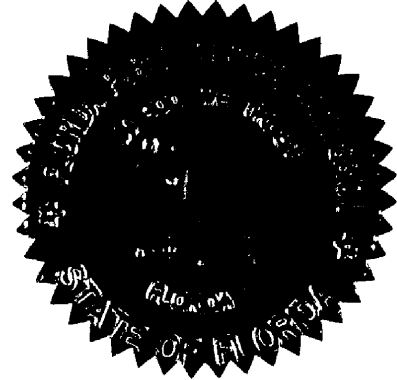


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030851-TP

In the Matter of

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



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VOLUME 29

Pages 4051 through 4145

PROCEEDINGS: HEARING

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

DATE: Friday, February 27, 2004

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## P R O C E E D I N G S

(Transcript follows in sequence from Volume 28.)

DON WOOD

continues his testimony under oath from Volume 28:

## CONTINUED CROSS EXAMINATION

BY MR. SHORE:

Q Can you read the next sentence, Mr. Wood, please.

"The state must also consider the revenues," do you see that?

A Yes.

Q Can you read that to the Commission, please?

A "The state must also consider the revenues a competitor is likely to obtain from using its facilities for providing data and long distance services and from serving business customers."

Q Thank you, Mr. Wood. Now, you also in your testimony opine that the customer acquisition input that Dr. Aron recommended is unreasonable, correct?

A I do believe it is too low. It wasn't really part of my analysis in terms of why I think the BACE is unreliable.

Q So you didn't do any study or analysis regarding customer acquisition costs of an efficient CLEC, did you?

A No, I just noted the inconsistency between Dr. Aron's input assumptions and what BellSouth used in the model. She looked at customer acquisition costs related to CLECs that serve almost exclusively voice service customers, but then

1 seeks to add in revenues that go well beyond voice customers.

2           And you can have it one way or the other potentially  
3 in terms of consistency. If you are going to take the revenues  
4 from a much broader array of services, you have got to include  
5 the customer acquisition costs for all those other services,  
6 and she doesn't do that. That is the mismatch.

7           Q     Did you present any analysis to attempt to  
8 demonstrate what the difference would be that you just alluded  
9 to exists?

10          A     No. The same response, Mr. Shore. This is  
11 BellSouth's demonstration to make, it's not mine.

12          Q     Now, you also opine in your testimony that the GNA  
13 cost input that Dr. Aron provides is unreasonable, right?

14          A     Yes, I do.

15          Q     And you haven't provided any analysis or study as to  
16 what the appropriate GNA costs of an efficient CLEC would be,  
17 have you?

18          A     I have certainly done some analysis in terms of  
19 reviewing her input, but, no, I'm not trying to take on  
20 BellSouth's job here of producing BellSouth's study. That is  
21 your folks job. I am simply looking at it and pointing out why  
22 the results are probably not reliable. In fact, are not  
23 reliable and the Commission shouldn't rely on them.

24          Q     Let's talk about the price inputs for a few moments.  
25 Well, maybe more than a few moments.

1           A     All right.

2           Q     The prices that BellSouth in its model filing used  
3 assumes that the CLEC will charge bundled services. Dr. Aron  
4 states that her price inputs are based on current CLEC prices,  
5 correct?

6           A     No, not as you ask it. The model actually considers  
7 bundles in a la carte pricing, and Dr. Aron bases her bundles  
8 on some unspecified and undocumented review of CLEC prices, or  
9 bundle prices.

10          Q     Right, that was my question. Dr. Aron bases her  
11 price input on what she says are current CLEC prices for  
12 bundled services, correct?

13          A     On what she says, yes.

14          Q     And do you know whether or not AT&T or another party  
15 to this case asked Dr. Aron in discovery to provide her backup  
16 for what you say are unidentified or unsubstantiated CLEC  
17 bundled prices?

18          A     I don't recall. You know, the issue really doesn't  
19 go to any of my issues with the BACE Model inputs --

20          Q     You didn't --

21          A     -- any specific issue.

22          Q     I'm sorry, Mr. Wood. I certainly didn't mean to cut  
23 you off. You didn't review any discovery responses that Dr.  
24 Aron provided where she identified the CLEC bundled prices she  
25 relied upon and her basis for those in forming your opinions,

1 did you?

2 A No, because her method of developing these prices is  
3 not one of my criticisms of the model or its inputs. My  
4 criticisms regarding pricing go to the lack of granularity and  
5 the failure to reflect the differences in BellSouth's prices  
6 against which CLECs would have to compete.

7 Q Let's talk about some of your more specific  
8 criticisms. You opine that it is unreasonable for BellSouth to  
9 use current prices over the entire business case presented in  
10 the ten-year business case, correct?

11 A It is certainly unreasonable. The requirement is to  
12 look at likely future revenues. To assume that current prices  
13 in a competitive market will stay in place until the year 2013  
14 is unreasonable.

15 Q Well, let's see what the FCC had to say about that.  
16 Can you turn to Footnote 1588? And that's another one of these  
17 epic footnotes, so I want to direct your attention to a part  
18 that appears on Page 333 of the TRO. And it is the paragraph,  
19 I think it is the first full paragraph at the top. It starts  
20 with Chairman Powell. Are you there?

