

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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PROCEEDINGS: HEARING

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

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EXHIBITS

NUMBER:

ID. ADMTD.

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 27.)

COMMISSIONER DEASON: Let's go back to another hypothetical; that is, this Commission makes a finding of nonimpairment and that's the correct decision. There is not impairment. I assume that means that there are competitive alternatives available to providers of service. How do you see that scenario? I know that you don't accept the hypothetical, but what would happen when we make that decision of nonimpairment and that is the correct decision? What plays out in the market?

THE WITNESS: I have to answer that in two ways because part of your assumption is actually incorrect, and that is that there are competitive alternatives to switching from BellSouth because the nonimpairment finding, you could -- one of the reasons you could reach a finding of nonimpairment is that the ILECs were able to come to you and say, there are other wholesale providers of switching out there, so these carriers can leave us and go to those wholesale carriers. They did not even make the claim. They both filed testimony here that says, we're not identifying any wholesale providers in the state of Florida. Their entire claim is based on the argument not that these carriers can take their business elsewhere but that they can meet this need by, in effect, becoming an ILEC by installing the switch by spending that money. So it's not a

1 question of you could take your business elsewhere.

2 If, in fact, this was a question of you could take
3 your business elsewhere, we wouldn't be having this docket
4 because they would be recognizing that they're better off with
5 \$5 than no dollars; right? I mean, as a practical matter --

6 COMMISSIONER DEASON: Let me interrupt you because I
7 think that's kind of where I want to end up. That's what the
8 real point of these questions, trying to reach this question.

9 If there are existing switches out there that are
10 being utilized to serve the enterprise market, but there's
11 excess capacity on those switches, and there are providers out
12 there of UNE-P that are looking at losing customers or else
13 trying to find an alternative way to provide service and do it
14 economically such that they earn a profit, wouldn't it be
15 incumbent upon them to look at other providers of service and
16 provide a revenue stream?

17 As you indicated earlier, you know, \$1 of revenue on
18 sunk investment is better than zero dollars of revenue.
19 Wouldn't there be an incentive upon those entities that already
20 have deployed switches for the market -- for the non-mass
21 market, wouldn't there be an incentive for them to try to gain
22 some of that market as opposed to those customers that have
23 already been acquired to be lost altogether?

24 THE WITNESS: Yes. And here, I direct you directly
25 to the testimony of Mr. Turner. The problem is, a switch that

1 lives outside the ILEC network suffers from some fundamental
2 cost disadvantages relative to a switch that lives inside the
3 ILEC network. And it's these costs to take these analog
4 signals, put them in a digital form, put them on a transport
5 facility, and take then those digital signals up to that
6 external switch to draw dial tone and get service. Those
7 additional costs, that backhaul penalty is the buzz word for
8 it, as Mr. Turner showed you, ranged, if memory serves me
9 correctly, from \$11 to \$19 per month. Now, you can't
10 realistically provide mass market services to average
11 Floridians, small business or res, when you're having to incur
12 that kind of penalty. Actually, let's think about these
13 numbers.

14 You know, BellSouth -- we're paying BellSouth -- or
15 CLECs are paying BellSouth well north of that \$5. For purposes
16 of just talking, let's say \$8 a month. But that penalty just
17 to reach that other switch is more than twice that or roughly
18 twice -- roughly twice that. Then you'd have to pay that other
19 company for use of the switch. That's the problem here. If
20 that was zero, if it was just as easy or even as close to as
21 costly to serve a line from capacity in a BellSouth switch or
22 capacity in somebody else's switch, then people would be moving
23 lines right and left, but that's not the case.

24 The cost difference between -- if the cost of the
25 switching is identical, the cost difference between serving a

1 customer out of a BellSouth switch and an external switch is
2 that \$11 to \$18 per month, and that is really kind of the nub
3 of the problem and that's a systemic problem. There's not,
4 like, something you can do about it. You know, you can approve
5 a batch hot cut process and that \$11, \$18 stays \$11, \$18. You
6 can do almost anything, but you can't change that because
7 that's a fact of the cost of creating -- taking this analog
8 signal, putting it in a digital format, and shipping it out.
9 And it's one of the reasons why you see competition developing
10 more for customers that already have a digital service because,
11 as I was talking about earlier, you're going after the customer
12 and you're making him digital there, and so it doesn't matter
13 so much whether for that customer you serve them out of the
14 switch that the ILEC has or your switch because you've already
15 made it digital and you've incurred those costs anyway. So
16 that's why you don't see that extra capacity that exists out
17 there today really solving the problem for mass market.

18 COMMISSIONER DEASON: So let me ask you, I guess, the
19 final question. If we never transition away from UNE-P, are we
20 always going to have UNE-P instead of more facilities-based
21 competition?

22 THE WITNESS: Yes and no. Today, UNE-P is needed to
23 provide POTs service. Today, UNE-P, and presumably UNE-P
24 never, is able to provide advanced services. So what it is
25 good for is serving the average POTs customer who's interested

1 in voice service, and what it doesn't do at all is help
2 customers that are interested in voice and data. Over time and
3 even today, you're not going to see people come out and build a
4 second architecture to provide voice service. It's just not
5 going to happen. But what they're going to build is this new
6 architecture for these new services. That's where you want
7 them to spend their money because Floridians aren't going to be
8 made \$1 better off by people trying to replicate the inherited
9 architecture of the ILEC. They're only going to be made better
10 off by people spending money for these new services.

11 The part of the question that Commissioner Davidson
12 did not get entirely from my answer was UNE-P helps you get
13 more of this stuff in two important ways. You have companies
14 here with these customers and over time probably relatively
15 rapidly -- you know, you first go in and you compete with each
16 other based on bundles. Bell gives you local and long
17 distance, I give you local and long distance, they give you
18 local and long distance. Well, you know what? Eventually
19 everyone is interested in that, which appears to be just about
20 everybody, they buy it. Now, how do I win my customer from
21 Bell? Well, I do more of this new stuff to differentiate
22 myself from all the other POTs providers.

23 In addition, BellSouth, because it's being competed
24 against in this market, has to do more of this stuff because
25 that's how it attracts customers out of the POTs market over

1 into this more advanced market. You know, Commissioner
2 Davidson is, like, on this leading edge. He's moved from this
3 market to this market. Over time, a lot of people are going to
4 move out of the POTs market into the more advanced services
5 market, and that's the natural transition that I identify in my
6 testimony.

7 UNE-P is part of a natural market-based transition as
8 customers leave the POTs market where UNE-P works to bring
9 competition to an advanced services market where it does not,
10 where people have to spend more money. The more people you
11 have, the more carriers you have competing over here, the more
12 carriers you're going to have making new investment over here.
13 Over time, the number of customers in the POTs market is going
14 to shrink, the number of customers over here is going to rise.
15 So the part of my answer that says UNE-P is not forever is,
16 hey, over here it's not at all, but over in this voice market,
17 I believe it's probably going to need to be here for as long as
18 there are people who are interested in mass market POTs
19 service. I don't know how long it's going to take for every
20 Floridian to decide that they're not interested in mass market
21 POTs service but are more interested in this advanced services.
22 Is it going to happen? Inevitably, yes, the whole market will
23 shift. Is it going to take five years, ten years, three years?
24 I don't know.

25 COMMISSIONER DEASON: Mr. Chairman, I thought that

1 was my last question, but I have one more.

2 I know it's not an issue in this proceeding but the
3 subject keeps coming up about the appropriateness of the UNE-P
4 price, the TELRIC price. And it's your position, I assume,
5 that the price is too high, and obviously it's BellSouth's
6 position, even though they're defending it, they would like to
7 see the UNE-P prices higher than they are. And we as
8 regulators, we have set the price the best way that we can.

9 I want you to assume with me for a moment that the
10 price is set correctly, that we have followed the TELRIC
11 principles and the price is accurate. If the price is
12 accurate, what is -- and I'll just pick on BellSouth at this
13 point, what is their incentive to want to end providing a
14 service which they get adequately compensated for, that being
15 UNE-P, and risk the possibility that they are going to lose
16 customers and diminish the utilization of a sunk investment?

17 THE WITNESS: Well, Commissioner, it only makes sense
18 if that risk of actually losing a customer is relatively low,
19 and that's the problem here. They know that by and large if
20 they push UNE-P out of market, those lines, those customers,
21 they don't go somewhere else, they come back to them as a
22 retail customer. And so the real financial equation they're
23 running through in their head is, well, I don't lose \$5 because
24 when that UNE-P customer leaves whoever it was, yeah, that
25 carrier quits paying me the \$5 but that customer or a large

1 number of them are going to come back and start paying me their
2 30 or 40 or 50 bucks again. And that's really what this is
3 about.

4 You know, it is pretty simple math. I've got -- what
5 is it in Florida -- 600,000 customers on UNE-P. And so that I
6 can do the math in my head, let's assume they're only getting
7 \$5 per month for switching. It's higher than that, but let's
8 assume it's only \$5. That's \$3 million, right, a month?
9 That's \$36 million a year they're getting. Now, if they really
10 thought that by doing all this they would lose \$36 million,
11 they would be sued by their shareholders. But it makes sense
12 because most of those customers will ultimately end up back
13 with them, paying them their retail rates, which are more
14 profitable to them than the wholesale rates they sell to these
15 carriers. It isn't that the wholesale rates are below cost,
16 they're just not as attractive as retail, but that's the way
17 it's supposed to be; right? And that's the calculus that has
18 to be motivating them.

19 They don't see these lines go to UNE-L and another
20 switch, they see these lines going back to retail which is a
21 much better business proposition for them. That's why when
22 Mr. Ruscilli says we just want a commercially viable rate
23 there's all these snickers in the back of the room that I hope
24 you can't hear. It has to do with the fact that we all know
25 that commercially viable to BellSouth is, I got the customer

1 back. Boy, am I viable.

2 CHAIRMAN BAEZ: Thank you, Commissioner.

3 COMMISSIONER JABER: Mr. Chairman, if there are other
4 Commissioner questions, I have just --

5 CHAIRMAN BAEZ: Absolutely.

6 COMMISSIONER JABER: Mr. Gillan, I don't know if you
7 were there when I asked Dr. Johnson the question about
8 speculating with respect to competitive responses if we were to
9 make some impairment -- no impairment findings. Were you there
10 for that question?

11 THE WITNESS: Yes, Commissioner, I was.

12 COMMISSIONER JABER: Okay. Keep that in mind. And
13 also, just to add on to one of Commissioner Deason's earlier
14 questions, if we were to make a no impairment finding for
15 BellSouth and Verizon in multiple areas, can you tell me what
16 you believe the reaction from competitors will be in the Sprint
17 territory, in the other portions of the Verizon territory, and
18 in the remaining portions of the BellSouth territory? Do you
19 understand the question?

