derived from the CLEC sample and the S&P 500, but dislikes the
9 sample's *upper-bound* capital structure and uses an *average* of that of the S&P 500 and the
10 CLEC sample. However, the cost of equity he uses is generated using market data that only
11 respects the capital structure he rejects for arbitrary reasons. Thus, Dr. Staihr's attempt to change
12 my analysis is inconsistent and incorrect. Further, I discuss his invalid comparisons of current
13 CLEC capital cost estimates with UNE estimates I made about four years ago. After making
14 incorrect adjustments to my cost of capital estimates, Dr. Staihr ultimately finds that the net
15 present value (NPV) generated by the BACE model remains positive. His analysis consequently
16 indicates that there is no evidence of impairment.

17
18 **E. SUMMARY OF SURREBUTTAL OF MR. KENT W. DICKERSON'S**
19 **REBUTTAL TESTIMONY ON BEHALF OF SPRINT/UNITED**
20 **MANAGEMENT COMPANY**
21

22 **Q. What issues does your surrebuttal focus on in Mr. Dickerson's rebuttal testimony**
23 **concerning the CLEC industry's capital costs?**

24
25 **A.** I concentrate on two aspects of Mr. Dickerson's testimony. First, I show that Mr. Dickerson's
26 use of a 10.14% pre-tax overall cost of capital in his analysis is inconsistent with the cost of

1 capital conclusions presented by another Sprint witness, Dr. Brian K. Staihr. Comparing these
2 analyses dramatizes the unreasonableness of their conclusions. Second, I explain why Mr.
3 Dickerson's internal rate of return analysis of the BACE model relies on an extremely fragile,
4 inappropriate financial assumption that renders his analysis useless in assessing or applying the
5 BACE model.

6
7 **III. ANALYSIS OF MR. DON J. WOOD'S REBUTTAL TESTIMONY ON**
8 **BEHALF OF AT&T**

9
10 **A. QUALIFICATIONS AS A COST OF CAPITAL EXPERT**

11
12 **Q. Are you familiar with Mr. Wood's testimony as a cost of capital expert in other**
13 **regulatory proceedings?**

14
15 **A.** No. While I have read and rebutted Mr. Wood's testimony in other regulatory proceedings, in my
16 experience he has always simply summarized the cost of capital recommendations made by the
17 cost of capital expert(s) working in the given case. I am not familiar with any independent work
18 done by Mr. Wood as a cost of capital expert. I am consequently surprised that he appears to
19 consider himself a cost of capital expert in the current proceeding and I know of no basis for
20 doing so.

21
22 **B. EVIDENCE CONTRADICTING MR. WOOD'S ASSUMPTION OF CLEC**
23 **INEFFICIENCY**

24
25 **Q. Do you agree with Mr. Wood's position that CLECs are currently operating efficiently?**
26

1 A. No, I believe that the evidence contradicts Mr. Wood's position. He incorrectly argues that:
2 ... the fact that a significant number of CLECs have gone bankrupt suggests that
3 competitive market constraints have winnowed the field, and those CLECs that
4 currently are operating do have efficient operations. In order to make reasonable
5 assumptions about efficient CLEC costs, it is logical to look at currently operating
6 CLECs (Rebuttal Testimony, p. 48, lines 12 – 16).

7
8 Mr. Wood argument reduces to unsupported speculation that CLECs that did not go bankrupt
9 are, by definition, necessarily operating efficiently. As shown in my direct testimony in this
10 proceeding, the average bond rating for a sample of market-traded CLECs is CCC+/CCC (see
11 Billingsley Exhibit No. RSB-6). This is a speculative-grade bond rating that is associated with
12 firms in financial distress. Consider the following definition of the CCC-level rating:

13 An obligation rated 'CCC' is currently vulnerable to nonpayment, and is dependent
14 upon favorable business, financial, and economic conditions for the obligor to meet its
15 financial commitment on the obligation. In the event of adverse business, financial, or
16 economic conditions, the obligor is not likely to have the capacity to meet its financial
17 commitment on the obligation (*Standard & Poor's Bond Guide*, October 2003, p.
18 4).

19 It is absolutely amazing that Mr. Wood argues that such firms should be used "... to make
20 reasonable assumptions about efficient CLEC costs." The evidence obviously contradicts this.
21 Further, Mr. Wood's reliance on unadjusted data drawn from inefficient CLECs is inconsistent
22 with the Federal Communication Commission's (FCC's) assertion that the cost of capital should
23 reflect a forward-looking, efficient network (see Triennial Review Order, In Re Review of the
24 Section 251, Unbundling Obligations of Incumbent Local Exchange Carriers, First Report and
25 Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, released August,
26 21, 2003, pp. 419-420, §682).

1
2 **C. INCONSISTENT ARGUMENT THAT CLEC CAPITAL STRUCTURES**
3 **ARE NOT EFFICIENT**
4

5 **Q. After arguing that CLECs are currently operating efficiently, does Mr. Wood also argue**
6 **that current CLEC capital structures are not efficient, target capital structures?**
7

8 A. Yes. Mr. Wood states:

9 This structure is clearly not the target capital structure of these companies, but has
10 arisen in large part because of the precipitous drop in the companies' stock prices
11 (Rebuttal Testimony, p. 55, line 24 – p. 56, line 2).

12 Mr. Wood is inconsistent. On one hand he argues that CLECs are efficient and a reasonable
13 source of representative capital costs. Yet on the other hand he argues that their current capital
14 structure is not equal to their target, optimal capital structure. His only explanation for this
15 contradictory speculation concerning current CLEC capital structures is that they are the result of
16 the "precipitous drop in the companies' stock prices." Mr. Wood's contradictory, inconsistent
17 argument does not make sense. The truth that must be faced is that CLECs are not currently
18 efficient in a comprehensive sense. It is consequently reasonable to use the averaging process that
19 I do to produce a representative bounded estimate of representative CLEC capital costs. It is
20 eminently appropriate to bound current CLEC costs on the downside with the S&P 500 and on
21 the upside with capital costs produced by a CLEC sample, which is obviously in an inefficient
22 condition.
23

24 **D. MR. WOOD'S SPECULATIONS CONCERNING CLEC FUTURE**
25 **INFRASTRUCTURE INVESTMENTS**
26

1 **Q. What speculation does Mr. Wood make concerning future CLEC infrastructure**
2 **investments based on history?**

3

4 A. The gist of Mr. Wood's speculation is that CLECs have no capacity to understand or to avoid
5 their past mistakes. He states that:

6 ... CLECs invested in network infrastructure (large fixed costs) based on an
7 anticipation of future revenues that would make their market entry economic. Their
8 assumptions regarding whether entry in this manner would be economic, now clearly
9 flawed, are very similar to the assumptions that BellSouth is now inviting CLECs to
10 make through the results of its business case analysis (and is asking the Commission to
11 conclude that the CLEC's should accept the invitation). ... CLECs face a decision of
12 whether or not to invest in network infrastructure (in this case a local circuit switch,
13 whose cost characteristics cause it to represent a large fixed cost). BellSouth argues
14 that they could rationally do so ... (Rebuttal Testimony, p. 53, lines 8-19).

15

16 Thus, Mr. Wood attributes the CLECs past woes to network infrastructure investments with
17 "large fixed costs" and predicts that CLECs will necessarily experience the same troubles again in
18 the future. However, I do not share Mr. Wood's uncomplimentary view of the CLECs' ability to
19 learn from past challenges. The future is not necessarily a simple extension of the past and learning
20 is possible.

21

22 **E. RELATIVE RISK OF CLECS AND ILECS**

23

24 **Q. Does Mr. Wood provide any evidence to support his position that CLECs face higher**
25 **risks than incumbent local exchange companies (ILEC's)?**

26

1 A. No. Mr. Wood offers no evidence on the relative riskiness of CLECs and ILECs. He only
2 expresses his unsupported opinion as follows:

3 There is a fundamental difference in the risk incurred by a former monopoly provider,
4 with existing network facilities and an existing base of customers, and the risk incurred
5 by a new entrant to enter the market by making a large fixed investment without the
6 customer base needed to recover the cost of that investment (Rebuttal Testimony, p.
7 51, lines 7-11).

8 He then speculates that "... a CLEC continues to face, for the reasons described above, much
9 higher risk than an ILEC" (Rebuttal Testimony, p. 52, lines 15-17).

10

11 While CLECs may well be riskier than ILECs, any possible difference should be *demonstrated*
12 using empirical evidence rather than *assumed*. Mr. Wood *speculates* about the relative risks of
13 ILECs and CLECs when evidence is needed, not his opinion.

14

15 **IV. ANALYSIS OF MR. DAVID A. NILSON'S REBUTTAL TESTIMONY ON**
16 **BEHALF OF SUPRA**

17

18 **Q. What is your assessment of Mr. Nilson's contention that investment capital is not**
19 **currently available to CLECs "at any cost?"**

20

21 A. Mr. Nilson provides nothing but his personal opinion and no evidence whatsoever that CLECs
22 cannot raise funds "at any cost." He speculates as follows:

23 BellSouth testimony of Dr. Randall S. Billingsley focuses on the cost of capitol without
24 ever addressing whether such capitol [*Mr. Nilson's spelling throughout quote*] is
25 available **at any cost**. Billingsley addresses the fact that CLECs are in financial
26 distress, but is silent whether capitol for expansion is available any longer. It is no

1 longer 1998 and 1999. Equipment vendors such as Lucent and Nortel went to the
2 edge of extinction based on their lending to CLECS who, lacking UNE-P, were
3 unable to build critical mass to stay afloat, much less repay the loans. Those loans are
4 non-existent today as any CLEC engineer knows. VC money similarly, and for the
5 same reasons no longer exists. (Rebuttal Testimony, p. 42, line 20 – p. 43, line 5).

6
7 Contrary to Mr. Nilson's unqualified assertion, a casual search of the World Wide Web reveals a
8 number of instances over the last six months in which CLECs have obtained capital. For example,
9 US LEC Corporation privately placed \$10 million in equity capital late in 2003 (see
10 PRNewswire-FirstCall, November 10, 2003), Mpower Communications Corporation raised
11 \$17.47 million in equity in September of 2003 (see www.mpowercom.com, Mpower
12 Newsroom, September 26, 2003), and Pac-West Telecommunications, Inc. raised \$40 million in
13 debt and equity private placement (see PRNewswire, December 19, 2003). These few examples
14 contradict Mr. Nilson's speculation that CLECs are barred from obtaining capital "at any cost."

15
16 **V. ANALYSIS OF DR. BRIAN K. STAIHR'S REBUTTAL TESTIMONY ON**
17 **BEHALF OF SPRINT**

18
19 **A. MISUNDERSTANDING OF APPROPRIATE AVERAGING PROCESS**
20 **USED IN COST OF CAPITAL ESTIMATION**

21
22 **Q. What is your evaluation of Dr. Staihr's criticism of averaging the returns on the S&P**
23 **500 with those of a sample of CLECs to provide a reasonable estimate of CLECs'**
24 **current capital costs?**

25
26 **A.** Dr. Staihr argues the S&P 500 and a sample of CLECs are not comparable groups but also

1 offers the following criterion for when averaging is appropriate:

2 Because investors' expected returns are functions of risk, the only justification for
3 averaging the two groups would be if the entrant reflected investment risk that was,
4 for some reason, somewhere between the S&P and CLECs in general (Rebuttal
5 Testimony, p. 39 lines 20-23).

6 While I agree that the S&P 500 and the sample of CLECs contain different firms, I do not accept
7 Dr. Staihr's argument that they should not be compared. The S&P 500 is a commonly-used
8 benchmark in evaluating investment returns. My analysis uses it in much the same spirit – as a
9 benchmark of average risk in the market. Further, I accept and my cost of capital analysis is
10 consistent with Dr. Staiher's stated criterion under which it is appropriate to average the returns
11 on the S&P 500 with the returns on the sample of CLECs. As quoted above, he asserts that such
12 averaging is appropriate "... if the entrant reflected investment risk that was, for some reason,
13 somewhere between the S&P and CLECs in general." I believe that the representative cost of
14 capital for the CLECs is consistent with risk between the average risk or lower-bound captured
15 by the current capital costs of the S&P 500 and the upper-bound expressed by the current capital
16 costs of a sample of publicly-traded CLECs.

17

18 As discussed above, it is important to stress that the CLEC industry currently operates in the
19 wake of a period of financial distress. Thus, the current capital cost estimates provided by a
20 sample of publicly-traded CLECs are not representative of sustainable and efficient long-term
21 equilibrium. These capital cost estimates consequently should be viewed as an *upper-bound* or
22 maximum in estimating CLEC capital costs in my analysis. Similarly, the capital costs associated
23 with the S&P 500 provide a benchmark of average market risk, which serves as a *lower-bound*
24 or minimum in estimating current CLEC costs. Importantly, the crux of Dr. Staihr's
25 misunderstanding is that he incorrectly views the capital costs of my sample of CLECs as a lower-
26 bound or minimum rather than the upper-bound or maximum that it must be under current market

1 conditions.

2

3 **Q. Dr. Staihr cites an overall cost of capital estimate that you presented in a previous UNE**
4 **proceeding. What is the relevance of this estimate in the current proceeding?**

5

6 A. The prior estimate has no relevance to the current proceeding. Dr. Staihr merely notes that “[i]n
7 the recent UNE docket (Docket No. 990649-TP) Dr. Billingsley advocated a WACC [*weighted*
8 *average cost of capital – definition added to quote*] for an ILEC in the range of 14.66% to
9 15.34%” (Rebuttal Testimony of Dr. Brian K. Staihr, p. 42, lines 8-9). The cited testimony was
10 filed in 2000, which was about four years ago and is thus not “recent” by capital market
11 standards. In asserting that this prior overall cost of capital range is somehow relevant to assessing
12 my CLEC capital cost estimates in the current proceeding, Dr. Staihr ignores that the UNE
13 estimates are too dated to be relevant. Further, he implicitly assumes that the only factor that
14 influences capital cost is the general level of interest rates, which he believes imply a decrease in
15 capital costs over the intervening period. However, capital costs capture not only interest rate
16 changes but also changes in risk. Thus, there is no valid way to compare my dated UNE cost of
17 capital estimate with current CLEC estimates. Dr. Staihr’s attempt to compare them is incorrect,
18 uninformative, and misguided.

19

20

21 **B. INCONSISTENT, INCORRECT CAPITAL STRUCTURE ANALYSIS:**
22 **PICKING AND CHOOSING AMONG ESTIMATES ARBITRARILY**

23

24 **Q. While Dr. Staihr accepts your average capital structure and average cost of debt**
25 **estimates based on the S&P 500 and a sample of publicly-traded CLECs, he arbitrarily**
26 **uses only the upper-bound cost of equity estimate produced by the CLEC sample. What**

1 **is your evaluation of his approach and its stated rationale?**

2

3 A. Dr. Staihr's approach is incorrect, arbitrary, and inconsistent. He incorrectly and arbitrarily picks
 4 and chooses among various inputs in my cost of capital analysis approach while ignoring the
 5 *relationship among* those inputs. His stated rationale for using only selected inputs is that he
 6 believes the CLEC sample's capital structure is unreliable, the cost of equity for *the same sample*
 7 is useful, and the cost of debt derived from an average of the S&P 500 and the sample is reliable.
 8 Yet the cost of equity estimate derived from the CLEC sample he accepts is generated using
 9 market data that only respects the risks implied by the associated capital structure *he rejects*. If
 10 he rejects the given capital structure, he should recognize that a more moderate capital structure
 11 implies a *lower* cost of equity. Thus, Dr. Staihr's attempt to change my analysis is incorrect,
 12 arbitrary, and inconsistent. Further, his unsuccessful attempt contradicts the pervasive trade-off
 13 between risk and return in modern finance.

14

15 **Q. What is your evaluation of Dr. Staihr's explanation for rejecting the capital structure of**
 16 **the sample of publicly-traded CLECs?**

17

18 A. The basis for his arbitrary decision is:

19 Because the CLEC-specific capital structure proposed by Dr. Billingsley is based on
 20 data reflecting amount of CLEC debt and equity for existing firms that do not
 21 represent a new entrant in today's market. In particular, the relative amount of debt
 22 proposed by Dr. Billingsley (roughly 87%) is obviously inappropriate, because many
 23 of the very firms represented in Dr. Billingsley's Exhibit RSB-3 had significantly lower
 24 relative percentage of debt when they entered the market. An appropriate capital
 25 structure, with relatively less debt, produces a more appropriate WACC ... (Rebuttal
 26 Testimony, p. 41, line 19 – p. 41, line 2).

1 Thus, Dr. Staihr's rationale for rejecting the "CLEC-specific capital structure" is apparently based
2 on his speculation that the sample of market-traded CLECs "... had significantly lower relative
3 percentages of debt when they entered the market."
4

5 While Dr. Staihr does not document his speculation, it does not matter because the argument is
6 invalid nonetheless. If the CLECs had different capital structures in the past then they presumably
7 had different costs of equity and debt as well. Dr. Staihr is again inconsistently mixing cost of
8 capital and capital structure estimates in a way that incorrectly inflates the estimate of CLECs'
9 overall cost of capital for use in the BACE model. Unlike Dr. Staihr's method, my estimation
10 approach averages the cost of debt, cost of equity, *and* capital structure estimates derived from
11 the S&P 500 and a sample of publicly-traded CLECs in a way that consistently matches capital
12 costs and their associated capital structures.
13

14 **Q. Is Dr. Staihr's position on CLEC capital structure consistent with the cost of capital**
15 **assumption made by another Sprint witness, Mr. Ken W. Dickerson?**
16

17 A. No, their positions are inconsistent and contradictory. I will summarize each witness' positions,
18 identify implicit assumptions, and then evaluate the consistency and reasonableness of their cost of
19 capital conclusions.
20

21 As noted above, Dr. Staihr argues that "... the relative amount of debt proposed by Dr.
22 Billingsley (roughly 87%) is obviously inappropriate, because many of the very firms represented
23 in Dr. Billingsley's Exhibit RSB-3 had significantly lower relative percentage of debt when they
24 entered the market" (Rebuttal Testimony, p. 41, lines 21-24). Thus, a capital structure that is
25 weighed heavily toward debt is considered "inappropriate."
26

1 Mr. Kent W. Dickerson, also filing on behalf of Sprint, uses an after-tax discount rate of 10.14%
2 in his analysis of collocation and power costs (Rebuttal Testimony of Kent W. Dickerson, Exhibit
3 KWD-4 and Exhibit KWD-5). Using an assumed federal tax rate of 35%, a state tax rate of
4 5.5%, and the 9.92% pre-tax cost of debt and 20.84% cost of equity rates assumed by Dr.
5 Staihr, the implied capital structure can be determined. The data imply a capital structure of
6 71.5% debt and 28.5% equity. This differs from my average capital structure of 58.5% debt and
7 41.5% equity that Dr. Staihr adopts in some of his analysis. The 71.5% debt component seems
8 rather close to what Dr. Staihr would consider too debt- intensive given his adoption of a 58.5%
9 component as acceptable. This draws into question the consistency of Dr. Staihr and Mr.
10 Dickerson's cost of capital conclusions.

