

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 27

Pages 3875 through 3971

PROCEEDINGS

HEARING

BEFORE:

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

DATE:

Friday, February 27, 2004

TIME:

Commenced at 9:00 a.m.

PLACE:

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

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1 REPORTED BY: LINDA BOLES, RPR
2 Official FPSC Reporter
(850) 413-6734

3 APPEARANCES: (As heretofore noted.)

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I N D E X
WITNESSES

NAME :

PAGE NO.

JOE GILLAN

Cross Examination by Mr. Lackey
Cross Examination by Ms. Hyer

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EXHIBITS

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 26.)

CHAIRMAN BAEZ: We will go on the record real quick. Briefly, Mr. McGlothlin, you had some early morning matters.

MR. MCGLOTHLIN: Mr. Chairman, thank you. Late yesterday there was a bit of confusion regarding Mr. Reith's status that we sorted out after the record. For the record, I'd ask that he be excused from the hearing.

CHAIRMAN BAEZ: And for the record, Mr. Reith is excused.

MR. MCGLOTHLIN: And I move into evidence his prefiled Exhibits, seven of them, marked as Composite 116.

CHAIRMAN BAEZ: I'm sorry. Was someone speaking up? No. We can do that. Without objection, we'll move composite 116 into the record. And if you have nothing else, you're free to go, too.

(Exhibit 116 admitted into the record.)

MR. MCGLOTHLIN: Thank you, sir.

CHAIRMAN BAEZ: All right. A brief time-out here.

COMMISSIONER BRADLEY: This is Commissioner Bradley.

CHAIRMAN BAEZ: Are you there, Commissioner Bradley?

COMMISSIONER BRADLEY: Yes.

CHAIRMAN BAEZ: Okay. Good morning.

COMMISSIONER BRADLEY: Good morning.

CHAIRMAN BAEZ: We're getting ready to start. Do we

1 have any preliminary matters, any other preliminary matters
2 this morning?

3 MR. SUSAC: Sprint Witness Kent Dickerson's redacted
4 transcript is copied and we'll be passing that out to the
5 parties.

6 CHAIRMAN BAEZ: Okay. Thank you. And if there's
7 nothing else, we can let Mr. Gillan set up and we'll start his
8 cross.

9 (Pause.)

10 CHAIRMAN BAEZ: Mr. Gillan, are you ready? Okay.
11 Mr. Lackey, you can proceed.

12 MR. LACKEY: Thank you, Mr. Chairman.

13 JOE GILLAN

14 was called as a witness on behalf of Florida Competitive
15 Carriers Association and, having been duly sworn, testified as
16 follows:

17 CROSS EXAMINATION

18 BY MR. LACKEY:

19 Q Mr. Gillan, I always get it wrong. Gillan; right?

20 A Good morning, Mr. Lackey.

21 Q But I'm always confused by whether it's Gillan or
22 Gillan.

23 A It's Gillan.

24 Q Okay. Good. I got it right the first time. You
25 were deposed in this proceeding on February 13th; correct?

1 A Yes.

2 Q If you were asked the questions today that you were
3 asked in your deposition on the 13th, would your answers be the
4 same?

5 A For the most part. I reviewed the deposition; there
6 was some typographical and wording errors. And there was also
7 a discussion between yourself and I concerning what you
8 characterized as your appeal of Florida's UNE rates, which I've
9 later discovered that you did not appeal the Florida UNE rates;
10 in fact, you're defending them. So that exchange I would have
11 to give different answers to given that the facts were
12 different than I thought at the time when we had our
13 discussion. But, yes.

14 Q Okay. The answer to that question would have been
15 that AT&T appealed the UNE rates; correct?

16 A No. The answer to that question, as I understand it,
17 is that MCI appealed the UNE rates and that you're defending
18 them as being properly established.

19 Q Okay. Other than that change and the typographical
20 corrections you would have made, would any of your substantive
21 answers have been different today?

22 A I don't believe so based on my review, but --

23 Q Okay. Thank you. Let's start at Page 4 of your
24 direct testimony, Lines, Lines 5 through 10. And I want to
25 make sure I understand what you say here, so I'm going to read

1 it to you, try to read it correctly.

2 "If UNE-P is eliminated prematurely, there will be no
3 viable alternatives for Florida consumers and the mass market
4 will revert to a monopoly once again. In the BellSouth region
5 alone, eliminating UNE-P would reduce local competition in 2004
6 (based on BellSouth's projections) by nearly 90 percent, a fact
7 that underscores the critical importance of this proceeding."

8 Did I read that correctly?

9 A Yes.

10 Q Now the 90 percent figure is a calculated figure; is
11 that correct?

12 A Yes.

13 Q And you or somebody on your behalf calculated it
14 correctly?

15 A Yes.

16 Q So there should be no -- no one should infer from
17 your testimony that BellSouth said that if UNE-P went away,
18 that local competition would be reduced in the BellSouth region
19 by nearly 90 percent; correct?

20 A That's correct.

21 Q Do you believe yourself that if UNE-P is eliminated
22 as a result of this proceeding, that local competition will be
23 reduced in 2004 by 90 percent or nearly 90 percent?

24 A Well, first, that would -- that couldn't occur from
25 this proceeding alone because, as the sentence indicates,

1 that's a regionwide calculation. That projection of those
2 UNE-P lines is based on a regionwide projection by BellSouth.

3 Q All right. I -- I'm sorry.

4 A In the real world, obviously, I think if the
5 Commission eliminated UNE-P here, the reality would be there
6 would be immediate and sustained litigation. But at the end of
7 all that litigation, if the availability to local switching and
8 UNE-P were actually eliminated, then I believe that kind of
9 reduction in local competition or something close to that would
10 occur, yes. It's not, it's not -- in the mass market that is
11 not an unreasonable prediction.

12 Q Okay. So but the point is, is that you certainly
13 didn't mean to imply that if UNE-P were eliminated, even -- if
14 this Commission ordered on July 2nd that UNE-P went away in
15 Florida, you really didn't mean to suggest that local
16 competition in Florida would be reduced by nearly 90 percent in
17 2004, did you?

18 A You mean if the Commission just flash cut said
19 there'd be no UNE-P in Florida anymore?

20 Q Yeah. If on July 2nd or whatever the, June 29th,
21 whatever the day of the decision is --

22 A Said there would be no more access to the, to the
23 element?

24 Q If they --

25 A I'd have to look at the numbers specific to Florida.

1 But it -- in the mass market, certainly it would be that kind
2 of reduction. I mean, if we look at the type of activity in
3 the mass market that you, we have before us here for the
4 trigger candidates that you've identified, that's about
5 1.4 percent. If we, if we accept those numbers as accurate,
6 that's about 1.4 percent that would still be there. So there
7 would be a dramatic reduction, yes.

8 Q Well, thank you for that answer. But doesn't the TRO
9 provide that CLECs can still order UNE-P for five months
10 following a decision that there's no impairment in the market?

11 A Well, the TRO has that provision, but --

12 MR. LACKEY: Excuse me. Mr. Chairman, could I ask
13 that you instruct the witness to give me a yes or no answer
14 before --

15 CHAIRMAN BAEZ: Mr. Gillan.

16 WITNESS GILLAN: Yes. But why would a company
17 continue to order and market to customers that it has to
18 immediately start shedding again? I mean, if you change the
19 conditions in which people are going to have an opportunity to
20 compete in the future, they're going to start reacting to it
21 right away. And since it's costly to go out and acquire
22 customers, there would be so little economic incentive to go
23 and acquire a customer that you knew you would be in, not be in
24 a position to serve in the future, that I think the Commission
25 should expect those kind of reductions to occur quickly.

1 BY MR. LACKEY:

2 Q Okay. So you, you do believe the Commission ought to
3 expect those kind of reductions in the future; is that what you
4 said at the end of your answer there?

5 A Under the hypothetical we're discussing.

6 Q Okay.

7 A Yes.

8 Q And, indeed, under the TRO there is a total of a,
9 what, 27-month transition period in markets where there's a
10 finding of no impairment?

11 A Yes.

12 Q Now when you were making your calculation there, did
13 you give any consideration to whether any of the UNE-P
14 customers would move to facility-based carriers?

15 A No.

16 Q Now can you, can you reconcile your conclusion that,
17 let me use the figure that's up there, that local competition
18 would be reduced by nearly 90 percent with the substantial
19 number of UNE-L hot cuts that Mr. O'Roark was talking to
20 Mr. Heartley about on Wednesday?

21 A I wasn't here for Mr. O'Roark's discussion with
22 Mr. Heartley.

23 Q But you understand that part of the attack on the hot
24 cut process that is proposed in this proceeding is that the hot
25 cut process cannot handle the volume of UNE loop conversions

1 that will occur in markets where a no impairment finding is
2 made; right?

3 A My understanding, yes, that there's, that there's a
4 discussion about whether if there was a hypothetical transfer
5 of those lines to other networks, whether or not the hot cut
6 process would be an additional impediment over and above the
7 economic impediments.

8 Q Well, you will agree that it can't go both ways, can
9 it? There can't be 90 percent of the local competition
10 disappearing, and at the same time a substantial volume of
11 UNE-L cuts that the company's hot cut process can't handle.
12 Those are two inconsistent positions, aren't they?

13 A No, I don't think so, because I think you
14 mischaracterize at least what I understand to be the discussion
15 about the hot cut issue. The, the question that -- one of the
16 questions that the hot cut issue addresses is are there
17 barriers that would prevent mass market competition using
18 UNE-L? So it's a debate about whether or not that hot cut
19 process is a barrier.

20 There's an additional debate that Mr. Turner spends
21 his testimony addressing, which is are there economic barriers
22 to mass market competition using UNE-L? Obviously the economic
23 barriers identified by Mr. Turner would prevent carriers from
24 rationally trying to move significant lines to UNE-L, but that
25 doesn't mean that the Commission under the TRO isn't supposed

1 to sit down and identify all the barriers that exist, even if
2 in reality some of them occur before others so that you don't
3 go, you don't reach all of them in the course of trying to
4 change the market. It's a discussion about barriers to entry.
5 Clearly, I think Mr. Turner's barrier is going to trump the
6 operational barrier that I presume Mr. O'Roark was discussing.

7 Q I'm sure my question wasn't clear.

8 Do you understand that one of the attacks made on the
9 hot cut process is that it cannot handle the volume of hot cuts
10 that will occur?

11 A No, I don't think you state that correctly. I think
12 the attack on the hot cut process is the hot cut process could
13 not handle the number of hot cuts that would be needed to occur
14 in order for there to be the same type of competition with
15 UNE-P.

16 It doesn't mean that if UNE-P would go away, that
17 you'd actually see those because, as the CLECs have explained,
18 there are both economic barriers to competition using UNE-L and
19 operational barriers to using UNE-L. In this case, the
20 economic barriers that Mr. Turner talked about would, would
21 preclude, I think, the hot cut volumes from increasing at that
22 level. But that doesn't mean that the Commission doesn't need
23 to look at the operational issues as well, because the question
24 you have to address is what are all these barriers and identify
25 and understand them all. And I think that's the role that the

1 hot cut debate is in is is it -- would it be a barrier -- if
2 all the other barriers were removed, would that still be a
3 barrier? Just like Mr. Turner looks at it, if all the other
4 barriers were removed, would this backhaul and transport
5 problem still be a barrier?

6 Q Well, I guess I'm still confused. Is it your
7 position then that one of the disputes in this proceeding --
8 let me rephrase that question.

9 Does your answer mean that you agree that the hot cut
10 process that has been proposed by BellSouth is sufficient to
11 handle the volumes of UNE-L conversions that you would expect
12 to see if UNE-P is eliminated in markets where there is no
13 impairment in Florida?

14 MS. KAUFMAN: Mr. Chairman, at this point I'm going
15 to object. Mr. Gillan does not address the hot cut process.
16 We've had a number of witnesses that have done that on our side
17 of the case, and that is not the area that his testimony
18 addresses.

19 CHAIRMAN BAEZ: I'm going to switch it up a little
20 bit, Mr. Lackey. You've asked him the same, the same question
21 three different ways, and I think he's given an answer that you
22 might not --

23 MR. LACKEY: You think I've got the answer I'm going
24 to get.

25 CHAIRMAN BAEZ: I think you've got the answer you're

1 going to get, yes, in short.

2 MR. LACKEY: Okay. That's fine. That's fine.

3 WITNESS GILLAN: Mr. Lackey, could you hold -- if I
4 could ask, there's a bottle of water, I think, at Ms. Harden's
5 feet that I would appreciate. Sorry. Thank you.

6 BY MR. LACKEY:

7 Q Let's talk, let's talk about your six criteria for a
8 moment, which I believe are on Page 36 and 37 of your direct
9 testimony.

10 Now looking at Line -- excuse me, Mr. Chairman. I
11 can't believe I've got to do this eight more times.

12 A You don't, Mr. Lackey. We could --

13 Q Well, actually what I was thinking was --

14 CHAIRMAN BAEZ: Touché.

15 MR. LACKEY: -- the DC Court of Appeals issues
16 decisions on Tuesdays and Fridays. Maybe I'll get lucky today.

17 BY MR. LACKEY:

18 Q Looking at Page 36, Lines 4 through 7, which is the
19 introduction to your six criteria. If I understand your
20 position, any trigger candidate, in order to be found to
21 qualify to satisfy the self-provisioning triggers, has to meet
22 every one of the six categories that you have outlined on Page
23 36 and 37 of your testimony; is that correct?