21 A 333. There is a paragraph --

22 Q Excuse me, 331, Mr. Woods. If I said 333, I'm sorry.  
23 And I want to look in that paragraph, the sentence that starts,  
24 "While we recognize," do you see that?

25 A Yes.



1 Q And what the FCC states there is, "While we recognize  
2 that an academically pure interpretation of the impairment  
3 standard proposed by Chairman Powell and adopted unanimously in  
4 this item might take such reductions into account, we agree  
5 with Chairman Powell that a more administratively practicable  
6 approach would be to consider prevailing prices and revenues.  
7 Accordingly, we expect states to consider prices and revenues  
8 prevailing at the time of their analyses. We believe that  
9 these are reasonable proxies for likely prices and revenues  
10 after competitive entry and will result in a more administrable  
11 standard." Did I read that correctly?

12 A You read that correctly, and I addressed this issue  
13 specifically in my testimony.

14 Q And also in your testimony, on Page 27 of your  
15 rebuttal, you criticize Dr. Aron and state that her only  
16 justification for using the price level she does is this  
17 paragraph, excuse me, this portion of the footnote I just read  
18 to you, do you not?

19 A No.

20 Q Look at Page 27 of your rebuttal.

21 A Yes.

22 Q Beginning on Line 5, you say, "Dr. Aron's only  
23 justification for the use of these prices is a reference to  
24 Footnote 1588 of the TRO," correct?

25 A Yes, but your previous question didn't ask me that.

1 You asked me -- my response here is to her only justification  
2 for using these prices over a ten-year period. And at no time  
3 in 1588 or any other place does the FCC suggest that  
4 considering prevailing prices means assuming that they will  
5 stay in place for ten years.

6 My criticism here, and I talk about on Line 8 the  
7 juxtaposition of the two inputs, and that is what I just  
8 described to you before. You can consider prevailing prices in  
9 a competitive market and no decrease, but coupled with that has  
10 to be a fairly short time horizon. If you are going to  
11 consider a ten-year time horizon, and the BACE locks in a  
12 ten-year horizon, you can't actually assume anything less, then  
13 it is absolutely unreasonable to assume that prices won't  
14 change over that period. And I don't think the FCC at any  
15 point said you have to assume inconsistent inputs that are an  
16 absurd result.

17 Q You suggest in your testimony that using a 5.1  
18 percent average yearly decrease in price level might be more  
19 appropriate, correct?

20 A No, sir.

21 Q You did run the BACE Model reducing a CLEC's retail  
22 price by 5.1 percent per year and you report that in your  
23 testimony, correct?

24 A I did, and I did it in the specific context of  
25 showing that the model output is, in fact, sensitive to

1 relatively minor price changes, and in this case a price change  
2 that reflects actual industry experience rather than an  
3 academic article. And if we run the 5.1 percent over the  
4 ten-year period, which is a fairly modest decline, we reduce  
5 the NPV by about 70 percent. I'm sorry, I think its about 80  
6 percent.

7 Q Are you suggesting --

8 A That is very -- that is a highly sensitive result to  
9 this input, and one that if we have got actual industry  
10 experience we ought to be looking at it.

11 Q I didn't hear the last part.

12 A If we have actual industry experience we ought to be  
13 looking at that.

14 Q And that actual industry experience you refer to was  
15 the average level that interstate toll prices decreased in the  
16 ten-year period following divestiture, correct?

17 A That's correct.

18 Q Now, I asked you at your deposition if your number  
19 was an industry average, that 5.1 percent, and you said that  
20 you thought it was just AT&T's, but you would confirm. Do you  
21 recall that?

22 A I do recall that.

23 Q Did you confirm that?

24 A I confirmed it, and the answer is that the first year  
25 by definition is only AT&T, because the starting point is at

1 the point of divestiture there wouldn't have been any other  
2 carriers. After that it is an industry average revenue per  
3 minute.

4 Q And what was the source for your data?

5 A It is the common carrier bureau report. I don't  
6 remember what table number this is.

7 Q It is the publication that -- the trends in telephone  
8 service that the FCC's common carrier bureau puts out?

9 A Yes. And I don't -- I want to say this is Table 8.1,  
10 but I don't remember exactly what the table number is.

11 Q You would agree with me, wouldn't you, that access  
12 charges are a significant portion -- historically have been a  
13 significant portion of the cost of providing long distance  
14 services?

15 A Yes.

16 Q I want to ask you to look at Table 1.2 from that  
17 publication you just referenced. And I've got it and I think  
18 they can put it up on the board there.

19 MS. AZORSKY: Do you have a copy?

20 MR. SHORE: No, I don't, Mr. Chairman. The copy I  
21 have is up there. It looks like it is not very good reading.

22 MS. AZORSKY: That's one of the reasons that we would  
23 like to see a hard copy, please.

24 MR. SHORE: Certainly. May I approach the witness  
25 and counsel?

1 CHAIRMAN BAEZ: Please do.

2 BY MR. SHORE:

3 Q Mr. Wood, what this table shows is the price of  
4 interstate toll on average on a per minute basis over in the  
5 far column beginning in the 1984 time period, correct?