11

12 **Q. What ultimate effect does Dr. Staihr's incorrect revisions of your cost of capital**
13 **estimates have on the NPV produced by the BACE model?**

14

15 A. Ultimately Dr. Staihr finds that the NPV in the BACE model remains positive, which indicates that
16 there is no evidence of impairment (see Rebuttal Testimony, p. 42, line 22 – p. 43, line 2).

17

18 **VI. ANALYSIS OF MR. KENT W. DICKERSON'S REBUTTAL TESTIMONY ON**
19 **BEHALF OF SPRINT/UNITED MANAGEMENT COMPANY**

20

21 **Q. Does Mr. Dickerson take a position concerning capital costs used in the BACE model**
22 **and, if so, what is your assessment of his position?**

23

24 A. Yes. As discussed above, Mr. Dickerson uses a pre-tax overall cost of capital than of 10.14% in
25 analyzing collocation and power costs. However, there is no explanation in his testimony of how
26 this cost of capital is determined. Mr. Dickerson's cost of capital is inconsistent with Dr. Staihr's

1 cost of capital conclusions. Given the lack of any evidence to support Mr. Dickerson's cost of
2 capital and the inconsistency between the two Sprint witnesses, my assessment is that Mr.
3 Dickerson provides no substantive cost of capital estimates or analysis.

4

5 **Q. What does Mr. Dickerson conclude concerning the internal rate of return of the cash**
6 **flows produced by the BACE model and of what relevance is this calculation to the**
7 **current proceeding?**

8

9 A. Mr. Dickerson describes his analysis as follows:

10 ... the net present value of each yearly net cash flow was calculated using the
11 discount rate which generated an overall net present value of zero for the 10-year
12 planning period. This discount rate of 37.4% is, by definition, the internal rate of return
13 (IRR) on this project. In other words, this is the rate of return that a competitor
14 entering Bellsouth's territory in Florida ... should be expected to earn while providing
15 competitive telephone service, if the assumptions in the BACE model are correct
16 (Rebuttal Testimony, p. 25, line 25 – p. 26, line 3).

17 Assuming Mr. Dickerson calculated it correctly, an IRR of 37.4% sounds impressive at first blush.
18 However, the fragile reinvestment assumption residing behind the analysis reveals that the IRR
19 conveys nothing of value about the reasonableness of the BACE model. The NPV technique
20 assumes that all of the cash flows generated by an investment can be *reinvested at the cost of*
21 *capital*. This is a *conservative*, realistic assumption given that the chosen cost of capital reflects
22 the riskiness of the investment under consideration. In dramatic contrast, the IRR technique makes
23 the heroic implicit assumption that all of the cash flows generated by an investment can be
24 *reinvested at the IRR*, which will be in excess of the appropriate risk-adjusted cost of capital for
25 acceptable investments.

26

1 Mr. Dickerson would have us mistakenly believe that the BACE model predicts that “a
2 competitor entering Bellsouth’s territory in Florida” can expect to earn a rate of return of 37.4%,
3 which allegedly reveals that the BACE model is flawed. This is nonsense and the BACE model
4 says no such thing. The BACE model is designed to calculate the NPV of a competitor entering
5 BellSouth’s territory in Florida and earning a risk-adjusted overall, pre-tax rate of return on its
6 investment of 13.09% - *not* 37.4%. Accordingly, the BACE model realistically assumes that a
7 competitor will reinvest its cash flow return over the 10-year horizon at a rate of 13.09%. The
8 only thing we can reasonably conclude about Mr. Dickerson’s calculated IRR is that it is above
9 the cost of capital and indicates that there is no impairment of CLEC entry in Florida. The positive
10 NPV generated by the BACE model provides the same result.

11 12 **VII. SUMMARY OF COST OF CAPITAL ANALYSIS FOR BACE MODEL**

13
14 **Q. Please summarize your recommendation concerning the appropriate pre-tax overall cost**
15 **of capital that should be used to calculate the NPV in the BACE model.**

16
17 A. As presented in my previously filed direct testimony in this proceeding, my cost of capital
18 estimation approach adapts to the data problems resulting from the current troubled environment
19 facing the CLEC industry. I essentially provide “ceiling” and “floor” estimates of the industry’s
20 capital costs. Thus, I use two surrogates to measure the representative CLEC’s capital costs. I
21 use the S&P 500 as a lower-bound or minimum estimate of the representative CLEC’s cost of
22 capital and I also use a sample of publicly-traded CLECs that provides an upper-bound or
23 maximum estimate of the representative CLEC’s cost of capital. I then provide a reasonable
24 estimate of the industry’s overall capital costs by averaging the results of my two approaches.

25
26 My analysis indicates that a forward-looking cost of equity estimate for the representative CLEC

1 is an average of 17.55%. I also find evidence that the cost of debt of the representative CLEC is
2 an average of 9.92%. The average market value-based capital structure of firms is 58.50% debt
3 and 41.50% equity. Combining this average capital structure with the above average costs of debt
4 and equity produces an average pre-tax overall cost of capital for the representative CLEC of
5 13.09%. This bounded averaging approach provides the most reasonable estimate of efficient
6 CLEC capital costs in the current environment.

7

8 In summary, I recommend that the Commission use a *before-tax* overall cost of capital of
9 13.09% to discount the cash flows produced by the BACE CLEC business case model.

10

11 **Q. Does this conclude your surrebuttal testimony**

12

13 A. Yes, it does.

14

15

1 CHAIRMAN BAEZ: Next.

2 MS. MAYS: Thank you, Mr. Chairman. The next witness
3 is BellSouth witness Mr. Eric Fogle. He has filed rebuttal and
4 surrebuttal testimony, and he has no errata. And he has not
5 been, also not been identified by either party, and we would
6 ask that his testimony be admitted and that he be excused.

7 CHAIRMAN BAEZ: Without objection, BellSouth Witness
8 Fogle's testimony will be entered into the record as though
9 read. And seeing no intent on cross-examination, the witness
10 is excused.

11

12

13

14

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1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF ERIC FOGLE
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 030851-TP
5 JANUARY 7, 2004
6

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

10
11 A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., in support
12 of BellSouth as a Director in BellSouth's Interconnection Operations
13 Organization. My business address is 675 West Peachtree Street, Atlanta,
14 Georgia 30375.

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

18
19 A. I attended the University of Missouri in Columbia, where I earned a Master of
20 Science in Electrical Engineering Degree in 1993 and Emory University in
21 Atlanta, where I earned a Master of Business Administration degree in 1996.
22 After graduation from Missouri, I began employment with AT&T as a Network
23 Engineer, and joined BellSouth in early 1998 as a Business Development Analyst
24 in the Product Commercialization unit. From July 2000, through May 2003, I was

1 responsible for the Wholesale Broadband Marketing group within BellSouth. I
2 assumed my current position in June 2003. First, as a Business Analyst, and then
3 as the Director of the Wholesale Broadband Marketing Group, I have been
4 actively involved in the evolution and growth of BellSouth's DSL based services
5 as well as the underlying technology.

6

7 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

8

9 A. The purpose of my testimony is to rebut the direct testimony of Mr. Van de Water
10 and Mr. Bradbury on behalf of AT&T, and Mr. Webber on behalf of MCI by
11 demonstrating that BellSouth has in place a hot cut process for loops that involve
12 Line Sharing and Line Splitting xDSL services during UNE-P to UNE-L
13 migrations. My testimony also demonstrates, contrary to any suggestion of
14 Supra's Mr. Stahly, that BellSouth has voluntarily involved the CLEC community
15 in the development of this process, including prioritization of BellSouth work
16 efforts regarding Line Sharing, Line Splitting and various subsequent migration
17 scenarios in which the CLECs are just now becoming interested.

18

19 Q. PLEASE DESCRIBE WHAT YOU MEAN BY A UNE-P AND A UNE-L.

20

21 A. A UNE-P is a combined loop and port. For a UNE-P, the loop and port are
22 combined in BellSouth's network. A UNE-P does not require any additional
23 elements, nor does UNE-P require either collocation or additional switching
24 capability in order to provide a functioning service for the end-user. A UNE-L is

1 a standalone UNE Loop, and requires collocation and additional switching
2 capability (both provided by the facilities based CLEC) in order to provide a
3 functioning service for the end-user.

4

5 Q. WHAT IS LINE SPLITTING?

6

7 A. Line splitting occurs when a voice CLEC provides voice service and a different
8 data LEC (“DLEC”) provides the xDSL service. This dual provider arrangement
9 is known as Line Splitting. BellSouth offers Line Splitting as a service to CLECs
10 and DLECs, to accommodate the sharing of the spectrum between the voice and
11 data services provided by each carrier. As part of this service, BellSouth will
12 provide cross-connects, and, if requested, a frequency splitter (although BellSouth
13 is not obligated to provide the splitter). BellSouth simply acts as a mere
14 facilitator between the CLEC and the DLEC.

15

16 Q. HOW DOES A UNE-P WORK WITH LINE SPLITTING?

17

18 A. When a carrier with an existing UNE-P combination enters into a Line Splitting
19 arrangement with another carrier, the loop that has historically been used to serve
20 the customer is no longer combined with the port, therefore breaking up the UNE-
21 P platform. Instead, central office work is performed to cross-connect the loop to
22 a splitter, which one of the CLECs usually owns. The splitter separates the
23 frequency used to provide the voice service from the frequency used to provide
24 the data services. From there, another collocation cross-connection is used to

1 carry the voice signal to the port on the voice CLEC's switch, while the data
2 signal is carried to the DLEC's network. Thus, the loop and port are no longer
3 combined but, rather, are separated by two collocation cross-connections and a
4 piece of CLEC-provided equipment. Exhibit EF-1 depicts a typical line splitting
5 arrangement. Exhibit EF-2 depicts a typical UNE-P arrangement. As can be
6 clearly seen by comparing the two drawings, the line splitting arrangement bears
7 little resemblance to the UNE-P arrangement, and it is obvious that the UNE loop
8 and port services purchased by the CLECs for the purposes of line splitting are
9 very different from the UNE-P purchased by the CLECs.

10

11 Q. ON PAGE 46, MR. VAN DE WATER DEFINES LINE SPLITTING SERVICES
12 AS A "UNE-P BASED." IS THIS CHARACTERIZATION ACCURATE?

13

14 A. No. This is a common misconception throughout the industry. Line Splitting can
15 not be provisioned over a UNE-P. The UNE-P (also known as UNE Platform) is
16 only a combined UNE Port and a UNE Loop. By FCC definition it is impossible
17 to have Line Splitting via UNE-P. In order to use a UNE-P facility for Line
18 Splitting, the CLEC must convert the UNE-P to a loop and port as the FCC
19 clearly explained in the Texas 271 Order, ¶ 325. ("For instance, if a competing
20 carrier is providing voice service using the UNE-platform, it can order an
21 unbundled xDSL-capable loop terminated to a collocated splitter and digital
22 subscriber line access multiplexer ("DSLAM") equipment and unbundled
23 switching combined with shared transport, *to replace its existing UNE-platform*
24 *arrangement* with a configuration that allows provisioning of both data and voice
25 *services.*")(emphasis added). Accordingly, a UNE-P cannot be used in a Line

1 Splitting environment but rather would need to first be converted to a shared UNE
2 Loop, a UNE Port and cross connects. The shared UNE Loop used in this
3 scenario is often referred to as a “shared loop”.

4

5 The UNE-L is just that, a standalone UNE Loop that runs from the ultimate end-
6 user to a collocation cage in the serving wire center. To use a UNE-L in a Line
7 Splitting environment, the CLEC would need to have the necessary equipment in
8 their collocation cage connected to the UNE-L. Accordingly, a UNE-L is but one
9 piece of a total Line Splitting solution.

10

11 Q. WHO OWNS THE SPLITTER IN A LINE SPLITTING ARRANGEMENT?

12

13 A. Under the TRO, the CLEC is responsible for owning the splitter. In addition,
14 BellSouth will provide the splitter at market rates.

15

16 Q. ON PAGE 20, LINES 14-15, MR. WEBBER STATES BELLSOUTH’S HOT
17 CUT PROCESS DOES NOT INCLUDE LINE SPLITTING, AND ON PAGE 46,
18 MR. VAN DE WATER ALSO MENTIONS THAT LINE SPLITTING IS NOT
19 INCLUDED IN BELLSOUTH’S CURRENT BULK HOT CUT PROCESS.
20 PLEASE COMMENT.

21

22 A. With a CLEC-owned splitter, which is all that the TRO requires, the CLEC can
23 manage their own ‘hot cut’ process for the voice service, without any involvement
24 or coordination from BellSouth. The CLEC would simply disconnect the

1 BellSouth switch port when moving the voice customer to its own switch port. A
2 subsequent order can then be placed to disconnect the BellSouth switch port that
3 is no longer in use. The responsibility for the migration (if any) of the data
4 service in this scenario lies with the CLEC who owns the splitter. Conversions of
5 line-splitting are not encompassed in BellSouth's batch migration process because
6 that process applies only to UNE-P to UNE-L migrations and, as described above,
7 line splitting does not utilize UNE-P.

8

9 Q. HOW IS THE HOT CUT PROCESSE DIFFERENT IF BELLSOUTH OWNS
10 AND MAINTAINS THE SPLITTER, VS. THE DLEC OWNING AND
11 MAINTAINING THE SPLITTER?

12

13 A. CLECs have the option in many situations of utilizing a BellSouth-owned splitter.
14 CLECs need to weigh this option against the benefits of owning their own
15 splitters. Introduction of any third party (in this case BellSouth) ownership of the
16 splitter may add possible down time for the end user during migrations.
17 Additionally, if the existing Line Sharing or Line Splitting scenario is with a
18 BellSouth owned splitter and the CLEC is migrating to a UNE-L, this requires a
19 change from a BellSouth owned splitter to a CLEC owned splitter. This change
20 requires altering cabling and accordingly the CLEC's end user will experience
21 some xDSL service down time until the responsible CLEC completes the new
22 cabling on their splitter.

23

1 If the existing Line Sharing or Line Splitting scenario is currently provisioned
2 with a CLEC owned splitter, it is possible that no change in the splitter cabling
3 would be necessary at the moment the CLEC migrates to a UNE-L. However,
4 that is totally under the control of the CLEC, and only the CLEC would be able to
5 determine the impact.

6

7 Q. IS IT POSSIBLE TO HAVE A VOICE SERVICE MIGRATION WITHOUT
8 ANY INTERRUPTION OF CLEC'S DSL SERVICE?

9

10 A. Absolutely. With a CLEC-owned splitter, the CLEC can complete the hot cut of
11 the voice service without interruption to the DSL service. In fact, unless the
12 CLEC wants to move the DSL service, it is not necessary for any changes to be
13 made to the DSL service.

14

15 Q. DOES THE BATCH MIGRATION APPLY TO LINE SPLITTING?

16

17 A. No, BellSouth's batch hot cut process only applies to UNE-P to UNE-L
18 conversions which were the subject of the TRO. As explained above, by FCC
19 definition, Line Splitting cannot be accomplished using UNE-P and accordingly,
20 the batch process is not applicable to hot cuts for lines that involve Line Splitting.
21 CLECs can submit these orders, however, via the individual hot cut process.
22 Given the low volume of line sharing and line splitting arrangements (less than
23 400 line splitting and less than 8000 line sharing) in Florida today, the batch
24 process is not necessary to convert the embedded base.

1 Q. WOULD YOU PLEASE EXPLAIN WHY LINE SPLITTING WITH UNE-L,
2 CLEC PROVIDED SWITCHING, AND CLEC-OWNED SPLITTER IS JUST
3 NOW BECOMING AN ISSUE FOR CLECS?
4

5 A. Line Splitting with CLEC provided switching and a CLEC-owned splitter is a
6 totally new concept. Until October 2, 2003, Line Splitting was only available via
7 a UNE Port, a UNE Loop, and collocation cross connects. The FCC, in its
8 Triennial Review Order on page 10 of the Rules (§51.319(a)(1)(ii)(A)) for the
9 first time expanded the definition of Line Splitting to include CLEC provided
10 switching. Accordingly, now that the telecommunications industry has had time to
11 read and digest the many changes contained in the FCC's Triennial Review
12 Order, new ways of delivering xDSL services to end users are just now being
13 considered and evaluated. Because this is all so new to all involved parties, it is
14 just now being discussed between BellSouth and CLECs.
15

16 Q. HAS BELLSOUTH TAKEN STEPS TO FACILITATE LINE SPLITTING
17 WHEN A CLEC PROVIDES ITS OWN SWITCHING?
18

19 A. Yes. In its purest form, Line Splitting with a CLEC providing its own switching
20 requires almost no effort on BellSouth's part. BellSouth's obligation is to insure
21 that the CLECs have the ability to order the UNE-L from the end user to their
22 collocation cage in the serving wire center. All other requirements to effectuate
23 Line Splitting with CLEC provided switching are under the exclusive control of
24 the CLEC and are the responsibility of the CLEC, not BellSouth. However,

1 BellSouth has voluntarily gone beyond its obligations to assist the CLEC in
2 facilitating various Line Splitting scenarios via the BellSouth/CLEC Line Sharing
3 and Line Splitting Collaborative, as discussed later in this testimony.