24 A Yes. With a small caveat, that the last one is more
25 of a collective review of the trigger candidates rather than so

1 much an individual review.

2 Q So, and I'm going to come back to it in a moment, but
3 number six is the one that we've talked about as the de minimus
4 standard?

5 A I think that's the term we've used to shorthand it,
6 yes.

7 Q And was the correction that you just made that
8 instead of applying your or the de minimus standard on a
9 trigger-candidate-by-trigger-candidate basis, that you might
10 apply it on a market basis?

11 A Yes, with the -- I wouldn't use the word
12 "correction."

13 Q Oh, okay. I am not sure I understood this correctly
14 yesterday, so let me just ask you the question as directly as I
15 can.

16 Is it your position that as opposed to being an
17 interpretation of what the TRO says, that every one of these
18 six criteria are, are articulated either in the rules or in the
19 TRO itself?

20 A I don't think I can answer that with a simple yes or
21 no because I don't -- it's not clear to me what the difference
22 between an interpretation and an articulation means. Obviously
23 it is, it is my understanding of what the TRO lays out.

24 Now does the TRO have a rule that lists these six?

25 No. The TRO has statements in it that indicate that they

1 expect the states to conduct an analysis of local conditions
2 that's consistent with the FCC's analysis, and then the FCC
3 conducts an analysis with these type of criteria. In that
4 sense it's an interpretation, but the fact -- but it's also an
5 articulation in the TRO. They're all drawn from discussion of
6 the FCC in the TRO.

7 Q Okay. Let's look at your third criteria, which is,
8 "The self-provisioning candidate should be relying on ILEC
9 analog loops to connect the customer to its switch." Did I
10 read that correctly?

11 A Yes.

12 Q Now just to make this as short as possible, you think
13 that every trigger candidate has to meet this particular
14 criteria; correct?

15 A That's my recommendation to the Commission, yes.

16 Q Okay. And if I understand correctly, the application
17 of this criteria will eliminate every cable company who
18 provides telephone service in Florida from being considered as
19 a trigger candidate; is that correct?

20 A That would be my recommendation, yes.

21 Q Okay.

22 A Obviously, as a practical matter, when we, when we
23 look at the actual triggers, there's only one cable company
24 that's been named, and there is, there are other issues
25 surrounding that cable company's involvement. But, yes.

1 Q Now is there a rule in the FCC's rules that directs
2 the Commission to eliminate cable companies from consideration
3 as trigger candidates?

4 A No, there's not a rule. In fact, even the text
5 doesn't direct the Commission to eliminate them. It tells the
6 Commission that they have the latitude to eliminate them, and
7 it is my recommendation that they do so.

8 Q Do you have Exhibit 91 with you? Exhibit 91 is the
9 exhibit that compiles, I guess, the trigger provisions of the
10 rules and the TRO that counsel for the impairment side compiled
11 and had marked yesterday. I have another copy, if you don't.

12 A I have a copy.

13 Q Okay, good. Do you have a copy in front of you,
14 Mr. Gillan?

15 A Yes.

16 Q Let's look at Page 2. That sets out the section of
17 the FCC rule related to local switching self-provisioning
18 trigger; correct?

19 A Yes.

20 Q That rule clearly mentions when it's speaking about
21 competing CLECs, competing providers, it specifically mentions
22 intermodal providers of service comparable in quality to that
23 of the incumbent LEC, doesn't it?

24 A Yes. It permits the Commission to consider them. It
25 does not require that they be counted because, as the TRO

1 explains, they may, the evidence may bear less weight in an
2 analysis.

3 Q Now let's turn to Page 14 of that same document, and
4 I'm looking at Footnote 1560 at the bottom of the page. Do you
5 see that?

6 A Yes.

7 Q And indeed the bold part -- and I assume that bold
8 part is not in the TRO, but was added by whoever prepared the
9 exhibit?

10 A That's my recollection.

11 Q Okay.

12 A I don't recall bold in the TRO.

13 Q Okay. The bold is the portion that says that when
14 one of the three competitive providers is self-deploying its
15 own loops, that this evidence may bear less heavily on the
16 ability to use a self-deployed switch as a means of accessing
17 the incumbent loops; correct?

18 A Yes.

19 Q The next sentence which isn't in bold clearly says
20 that the presence of three competitors in a market using
21 self-provisioned switching and loops shows diffusibility of an
22 entrant serving the mass market with its own facilities,
23 doesn't it?

24 A Yes.

25 Q So to be clear, the criteria that we have been

1 talking about is a position that you're advocating this
2 Commission ought to apply, but it is certainly not required by
3 either the FCC rules or by the language of the TRO; correct?

4 A Yes. I think I made clear yesterday it's an area
5 where the Commission has discretion. They may choose to
6 include or may choose not to include those companies. My
7 recommendation is, as I explained, they should not.

8 Q Well, can you point to me the place in the TRO that
9 authorizes the Commission to exercise the discretion to exclude
10 a cable company as opposed to simply giving it less weight?

11 A Well, to me, the phrase "less weight" in a trigger
12 analysis is you either include it or you don't include it.
13 That is the authority.

14 Q Well, if that was what the FCC had intended, that is,
15 you either include it or you don't include it, why would they
16 have used the term, if you know, "less weight"? Why didn't
17 they just say what you said?

18 A Well, there's a number of places where I wish they
19 had written it the way I would have written it.

20 Q Oh --

21 A But to me, it's pretty clear that this, this phrase
22 that they used gives that authority. Plus there's another,
23 there's another section or another footnote in here where they
24 direct, for intermodal providers, the Commission, all the way
25 back to the entire section on the unbundling analysis, and

1 directs that the Commission consider that entire section and
2 the discussion in it. And throughout the TRO the FCC was quite
3 clear that, that the, you know, the bottom line question in
4 front of it is can people fundamentally access the incumbents'
5 loops. And the actual competition or trigger test is in part
6 supposed to be an actual market test as to whether people can
7 access that loop network, and cable companies and other
8 intermodal providers are not as useful to answering that
9 question as carriers using UNE-L.

10 Q So, again, back to the question, your position is
11 that the term "less weight" actually means no weight?

12 A I think in a trigger analysis that's, it turns out
13 that way, yes, because you either count them or they don't
14 count them. 2.8 and 2 have the same effect in a trigger
15 analysis. It's a binary analysis, and so that's how it would
16 be applied. Yes.

17 Q Well, let me give you a hypothetical. Let me give
18 you a hypothetical.

19 Let me ask you to assume that you had CLEC A using
20 its own switches and the ILEC's loops serving 20,000
21 residential single line customers in whatever the relevant
22 market area is. You had CLEC B using its own switch serving
23 20,000 residential customers in that same market. You had CLEC
24 C, which was a cable company, serving 100 customers in that
25 market.

1 A I'm sorry, Mr. Lackey. I --

2 Q You want me to go through it again?

3 A Yeah, because I'm going to have to --

4 Q A and B are exactly alike, they're both using their
5 own switches and ILEC loops, they're using 20 -- they're
6 provisioning 20,000 residential single line customers. I just
7 want to make sure that we don't have a disagreement about
8 whether CLEC A and B would be trigger companies. Okay? Have
9 you got the facts though?

10 A Two companies, two CLECs, they each have a switch and
11 they're each serving 20,000 residential customers.

12 Q Okay. Yeah. And then let's, let's make the third
13 carrier a cable company and, what the heck, let's just say that
14 it's serving using its switch and its loops and it's serving
15 20,000 residential customers in that same market. Are you with
16 me?

17 A Yes.

18 Q Okay. In that example, don't you think that a, that
19 this Commission could fairly find that that market, that CLECs
20 were not impaired in that market without access to the ILEC's
21 unbundled switching?

22 A They might be able to in that situation. I don't
23 know. We don't have anything that looks like that at all here
24 though.

25 Q Well, I'm just --

1 A I recognize that, that the Commission has the
2 flexibility to count or not count a cable company, and my
3 recommendation is here in Florida, given what we see in the
4 marketplace, they should not.

5 Q Well, this, this recommendation you're making isn't
6 unique to Florida. You're saying this everywhere you go,
7 aren't you, at least in the BellSouth region?

8 A Yes.

9 Q All right. And so what I'm asking you is, is that if
10 the Commission applies your criteria, in my hypothetical they
11 would find impairment even in those situations where those
12 three CLECs are serving that number of customers in that market
13 just because one of them is a cable company; right?

14 A They might in that. But we don't -- that isn't
15 the -- I don't have that fact situation anywhere in front of me
16 in making this recommendation. I could very well be making a
17 different recommendation with that fact situation.

18 Q Oh, okay. I must have -- are you taking the position
19 that your six criteria are principles that you are advancing
20 based on the specific facts that you have learned in Florida as
21 a result of this proceeding as, as opposed to a recommendation
22 you're making as a matter of principle?

23 A No. But in terms of this recommendation, throughout
24 the country in everything I've seen, it would take an
25 exceptional circumstance for me to make a recommendation other

1 than they should not at this point count a cable company. I
2 mean, you -- I'm in roughly 20 states. The problems that are
3 systemic in Florida to local competition and the barriers are
4 not unique to Florida. They exist across the entire country in
5 virtually the same level throughout the markets I've looked at.
6 In fact, if there's any sort of unique situation in Florida, it
7 has to do with FDN, and I've made clear that FDN we're not
8 disqualifying. They appear to be relatively unique around the
9 country.

10 Q That reminds me, and I'm going to digress, but I'll
11 come back to these criteria. Were you here last night when
12 Mr. Nilson for Supra was testifying?

13 A No.

14 Q If I recall your testimony correctly and your
15 presentation that you made, Supra was disqualified as a
16 candidate trigger because it had self-disqualified itself; is
17 that right?

18 A Yes.

19 Q So you weren't here last night and you weren't
20 listening to the examination of Mr. Nilson?

21 A No.

22 Q I suppose the transcript will show what it shows, but
23 if I were to tell you that Mr. Nilson said that at least, and I
24 may have this wrong, but I thought he said that he considered
25 himself disqualified because BellSouth said in a pleading in

1 the bankruptcy court that Supra wasn't going to survive. Do
2 you, do you know why Supra disqualified itself as a trigger
3 candidate?

4 A I haven't reviewed Supra's testimony, but my
5 understanding was there's certainly that issue as to whether
6 BellSouth can maintain in this forum that they are likely to
7 continue while representing in what I understand to be a
8 federal court that they are not likely to continue.

9 I also understand that, that Supra's activity is only
10 just now beginning to emerge in an attempt to use UNE-L, and
11 that those, that factor would need to be considered into
12 whether they constitute a legitimate trigger. But I've not
13 done an independent evaluation of Supra other than in the total
14 numbers for the de minimus test that I've reviewed for all the
15 trigger candidates collectively.

16 Q Well, for instance, do you happen to know how many
17 hot cuts Supra had since December 4th?

18 A I have not reviewed Supra's information.

19 Q Would you be surprised to learn that the record
20 evidently will show, according to my co-counsel, that there
21 have been 16,000 Supra hot cuts since December 4th?

22 A I have no basis to be surprised or, or otherwise on
23 the data. I have no idea how many wire centers that's across
24 or how many days in that period that 16,000 was spread across
25 or whether or not it could be done again.

1 Q Do you know whether the -- you've talked about
2 whether BellSouth could take one position here and one position
3 in federal court. I think that's what you said a moment ago.
4 Do you happen to know whether the conversation in the federal
5 court was in the context of having a trustee appointed for
6 Supra?

7 A I have not reviewed Supra's operations or its
8 testimony or its position. I was actually going off of, I
9 think, your, partially your representation.

10 Q Do you, do you know whether FDN and Supra operate in
11 the same markets in Florida?

12 A Without having a discussion with you about what the
13 word "market" is, I'm generally familiar that they would both
14 be operating offering service in South Florida.

15 Q Okay. Using your definition of the geographic market
16 that you've advanced in this case, do Supra and FDN operate in
17 the same market?

18 A I believe they do.

19 Q Okay. And does that cable company that we were
20 talking about, which I believe is Comcast from your
21 presentation, does that operate in the same market as FDN and
22 Supra?

23 A I don't know.

24 Q You don't know where in Florida Comcast provides
25 telephone service?

1 A No.

2 Q Okay. Let's go back to the criteria again, and I
3 want to go to the sixth one, the de minimus standard. Now just
4 so we're clear, the word -- you and I have agreed that that
5 criteria is the one that we've been colloquially referring to
6 as the de minimus standard, some minimum number of lines that
7 have to be provided before trigger candidates can qualify?

8 A Yes. It's a useful shorthand.

9 Q Okay. But I understand, and I'm sure it was just my
10 misunderstanding, that you're not applying the de minimus
11 standard on a CLEC-by-CLEC basis, but rather are providing it
12 for the market as a whole.

13 A Yes. I believe that's how the FCC applied it in its
14 analysis. And so I think for the Commission to conduct its
15 impairment analysis in the manner consistent with the federal
16 analysis as required by the TRO, they would have to apply it
17 collectively as well.

18 Q Okay. So just to make sure I understand, if we
19 agreed that the -- if we agreed, first of all, that a
20 de minimus standard was required, and, second, you and I agreed
21 that for a particular market the de minimus standard was 1,000
22 lines, if one CLEC had 500 lines and the second CLEC had 450
23 lines and the third CLEC had 50 lines to total to the 1,000, I
24 hope, we wouldn't have a disagreement that the de minimus
25 standard had been met; correct?