20 THE WITNESS: Yes. And for purposes of answering the
21 question, just because it makes it simpler, let me assume that
22 you make a finding of no impairment in all the areas that they
23 asked for it, if that's okay with you.

24 COMMISSIONER JABER: Okay. In all the areas that
25 they've asked for?

1 THE WITNESS: Yeah.

2 COMMISSIONER JABER: Okay.

3 THE WITNESS: Because one of the things that
4 Dr. Johnson did not, I think, answer you correctly on was he
5 suggested that somehow if you reach a finding of no impairment
6 in some places, that you don't have any impact in areas where
7 you reached a finding of impairment and that just isn't true.

8 If, for instance, you reached a finding of no
9 impairment in this state from Miami, that would affect -- I'm
10 going to do this a little bit off of my head so I'm probably
11 off by a bit, that would affect probably 50 percent of the
12 access lines in this state. That would shrink this state by
13 half. People's ability to compete in the other half of this
14 state would be materially and adversely affected.

15 COMMISSIONER JABER: Okay. Let me interrupt you. Is
16 the point you're making that in terms of density, Miami is a
17 more dense market?

18 THE WITNESS: Well, not even just density, just
19 that's where most people live in this state. I mean, it's got
20 the largest concentration -- you know, it has the largest
21 number of access lines and because of that it would ripple out
22 and affect other parts of the state. What Dr. Johnson, I
23 think, failed to explain -- failed to appreciate in his answers
24 to you was that the mass market is interlinked. People in this
25 state are only able to compete in the less dense Zone 3 higher

1 cost markets because they're also competing in the cities.

2 CLECs are no different than BellSouth. BellSouth has
3 told you for years and years and years that the cities are
4 subsidizing the rural areas. Well, we may or may not agree
5 with their use of the term "subsidy," but it is absolutely true
6 that if you told BellSouth you were going to split it into two
7 companies, one that could compete in the city and one that
8 could compete in the rural area, which is what you would be
9 doing, you know, with a finding of nonimpairment in the city to
10 the CLECs, BellSouth would immediately tell you, well, I can't
11 serve those other areas without the ability to cover my costs
12 over the whole state.

13 COMMISSIONER JABER: Okay. Well, with that
14 explanation, let's take them company at a time. If we found
15 no -- well, Sprint is not asking us to make any impairment
16 findings. They're not. They've conceded they're not trying to
17 do that. So tell me what the competitive reaction will be for
18 the Sprint territory.

19 THE WITNESS: I don't know that -- I don't think
20 anything would change for the Sprint territory. You have
21 little competition there now and you'd have none more develop.
22 The reality is that it takes time for competition to go through
23 all the ILECs in a state and bring competitive choice
24 everywhere because each time you go to enter a different ILEC,
25 you have to create entirely new operating and provisioning

1 systems that marry up with that ILEC's systems.

2 COMMISSIONER JABER: Well, I'm having trouble
3 reconciling your position then because for the Sprint territory
4 you know for a fact that UNE-P will remain available.

5 THE WITNESS: Yes. But my point was it's not clear
6 to me that the Sprint territories by themselves in this state
7 are sufficiently large to attract entry and cause people to
8 spend the dollars they need to spend to make their systems
9 operate with Sprint.

10 In addition, if you look at Sprint's territory, like,
11 in Orlando, I have a hard time figuring out a way that a
12 carrier could reasonably compete for Winter Park customers
13 trying to advertise in the Orlando Sentinel, paying the Orlando
14 Sentinel's advertising costs based on the population of Orlando
15 but being able to only offer the service to people who live in
16 Winter Park. It doesn't match up that way. So there would be
17 some consequences even in the Sprint territory from not having
18 competition available in the Orlando area because the markets
19 themselves don't really match up very well with the carriers.

20 The reason you have more competition in BellSouth
21 than Sprint today is twofold. One is the prices that they
22 charge for UNE-P, quite obviously, but the other one just has
23 to do with the fact that when you design your systems to
24 compete in BellSouth territory, you gain access to whatever --
25 21 million access lines across nine states because the

1 operating systems are the same across all of them, and you
2 would have to incur almost the exact same amount of money to
3 create operating systems to interface with Sprint even though
4 the commercial opportunity in the Sprint territory is
5 dramatically lower. And that's one of the reasons why you
6 haven't seen as much competition developed there just yet.

7 COMMISSIONER JABER: Okay. And I think I understood
8 your response with regard to the remaining BellSouth territory.
9 What would be your response as it relates to any remaining
10 Verizon territory where UNE-P stays available?

11 THE WITNESS: I think you'd see it disappear
12 entirely. If I recall the maps that Verizon showed you, and
13 I'm sure you're aware, the Verizon territory has the Tampa
14 metropolitan area which is fundamentally where they're asking
15 to take it away, and then it extends around that area in a
16 collar of far less populated communities. I don't believe that
17 that residual area, that step market, if you will, that Verizon
18 says it would continue to make UNE-P available is commercially
19 significant. I mean, again, how do you advertise to the people
20 that live near Tampa, paying Tampa radio, newspaper,
21 television, you know, ad rates based on coverage to the Tampa
22 metropolitan area, but you have to put in the ad, not available
23 anywhere in the Tampa metropolitan area? It doesn't work.
24 While they say they're only asking for a finding in the Tampa
25 MSA, they're effectively asking for a finding that would apply

1 throughout their entire service territory from a commercial
2 impact basis.

3 COMMISSIONER JABER: Thank you, Mr. Gillan. Thank
4 you, Mr. Chairman.

5 CHAIRMAN BAEZ: Thank you, Commissioner. We are --
6 now would be a good time to break for lunch. And as homework,
7 I would like to -- no, just lunchtime discussion, let's call
8 it -- take inventory of how much time you think -- how much
9 cross time is left amongst you and between you just to have --
10 I want to try and keep a running total of how we're ending.

11 Staff, I think I've got your numbers, and if you can
12 think -- and if the impairment parties can do the same thing,
13 in terms of redirect, that would be good just to have numbers
14 that we can discuss on hand. Thank you.

15 MS. HYER: Mr. Chairman.

16 CHAIRMAN BAEZ: Yes.

17 MS. HYER: Just one housekeeping matter. I neglected
18 to do this earlier, but I would like to mark the chart that we
19 put up as an exhibit. And we can reduce it to standard paper
20 size and give that to the Commission and the parties next week.

21 CHAIRMAN BAEZ: It was drawn real time. I don't know
22 that -- you'll get a chance to challenge it.

23 MS. KAUFMAN: Mr. Chairman, I mean, you sort of
24 stated my objection for me. I appreciate it.

25 CHAIRMAN BAEZ: I'm sorry?

1 MS. KAUFMAN: I said you stated my objection for me.
2 I appreciate it. It was drawn real time. It wasn't provided
3 to the parties. I take it to be a demonstrative exhibit, if
4 you will.

5 CHAIRMAN BAEZ: Did we not have -- let me take the
6 objection under advisement, okay? And I'll give you -- we'll
7 mark it as 118 for identification purposes, and we'll have a
8 ruling subsequent.

9 MS. HYER: Okay. That sounds great. Thank you.

10 (Exhibit 118 marked for identification.)

11 (Lunch recess.)

12 CHAIRMAN BAEZ: We're going to go back on the record
13 and get started. Quickly, the estimates that I asked you to go
14 off the record with, I think we'll be able to work it out. We
15 need to do better. Anyway, Mr. Bradbury, you're up.

16 MS. PATTON: Mr. Chairman.

17 CHAIRMAN BAEZ: Yes, ma'am.

18 MS. PATTON: It's my understanding that BellSouth
19 does not have cross at this time of Mr. Bradbury but that staff
20 and Verizon both have just have a few questions.

21 CHAIRMAN BAEZ: Okay. Mr. Lackey, when you say at
22 this time, what does that mean?

23 MR. LACKEY: Well, yes and no.

24 CHAIRMAN BAEZ: Is that right?

25 MR. LACKEY: BellSouth has no examination at all for

1 Mr. Bradbury.

2 CHAIRMAN BAEZ: Okay. That sounded like a no.

3 Ms. Hyer, do you have some questions?

4 MS. HYER: Yes.

5 CHAIRMAN BAEZ: Hold on just for a moment because I
6 know that we left something hanging, and I apologize for not
7 bringing it up sooner.

8 The exhibit didn't quite -- how do I say this? We
9 had said at the outset concerning demonstrative pieces to have
10 them provided well ahead of time. This was kind of done real
11 time. I'm not sure that it has anything more to offer than
12 even your good explanation into the record or the good
13 discussion in the record that took place. And based on the
14 fact that it was done real time and it wasn't provided ahead of
15 time, I'm going to deny your request to have it entered into
16 the record. But I do think it's adequately covered by the
17 discussion.

18 MS. HYER: Thank you, Mr. Chair.

19 CHAIRMAN BAEZ: Now that we got that out of the way,
20 you can go ahead with your cross.

21 JAY BRADBURY

22 was called as a witness on behalf of AT&T Communications of the
23 Southern States, LLC and, having been duly sworn, testified as
24 follows:

25 CROSS EXAMINATION

1 BY MS. HYER:

2 Q Good afternoon, Mr. Bradbury.

3 A Good afternoon.

4 Q I'm Leigh Hyer with Verizon. I'm sure you know that
5 already.

6 A Yes, ma'am.

7 Q Do you recall during your deposition on February 18th
8 that I asked a few questions about a service that AT&T offers
9 to small business customers called AT&T All In One service?

10 A Yes, ma'am.

11 Q And it's true, is it not, that some of the customers
12 that AT&T provides AT&T All In One service to are served over
13 UNE-L lines; is that correct?

14 A That's correct. The only customers that are UNE-L
15 today are customers that became UNE-L back in the time period
16 1999 through 2001. We have not added any new customers to the
17 All In One product using UNE-L since that time.

18 Q Mr. Bradbury, it's true, is it not, that AT&T is not
19 actively disconnecting those existing UNE-L customers that
20 subscribe to AT&T All In One from UNE-L to UNE-P?