4

5 Q. HOW MANY CLEC XDSL LINES ARE POTENTIALLY AFFECTED BY
6 THESE CONVERSIONS?

7

8 A. As of October 31, 2003, in Florida BellSouth had a total of 385 Line Splitting
9 lines in service, and a total of 7,938 Line Sharing lines in service. In the most
10 unlikely event that all Line Sharing lines in service in Florida converted to Line
11 Splitting, and then all Line Splitting converted to UNE-L, the maximum total
12 potential number of lines would only be 8,323. This hypothetical total conversion
13 of all shared loop lines in Florida to Line Splitting via UNE-L, 8,323 is
14 approximately 1% of all CLEC owned UNE-P and UNE loops in Florida.

15

16 Q. ON PAGE 46, MR. VAN DE WATER STATES "WHILE THERE IS NO
17 TECHNICAL REASON THAT THE OUTPUT OF THE BELLSOUTH
18 SPLITTER COULD NOT BE HOT CUT TO THE VOICE CLEC DIRECTLY
19 FROM THE MDF, AS A MATTER OF POLICY, BELLSOUTH REFUSES TO
20 DO IT." PLEASE COMMENT.

21

22 A. What Mr. Van de Water notably fails to mention is that BellSouth is not obligated
23 to provide a splitter. Thus, while BellSouth welcomes requests from CLECs for
24 new services provided at market based rates, there is no obligation for BellSouth

1 to continue to facilitate line splitting between CLECs and DLECs by providing
2 splitter functionality, if enough CLECs or DLECs wished to purchase BellSouth's
3 splitter functionality at market base rates, then BellSouth would be willing to
4 pursue such an offering.

5

6 Q. ON PAGE 47, MR. VAN DE WATER STATES "THE ONLY PRACTICAL
7 PROCESS AVAILABLE IN BELLSOUTH TERRITORY BY WHICH CLECS
8 AND DLECS CAN IMPLEMENT UNE-L LINE SPLITTING TODAY IS
9 THROUGH THE USE OF PRE-WIRED (DEDICATED) CAGE-TO-CAGE
10 CABLING BETWEEN THEIR RESPECTIVE COLLOCATIONS TO ENABLE
11 INTERCONNECTION OF THE NECESSARY EQUIPMENT..." HE GOES
12 ON TO EXPLAIN IN A FOOTNOTE THAT "CLECS COULD
13 THEORETICALLY INSTALL NON-DEDICATED CAGE-TO-CAGE
14 CABLING BETWEEN THEIR COLLOCATIONS, BUT THIS WOULD
15 REQUIRE A DISPATCH TO EACH PARTY'S COLLOCATION CAGE TO
16 IMPLEMENT EACH NEW VOICE/DSL CUSTOMER'S SERVICE." WHICH
17 APPROACH IS ACTUALLY MORE FEASIBLE?

18

19 A. Dispatching on every DSL order is actually more feasible then providing
20 dedicated cabling at the considerable expense Mr. Van de Water describes.
21 BellSouth's current process for wiring DSL customers requires a dispatch to the
22 remote terminal, or at the main distribution frame in the central office, for every
23 new DSL order. Even at high DSL order volumes, this approach is more cost
24 effective then wiring dedicated cabling between DSLAMs and voice switches.

1 With the penetration rate of DSL service at approximately 10% of voice lines in
2 Florida, it does not make sense to utilize dedicated wiring for such a low take rate.

3

4 Q. ON PAGE 48, MR. VAN DE WATER DESCRIBES SUPPOSED
5 OPERATIONAL CONCERNS ASSOCIATED WITH CAGE-TO-CAGE
6 CROSS CONNECTS (AND THE ASSOCIATED CFAS) AND ROUTING OF
7 THE CLEC'S VOICE PATH THROUGH A DLEC'S COLLOCATION SPACE.
8 HOW SIMPLE ARE THE MITIGATING SOLUTIONS TO BOTH OF THESE
9 'CONCERNS'?

10

11 A. If the CLECs share the concerns that Mr. Van De Water has alluded to, then they
12 have a relatively simple solution that they can employ to mitigate almost all of his
13 concerns. Specifically, the voice CLEC could install and maintain their own
14 splitters, and they could approach BellSouth to provide technician dispatches at
15 market rates.

16

17 Q. HOW DOES HAVING THE VOICE CLEC PROVIDE ITS OWN SPLITTERS
18 MITIGATE MANY OF THE CONCERNS THAT MR. VAN DE WATER
19 RAISES?

20

21 A. By installing and maintaining its own splitter in the CLECs collocation cage, the
22 CLEC's voice service will no longer pass through the DLEC's collocation cage.
23 Since the DLEC is no longer in the voice path, they would not be required to
24 troubleshoot voice service troubles with the CLEC and ILEC. In addition, the

1 DLEC could pre-wire a number of DSLAM ports to the cables coming from the
2 splitter, which would reduce dispatch costs, since only the CLEC would need to
3 dispatch for wiring once a DSL order is received. This method would allow all
4 other voice service wiring procedures to remain 'as is,' and would only require
5 modifications for the relatively few customers that desire DSL service.

6 For those dispatches that do remain, the CLECs could approach BellSouth to
7 develop a market based agreement to provide dispatch services for the CLECs.
8 Because BellSouth is the party most likely to have trained technicians located at
9 or near the CLEC's collocation cage, a market based rate would likely save the
10 CLECs considerable costs associated with dispatching technicians to central
11 offices.

12

13 Q. MR. VAN DE WATER DESCRIBES THE NEED FOR ADDITIONAL CFA
14 ASSIGNMENTS IN ORDER TO BE ABLE TO CONNECT DLEC-PROVIDED
15 DSL SERVICES WITH CLEC-PROVIDED VOICE SERVICES. HOW
16 DIFFICULT IS KEEPING THE RECORDS BETWEEN THE DLEC AND
17 CLEC?

18

19 A. Managing CFAs and other assignments is a core functionality of any telephone
20 company. With the number of customer records, the complexity of managing
21 facility assignments throughout the network, and interconnection agreements with
22 ILECs, IXCs and others, managing customer and network records is critical to the
23 ongoing business of any CLEC. The requirements for CLEC to DLEC CFAs is
24 no less, or no more, complicated than any other type of record keeping, and the

1 CLECs have no relative advantage, or disadvantage to BellSouth when it comes
2 to keeping records.

3

4 Q. BASED ON THE MITIGATING ALTERNATIVES DESCRIBED ABOVE,
5 HOW ACCURATE ARE THE 'COSTS' DESCRIBED BY MR. VAN DE
6 WATER FOR USING A LINE SPLITTING ARRANGEMENT WITH CLEC
7 PROVIDED SWITCHING?

8

9 A. As described above, dispatching technicians to 'recreate' the facility connections
10 when adding a DLEC provided DSL service is the most economically feasible
11 alternative. Now that a technician is available to recreate the DSL connection, re-
12 using the formerly voice only DLC port is a valid option. Therefore, 88% of the
13 'costs' described by Mr. Van De Water are no longer warranted.

14

15 Q. PLEASE EXPLAIN HOW CLECS AND DLECS CAN IMPROVE THIS
16 PROCESS WITHOUT REQUIRING ANY INVOLVEMENT FROM
17 BELLSOUTH.

18

19 A. CLECs could best serve themselves by strengthening the arrangements they have
20 amongst themselves. As explained in this testimony, BellSouth is merely a
21 facilitator of Line Splitting and not actually a directly involved party. All of the
22 necessary components for Line Splitting are currently available to CLECs. It
23 must be noted that much of the necessary work when migrating to Line Splitting
24 via UNE-L needs to be done by the CLEC. Accordingly, the CLEC has

1 considerable control over the extent of down time the CLEC xDSL end user
2 would experience. Just like BellSouth, CLECs need to develop the necessary new
3 processes, test them, enhance them, and refine them to the point where they are
4 operationally efficient in order to minimize end user down time.

5

6 Q. DO ANY OF THE ABOVE MENTIONED MIGRATION SCENARIOS
7 REQUIRE USE OF AN ASR?

8

9 A. No, for all Line Splitting scenarios, and migrations to Line Splitting, CLECs only
10 need to use existing LSR processes. ASRs are not needed for any currently
11 available components needed for Line Splitting.

12

13 Q. ARE THERE ANY SCENARIOS WHERE PLACING MULTIPLE ORDERS
14 ARE REQUIRED TO DO A SINGLE CONVERSION?

15

16 A. There are a few situations that may require two LSRs be submitted. The first such
17 situation would be where an end user is moving from one location to another. In
18 order to establish a shared loop scenario (Line Sharing or Line Splitting via a
19 UNE Loop, UNE Port and cross connects) the loop at the customers new address
20 must first have dial tone established. Accordingly, this would require two orders,
21 one for the voice service and a second to establish the loop sharing. However,
22 these orders can be "related" and worked together. A second scenario would be
23 where an end user desires to establish an additional line with xDSL at their
24 location. As with the above, the voice service must be established first, and then

1 the loop sharing may be established. Again, these orders can be “related” and
2 worked together. The third such scenario would be where the end user currently
3 does not have data and desires to change voice providers from BellSouth to a
4 CLEC and add a shared loop. In this case, if the end user is changing any of the
5 existing voice service (adding, deleting features, etc.) two orders would be
6 necessary. As stated above however, any of the remaining types of migrations
7 can be accomplished with a single LSR.

8

9 Q. WHAT EFFORTS HAVE BEEN MADE BY CLECS AND BELL SOUTH TO
10 DEVELOP PROCESSES AND PROCEDURES FOR SHARED LOOP
11 CONVERSIONS?

12

13 A. Since the inception of Line Sharing and Line Splitting, BellSouth voluntarily
14 established the BellSouth/CLEC Line Sharing/Line Splitting Collaborative.
15 BellSouth developed its shared loop products (Line Sharing and Line Splitting)
16 through a collaborative process with all interested CLECs. BellSouth invited
17 CLECs to a collaborative meeting in Atlanta on January 26, 2000. Twelve
18 CLECs participated in the meeting. The participants agreed to form several
19 working teams to develop, test, and refine the procedures for pre-ordering,
20 ordering, and provisioning the High Frequency Portion of the Loop (“HFPL”)
21 UNE so that CLECs and BellSouth could implement line sharing successfully.
22 The first meeting of the working teams was held on February 2, 2000. The
23 participants jointly decided to have two sub-committees: a technical sub-
24 committee and a systems/process sub-committee. Each sub-committee would

1 meet one day each week. The technical sub-committee worked on technical
2 issues, such as systems/network architecture and testing. The systems/process
3 sub-committee focused on the pre-ordering, ordering, provisioning, maintenance,
4 and billing issues associated with line sharing. Each sub-committee listed and
5 prioritized issues and action items. The sub-committees addressed and resolved
6 issues essential to the development of the architecture and operations plan for the
7 line sharing product. Beginning April 12, 2000, the collaborative consolidated the
8 two sub-committees, and the full committee then conducted the collaborative
9 meetings on one full day each week. Subsequently the Collaborative changed the
10 meeting schedule to one half day, twice per month.

11

12 BellSouth also provides a web site for Line Sharing and Line Splitting
13 information including meeting logistics, meeting minutes, process flow and
14 procedures. The web site can be found at
15 [http://www.interconnection.bellsouth.com/markets/lec/line_sharing_collab/index.](http://www.interconnection.bellsouth.com/markets/lec/line_sharing_collab/index.html)
16 [html](http://www.interconnection.bellsouth.com/markets/lec/line_sharing_collab/index.html)

17

18 Q. WHO IS REPRESENTED IN THE BELLSOUTH / CLEC LINE SHARING
19 AND LINE SPLITTING COLLABORATIVE?

20

21 A. Since its inception, the following are some of the companies providing
22 representation and input to the Collaborative: Aircovr, A-Call, AT&T,
23 BellSouth, BlueStar, Covad, Duro Communications, MCI/WorldCom, MTA

1 Consulting, Network Telephone, New Edge, NorthPoint, Rhythms, Sprint,
2 Volaris, and WebShoppe.

3

4 Q. HAVE THE CLECS AND DLECS EXPRESSED ANY INTEREST IN THE
5 VARIOUS HOT CUT SCENARIOS YOU HAVE DESCRIBED EARLIER?

6

7 Yes, just recently, but their interest has been very limited and generally only
8 relates to a few specific situations. The first such expression of CLEC interest
9 was raised during the September 18, 2003 BellSouth/CLEC Line Sharing and
10 Line Splitting Collaborative (“Collaborative”). A CLEC requested an agenda
11 item to address BellSouth’s plans to support Line Splitting OSS changes based on
12 the recent TRO requirements. At the next Collaborative this issue was listed on
13 the Agenda as a discussion item as requested by the CLEC however, in
14 accordance with Collaborative policy, because the requesting CLEC was not in
15 attendance, the discussion was tabled until the next scheduled meeting. During
16 the October 16, 2003 Collaborative meeting the CLEC’s issue was specifically
17 identified as BellSouth’s readiness to provide Line Splitting with CLEC voice via
18 CLEC switch in an electronic ordering environment with seamless provisioning.

19

20 Q. ARE YOU SAYING THAT BELLSOUTH’S HOT CUT PROCESS ON LINE
21 SHARING AND LINE SPLITTING IS A SIGNIFICANT CONCERN TO THE
22 CLECS?

23

24 A. No, at least not according to their actions. The CLECs’ lack of action in the
25 formal forum for them to work with BellSouth to effectuate change indicates that

1 hot cuts impact on xDSL service are not currently of significant concern to them.

2

3 Q. PLEASE EXPLAIN HOW BELL SOUTH DECIDES WHICH DLEC
4 REQUESTS IT WILL WORK ON, AND WHEN?

5

6 A. Since the inception of Line Sharing and Line Splitting, BellSouth has continually
7 solicited input, direction and prioritization from CLECs via the BellSouth/CLEC
8 Line Sharing/Line Splitting Collaborative, of which AT&T, MCI/WorldCom,
9 Sprint, Covad, and several others are members. Basically, BellSouth asks the
10 CLECs to provide a prioritized list of the CLEC's requests for enhancements,
11 changes, modifications, etc. to Line Sharing /Line Splitting. The listing is then
12 presented to the Collaborative where the items and related prioritization is voted
13 on and approved by the Collaborative. BellSouth then uses the consolidated and
14 Collaborative approved prioritized listing of projects to determine the work
15 activity of the BellSouth internal team. The attached exhibit EF-3 shows the most
16 current CLEC prioritization of Line Splitting migrations. All requests on the first
17 page have already been prioritized by the CLECs, and completed by BellSouth.

18

19 Because of the recentness of the TRO and the lack of any significant quantity of
20 Line Splitting sales (including migrations to Line Splitting) within the BellSouth
21 region, the request for migrations and or hot-cuts to or from Line Splitting has just
22 recently been received by BellSouth. As of the November 13, 2003

23 BellSouth/CLEC Line Sharing and Line Splitting Collaborative, the CLECs have
24 not yet fully defined or developed their requests, let alone prioritized them. Once

1 received from the CLECs, BellSouth will have the CLECs prioritize and then vote
2 to approve the prioritization of the desired UNE-L migrations, including any hot
3 cut scenarios.

4

5 a. HAVE THE CLECS FORMALLY REQUESTED BELLSOUTH TO BEGIN
6 WORK ON ESTABLISHING ANY ADDITIONAL PROCEDURES, ETC. FOR
7 HOT CUTS OR MIGRATIONS TO UNE-L AS EXPLAINED ABOVE?

8

9 A. No. That is what is confusing. As previously mentioned, the CLECs are raising
10 many of these issues to this Commission but have yet to provide BellSouth with a
11 prioritized listing of what they are desiring.

12

13 Q. PLEASE DESCRIBE THE STAND ALONE FASTACCESS SOLUTION THAT
14 WAS RECENTLY IMPLEMENTED IN FLORIDA IN RESPONSE TO THE
15 DSL OVER UNE-P DOCKETS.

16

17 A. BellSouth has implemented a FPSC ordered standalone FastAccess solution for
18 end-user customers that have their voice service provided by a CLEC that utilizes
19 either UNE-P or UNE-L. The StandAlone FastAccess solution utilizes a separate,
20 BellSouth owned facility, and is not impacted by any conversions of the voice
21 line. Therefore, any UNE-P to UNE-L conversion, including individual or batch
22 hot cuts, will not impact the StandAlone FastAccess end users.

23

1 Q. ON PAGE 42 OF HIS TESTIMONY, MR. BRADBURY STATES
2 “ADDITIONALLY, EXCEPT WHEN THE IDLC CUSTOMER CAN BE
3 PLACED ON A COPPER LOOP LESS THEN 18,000 FEET IN LENGTH
4 CLECS ARE DENIED THE CAPABILITY TO PROVIDE DSL SERVICE TO
5 THEIR CUSTOMERS.” PLEASE EXPLAIN WHAT CAPABILITIES CLECS
6 HAVE TO CONTINUE TO PROVIDE BROADBAND SERVICES TO THEIR
7 END USERS.

8

9 A. CLECs have numerous options available for serving the broadband needs of their
10 end-user customers in cases other than where IDLC customers can be placed on a
11 copper loop less than 18,000 feet. Specifically, any CLEC can: (1) place its own
12 DSLAM at the DLC remote terminal as BellSouth does in such a situation, (2)
13 provision the end-user customer with Integrated Services Digital Network
14 (“ISDN”) Digital Subscriber Line (“IDSL”) service, (3) Provide the customer
15 with a dedicated T1 connection, (4) partner with a cable broadband provider to
16 provide cable modem broadband service, (5) purchase BellSouth’s tariffed
17 wholesale DSL offering, (6) deploy a fixed wireless broadband technology, and
18 (7) partner with a satellite broadband provider.