1 A Not necessarily. I think what you're missing,
2 Mr. Lackey, is that when the Commission delegated this
3 responsibility to the state Commissions, it was delegating some
4 latitude and, and, and a direction that you apply your judgment
5 in a manner consistent with the way the FCC applied its
6 judgment.

7 Now the FCC's judgment when it came to requiring,
8 when it came to dismissing ILEC claims of nonimpairment based
9 on low levels of competitive activity occurs throughout the TRO
10 in a number of places. It isn't a hard and fast rule that says
11 2 percent and you add up three carriers. It's a, it's a much
12 more nuanced common sense view of, look, this actual
13 competition is supposed to be enough there to give you, the
14 Commission, confidence that barriers to competition in that
15 market don't exist.

16 Now when the FCC applied its judgment, it looked out
17 and the ILECs threw a couple, a number of things at it in an
18 effort to get the FCC to bite on the premise that low levels of
19 competitive activity were a demonstration that there aren't
20 barriers to competition and barriers to entry in these markets.
21 They threw people substituting their wireless phone for
22 wireline service. Does that happen? Yes. Does it happen a
23 lot? No. They threw cable telephony, they threw alternative
24 technologies. And as the FCC went through it, and it was in
25 the, the list of citations that we provided the Commission

1 yesterday, the FCC used its judgment to look and say, you know,
2 yeah, there's some of this going on out there, for instance,
3 wireless, people getting rid of their wireline phone service
4 and using their wireless phone, but, you know, it's only 3 to
5 5 percent. We're not going to count that. And, yeah, there's
6 some cable telephony, but, you know, it only adds up to like
7 3 percent of the residential market. That isn't proof.

8 I'm not going to sit here and get locked into a hard
9 and fast percentage any more than the FCC identified a hard and
10 fast percentage when it delegated this responsibility to you.
11 But what it told you to do is that your state job for Florida
12 is to apply an analysis comparable to what they did, and they
13 clearly threw out claims of nonimpairment based on low levels
14 of competitive activity. And most of those levels, in fact, I
15 think all of those levels that we could, you know,
16 mathematically translate into a percentage are far greater than
17 what BellSouth and Verizon are claiming here.

18 Now at what point does it really count? I don't
19 know. I mean, I'm not going to sit here and tell you when it's
20 5 percent it counts or that if it's 10 percent, but if
21 9 percent is with one carrier and the rest is with a couple of
22 small ones, it shouldn't count. I don't know. I mean, at that
23 point we're truly looking at each fact-specific situation and
24 applying judgment. The testimony is that analysis is
25 permitted, in fact, it's indicated by the TRO as a

1 responsibility to the state to make sure that you do things
2 consistent with the TRO. And it makes no sense for the FCC to
3 be in Washington rejecting ILEC claims of nonimpairment based
4 on low levels of competitive activity and then saying, but
5 we're going to have a trigger analysis, that if you apply this
6 analysis to the exact same set of facts, you turn the finding
7 around and you reverse it. That's not conducting your analysis
8 in a manner consistent with the FCC.

9 Q Are you done with your answer? I don't want to
10 interrupt you.

11 A Yes.

12 Q Okay. You want this Commission to apply the six
13 criteria that are on Page 36 and 37 of your testimony; correct?

14 A Yes.

15 Q And I'm not sure whether we agreed on this or not,
16 but I thought these were supposed to be statements of
17 principles that you wanted them to apply. Is that correct?

18 A Yes. They are areas of inquiry that I think reflect
19 what the FCC did as well.

20 Q Okay. And I want -- all I'm trying to do is to see
21 if we can explore these principles to see what they mean so
22 that we can see whether they can help the Commission make these
23 decisions. And what I was trying to ask you, although not
24 successfully apparently, is that should the Commission
25 interpret criteria number six to mean that they should fix a

1 minimum number of customers that CLECs have to serve in a
2 market before that market can have a no impairment finding?

3 A No.

4 Q If that's not what that principle means, just say no
5 and that'll be it.

6 A No. They should not fix a set amount in this
7 proceeding. These are principles that you apply to the facts
8 on the ground in Florida.

9 Q Got it.

10 All right. Let's talk about really a derivation of
11 your criteria number 1.

12 The self-provisioning trigger candidate switches must
13 not be enterprise switches. If I understand correctly, your
14 position is that a switch that serves both enterprise and mass
15 market customers cannot be considered a switch for the purpose
16 of determining whether a CLEC that owns it is a
17 self-provisioning candidate or not or trigger candidate or not
18 unless at least 20 percent of the capacity of that switch is
19 used to provide mass market service; is that correct?

20 A Yes. Again, it's not a hard and fast percentage.
21 But we know that the FCC looked out at switches in the 80 to
22 90 percent -- it's easier at least for me to think of this in
23 terms of its digital capacity, its enterprise capacity. They
24 looked out at switches that had 80 to 90 percent of their
25 capacity being used to provide service to enterprise customers

1 and viewed those as enterprise switches.

2 Now would 75 percent/25 percent mean it was mass
3 market? I don't know. You know, we can apply these principles
4 to the facts on the ground here in Florida. It's pretty
5 straightforward. I think the examples we have and the carriers
6 you have to look at are pretty clear. As you get nearer the
7 boundary layer of, you know, 80 percent, then you might need to
8 take a more nuanced look at the carrier. So what you're really
9 trying to figure out is, hey, is this carrier and its activity
10 really the type of thing that shows me there's no barriers in
11 this market? And, you know, is there a magic percentage there?
12 You're not going to get one from me today. But we don't need
13 one because the carriers that are here in Florida are very
14 comfortably inside the range used by the FCC to characterize
15 enterprise switches.

16 Q Well, let's talk about that a little bit. Let's take
17 it piece by piece.

18 Let me, let me have Page 159 of his deposition, would
19 you, please, and Page 160.

20 In your deposition --

21 A Excuse me, Mr. Lackey. Let me get to Page -- Page
22 159?

23 Q It starts on 159 and goes to 160. And you and I were
24 talking -- are you there?

25 A I don't --

1 Q Do you have it?

2 A If I could stop you one moment.

3 Q Sure.

4 A The copy of the deposition I have -- all right. Now
5 I see where the page -- the page numbers don't match up with
6 the pages. All right.

7 Q We've got it on the screen, if you need it. I just
8 want to make sure that we're still where we were, and that
9 was -- unless I misunderstood you, you said that, for instance,
10 if a switch was only at 79 percent capacity, you'd still argue
11 that you couldn't count it. Did I misunderstand that?

12 A Yes. Although I think in the deposition I might have
13 said could instead of would, because the point I was trying to
14 convey to you was this is not a hard limit. It is, it is an
15 area of -- you know, it's a measure that the FCC used.

16 Q Well, I'm going to talk about that, but I want to
17 make sure that you and I are agreed about what your position is
18 before I go to the FCC.

19 If I have a switch that's got a capacity of 50,000
20 voice grade equivalent lines and I'm serving 5,000 single line
21 residences out of that switch and the other 45,000 voice grade
22 equivalent lines are being used for enterprise customers, your
23 position is that the, assuming all the other test criteria were
24 made, that the CLEC that owned that switch couldn't be counted
25 as a trigger candidate in that market; correct?

1 A They shouldn't be, because that would be an
2 enterprise switch.

3 Q And if --

4 A Now I just want to point out to you -- I mean, the
5 hypothetical I'm sure you did just from math, but we're not
6 talking about line count levels where we have somebody who's
7 out there with 5,000 customers and I'm recommending you not
8 count him because they have this other capacity of 45,000
9 lines. I mean, we're talking about companies that have
10 100 lines of residential, of analog service or maybe 1,500 or
11 maybe, you know, 1,000. We're talking about low levels of
12 activity, not that they're out there with some very large
13 market presence, but they have large market presence in both
14 markets.

15 Q Well, once again, I'm just trying to establish the
16 principle that we can apply on a going-forward basis. And so
17 if there were 10,999 residential customers being served off
18 that same switch, that 50,000 line capacity switch, and the
19 other, whatever 10,999 from 50,000 is, were used to serve
20 residential customers, according to your testimony in the
21 deposition anyway you wouldn't count the CLEC that owned that
22 switch as a trigger candidate in that market; correct?

23 COMMISSIONER BRADLEY: Mr. Chair, I need the
24 gentleman who is testifying to speak into the mike, please.

25 MR. LACKEY: I'm sorry, Commissioner. Is it me that

1 you need to be at the mike? Can you not hear me?

2 CHAIRMAN BAEZ: Commissioner Bradley, is it the
3 questions that you can't hear or the answers?

4 COMMISSIONER BRADLEY: It's the answers.

5 CHAIRMAN BAEZ: Okay.

6 WITNESS GILLAN: I apologize, Commissioner Bradley.

7 CHAIRMAN BAEZ: Is that better?

8 COMMISSIONER BRADLEY: Yes.

9 WITNESS GILLAN: I feel like I'm going to start
10 sounding like Charlton Heston.

11 BY MR. LACKEY:

12 Q Would you like me to repeat the question?

13 A No, Mr. Lackey. I understand the question.

14 Q Okay.

15 A Let me try and answer it this way.

16 MR. LACKEY: I'd like -- Mr. Chairman, I think it was
17 a yes or no question again. I'd like a yes or no --

18 COMMISSIONER BRADLEY: Now I need the gentleman who's
19 asking the questions to speak into the microphone.

20 CHAIRMAN BAEZ: Mr. Lackey, I think it was you all
21 along. Can you ask Mr. Gillan -- for my benefit, can you ask
22 the question again?

23 MR. LACKEY: I will. And I'll try to stay very close
24 to the microphone.

25 CHAIRMAN BAEZ: Yes.

1 BY MR. LACKEY:

2 Q The same switch I was talking about a moment ago, the
3 switch is serving -- let's just make it easy. 10,000 are
4 residential single line customers. The other 40,000 lines are
5 being used to serve enterprise customers. 20 percent of the
6 capacity is being used to serve mass market customers. I
7 understood your position, you would still argue that this
8 Commission could not count the CLEC that owned that switch,
9 assuming all the other criteria were met, as a trigger
10 candidate. Is that your position?

11 A Yes. I think you could still argue that. Now how
12 compelling that argument would be under that fact situation to
13 this Commission, I don't know. As a practical matter, what my
14 testimony is to the Commission is that you have the judgment --
15 and when you look at the carriers here who have all provided
16 you affidavits that clearly tell you that we're in the
17 enterprise business and we pick up analog lines because of
18 either something we did in the past we don't do anymore or
19 we've picked them up because to serve enterprise customers you
20 pick up some analog lines. The FCC, when it applied its
21 judgment, it looked at these types of percentages and said
22 these carriers are still enterprise. And I'm recommending to
23 you that when you look at these facts, you conclude that these
24 carriers are still enterprise and you not count them in the
25 trigger analysis.

1 Now at some other point in the future and somebody
2 shows up here with 10,000 residential lines on that switch,
3 would you still reach that same fact-finding for that carrier?
4 I don't know. That's -- but you have the judgment and the
5 responsibility and the authority to look at it.

6 COMMISSIONER JABER: Mr. Chairman, may I interject a
7 quick question?

8 CHAIRMAN BAEZ: Go ahead, Commissioner.

9 COMMISSIONER JABER: Just to try to move us along.
10 Mr. Gillan, I think you can argue anything in life,
11 and certainly as an attorney I always like to give it a good
12 try.

13 Let me, let me ask the same question a different way.
14 Regardless of what you can or cannot argue, do you believe the
15 Commission can exercise its discretion and find enough evidence
16 in the record to support that if 20 percent of the lines that
17 are served are mass market, then it is sufficient to make a
18 finding that the geographic market is predominantly mass
19 market; therefore, switching comes off the UNE list? I'm not
20 asking for your argument. I'm asking for you to confirm that
21 we can exercise our discretion to say that there's sufficient
22 evidence in the record based on the percentage 20 percent.
23 And, again, not passing judgment on whether we will or we
24 won't, but --

25 WITNESS GILLAN: No, Commissioner. In fact, the

1 answer to your question is I think possibly in some fact
2 situation, and that was precisely my point, I think the
3 Commission -- I think when the percentages are up, up in the
4 90s, when you look at switches that are 90 percent digital or
5 enterprise, that it would be very, very unlikely that you could
6 legitimately consider those switches to be mass market.
7 Obviously you get down in the 50/50, you're going to be able
8 to, I think, find that switches that have that kind of mix are
9 certainly mass -- are likely to be mass market.

10 My point was is that there's clearly a gray area in
11 here that the Commission can exercise its own judgment. I
12 can't tell you today a hard and fast percentage that you should
13 apply without, without having better information about the type
14 of carrier.

15 COMMISSIONER JABER: Okay. Then, then let's dig deep
16 on what those fact scenarios should be that I should evaluate.
17 What -- let's set aside the percentages for a moment. What are
18 the fact distinctions I should be looking at then?

19 WITNESS GILLAN: I think the first fact distinction
20 is you look at the carrier and you ask what is it that it's --
21 what business is it principally in? When its sales force goes
22 out into the market, what is the, what are the things in its
23 product portfolio that it's really interested in selling? And
24 the fact situation here for, for most of the carriers that this
25 criteria is used to disqualify is those carriers go out into

1 the marketplace selling DS1-based services that mix voice and
2 data.

3 COMMISSIONER JABER: Okay. So the first one would be
4 what is the product portfolio for each carrier? What's the
5 second one? I want you to quickly go through these so we can
6 cut to the chase. What other fact scenarios should we look at?