21 A That's true. And there are a couple of reasons for
22 doing that. One, it could cost us money to move those
23 customers from UNE-L back to UNE-P. Secondly, it would disrupt
24 the customer's service. So rather than doing that, we are
25 simply leaving those customers who we acquired in that prior

1 time period on the platform that they're on. It's also a
2 convenience for the customer. If I try to add something to
3 that customer and put it on UNE-P, I'd have the account split,
4 and I don't have a way to do that billing. The customer would
5 have two different things that would happen at his own location
6 because he would have part of his service on my switch, part of
7 his service on the other switch. So those customers that are
8 left over from that old business plan, we simply have them
9 there waiting for them to attrit naturally, which is happening
10 at about 26 percent over the last 18 months.

11 Q So for those customers, so long as they continue with
12 AT&T as their service provider, they will continue to be served
13 via DS0 voice grade loops; correct?

14 A That's correct. We're simply allowing them to stay
15 there because it would cost us money to move them and disrupt
16 their service. You would have to do a reverse hot cut for each
17 and every one of them, and there's simply no reason to go
18 through that pain for the customer.

19 Q And AT&T's All In One service, that's a current
20 tariffed offering; correct?

21 A That's correct. We're marketing that service
22 throughout Florida, and we provision all new customers on it
23 using UNE-P.

24 Q When you provision customers using your AT&T All In
25 One service offering, do you inform those customers that you're

1 using UNE-P versus UNE-L?

2 A No, we do not.

3 Q So you don't advertise the service based on the type
4 of facilities that you use; correct?

5 A No, we do not.

6 MS. HYER: I have no further questions.

7 CHAIRMAN BAEZ: Thank you. Mr. Feil.

8 MR. FEIL: No, sir.

9 CHAIRMAN BAEZ: No questions.

10 Commissioners. No questions.

11 Staff.

12 MR. SUSAC: Yes, I just have two quick questions.

13 CHAIRMAN BAEZ: Go ahead, Mr. Susac.

14 CROSS EXAMINATION

15 BY MR. SUSAC:

16 Q Good afternoon. We discussed previously, and just
17 jumping right in, and if you don't understand anything, I'll
18 repeat it, but all of your six switches in Florida, are they
19 capable of serving voice services?

20 A Yes, they are.

21 Q And did you testify that your switch with a CLLI
22 beginning with FTLD serves the Fort Lauderdale market?

23 A That's correct.

24 Q Is it your testimony that this FTLD switch is serving
25 69 percent enterprise customers? And if you need to see a

1 chart, it's on your rebuttal testimony, Page 7.

2 A Let me get there.

3 Q Thanks.

4 A Yes. My calculation there using AT&T's records of
5 its DS0 customers indicates that 69 percent of the terminations
6 on that switch are enterprise terminations. And if I use
7 BellSouth's records, it's 65 percent.

8 Q And what is the remaining 31 percent?

9 A Very small business customers who are, as we were
10 just discussing with Verizon, All In One customers are the fact
11 of the plan that we had in place 1999 through 2001 where we
12 thought we could make money on the UNE-L platform, we
13 discovered we couldn't.

14 Q So just for clarification, is that 31 percent mass
15 market?

16 A It's 31 percent very small business, which is a
17 portion of the mass market. It doesn't represent a typical
18 mass market customer.

19 Q All right. Excluding your switch which serves OJUS,
20 which is 100 percent enterprise, and your switch serving Fort
21 Lauderdale that we just discussed, do the remaining switches
22 range from approximately 85 percent to 98 percent of its used
23 capacity serving enterprise customers?

24 A That's correct. The calculations that I have done
25 would indicate that of the terminations on the switch between

1 85 percent and -- we were in BellSouth alone, and 98 percent
2 are enterprise terminations, that's correct.

3 Q And yes or no, would the smaller percentage that
4 remains serve mass market customers?

5 A Again, the very same answer as before. Those
6 customers are very small business customers that were placed on
7 the switch as the old business plan was effective in
8 1999 through 2001. That's a portion of the mass market. It is
9 not a typical mass market customer.

10 Q Okay. And my last question is, could the remaining
11 percentage of the switch be used to serve mass market?

12 A Yes, it could.

13 MR. SUSAC: Okay. No further questions, Chairman.

14 CHAIRMAN BAEZ: Thank you. Thank you, Mr. Bradbury.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 CHAIRMAN BAEZ: I have Witness Bryant.

18 MR. ELLENBERG: Mr. Chairman, while Dr. Bryant is
19 settling in, it's been several years since I appeared before
20 the Florida Commission. My face is not familiar. That may
21 be -- made a lot of people happy, but I'm back and I just
22 wanted to introduce myself. I'm William Ellenberg; I'm
23 appearing on behalf of BellSouth.

24 CHAIRMAN BAEZ: Welcome back, Mr. Ellenberg. It's
25 your witness.

1 MARK BRYANT

2 was called as a witness on behalf of MCI WorldCom
3 Communications, Inc. and, having been duly sworn, testified as
4 follows:

5 CROSS EXAMINATION

6 BY MR. ELLENBERG:

7 Q Good afternoon, Commissioners, and good afternoon,
8 Dr. Bryant.

9 A Good afternoon.

10 Q Now, as I've just said, my name is William Ellenberg
11 and I'm here representing BellSouth. I have a few questions
12 about your testimony in this proceeding. Now, your testimony
13 has not been limited to a single issue. You testify about
14 market definition, economic impairment, and the switching
15 triggers; correct?

16 A That's correct.

17 Q And I believe I have a few questions on each of those
18 subjects. Starting with the market definition, you have
19 provided a proposal to the Commission regarding the appropriate
20 definition of the geographic market for applying the triggers
21 in the potential deployment analysis; correct?

22 A Yes, that's right.

23 Q And you tell us in your prefiled testimony that the
24 market definition approach that you have presented is the same
25 one used in the horizontal merger guidelines; correct?

1 A Yes.

2 Q Now, throughout your career -- well, let me back up
3 and ask you about your career. I believe you addressed it very
4 briefly at the outset of your presentation yesterday afternoon,
5 but it was while you were explaining that you're very
6 soft-spoken and, in fact, I didn't hear it. So let me just try
7 to clarify that.

8 I understand that you have 20 years working in and
9 around the telecommunications industry; is that correct?

10 A That's right.

11 Q And 18 of those years were spent in the employ of
12 MCI; correct?

13 A I'm sorry. Could you say again how many?

14 Q Eighteen of the 20 years which you have been working
15 in and around the telecommunications industry, you were
16 employed by MCI; correct?

17 A That's about right.

18 Q All right. Now that we've played musical chairs,
19 hopefully the microphone is working better. Is this better,
20 Dr. Bryant? Can you hear me?

21 A Yes, it is.

22 Q Now, it's fair to say, Dr. Bryant, that prior to this
23 proceeding throughout your career of 20 years and 18 years at
24 MCI, you have not participated in any court proceeding or
25 regulatory proceeding or appeared in front of any

1 administrative agency in which you have performed a market
2 definition analysis using the horizontal merger guidelines;
3 correct?

4 A I have not appeared in any proceeding. Was the
5 question whether I had participated in --

6 Q Well, it was actually whether you had, in any of
7 those proceedings and throughout your career, performed a
8 market definition analysis under the horizontal merger
9 guidelines.

10 A Well, I believe I did a lot of work on -- for MCI at
11 the time that the merger with British Telecom had been
12 proposed, and I did a lot of work with MCI at the time that the
13 WorldCom merger was taking place. And I participated in the
14 team of economists that was working on those cases, and as a
15 part of that, I participated in discussions on those issues.

16 Q I understand that there were discussions internal to
17 MCI, Doctor, but my question was, have you participated in any
18 court proceeding or regulatory proceeding or any proceeding
19 before an administrative body in which you have performed a
20 market definition analysis using the horizontal merger
21 guidelines?

22 A Well, I guess it depends on what you mean by
23 participated because, as I mentioned, I worked on both of those
24 mergers in which market definition was an issue. I didn't
25 appear in a court proceeding if that's what you mean.

1 Q Do you have a copy of the responses to discovery
2 filed on behalf of MCI in this proceeding?

3 A I don't think I have everything with me.

4 Q And I'm referring specifically to Interrogatory
5 Number 132. We may be able to bring it up on the screen.

6 MS. McNULTY: And if you don't mind waiting just one
7 moment while we obtain our official response, we'd appreciate
8 that.

9 Q Dr. Bryant, can you see Interrogatory Number 132 on
10 the screen behind the Commissioners?

11 A Yes, I can.

12 Q And I believe that's basically the same question I
13 had been asking you. You were asked -- or MCI was asked to
14 identify each administrative, regulatory, judicial or other
15 proceeding in which Dr. Bryant has participated in which he has
16 performed market definition analysis under the HMG. Do you see
17 that?

18 A Yes, I see that.

19 Q Do you see the response that was provided to
20 BellSouth?

21 A Yes, I do.

22 Q And that response is, "Dr. Bryant has not previously
23 participated in any proceeding in which he has performed market
24 definition analysis under the horizontal merger guidelines."

25 A That is the response, yes.

1 Q Does that make the answer to my previous question a
2 little easier for you?

3 A As I read that interrogatory, I read it to mean had I
4 appeared in any proceeding, and, no, I have not appeared in any
5 proceeding.

6 Q Thank you. Now, several times throughout this
7 proceeding we have taken a look at a portion of Paragraph
8 495 of the TRO to find what guidance the FCC has provided to
9 state commissions in defining a market area. Are you familiar
10 with Paragraph 495?

11 A Yes.

12 Q I'm sorry. Did you answer?

13 A Yes. I answered yes.

14 Q Thank you. I'm sorry. Now, since this has been
15 discussed several times, I don't want to belabor the point, but
16 basically the FCC has provided the outer limits of an
17 appropriate market and told state commissions that the entire
18 state cannot comprise the market; correct?

19 A That's right.

20 Q And at the lower end, the FCC has told us that the
21 market cannot be so narrowly defined that a competitor serving
22 that market alone would not be able to take advantage of
23 available scale and scope economies from serving a wider
24 market; correct?

25 A Yes, it has said that. But I believe it's also

1 provided some additional guidance on what it means by
2 granularity.

3 Q Okay. Thank you. Now, when we talk about scale and
4 scope economies from serving a wider market, one of the
5 economies that you and others in this proceeding have discussed
6 are economies relating to the utilization of a local switch;
7 correct?

8 A I've discussed that, yes. I have also said that I
9 don't think they're very significant.

10 Q And that's what I would like to talk to you about.
11 But you have discussed the economies related to the switch
12 utilization in this proceeding; correct?

13 A Yes.

14 Q Now, I think you may have just answered this
15 question, but you do agree that there are efficiencies of scale
16 associated with the switching facility; correct?

17 A They are very small in nature. Yes, there are some
18 economies of scale, but they are realized very quickly.

19 Q And we're going to talk about that, if we can get
20 through a couple principles first. You understand that CLECs
21 generally are not installing a switch for each wire center that
22 they intend to serve; correct?