19

20 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

21

22 A. As becomes readily apparent from the above testimony, BellSouth already has in
23 place the needed processes to handle all known CLEC requested migration
24 scenarios. In particular, if the CLEC owns the splitter, as it is obligated to do, the

1 CLEC can cut a loop from the BellSouth switch port to a CLEC switch port using
2 its own processes without interruption to the DSL service. In addition, BellSouth
3 has demonstrated that CLECs are not harmed in any way with a conversion of
4 Line Splitting via UNE Loop, UNE Port and cross connects to a UNE-L. In
5 addition to the requirements, BellSouth has, is, and will continue to voluntarily
6 provide various items at market based rates to assist the CLEC community with
7 better serving their end user customers. Additionally, BellSouth has had a long-
8 standing forum for CLECs to bring their new ideas, needs and requests to the
9 attention of BellSouth, the BellSouth/CLEC Line Sharing and Line Splitting
10 Collaborative. Through this Collaborative not only are the CLECs able to assist
11 with the development of the various offerings, enhancements, etc., they
12 additionally have significant input into the prioritization of the BellSouth work
13 effort. As of the last Collaborative meeting, November 13, 2003, the CLECs had
14 not yet formulated their requests for conversions to or from Line Splitting.
15 BellSouth has continually demonstrated that it is diligent, prompt and attentive to
16 the requests of the CLECs, and is committed to remain so. To that end, even
17 though BellSouth stands ready and waiting, CLECs have not provided any
18 additional detailed process requests, nor prioritized any additional BellSouth work
19 efforts to help facilitate xDSL migrations with UNE-P to UNE-L or subsequent
20 migrations, even though the collaborative meetings with BellSouth has given
21 them ample opportunity to do so.

22
23
24
25

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes. Thank you.

4

1 BELL SOUTH TELECOMMUNICATIONS, INC.
2 SURREBUTTAL TESTIMONY OF ERIC FOGLE
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 030851-TP
5 JANUARY 28, 2004
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELL SOUTH
8 TELECOMMUNICATIONS, INC. ("BELL SOUTH") AND YOUR BUSINESS
9 ADDRESS.

10
11 A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc. as a Director in
12 BellSouth's Interconnection Operations Organization. My business address is 675 West
13 Peachtree Street, Atlanta, Georgia 30375.

14
15 Q. ARE YOU THE SAME ERIC FOGLE WHO FILED REBUTTAL TESTIMONY IN
16 THIS DOCKET?

17
18 A. Yes.

19
20 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?
21

22 A. My surrebuttal testimony responds to portions of the rebuttal testimony of Mark
23 David Van de Water of AT&T Communications of the Southern States, LLC
24 ("AT&T"), and Sherry Lichtenberg of MCI WorldCom Communications, Inc. and

1 MCIMetro Access Transmission Services, Inc. ("MCI").

2
3 Q. ON PAGE 11 OF HER TESTIMONY, MS. LICHTENBERG CRITICIZES THE
4 IMPACT OF THE BATCH ORDERING PROCESS ON LINE SPLITTING AND
5 OPINES THAT BELL SOUTH MUST CHANGE THE PROCESS SO THAT THE
6 CUSTOMER'S LINE SPLITTING ARRANGEMENT IS NOT TAKEN DOWN.
7 PLEASE COMMENT.

8
9 A. First, Ms. Lichtenberg's 'understanding' of when a "customer is served by a UNE-
10 P voice CLEC and a data CLEC over a line splitting configuration" is flawed. As I
11 explained in my rebuttal testimony, line splitting service is not compatible with a
12 UNE-P arrangement, as a splitter has been inserted between the UNE Port and
13 UNE Loop that were previously combined and provided to the CLEC as a UNE-
14 P. Since CLECs that use line splitting do not, by definition, use UNE-P, there is
15 no process that converts UNE-P customers to UNE-Ls that will affect the DSL
16 service of the end-user customer.

17
18 Second, Ms. Lichtenberg continues by saying that "a process that does not allow
19 the customer to retain his or her data provider when he moves to UNE-L is not
20 acceptable..." As outlined in my rebuttal testimony, if a CLEC is concerned
21 about the impact a change in the switch provider for the voice service would have
22 on DSL service, then the CLEC can easily address this concern by installing and
23 maintaining its own splitters, and performing the voice service UNE-P to UNE-L
24 migration without any assistance from BellSouth and without any interruption of

1 the data service. The simplest approach to resolving Ms. Lichtenberg's concerns
2 remains one in which the CLECs maintain and manage their own splitters.

3
4 Since the Triennial Review Order does not require BellSouth to provide a splitter,
5 BellSouth has met its obligations. Moreover, there is a process that the CLECs
6 can follow, even in the circumstances when BellSouth voluntarily provides a
7 splitter, that allows the end-user to retain his or her data provider after a
8 momentary disconnect (necessary when the CLEC moves the end-user's service
9 from a BellSouth splitter to a CLEC splitter), because the UNE Loop portion of
10 the service can be reused with the new service arrangement.

11
12 Q. ON PAGE 3, AND AGAIN ON PAGE 14, OF HIS TESTIMONY, MR. VAN DE
13 WATER IMPLIES THAT "BELLSOUTH IGNORES THE BASIC REALITY THAT
14 ITS 'BATCH' ORDERING PROCESS EXCLUDES CUSTOMERS WHO OBTAIN
15 DSL SERVICES VIA A LINE-SPLITTING ARRANGEMENT AND THOSE WHO
16 WOULD LIKE TO MOVE FROM ONE CLEC TO ANOTHER." PLEASE
17 COMMENT.

18
19 A. BellSouth does not ignore the fact that the batch ordering process excludes
20 customers that obtain their DSL service via a line splitting arrangement.
21 BellSouth's batch process is efficiently designed to move large numbers of CLEC
22 customers provisioned via UNE-P to UNE-L. The introduction of the splitter
23 between the UNE Port and the UNE-Loop breaks up the UNE-P, and therefore
24 excludes line splitting lines from the batch ordering process. Additionally, and
25 perhaps more importantly, at the end of 2003 there was a total of 1,506 line

1 splitting lines provisioned at the request of CLECs region-wide. With fewer line
2 splitting lines than BellSouth central offices, no batch migration process is
3 necessary.

4

5 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

6

7 A. Yes.

1 MS. MAYS: Thank you, Mr. Chair. I believe that the
2 remaining witnesses have all been identified, either in the
3 direct examination or the cross-examination, so we could go
4 through them one by one, if it pleases the Chair.

5 I'm sorry. Well, he's -- there's a witness who is in
6 the direct case but has not been identified for the
7 cross-examination, that's one caveat, but he will be testifying
8 to some degree.

9 CHAIRMAN BAEZ: That's something else entirely.
10 Okay.

11 MS. MAYS: Yes, Mr. Chair. And then there is an
12 adoption of the testimony of BellSouth Witness Tennyson. That
13 testimony has been adopted by BellSouth Witness Mr. John
14 Jackson. He is here, and that witness has been noticed for
15 cross-examination, and Mr. Jackson will stand in Mr. Tennyson's
16 stead.

17 CHAIRMAN BAEZ: Very well. That does it for you all?

18 MS. MAYS: Excuse me, Mr. Chair. One last matter.
19 We would also identify as the next two exhibits the exhibits to
20 the testimony of Mr. Billingsley as Number 60.

21 CHAIRMAN BAEZ: That consists of -- can you let me
22 know what they are?

23 MS. MAYS: I believe they are all identified in the
24 prehearing order, if it pleases the Chair. We would just refer
25 to the prehearing order.

1 CHAIRMAN BAEZ: That's a composite 60, the
2 Billingsley exhibits.

3 (Exhibit 60 marked for identification.)

4 MS. MAYS: And then as Number 61, the exhibits to
5 Mr. Fogle, which are also identified in the prehearing order.

6 CHAIRMAN BAEZ: Composite 61, Mr. Fogle's exhibits as
7 identified in the prehearing order.

8 (Exhibit 61 marked for identification.)

9 Mr. Chapkis.

10 MR. CHAPKIS: The only Verizon witness that hasn't
11 been called is Dr. William Taylor. However, I will say that
12 Verizon Witness Orville D. Fulp refers repeatedly to the
13 testimony of Dr. William Taylor regarding economic issues
14 surrounding the market definition. I think it might make sense
15 for those two to sit as a panel so that you don't have Dr. Fulp
16 pointing to an empty chair when he's asked questions about
17 economics. However, if the other side chooses to let Dr.
18 Taylor go, that's their prerogative. But I'll just say that
19 he, he is not an expert on economics and will be deferring
20 questions to an empty chair if they choose not to call him.

21 CHAIRMAN BAEZ: Well, I hate to -- I don't know how
22 to -- I'm not sure I know how to address that. I mean, in an
23 abundance of caution, Dr. Taylor, if it's on advice of your
24 counsel and his best judgment, if Witness Taylor can stick
25 around so that -- I mean, I don't --

1 MR. CHAPKIS: We'll have him available. I just
2 wanted to kind of put everybody on notice that I didn't see his
3 name and it was conspicuously absent, and I just wanted to make
4 sure that they weren't thinking that they were going to be able
5 to ask Fulp questions on economics because he had referred to
6 Taylor's testimony. That's Taylor's area of expertise. And
7 I'll leave that to their judgment.

8 CHAIRMAN BAEZ: Very well. Mr. Feil.

9 MR. FEIL: FDN had only one witness, Mr. Gallagher,
10 who has also been identified as a cross witness, and he will
11 also be part of the direct presentation.

12 CHAIRMAN BAEZ: Okay. Ms. Masterton.

13 MS. MASTERTON: Yeah. Let me just understand. I'm
14 just giving you the witnesses of Sprint who have not been
15 identified or not made --

16 CHAIRMAN BAEZ: We're starting off -- I think this
17 has morphed into witness issues, but I think that might even be
18 more efficient. But for starters just tell me who you've got
19 off the chart.

20 MS. MASTERTON: Okay. Yes. Okay. We have one
21 witness who has not been called and is not going to be part of
22 the direct, and that is Terry L. Alleman, and she filed direct
23 testimony only consisting of ten pages and she has no exhibits.
24 And I guess we're moving that into the record now; right?

25 CHAIRMAN BAEZ: And without objection, Witness

1 Alleman's direct testimony -- she didn't have any exhibits?

2 MS. MASTERTON: No exhibits.

3 CHAIRMAN BAEZ: Okay. Showing no exhibits, will be
4 moved into the record as though read. And seeing -- having
5 expressed no intention on cross-examination, Witness Alleman is
6 excused.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF FLORIDA

DIRECT TESTIMONY

OF

TERRY L. ALLEMAN

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Q. Please state your name, title, and business address.

A. My name is Terry L. Alleman. I am employed by Sprint Corporation as a Senior Analyst in Regulatory Policy. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

Q. Please briefly summarize your educational background and professional experience.

A. I received a B.A. in Psychology and Philosophy from Rockhurst University in Kansas City, Missouri, in 1992. I earned an M.S. and Ph.D. in Experimental Psychology from Ohio University in 1995 and 1997, respectively.

I have been employed by Sprint since 1998. In my current position, I am involved with the development of state and federal regulatory and legislative policy for all divisions of Sprint Corporation. I am involved with the coordination of policy across Sprint's business units. I also perform regulatory research and quantitative data analyses as needed. The specific policy issues I address are Voice over Internet Protocol, Performance Measures, Abbreviated Dialing Codes, and the issue we are discussing today.

Q. What is the purpose of your testimony?

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 A. The purpose of my testimony is to demonstrate why it is unnecessary for the
2 Commission to establish a batch hot cut process in the operating territory of Sprint-
3 Florida.

4
5 **Q. Is Sprint-Florida challenging the FCC's national finding of impairment for**
6 **unbundled local circuit switching in its markets?**

7 A. No. Sprint-Florida does not intend to challenge the FCC's findings regarding
8 impairment without access to unbundled local circuit switching for any market in its
9 Florida serving territory during this initial nine-month proceeding.

10

11 **Q. What impact does this decision have on the availability of unbundled local**
12 **switching in Sprint-Florida territory?**

13 A. Given Sprint-Florida's decision not to challenge the national findings in this
14 proceeding, under the FCC rules, Sprint-Florida is required to continue to offer mass
15 market unbundled local circuit switching until there is an affirmative finding of non-
16 impairment in a geographic market composed of or including Sprint-Florida
17 exchanges. Should Sprint-Florida challenge the FCC's national impairment findings
18 in the future, Sprint-Florida would be required to petition the Commission and initiate
19 a docket consistent with the FCC rules. As such, Sprint-Florida will continue to
20 provide CLECs serving the mass market access to unbundled switching in its Florida
21 territory until such time as the Commission rules otherwise.

22

23 **Q. Does Sprint-Florida's continued unbundling of local switching to the mass**
24 **market obviate the need for the Commission to review Sprint-Florida's hot cut**
25 **process?**

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 A. Yes. The FCC rules (47 C.F.R 51.319 (d)(2)(ii)(B)) contemplate that state
2 commissions will evaluate whether a hot cut process is:
3 “not impairing requesting telecommunications carriers’ ability to serve
4 end users using DS0 loops in the mass market *without access to local*
5 *circuit switching on an unbundled basis...*” (Emphasis Added).

6 Because CLECs in Sprint-Florida’s territories will continue to have access to
7 local switching on an unbundled basis, a review of Sprint-Florida’s hot cut
8 process is not necessary.

9
10 **Q. Issue 3(a) of the Commission’s issues list asks, “Does a batch cut process exist**
11 **that satisfies the FCC’s requirements in the Triennial Review Order? If not, in**
12 **which markets should the Commission establish a batch cut process?” Can you**
13 **address this issue?**

14 A. In the Triennial Review Order, the FCC defines a batch cut process as “a process by
15 which the incumbent LEC *simultaneously* migrates two or more loops from one
16 carrier’s local circuit switch to another carrier’s local circuit switch, giving rise to
17 operational and economic efficiencies not available when migrating loops from one
18 carrier’s local circuit switch to another carrier’s local circuit switch on a line-by-line
19 basis.”¹ (Emphasis Added.) Sprint is not aware of a batch cut process that can
20 “simultaneously” migrate two or more loops from one switch to another. A loop
21 migration is a manual process that requires the physical disconnection of the end
22 user’s copper pair from the ILEC’s block and pin and the reconnection of the copper
23 pair to the CLEC’s block and pin. Each copper pair must be cut over line by line.

¹ §51.319.(d)(2)(ii)

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 There are no Sprint-Florida markets in which the Commission should establish a batch
2 cut process.

3

4 **Q. Could you address the items raised in Issue 3(g) of the Commission's**
5 **issues list?**

6 A. Yes. The items included in the Commission's Issue 3(g) are taken from the
7 FCC Rules established in the TRO (47 C.F.R 51.319 (d)(2)(ii)(B)). The FCC
8 rules establish a state commission's requirements for supporting a finding that
9 the absence of a batch cut process is not impairing CLECs' ability to serve end
10 users without access to unbundled local switching. As I previously described,
11 CLECs will continue to have access to unbundled switching in Sprint-Florida
12 territory.

13

14 Nevertheless, Sprint-Florida's current hot cut process does not present
15 impairment and there is no need for the Commission to require Sprint-Florida
16 to establish a batch hot cut process. Under the FCC rules, state commissions
17 should evaluate several factors in reaching a decision as to whether a hot cut
18 process presents impairment. These items are included in the Commission's
19 Issue 3(g) as follows:

20 (i) what volume of unbundled loop migrations can be anticipated if
21 CLECs no longer have access to unbundled local circuit
22 switching.

23 (ii) how able is the ILEC to meet loop migration demand with its
24 existing processes in a timely and efficient manner; and

25 (iii) what are the nonrecurring costs associated with the ILEC's

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 existing hot cut process?

2 In my testimony below, I will address each of these issues while providing a
3 review of Sprint's current hot cut process.

4

5 **Q. How does the FCC define a "hot cut" in the Triennial Review Order?**

6 A. The FCC defines a "hot cut" as the physical transfer of a customer's line from the
7 incumbent LEC switch to the competitive LEC switch. (§ 465)

8

9 **Q. What is Sprint-Florida's current hot cut process?**

10 A. Sprint-Florida offers Timed Coordinated Hot Cuts and Non-timed Coordinated Hot
11 Cuts. Both types of hot cuts begin when the CLEC submits a local service request
12 (LSR) via Sprint-Florida's Integrated Request Entry System (IRES). IRES is a web-
13 based order entry system. Through IRES, the CLEC requests either the Timed
14 Coordinated or the Non-timed Coordinated Hot Cut, the due date is set, and the firm
15 order confirmation (FOC) is sent to the CLEC.

16

17 For the Timed Coordinated Hot Cut, more than 48 hours prior to the due date, the
18 Sprint National CLEC Provisioning Center (NCPC) Associate contacts the Sprint-
19 Florida central office personnel (and the outside technician if a dispatch is required) to
20 review and assign the conversion order and to establish contact names and numbers.
21 Forty-eight hours prior to the due date, the CLEC contacts the NCPC to confirm the
22 conversion. One day prior to the conversion, the CLEC provisions their switch and
23 the Sprint-Florida central office technician pre-runs the jumpers from the Sprint main
24 distribution frame to the CLEC block and pin, verifies correct assignment, and tests
25 for dial tone on the CLEC's block and pin. On the conversion date, at the specified

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 time, the NCPC associate initiates a conference call to all involved Sprint-Florida
2 personnel and the CLEC to begin the conversion process. The Sprint-Florida
3 technician terminates the jumpers to the appropriate block and pin and the conversion
4 is complete. The CLEC notifies NPAC to activate local number portability and
5 Sprint-Florida removes the ported number from its switch.

6
7 For the Non-timed Coordinated Hot Cut, 24 hours prior to the conversion, the CLEC
8 activates the 10-digit trigger in their switch. Prior to the conversion date, the Sprint-
9 Florida technician pre-runs the jumpers from the Sprint-Florida main distribution
10 frame to the CLEC block and pin, verifies correct assignment, and tests for dial tone
11 on the CLEC's block and pin. On the conversion date, the Sprint-Florida NCPC
12 associate contacts the Sprint-Florida central office technician when the conversion
13 process is ready to begin. The Sprint-Florida CO technician ties down the jumpers to
14 the appropriate block and pin. The NCPC associate notifies the CLEC that the
15 conversion is complete and removes the ported number from the switch. The CLEC
16 notifies NPAC to activate LNP and removes the 10-digit trigger from their switch.