7 WITNESS GILLAN: I would look at the type of line
8 additions it's making recently. I would look at what has it
9 done, for instance, in the past six months or a year. If in,
10 for instance, Mr. Lackey's 10,000-line hypothetical, if all
11 those 10,000 lines were added recently, then that shows or
12 would tend to cause you to conclude that this is a company that
13 has entered the mass market and the percentages just haven't
14 completely caught up.

15 On the other hand, if those lines had been added five
16 years ago or four years ago or whatever and they used to be
17 50,000 lines and now they're 10, that tells you a completely
18 different story. So I'd look at what they're selling today and
19 I'd look at the pattern of their volume over a period of time,
20 if, if needed. As a practical matter, Commissioner --

21 COMMISSIONER JABER: Mr. Gillan, what else? What
22 else?

23 WITNESS GILLAN: Those are the only two I can think
24 of off the top of my head, Commissioner. Because on the
25 affidavits that you have in this record for these carriers,

1 it's not a judgment call. They tell you directly; we are
2 servicing the enterprise market, and the analog lines we have
3 are either the product of something we did and abandoned
4 (phonetic) or we have, or we pick up as an incidental part of
5 servicing the analog or the enterprise marketplace.

6 COMMISSIONER JABER: Okay. So it's your testimony
7 that to break down the analysis even further we should look at
8 what carriers are in that market and what they are principally
9 providing in terms of product portfolio and what line additions
10 they've made recently, whether they're analog or digital,
11 and/or digital.

12 Now do you believe that we have the evidence in this
13 record to make that kind of determination?

14 WITNESS GILLAN: Yes.

15 COMMISSIONER JABER: Okay. Thank you.

16 CHAIRMAN BAEZ: Go ahead, Mr. Lackey.

17 BY MR. LACKEY:

18 Q The geographic area that you recommend in your
19 testimony on behalf of the FCCA is the LATA; is that correct?

20 A Yes.

21 Q And you make the point, I believe, on Page 8 of your
22 rebuttal testimony that limiting that area or taking that area
23 to a smaller area ignores the primary defining characteristic
24 of the mass market as a broadly dispersed customer set; is that
25 correct?

1 A Yes.

2 Q So, therefore, I take it you disagree with MCI's
3 claim that the relevant market area ought to be the wire
4 center.

5 A Yes and no. I think for the mass market the relevant
6 market area is a broad market. I think MCI's point, which is
7 equally accurate, is that for UNE-L the relevant area is much
8 smaller because the UNE-L business strategy or the UNE-L entry
9 strategy is fundamentally a one-wire-center-at-a-time entry
10 strategy.

11 The problem here, quite frankly, is that that is,
12 that is the conflict. The mass market is big and broad, which
13 is why most of the members of the FCCA take the position that
14 the market you should look at should be a large market area
15 because the mass market is broadly dispersed.

16 UNE-L, on the other hand, is an entry strategy that
17 is one wire center at a time. The lesson from this, quite
18 frankly, is it's one of the reasons why UNE-L doesn't do a good
19 job of providing mass market services because fundamentally the
20 market area that it can address doesn't match up with the
21 market area that people live in. Therefore, you end up with
22 this dichotomy and the positions taken, I think, by MCI, and
23 perhaps I think that might be what was underlying Dr. Johnson's
24 position as well.

25 If you look at it from the perspective of how does

1 UNE-L get deployed, it is clearly one wire center at a time.
2 But I think the problem is that the mass market is not a
3 one-wire-center-at-a-time marketplace, and, therefore, you have
4 to define it as a larger market and then use that information
5 to appreciate why UNE-L is not good at serving it.

6 Q Do you agree with me that this Commission has to
7 identify for analysis purposes in this proceeding a specific
8 geographic market?

9 A Yes.

10 Q Okay. Is the geographic market that you recommend
11 that they use in making the impairment analysis in this case
12 the LATA?

13 A Yes.

14 Q So, therefore, you would tell them, I take it, that
15 the geographic area that they should use in this proceeding to
16 do their impairment analysis should not be the wire center;
17 correct?

18 A Yes. But my LATA recommendation comes with an
19 additional caveat, and that is you are absolutely going to see
20 some little pockets of competition in a LATA. But it doesn't
21 make sense to use as triggers companies that only serve small
22 areas. I believe that the Commission has to when -- if it
23 defines the market broadly, it has to also make sure that it
24 sees broad competition before removing UNE-P.

25 Q Let's talk about the --

1 COMMISSIONER DEASON: I'm sorry. I need to ask a
2 question at this point.

3 MR. LACKEY: Yes, sir.

4 COMMISSIONER DEASON: Well, where did the FCC say
5 that if you define the market broadly, that the trigger has got
6 to be providing service throughout that market and not just
7 have a presence within that market?

8 WITNESS GILLAN: Within the TRO, again, there are
9 places where when the FCC did this analysis, it excluded
10 positions, it rejected ILEC positions about alternatives
11 because those alternatives were not sufficiently ubiquitous.

12 One of the reasons that the FCC decided that it
13 wasn't going to count CMRS, wireless, one of the reasons that
14 it rejected it was that that technology wasn't sufficiently
15 ubiquitous to be considered an alternative to wireline
16 networks.

17 And, you know, and let's be honest, let's face it, as
18 technologies go, wireless has a pretty big footprint. But even
19 so, that's one of the reasons the FCC rejected it.

20 COMMISSIONER DEASON: I'm not sure you answered my
21 question. I'm sorry. I'm trying to understand -- what I hear
22 you saying, and I don't think it's your intent, but what I hear
23 you saying is that if you define the market broadly enough,
24 nothing will ever qualify, and that's what you want, nothing to
25 be determined to be nonimpaired. And what I hear you saying is

1 that if we can just win on market definition, we've got the
2 whole case won. Now explain why that's not what you're telling
3 me.

4 WITNESS GILLAN: Commissioner, I don't even think
5 market definition is that important because here's the, here's
6 fundamentally the problem with market definition, which is a
7 hard thing to handle.

8 One of the problems with this wire center approach is
9 it gives you the impression that you can look out in the market
10 and you can take away people's ability to compete in certain
11 pockets and you won't have any impact across the market more
12 broadly. That just simply isn't true because carriers that
13 approach the mass market in Florida need the ability to run TV
14 ads, to market, to cover their costs across a broad footprint
15 of consumers. I mean, it just makes walking around sense.

16 So we know that on one end you, you're misled when
17 people, in a sense when people suggest that wire centers are a
18 useful solution to you because that comment fails to appreciate
19 just how interlinked all this competition is. You know, you
20 don't get competition in rural areas unless you have
21 competition in suburban areas, unless you have competition in
22 urban areas. And you start punching holes, this whole thing
23 goes down.

24 On the other hand, your point is valid. If the
25 market is too large but yet you do see a very large area of

1 competition within it, the fact that there isn't competition
2 everywhere shouldn't cause you to conclude that there's
3 impairment everywhere if you do see a broad area of
4 competition.

5 I don't know how you get out of this box. There's no
6 simple solution in an abstract argument about how do you draw
7 these boundaries then. Because you know if you go too small,
8 you're missing part of the picture, and that is mass market is
9 everywhere. On the other hand, if you draw them too big, you
10 have this other concern. And then in between you just pick up
11 a third problem.

12 The problem with the MSA approach -- and, you know,
13 I'm going to call BellSouth's approach an MSA approach because,
14 quite frankly, all they did was the most elaborate way to get
15 to a big, to get to big areas. I mean, they still end up
16 saying that they're going to get rid of UNE-P in 75 percent of
17 the state -- I guess it's 85 percent of the state. How many
18 steps they went through to get to that is sort of immaterial.

19 But you end up -- let's take GTE for example. They
20 say Tampa is the market area. What they never tell you about
21 is that by virtue of them saying Tampa is the market area, they
22 create a second market, which is all the area in the GTE
23 territory that isn't inside the Tampa MSA.

24 Now is it really logical to think that all the area
25 in the Tampa LATA that isn't in the MSA is a separate market

1 for telephone service? No. So basically we end up at the LATA
2 level primarily because it's the only thing we know of that's
3 out there to make sure every part of Florida is in a market of
4 reasonable size.

5 Now I'm not going to tell you that you need to see
6 competition in every part of that LATA in order to at some
7 point in the future think about removing UNE-P. We're not
8 close to that yet though. And part of the problem here is that
9 if you argue this as an abstract theory, at the extreme nothing
10 works. But nobody is really asking you as a Commission to
11 apply your judgment at the extreme. Right now you've got, I
12 think, some pretty clear choices. Ten years from now, five
13 years from now, two years from now, I don't know. You might
14 get closer and closer to having closer judgment calls that will
15 be more difficult. But right now I don't think you have those
16 close judgment calls.

17 It is not our intent to draw a big market and then
18 say, therefore, you can't -- you know, it's because we drew a
19 big market you can't take it away anywhere. I'm going to tell
20 you right now, you can't take it away anywhere because nothing
21 else is going to work. I don't care if you draw a big market
22 or small market, that's my testimony. That's the important
23 part. You don't have alternatives that work. Whether you draw
24 a big market or small market, you don't have alternatives that
25 work. Whether you draw a big market or small market, those

1 companies that they name as triggers aren't triggers. That's
2 what's important in this case.

3 I'm going to tell you shouldn't take it away not
4 because of how you draw the market, but because they're going
5 to point you to companies that simply don't do the type of
6 competitive activity that UNE-P does. They don't serve the
7 same type of customers, the don't serve across the same
8 geographic area, they don't bring the same levels of
9 competition. The existence of those companies isn't enough to
10 remotely show that there are no barriers to competition in this
11 market. And that fact, that testimony is going to hold true
12 whether you ultimately decide to do MSAs, wire centers or CEAs.

13 CHAIRMAN BAEZ: Go ahead, Mr. Lackey.

14 MR. LACKEY: Thank you, sir.

15 BY MR. LACKEY:

16 Q I was turning to the affidavits that you mentioned in
17 your testimony a few moments ago. Is it correct that you first
18 produced those affidavits to BellSouth on February 13th in the
19 redirect portion of your deposition?

20 A Yes.

21 Q Now your attorney asked Ms. Tipton during her
22 examination whether she considered those affidavits during
23 the -- whether she considered what those affidavits said
24 based -- what those affidavits said on her conclusions. Let me
25 start that question again since it didn't even make sense to

1 me.

2 Do you recall your attorney asking Ms. Tipton whether
3 she considered those affidavits?

4 A Yes.

5 Q Okay. Now the --

6 A You mean during the hearing like two days ago;
7 correct?

8 Q Yes.

9 A Yes.

10 Q Yes. Yes. Wednesday. I think it was Wednesday.
11 I've lost track of the days.

12 The Xspedius affidavit was actually signed on
13 January 6th, 2004, wasn't it? Do you have the affidavit there
14 in front of you?

15 A Yes.

16 Q Okay. The Xspedius one was signed January 6th, 2004;
17 right?

18 A Yes. That's what it says.

19 Q Nuvox, January 7th?

20 A I'll accept all your dates, subject to check.

21 Q Okay. Well, in fact, the US LEC affidavit and the
22 NuVox affidavit indicate on their face that they were filed on
23 January 7th and 9th, 2004, don't they?

24 A I think that that's typed in there, yes.

25 Q Okay. But they really weren't, were they?

1 A No.

2 COMMISSIONER JABER: Mr. Lackey, you're fading out on
3 us.

4 MR. LACKEY: I'm sorry.

5 BY MR. LACKEY:

6 Q They really weren't filed, were they?

7 A They were never filed.

8 Q Okay. Now before -- well, before last night,
9 Supra -- you had discounted Supra as a trigger candidate based
10 on their representation that they were disqualified; correct?

11 A I think it's safer to say I did no analysis of Supra.

12 Q Uh-huh. The people who have filed these affidavits
13 that you've submitted are not here to be cross-examined about
14 the accuracy of their statements, are they?

15 A No, they're not; at least I don't see them in the
16 room.

17 Q When you were running through your presentation
18 yesterday, you had one slide for a company called Orlando
19 Telephone Company. Do you recall that?

20 A Yes.

21 Q Do you have your presentation in front of you?

22 A No.

23 Q Or with you? Let me see if I can find my copy.

24 COMMISSIONER BRADLEY: Would someone check to see if
25 Mr. Lackey has a bad microphone?

1 CHAIRMAN BAEZ: We'll get that checked out,
2 Commissioner. I think Mr. Lackey -- yeah, Mr. Lackey keeps
3 turning his head.

4 MR. LACKEY: It's me. What I need is that body mike
5 so that it'll follow me when I turn. It's my fault,
6 Commissioner.

7 BY MR. LACKEY:

8 Q I'm having our copy of the presentation --

9 A I'm sorry. It was provided to me. Thank you,
10 Ms. Foshee.

11 Q Okay. If you turn to the page where it says,
12 "Orlando Telephone Company products and services."

13 A Yes.

14 Q Actually I need to get my copy back or your copy
15 back. I've got it right here, don't I?

16 The slide that you used says, "Orlando Telephone
17 Company" --

18 COMMISSIONER DEASON: Excuse me. What page number is
19 that?

20 MR. LACKEY: Page 37. I'm sorry. That's what I
21 actually intended to say. Page 37.

22 BY MR. LACKEY:

23 Q It says, "Note services are for hospitality and
24 business customers with a minimum of 15 lines. Price quotes
25 available on request." Did I read that right?