6 A No, sir. This is total access charges, these are not  
7 toll prices.

8 Q Right. It shows the total to access charges per  
9 minute, correct?

10 A Yes. Well, actually what it shows is the sum of the  
11 previous columns.

12 Q And the last column is labeled total charges per  
13 minute, correct, per conversation minute?

14 A That is correct.

15 Q And it shows the price there beginning in 1984 of  
16 17.26 cents, correct?

17 A It does.

18 Q And then what is the next year, or the next entry?

19 A It appears to be 17.66.

20 Q And can we agree that every entry there on, every  
21 subsequent entry that rate decreases?

22 A I agree that it does. I don't agree that anything on  
23 this table is reflective of what either dominant or  
24 non-dominant carriers were actually paying for access charges  
25 during this period, but I will agree with you in terms of how

1 the numbers change on this table.

2 Q And I just want to talk about one final input in the  
3 BACE Model, Mr. Wood, and I will get that from when we are done  
4 so we can move along, and that is cost of capital.

5 A Yes.

6 Q You state in your testimony that Dr. Billingsley  
7 failed to point out that a CLEC faces a much higher risk than  
8 ILECs in his cost of capital testimony, and that the cost of  
9 capital that Dr. Billingsley recommends is too low, correct?

10 A No, actually I think actually what I said is that it  
11 didn't have anything to do with what he pointed out, because,  
12 in fact, in his testimony he points out that there is a greater  
13 risk. What I'm taking issue with is his number where he  
14 calculates a cost of capital associated with one level of risk  
15 and then for a future period that is going to represent a much  
16 higher level of risk for that company, adjusts the cost of  
17 capital downward rather than upward.

18 Q Can you look at Page 52 of your rebuttal, and  
19 beginning down on Line 15. What you state there is, "What Dr.  
20 Billingsley fails to point out is that while the increase in  
21 risk applies to both ILECs and CLECs, the CLEC continues to  
22 face for the reasons described above, a much higher risk than  
23 an ILEC," correct?

24 A I did say that. And that is not what I understood  
25 you to ask me a minute ago. This is a completely different

1 point, but that is, in fact, my testimony as you read it.

2 Q Would you agree with me subject to check that the  
3 cost of capital that this Commission adopted for BellSouth in  
4 its most recent UNE cost case is 10.24 percent?

5 A Subject to check that sounds about right.

6 Q And the 13.09 percent cost of capital that Dr.  
7 Billingsley recommends for use in this case is about 30 percent  
8 higher than that 10.24 percent figure, correct?

9 A Well, it is about 300 basis points higher, yes.

10 Q And it reflects a riskier investment than a  
11 competitor whose cost of capital is at 10.24 percent, correct?

12 A It does reflect some increased risk, it doesn't  
13 reflect the risk that a CLEC self-deploying local circuit  
14 switching would face going forward, which is the exercise that  
15 is supposed to be conducted in here in your analysis.

16 Q Have you reviewed the model that Mr. Turner submitted  
17 on behalf of AT&T in this case?

18 A I know that he produced a model and I have seen his  
19 slides on it, but I haven't really looked at it.

20 Q Are you aware that Mr. Turner used a cost of capital  
21 of 12.24 percent in his analysis?

22 A I am not aware one way or the other.

23 MR. SHORE: That's all I have, Mr. Chairman.

24 CHAIRMAN BAEZ: Thank you, Mr. Shore. Mr. Chapkis or  
25 Ms. Hyer.

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

2 CHAIRMAN BAEZ: Mr. Feil.

3 MR. FEIL: None.

4 CHAIRMAN BAEZ: Mr. Rojas.

5 MR. ROJAS: Staff has no questions.

6 CHAIRMAN BAEZ: Commissioners. No questions? Very  
7 well. Thank you, Mr. Wood.

8 WITNESS WOOD: Thank you, sir.

9 CHAIRMAN BAEZ: Next we have Dr. Staihr. You know  
10 what, before we start with Dr. Staihr, why don't we take a  
11 ten-minute break. Thank you.

12 (Recess.)

13 CHAIRMAN BAEZ: We are going to go back on the  
14 record. And we have Dr. Staihr on the witness stand.

15 MS. MASTERTON: Yes, Mr. Chairman. Dr. Staihr is  
16 available for cross-examination.

17 CHAIRMAN BAEZ: Thank you, Ms. Masterton. Mr. Shore,  
18 are you going to be handling this one?

19 MR. SHORE: I'm afraid so.

20 CHAIRMAN BAEZ: Okay.

21 BRIAN K. STAIHR  
22 was called as a witness on behalf of Sprint-Florida, Inc., and  
23 having been duly sworn, testified as follows:

24

25

CROSS EXAMINATION



1 BY MR. SHORE:

2 Q Dr. Staihr, my name is Andrew Shore. I represent  
3 BellSouth. I want to ask you some questions about your sworn  
4 testimony.

5 A Okay.

6 Q Thanks. First, I want to ask you about something  
7 that is in your testimony, and which your counsel also talked  
8 about yesterday in you all's direct presentation of your direct  
9 case. And that refers to your testimony in your direct where  
10 you state that Sprint brings a unique perspective to this  
11 proceeding because it operates some places as an ILEC and other  
12 places as a CLEC, correct?

13 A Yes, sir.

14 Q Sprint is not claiming that CLECs are not impaired  
15 without unbundled local switching in any market in Florida  
16 where Sprint is the ILEC, correct?