23 A Yes, that's right.

24 Q So to gain the efficiencies of scope, whatever they
25 are, and we'll talk about that in a minute, associated with the

1 switching facility, a CLEC will need to provide service to more
2 than one wire center; correct?

3 A It depends on how many customers that it can gain in
4 an individual wire center. If it could gain 1,000 or 2,000
5 customers in a single wire center, I would think they would
6 have achieved most of the economies of scale that are
7 pertinent.

8 Q To that point, in your rebuttal testimony, you say
9 that by the time a CLEC is serving a few thousand customers,
10 the rate of decline in the per customer investment has slowed
11 dramatically and adding additional customers results in a
12 miniscule decrease in the per customer investment. Is that
13 what you're referring to?

14 A Yes.

15 Q Now, you have attached to your rebuttal testimony a
16 chart that's identified as MTB-4. And do you see it? Is that
17 chart behind the Commissioners a fair representation of that
18 chart?

19 A Yes.

20 Q Now, when you say a few thousand customers in your
21 rebuttal testimony, I'd like to see if we can hone in on that a
22 little bit. I grew up in South Carolina and a few thousand to
23 those of us who came from South Carolina is at least 3,000
24 customers. Would you agree with that?

25 A Well, I wouldn't want to quantify what a -- a few

1 thousand. I think I said a minute ago, if they could get 3,000
2 or 4,000, they would have gotten most of the way there.

3 Q Okay. 3,000 or 4,000. So let's talk about the chart
4 just a minute and see if we can put this in context. On your
5 exhibit, the vertical axis is the cost of the switch per
6 customer; is that right?

7 A It's the investment per customer, not the cost.

8 Q Excuse me. The investment per customer. I stand
9 corrected.

10 And on the Y axis, we see the number of customers
11 that are served with the switch; correct?

12 A That's correct.

13 Q So if we move the line out to where -- 3,000 or 4,000
14 customers, is that the point where you think the economies --
15 the rate of decline in the per customer investment has slowed
16 so dramatically that adding additional customers won't result
17 in any further savings in per customer investment?

18 A That's where the line has begun to flatten out, yes.

19 Q While I was asking you, I thought I heard you say
20 that it would be 3,000 or 4,000 customers.

21 A Yes. And that's where the line begins to flatten.

22 Q Dr. Bryant, are you aware of the number of access
23 lines served in BellSouth's footprint in Florida?

24 A I'm sorry. I didn't hear the last part of the
25 question.

1 Q The number of access lines served in BellSouth's
2 footprint in Florida, do you know that number?

3 A Not off the top of my head, no. It's in the
4 millions.

5 Q Would you accept, subject to check, it's on the order
6 of 6 million?

7 A Sounds good to me.

8 Q And have you heard in the testimony in this
9 proceeding that there are 200 wire centers in BellSouth's
10 footprint in Florida?

11 A Yes -- well, actually, I counted 201, but close to
12 it.

13 Q Well, as we learned earlier this morning, with round
14 numbers math is easier, so maybe we can just settle on 200.
15 Would that be acceptable?

16 A Okay.

17 Q Now, if we take the number of access lines served in
18 the BellSouth footprint in Florida and divide that by the
19 number of wire centers, we come up with a number of 30,000
20 access lines per wire center on average; correct?

21 A You said 6 million -- yes.

22 Q Now, you have provided in your testimony an
23 analytical tool that you say can be used to develop a cost of a
24 CLEC entering a market with a UNE-L strategy; correct?

25 A That's right.

1 Q And in that analytical tool, you have assumed that
2 the maximum market share that a CLEC can obtain is 5 percent;
3 correct?

4 A No. That was the baseline assumption. I think I
5 varied that between 3 and 8 percent.

6 Q Yes, sir. You did some sensitively runs with
7 different percentages, but the baseline model assumed 5 percent
8 market share; correct?

9 A Well, again, that's just the midpoint of the range
10 that I considered.

11 Q I'll take it as the midpoint of the range that you
12 considered. Use the midpoint of the range that you considered
13 and using an average line count per wire center of 30,000, that
14 means a CLEC would obtain 1,500 customers if it were to achieve
15 the maximum market share; correct?

16 A In each wire center, yes.

17 Q Well, I'm just trying to do the math. 30,000 access
18 lines in the wire center times the 5 percent market share,
19 that's 1,500 lines; correct?

20 A That's right.

21 Q So if there are still economies of scale in the
22 switch investment at 4,000 lines, a CLEC would have to obtain
23 the maximum market share in two, perhaps three, and maybe even
24 more wire centers before it would mine all of the economies of
25 scale in that switch; correct?

1 A Well, I mean, it could obtain an even smaller market
2 share in some larger wire centers and get to that point.

3 Q We're just working with the averages that we've been
4 discussing. That would be great.

5 A Sure. I mean, it would have to serve more than one
6 wire center if we assume the average.

7 Q Thank you. Now, I want to talk to you a bit about
8 the analytical tool that you have provided in this proceeding.
9 I just asked you about your analytical tool. You have also
10 provided an analysis and some criticisms of the model offered
11 by BellSouth, correct, the BACE model?

12 A Yes.

13 Q Would you agree with me that the BACE model is a more
14 sophisticated model than your analytical tool?

15 A It's certainly more complicated. It considers, I
16 would say, many more factors than the analytical tool that I
17 presented.

18 Q And you will agree with me that you have said in your
19 testimony you cannot fault the general approach outlined in
20 Mr. Stegeman's testimony and in the model documentation of
21 BACE; correct?

22 A Yes. I said I can't fault the approach as outlined
23 in the model description. Whether or not the model actually
24 implements that approach I can't say.

25 Q Now, in the base case of your analytical tool, you

1 used an estimate of current average revenues to provide a
2 snapshot of the modeling process; correct?

3 A I used current revenues as the revenues assumed in
4 the model.

5 Q Maybe I can save some time. I lifted that straight
6 from an answer that you gave to a BellSouth interrogatory. So,
7 I mean, I could be glad to show that to you, but in your base
8 case, you used an estimate of current average revenues to
9 provide a snapshot of the modeling process; correct?

10 A That was the starting place. And I also provided a
11 range of potential discounts from that current average revenue
12 that were considered in the sensitivity analysis.

13 Q Thank you. Now, going back to the relative
14 sophistication of base in your analytical tool, you will agree
15 that you could have enhanced the analytical sophistication of
16 your tool by including a time series of revenues and market
17 share that a CLEC could obtain; correct?

18 A Yes. And that probably would have resulted in a
19 lower profitability being shown.

20 Q Well, we don't know that because you didn't perform
21 such a time series analysis using your analytical tool;
22 correct?

23 A Well, I can tell you that if you discount future
24 revenues, they will be lower than if you're considering a
25 static view of revenues. And I think also I've had testimony

1 in there -- or I have testimony that I would expect prices to
2 decline over time. So assuming current revenues is a
3 conservative assumption.

4 Q But you have not performed a time series analysis and
5 offered it into the record of this proceeding; correct? I
6 understand your general observations.

7 A As to revenues, no.

8 Q Now, turning back to the BACE model, Dr. Bryant, you
9 made several runs of the BACE model for Florida; correct?

10 A That's correct.

11 Q But you don't know the exact number; right?

12 A No.

13 Q I'm sorry?

14 A I do not know the exact number.

15 Q Okay. Thank you. Now, you gave a deposition in this
16 proceeding, I believe, two weeks ago today; correct?

17 A Was it two weeks ago? It seems a lot longer.

18 Q It was Friday the 13th.

19 A I'll take your word for it.

20 Q It was Friday the 13th. I'm not sure if that was
21 significant or not, but it was Friday the 13th.

22 A Okay.

23 Q And in that deposition, you answered questions from
24 the staff, and you answered questions from a colleague of mine,
25 Meredith Mays; correct?

1 A That's right.

2 Q And you were asked in your deposition if you had
3 reviewed the surrebuttal testimony of Mr. Stegeman, including a
4 newer version of BACE, BACE 2.2; correct?

5 A Yes, I was asked that question.

6 Q And you at that time had not reviewed the surrebuttal
7 testimony nor the newer version of BACE attached to the
8 surrebuttal testimony of Mr. Stegeman; correct?

9 A At that time I had not, yes.

10 Q I take it from your answer, you have had the
11 opportunity to do that today?

12 A I have reviewed the surrebuttal testimony. I haven't
13 had a chance to play with the new version of the model in
14 Florida, in any event. I have worked with it in some other
15 states.

16 Q So since the time of your deposition, you have not
17 undertaken any additional runs of BACE for Florida; is that
18 correct?

19 A Not for Florida, yes.

20 Q Now, in your testimony and in your presentation
21 yesterday, you discussed an anomaly that you observed when you
22 changed the churn rates in the BACE model; correct?

23 A That's right.

24 Q And I'll try to paraphrase what you have done and
25 what you observed, and you can tell me if it's a fair

1 characterization. You raised the churn rate in the BACE model
2 and observed that that had the effect of raising the
3 profitability of certain wire centers; is that correct?

4 A That's correct.

5 Q And that concerned you because you would expect that
6 if you raise a churn rate, you might see a drop in the
7 profitability of certain wire centers; is that correct?

8 A That's certainly what I would expect to see.

9 Q Now, back to your deposition. You were asked whether
10 you had made runs of the BACE model for other states; correct?

11 A Yes.

12 Q And you indicated that you had made runs for Georgia
13 and had not observed that same anomaly regarding the churn rate
14 effect; correct?

15 A That's correct. And I've also since that time made
16 runs for North Carolina and Tennessee.

17 Q And have you observed the anomaly that you discussed
18 with this Commission yesterday?

19 A I didn't see it in North Carolina, but I saw it in a
20 very dramatic fashion in the runs that I did for Tennessee.

21 Q Now, you say that you have reviewed -- you've had now
22 the opportunity to review the surrebuttal testimony of
23 Mr. Stegeman. You are aware that he tried to replicate -- from
24 your discussion in your testimony, he tried to replicate what
25 you had observed; correct?

1 A That's what he said, yes.

2 Q And he was unable to do so; correct?

3 A That's what he said.

4 Q But to make sure this is clear, with respect to runs
5 of the BACE model for Florida, you have not made runs using the
6 Version 2.2 of the BACE model; correct?

7 A Not for Florida.

8 Q So you don't know whether you -- had you made runs
9 using Version 2.2, you would have observed the same anomaly
10 that you described to this Commission yesterday; correct?