1 A Yes.

2 Q Do you know where that page came from or that text
3 came from?

4 A Yes.

5 Q Where did it come from?

6 A Orlando Telephone Company's Web site.

7 Q Okay. I want to hand out a document that was marked
8 as Tipton Deposition Exhibit 2. So it may already be in the
9 record, but let me hand out another copy of it just so we'll
10 have it in front of us.

11 MR. LACKEY: Mr. Chairman, can I ask whether I can be
12 heard now with this mike?

13 Commissioner Bradley, can you hear me?

14 CHAIRMAN BAEZ: Commissioner Bradley, can you hear
15 Mr. Lackey? Go ahead, Mr. Lackey.

16 COMMISSIONER BRADLEY: Not very well. Just he needs
17 to speak up a little bit more.

18 MR. LACKEY: Commissioner Bradley, can you hear me
19 now?

20 COMMISSIONER BRADLEY: That's much better.

21 MR. LACKEY: Okay. They got me a mike, so when I
22 turn my head --

23 COMMISSIONER DAVIDSON: Do you work for Verizon?

24 MR. LACKEY: I'm sorry. What did you say?

25 CHAIRMAN BAEZ: You owe him something. I don't know

1 how much, but --

2 MR. LACKEY: Well, gosh, I guess we'll just, we'll
3 just buy them. How's that?

4 BY MR. LACKEY:

5 Q All right. Let's try. Do you, do you recognize the
6 document that we have just handed out?

7 A No.

8 Q Does this not appear to you to be the Web page from
9 Orlando Telephone Company?

10 A On the second page, yes. I thought you meant did I
11 recognize --

12 Q I'm sorry. Would you turn to the second page of the
13 Tipton deposition exhibit?

14 A Yes.

15 Q All right. Does that appear to be the Web page of
16 the Orlando Telephone Company?

17 A Yes.

18 Q And does the, the language "Note services are for
19 hospitality and business customers with a minimum of 15 lines"
20 appear there at the top of that?

21 A Yes.

22 Q Does, does this page further down also indicate that
23 these folks provide local dial tone service for residential or
24 business lines?

25 A Yes.

1 Q Okay. Is there some reason why you didn't include
2 that in your slide?

3 A Actually I didn't see that. But I also note this,
4 this whole company, when you go to the page in front of it and
5 you start looking at it, it looks to be primarily an equipment
6 vendor that is involved in the business of, of selling terminal
7 equipment and other applications to customers, and then has
8 this service business that, that is affiliated with it.

9 Q But at least looking at the Web page there, they make
10 some claim regarding local dial tone residential or business
11 lines; right?

12 A It makes that claim.

13 Q I mean, it could be resale, it could be UNE-L, it
14 could be -- who knows what it is. It could be something;
15 right?

16 A It could be nothing.

17 Q Yeah.

18 A Given the fact that you start at the top of the page
19 and they're telling people who come to the Web site, hey, we're
20 here for customers with 15 lines.

21 Q Okay. But is this one of the companies you have an
22 affidavit for or is this just a company that you, you listed on
23 your presentation?

24 A Just listed on the presentation. We do not have an
25 affidavit from Orlando Telephone.

1 Q Okay. So we don't have the information necessary
2 based on this to figure out exactly what they do, do we?

3 A I'm not sure I would go so far as to say that,
4 Mr. Lackey. I mean, we do have the flagship comment at the
5 top. It's more -- and it's, you know, it's highlighted. I
6 think if you go to the Web site, it's, it's either in red or
7 blue. I mean, it's designed to catch your eye the minute you
8 open that page. And, quite frankly, you'd have to scroll down
9 to even find the rest of this, so you'd have to see it before
10 you saw anything else. So it's a pretty prominent element of
11 their Web site.

12 Q Well, Ms. Tipton has testified that Orlando Telephone
13 Company has locations, customer locations in the markets she's
14 defined that have three or fewer UNE loop lines serving the
15 customer location, hasn't she?

16 A I believe she has testified to that.

17 Q Okay. And that would be inconsistent with the
18 conclusion you're attempting to draw from this Web page.
19 That's the point you were making, isn't it?

20 A Yes.

21 Q But this Web page does say they provide local dial
22 tone, doesn't it?

23 A It has that link.

24 Q Okay. All right. Let's, let's go to the last
25 subject, and I know you want to talk about this. This is your

1 slide and in your surrebuttal testimony where you talk about
2 every controversy requires a myth. I've put it up on the
3 screen. This is a copy of the slide that you had in your
4 presentation; correct?

5 A Yes.

6 Q But the chart is from your surrebuttal testimony;
7 correct?

8 A Yes.

9 Q All right. Your surrebuttal testimony though had a
10 different figure for the average SGAT rate; correct?

11 A No.

12 Q Your surrebuttal did not? I thought you did -- let's
13 look at it.

14 A There was, there was an errata issued.

15 Q That was what I was asking.

16 A Oh, you mean was the number -- this is the corrected
17 number.

18 Q Yes. This is the corrected number.

19 A Yes.

20 Q Oh, okay. Now if I understand correctly, and I may
21 be getting this wrong, and let me just explain my understanding
22 and see if I can get a statement, a yes or no whether my
23 understanding is correct rather than an explanation of what it
24 is.

25 I understand that what you've offered this for is to

1 show that using BellSouth's average embedded switching cost,
2 that for the Year 2000 the average embedded switching cost for
3 BellSouth was \$3.31 per line. And since that is less than the
4 average SGAT rate, BellSouth should be happy to sell switching
5 at the average SGAT rate. Is that the import of, or the
6 conclusion I should draw from these numbers?

7 A Well, yes and no. I think without any of the
8 embedded information at all, I would draw the conclusion based
9 on the -- as long as the Commission has properly set the, the
10 rates for switching at TELRIC, I mean reasonably set them so
11 that they actually represent your forward-looking costs of
12 switching, you're particularly in an environment where you have
13 access capacity on the switches and the capacity utilization is
14 going down. You would be better off having revenue on those
15 switches than having those switch ports be idle because your
16 costs -- you know, as a business, your costs aren't going to go
17 down if these lines go to a different network. You would just
18 have the revenue reduction. So the conclusion would be, hey,
19 you're better off at almost any revenue level -- and
20 particularly since this revenue level, quite frankly, appears
21 to be a significant underestimate of how much revenue you
22 actually get from having UNE-P lines on your network, because
23 there's a discovery response that is also referred to in my, in
24 my surrebuttal testimony that goes, that looks more broadly at
25 how much money does BellSouth get per month from UNE-P lines

1 for all the things that you get in addition to the loop rate
2 for the switch. This doesn't include the revenues you get for
3 providing billing records to the carrier, this doesn't reflect
4 the revenues that you get from selling shared transport to it.
5 So this is a -- there's a significant under-reflection of those
6 additional revenues as well.

7 Now the chart -- so the point that you're better off
8 having these revenues than not having these revenues is
9 independent of this chart. The chart just goes to a second
10 question. We know that the appropriate costing standard is a
11 forward-looking standard and we know basically that the issues
12 involving TELRIC don't apply to switching, so there really
13 shouldn't be a pricing dispute for us to have. But since we so
14 frequently hear BellSouth claim, gee, it's just below my actual
15 cost or it's below my cost, or I think even Dr. Aron got up and
16 said, gee, these things don't cover the costs, I tried to give
17 it some measure, some sanity check of, well, what we know about
18 your embedded costs, is it really true that these kind of
19 revenue levels fall below those embedded costs as well? It's
20 not really relevant for a business planning purpose because you
21 can't ever go backwards in time and change those historic
22 costs, but it's a useful metric to try and consider what do
23 these look like relative to those embedded costs.

24 Q So that the folks who are on the phone can follow
25 this, this is the chart that's on Page 13 of your surrebuttal

1 testimony; is that correct?

2 A Yes.

3 Q Except that on Page 13 of your surrebuttal testimony
4 the average SGAT rate is listed at \$7.62, and in your
5 presentation and as a result of your errata the \$7.62 should be
6 changed to \$5.21; correct?

7 A Maybe we're talking past each other. There's a
8 corrected page to the surrebuttal testimony that was filed well
9 before this hearing.

10 Q Sure.

11 A Okay. So there -- so the old figure that you're
12 referring to is not on Page 13 of my surrebuttal testimony.
13 The number on my surrebuttal testimony is the number in the
14 chart. We issued a correction, what, last week, Ms. Kaufman?

15 MS. KAUFMAN: Yes. If I could just clear that up.
16 We talked about this when we entered the testimony into the
17 record. There is revised Pages 13 and 14 to the surrebuttal,
18 and it was filed on February 18th, distributed to all the
19 parties and filed at the Commission. That's what is in
20 Mr. Gillan's testimony and that was what was on the slide from
21 our presentation yesterday.

22 MR. LACKEY: I'm not trying to make an issue out of
23 this. I just, I thought that the folks who are on the phone, I
24 wanted to make sure if they looked at the page, they were
25 looking at the \$5.21 number. I'm not, I'm not making a big

1 deal out of this, not in my opinion anyway.

2 CHAIRMAN BAEZ: Then you can move on then?

3 MR. LACKEY: Sure will.

4 CHAIRMAN BAEZ: Okay.

5 BY MR. LACKEY:

6 Q The question that I really want to ask you is you're
7 not taking the position that the \$3.31 represents the same cost
8 that the \$5.21 represents, do you?

9 A No. No. Because the SGAT rate includes -- is, is a
10 forward-looking average cost. So I was just making the point
11 that when you compare it to the embedded cost, you're getting
12 revenues above those cost categories that provides a
13 contribution to other costs if you were to try and look at this
14 in a sort of historic traditional cost of service framework.

15 I wouldn't propose that you do that. I think that
16 the correct way the rate is being set is on a forward-looking
17 basis. There are no, there are no issues between us that I'm
18 aware of that TELRIC does not accurately and reasonably
19 calculate your switching cost.

20 You know, we heard, we heard Mr. Ruscilli say over
21 and over and over again, in fact, he makes the claim that it's
22 being subsidized; a claim that's very easy to type into
23 testimony but very difficult to prove with numbers, so
24 apparently he didn't try. And I didn't want that misconception
25 through repetition to, to reach some sort of fact basis because

1 people have heard it so much, well, my switching rates are too
2 low. There is no, there is no analysis that I'm aware of,
3 forward-looking or embedded, that suggests that your switching
4 rates are not compensatory.

5 Q Let's see if I can break this down into very small
6 questions that are answerable with a yes or no.

7 Will you agree that BellSouth has taken the position,
8 whether you agree with it or not, that the switching rate
9 approved by this Commission is below its cost?

10 A I will not agree with that unless you explain to me
11 exactly where you have taken that position and why you have
12 taken that position. Because the last time I agreed to
13 something with you, you said that you were appealing the
14 Commission's UNE rates, and I only later discovered that MCI
15 was appealing it and you were defending it. So I'm not
16 accepting -- fool me once, Mr. Lackey.

17 Q All right. Well, that's what I said to Mr. Henry
18 Wednesday.

19 Let me do it a different way then. If I understand
20 correctly, on this chart you calculated the switching share of
21 depreciation and amortization cost by doing something like
22 taking the ratio of the switching plant in service to the total
23 plant in service, derived a percentage, applied that to the
24 total amount of depreciation and amortization to get your
25 \$160 million number; is that correct?

1 A Yes.

2 Q Now that assumes then that the average depreciation
3 lives for switching equipment are the average life -- average
4 depreciable life for switching equipment is equal to the
5 average of all depreciable lives in that asset, in that
6 category; correct?

7 A No.

8 Q If the -- if switches are depreciated over a shorter
9 period than copper, than poles and that sort of thing, wouldn't
10 that number understate the amount of that switching
11 depreciation or that depreciation and amortization account that
12 was attributable to switching?

13 A No. Because it depends on when the switching
14 investment was made. For instance, if you go back into ARMIS,
15 and I'm going off my memory here, Commissioners, but I believe
16 that roughly half of the total plant in service for switching
17 had already been expended by, I think 1992 is the, is the
18 earliest year in ARMIS that you can look at the data for.
19 Well, that means that all that investment has really already
20 been depreciated at zero because for half of it it's gone. It
21 was pre-1990 in effect.

22 If you think about it -- just for, just to prove why
23 your assumption is wrong, if you had spent all the dollars on
24 switching in, before 1990, and then since 1990 you had just
25 been putting in fiber networks and SONET architecture and

1 things of that nature, the depreciation costs that you're
2 showing in 1990 -- in 2002 would be 100 percent related to
3 assets that you're continuing to depreciate, while all of the
4 switching costs which would have been incurred prior to 1990
5 was completely gone.

6 So when I use this formula of allocating depreciation
7 based on relative plant in service in that example, I would be
8 assigning depreciation to switching that doesn't belong there
9 at all. So it really depends on how -- it is true that
10 switching gets depreciated faster than some assets, but, on the
11 other hand, a big chunk of the switching costs, and I believe
12 for Florida it was roughly half, should already be off the
13 books entirely.

14 Q Okay. So --

15 COMMISSIONER DEASON: I'm sorry. I've got to ask a
16 question. But if it's already off the books entirely, then
17 that means the numerator of your ratio should be smaller.