17 A That is correct.

18 Q Sprint is only making a claim of no impairment in one  
19 market in the entire country, correct?

20 A Yes, sir.

21 Q And that is in Las Vegas, Nevada?

22 A Yes, sir.

23 Q Now, Sprint's claim of no impairment in the Las Vegas  
24 market is based on the self-provisioning trigger, correct?

25 A That is correct, it is.

1 Q And Sprint has data in its own possession from its  
2 loop inventory records and billing records that it is using to  
3 support its claim that the self-provisioning trigger is  
4 satisfied in Las Vegas, correct?

5 A The answer to the question is yes, we do have our own  
6 data. We are also using CLEC data to verify our own data in  
7 Nevada.

8 Q Do you have the TRO up there with you?

9 A Yes, I do.

10 Q Great. Can you turn to Paragraph 498, please?

11 A I'm there.

12 Q Okay. And that begins a section entitled triggers,  
13 correct?

14 A Yes, sir.

15 Q And the triggers discussed there apply to the  
16 switching used to serve mass market customers, correct?

17 A Yes, sir.

18 Q And the self-provisioning trigger that we talked  
19 about a good deal this week is set out in Paragraph 501,  
20 correct?

21 A That is where that discussion begins, Paragraph 501,  
22 yes, sir.

23 Q And the FCC also codified the self-provisioning  
24 trigger in a rule that it promulgated pursuant to the TRO,  
25 correct?

1 A Yes, sir.

2 Q And that is rule -- and I'm not as good at rattling  
3 these off as Mr. Magness is, so bear with me. But it is Rule  
4 319.D2 -- I say where I come from (iii)(A)(1), correct?

5 A Yes, sir, that is correct.

6 Q And you are familiar with that rule, aren't you?

7 A I have looked at this rule, yes, sir.

8 Q Maybe we can all look at it now. There it is. There  
9 was a couple of criteria set forth right there in the rule that  
10 CLECs must meet in order to count towards the trigger, correct?

11 A I assume couple with you means two?

12 Q Yes, sir.

13 A Or your question is there are two? I see four.

14 Q Okay. Me, too.

15 A Okay.

16 Q And they are set forth right there in the rule,  
17 correct?

18 A Yes, there are certainly some criteria set forth  
19 there in the rule.

20 Q And in your direct testimony you list four criteria  
21 that you say must be met before a CLEC can count towards the  
22 self-provisioning trigger, correct?

23 A I say, yes, there are four criteria that are outlined  
24 in the order that must be met before a CLEC can be counted  
25 toward meeting the trigger.

1 Q Let's look at your four criteria, Dr. Staihr. And we  
2 may have a slide of those. Staihr's four criteria. There we  
3 go. And that is a list of the four criteria that you say must  
4 be satisfied before a CLEC meets the self-provisioning trigger,  
5 correct?

6 A Yes, sir. That is a list of the criteria that are  
7 discussed in the order that accompanies this rule, yes, sir.

8 Q Okay. Let's talk about those in turn. Your first  
9 criteria is that enterprise switches don't count, correct?

10 A That is correct.

11 Q But that is not in the rule we just looked at, is it?

12 A You are correct, that is not in the rule. It is in  
13 the order.

14 Q It's not in Paragraph 500 where the self-provisioning  
15 trigger is stated, is it?

16 A That is correct, those words do not appear in this  
17 paragraph.

18 Q And in both the rule and in Paragraph 500, the FCC  
19 refers to carriers providing service to mass market customers  
20 with their own switches, correct?

21 A Yes, sir.

22 Q Neither the rule nor Paragraph 500 say anything about  
23 the type of switch, correct?

24 A As opposed to own?

25 Q That's right, they just say the CLEC's own switch.

1 They don't say enterprise switch, they don't say mass market  
2 switch, they just say switch, correct?

3 A That is correct. This rule does not make a  
4 distinction.

5 Q And can we agree that the TRO does not provide a  
6 mechanism for identifying what an enterprise switch is?

7 A Yes. We can agree that the TRO left that to the  
8 states as is discussed in my testimony as part of the judgment  
9 and assessment they expect the states to bring to this process.  
10 So the answer is yes.

11 Q And you state in your testimony that it would be  
12 appropriate to use switch capacity, in other words, the portion  
13 of the switch devoted to serving enterprise versus mass market  
14 customers to determine if a switch was an enterprise switch,  
15 your first criteria, yes?

16 A Are you giving me a direct quote or paraphrasing? I  
17 apologize for asking you.

18 Q I was paraphrasing, but you can look in your direct  
19 testimony on Page 13 if you need a reference.

20 A I believe the word I use is reasonable. I think the  
21 word you said was appropriate.

22 Q Okay. Well, I said your recommendation -- what I  
23 tried to say is your recommendation is that it would be  
24 appropriate for the Commission to use switch capacity to  
25 measure what you refer to as an enterprise switch, correct?

1           A     My recommendation, sir -- the answer is no, my  
2 recommendation as it exists in this testimony is that it would  
3 be reasonable to use some measurable standard, and I provide  
4 utilized switched capacity as an example of one measurable  
5 standard.

6           Q     And that is the only example that you provide in your  
7 prefiled testimony, correct?

8           A     That is correct.

9           Q     And you have not presented the Commission with what  
10 measurement of switch capacity it ought to use to make that  
11 determination, have you?