11 A I don't know that, but I would guess I would say
12 based on my experience in Tennessee that I have no reason to
13 believe the problem has been corrected.

14 Q Well, we don't know for the Florida model though, do
15 we?

16 A I assume that the model is the same, and it's the
17 data that differs between the states.

18 MR. ELLENBERG: Mr. Chairman, it would be very
19 helpful to me if we could instruct the witness to -- or if you
20 could instruct the witness, I won't do that, to answer with a
21 yes or no.

22 CHAIRMAN BAEZ: I think you're doing that by -- can
23 you instruct your witness?

24 MS. McNULTY: Well, I think everybody has already
25 instructed the witness, but he is also entitled after he has

1 said yes or no to provide an explanation.

2 CHAIRMAN BAEZ: Absolutely, sir. The witness can
3 elaborate after he answers yes or no.

4 THE WITNESS: Thank you.

5 MR. ELLENBERG: Thank you, Mr. Chairman. And I don't
6 mean to cut the witness off. If I have, I apologize.

7 BY MR. ELLENBERG:

8 Q But my question to you, Dr. Bryant, was, we don't
9 know what anomalies you might see or not see with respect to
10 Florida runs of the BACE model Version 2.2 because you haven't
11 done that; correct?

12 A No. But again, I have no reason to believe that the
13 problem has been fixed.

14 Q Now, Dr. Bryant, you have used at least on some of
15 the exhibits to your testimony a reference to filters on the
16 BACE model; correct?

17 A Yes, that's correct.

18 Q Now, when you use the term "filters," are you
19 referring to the same thing that Mr. Stegeman calls
20 optimization toggles?

21 A No. I don't believe so anyway. Let me say what I do
22 mean by that. There are certain filters in the BACE that
23 permit it to exclude unprofitable wire centers, unprofitable
24 markets, unprofitable mass market customers, unprofitable
25 LATAs, and those are the filters that I'm referring to.

1 Q You don't know whether Mr. Stegeman refers to those
2 as optimization toggles?

3 A There are a lot of optimizations as I believe that
4 Mr. Stegeman says occur in the model. And when he says
5 optimization, I'm not sure what part of the model he's
6 referring to. There are other things that look at whether or
7 not to provide DLC, whether to choose special access or
8 dedicated transport or EEL and things of that nature. Those
9 are other optimizations that Mr. Stegeman says occur in the
10 model.

11 Q Dr. Bryant, it wasn't clear to me whether that was a
12 yes, no, a maybe, or I don't know.

13 A An I don't know, I suppose.

14 Q Thank you. One other area of dispute or debate that
15 you have with Dr. Aron related to the effect of the
16 availability of unbundled network elements at TELRIC rates on
17 the investment incentives that ILECs would operate under;
18 correct?

19 A Yes, that's right.

20 Q And in support of your position, you have attached to
21 your surrebuttal testimony an essay by Professor Willig;
22 correct?

23 A That's correct.

24 Q And that essay, at least the original version of that
25 essay, was prepared for AT&T and filed with the FCC in the TRO

1 proceeding; correct?

2 A No, that's not correct. It was prepared for AT&T,
3 and I believe it was filed in the FCC's current proceeding
4 that's evaluating the TELRIC methodology.

5 MR. ELLENBERG: Thank you. That's all I have.

6 CHAIRMAN BAEZ: Thank you, Mr. Ellenberg.

7 MS. HYER: Verizon has no questions for the witness.

8 CHAIRMAN BAEZ: Mr. Feil.

9 MR. FEIL: No questions.

10 CHAIRMAN BAEZ: No questions.

11 Mr. Susac.

12 MR. SUSAC: Staff, would like to defer just to
13 resolve -- we have some more questions that I'd like to --

14 CHAIRMAN BAEZ: Very well. Commissioners, no
15 questions?

16 COMMISSIONER JABER: No, Chairman.

17 CHAIRMAN BAEZ: Thank you, Dr. Bryant.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 CHAIRMAN BAEZ: Next up is Witness Wood. Go ahead,
21 Mr. Shore.

22 MR. SHORE: Thank you, Mr. Chair.

23 DON WOOD

24 was called as a witness on behalf of AT&T Communications of the
25 Southern States, LLC and, having been duly sworn, testified as

1 follows:

2 CROSS EXAMINATION

3 BY MR. SHORE:

4 Q Mr. Wood, Andrew Shore on behalf of BellSouth. I
5 have a few housekeeping things before we start. Do you have
6 copies of your prefiled testimony up there with you?

7 A Yes, I do.

8 Q Do you have a copy of the TRO?

9 A Yes, I do.

10 Q And finally, you're familiar -- I take it, you were
11 in the room today, you're familiar with the Commission's rule
12 about giving a yes-or-no answer in response to a question
13 before you go on to explain or elaborate.

14 A Any yes-or-no questions you ask me, I will certainly
15 answer with a yes or no first, Mr. Shore.

16 Q Great. This will go very quickly then. Now,
17 Mr. Wood, the purpose of your surrebuttal testimony is to
18 respond to the testimony of Dr. Aron; correct?

19 A Yes.

20 Q And you also devoted a significant portion of your
21 56 pages of rebuttal testimony to attempting to respond to
22 Dr. Aron's testimony; correct?

23 A I do respond to Dr. Aron. I also respond to
24 Dr. Billingsley and Mr. Stegeman.

25 Q Dr. Aron is an economist; right?

1 A That's my understanding, yes, although not one who's
2 participated in the industry very much, which is unfortunate.

3 Q Did you read Dr. Aron's testimony?

4 A Of course.

5 Q And did you review the vitae that she provided along
6 with it?

7 A Yes.

8 Q Did you hear her testify here earlier in the week
9 that she has testified in numerous telecommunications
10 regulatory proceedings?

11 A Yes.

12 Q Now, you don't hold -- you don't call yourself an
13 economist, do you, Mr. Wood?

14 A No. I have a Master's degree in finance and
15 microeconomics, but I don't usually hold myself out as an
16 economist. I usually reserve that for PhDs.

17 Q Although you're not an economist and you don't call
18 yourself one, you do claim to be an expert on economic issues;
19 correct?

20 A Certainly these economic issues I do hold myself out
21 as an expert, and I'm found to be an expert by federal judges,
22 arbitration tribunals, and at least 35 state regulatory
23 commissions, including this one.

24 Q You graduated from college in 1985, and then you went
25 on to grad school; correct?

1 A That's correct.

2 Q When you got out of grad school in 1987, you came to
3 work for BellSouth; right?

4 A I did go to work for BellSouth.

5 Q And your job at BellSouth was to develop cost support
6 for tariff filings; correct?

7 A That's right.

8 Q And when you left BellSouth in 1989 after about two
9 years, you went to work for MCI as a regulatory analyst;
10 correct?

11 A That's right. I helped manage the southeastern
12 division for regulatory.

13 Q And since you left MCI in 1992, you've worked as a
14 consultant; correct?

15 A Yes.

16 Q Now, during the two years that you worked at
17 BellSouth in the cost group, you testified at your deposition
18 that you were not involved in developing regulatory policy;
19 correct?

20 A No. I was implementing policy. I was not developing
21 BellSouth's policy.

22 Q And you also testified at your deposition, did you
23 not, that during the less than two years or approximately two
24 years that you worked at BellSouth, your job did not include
25 developing business strategy? That was your testimony;

1 correct?

2 A Well, it was my testimony and it's also correct. I
3 was performing cost analysis based on network evaluation and
4 new services, but I wasn't developing strategy.

5 Q Now, you also testified at your deposition that your
6 involvement with business strategy while you were at MCI for
7 two and a half years or so was limited to helping obtain
8 regulatory approval for service offerings; correct?

9 A I don't think that's exactly what I said. Certainly
10 the scope of my duties did include entry for new services and
11 market entry for MCI into markets that didn't previously have
12 access to, such as the market for intraLATA toll, and in fact,
13 I participated in this Commission's proceeding on that issue.
14 But it wasn't limited to that because I also was involved in
15 service evaluation beyond simply tariff approval.

16 Q Do you have a copy of your deposition up there?

17 A Yes.

18 Q Let's take a look at Page 45 and specifically
19 Lines 5 through 9.

20 A I'm sorry. My page numbers are hard to read, so it's
21 going to take me a second.

22 Q Okay. Just let me know when you get there.

23 A Yes.

24 Q Do you see there starting on Line 5 I asked you,
25 "When you were at MCI, did your job duties include developing

1 business strategy?"

2 And your answer was, "It involved market entry
3 strategy with regard to the regulatory component and service
4 approvals but only to that degree." That was your answer;
5 correct?

6 A It was my answer and it's still my answer today.

7 Q Do you have Exhibit 1 to your direct with you?

8 A Yes.

9 Q And that's an 18-page document entitled, "Vitae of
10 Don J. Wood;" correct?

11 A It is.

12 Q And I take it, you provided that along with your
13 testimony in this case to demonstrate your experience that you
14 have that qualifies you to testify about the issues that are
15 covered in your testimony; right?

16 A Well, it's certainly part of that demonstration. I
17 want to give the Commission an idea of the scope of my
18 experience and the kind of issues that I've been asked to give
19 expert testimony on.

20 Q Is your vitae accurate?

21 A I believe it is accurate up until the last date that
22 it was updated, but I will not represent to you that it is
23 completely up to date because it almost certainly is not.

24 Q Is what you're trying to say is you might not have
25 all the testimony you filed up to the present day listed on

1 there, but other than that, it would be accurate? Is that your
2 testimony?

3 A Yes, it is. There are quite a few cases that the
4 testimony has been filed in the last couple of months that
5 probably don't appear here.

6 Q Yeah, I've been involved in a couple of those, I
7 understand.

8 Can you look at Page 1 of your vitae and specifically
9 the second paragraph? And I want to look at the second
10 sentence there. You see that where it says, "Prior to his work
11 as a consultant, Mr. Wood was employed in a management capacity
12 at a major local exchange company and an interexchange
13 carrier"?

14 A Yes.

15 Q And that references your experience at BellSouth and
16 at MCI that we've talked about; correct?

17 A That's correct.

18 Q And in there you state, "In each capacity, he has
19 been directly involved in both the development and
20 implementation of regulatory policy and business strategy."
21 That's what you state; correct?