17
18 **Q. How many mass market UNE-P lines does Sprint-Florida currently provide?**

19 A. Because the crossover is yet to be determined by the Commission, I used 12 or fewer
20 lines as a definition for mass market. As of August 2003, Sprint-Florida has provided
21 7,492 mass market UNE-P lines.

22
23 **Q. According to the TRO, if there is a finding of "no impairment" in a market,**
24 **CLECs will no longer be allowed to add UNE-P customers after December 2,**
25 **2004. (¶ 532) Using that date as a point in time to discuss anticipated volumes,**

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 **how much growth does Sprint-Florida expect in mass market UNE-P lines from**
2 **now until December 2004?**

3 A. If additional CLECs enter Sprint-Florida's markets, the anticipated growth in mass
4 market UNE-P lines from now until December 2004 would be expected to be
5 approximately 17,000 access lines. If new CLECs do not enter Sprint-Florida's
6 territory, Sprint-Florida expects the growth for this period to be approximately 3,000
7 new UNE-P access lines.

8

9 **Q. Considering Sprint-Florida's current UNE-P base and an aggressive anticipated**
10 **growth of approximately 17,000 UNE-P lines, if UNE-P were no longer available**
11 **and the embedded base of UNE-P lines had to be transitioned to UNE loops, on**
12 **average, approximately how many hot cuts would Sprint-Florida need to**
13 **perform per month and per day?**

14 A. According to the FCC's Triennial Review Order, the transition will be one-third of the
15 UNE-P base over a seven-month period, then one-half of the remaining base over the
16 next seven months, and then the remainder over the next seven months. (§ 532) To
17 transition one-third of Sprint-Florida's UNE-P lines to UNE-L, Sprint-Florida will
18 need to perform, on average, 1,165 hot cuts per month or 55 hot cuts per day (based on
19 21 workdays per month). (17,000 growth + 7,492 current = 24,492; 24,492*0.333 =
20 8,156; 8,156/7months = 1,165; 1,165/21 days = 55)

21

22 **Q. How many hot cuts per day does Sprint-Florida currently perform?**

23 A. Sprint-Florida keeps records showing the number of UNE loops provisioned, but the
24 records do not identify which loops required a hot cut. However, Sprint-Florida

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 currently provisions an average of 185 UNE loops per month or approximately nine
2 UNE loops per day.

3

4 **Q. If UNE-P is no longer available and UNE-P orders become UNE-L orders, how**
5 **many hot cuts per month and per day does Sprint-Florida expect to need to**
6 **perform?**

7 A. Assuming an average yearly growth at the same level as the projected UNE-P growth
8 previously discussed, Sprint-Florida would expect an average of 1,417 mass market
9 UNE-L orders per month or 67 per day. ($17,000/12$ months = 1,417; $1,417/21$ days =
10 67) If that number is added to Sprint-Florida's current UNE-L orders of nine per day,
11 Sprint-Florida would be provisioning, on average, 76 UNE-L orders per day for the
12 entire state of Florida.

13

14 **Q. During the 21-month period to transition the embedded base, how many hot cuts**
15 **per day would be required of Sprint-Florida?**

16 A. On average, Sprint-Florida would need to perform 132 hot cuts per day for the entire
17 state of Florida, or 123 hot cuts in addition to our current workload.

18

19 **Q. If you consider Sprint-Florida's ten largest wire centers based on the number of**
20 **UNE-P lines currently provisioned out of those offices, and assume the**
21 **percentage of UNE-P lines in those offices now will equate to the same percentage**
22 **of UNE-L lines in an environment without unbundled local switching,**
23 **approximately how many hot cuts per wire center will Sprint-Florida need to**
24 **perform each day?**

25 A. Sprint-Florida's largest wire center would need to perform an average of 13 hot cuts

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 per day. The second largest through the tenth largest wire centers would require daily
2 hot cut volumes of 8, 8, 5, 5, 5, 4, 4, 4 and 4 respectively.

3

4 **Q. How long does it take to pre-run the jumpers from the Sprint-Florida main**
5 **distribution frame to the CLEC block and pin?**

6 A. It takes approximately seven to nine minutes per line to pre-run the jumpers.

7

8 **Q. When it is time to perform the hot cut, how long does the central office work take**
9 **to complete the conversion?**

10 A. It takes approximately one to three minutes per line to complete the conversion.

11

12 **Q. What are Sprint-Florida's hours of operation for its central offices?**

13 A. Sprint-Florida's central offices hours of operation are Monday through Friday, 8 a.m.
14 to 5 p.m.

15 **Q. Does Sprint-Florida have any evidence that its current hot cut process can handle**
16 **the volumes you have discussed?**

17 A. Sprint uses the same hot cut process in all of its markets. Currently Sprint is
18 converting a CLEC in another state from UNE-P to UNE-L and is performing 50 hot
19 cuts per day in one wire center in addition to its current workload. This is evidence
20 that Sprint's process can easily handle any anticipated volumes in Florida.

21

22 **Q. Does Sprint-Florida consider these volumes to be "best case" or "worst case"?**

23 A. Sprint-Florida considers these volumes to be "worst case." The projected growth is
24 almost four times the current number of UNE-P lines, so growth is not likely to be
25 greater than projected. Also, it is unlikely that all of Sprint-Florida's markets will

SPRINT-FLORIDA/SPRINT COMMUNICATIONS LP
DOCKET NO. 030851-TP
FILED: December 4, 2003

1 transition to UNE-L at the same time, which will reduce the state-wide volume
2 numbers while the embedded base is being transitioned.

3

4 **Q. What are the nonrecurring costs associated with Sprint-Florida's existing hot cut
5 process?**

6 A. Sprint-Florida's nonrecurring costs are reflected in its Commission-approved
7 nonrecurring charges in Docket 990649-TP.

8

9 **Q. Based on your description of Sprint-Florida's hot cut process, its ability to handle
10 existing and projected volumes and the non-recurring costs associated with hot
11 cuts, does the Commission need to pursue development of a batch hot cut process
12 for Sprint-Florida?**

13 A. No. Given the above facts with respect to the FCC's three threshold criteria, Sprint-
14 Florida submits that its current hot cut process does not give rise to impairment in its
15 operating territory. Further, as Sprint-Florida is not challenging the national finding of
16 impairment, unbundled access to mass market switching will remain available in
17 Sprint-Florida's territory. For these reasons, there is no need for the Commission to
18 establish a batch hot cut process.

19

20 **Q. Does that conclude your testimony?**

21 A. Yes.

22

23

24

25

1 CHAIRMAN BAEZ: I'm sorry. Mr. Hatch, you were going
2 to say something?

3 MR. HATCH: Only when it got to me. I'm sorry. I'm
4 on point too fast.

5 CHAIRMAN BAEZ: You're just towing the line, aren't
6 you?

7 Mr. McGlothlin.

8 Is that -- I'm sorry, Ms. Masterton. I didn't mean
9 to cut you off. That's all that you have.

10 MS. MASTERTON: No. I just wanted to make sure she
11 was excused. Thank you.

12 CHAIRMAN BAEZ: Very well.

13 MR. MCGLOTHLIN: Mr. Chairman, Z-Tel will call
14 Witness Mike Reith, who is part of the direct presentation.
15 And if this is the right opportunity, I would like to clarify
16 one thing that was brought up earlier just before the break.

17 Staff indicated that Mr. Reith was among several who
18 had been indicated by others as someone who should be available
19 for cross. I think I've canvassed all the other parties, and I
20 believe we can establish that for his planning purposes no
21 party intends to cross Mr. Reith.

22 CHAIRMAN BAEZ: That will leave him free. And I'm
23 looking around the room, and nobody seems to be indicating
24 otherwise. So is this your request to have his testimony --

25 MR. MCGLOTHLIN: To be clear, we do wish to use his

1 five minutes of the direct testimony, so he will be here for
2 the direct case.

3 CHAIRMAN BAEZ: Oh, okay. All right.

4 Did I hear my name called? No. Okay. Now I'm
5 starting to hear things. Ms. Kaufman.

6 MS. KAUFMAN: Thank you, Mr. Chairman. The FCCA has
7 one witness, Mr. Gillan, who will be in our direct case, and he
8 will be standing for cross as well. And Covad has sponsored no
9 witnesses.

10 CHAIRMAN BAEZ: Very well. Thank you.

11 Mr. Hatch.

12 MR. HATCH: Did you want to identify all the
13 witnesses at this point or just those to be excused?

14 CHAIRMAN BAEZ: Well, I'd like to start over that.
15 If you have some overriding issues that need addressing in
16 another, you know --

17 MR. HATCH: I'm just trying to figure out which way
18 we're going. I'm trying to figure out which way we're going
19 here.

20 CHAIRMAN BAEZ: No. This has obviously expanded a
21 little bit, but try and keep it to -- we're trying, we're
22 trying to identify witnesses for the moment that don't need to,
23 don't need to be sworn in or --

24 MR. HATCH: AT&T has prefiled the testimony of
25 Ms. Cheryl Bursh on rebuttal and surrebuttal. She does not

1 appear on anyone's cross list and she's not going to be
2 appearing on our panel, in our presentation panel. So I don't
3 believe that she needs to be here. We'd request that she be
4 excused.

5 CHAIRMAN BAEZ: Very well.

6 MR. HATCH: We would also request that her rebuttal
7 and surrebuttal testimony be inserted into the record as though
8 read.

9 CHAIRMAN BAEZ: That would be Witness Bursh, you
10 said; correct?

11 MR. HATCH: That's correct. And the exhibit is
12 reflected in the prehearing hearing order.

13 CHAIRMAN BAEZ: All right. Let's go in order. If
14 there is no objection, the testimony of Cheryl Bursh will be
15 admitted into the record as though read. The exhibits as
16 reflected in the prehearing order -- and there is more than
17 one, Mr. Hatch; correct? I don't have the prehearing order in
18 front of me.

19 MR. HATCH: I'm trying to track it down now. I
20 thought there were some, but apparently there are not.

21 CHAIRMAN BAEZ: I'm sorry?

22 MR. HATCH: Apparently there are no exhibits. I
23 don't see any reflected.

24 CHAIRMAN BAEZ: There are no exhibits to Witness
25 Bursh?

1 MR. HATCH: I believe that's correct.

2 CHAIRMAN BAEZ: Very well. We'll strike that. And
3 without objection show Witness Bursh's testimony admitted into
4 the record as though read without exhibits.

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1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Cheryl L. Bursh. My business address is 1200 Peachtree Street, Suite 8100,
3 Atlanta, Georgia 30309.

4
5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
6 **BACKGROUND.**

7 A. I have a Bachelor of Science Degree from Johnson C. Smith University and a Master of
8 Science Degree from George Washington University. I am employed as a District
9 Manager by AT&T, operating in Florida as AT&T of the Southern States, LLC
10 ("AT&T"), where I am responsible for performance measurement and remedy plan
11 advocacy for AT&T's Southern Region. My area of expertise is the development of an
12 effective methodology for measuring BellSouth's performance and includes policy
13 development for effective remedy plans. I have represented AT&T in a number of
14 regulatory proceedings, including performance measurement workshops and hearings
15 conducted in Alabama, Louisiana, Florida, North Carolina, South Carolina, Kentucky,
16 Tennessee and Georgia. In over 22 years with AT&T, I have held a variety of
17 management positions, including strategic planning, sales of large business systems and
18 telecommunications services, system development for operation support systems, product
19 marketing and technical support for computer systems.

20
21 **Q. WHAT ISSUES DOES YOUR TESTIMONY ADDRESS?**

22 A. My testimony provides information related to the Commission's consideration of Issue
23 5(c)1.

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Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to the Direct Testimony filed by BellSouth witness Alphonso J. Varner, and specifically to demonstrate that:

- * BellSouth's assessment of its loop performance data for Florida does not dispute that Competitive Local Exchange Carriers ("CLECs") face operational barriers to market entry absent unbundled local switching (Unbundled Network Element Platform or "UNE-P").
- * BellSouth's Florida performance data does not settle whether its existing processes can handle anticipated loop migration demand if UNE-P is eliminated.
- * BellSouth's proposed changes to its Performance Assurance Plan fail to properly sanction poor performance in the batch hot cut process; even with them, key performance areas are excluded.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. To bolster its effort to persuade this Commission that its existing hot cut and loop provisioning process will perform well in a different, untested future, BellSouth relies on the performance data presented in Mr. Varner's testimony, coupled with an incorrect standard. For compelling reasons, this information does not support BellSouth's case. Assembled as directed by this Commission's orders in the 271 approval process, and reflecting an environment where UNE-P is the local service mechanism used by CLECs, such performance data provides limited insight into how BellSouth would perform if UNE-P is no longer available. In that event, CLECs would use an Unbundled Network Element-Loop ("UNE-L") approach, existing today in low volumes with uneven performance by BellSouth. I will demonstrate areas of concern in the reporting, which should be gauged by the standard that in a UNE-L environment, loops should be transferred as promptly and efficiently as UNE-P. Additionally, BellSouth's proposed changes to its Performance Assurance Plan, specifically, the Self Effectuating

1 Enforcement Mechanism (“SEEM”) and the performance measures, are inadequate and
2 will excuse poor performance without sanctions. I also propose measures which are
3 needed in a batch hot cut environment.

4
5 I. **BELLSOUTH’S CURRENT PERFORMANCE IN EXECUTING HOT CUTS AND**
6 **PROVIDING LOOPS IS IRRELEVANT IN CONSIDERING THE BATCH HOT**
7 **CUT PROCESS REQUIRED IN THIS PROCEEDING.**

8 Q. **ON PAGE 3 OF HIS DIRECT TESTIMONY, MR. VARNER ASSERTS THAT**
9 **BELLSOUTH’S CURRENT PERFORMANCE DATA SUPPORTS BELLSOUTH’S**
10 **CLAIM THAT ITS EXISTING PROCESSES WILL ADEQUATELY SUPPORT**
11 **ANTICIPATED LOOP MIGRATION. DO YOU AGREE?**

12
13 A. No. The current performance data reflects the fact that hot cuts and loop provisioning are
14 at low levels. If access to unbundled local switching is denied to CLECs, these volumes
15 will increase dramatically. As described in the testimony of AT&T’s witness Mark Van
16 De Water, BellSouth’s highly manual provisioning process will be inadequate to handle
17 this situation. Because the different volume levels create two very different
18 environments, how BellSouth handles hot cuts and loop provisioning in a low volume
19 environment does not carry over to an environment with dramatic increases in volume.

20 The Federal Communications Commission (“FCC”) recognized this point in the
21 Triennial Review Order (“TRO”). Incumbent Local Exchange Companies (“ILECs”)
22 made the same argument in that case, claiming that performance data demonstrated that
23 hot cut performance is satisfactory. The FCC accurately pointed out that this data was
24 irrelevant: “the issue is not how well the process works currently with limited hot cut
25 volumes...” TRO at ¶ 469. BellSouth’s continued effort to twist current performance
26 data to support a different future should similarly be given no weight by this
27 Commission.

1
2 **Q. ON PAGE 9 OF HIS DIRECT TESTIMONY, MR. VARNER SUGGESTS THAT**
3 **BELLSOUTH'S PERFORMANCE DATA DEMONSTRATES THAT IT**
4 **"PROVIDES TODAY, AS IT PROVIDED AT THE TIME OF ITS 271**
5 **APPLICATION, NON-DISCRIMINATORY, TIMELY AND EFFICIENT**
6 **ACCESS TO UNE LOOPS." WHAT RELEVANCE DOES THAT HAVE FOR**
7 **THIS CASE?**

8 A. None. This point was explicitly rejected in the TRO, where the FCC found that "the
9 number of hot cuts performed by BOCs in connection with the 271 process is not
10 comparable to the number that incumbent LECs would need to perform if unbundled
11 switching were not available for all customer locations served with voice-grade loops." ¶
12 469 (fn. omitted). BellSouth (and other regional Bell operating companies) relied on
13 UNE-P in order to obtain 271 approval, with the result that its hot cut performance has
14 been limited. BellSouth's effort to transform the performance data into evidence that
15 BellSouth will perform as well in a UNE-L environment fails. There is no casual
16 connection between the two different environments.

17
18 **II. BELLSOUTH USES THE WRONG STANDARD IN ATTEMPTING TO**
19 **DEMONSTRATE THAT CLECS DO NOT FACE OPERATIONAL BARRIERS**
20 **TO MARKET ENTRY ABSENT UNBUNDLED LOCAL SWITCHING.**

21 **Q. WHAT STANDARD SHOULD BE USED IN ANALYZING WHETHER CLECS**
22 **FACE OPERATIONAL BARRIERS TO MARKET ENTRY ABSENT**
23 **UNBUNDLED LOCAL SWITCHING?**

24
25 A. The FCC suggested a review of performance data could be appropriate as part of the
26 inquiry into the ILEC's "ability to transfer loops in a timely and reliable manner." TRO at
27 ¶ 512. Such an analysis "is necessary to ensure that customer loops can be transferred
28 from the incumbent LEC main distribution frame to a competitive LEC collocation as
29 promptly and efficiently as incumbent LECs can transfer customers using unbundled
30 local circuit switching." *Id.* at n. 1574. This approach is sound, for if the prompt and

1 efficient local service delivery method of UNE-P is no longer available, the ILEC must
2 follow the same standard in performing its replacement. Anything less will cause
3 customer dissatisfaction and confusion. While Mr. Varner's testimony is lengthy, his
4 discussion provides little insight into the issue of whether BellSouth's loop provisioning
5 is as prompt and efficient as UNE-P. Claiming that measurement results show that
6 BellSouth responds to CLEC loop orders accurately and timely and performs
7 maintenance and repair activities in a nondiscriminatory manner falls short of actually
8 comparing loop performance to the FCC-prescribed standard of UNE-P performance.