18 WITNESS GILLAN: No. Because the only -- the
19 allocation, the only thing I could use was telephone plant in
20 service, which never shrinks with accumulated depreciation.
21 It's just -- because in that calculation --

22 COMMISSIONER DEASON: You didn't use, you didn't use
23 net plant in service, you used --

24 WITNESS GILLAN: No. They didn't have it in a way
25 that I could use it for this calculation.

1 BY MR. LACKEY:

2 Q Just a couple of more questions then and we'll be
3 done. In your calculation of the \$3.31, you have not included
4 any return on capital; is that correct?

5 A Correct. What I was computing was the contribution
6 towards all the firm's other costs, including return on
7 capital, et cetera, common costs, whatever.

8 Q Okay. You've not included in your calculation of the
9 \$3.31 any of the land and buildings in which and on which the
10 switches are located; correct?

11 A I don't believe that's in the switching expense. I
12 don't know what -- the buildings, of course, would be in effect
13 partially picked up in the depreciation. Again, the
14 calculation is producing what is the contribution to all the
15 firms' other costs. And you're right, I did not include all
16 the other firm's other costs. I was calculating the
17 contribution.

18 Q And you didn't include any of the miscellaneous
19 equipment that is ancillary to the switching equipment but
20 necessary for it to operate; correct?

21 A That I don't think is correct. There's a large
22 number of costs of ancillary equipment included in the central
23 office switching expense. For instance, in that cost category
24 is the costs associated with creating call detail records, yet
25 in the SGAT rate I did not include the revenues you receive

1 from the production, from producing call detail records to the
2 CLEC, which would add a couple -- a dollar or so or more to
3 the, to the revenues.

4 Again, it was not intended to be a perfect embedded
5 cost of service study, which, as you're well aware, is an
6 oxymoron. I was more trying to point out that under the cost
7 standard that should apply forward-looking, these rates,
8 there's not even a dispute before us as to whether they're
9 being calculated correctly, and there certainly isn't any
10 evidence that even on this embedded cost basis. So there's no
11 basis for the statement in Mr. Ruscilli's testimony that anyone
12 is being subsidized by paying you what is in the real world a
13 figure far greater than \$5 per month per switch port plus loop
14 plus everything else to use UNE-P.

15 Q Your central office switching expense is Account
16 6210; correct?

17 A I believe so.

18 Q Isn't there a different account for miscellaneous
19 equipment?

20 A Well, it goes to what you want to consider the term
21 "miscellaneous equipment," Mr. --

22 MR. LACKEY: Excuse me, Mr. Chairman. Could I ask
23 the witness to give me a yes or no? I asked whether there's a
24 separate account number for miscellaneous equipment.

25 CHAIRMAN BAEZ: Mr. Gillan, you can answer yes or no

1 or --

2 WITNESS GILLAN: There may be. My only point was
3 that there are, there are things included in this account that
4 I did not try to remove for which I know BellSouth receives
5 additional revenues from the CLEC.

6 BY MR. LACKEY:

7 Q Are there -- is there any inclusion in your \$3.31 of
8 ad valorem taxes that are paid by the company?

9 A No, Mr. Lackey. Again, the calculation is producing
10 a contribution -- shows the contribution to the firm's other
11 costs. There are a number of other costs that that
12 contribution goes to help recover.

13 Q Have you done any analysis to determine that this
14 58 percent contribution that you have calculated actually
15 covers all of the other expenses that I've mentioned?

16 A No, Mr. Lackey. Because once again, the point is
17 you're better off getting \$5 than no dollars. And this was
18 added to give some sense of those costs that are at least
19 plausibly directly attributable to switching to give some sense
20 as to where these forward-looking costs, this forward-looking
21 rate looks in comparison to those directly attributable
22 switching costs. There are a number of other costs that
23 BellSouth incurs to which -- that are not included in this
24 analysis.

25 MR. LACKEY: That's all I have, Mr. Chairman. Thank

1 you.

2 CHAIRMAN BAEZ: Thank you. Ms. Hyer.

3 MS. HYER: Yes. Verizon has a few questions, but may
4 I ask if we could take a five-minute break to put our notes
5 together? We've been going for a while.

6 CHAIRMAN BAEZ: I think, I think we can take a
7 five-minute break now. That's good.

8 (Recess taken.)

9 BY CHAIRMAN BAEZ:

10 CHAIRMAN BAEZ: We'll go back on the record. And,
11 Ms. Hyer.

12 CROSS EXAMINATION

13 BY MS. HYER:

14 Q Yes. Good morning, Mr. Gillan. I'm Leigh Hyer, and
15 I represent Verizon.

16 A Good morning.

17 Q Mr. Gillan, do you have with you the affidavits that
18 Mr. Lackey was asking you about that you produced as a result
19 of your deposition a couple of weeks ago?

20 A Yes, I do. And before you ask your next question, I
21 just want to thank you for the record. During the course of
22 this proceeding when we asked Verizon for information and asked
23 you to provide it to us in Excel spreadsheet form, you
24 immediately E-mailed it to us and made it easy for us to do our
25 analysis. And I want to give you credit for that since it was

1 a courtesy not universally extended by the parties to this
2 proceeding. So thank you.

3 Q Thank you. And within these affidavits, some of them
4 deal with carriers that were on BellSouth's trigger list that
5 were not on Verizon's trigger list. A couple of them were. In
6 particular, I'd like to, to direct your attention to the
7 affidavit that was provided by KMC Telecom.

8 A Yes, ma'am.

9 Q And I understand that these are confidential, so I
10 will endeavor not to reveal any confidential information about
11 them. I don't think that there's -- it's necessary for this
12 line of questioning. But --

13 A Just give me one moment.

14 Q Oh, certainly.

15 A Thank you. I'm ready. I'm sorry, ma'am.

16 Q Oh, I'm sorry. In particular, I'd like to direct you
17 to Paragraph 3 of the affidavit where the affiant says, "I have
18 been told by FCCA that KMC has been named by BellSouth as a
19 self-provider using our own local circuit switches in Florida
20 to serve mass market customers."

21 And my question for you is that when FCCA went to KMC
22 to obtain this affidavit, they were seeking information about
23 the BellSouth territory; correct?

24 A Actually I believe they were seeking information
25 about Florida. So while it, while it says BellSouth, the

1 discussions involve Florida.

2 Q I'd like to direct your attention to Page 3 of that
3 affidavit, and in particular this chart on this last page of
4 the affidavit. It lists several switches and their locations.
5 Is it your understanding that any of those switches are located
6 in Verizon's territory in Florida?

7 A None of those switches are located in Verizon
8 territory. That's correct.

9 Q Okay. I'd next like to direct you to the, I think
10 it's the next affidavit in this group, if they're in the same
11 order as your, as your set. It's the ITC^DeltaCom affidavit.

12 A Yes.

13 Q And in particular, I'd like to direct you to Page 2
14 of that affidavit and the chart that appears at the bottom of
15 the page.

16 A Yes.

17 Q There are a couple of switches identified on this
18 chart. Is it your understanding that either of these switches
19 is located in Verizon territory in Florida?

20 A Neither of these switches is located in Verizon
21 territory.

22 Q Okay. Thank you, Mr. Gillan.

23 Now, Mr. Gillan, do you have a copy of the PowerPoint
24 presentation that was put together or that was part of your
25 presentation and the other CLECs' presentation yesterday

1 morning?

2 A Yes.

3 Q Okay.

4 MS. HYER: And do the Commissioners have their copies
5 just in case? Okay. Great. Thank you.

6 BY MS. HYER:

7 Q I'd like to direct you to Page 12 or Slide 12,
8 whichever it may be. And this is the slide that is titled,
9 "Competitive Profile of UNE-P and UNE-L." Do you see that?

10 A Yes.

11 Q Okay. And the first of these two charts says,
12 "Competitive profile of UNE-P BellSouth Territory in Florida,
13 last six months." Do you see that?

14 A Yes.

15 Q Did you create a similar chart for the Verizon
16 territory in preparation for this direct presentation?

17 A That compared the two?

18 Q Yes.

19 A No.

20 Q So you didn't do a chart that compared UNE-P in
21 Verizon territory to UNE-L in Verizon territory and include a
22 chart like this in your presentation?

23 A No. I mean, as you're well aware, there's sort of
24 two Verizons out there. There's the Bell Atlantic properties
25 that have seen a considerable amount of competition, and then

1 there's sort of been a, I don't want to use the term "national
2 embarrassment," but a completely different level of competition
3 in the, the Bell, the Verizon old GTE properties that reflects
4 a number of factors. So if I had done such a thing, it would
5 not show very much UNE-P competition at all because there's
6 been almost no mass market competition developing in the
7 Verizon territory, which, quite frankly, should be a separate
8 issue for the Commission to look at, but not one that I would
9 encourage you to do right now.

10 Q Mr. Gillan, I'd like to direct your attention to the
11 Annual Report on Competition Telecommunications Markets in
12 Florida. I believe it's already an exhibit in the proceeding.
13 I do have excerpts. I would be happy to provide it to you for
14 your convenience and to the Commissioners as well.

15 A Please do.

16 MS. KAUFMAN: I don't believe he has a copy.

17 BY MS. HYER:

18 Q And, Mr. Gillan, if I could direct you to Page 16 of
19 this competitive report.

20 CHAIRMAN BAEZ: Sorry, Ms. Hyer. What page?

21 MS. HYER: Page 16.

22 CHAIRMAN BAEZ: 16?

23 WITNESS GILLAN: Yes.

24 BY MS. HYER:

25 Q Okay. In particular, Figure 5 entitled "CLEC Line

1 Makeup, 2003 Florida."

2 A Yes.

3 Q And this is a pie chart that provides the various
4 percentages of UNE-P versus resale and facilities-based
5 competition?

6 A Yes.

7 Q Okay. And do you see there that the UNE-P figure
8 statewide is 38 percent?

9 A Yes.

10 Q Okay. And the facilities-based UNE-L competition is
11 at 54 percent?

12 A Yes.

13 Q Now immediately below this chart it states, "UNE-P
14 comprises only 3 percent of CLEC lines in Verizon's territory."
15 Do you see that?

16 A Yes. That was what I was referring to earlier in
17 terms of there's been very little mass market competition
18 developed to date in the Verizon territory that used to be
19 called GTE properties. I mean, this is a, this is a national
20 characteristic that if you look across all of your states,
21 there are only beginning to see mass market competition emerge
22 in, in that portion of the company that was acquired through
23 the GTE merger.

24 Q Excuse me. Mr. Gillan, did you mean that they're
25 just starting to see UNE-P competition?

1 A No. I said mass market.

2 Q You said mass market, but don't you mean UNE-P
3 competition?

4 A No. I meant mass market.

5 Q And, Mr. Gillan, in your surrebuttal testimony -- and
6 this is at Page 20.

7 A Just give me one moment. There appears to be an
8 excess supply of paper. All right. Yes.

9 Q Now you recommend to the Commission that it not count
10 Florida Digital Network as a trigger carrier because it has not
11 yet been determined that FDN is, in fact, offering mass market
12 services. Do you see that?

13 A Can you direct me to a --

14 Q Oh, definitely. I'm sorry. It's Page 20 at Lines 4
15 and 5.

16 A Yes, the sentence says that. I want to make it
17 clear, I'm recommending that the Commission really reach a no
18 finding on them. We do not have the data to disqualify them.
19 But on the other hand, there's some open issues about them that
20 would not be easy to resolve.

21 Q Do you maintain that Florida Digital Network is not,
22 in fact, offering mass market services in Verizon's territory
23 today?

24 A No, I cannot demonstrate that to be true.

25 Q Okay. Can you demonstrate that it is not true?

1 A No, I can't make -- we don't have any real data on
2 the type of customers that FDN has. We know that they have
3 customers on analog loop, so they fundamentally satisfy sort of
4 the primal characteristic. Now it may turn out that, that all
5 of those customers are under long-term contracts, which would
6 raise an issue with respect to whether they're mass market or
7 not, an open issue that I'm not actually asking the Commission
8 to get involved in at all right now.

9 Q Were you in the room, I think it was on Tuesday, when
10 FDN's witness Mr. Gallagher confirmed that his company is, in
11 fact, a trigger company?

12 A Yes. But given Mr. Gallagher's incentive structure,
13 I'm not sure I want to take his word for that. And
14 particularly his reading of the TRO, I don't think he's -- I
15 don't know that his statement is one that I would agree with
16 since he doesn't take into consideration some of the
17 requirements of the TRO.

18 I don't want to mislead you though. I'm not telling
19 the Commission that we're in a position to disqualify them.
20 I'm just telling them that at this point since some of the open
21 issues would take more work to resolve than, than would be
22 justified at this point given the absence of any other
23 potential candidates, that it's not necessary.

24 Q Now, Mr. Gillan, you just said that it would take
25 more work. And I think during your direct presentation

1 yesterday what you said was, quote, more time, more work, more
2 information before we could determine whether FDN was a trigger
3 candidate; correct?

4 A Yes.

5 Q And, in fact, you're recommending that this
6 Commission perform an in camera review of FDN's financial
7 statements to determine whether or not it is financially sound;
8 isn't that correct?

9 A Yes. I think in order to satisfy -- when you certify
10 companies to be these triggers that make such a large impact on
11 the choices and entry strategies available to competitors and
12 to consumers, that you have to take that responsibility
13 seriously.

14 One of the key considerations that the FCC requires
15 is that a Commission conclude that they are -- that not only
16 are they offering mass market services, but they're likely to
17 continue to do so. I don't see how the Commission can reach
18 that forward-looking finding without at least some review of
19 the financial condition of the company.