12          A     I have not provided a particular percentage, a 90  
13 percent, no, I have not testified that this Commission should  
14 or shouldn't use a specific number, no.

15          Q     At your deposition, you recall me asking you about  
16 your four criteria, don't you?

17          A     Yes, I do.

18          Q     We spent a nice Saturday, Valentine's Day talking  
19 about this, didn't we?

20          A     It was a good time.

21          Q     And when I asked about you about what basis you had  
22 in the TRO to support your contention that enterprise switches  
23 don't count, you told me that Paragraph 508, that was the only  
24 cite you provided to me, correct?

25          A     I will be honest, I don't remember if that was the

1 only cite. That was certainly one of the cites that exists in  
2 the TRO. There are also a couple of other places where that is  
3 discussed.

4 Q You know, I just misspoke, because I'm looking at  
5 your deposition and you actually gave me two cites. You told  
6 me Paragraph 508 and Footnote 1354. Those were the only two  
7 that you gave me at your deposition, correct?

8 A Yes, sir.

9 Q Paragraph 508, that appears in the potential  
10 deployment section of the TRO, correct, not in the  
11 self-provisioning switching trigger section?

12 A Yes, Paragraph 508 is contained in the part of the  
13 TRO that is discussing potential deployment.

14 Q Let's talk about your second criteria. You actually  
15 refer to it, and I think correctly as the non de minimis  
16 requirement, but we have been talking about it here this week  
17 as the de minimis requirement, and that's easier for me to  
18 pronounce, so I'm going to try to go with that one. And your  
19 testimony is that for the trigger to be satisfied in a given  
20 market, CLECs in the aggregate in that market must be serving a  
21 non de minimis portion of the market, correct?

22 A Yes, that is correct. As the TRO discussed, the FCC  
23 looked at the quantity of mass market customers that were being  
24 served, and they decided that a de minimis quantity was  
25 insufficient for them to negate a national finding of

1 impairment. So clearly according to the text of the TRO, the  
2 quantity of mass market customers that are being served in  
3 aggregate matters.

4 Q Okay. We are going to get to the TRO in a minute,  
5 but let me first ask you this. You are not saying, just so it  
6 is clear, that each CLEC in a market to be counted towards the  
7 trigger must be serving some non de minimis number of customers  
8 or access DS-0 lines, are you?

9 A No, I'm not saying that. It is the total quantity  
10 that the FCC was concerned about, so it is the total quantity  
11 that this Commission should be concerned about.

12 Q Are you aware, do you know whether or not there are  
13 parties in this case who are contending that each CLEC in a  
14 market must be serving a non de minimis number of customers to  
15 count toward the trigger?

16 A I can't answer that 100 percent accurately. I  
17 believe it is possible there are some parties who advocate that  
18 position.

19 Q And in your testimony, your direct testimony on Page  
20 15, you state that there is no suggestion in the TRO that an  
21 individual CLEC's market share matters, correct?

22 A I'm sorry, again, were you paraphrasing?

23 Q Well, let me look at your testimony. I probably was.  
24 Page 15, beginning on Line 10. You state there, "If there was  
25 concern regarding individual CLEC market shares, it does not



1 appear in the discussions contained in the TRO."

2 A Yes, sir, that is what my testimony says.

3 Q And just so we are clear, we talked about a  
4 hypothetical at your deposition, and I just want to provide one  
5 now so we are all square on this. According to your non de  
6 minimus -- and I said I was not going to use it and I have used  
7 it every time, haven't I? You got me, Dr. Staihr.

8 According to your non de minimis requirement, let's  
9 assume that the Commission set some standard to get to non de  
10 minimis. And let's assume whatever they set, if it is a  
11 percentage or whatever, but for a particular market in order to  
12 be non de minimis, CLECs in the aggregate had to be serving at  
13 least 9,000 access lines in that market. Are you with me so  
14 far?

15 A It is a pure number, it's not a percentage you are  
16 talking about?

17 Q Right. If it was a percentage and you apply it to  
18 the total access lines in the market we get to the pure number  
19 of 9,000, okay?

20 A Okay.

21 Q And let's assume for purposes of my question that  
22 there is no other criteria to meet the self-provisioning  
23 trigger, and I'm not agreeing that there is a de minimis  
24 figure, you understand, of course, but let's assume although we  
25 are talking about that one now, there are no other criteria

1 that don't expressly appear in the rule that we talked about a  
2 few minutes ago, okay?

3 That under your testimony if in that market CLEC A  
4 was serving 5,000 mass market access lines, CLEC B was serving  
5 3,997 access lines, and CLEC C was serving four access lines.  
6 You have got an accounting degree, did that get me over 9,000?

7 A It did.

8 Q Okay. And according to your recommendation, the  
9 trigger would be met in that market, correct?

10 A I know you like yes or no.

11 Q The Commission does, too.

12 A Yes, assuming that the other criteria are met. For  
13 example, this CLEC only serving four customers was capable of  
14 serving a substantial portion of the market, so the answer is  
15 yes assuming that.

16 Q And that assumption does not appear in the rule we  
17 looked at with all of those little letters and numbers after  
18 it, does it?