9 Table 1 below illustrates that BellSouth's loop performance falls woefully short
10 when compared against UNE-P performance. Data for this table is obtained from
11 BellSouth's Performance Measurement and Analysis Platform ("PMAP") website, as
12 well as Mr. Varner's testimony, Exhibit AJV-1, and reflects the performance (from the
13 PMAP website) for UNE-P (Loop+Port Combinations/<10circuits/Non-Dispatch),
14 compared to the results (as set forth in Mr. Varner's Exhibit AJV-1) for the 2-W Analog
15 Loop W/LNP Non-Design<10/Dispatch-In. The latter was chosen for comparison
16 because this will generally be one of the most prevalent loop categories ordered in a
17 UNE-L environment. The table reflects the performance for the Order Completion
18 Interval ("OCI"), which measures the time from the issuance of the Firm Order
19 Completion ("FOC") until the order is completed. These intervals are added for each
20 Local Service Request ("LSR") and then divided by the total number of LSRs to ascertain
21 the interval average. The numbers in Columns 2 and 3 are expressed in terms of days,
22 with 1.0 meaning one day.

23
24

1
2
Table 1: Order Completion Interval (“OCI”)

Month	UNE-P	2-W Analog Loop W/LNP Non- Design<10/Dispatch-In
11/02	0.84	5.20
12/02	0.83	5.03
1/03	0.88	4.99
2/03	0.85	4.85
3/03	0.86	4.85
4/03	0.84	4.97
5/03	0.48	4.92
6/03	0.53	4.95
7/03	0.53	4.90
8/03	0.51	4.98
9/03	0.47	4.82

3
4 As reflected above, the UNE-P performance is less than one day, but the OCI for
5 a 2-W Analog Loop is approximately four days. While this type of performance was
6 tolerated in an environment where UNE-L was an infrequently used option, without
7 UNE-P, the OCI for 2-W with Analog Loop w/LNP should be required to meet the UNE-
8 P interval, which currently is less than a day. Otherwise, CLECs competing in Florida
9 that today have access to UNE-P installations will face difficulties offering customers
10 intervals almost 4 days longer. In addition, because the OCI does not include the Firm
11 Order Confirmation interval, the actual customer experience would be even worse if
12 UNE-P is no longer available. Clearly, an extensive interval for basic phone service
13 qualifies as an operational barrier to market entry.

14
15 **III. CONSOLIDATING PERFORMANCE RESULTS FOR “ALL LOOPS” HIDES**
16 **PERFORMANCE RESULTS RELEVANT TO THE ISSUE OF OPERATIONAL**
17 **BARRIERS TO MARKET ENTRY ABSENT UNBUNDLED LOCAL**
18 **SWITCHING.**

19 **Q. SETTING ASIDE FOR THE MOMENT THE ISSUES YOU DISCUSS ABOVE –**
20 **THAT CURRENT PERFORMANCE IS IRRELEVANT AND BELL SOUTH USES**
21 **THE WRONG STANDARD – DO YOU HAVE OTHER CONCERNS ABOUT**

1 **THE PERFORMANCE ASSESSMENTS REPORTED IN MR. VARNER'S**
 2 **TESTIMONY?**

3 A. Yes. Mr. Varner's performance assessments are reported in such a way that one cannot
 4 readily discern pertinent information. Basing the performance assessment on a
 5 consolidation of a variety of loops does not allow this Commission to consider the
 6 performance of loops which are more relevant if UNE-P is eliminated. Mr. Varner's
 7 performance assessment contained in Exhibit AJV-1 is offered for "All Loops" which
 8 includes some which are relevant and others which are not. I will address why this is a
 9 problem.

10
 11 **Q. CAN THIS COMMISSION RELY ON "ALL LOOPS" PERFORMANCE**
 12 **ASSESSMENT TO MAKE A DECISION ON BELL SOUTH'S ABILITY TO**
 13 **PERFORM HOT CUTS?**

14 A. No. There are two problems with relying on the "all loops" results relied upon by Mr.
 15 Varner. First, the "all loops" results commingles information from dissimilar products
 16 and activities. As a result, it does not give a realistic view of BellSouth's performance in
 17 migrating the specific types of loops that will most frequently be migrated for mass
 18 market customers. Second, the "all loops" reporting includes data on loops that
 19 BellSouth does not appear to migrate at all.

20
 21 **Q. PLEASE EXPLAIN YOUR FIRST CONCERN REGARDING THE**
 22 **COMMINGLING OF DATA RELATING TO DISSIMILAR PRODUCTS AND**
 23 **SERVICES IN THE "ALL LOOPS" REPORTING.**

24 A. First, by way of background, it is important to realize that BellSouth includes the
 25 following products in the UNE loop performance data:

26 (1) xDSL – this includes ADSL, HDSL, and Unbundled Copper Loop ("UCL"),
 27 except UCL-Non-Design ("ND");

28 (2) Unbundled Copper Loop–Non-Design ("UCL-ND");
 29

- 1 (3) UNE ISDN Loops – this includes Basic Rate Interface (“BRI”), Primary Rate
2 Interface (“PRI”), and UDC;
3
- 4 (4) UNE 2-W Analog Loops Design with and without Local Number Portability
5 (“LNP”);
6
- 7 (5) UNE 2-W Analog Loops Non Design with and without LNP; and
- 8 (6) Enhanced Extended Links (“EELs”).

9 See Varner Direct, pp. 8-9. Thus, the performance assessment for “all loops”
10 consolidates the results for varying loops and for dissimilar activity types such as
11 dispatch and non-dispatch. Review of the more granular performance results reveals that
12 actual performance for the individual loop types commingled in the “all loops” category
13 are different. The aggregated assessment, therefore, may mask the more relevant
14 performance.

15 There should be no consideration of Mr. Varner’s claims that “a cursory review of
16 the data by simply comparing the number of submetrics met indicates the high level of
17 performance...[table omitted] BellSouth met an average of 90% of all the UNE Loop
18 provisioning submetrics over the last 12 months in Florida.” (Varner Direct, p. 20, lines
19 10-12, 15-16.) Even if BellSouth’s claim of compliance for 90% of the provisioning
20 submetrics were true, this is somewhat meaningless given that a number of the missed
21 submetrics were for provisioning of product areas that will be dominant if unbundled
22 local switching is eliminated. That is, some submetrics BellSouth failed are for the
23 services to which CLECs will migrate if UNE-P is eliminated. This is troubling, for it
24 portends that what is a sub-par performance in a low volume environment will remain so
25 and become magnified in the high volume environment which would result if CLECs are
26 denied access to unbundled local switching.

1 To illustrate this point, the PMAP reports reveal that BellSouth failed to meet the
 2 benchmark for the following submetrics, pertaining to Order Completion Interval, which
 3 will have volume at the level of UNE-P if UNE-P is eliminated:

- 4 • 2-W Analog Loop w/LNP Non-Design/<10circuits/Dispatch In: non-
 5 compliant for 12 consecutive months, spanning from September 2002 to
 6 August 2003; and
- 7 • 2-W Analog Loop w/LNP Non-Design/>10 circuits/Dispatch In: non-
 8 compliant for 3 of 12 months for provisioning.

10 These examples demonstrate that what Mr. Varner offers as a relevant performance
 11 assessment turns out to be of little help in analyzing whether BellSouth is capable of
 12 providing CLECs with access to unbundled loops in a manner “as promptly and
 13 efficiently as incumbent LECs can transfer customers using unbundled local switching.”
 14 TRO at n.1574. It is therefore important to analyze the data with more than a “cursory
 15 review” because aggregating results for “all loops” masks areas that are critical in a
 16 UNE-L environment.

17
 18 **Q. DOES MR. VARNER’S PERFORMANCE ASSESSMENT OF FOC /REJECT**
 19 **RESPONSE COMPLETENESS METRIC MASK PERTINENT**
 20 **PERFORMANCE?**

21 A. Yes. Despite BellSouth’s touting of 94% attainment of FOC/Reject Response
 22 Completeness for “all loops” (See Varner Direct, p. 18), aggregating varying results for
 23 multiple products/services masks the performance for products/services to which UNE-P
 24 would be migrated if UNE-P is eliminated. The FOC/Reject Completeness metric,
 25 having a benchmark of 95%, specifies the percentage of LSRs that receive a response of
 26 either a reject or FOC. To illustrate once again how Mr. Varner’s performance
 27 assessments provide little insight into operational impairment if UNE-P is eliminated, the

1 performance results for FOC/Reject Completeness reveals a less desirable performance
2 than he represented.

3 For FOC/Reject Completeness (mechanized)-2W-Analog Loop w/LNP Design,
4 BellSouth did not meet the benchmark nine out of 12 months for EDI (See Exhibit AJV-
5 1, page BST000135) and 11 out of 12 months for TAG (See Exhibit AJV-1, page
6 BST000135). For the products/services most likely to be migrated from UNE-P, namely
7 2W Analog Loop w/LNP Non-Design, BellSouth did not meet the benchmark for EDI 6
8 out of 12 months and TAG 8 out of 12 months (See Exhibit AJV-1, page BST000136). It
9 is apparent from these examples that the performance for loops collectively does not
10 necessarily represent the performance for individual loop categories. They are a
11 cautionary note that what BellSouth offers as relevant performance data turns out to be of
12 little help in analyzing whether BellSouth is capable of providing CLECs with access to
13 unbundled loops in a manner “as promptly and efficiently as incumbent LECs can
14 transfer customers using unbundled local switching.” TRO at n. 1574.

15
16 **Q. COULD YOU ELABORATE ON YOUR SECOND POINT, THAT MR. VARNER**
17 **IS RELYING ON DATA FOR LOOPS THAT BELLSOUTH DOES NOT**
18 **MIGRATE IN HIS “ALL LOOP” PERFORMANCE ASSESSMENTS.**

19 A. The loop performance represented in “all loops” includes loops that are not mentioned as
20 being migratable from UNE-P in BellSouth’s “UNE-Port/Loop Combination (UNE-P) to
21 UNE-Loop (UNE-L) Bulk Migration CLEC Information Package” (“Information
22 Package”), included on the web address set forth in BellSouth witness Kenneth L.
23 Ainsworth’s Direct, p. 5, identified as the BellSouth batch hot cut process. The
24 Information Package states on page five that “Bulk migration is available for existing
25 non-complex Port/Loop Combination services to Unbundled Loops with Local Number

1 Portability (LNP),” with the further explanation that “Complex UNE-P accounts are
 2 prohibited on bulk requests.” It further states that “[e]xamples of Complex UNE-P are 2-
 3 Wire ISDN/BRI Digital Loop & Port UNE Combination, 4-Wire ISDN/PRI Digital Loop
 4 & Port UNE Combination, UNE-P Centrex, Digital Direct Integration Termination
 5 Service (DDITS), etc.” *Id.* The Information Package does not convey that EELs or ISDN
 6 can be migrated under BellSouth’s “batch” hot cut process. By intermingling EELs and
 7 ISDN into its “all loops” performance assessments, as appears to be the case, BellSouth
 8 has complicated review by injecting irrelevant information.

9 **IV. BELLSOUTH’S PROPOSED ENHANCEMENTS TO THE PERFORMANCE**
 10 **MEASURES AND SEEM PLAN ARE INADEQUATE.**

11 **Q. IS BELLSOUTH’S PROPOSED PRE-ORDERING MEASURE ADEQUATE TO**
 12 **CAPTURE BELLSOUTH’S PERFORMANCE IN THE INITIAL STAGE OF**
 13 **PROCESSING A CLEC REQUEST FOR A BATCH CONVERSION?**

14 A. No. The proposed metric, PO-3: UNE Bulk Migration-Response Time, is not included in
 15 SEEM. Therefore, BellSouth will incur no consequences for extensive response intervals
 16 to the Bulk Migration Notification forms. BellSouth does not provide a meaningful
 17 explanation as to why such a critical area should not incur consequences for poor
 18 performance. If BellSouth has no incentive to delay the response, as suggested by Mr.
 19 Varner (See Varner Direct, p. 40) then BellSouth should have no concerns with including
 20 PO-3 in SEEM.

21 **Q. SHOULD ADDITIONAL METRICS BE ESTABLISHED FOR MONITORING**
 22 **THE BATCH HOT CUT PROCESS?**
 23

24 A. Yes, it is essential to have performance monitoring start-time and completion time for
 25 batches; therefore, two new metrics should be established. First, the metric Percent of
 26 Batches Started On Time should be implemented. CLECs have minimal resources and

1 therefore must use them optimally. Having CLEC operations representatives' daily
2 schedule disrupted due to late starts results in other work not being handled as planned.
3 Second, the Percent of Batches Completed On Time should be implemented. As
4 previously stated, CLEC resources are too scarce to have technicians idle. The cut needs
5 to complete at the designated time so that the technicians can immediately commence
6 final tasks to service the customer in order for the customer to receive telephone calls.
7 Both the Percent Batches Completed On Time and Percent Batches Started On Time
8 metrics should be included in SEEM.

9
10 **Q. WHAT ADDITIONAL METRICS SHOULD BE INCLUDED IN SEEM?**

11 A. For conversion service outages, the Percent Conversion Service Outages metric should be
12 established. The consequences should be commensurate with the average net revenue
13 times the average life of the customer.

14
15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16
17 A. Yes.

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Cheryl L. Bursh. My business address is 1200 Peachtree Street, Suite
3 8100, Atlanta, Georgia 30309.

4 **Q. ARE YOU THE SAME CHERYL BURSH WHO PREVIOUSLY FILED**
5 **REBUTTAL TESTIMONY IN THIS DOCKET ON JANUARY 7, 2004?**

6 A. Yes, I am.

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

8 A. The purpose of my testimony is to respond to various performance related issues
9 raised in the Rebuttal Testimony filed by BellSouth witness Alphonso J. Varner.

10 **Q. BELLSOUTH WITNESS ALPHONSO VARNER'S REBUTTAL**
11 **TESTIMONY AT PAGE 9 DISPUTES AT&T'S EXPERIENCE WITH**
12 **HOT CUT IMPAIRMENTS. PLEASE COMMENT.**

13 A. AT&T witness Mark Van De Water has described AT&T's negative experience
14 with BellSouth's hot cut process, specifically listing provisioning delays and
15 factors that contributed to customer service outages. (See Van De Water Direct at
16 pp. 8 and 9.) Nonetheless, Mr. Varner dismisses "'substandard performance in
17 returning timely firm order confirmations', and other failures related to the
18 scheduling of hot cuts and 'erroneous disconnection of end users' line,' and
19 'undue delay in reconnection'" as meritless. (See Varner Rebuttal, p. 9, lines 13-
20 20.) And although his testimony purportedly demonstrates this, it, in fact, focuses
21 on a different period of time than that discussed in AT&T's testimony and does
22 not focus on data for 2Wire Analog Loop w/Local Number Portability ("2W
23 Analog Loop w/LNP"), the type of loop that will be most frequently used in an
24 Unbundled Network Element-Loop ("UNE-L") environment.

1 Q. **WHY DO YOU MAINTAIN THAT MR. VARNER'S TESTIMONY USES**
2 **A TIME PERIOD WHICH DOES NOT SUPPORT THE POINT HE**
3 **PURPORTS TO MAKE?**

4 A. As AT&T has noted, the company virtually eliminated UNE-L as a means of
5 acquiring customers several years ago, in 2001. (See Van De Water Direct at p.
6 8; AT&T's Responses to BellSouth's Interrogatory Nos. 125 and 134.) For the
7 last several years, including September 2002 through August 2003, the period of
8 time used by Mr. Varner, AT&T has been acquiring its mass market (residential
9 and small business) customers using UNE-P. *Id.*

10 Q. **BELLSOUTH CLAIMS THAT "...FOR THE 12-MONTH PERIOD**
11 **SEPTEMBER 2002 TO AUGUST 2003, OVER 92% OF THE LSRs FOR**
12 **UNE LOOP ORDERS (WHICH INCLUDE HOT CUTS ORDERS)**
13 **RECEIVED A FOC WITHIN THE INTERVAL ESTABLISHED BY THIS**
14 **COMMISSION" (SEE VARNER REBUTTAL, P. 10, LINES 4-8). DOES**
15 **THIS SUPPORT YOUR POINT THAT BELLSOUTH'S PERFORMANCE**
16 **ASSESSMENT DOES NOT FOCUS SPECIFICALLY ON THE TYPES OF**
17 **LOOPS THAT WOULD BE USED IN A UNE-L ENVIRONMENT?**

18 A. Yes. The 92% touted by BellSouth appears to encompass all UNE Loops even
19 though 2W Analog Loop w/LNP results would be more meaningful for evaluating
20 hot cut performance. Evaluating the Firm Order Confirmation ("FOC")
21 performance for 2W Analog Loop w/LNP shows non-compliant levels of service.
22 In the period from September 2002 to August 2003, both 2W Analog Loop
23 w/LNP Design and 2W Analog Loop w/LNP Non-Design reflect 12 months of
24 non-compliance.

25 Q. **ARE MR. VARNER'S COMMENTS CONCERNING THE AVERAGE**
26 **COMPLETION NOTICE INTERVAL PERFORMANCE RESPONSIVE**
27 **TO AT&T'S CONCERN OVER BELLSOUTH'S FAILURE TO NOTIFY**
28 **"CONSISTENTLY AND TIMELY THAT CUSTOMER LOOPS HAD**
29 **BEEN TRANSFERRED TO AT&T"?(SEE VARNER DIRECT AT P. 11;**
30 **VAN DE WATER DIRECT AT PP. 8-9.)**

1 A. No. BellSouth references a different notification than that discussed in Mr. Van
2 De Water's Direct Testimony. Mr. Van De Water refers to the call that the
3 BellSouth provisioning center makes to the Competitive Local Exchange Carrier
4 ("CLEC") to advise that the old cross connection jumper that connected the
5 customer's loop to the Incumbent Local Exchange Carrier's ("ILEC's") switch
6 was removed and that the re-wired cross connection from the CLEC's Connecting
7 Facility Assignment ("CFA") has been terminated to the customer's loop.