20 Q Mr. Gillan, do you have a copy of the Triennial
21 Review Order in front of you right now?

22 A Yes.

23 Q Can you please turn to Paragraph 500 of the Triennial
24 Review Order. Okay. In particular, I'd like to direct your
25 attention to the first sentence of Paragraph 500 which states,

1 "For the purposes of these triggers, we find that states shall
2 not evaluate any other factors such as the financial stability
3 or well-being of the competitive switching providers." Do you
4 see that language?

5 A Yes.

6 Q Okay. Now I am not asking for your legal
7 interpretation of this particular paragraph. I think that
8 that's something that we can leave to the lawyers in the
9 briefs, so just to make sure that we're on the same page.

10 What I'd like you to look at is actually 15, excuse
11 me, Footnote 1554, which appears at the very end of that
12 sentence. And I'd direct your attention down to the bottom of
13 the page where it states, "For the potential deployment
14 analysis, however, the state Commission may consider financial
15 evidence relating to the difficulty in serving the mass market
16 by existing competitive switch providers." Do you see that
17 language?

18 A Yes.

19 Q You are aware, are you not, that, that in this
20 proceeding Verizon is not bringing a potential deployment case?

21 A Yes. But this, this 1554, I think, is a different
22 issue than the one we were just talking about. As I understand
23 1554, it is talking about the Commission looking -- the state
24 Commissions considering an existing competitive switch provider
25 which doesn't refer to mass market or enterprise, whether or

1 not they would have difficulty in serving the mass market. So
2 I interpret this to actually be referring to a direction that
3 Commissions need to look at enterprise switches and the
4 financial consequences of them attempting to serve the mass
5 market in a potential deployment case.

6 Q And as I said, Mr. Gillan, I'm not interested in your
7 legal opinion on, of what 1554 means. I was just trying to
8 confirm with you that you are aware that Verizon is not
9 bringing a potential deployment case in this proceeding; is
10 that correct?

11 A Yes.

12 Q Okay. Now, Mr. Gillan, I'd like to follow up on your
13 discussion with Mr. Lackey and the Commissioners on how to
14 identify a, quote, enterprise switch.

15 And just for clarification, did I understand your
16 responses to Commissioner Deason's questions to mean that even
17 if the Commission doesn't follow your 80 percent rule, it
18 should at least follow a 90 percent rule to identify an
19 enterprise switch? Did I correctly get that from your
20 response?

21 A No. I think -- I don't think so. What I was trying
22 to convey to Commissioner Deason is that the FCC looked at a
23 bunch of carriers that had results in the 80 to 90 percent
24 range, that, that obviously there's some judgment involved
25 here. I don't think there's judgment that needs to be applied

1 for the carriers we're looking at in Florida because they're
2 all, they're all pretty clearly, they're all clearly
3 enterprise-oriented carriers and the percentages are clearly
4 inside that range. But just pointed out that as you get near
5 the boundaries, you might have to think about it more. That's
6 all.

7 Q And I guess my response would be or my question is,
8 if you were to make a recommendation on a percentage to the
9 Commission, which would it be? Would it be 80 percent or would
10 it be 90 percent?

11 A And I think I tried to explain in detail before that
12 you're not going to get a, a hard rule from me where at
13 81 percent or 91 percent it is unequivocally, you know, one or
14 the other. The reality is as you move up towards 100, it
15 becomes clearer and clearer and clearer. I think it's
16 absolutely clear for the ones we have here today. As you move
17 down, you might have to do a more nuanced interpretation. I'm
18 not going to sit here and try and tell you that there's a magic
19 percentage that is more important than the Commission's
20 judgment.

21 Q In exercising the Commission's judgment, would you
22 recommend that a carrier have at least, say, in the, in the, in
23 the range of 10 to 20 percent of the switch capacity with voice
24 grade analog loops before they would do any further analysis to
25 determine whether the switch carrier could be considered a

1 trigger candidate?

2 A I think at this point that that's reasonable. Yes.

3 Q Okay. And taking the, the low end of that rule or,
4 depending on which way you look at it, 90 percent, 10 percent,
5 the low end or high end, but let's just use 90 percent as a
6 proxy at this point.

7 A Let's use 80 percent just so that I feel more
8 comfortable.

9 Q You'd like to use 80 percent?

10 A Sure.

11 Q Okay. Now, Mr. Gillan, I'd like to show you a page
12 from Mr. Fulp's presentation on Tuesday morning. I don't think
13 it's necessary to mark it as an exhibit since it's already part
14 of the record.

15 And I'd like to ask you a few questions, do a little
16 exercise based on the numbers here for -- to make it easy,
17 let's just look at the Density Zone 1 numbers for these various
18 CLECs, and I'd like to see what your 80 percent rule means.

19 A You can't do any, you can't do that with this
20 exhibit. You don't have any of the DSIs on here.

21 Q Mr. Gillan, I just, I -- just, just bear with me. I
22 think we can make some, some assumptions about this and do, you
23 know, to, to try to alleviate that problem.

24 Now let's not take the carrier that's got the most
25 lines here, not the, not the one that has nearly 13,000 lines.

1 Let's not take the second carrier or second largest number of
2 lines, the 6,128. And let's not even take the third largest
3 number of lines, which is 917. Let's take the fourth, which is
4 567, and let's, to make the math easier, round it down to 500.
5 And given that we're going with your 80 percent number, it's
6 going to make the math a little bit harder for me because I
7 became a lawyer so I wouldn't have to do math.

8 A To make it easier on you, as long as we stipulate
9 that this is a purely hypothetical exercise, I'll make the math
10 easier and put it back at 90 for you.

11 MS. HYER: Well, let me make sure my microphone works
12 because I would like, Mr. Chairman, to be able to approach the
13 witness to use the white flip chart.

14 BY MS. HYER:

15 Q Let's give it a shot at 80 percent. And if we need
16 to go to 90 percent, we can. All right.

17 Now taking this carrier with 567 lines, rounding it
18 down to 500 lines, now let's assume that that carrier is at
19 80 percent, excuse me, is at 80 percent of the, of the switch
20 capacity. Let me see.

21 A You must have this worked out already at 90, so let's
22 just --

23 Q Let's just do it at 90 since, as I said --

24 A Stipulating that we've just chosen it for the purpose
25 of a hypothetical.

1 Q Just chosen it for the purposes of the hypothetical.
2 And first let me ask you, how many voice grade equivalents are
3 there for a DS1 loop?

4 A 24.

5 Q 24? Okay.

6 CHAIRMAN BAEZ: Mr. Gillan, you're still going to
7 have to stay close to the microphone. I know it's going to be
8 a little uncomfortable, but that way everybody can hear.

9 WITNESS GILLAN: I'll try to talk as little as
10 possible.

11 CHAIRMAN BAEZ: The perfect witness.

12 BY MS. HYER:

13 Q Oh, okay. That's much easier. I don't have to do
14 the math. The 90 percent applied to a switch that has 500 DS0
15 voice grade lines. Assuming it's at 90 percent of the switch
16 capacity, that switch would have 5,000 voice grade equivalents
17 on it. Is that an accurate assumption to make?

18 A Yes.

19 Q Okay. Now 10 percent of those 5,000 lines is, as
20 we've said, 500 DS0 voice grade lines; correct?

21 A Yes.

22 Q Now the other 90 percent of those voice grade
23 equivalent lines would be provided over, let's just say to make
24 it easier, DS1 loops.

25 A Yes.

1 Q Okay. Now let's figure out how many DS1 loops we
2 have based on those 4,500 remaining voice grade equivalents,
3 the 90 percent. Okay?

4 A Okay.

5 Q Now if we take those 4,500 voice grade equivalents
6 and divide them by 24, we get 188 DS1 lines. Do you agree with
7 that?

8 A I'll accept that, subject to check. My math is no
9 better than -- well, no better than somebody else's.

10 Q Certainly. And if you'd like to check it, we have a
11 calculator available, or subject to check.

12 A It's okay. This looks like it was thought out ahead
13 of time, so we'll go with it.

14 Q Okay. So, so a switch that has 500 DS0 lines versus
15 188 DS1 lines, in your estimation under this 90 percent rule
16 that switch would not count toward the triggers; is that
17 correct?

18 A Right. Yes.

19 Q Okay. Even though there are 500 DS0 lines provided
20 to customers and only 188 DS1 lines provided to customers;
21 correct?

22 A Yes. Because those are on a voice grade equivalent
23 basis equal to 4,500 voice grade equivalents. And this is
24 exactly the calculation the FCC looked at when it said that
25 these enterprise switches shouldn't be seen as mass market. It

1 didn't quite say it in that terms, but when they were looking
2 at and recognizing that enterprise switches serve some analog
3 lines, that is exactly the type of calculation they were
4 reviewing. So to make the analysis consistent with the TRO,
5 that is how you would do the calculation.

6 Q Yes. And I'm just asking you to look at a different
7 calculation using the same numbers. And a different
8 calculation that looks at number of loops as opposed to number
9 of voice grade equivalents yields 500 versus 188; correct?

10 A Yes. But that's not how the FCC did its calculation.

11 Q I know that that's what you've stated. But what I'm
12 asking you to look at is a different calculation.

13 I have no further questions.

14 CHAIRMAN BAEZ: Thank you, Ms. Hyer. Mr. Feil.

15 MR. FEIL: I'll spare us. No questions.

16 CHAIRMAN BAEZ: Very well. Staff.

17 MR. SUSAC: Although staff has questions, we're going
18 to defer.

19 CHAIRMAN BAEZ: Okay. Commissioners.

20 COMMISSIONER DAVIDSON: I've got a couple of
21 questions.

22 CHAIRMAN BAEZ: Go ahead, Commissioner Deason --
23 Davidson.

24 COMMISSIONER DAVIDSON: Hi, Dr. Gillan.

25 WITNESS GILLAN: I'm actually not a doctor.

1 COMMISSIONER DEASON: Mr. Chairman, he's the
2 pretty -- I mean, he's the smart one and I'm the pretty one.

3 COMMISSIONER DAVIDSON: Oh, thank you. Oh, okay. I
4 could agree with that if we can just limit the market for the
5 definition of pretty to North Florida.

6 I'm going to ask you a fairly long hypothetical, so
7 you might want to take notes. And this really is a
8 hypothetical. You may disagree with certain assumptions in
9 there, but if you could just accept those assumptions for the
10 purpose of the, the question.

11 I am defining the term "voice communications mass
12 market" as the total number of voice minutes that individuals
13 consume in a given year. Assume that in Year 1 the local --
14 pardon me. Let me strike that.

15 Assume the Orlando MSA is the relevant geographic
16 market at issue. And, again, just assume that; I just picked
17 that out of the blue. Assume that in Year 1 a single local
18 exchange company has 100 percent of the minutes representing
19 the total voice mass communications markets in the Orlando MSA,
20 one LEC, 100 percent.

21 Next assumption, assume in Year 10 the following:
22 That same local exchange company has 60 percent of the total
23 minutes representing the total voice communications market,
24 wireless companies have 20 percent of the total minutes, UNE-L
25 providers have 5 percent of the total minutes, UNE-P providers

1 have 10 percent of the total minutes, broadband-based telephony
2 has 5 percent of the total minutes. And that's Year 10.

3 Assume in Year 13 the following: That same local
4 exchange company has 50 percent of the total minutes
5 representing the total voice market, all voice minutes used
6 amongst these different providers; wireless has 25 percent of
7 the total minutes; broadband telephony has 15 percent of the
8 total minutes; UNE-L CLEC has, in total UNE-L CLECs have
9 10 percent of the total minutes.

10 Assuming these facts, and I understand you may hate
11 all those assumptions and may disagree with them all, but
12 assuming for purposes of this hypothetical those facts, does it
13 matter from a policy standpoint whether UNE-P survives as a
14 platform? First answer yes or no, and then feel free to
15 explain without changing the assumptions.

16 WITNESS GILLAN: Can I ask one clarifying question?

17 COMMISSIONER DAVIDSON: Sure.

18 WITNESS GILLAN: When, when you defined this as the
19 market is voice communication, you are, you are basically
20 wanting me to, to accept the hypothetical that these are all
21 forms of substitutes with each other; is that correct?

22 COMMISSIONER DAVIDSON: Yes. Yes.

23 WITNESS GILLAN: I'm sorry, Commissioner. I forgot
24 your question.

25 COMMISSIONER DAVIDSON: Assuming those facts, does it

1 matter from a policy standpoint whether UNE-P survives as a
2 platform, yes or no? And then without changing the
3 assumptions, feel free to explain.

4 WITNESS GILLAN: Well, inside that framework, I'm
5 going to answer no, with the following observation.

6 The analysis is stacked obviously by the assumption
7 that these are substitutes, which by and large they are not.
8 And because of that, there's, I don't think there's really
9 another answer to the hypothetical with the following other
10 caveat.

11 This analysis doesn't tell me at all how did we get
12 from 100 to -- you know, to Year 10 to Year 13. And even if
13 you were to believe that these were hypotheticals, they were
14 substitutes to one another, what I would posit back to you is
15 you can't get market change without a whole bunch of
16 competitors in there making the incumbent run hard as well as
17 each other. So if this is the outcome as though it's
18 preordained, then I'm not going to argue with you about what
19 importance UNE-P has to this preordained outcome in the
20 hypothetical. But I think in the real world the way you ever
21 see a market fundamentally change is that competitive entrants
22 of all flavors and forms take part in that dynamic and force
23 the incumbent to be just as innovative as everybody else.