19 A No, it does not. Those words are not in the rule.

20 Q Now, when I asked you at your deposition about the  
21 basis for your claim that there is this non de minimis  
22 requirement, you told me that that was based on your readings  
23 of Paragraphs 438 and 440, correct?

24 A Yes, sir. 438 and 440 discuss the FCC's examination  
25 of how many mass market customers are being served.

1 Q Well, those paragraphs discuss the number of  
2 residential lines that were being served by CLEC switches as of  
3 2001, do they not?

4 A Yes, sir, they do.

5 Q And they only talk about the number of -- the figures  
6 they cite and the percentages only refers to residential lines,  
7 correct?

8 A Yes, that is correct. The FCC is discussing if it is  
9 not enough to serve 3 percent of the residential customers, it  
10 is obviously not enough to demonstrate that the mass market,  
11 which is primarily made up of residential customers according  
12 to Paragraph 137, is being served.

13 Q Mass market customers do include small business  
14 customers, correct?

15 A Yes, sir, they do.

16 Q And under Sprint's proposal in this case, and we will  
17 get to that part of your testimony in a few minutes, they  
18 include customers with up to 11 DS-0 lines?

19 A That is correct.

20 Q That you provide in your testimony, correct?

21 A Yes, sir.

22 Q Now, you do not make in your prefiled testimony any  
23 recommendation of what a non de minimis number or percentage of  
24 mass market customers are, correct?

25 A That is correct. That is, again, part of the

1 judgment and the assessment that we believe the FCC wanted the  
2 state commissions to bring to this process.

3 Q Let's talk about your Criteria 3, and that is that  
4 CLECs must be serving or capable of serving customers  
5 throughout the entire market, correct?

6 A No, sir.

7 Q Okay. Throughout the market, is that more accurate?

8 A Absolutely, yes, sir.

9 Q And that is not in the rule either, is it?

10 A Again, no, it is not in the rule. The intent is  
11 clearly in the body of the TRO.

12 Q And it is not in Paragraph 501, is it?

13 A Well, to the -- no. Forgive me, the answer is not no  
14 to your question. The answer is yes, the intent is in  
15 Paragraph 501 when the last line refers to the entrant being  
16 able to serve the market as opposed to a select portion of the  
17 market.

18 Q Can you get Paragraph 501?

19 A Right here, yes, sir.

20 Q In Paragraph 501, the FCC states at the outset of  
21 that paragraph, "We determine that subject only to the limited  
22 exceptions set forth below, a state must find no impairment  
23 when three or more unaffiliated competing carriers each is  
24 serving mass market customers in a particular market with the  
25 use of their own switches," correct?

1           A     Yes, you read that correctly. I was referring to the  
2 last line of that paragraph where they specifically talk about  
3 an entrant serving the mass market as opposed to a portion.

4           Q     And can we look at the rule again that the FCC  
5 codified as set forth, the self-provisioning trigger. That  
6 rule refers to providing service in a market, correct? It says  
7 the particular market.

8           A     It says in the particular market, yes, sir.

9           Q     Now, at your deposition you told me that the basis  
10 for your Criteria Number 3 was implied you said in Footnotes  
11 1537 and 1552, correct?

12          A     Yes, sir, specifically 1537.

13          Q     Okay. Footnote 1537 is in a section of the TRO that  
14 addresses how states should define the geographic markets to  
15 use in their impairment analysis, correct?

16          A     It is in a section of the TRO discussing the  
17 impairment analysis. The market definition has been indicated  
18 that has to be the same definition for both the triggers and  
19 the impairment analysis that is done with economics.

20          Q     Remember earlier, I think it was maybe one of my  
21 earlier questions when we looked at the part of the TRO that  
22 had the title triggers for mass market switching?

23          A     I remember us -- I remember that, yes, sir.

24          Q     Footnote 1537 doesn't fall in that section, does it?

25          A     No, Footnote 1537 falls before that section.

1 Q It falls in the section entitled defining the market,  
2 correct?

3 A That is correct.

4 Q Let's talk about your last criteria, and that is that  
5 the CLEC must be actively serving the market and likely to be  
6 able to continue to do so. Did I get that right?

7 A Likely to continue to do so, yes, sir.

8 Q That is not in the rule, is it?

9 A No, the words are not in the rule. The words are  
10 found in Paragraph 500 of the TRO itself.

11 Q And the part of Section 500 that you rely on is the  
12 very last sentence, correct?

13 A That is the likely to continue to do so, yes, sir.  
14 The word actively is actually in Paragraph 499.

15 Q Okay. And when the FCC states that the consideration  
16 is whether providers are currently offering and able to provide  
17 service and are likely to continue to do so, it follows that up  
18 with a footnote, Footnote 1556, correct?

19 A Yes, sir, they do. They give an example of one  
20 situation in which a provider might not be likely to continue  
21 to do so.

22 Q And that example, we have heard testimony about that  
23 earlier in the week, is that states should review whether the  
24 CLEC has filed a notice to terminate service in the market,  
25 correct?

1           A     Yes, that is what that says. And, again, that is one  
2 example.

3           Q     That is the only example that the FCC gave in the  
4 TRO, correct?

5           A     That is the only example I see, yes, sir.

6           Q     You don't propose in your testimony, do you, any test  
7 or measurement to determine if a CLEC is actively serving  
8 customers and is likely to continue to do so?