22 A That's right.

23 Q And that's inconsistent with your deposition
24 testimony and your testimony today, isn't it, sir?

25 A Well, certainly my time at BellSouth --

1 MR. SHORE: Mr. Chairman, if I could ask for an
2 instruction for a yes or no.

3 CHAIRMAN BAEZ: Answer yes or no, Mr. Wood, and then
4 you can elaborate.

5 THE WITNESS: No.

6 BY MR. SHORE:

7 Q Great. Now, according to Page 2 of your resume, your
8 graduate degree is an MBA?

9 A Yes.

10 Q That's a Master's in business administration?

11 A That's right.

12 Q That's different than a Master's in economics, isn't
13 it?

14 A Yes and no. And I don't know how else to answer that
15 because in my particular case it's both of those things. Part
16 of the reason I went to William and Mary was that they offered
17 me an opportunity to, through oral exam, place out a lot of the
18 course requirements in the business school program, and there
19 was an agreement, a reciprocal agreement with the graduate
20 school of arts and sciences so that I could complete both the
21 business degree requirements and the MA in economics
22 requirements. The business school issued my degree because,
23 frankly, they were the one funding my scholarship, but my
24 sheepskin, if you will, actually indicates both designations.

25 Q Do you have a Master's degree in economics?

1 A I completed all those requirements and that's what's
2 reflected. My degree was issued not from the graduate school
3 of arts and sciences but from the graduate business school
4 because I was there matriculating as a business student.

5 Q Do you have a Master's degree in economics? Do you
6 remember what you told me at the beginning, that you'd answer
7 yes or no?

8 A I did, and I told you I'd answer that to any
9 yes-or-no question you ask me, and I'm trying to explain to
10 this -- you know, I'm giving you my best explanation of this
11 one. The diploma hanging on my office wall says MA economics,
12 MBA finance.

13 Q Now, your testimony in this case focuses on the
14 economic barriers to CLEC market entry; correct?

15 A In part. It focuses on BellSouth's economic analysis
16 or potential entry analysis, and certainly barriers to entry
17 are a big part of that analysis.

18 Q You state in your testimony that you only address the
19 economic barrier component and other witnesses on behalf of
20 your client address the operational component; correct?

21 A No, that's not correct.

22 COMMISSIONER BRADLEY: I need for the questioner to
23 speak into the mike, please.

24 MR. SHORE: Yes, sir.

25 CHAIRMAN BAEZ: Mr. Shore.

1 MR. SHORE: Certainly.

2 BY MR. SHORE:

3 Q Mr. Wood, can you turn to your rebuttal testimony on
4 Page 1, and can you look way down at the bottom sentence that
5 starts toward the end of Line 23, "My testimony"?

6 A Yes.

7 Q Can you read that into the record, please?

8 A "My testimony focusses on economic barriers to market
9 entry and addresses the BellSouth model used to conduct its
10 analysis and the inputs and assumptions that BellSouth chose to
11 use with that model."

12 Q And the sentence just prior to the one you read, that
13 states that AT&T witness Mark Van de Water addresses
14 operational impairment issues in his testimony; correct?

15 A That's correct.

16 Q Now, you then go on in your rebuttal testimony and
17 your surrebuttal testimony to assess BellSouth's evidence
18 regarding economic barriers; correct?

19 A In part, yes.

20 Q And can we agree that the consideration of the
21 existence of economic barriers is part of the potential
22 deployment analysis under the TRO?

23 A It is.

24 Q And that test only applies for markets where the
25 triggers are not satisfied; correct?

1 A No, that's not correct. BellSouth has actually
2 produced a base run and has presented testimony that both the
3 markets -- the additional ten markets and the 13 identified
4 triggers markets by BellSouth would meet the economic
5 deployment analysis test. So the economic analysis would
6 actually apply to all of those markets.

7 Q Under the TRO, the FCC's potential deployment test,
8 this Commission only needs to apply that test in markets where
9 the triggers are not met; correct?

10 A That's right, which in this case would be all 23
11 identified BellSouth markets.

12 Q Now, the purpose of the potential deployment test, as
13 the name implies, is to determine the potential ability of
14 CLECs to serve mass markets customers with their own switches
15 where there's not actual deployment sufficient to meet the
16 trigger; correct?

17 A That's right.

18 Q And BellSouth in this case introduced the BACE model
19 to use as a tool to assess whether or not economic barriers
20 exist in markets; correct?

21 A That's the way your witnesses have presented it, yes.

22 Q Let's put your testimony regarding the BACE model in
23 context. You say in your direct testimony that it's unlikely
24 that any analysis would show the absence of economic barriers
25 anywhere in Florida; correct?

1 A I do say that.

2 Q And at the time you filed your direct testimony, you
3 had not yet reviewed BellSouth's BACE model filing for Florida;
4 correct?

5 A That's correct. I can't remember if we had seen the
6 preview at NARUC by that point or not, but it was prior to --
7 obviously when the filing came in with BellSouth's direct
8 testimony, it was simultaneous with mine.

9 Q You don't mention the BACE model or what BellSouth's
10 evidence would be anywhere in your direct testimony where you
11 state the opinion that it was unlikely that any economic
12 analysis would show the absence of economic barriers in
13 Florida; right?

14 A No, sir. I mean, I guess that's inherent in
15 simultaneous direct. I can't address what your case is going
16 to be until I see it.

17 Q Now, the basis for your opinion that the potential
18 deployment test was unlikely to be met, I think were your
19 words, was that according to you, CLECs had not actually
20 deployed their own switches to date to serve mass market
21 customers; right?

22 A No, sir. The basis is that having worked with those
23 CLECs, having worked with investors looking at putting money
24 into those CLECs since 1996, I can tell you that those CLECs
25 are highly motivated not to rely on a competitor's network if

1 they can avoid doing so because that kind of reliance takes
2 service quality, service definition, provisioning intervals,
3 all of those things out of the CLEC's control. So what I'm
4 saying here is that if CLECs have an option to not have this
5 kind of reliance on BellSouth or another ILEC for an essential
6 component of their service, they will elect not to rely but
7 will go with their own facilities.

8 Q Can you look -- your direct testimony didn't have
9 page numbers. Can you turn to -- I call it Page 5, but I'm not
10 sure. It only has one question. It starts on Line 3. And the
11 question is, "Is it likely that an economic impairment analysis
12 will establish that economic impairment does not exist?" Are
13 you there?

14 A I am there. And I don't know why the page numbers
15 don't show up here.

16 Q And then you say, "No." And then you go on in the
17 following paragraph to talk about the market realities, and
18 essentially what you're saying there is that the market reality
19 is that CLECs have not deployed their own switches to serve
20 mass market customers. That's your testimony; correct?

21 A No, sir, not quite. I think what I say is that what
22 you find it clear is that CLECs either can't economically
23 justify the deployment, or what you found in the industry is
24 that CLECs have decided in what turned out to be a very bad
25 decision, I talked about that yesterday, and I think Mr. Gillan

1 did also, to make those kind of investments. Those are the
2 kinds of CLECs that didn't graduate from that school of hard
3 knocks and aren't here. But those are the two real scenarios
4 that have manifested themselves since 1996.

5 Q Your conclusion was, there's no actual deployment;
6 right?

7 A Well, my conclusion is that if you don't see actual
8 deployment, a potential deployment test is highly unlikely to
9 show that somehow CLECs have just missed an opportunity and
10 much more likely to show, if you do it right, the different
11 ways that they are impaired. And I think I offer in my direct
12 testimony there's at least some potential opportunity that this
13 is a useful tool because the Commission can look at the ways
14 that the model shows impairment and see if any of those are
15 things that can be addressed.

16 Q So let me see if I got this now. Your testimony is
17 that the Commission should look at actual deployment to
18 determine whether or not the potential deployment test is met?
19 Is that what you just told us?

20 A No, sir. I guess if I could have said it that
21 quickly, I wouldn't have written all this in the testimony.
22 What I'm saying here is that if there's a market and you don't
23 see actual deployment, given the history of what CLECs have
24 attempted to do, given the incentives of CLECs to self-deploy
25 and not rely on BellSouth where possible, it is informative

1 that there are not self-deployment companies and that tells you
2 something about whether that deployment is potential.

3 Q Now, your testimony in this case is that, in your
4 opinion, the cost disadvantage to a CLEC, because it has to pay
5 for backhaul by itself, makes CLECs economically impaired;
6 correct?

7 A I do believe that if the revenue --

8 MR. SHORE: Mr. Chairman, if I -- can I ask for that
9 instruction again?

10 CHAIRMAN BAEZ: That --

11 THE WITNESS: I'm sorry, Mr. Chairman. Mr. Shore is
12 giving a quick paraphrase that's not entirely accurate. And I
13 can say, no, he's wrong.

14 CHAIRMAN BAEZ: You can restate. That's fair. If
15 he's wrong, he's wrong.

16 THE WITNESS: Okay.

17 MR. SHORE: Let's just see.

18 THE WITNESS: Mr. Shore, the answer to your previous
19 question is, no, that is not what I'm saying.

20 BY MR. SHORE:

21 Q Okay. Let's see. Look at Page 7 of your direct
22 testimony and I think it's 7. There's question on Line 4, "Did
23 the FCC review information."

24 A Yes.

25 Q Okay. And up above that, right before that question,

1 the last sentence above it says, "As shown in the testimony of
2 Mr. Turner, this cost disadvantage," and that's referring back
3 on the prior page the costs of backhaul; correct?

4 A At least in part, yes.

5 Q "This cost disadvantage is significant." Well, look
6 back at Page 6 in the prior sentence. Can you read that prior
7 sentence, please, into the record?

8 A "The costs of backhaul include the cost of
9 collocating in the customer's serving wire center, installing
10 equipment in the wire center in order to digitize, aggregate,
11 and transmit the voice traffic, and paying the incumbent to
12 transport the traffic to the competitor's switch."

13 Q Those are the costs of backhaul; correct?

14 A Yes.

15 Q And then on the next page, you say, "This cost
16 disadvantage is significant. Indeed, in my view, it is
17 sufficient in and of itself to create economic impairment for
18 CLECs." Is that what your prefiled testimony states?

19 A That is exactly what my prefiled testimony states.
20 And as I tried to describe to you before in response to your
21 question, what I'm saying here is that if you've got an ILEC
22 and a CLEC and the revenue opportunities are the same and one
23 of those carriers has a cost disadvantage versus the other that
24 cannot be changed by the disadvantaged company, then you've got
25 an impairment problem because the company without the cost

1 disadvantage -- or to take out the double negative, the company
2 with the cost advantage will always be able to underprice the
3 company with the cost disadvantage. The disadvantaged company
4 trying to make a prudent investment, a rational investment,
5 knowing that that's the case, could not rationally come in and
6 make a large fixed investment like a local circuit switch
7 knowing that it would never be able to compete on price versus
8 the incumbent. It wouldn't be rational to do that. If it's
9 not rational, then there is in the FCC's words economic
10 impairment.