24 And part of the problem we have here is that we have
25 a national treasure and exchange network that by and large it's

1 owned by those people, but it's the product of a government
2 policy. And the question before us fundamentally is how do we
3 do two things: One, extract the maximum value we can out of
4 this inherited legacy of past policies, and, two, how do we
5 make sure that everybody has the greatest incentive possible to
6 get out there and continue to, to add on with new technologies
7 and new capabilities?

8 Now UNE-P solves both of those riddles. Riddle one,
9 how do we get the most value out of this legacy network that
10 ratepayers have paid for for years and years and years that
11 right now is sitting out there with a lot of excess capacity on
12 it and idle promises that could be extracted through other
13 applications that have nothing to do with installing circuit
14 switching: Things like access to the advanced intelligent
15 network architecture that allow you to control that network
16 through remote databases, things like what Z-Tel was talking
17 about. One way, one fast way of doing it is let as many people
18 ride that architecture with their applications as possible.
19 And local exchange voice service is just one application, and
20 the best way to get that application out there on that platform
21 is to lease that network in a way that's most commercially
22 useful, which is UNE-P.

23 COMMISSIONER DAVIDSON: I'm going to cut you off
24 here, if you don't mind. Just I don't want to take up too much
25 time on cross. So if there's another opportunity, I mean, feel

1 free to, to go in. And I understand you, you've sort of got a
2 philosophy on, on what you think needs to happen with, with the
3 network and, and that view is, is appreciated. I wanted to
4 cover the one hypothetical.

5 And I've got now one more sort of general economic
6 principle question to ask, and, again, it's based on an
7 assumption. Independent -- it's a general sort of true or
8 false that you might see on, on an economics exam.

9 Assume that a particular product -- assume that in a
10 particular product or service market there are four intermodal
11 providers competing for share of that market. In a market
12 characterized by intermodal competition and if consumers can,
13 in fact, choose amongst the modes, again I'm asking you to
14 assume that, does it matter whether there is intramodal
15 competition?

16 WITNESS GILLAN: Yes, I think so. I don't think --
17 four is a pretty concentrated industry, and so under this
18 hypothetical, you would, you would still, I think, see
19 oligopolistic tendencies developing, given the fact that there
20 would only be four providers of service in the market without
21 intramodal competition as well.

22 COMMISSIONER DAVIDSON: What if there were six?

23 WITNESS GILLAN: It becomes less so.

24 COMMISSIONER DAVIDSON: All right. Thank you. No
25 further questions, Chairman.

1 CHAIRMAN BAEZ: Commissioner Deason.

2 COMMISSIONER DEASON: Mr. Gillan, I want to ask you
3 some questions, and this is fairly at a high level.

4 COMMISSIONER DAVIDSON: You need some help with that,
5 Commissioner?

6 COMMISSIONER DEASON: I'm sorry?

7 COMMISSIONER DAVIDSON: Do you need some help?

8 COMMISSIONER DEASON: No. No. No thanks. You know,
9 good things take time to develop, like competition.

10 I want you to assume that the Commission makes the
11 decision that in a given market, and I won't debate with you
12 the size of the market, but there's a market out there, we
13 define it as such, and we make a decision that that market,
14 that there, that there is not impairment in that market and
15 that was the wrong decision. What is going to be the result of
16 that? What are the possible outcomes? And I assume there
17 would be some bad outcomes. What are those bad outcomes?

18 WITNESS GILLAN: Since we're at a high level, let me
19 just put aside like the whole litigation outcome for a moment
20 because the reality would be there's Chapter 364 that we
21 believe would still provide access and 271, but all that, just
22 putting it aside.

23 If you had made a mistake, then what would happen
24 fundamentally is while it is true that the TRO would permit
25 people to continue to add customers for a period of five

1 months, I think you would expect people to within a very short
2 period of time, maybe as short as a week, announce termination
3 of service. Because there's no reason -- unless people are
4 going to go out of their way to call you and sign up for your
5 service without you expending any resource for them to become
6 an incremental revenue stream, you're not going to get, you're
7 not going to expend your limited resources trying to attract
8 customers for whom you have no future.

9 COMMISSIONER DEASON: I'm just going to -- just so I
10 understand. So you're saying that entities out there that are
11 currently providing service to the mass market via UNE-P, that
12 there would be some of those providers who would just simply
13 choose to exit the market.

14 WITNESS GILLAN: Yes. Yes. And, quite frankly, I
15 think it would be most of them. I think then the next -- let's
16 assume in this discussion we're talking about carriers that
17 fundamentally have some group of mass market customers already.

18 COMMISSIONER DEASON: Let me interrupt. They choose
19 to exit the market because I assume that, that costs of
20 continuing to provide service are going to exceed the revenue
21 of, of providing service. What would be the analysis of that
22 decision-maker, that businessman out there to make that
23 decision?

24 WITNESS GILLAN: Let me, let me make that
25 clarification. Because what I was trying to get across was

1 they would stop marketing service because they wouldn't expend
2 resources to sign up new customers. But they wouldn't leave
3 the market yet in terms of, in terms of disconnecting customers
4 yet because you've already got a customer base and you would
5 start using that transition to, in a very blunt term, extract
6 as much cash in your exit strategy as you could. So you'd stop
7 marketing by and large and adding customers, but you would
8 probably continue to serve customers until you hit these
9 one-third, one-third, one-third transition points.

10 COMMISSIONER DEASON: Okay. Let's assume we're at
11 the first transition point and there's a third of the customer
12 base that has to be transitioned. What does the CLEC
13 businessman do with that information?

14 WITNESS GILLAN: Well, I think, I think as a
15 practical matter what -- and I apologize, Commissioner. I'm
16 doing a little bit of this off the top of my head. But I think
17 as a practical matter what I would do as a businessman is I
18 would look at my customer base and I would try and, first cut,
19 I'd try and assign them into three categories: The first third
20 I'm willing to lose, the second third I'm willing to lose and
21 the last third. And I would try and figure out ways to make
22 sure that as I hit these transition points, I'd lose the least
23 valuable customers first, you know, the next, so that I get as
24 much cash as I can.

25 Now I will also be doing two other things. I'll be

1 looking at my customer base thinking, all right, some of these
2 people, because, you know, I have a customer base, some of them
3 are going to be closer to enterprise ready than others. In
4 other words, they're going to be more susceptible for maybe me
5 or somebody else going to them and trying to sell them a
6 service that is more amenable to UNE-L provisioning, maybe a
7 DS1 or, or maybe some broadband architecture. And so I'll try
8 and figure out are there any, are there any nuggets here that I
9 can either continue to serve either by -- for instance, many
10 UNE-P providers have switches. One of the myths is that they
11 don't have switches. Actually one of the -- many of them have
12 their own switches, but they use them for customer bases where
13 it makes sense. Not so much because of profitability,
14 Commissioner, because I heard that earlier question, but
15 because you can work through with that customer the
16 arrangements you need to to get them transitioned into a
17 digital pipe that is an efficient way to bring them back to
18 your remotely located switch.

19 COMMISSIONER DEASON: But the only reason you'd do
20 that is if you anticipate that that customer is going to
21 generate enough revenue in the long-term; correct?

22 WITNESS GILLAN: Yes. But there's more things than
23 just revenue kicking in here. Part of it is the fact that if I
24 can get them into a digital, get them on to a digital service,
25 I've got at least, well, probably three things going for me.

1 First, people who buy DS1 type services commonly buy
2 them, commonly buy them under a contract. So that I know I'm
3 very, very likely to get them into a service arrangement where
4 I can lock them into a contract, know I'm going to have them
5 for a long enough period of time that all the cost it takes to
6 put them on my network, I have a pretty certain period of time
7 that I know I'm going to recover them on. They're not like
8 mass market customers that sign up on a month-to-month basis or
9 maybe even only sign up for a year where you have a lot of
10 churn and so you have to have a relatively low cost to move
11 them between networks because you can't count on them being
12 long. So I have that.

13 The second thing is that normally when a customer
14 obtains a DS1 type service, they are expecting by the nature of
15 the service that a truck is going to come, that technicians are
16 going to show up on its premise, that there's going to be a
17 service rearrangement. So kind of all the things that you've
18 got to go through to move a customer between two networks the
19 customer is expecting just given the nature of the service.

20 And then the third, and this gets overlooked, a big
21 portion of the costs that Mr. Turner talks about in what is
22 called the backhaul penalty, the need to extend the loop up to
23 your switch, has to do with the fact that to transport a signal
24 any great distance, you have to put it in digital form. Well,
25 one of the great benefits of selling a customer DS1 service is

1 I've already digitized him back there at his premise, and so
2 now the signal that I've got to extend back to my switch is
3 already in a digital format that makes it easier to carry a
4 long distance. So that backhaul penalty becomes less and less.

5 COMMISSIONER DEASON: Okay.

6 WITNESS GILLAN: So that was all a very long way of
7 saying that I'm going to look into my customer base to see if
8 there are people there that are near the margin that I can
9 upsell into that type of product.

10 COMMISSIONER DEASON: So you're going to review the
11 customer base, and those that have high revenue or those that
12 are potential candidates to transition to a digital service,
13 you would want to be those -- those customers would be your
14 last third that you would transition.

15 WITNESS GILLAN: Yes. Yes. And I would also look at
16 some of them -- and, quite frankly, I think part of this as a
17 businessman is why you see Mr. Gallagher sitting on that end of
18 the table and not this end of the table is I'd walk around and
19 see other customers, carriers and say, all right, how much are
20 you going to give me for my customer base, you know? Because
21 they've got, they've got a customer acquisition cost, and while
22 that's a pretty low cash value for all the work I did to win
23 these customers with my services, I'm going to look at selling
24 them to somebody else to get some cash out of them.

25 And then -- and I hate saying this in a public forum,

1 but this is a fact of life in business. If I'm going to --
2 basically I'm going to hope that if you were to make this
3 mistake, you wouldn't make it in a lot of places. I would
4 shift resources to places where you hadn't made the mistake or
5 to states that hadn't made the mistake. And I don't think you
6 should ever forget this, that a lot of these -- you know,
7 people look around the southeast, they make decisions on where
8 to bring their services. They're not locked into any
9 particular state. They go, they go to a variety of them. And,
10 and this is going to lead me to two points.

11 Point one is if I'm, if I'm going to ultimately walk
12 out of this marketplace and these customers, a businessman is
13 going to slowly increase prices to those customers to just see
14 how much cash he can get out of them before they leave because
15 you know they're going to leave you anyway or you're going to
16 have to get rid of them. And unfortunately, you know,
17 businesspeople, they're in it to make money. And if they're
18 going to have to lose these customers anyway, they've got no
19 reason to try and offer them a bargain. They're going to try
20 and take advantage, I think, of some of that, the fact that
21 customers don't immediately react to a price increase by
22 leaving. So you'll see some price increases.

23 The other point I want to make, Commissioner, and
24 maybe I'm making a stretch out of your question, is, you know,
25 you've got two --

1 COMMISSIONER DEASON: You would never do that.

2 WITNESS GILLAN: It's only because I know you so
3 well, Commissioner, that I realize you'd grant me this license.

4 You have two companies here in Florida: Network Tel
5 over in Pensacola, Z-Tel down in Tampa. These are
6 Florida-based companies. They have jobs here in Florida. And
7 their business plans are actually the type of business plans
8 that even Commissioner Davidson would endorse. Network Tel is
9 out trying to provide advance services by deploying DSL
10 technology to customers and then selling those customers higher
11 speed products that integrate voice and data. But they also,
12 in order to survive as a company, they sell UNE-P because not
13 every customer wants that. And when you send your sales force
14 out to sell, you can't guarantee he's only going to find
15 customers that want that particular product or that particular
16 type of technology. You're also going to want to earn other
17 customers that hopefully will grow into it. And to succeed as
18 a business, you have to be able to serve mass market. So they
19 do UNE-P and they do this advanced technology. Z-Tel, on the
20 other hand, doesn't deploy a new physical technology, but
21 they're very much into applications development that they use
22 on UNE-P.

23 I bring this up because these are two very innovative
24 companies that this state should be very proud of. But if you
25 look at Network Tel's discovery in this case, you'll see that

1 Network Tel, even though they're based here, they don't expand
2 here. They're expanding into Georgia, they're expanding into
3 other states in the southeast with that kind of capability
4 because they have a limited capital and they're going to go
5 spend it where it produces the highest return.

6 And I'm going to direct you with trepidation to the
7 discovery response because they list in it that they're not
8 expanding in Florida, and one of the reasons is the regulatory
9 climate. And if you listened to Mike Reith yesterday, they
10 have one of the most innovative service platforms in America.
11 Verizon -- in fact I have the article here with me. Verizon
12 not only copied their service, but when they copied it, Verizon
13 gets this great write-up in, I think it was Business Week about
14 how innovative Verizon is by copying Z-Tel. I mean, they don't
15 put that in the article, which proves Verizon has much better
16 PR people than Z-Tel, but that's a separate story.

17 Z-Tel, if you listen to Mike Reith, they don't really
18 focus their market in Florida either. These companies are
19 based here because your climate is great, but they're not --
20 but they're bringing their benefits to other states. And if I
21 were a Commissioner, quite frankly, I'd be a little concerned
22 about that because this is, these are your companies.

23 (Transcript continues in sequence with Volume 28.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER


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

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

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

DATED THIS 2ND DAY OF MARCH, 2004.


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