8 Mr. Varner's testimony references something different, the Average
9 Completion Notice Interval ("ACNI") metric. The endpoint for this metric is the
10 time stamp when the completion notice was delivered to the CLEC interface for
11 mechanized order. For non-mechanized orders, the endpoint for the ACNI metric
12 is when the order status is changed to complete in the Service Order Control
13 System ("SOCS"). The starting point for the ACNI metric does not even begin
14 until several steps after the re-wired cross connection from the CLEC's CFA has
15 been terminated to the customer's loop. Any performance results associated with
16 the ACNI metric have no relevance to Mr. Van De Water's point that BellSouth
17 fails to notify AT&T consistently and timely that customer loops have been
18 transferred to AT&T.

19 **Q. STARTING ON P. 13 OF HIS DIRECT TESTIMONY, MR. VARNER**
20 **DISCUSSES BELLSOUTH'S PERFORMANCE FOR THE THREE LNP**
21 **DISCONNECT TIMELINESS MEASURES FOR THE PAST SIX**
22 **MONTHS IN FLORIDA. DOES THAT DISCUSSION OMIT PERTINENT**
23 **INFORMATION?**

24 A. Yes, BellSouth neglected to convey the impact of being non-compliant for a
25 sustained period of time for the P-13D: LNP-Average Disconnect Timeliness

1 (Non-Trigger) metric. This measures the percentage of time BellSouth
2 disconnects the LNP service within 4 hours for non-trigger orders. The ILEC
3 issues the number portability “trigger” order by setting switch triggers which will
4 ensure the customer receives intra-switch calls between the period of time the
5 CLEC ports the number to its switch until the ILEC disconnects the telephone
6 number in its switch. If no trigger is set, then of course the intra-switch calls to
7 the ported number cannot be completed until the ILEC disconnects the telephone
8 number in its switch. This is the situation captured in Metric P-13D. Thus,
9 failing P-13D means that calls made by customers on the same switch from which
10 a number was ported were unable to complete their calls to the ported number for
11 more than 4 hours. This level of performance negatively impacts the CLECs’
12 reputation. If the CLEC’s customer is a small business serving a local area, this
13 level of performance would even have direct, negative impacts on the CLEC’s
14 customer.

15 **Q. DOES FAILING THE P-13B: LNP-PERCENTAGE OF TIME**
16 **BELLSOUTH APPLIES THE 10-DIGIT TRIGGER PRIOR TO THE LNP**
17 **ORDER DUE DATE HAVE CUSTOMER CONSEQUENCES SIMILAR**
18 **TO FAILING THE P-13D METRIC?**

19 A. Yes. Metric P-13B measures the percentage of time BellSouth applies the 10-
20 digit trigger before the LNP order due date. This is important because intraswitch
21 calls are dropped between the period of time the CLEC ports the number to its
22 switch until the ILEC disconnects the telephone number in its switch if the 10-
23 digit trigger is not applied before the LNP order due date. BellSouth has failed
24 this metric because the trigger was applied less than 95% of the time. The
25 consequences of this for customers are similar to failing the P-13D metric: CLEC

1 residential and small business customers would be negatively affected, because
2 they would miss calls.

3 **Q. IS MR. VARNER CORRECT IN STATING THAT ANY DIFFERENCE**
4 **BETWEEN THE ORDER INTERVALS FOR UNE-P VERSUS UNE-L**
5 **ORDERS IS IRRELEVANT? (VARNER DIRECT AT PP. 11-17.)**

6 A. No. For the reasons specified in my Rebuttal Testimony, comparing order
7 intervals for UNE-P versus UNE-L orders is important to understanding
8 impairment in an environment in which UNE-P is absent. (See Bursh Rebuttal at
9 pp. 3-4.)

10 **Q. DOES MR. VARNER'S ATTEMPT TO EXPLAIN THE FLAW IN**
11 **COMPARING THE PERFORMANCE OF UNE-P TO UNE-L ACTUALLY**
12 **SUPPORT AT&T'S POINT THAT IT IS APPROPRIATE TO USE UNE-P**
13 **PERFORMANCE AS THE STANDARD TO DEMONSTRATE HOW**
14 **IMPAIRED CLECS WOULD BE IN AN ENVIRONMENT WITHOUT**
15 **UNE-P?**

16 A. Yes. Mr. Varner states,

17 An order for UNE-P has typically involved little more than
18 changing the billing of an existing end-user from BellSouth
19 retail (or from another CLEC) to the acquiring CLEC. In
20 this instance, no physical work is required, an outside
21 dispatch is not needed and the order is not subject to
22 facility shortages. In contrast a UNE-L order will always
23 require some form of physical work, in the central office, at
24 the customer's premise, or both. A dispatch may be needed
25 and the order interval can be affected by facility shortages.
26 As a result of these two processes, the applicable ordering
27 intervals will usually differ.
28

29 Varner Rebuttal, p. 15, lines 13-21. The fact that the processes differ demonstrates
30 the very reason why the comparison is appropriate. It is only via the comparison
31 that the differences can be assessed and later evaluated to determine how the
32 difference will contribute to the CLECs being impaired in the local market.

1 **Q. MR. VARNER CRITCIZES AT&T'S COMPARISON OF UNE-L TO UNE-**
2 **P PERFORMANCE, SAYING THAT THIS COMPARISON IS NOT**
3 **CONSISTENT WITH RULINGS IN THE COMMISSION'S**
4 **PERFORMANCE MEASUREMENT PROCEEDINGS. (SEE VARNER**
5 **DIRECT, P. 19.) IS THE COMMISSION'S OBJECTIVE IN THIS**
6 **PROCEEDING THE SAME AS THAT FOR PERFORMANCE**
7 **MEASUREMENT PROCEEDINGS?**

8 A. No. In response to the Federal Communications Commission's (FCC) August 21,
9 2003, Triennial Review Order ("TRO"), this Commission opened two dockets to
10 ascertain whether impairment exists within the state and local market."¹ In other
11 words, this Commission will evaluate the difference in the CLEC customer
12 experience in an environment without UNE-P and how that less desirable
13 experience will impair CLECs. The Performance Measurement Docket, was
14 opened, however, to develop permanent performance metrics for the ongoing
15 evaluation of operations support systems provided for CLEC use by ILECs².

16 **Q. DO COMPARISONS OF UNE LOOPS AND UNE-P IN THIS**
17 **PROCEEDING CONTRADICT ANY RULINGS IN THE PERFORMANCE**
18 **MEASUREMENT PROCEEDING?**

19 A. No. A comparison of UNE-P versus Analog Loop/with LNP is not in conflict
20 with the Commission's findings that established a retail analogue for each
21 product. Determining impairment requires incremental steps from monitoring
22 performance. Once performance is assessed for UNE-P and Analogue Loop/with
23 LNP based on the performance standard ordered by this Commission, the
24 Commission also will understand differences in the two results. Next, the

¹ In re: Implementation Of Requirements Arising From Federal Communications Commission's Triennial UNE Review: Local Circuit Switching For Mass Market Customers. In re: 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, Order No. PSC-03-1265-PCO-TP, Docket No. 030851-TP, November 7, 2003, page 1.

1 Commission will assess how this difference or inferior performance impairs
2 CLECs' ability to compete. In other words, this Commission will evaluate the
3 difference in the CLEC customer experience in an environment without UNE-P
4 and how that less desirable experience will impair CLECs. Evaluating impairment
5 requires a different methodology than that of monitoring performance.
6 Evaluating impairment requires an additional step, beyond that required for
7 monitoring performance.

8 **Q. AT PP. 15-16 OF HIS DIRECT TESTIMONY, MR. VARNER IS**
9 **CRITICAL OF AT&T'S USE OF UNE-P/SWITCHED-BASED**
10 **COMPLETIONS FOR COMPARISON WITH ANALOG LOOPS/WITH**
11 **LNP. IS THIS JUSTIFIED?**

12 A. No. As explained in Mr. Van De Water's Direct Testimony, data demonstrates
13 that UNE-P orders are completed much more quickly than UNE-L orders. The
14 chart included in Mr. Van De Water's testimony shows completion intervals for
15 UNE-P orders without any field work to compare against UNE-L orders without
16 any field work. Data for both switch-based and central office based completions
17 for UNE-P orders is provided. Contrary to Mr. Varner's assertions, switch based
18 completions contain both feature changes and migrations that do not require
19 central office work. Notably, Mr. Varner has no comment regarding the central
20 office based completions, which completed on average in only 1.20 days, far
21 more quickly than UNE-L completions.

22 **Q. ON PAGE 17, MR. VARNER STATES THAT MOST UNE-P ORDERS**
23 **ARE MIGRATION ORDERS. WHAT IS YOUR RESPONSE?**

² Investigation Into The Establishment Of Permanent Performance Measures For Incumbent Local Exchange Telecommunications Companies, Docket No. 000121-TP, August 2, 2001, page 2.

1 A. Mr. Varner should certainly have access to information regarding types of orders
2 being processed by BellSouth. However, I find it quite bizarre that he would
3 make that statement, since it contradicts his earlier comments. For example, he
4 contends on page 16 that switch-based completions are not migrations (i.e.,
5 “nothing more than a feature change”) knowing full well that those types of
6 completions comprise the vast majority of the UNE-P orders. Now he is saying
7 that most UNE-P orders are migrations. Further, it is unclear why he comments
8 that Mr. Van De Water’s analysis is based on the ordering patterns of today, since
9 he presents no evidence as to why this is an inappropriate approach or what the
10 changes should be.

11 **Q. DOES MR. VARNER’S STATEMENT ON PAGE 18 THAT “UNE-L DATA**
12 **REFLECTS DATA FOR NEW SERVICES...” APPLY TO THE AT&T**
13 **TABLE HE CRITICIZES?**

14 A. No. The data reflected on page 17 of the Direct Testimony of Mr. Van De Water
15 represents performance specifically for Analog Loops/with LNP which is
16 migration of existing service. The table “illustrates the inferior performance
17 BellSouth provides for analog loops compared to UNE-P in Florida...” (See Van
18 De Water Direct at p. 17, lines 4-5.) Mr. Varner, however, states that “[f]or the
19 most part UNE-L data reflects data for new service while UNE-P data is largely
20 migration of existing service.” (See Varner Rebuttal, p. 18, lines 11-12.) While
21 this may be true for UNE Loops in general, it does not apply to the AT&T table,
22 for the data it contains reveals Analog Loop/with LNP performance results, which
23 is existing service. Therefore, the differences appear to represent inferior

1 performance for Analog Loop/with LNP given that both reflect data that is largely
2 migration of existing service.

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

4 A. An assessment of the anticipated customer experience in an environment that
5 excludes UNE-P is essential for determining whether CLECs will be impaired
6 without its continued availability. Comparisons of the UNE-P versus UNE-L
7 experience provide valuable information for that assessment. AT&T originally
8 had market plans based on a UNE-L strategy that resulted in customer
9 dissatisfaction. Therefore, assessing anticipated differences in a new
10 environment, in which UNE-P is absent, is critical.

11

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

13 A. Yes.

1 CHAIRMAN BAEZ: Ms. McNulty.

2 MS. McNULTY: MCI -- can you hear me okay? MCI's
3 witnesses -- it's my understanding that all three of MCI's
4 witnesses have been or will be called by one party to, for
5 cross-examination.

6 CHAIRMAN BAEZ: Very well. Thank you, Ms. McNulty.
7 Mr. Cruz.

8 MR. CRUZ-BUSTILLO: George Cruz-Bustillo, Supra
9 Telecom. Mr. Chairman, we have only one witness, Mr. Neptune,
10 who is not going to be crossed by BellSouth, and we would ask
11 that his rebuttal testimony be placed into the record as if
12 read. And it also has an Exhibit A, an MAK-1, and I would ask
13 that that be included, also.

14 CHAIRMAN BAEZ: Let me find my place, Mr. Cruz. If
15 you'll excuse me a moment. That was Witness --

16 MR. CRUZ-BUSTILLO: Mr. Mark Neptune.

17 CHAIRMAN BAEZ: Mr. Mark -- I'm sorry?

18 MR. CRUZ-BUSTILLO: Mr. Mark Neptune.

19 CHAIRMAN BAEZ: Neptune. Sorry.

20 MR. CRUZ-BUSTILLO: And then also, Mr. Chairman,
21 Mr. David Stahly, he filed direct testimony in this case on
22 behalf of Supra Telecom. Mr. Dave Nilson has adopted his
23 direct testimony at the request of staff.

24 CHAIRMAN BAEZ: Okay. All right. Witness Neptune's
25 rebuttal testimony without objection will be entered into the

1 record as though read.

2 Mr. Cruz, don't leave. You said he had some exhibits
3 to the rebuttal?

4 MR. CRUZ-BUSTILLO: Yes. There's one Exhibit A,
5 which was attached to his rebuttal testimony.

6 CHAIRMAN BAEZ: Okay.

7 MR. CRUZ-BUSTILLO: And I believe in the staff's
8 order it's identified as MAK-1.

9 CHAIRMAN BAEZ: Show MAK-1 --

10 MR. CRUZ-BUSTILLO: 1 attached.

11 CHAIRMAN BAEZ: -- attached to the testimony --

12 MR. CRUZ-BUSTILLO: Rebuttal testimony.

13 CHAIRMAN BAEZ: -- marked as -- rebuttal testimony
14 marked as Exhibit 62.

15 MR. CRUZ-BUSTILLO: Thank you, Mr. Chairman.

16 (Exhibit 62 marked for identification.)

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1 **I. INTRODUCTION, PURPOSE, AND SUMMARY OF TESTIMONY.**

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

4 A. My name is Mark Neptune. I am employed by Supra Telecommunications and
5 Information Systems, Inc. ("Supra Telecom") as Vice-President Network Engineering &
6 Operations.

7 My business address is 2620 SW 27th St.; Miami, FL 33133.

8 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND, WORK**
9 **EXPERIENCE AND PRESENT RESPONSIBILITIES.**

10 A. I graduated from Glendale Community College of Glendale, Arizona and attended the
11 University of Texas. I have been in Telecommunications since 1966 and in Engineering and/or
12 Operations management since 1981. Since 1981, I have engineered, built and operated domestic
13 and international long distance networks for four companies, one of which I partially owned. I
14 have also consulted for a packet data company and managed a Florida based ISP. I have been the
15 Regulatory vice-president or subject matter expert in three long distance companies, including
16 Teltec Savings Communications, LDI and STSJ/Trescom.

17 I have submitted testimony and/or testified before the Florida Public Service Commission, the
18 New York Public Utilities Commission, the FCC and the Communications Commission of
19 France (ART).

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23

1 **Q. ON PAGE 2, LINE 13, AINSWORTH (BELLSOUTH WITNESS) CLAIMS THAT IT**
2 **HAS DEMONSTRATED THAT IT OFFERS A PROVEN, SEAMLESS AND HIGH**
3 **QUALITY HOT CUT PROCESS, IS THIS TRUE?**

4 A. No it is not true. BellSouth has not demonstrated a proven, seamless or high quality hot cut
5 process. During the month of November 2003 when Supra Telecom converted over 2400
6 customers from UNE-P to UNE-L, those customers experienced No Dial Tone (NDT) on the
7 date of conversion between 4-5% of the time and could not receive calls for a period of four (4)
8 hours or more 47% of the time. This trend has continued into December 2003 and this evidence
9 does not reflect a seamless or high quality process.

10 What's more, the BellSouth processes in place to rectify NDT and incoming calls
11 problems do not lend themselves to timely resolution of these troubles. For example, a customer
12 experiencing NDT upon cutover can typically expect a twenty-four hour window for repair.
13 These service disruptions have influenced the customer's perception of Supra Telecom's ability
14 to provide quality service and resulted in migrations away from Supra Telecom to other carriers.
15 Issues with number portability can and do result in a customer's inability to receive incoming
16 calls for unacceptable periods of time, up to five days. Additionally, the incoming calls issue
17 becomes more problematic when a telephone number has been "ported in error" due to a missed
18 appointment or cancellation. BellSouth's current process requires Supra Telecom to submit a
19 supplement (SUP) to the LSR and fax Form RF-3654 (*CLEC Port in Error Referral For Local*
20 *Carrier Service Center*). Further, SUP LSR must be sent to BellSouth® LCSC and revised FOC
21 received by CLEC prior to CLEC sending a Modify Subscription Version (SV) to NPAC.
22 Meanwhile, no incoming calls can terminate to the customer's telephone number. Overall, when
23 there is a problem, the current processes do not provide for timely restoration of service.

1 As Supra has described in its direct testimony, BellSouth's "Batch Hot Cut Process" is in
2 fact mis-labeled. It is a batch pre-ordering/pre-qualification process that is not efficient in the
3 least. In fact, it adds up to 14 days to the process, leads to numerous conversion rejects or
4 increased conversion costs and culminates in the submission of a tab delimited text file. The
5 Batch Request is initially submitted to BellSouth as an Excel spreadsheet. BellSouth responds to
6 Supra via the Excel spreadsheet. When Supra is ready to issue the Batch Request, we must
7 reformat the request into a tab delimited text file to upload into the Local Exchange Network
8 System (LENS), in lieu of the spreadsheet.

9 The evidence outlined above demonstrates that BellSouth does NOT have a proven,
10 seamless, and much less any system that could be characterized as high quality.

11

12 **Q. IS THE INTER-CARRIER PROCESS OF CONVERSION FROM UNE-P TO UNE-L**
13 **AS NON-COMPLEX AS CLAIMED BY BELL SOUTH?**

14 A. The process is much more complex. On page 3, line 5, of Ainsworth's Direct Testimony,
15 BellSouth glosses over the complexity of a conversion from UNE-P to UNE-L by focusing on
16 the simple physical act of moving a distribution frame jumper from the BST switch to that of the
17 CLEC. The inter-carrier process also includes the porting of the customer's telephone number
18 ("TN") via the LNP process. Porting of the number and in many cases the assignment and cross-
19 connection of new F1 loops or UDLC facilities to existing F2 copper loops are the more complex
20 and problematic processes. These have proven to be the processes that cause the most customer
21 disruption and out of service (OOS) incidents.