11 Q In your deposition, you testified that anytime a CLEC
12 has any cost advantage -- disadvantage, excuse me, vis-a-vis
13 the ILEC, then the CLEC is impaired. And that's on Page 69,
14 Lines 11 through 15, if you need to verify it.

15 A I'm sorry. What was the line number on 69?

16 Q Eleven, I believe.

17 A Okay. Well, I guess my answer is, no, to the
18 accuracy of your paraphrase. What I say here is that if we're
19 talking about self-deployment of a local circuit switch -- or
20 self-deployment of local circuit switching to enter a market to
21 serve mass market customers, anywhere that a cost disadvantage
22 exists, such as this backhaul disadvantage, there will be
23 impairment with regard to switching. And that's exactly my
24 testimony today.

25 Q Now, in your direct testimony on this issue, you go

1 on to say on the page I have Number 9 that this impairment can
2 never be overcome by the CLEC; right?

3 A Actually --

4 Q If you look at Page 9, beginning on Line 2, you're
5 talking there about, again, down on Line 3, the costs of
6 backhaul expenses, and the sentence that begins on Line 5, you
7 say, "As I will explain below, no CLEC can grow out of this
8 kind of cost advantage, and the resulting impairment cannot be
9 overcome." Do you see that?

10 A I do. What I'm trying to explain here is that there
11 are two separate and distinct cost disadvantages that a CLEC
12 would face when it's looking at making this kind of investment
13 decision. The first is that it has far fewer units to spread
14 over this large fixed investment. So it's going to start out
15 with a cost per unit that's much higher than the ILEC. And at
16 some point, it may, through the accumulation of customers, be
17 able to drive its cost per unit downward toward the level of
18 the ILEC. That would represent a cost disadvantage that at
19 least the potential exists for the CLEC to grow out of. It
20 can grow market share, decrease its cost per unit.

21 But where you have the kind of cost disadvantage like
22 a backhaul, that doesn't change with accumulation of additional
23 customers. That's not something that the CLEC can go out and
24 fix through its own actions like aggressively seeking
25 customers. That's a cost disadvantage that's going to continue

1 as long as the existing legacy circuit network continues to be
2 the network of choice, and that's going to continue as long as
3 people want analog voice service and you're the only provider
4 of UNE loops.

5 Q And your testimony was that that creates impairment
6 and that impairment can never be overcome; correct?

7 A It is my testimony that where you've got a cost that
8 can't be controlled by the CLEC, it creates a disadvantage,
9 that creates an impairment problem because equal opportunity
10 for revenues, higher cost for one carrier than the other, they
11 can't address the higher cost, they can't change it, that's an
12 impairment problem.

13 Q Was that a yes?

14 A It is exactly what I gave you. It is a yes.

15 Q So in your direct, before you had ever reviewed
16 BellSouth's potential deployment evidence, you had concluded
17 that CLECs are impaired and that that impairment cannot be
18 overcome; isn't that right?

19 A Yes, subject to. The answer is, yes, subject to a
20 bit more detail as I put forth in my testimony that as long as
21 there is a cost disadvantage that can't be addressed by the
22 CLEC, it's a function of something outside the CLEC's control,
23 that's going to cause an impairment problem that's got to be
24 recognized. And no modeling no matter how sexy, no matter how
25 complex, no matter how really nice looking the maps are that it

1 generates is going to fix that problem.

2 Q And your testimony is that the backhaul cost
3 disadvantage will always exist; right?

4 A It will exist as long as --

5 Q People want to use our network.

6 A No, no. I'm not sure anybody wants to use your
7 network, Mr. Shore. I think there are people -- and the FCC
8 explicitly recognized this in the TRO at several points. The
9 opportunity for wireline loops and to acquire those only comes
10 from the incumbent LEC. There is decision for impairment on
11 DS0 loops, and there is no opportunity to change that through
12 any proceeding. That decision is here and it's here for good
13 reason, because there's not another opportunity. It's not a
14 want to use your network. If a company's going to offer
15 wireline service, they've got to do it.

16 Q Let's talk about this cost disadvantage issue and
17 whether or not the FCC thinks that's a determinative of
18 impairment. Can you turn to Footnote 1579 of the TRO? And
19 could you please read the first three sentences of that
20 footnote into the record, please?

21 A Yes. "Consistent with the impairment standard we
22 adopt today, state commissions must determine whether
23 competitors are unable economically to serve the market. State
24 Commissions should not focus on whether competitors operate
25 under a cost disadvantage. State commissions should determine

1 if entry is economic by conducting a business case analysis for
2 an efficient entrant. This involves estimating the likely
3 potential" --

4 Q I was fine with just the first three sentences. I
5 mean, you're free to go on if you want, but I'd only asked if
6 you would --

7 A Well, I actually think the next sentence is
8 important.

9 Q Then go right ahead.

10 A "This involves estimating the likely potential
11 revenues from entry, and subtracting out the likely costs."

12 Q Thank you. Now, Mr. Wood, after you concluded in
13 your direct testimony that CLECs were impaired and always would
14 be, in your rebuttal and surrebuttal, you go on and talk about
15 BellSouth's potential evidence, and you claim that BellSouth's
16 business case model is flawed, and you take issue with and
17 criticize some of the inputs into the model; correct?

18 A Incorrect for several reasons. First of all, the way
19 you stated your premise is incorrect. And I've been unclear.
20 I apologize. At no time have I said CLECs are impaired and
21 always will be. I don't know how else to explain it to you.
22 They will be impaired as long as they have a cost disadvantage,
23 they're trying to offer analog voice grade service, that
24 there's a demand for that, and BellSouth is the only provider
25 of the wireline loop that's necessary. Technology is going to

1 change that. Mr. Gillan described that this morning; I
2 described that some in my testimony. This is not a static
3 analysis. It's an ongoing analysis in this industry as to what
4 facilities can economically be duplicated and should be
5 duplicated and which ones aren't.

6 Q In your rebuttal and surrebuttal, you do criticize
7 the BACE model; correct?

8 A I take issue with the BACE model.

9 Q And you take issue with and criticize some of the
10 inputs and assumptions in the model; correct?

11 A I also take issue with the inputs and assumptions.

12 Q In fact, you call them things like nonsensical,
13 flawed, unreasonable, based on utter nonsense, and absurd;
14 correct?

15 A I expect that for any particular input I did apply
16 all of those labels to as inputs.

17 Q Now, in your prefiled testimony, you do not recommend
18 any inputs to be used in the BACE model in place of the inputs
19 that BellSouth has provided; correct?

20 A No. This is not my demonstration. This is
21 BellSouth's demonstration.

22 Q My answer (sic) was, was my statement correct that
23 you do not recommend any inputs?

24 MS. AZORKSY: Mr. Chairman, he answered the question
25 with a no, so I'm not sure what the criticism is.

1 CHAIRMAN BAEZ: I think he did, Mr. Shore.

2 MR. SHORE: I respectfully disagree. I'll just ask
3 it a different way.

4 BY MR. SHORE:

5 Q Mr. Wood, did you provide or did you recommend in
6 your prefiled testimony any inputs for use in the BACE model?

7 A Same response. No, comma, it's BellSouth's
8 presentation to make, and I'm not seeking to cure BellSouth's
9 case. I'm simply pointing out why what BellSouth concludes
10 here in terms of economic analysis and economic potential is
11 not valid.

12 Q I want to talk about your specific criticisms that
13 you levy at the BACE model, but first, let's look back at your
14 direct testimony. And I want to put your criticisms in
15 context. And I'm looking at what I've been calling Page 5. It
16 seems like we've been at least agreeing on what the page
17 numbers were. So if you could look back there with me,
18 beginning on Line 10, "Since 1996," that sentence.

19 A Yes.

20 Q And you state there, "Since 1996 I've worked with
21 CLECs in most aspects of their market entry plans and have
22 assisted investors and potential investors with their analyses
23 of CLEC business plans;" correct?

24 A That's correct.

25 Q And when you said yesterday you've been down in the

1 weeds, I guess that's what you were referring to?

2 A Well, that's in part what I'm referring to. I'm also
3 referring in part to where we have cost analysis cases, I've
4 been involved in the details of the cases and the details of
5 the cost models rather than simply relying on journal articles
6 at a very high level that I understand Dr. Aron to rely on.

7 Q What was the last thing you said? That you
8 understand what? I just didn't hear you.

9 A I understand Dr. Aron's justification for some of her
10 assumptions is that there are published articles that she
11 relied on in scholastic journals. What I was trying to do
12 yesterday is contrast that with actual experience with actual
13 cost studies and actual cost models.

14 Q Let's talk about your actual experience. Actually,
15 you've never formulated or analyzed a CLEC business plan that
16 involved providing service with the CLEC's own switch; correct?

17 A I believe the answer is incorrect.

18 Q Can you turn to Page 40 of your deposition, please,
19 and beginning down at Line 16. Do you see there where I asked
20 you, "Have you ever been involved in formulating or analyzing a
21 CLEC's business plan that involved providing service with the
22 CLEC's own switch"? What was your answer?

23 A My answer was, "No." And I'm trying to put that in
24 context because I believe we had been talking specifically
25 about mass market, because certainly using a CLEC's own switch

1 to offer enterprise -- or service to enterprise customers is a
2 very different question. And if I misunderstood you in the
3 deposition, I apologize. It would be, yes, with regard to an
4 enterprise customer; no, with regard to a mass market customer.

5 Q You've never seen AT&T's business cases that analyze
6 providing service to mass market customers with AT&T's own
7 switches, have you?

8 A That is correct, I have not.

9 Q And you didn't ask AT&T to provide those to you to
10 use in your analysis in this case; correct?

11 A No. That wouldn't really have been part of an
12 analysis of BellSouth's model and proposal.

13 Q Did you ask AT&T to provide to you its local entry
14 business plans using its own switch that it may have so that
15 you can look at the inputs, for example, that AT&T might have
16 used in formulating any of your opinions in this case?

17 A The answer is still no.

18 Q Now, with respect to your testimony we looked at a
19 minute ago regarding assisting investors with their analyses of
20 CLEC business plans, you said in your deposition, Page 65, that
21 your role was to look at whether the CLEC had properly
22 considered regulatory issues; correct? Page 65, beginning at
23 Line 8.

24 A I think what I said was that my role was to
25 specifically look at whether the CLEC had adequately and

1 properly considered regulatory issues in formulating that
2 business plan.