9           A     Well, the answer is when you say you don't, no, I  
10 propose things that this Commission can look at whether there  
11 are customers that are currently being added, whether there are  
12 active marketing programs, this type of evidence which would  
13 lead them to conclude that this provider is actively serving  
14 and likely to continue to do so.

15          Q     You agree, don't you, that a CLEC can be actively  
16 serving customers without actively marketing the customers?

17          A     I agree that that is possible, yes, sir.

18          Q     Okay. Let's switch gears. I want to talk about an  
19 item you cover in your testimony, and that is the switch that  
20 Sprint's CLEC operation has in Orlando. And that was something  
21 else that we talked about at your deposition and you also  
22 talked with Mr. Susac about at your deposition, as I recall my  
23 happy Valentine's Day.

24          A     Correct.

25          Q     BellSouth lists a switch, Sprint's CLEC switch as one

1 of the switches that meets the trigger in a market in Orlando,  
2 correct?

3 A Yes, sir, that is correct.

4 Q And your testimony is that this switch should not be  
5 counted towards the trigger, correct?

6 A That is correct. My testimony is that this switch is  
7 an enterprise switch. It was deployed to serve the enterprise  
8 market as is discussed in Paragraph 435 of the TRO.

9 Q That switch is, in fact, today serving customers with  
10 three or fewer DS-0 lines, is it not?

11 A Yes, sir.

12 Q And is it serving greater than 100 DS-0 lines?

13 A Yes, it is.

14 Q Let's talk about market definition. You recommend  
15 that the Commission define the geographic market to use in its  
16 impairment analysis as an MSA, correct?

17 A Yes, sir. We believe that the MSA exhibits the  
18 characteristics that are most appropriate as described in  
19 Paragraph 495 of the TRO for the geographic area that we should  
20 use for this impairment analysis.

21 Q And what you told us at your deposition was that an  
22 MSA represents an economic community of interest, correct?

23 A That is one of the characteristics of an MSA, yes,  
24 sir.

25 Q And you also testified that it is not appropriate to



1 use CEAs to define a market, because CEAs don't necessarily  
2 represent economic communities of interest, and CEAs often  
3 contain territory that isn't economically integrated with other  
4 parts of the same CEA. And I was quoting. I was looking at  
5 Page 17 of your deposition, Lines 19 through 24.

6 A Okay. I'm sorry, the lines again? I just want to  
7 make sure I have the same version.

8 Q 19, end of that line. "CEAs don't necessarily  
9 represent economic communities of interest," you testified?

10 A Yes, sir, that is there.

11 Q And then you went on to explain that a little bit  
12 more, correct?

13 A Yes, sir.

14 Q Okay. Can I ask you to take a look at -- I don't  
15 have copies to pass out. I'm happy to give your counsel a  
16 copy, but we can put it up on the board so everybody can see  
17 it. A portion of the FCC's rules, Section 26.102.

18 MS. MASTERTON: Yes, I guess you offered to give me  
19 and I suppose the witness a copy, too, because I don't think he  
20 can read that.

21 MR. SHORE: Well, would you mind sharing? Mr.  
22 Chairman, can I provide one copy? That's all I have and  
23 counsel can share with her witness.

24 CHAIRMAN BAEZ: If that's all you've got. Well, you  
25 gave us plenty of paper. I don't think it was a question of

1 affording it.

2 BY MR. SHORE:

3 Q Dr. Staihr, can you read the portion, the very end of  
4 that, it's on the far right of the paper you're looking at, but  
5 it is highlighted up on the screen where the FCC is talking  
6 about what a CEA is. Can you read that highlighted portion,  
7 please?

8 A Yes. It says, "Each CEA consists of a single  
9 economic node and the surrounding counties that are  
10 economically related to the node."

11 Q Thank you.

12 A Which, of course, is a different thing than an  
13 economic community of interest.

14 Q Now, in your direct testimony when you are discussing  
15 the market definition, you cite to and quote from Paragraph 495  
16 of the TRO as setting forth I think you describe it as the  
17 directions from the FCC to defining a market, correct?

18 A Yes, sir.

19 Q You don't cite or even mention Paragraph 496 in your  
20 testimony, do you?

21 A No, I don't, because Paragraph 496 appears to be  
22 recommendations as to what the Commission might consider as  
23 opposed to Paragraph 495 which is recommendations that they  
24 believe the Commission must consider.

25 Q Paragraph 495 sets out the general framework and

1 principles, and then 496 provides some examples that the  
2 Commission might use, is that a fair characterization?

3 A That's fair, yes, sir.

4 Q And in Paragraph 496, the FCC said that a state might  
5 use -- might consider using already defined markets, such as  
6 UNE zones, in defining its market for impairment analysis  
7 purposes, correct?

8 A Those words are in Paragraph 496, yes, sir.

9 Q Now, UNE zones reflect different costs of serving  
10 customers, don't they?

11 A They reflect different loop costs, which is one cost.

12 Q Now, at your deposition at Page 21, up at the top?

13 A Yes, sir.

14 Q When you testified that UNE zones are distinctions  
15 that don't necessarily make any sense in terms of a customer,  
16 you weren't saying they didn't reflect different costs of  
17 serving the customer, were you?