22

23 **Q. DOES BELL SOUTH LIMIT CONVERSIONS, PER DAY, PER CENTRAL OFFICE?**

1 A. Yes, BellSouth does impose limitations on the number of conversions allowed per day per
2 central office. On page 4, line 1, of Ainsworth's Direct Testimony, BellSouth claims that they
3 can and have performed high volumes of conversions with a high degree of accuracy. Yet
4 despite this claim, BellSouth limits Supra's conversions to 150 per central office, per day. This
5 may be considered high volume in central offices with a few hundred or thousand existing UNE-
6 P customers but in some COs with 26,000 UNE-P customers, it comprises 174 working days or
7 approximately eight (8) months to complete the conversion. In the case of simple copper loop
8 conversions, the move of the jumper can occur without much complexity, but as we have stated
9 and will illustrate this is the easy part of the conversion.

10

11 **Q. WHAT DOES THE EVIDENCE SHOW REGARDING THE EFFICIENCY OF THE**
12 **BATCH HOT CUT OR BULK MIGRATION PROCESS?**

13 A. Contrary to Ainsworth's assertions on page 5, line 1 of his Direct Testimony, the Batch Hot
14 Cut or Bulk Migration process is only a batch pre-qualification process for the conversion of
15 numbers of UNE-P customers in a central office. The only identifiable ordering efficiencies
16 gained, from the present BellSouth process, are that any orders BellSouth deems ineligible for
17 conversion as SL-1 are identified and either removed from the conversion process or upgraded at
18 BellSouth's insistence to more costly SL-2 coordinated conversions. Each line is identified and
19 related to the batch with a project number. This process adds 14 or more days to the process (see
20 Exhibit A). Of the four (4) 99 line batches submitted by Supra Telecom in November of 2003,
21 30-40 lines in each were returned as SL-2 conversions required and 1-5 were classified as non-
22 convertible in any way. As of December 18, 2003, no reason has been forthcoming for these
23 classifications.

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Q. PLEASE COMMENT ON BELLSOUTH’S HOT CUT COORDINATION LEVELS?

A. On page 5, line 17, of Ainsworth’s Direct Testimony he describes the three levels offered by BellSouth for coordinating the hot cut process. Supra has not used the level entitled “Coordinated/Time Specific” option as yet, though we contemplate doing so for our small business customers in the future.

That said, the level entitled “Coordinated” conversion normally means that all parties involved from **BOTH** sides of the conversion are in direct communication as the conversion takes place. In this case, BellSouth indicates that they will communicate internally during the conversion, and then **ATTEMPT** to contact the CLEC to notify them of the conversions completion. This is not what the industry considers “coordinated” nor is it time specific unless both carriers are communicating during the conversion.

Q. DOES BELLSOUTH’S “COORDINATED” PROCESS ALLOW THE PARTIES TO COMMUNICATE DURING THE PROCESS?

A. No it does not allow for communication during the process. As noted above, coordinated implies that all parties are communicating during the process. If BellSouth were to implement a true coordinated conversion, then the assumption of satisfactory completion would be unnecessary and any potential for an out of service (OOS) condition would be eliminated. As it is described herein, the delays input by this process could cause up to 12 hours of an OOS condition while awaiting a response from the CLEC. Furthermore, there is an assumption of successful completion; what is the process if it was not successful? This is a process not

1 described in any of the cutover processes described in the direct testimony. What is the rollback
2 process if there is a problem on either side?

3

4 **Q. WHAT HAS BEEN SUPRA'S EXPERIENCE OVER THE LAST TWO MONTHS OF**
5 **2003 WITH RESPECT TO THE ORDER COMPLETION STEP?**

6 A. Supra's experience in the last 60 days with over 3,500 conversions including individual
7 orders and the batch process, has clearly illustrated that the order completion step is the greater
8 of two major OOS conditions encountered in the conversion process. BellSouth has no metric
9 nor have they offered one similar to Verizon's to assure that the central office frame technician
10 will enter completions into their systems in a timely manner. The extent of their commitment is
11 that they will make a **BEST EFFORT** to enter the completions in less than four (4) hours. This
12 commitment is entirely dependant upon the mood, attitude or workload of a technician that sees
13 the CLEC as the enemy. This lack of a metric or codified process has led to completion being
14 received by Supra Telecom as late as midnight of the conversion due date.

15 In contrast, Verizon requires that its technicians enter the completions every 20 orders or
16 using their time studies, every 74 minutes. The technicians are measured and graded based on
17 this requirement.

18

19 **Q. PLEASE DESCRIBE THE LEVEL OF COORDINATION AND**
20 **COMMUNICATIONS DURING AND AT THE CONCLUSION OF THE**
21 **CONVERSION?**

22 A. It is non-existent. On page 8, line 20 of A insworth's Direct Testimony he indicates that
23 coordinated conversions assure the highest level of coordination and communication during the

1 provisioning process. What is ignored, however, is that during the most critical point in the
2 process, the actual conversion, this coordination and communication is nonexistent. The process
3 does not assure direct notification at the conclusion of the conversion. It only assures that an
4 attempt will be made to notify the CLEC. This is similar to the purported best effort to enter
5 completions into the service order system in a timely manner during un-coordinated conversions.
6 Neither function is measured, scored or reported.

7

8 **Q. IS IT TRUE THAT THE UNCOORDINATED CONVERSION IS LOW COST?**

9 A. Ainsworth claims on page 9, line 9, that the uncoordinated conversion is low cost. The
10 evidence demonstrates that BellSouth charges Supra \$51.09, for an un-coordinated conversion.
11 This is far from low cost. Close examination of the cost factors used to substantiate the rate used
12 for UNE-P to UNE-L conversion NRCs, have revealed numerous Outside Plant, administrative
13 an engineering costs loaded into the charge. These costs do not apply in the majority of the
14 simple conversions of a customer's copper loop from BellSouth to the CLEC switch port.

15 Again, completion notification is the most troublesome function in the process. The
16 notifications are in the form of "Go-Ahead Notices" sent to the CLEC on an individual telephone
17 number (TN) basis. Supra Telecom's experience with Go-Ahead Notices is that they are received
18 up till 9:00 PM on the due date during a normal workload day and sometimes after midnight on
19 busy day or during periods of BellSouth system congestion. If one assumes that BellSouth
20 technicians end their work day on or before 5:00 PM, this causes an unacceptable delay of four
21 hours during which the customer cannot receive calls.

22

23 **Q. IS BELL SOUTH'S 271 APPROVAL RELEVANT TO THESE PROCEEDINGS?**

1 A. No, it is not relevant. On page 11, lines 11-13, BellSouth **admits** that the FCC indicated that
2 neither the State's nor FCC's 271 approval is applicable to a situation in which CLECs will not
3 have unbundled circuit switching or UNE-P. Therefore, Ainsworth's attempt to argue on page 9,
4 lines 21-25, that the 271 process has already concluded that its hot cut process is adequate to
5 eliminate UNE-P is inappropriate and legally irrelevant.

6 The evidence in this docket demonstrates that Supra does not have non-discriminatory
7 access to UNE-L loops. If we did have non-discriminatory access to UNE-L loops, then why
8 were 4 out of 99 orders classed a non-convertible in Pembroke Pines that is heavily served by
9 IDLC. This trend has continued through 4 batch orders of 99 each.

10 Every process Supra has seen is geared for the business CLECs with lower volumes
11 consisting of high capacity lines requiring coordinated conversions. The volumes required by a
12 residential CLEC cannot be met reliably with the highly manual BellSouth processes.

13

14 **Q. DOES BELLSOUTH'S PROCESS PROVIDE FOR LOCAL LOOP**
15 **VERIFICATION?**

16 A. Despite the processes listed by Ainsworth on page 10, lines 3-15, the process does not
17 provide for local loop verification when, due to the process chosen by BellSouth, the loop must
18 be replaced by copper or UDLC in lieu of existing UDLC or IDLC served loops. Supra suspects
19 that this loop replacement process is causing a 4-5% rate of NDT occurrences during
20 conversions. Supra Telecom cannot provide actual data because BST declines to identify these
21 customers prior to the conversion.

22 The notification of conversion completion must be accelerated, automated, and
23 measured/scored in order to reduce service outages in the high volumes required.

1

2 **Q. DOES THE CURRENT PROCESS PROVIDE FOR TIMELY RESTORATION OF**
3 **SERVICE?**

4 A. No. When a telephone number has been “ported in error” due to a missed appointment or
5 cancellation. BST’s current process requires Supra Telecom to submit a supplement (SUP) to
6 the LSR and fax Form RF-3654 (*CLEC Port in Error Referral For Local Carrier Service*
7 *Center*). Further, SUP LSR must be sent to BellSouth® LCSC and revised FOC received by
8 CLEC prior to CLEC sending Modify SV to NPAC. Meanwhile, no incoming calls can terminate
9 to the customer’s telephone number. Thus, the current processes do not provide for timely
10 restoration of service.

11

12 **Q. WHEN DO CLECS PERFORM LNP PORTING, IS IT ONCE THE CONVERSION IS**
13 **COMPLETE OR IS IT UPON RECEIPT OF THE BELL SOUTH COMPLETION**
14 **NOTIFICATION?**

15 A. On page 12, lines 18-19, Ainsworth creates the impression that CLECs perform LNP porting
16 once the conversion is complete. This is not true. The CLEC does not perform the LNP porting
17 activity once the conversion is effectuated. It does so upon receipt of the BST completion
18 notification. This notification can be and often is hours after the conversion is completed. Due to
19 the remote chance of an MA (i.e. missed appointment) and the difficult process involved to port
20 a number back to BellSouth, the CLEC usually will take the safe route and await the notification.

21

22 **Q. WOULD YOU AGREE THAT ECONOMIC COSTS ARE IMPORTANT TO CLECS?**

1 A. Yes. Yes, the economic cost of conversions is very important to CLECs with large
2 residential customer bases that produce lower revenue per line versus business accounts. That
3 being said, BellSouth has taken the course of meeting the minimum requirements for non-
4 discrimination at the highest cost to them and the CLEC. They are utilizing a very manual
5 process with the built in costs of an over abundance of labor instead of developing simple
6 automated processes and cleaning up their databases to reduce the cost while improving the
7 process.

8 Contrast that to Verizon's process. They have taken advantage of existing automated
9 processes and the Internet to improve the conversion process from beginning to end, reduce out
10 of service time, add enhancements and reduce overall cost to the CLEC.

11

12 **Q. WHAT IS SUPRA'S EXPERIENCE WITH IDLC (INTEGRATED LOOP CARRIER)**
13 **MIGRATIONS?**

14 A. Contrary to Ainsworth's claims on page 17 of his Direct Testimony, Supra Telecom's
15 experience with IDLC is that a large number of customers experience NDT conditions on or
16 before the conversion due date. This indicates that many of these loops are converted to straight
17 copper or UDLC prior to the due date and few if any are tested from customer NID to the CO
18 prior to the jumper move on the MDF.

19 Unfortunately we can only assume the above because BellSouth does not identify these
20 customers to us in advance and we cannot envision how a customer conversion consisting of a
21 "jumper ONLY move" would cause a NDT condition. This is especially true when you consider
22 that Supra Telecom tests for dial tone prior to the due date and BellSouth tests again on the due
23 date and is quick to point out the accuracy of the jumper conversion.

1

2 **Q. GIVEN BELLSOUTH'S LIMITATIONS ON THE NUMBER OF CONVERSIONS**
3 **SUPRA IS PERMITTED, WHAT IS YOUR COMMENT REGARDING BELLSOUTH'S**
4 **CLAIMS, ON PAGE 18, LINES 17-25, THAT IT HAS CONVERTED OVER 600 LINES?**

5 A. Supra would ask BellSouth to please identify the CLEC involved and the date of these 600
6 conversions? With this information we can determine how many customers lost dial tone and
7 how many could not receive incoming calls beyond a reasonable LNP porting period. These are
8 the issues that the Commission must examine.

9

10 **Q. DOES BELLSOUTH'S PROJECT MANAGER, THAT WORKS WITH SUPRA,**
11 **KNOW HOW TO USE THE BULK MIGRATION REQUEST SYSTEM THAT**
12 **AINSWORTH DESCRIBES ON PAGE 21, LINES 15-20 IN HIS DIRECT TESTIMONY?**

13 A. No, the BellSouth project manager does not. The process of uploading the bulk LSR
14 orders in the form of a tab delimited text file exists in LENS. However, Supra has never been
15 made aware of how it works or trained in its use. As noted in the question, our BellSouth Project
16 manager does not know how to use it. Having noted this, does the system really work? As of
17 today, Supra Telecom can only say that it continues to submit LSRs that result from the bulk
18 process on an individual basis.

19

20 **Q. WHAT DOES THE LCSC "NORMAL PROCESS", MENTIONED ON PAGE 23,**
21 **LINES 1-2, INCLUDE?**

22 A. The normal process appears to include responses to the CLEC that do one of three things: (1)
23 Assign due dates to lines as SL-1 conversions, (2) Unilaterally designate lines as requiring the

1 higher cost SL-2 conversion process, or (3) Unilaterally designate lines as ineligible for
2 conversion at all. The later two are proffered without explanation.

3

4 **Q. IS THE BULK PROCESS EFFICIENT AS MEASURED BY THE TIME AND**
5 **RESOURCES EXPENDED IN THE PROCESS BY A CLEC?**

6 A. No, it is not. The bulk process allows for pre-qualification of lines to be converted helping to
7 avoid MA, Plant Facilities (PF) issues or OOS issues. But if efficiency is measured as time and
8 resources expended in a process Supra Telecom does not agree it is more efficient. The process
9 adds a minimum of 17 business days to the conversion interval. (See Exhibit A) This delay
10 causes the CLEC to have to re-qualify every line before submitting its LSRs to assure that
11 nothing has changed on that line in the 14 business day interval. This is very difficult to do in the
12 very short 3 day interval allowed to submit the final LSRs.

13

14 **Q. PLEASE DESCRIBE SUPRA'S EXPERIENCE WITH RESPECT TO**
15 **ALTERNATIVES 1 AND 3 AS OUTLINED BY AINSWORTH ON PAGE 26, OF HIS**
16 **DIRECT TESTIMONY?**

17 A. BellSouth has chosen to utilize Alternatives 1 and 3 in providing access to IDLC loops. Both
18 alternatives require the movement of the F2 pair (customer sub-loop) to a newly assigned F1 pair
19 to the CO or an UDLC system with spare capacity in the same CO. In theory, both of these
20 alternatives should work well with minimal customer outages. Our experience over the last two
21 months, however, has indicated that this is not the case. We suspect a high error rate in the
22 BellSouth OSP assignment database is the direct cause.

1 Both of these alternatives require truck rolls to the remote terminal to accomplish and
 2 truck rolls to both the remote terminal and customer location to repair the 4-5% of the
 3 conversions that result in NDT. Obviously, these truck rolls increase the cost to BellSouth and
 4 they have loaded that extra cost into every conversion whether it involves IDLC or not.

5 In an inter-carrier planning meeting on March 5, 2003, Supra Telecom proposed that in
 6 areas of high Supra Telecom customer concentration conjoined with high concentrations of
 7 IDLC BellSouth could move or groom all the customers to 1-N remote terminals which could be
 8 demuxed at the CO and handed off to Supra at the appropriate level. A BellSouth representative
 9 then asked if we would be willing to pay some charge for any unused terminal slots if we lost
 10 customers in those units. Viewing this sunk cost as an incentive to market better and retain
 11 customers, Supra Telecom readily agreed to negotiate such a charge. This proposal was rejected
 12 out of hand without explanation YET it is almost precisely as described in Alternative 4. This is
 13 a lower cost and much more efficient alternative though not as efficient as Alternative 2 which is
 14 also very close to our proposal.

15

16 **Q. PLEASE COMMENT ON STATEMENTS MADE BY RON PATE ON PAGE 3,**
 17 **BEGINNING ON LINE 5 OF HIS DIRECT TESTIMONY?**

18 A. To our knowledge the CLEC is still required to submit individual LSRs as the last
 19 step in the batch migration process. The BellSouth PM (project manager) has been unable to
 20 instruct Supra Telecom Carrier Operations in the use of a batch LSR submission process. With
 21 respect to Mr. Pates testimony beginning on line 22, Supra Telecom does not consider a process
 22 dependant upon MS Excel spreadsheets and e-mail for inter-carrier communications to be fully
 23 mechanized or even partially mechanized in its most important functions.

1

2 **Q. HOW DO YOU RESPOND TO PATE'S COMMENTS ON PAGE 8, BEGINNING ON**
3 **LINE 17?**

4 A. Although this bulk LSR submission process was described to Supra Telecom during its joint
5 planning meeting with BellSouth in March of 2003, we must again state that we are unaware of
6 how it should work or if it works at all. To date, our BellSouth PM has been unable to explain
7 the process to Supra Telecom Carrier Operations.

8

9 **Q. PLEASE COMMENT ON MR. RUSCILLI'S DIRECT TESTIMONY ON PAGE 13,**
10 **LINE 22, REGARDING UNE-L LINES?**

11 A. How many UNE-L loops are there in Florida? Ruscilli claims there are 156,746. In Mr.
12 Ainsworth's testimony, we were told approximately 300,000.

13

14 **Q. IS RUSCILLI CORRECT TO STATE THAT UNE LOOP NONRECURRING**
15 **CHARGES CONSTITUTE AN ECONOMIC BARRIER ON PAGE 19, LINES 4-7?**

16 A. This is not correct. The FPSC was presented with data for the installation of a **NEW** UNE-L
17 loop and approved same. BellSouth has never submitted cost studies or any other cost data
18 directly related to the migration of an **EXISTING** UNE-P loop to a UNE-L loop only
19 configuration.

20

21 **Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

22 A. Yes it does.

1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

3

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

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

9 I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a relative
10 or employee of any of the parties' attorneys or counsel
connected with the action, nor am I financially interested in
11 the action.

12 DATED THIS 26TH DAY OF FEBRUARY, 2004.

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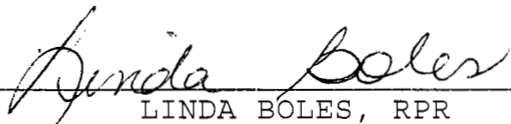
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