3 Q And you told me at your deposition that you had done
4 that for potential investors on three occasions; correct?

5 A That's correct. I'd been asked by three venture
6 capital firms to analyze business plans that they were
7 reviewing to determine whether they should put in fairly
8 substantial amounts of money -- I'm sorry, they're not fairly
9 substantial, they were substantial amounts of money.

10 Q I thought you told me at your deposition that you had
11 actually been asked by two venture capitalist firms, but one of
12 them you made two assessments about regulatory issues in the
13 business plan.

14 A I stand corrected. I was asked on three occasions.
15 It represents two venture capital firms.

16 Q And when you said yesterday in your direct
17 presentation that you used to get calls all the time from
18 venture capitalists, are those three occasions what you were
19 referring to?

20 A No. I've been asked to work on -- or to do analysis
21 beyond those. Those are the three that given the other
22 commitments that I had and time commitments that I had that I
23 was able to work on. But those are the kinds of projects that
24 involve a very large number of hours over a very short period
25 of time, and it's often that I can't work those in.

1 Q You testified when I asked you about this experience
2 with potential investors at your deposition that you didn't
3 rely on that limited experience in any way in formulating your
4 opinions in this case; correct? It's Page 67 if you need to
5 remind yourself, beginning at Line 5. Are you there, Mr. Wood?

6 A Yeah. And I did not rely on that experience
7 exclusively in any way to reach any of my opinions here. All
8 of my opinions have support beyond those particular three
9 projects.

10 Q The question I asked you at your deposition didn't
11 have the word "exclusive" or "exclusively" in it. I asked you,
12 "Mr. Wood, do you rely on your experience in analyzing
13 opportunities on behalf of investors in formulating your
14 opinions in this case in any way?" And what was your answer?

15 A My answer was, "No." And if we look at the context
16 of our discussion, we were talking about the limits of my
17 disclosure and the nondisclosure agreements that I have to
18 enter into with those companies to perform those projects
19 because these are people who are very secretive about what they
20 are putting money into and don't want anybody else to know
21 about what they're looking at I guess for good reason. And I
22 understood our discussion here to be that you had some concern
23 about that nondisclosure, and I sought to give you some
24 reassurance that my opinions here have other bases beyond
25 simply those three projects. And I understood you then to

1 decide to move on because that was not the sole basis for
2 anything.

3 Q Mr. Wood, didn't you tell me that you didn't rely on
4 that experience anyway at your deposition? Right there on the
5 screen.

6 A I'm not disputing the transcript, Mr. Shore. I'm
7 simply saying that we need to put one Q&A in the context of the
8 previous two pages in terms of what it is we were discussing
9 and talking about.

10 Q Now, let's shift gears to your criticisms of the BACE
11 model. You claim that BellSouth's market share input that it
12 uses in BACE is inappropriate; correct?

13 A I say that it's unsubstantiated.

14 Q And you say that it's unsubstantiated. And on
15 Page 38 of your rebuttal, you criticize Dr. Aron for basing her
16 recommendation on market share in part on academic literature,
17 and you characterize the use of such material as, quote,
18 immediately suspect, close quote; correct?

19 A I'm sorry. I'm trying to catch up with you. On 38?

20 Q Thirty-nine.

21 A I'm sorry. Oh, no. The entire approach, not simply
22 the academic literature is what's suspect. She looked at line
23 growth across the region. She looked at cable telephony, which
24 is not particularly informative here because cable companies
25 don't rely on BellSouth-provided UNE loops. Looking at these

1 things rather than Florida-specific information is, in fact,
2 immediately suspect.

3 Q Is it your testimony that Dr. Aron's inspection of
4 academic literature concerning market share was immediately
5 suspect to you?

6 A No. My testimony is exactly what I wrote here, which
7 is, if what she's saying is that she starts with academic
8 literature that's not related to Florida, not related to
9 BellSouth, not related to telecommunications particularly and
10 certainly not related to mass market entry and only goes to the
11 next level of detail of across the BellSouth region and then
12 goes to something unrelated like cable telephony, that sequence
13 is immediately suspect.

14 Q And you go on to state on Lines 18 and 19 there that
15 the academic literature on firm growth in other industries is
16 unlikely to be relevant to this inquiry; correct?

17 A I did indeed.

18 Q Did you review the academic literature that Dr. Aron
19 did prior to concluding that it was suspect and irrelevant?

20 A I'm sorry, Mr. Shore. I don't agree with the premise
21 of your question. I tried in the last answer to explain to you
22 that I didn't make that conclusion simply based on the academic
23 literature.

24 Q And my question now is, did you review the academic
25 literature that Dr. Aron reviewed and cited in her testimony

1 and discovery responses?

2 A And I believe the answer is yes. Based on her
3 citation, there were actually a couple of articles that I
4 thought could fit, and I did look at both of those.

5 Q What were the names of those articles?

6 A Oh, I don't know. I don't remember.

7 Q You don't know?

8 A I don't remember.

9 Q Where did they appear?

10 A I do not remember. I had somebody on my staff pull
11 them for me.

12 Q Who wrote them?

13 A I don't remember.

14 Q Now, Mr. Wood, you've not conducted any analysis or
15 study of what CLEC market share would be for an efficient CLEC
16 deploying its own switch to serve mass market customers, have
17 you?

18 A I'm sorry, Mr. Shore. Hit me with that one one more
19 time.

20 Q I don't want to hit you with it, I'll just ask it.
21 Have you conducted any analysis or study of what market share
22 an efficient CLEC deploying its own switch to serve mass market
23 customers would likely be able to achieve?

24 A Have I performed a study, no.

25 Q Now, you also testify in your prefiled testimony that

1 BellSouth unreasonably assumes that the modeled CLEC will sell
2 a broad array of products to a wide range of customers;
3 correct?

4 A I'm sorry. Where are you, Mr. Shore?

5 Q Well, I was in my notes, but that appears on Page 45
6 of your rebuttal testimony, down on Line 20.

7 A I see the reference, and I did respond to Dr. Aron's
8 claim that an efficient CLEC will sell a broad array of
9 products to a wide range of customers.

10 Q You say you did respond or did not?

11 A I did.

12 Q Okay. And then look at your testimony on Page 46,
13 beginning on Line 8. And what you state there is that it's not
14 necessary or appropriate to assume, as BellSouth does in its
15 analysis, that an efficient CLEC will offer nonswitched
16 services in order to help pay for the switch. Do you see that?

17 A I do.

18 Q Okay. Now, can you look at Paragraph 519 of the TRO?
19 And just let me know when you get there.

20 A Yes.

21 Q The first sentence of Paragraph 519, which is in the
22 potential deployment section, states, "In determining the
23 likely revenues available to a competing carrier in a given
24 market, the state commission must consider all," and emphasis
25 original, "revenues that will derive from service to the mass

1 market, based on the most efficient business model for entry."

2 Did I read that correctly?

3 A Yes, you did.

4 Q Can you look at Footnote 1581? And it's a long
5 footnote. I want to direct your attention to a section on
6 Page 327 of the TRO, and it's the paragraph that starts off
7 with, "The dissents mischaracterize." Do you see that?

8 A Yes.

9 Q Okay. Go down about two-thirds of the way down that
10 sentence -- excuse me, down that paragraph where the majority
11 is talking about the potential revenue assessment that must be
12 made. Do you see the sentence that says, "As described"?

13 A Yes, I do. And that actually has a reference back up
14 to "see infra Paragraph 519," which takes us to the sentence
15 that you didn't read in 519, where they talk about potential
16 revenues associated with voice services. The basic retail
17 price charged to the customer, sale of vertical features,
18 universal service payments, access charges, subscriber line
19 charges, and, if any, toll revenues.

20 Q And in that sentence in the footnote that I asked you
21 to take a look at, does not the FCC state there that potential
22 revenues include -- or excuse me, go beyond just switching
23 revenues?

24 A That's right. And they put that in quotes, and they
25 have a "see infra" to take you back to 519 to see what they

1 mean. And in fact, what they list here are all services that
2 are associated with switching.

3 Q In the footnote, they directly state that the
4 revenues to be considered go beyond just switching revenues, do
5 they not, sir?

6 A Yes. And they also say "see infra 519," which takes
7 us back to the sentence you didn't read.

8 Q Well, Mr. Wood, why don't you read that sentence into
9 the record? Because I don't want there to be any implication
10 that that's somehow inconsistent with what I'm trying to
11 establish here. So why don't you read that in now and we don't
12 have to quibble about it.

13 A I don't want to quibble with you at all, Mr. Shore.
14 "These potential revenues include those associated with
15 providing voice services, including, but not restricted to, the
16 basic retail price charged to the customer, the sale of
17 vertical features, universal service payments, access charges,
18 subscriber line charges, and, if any, toll revenues."

19 Q And some of those specific revenues that you were
20 kind enough to read into the record for us now, those go beyond
21 just switching revenues, don't they?

22 A They go beyond the switching component, but they
23 don't go beyond providing voice services, which is where this
24 sentence starts. Potential revenues include those associated
25 with providing voice services, and then it has an including and

1 lists some components of that. And my disagreement in my
2 testimony with Dr. Aron is where she talks about looking at
3 nonswitched data service revenues beyond simple voice services
4 as revenue available to pay for the switch. If the data
5 service is competitive, then there's unlikely to be any margin
6 available there to pay for the switch anyway, beyond paying for
7 the data service, but it's also beyond the scope of the mass
8 market voice service that the FCC clearly refers to in 519.

9 Q Is it your testimony that under the FCC's potential
10 deployment test only voice services are to be considered?

11 A It's my testimony that where you took me to in terms
12 of --

13 MR. SHORE: Mr. Chairman, can I --

14 CHAIRMAN BAEZ: Yes or no, Mr. Wood, and then
15 elaborate.

16 THE WITNESS: Well, I think, no, as to the way you
17 gave your limited question. Where you took me to in 519 is
18 very clear that it's talking all revenues -- potential revenues
19 associated with providing voice services.

20 BY MR. SHORE:

21 Q Well, didn't the FCC state that it should consider
22 all revenues that will derive from service to the mass market?
23 Paragraph 519 --

24 A Yes.

25 Q -- and they italicized all; correct?

1 MS. AZORKSY: Mr. Chairman, please --

2 CHAIRMAN BAEZ: Mr. Shore, you're not letting him
3 finish his answer.

4 MR. SHORE: I'm sorry. I didn't realize it required
5 more.

6 THE WITNESS: Yes. And in fact, all revenues which
7 is up there in green is then explained in the next sentence
8 where they say, these potential revenues include those
9 associated with providing voice services.

10 (Transcript continues in sequence with Volume 29.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, TRICIA DeMARTE, 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.



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