18 A That line that you are referring me to says nothing  
19 about costs, that is correct.

20 Q Not a trick question, just a clarification question.

21 A Okay.

22 Q Now, I asked you at your deposition, do you recall me  
23 asking you if you are aware of any state commission decisions  
24 that had been issued yet regarding the definition of markets  
25 under the TRO, and you told me that you were aware of the Ohio

1 Commission's order, correct?

2 A There is no Ohio Commission order. I believe I  
3 referred to a tentative conclusion. Now, whether that was in  
4 an order, it is not a conclusion, it is a tentative definition.  
5 And I understand that that is not the final definition that  
6 they have come up with.

7 Q Is it your understanding that the Ohio Commission  
8 ordered the parties in that case to present their evidence in  
9 their full-blown evidentiary hearing just like the one we are  
10 having today based on a market definition that they set forth  
11 in the order that you are familiar with?

12 A Yes, it is my understanding they ordered the parties  
13 to present evidence with regard to that definition and any  
14 other definition that the parties wanted to put forth.

15 Q In that Ohio proceeding, Sprint advocated using the  
16 MSA as the market definition, correct?

17 A That's correct.

18 Q And the Ohio Commission rejected that, correct?

19 A The Ohio Commission tentatively rejected that, yes,  
20 sir.

21 Q And when I asked you about this at your deposition,  
22 you said you didn't know if the Ohio Commission had used UNE  
23 zones in its market definition. Do you remember that? Page 55  
24 of your deposition beginning at Line 21. I asked you there,  
25 "Is it your understanding that the Ohio Commission relied in

1 any way upon UNE zones in making that determination?" Your  
2 answer, "I don't know the answer to that," and then you were  
3 nice enough to apologize to me.

4 A And I don't know the answer today, sir.

5 Q Have you had a chance to go back and take a look at  
6 that since the time of your deposition?

7 A No, sir.

8 MR. SHORE: I've got copies this time, Mr. Chairman.

9 CHAIRMAN BAEZ: You're catching on just in time.

10 MR. SHORE: I sensed that. That's why I shuffled my  
11 notes.

12 MS. MASTERTON: And while you are passing out this  
13 order, this is probably the time to say that Dr. Staihr is not  
14 an attorney, so to the extent that you should ask him any  
15 questions that require a legal conclusion, he is not qualified  
16 to answer as an attorney.

17 MR. SHORE: I couldn't agree more. Mr. Chairman,  
18 could I ask that this -- what I just passed out are excerpts  
19 from an Ohio Utilities Commission order dated January 14th of  
20 this year in Docket Number 03-240, et al, as our next hearing  
21 exhibit, please.

22 CHAIRMAN BAEZ: And I'm showing the next exhibit  
23 number is Number 119.

24 MR. SHORE: Thank you.

25 (Exhibit Number 119 marked for identification.)

1 BY MR. SHORE:

2 Q Dr. Staihr, what I have handed out, as I have just  
3 identified, are portions of a document that is entitled order  
4 from the Ohio Public Utilities Commission. Do you see that?

5 A Yes, sir.

6 Q And can you look at Page 31 of the order? There is a  
7 paragraph there labeled MSA. Do you see that about halfway  
8 down the page?

9 A Yes, I do.

10 Q Okay. The first sentence there says, "In regard to  
11 defining the geographic market to be the ILEC's wire centers  
12 within an MSA, the Commission disagrees with both SBC Ohio and  
13 Sprint." Do you see that?

14 A Yes, I do.

15 Q Now, turn with me to -- do you have Page 24 there?

16 A I'm getting there. Yes, sir.

17 Q On Page 24, the Ohio Commission sets out its  
18 definition -- or let's stick with tentative definition, so we  
19 don't have to argue about that -- as a market as MSAs further  
20 divided into UNE zones. Do you see that?

21 A This says that the -- I'm just making sure I  
22 understand it because of the paragraph. The service area of an  
23 ILEC within each of the MSAs at issue in this proceeding shall  
24 be divided into separate areas according to the Commission  
25 established UNE loop TELRIC rates. Yes, sir, it says that.

1 Q All right. Let's switch gears again.

2 A And then it -- I'm sorry.

3 Q And talk about -- I want to ask you a few questions  
4 about some of the things you said yesterday in your  
5 presentation. And during your presentation yesterday, you  
6 discussed the effect of certain input changes that you  
7 recommend to the BACE Model and the percentage that each cause  
8 the NPV, the net present value in the model, to decrease by.  
9 That was part of your presentation, correct?

10 A Yes. Part of the presentation was when we changed  
11 some inputs to the BACE Model that had been recommended by Dr.  
12 Aron, the impact that the changes had on the NPV, yes, sir.

13 Q And the percentages that you referred to yesterday  
14 during your presentation, those referred to total NPV across  
15 BellSouth's entire service area, not to any particular market,  
16 correct?

17 A That is correct. The percentages that I referred to  
18 were in aggregate.

19 Q And when you did your analysis and did these input  
20 sensitivity runs, you defined the market as an MSA, you did not  
21 define it as BellSouth did in its filing, correct?

22 A That is correct. We ran the sensitivities with the  
23 market defined as an MSA.

24 Q And one of the things you talked about yesterday that  
25 you did was that you changed the penetration curve input from

1 .5 to .25, correct?

2 A That is correct.

3 Q And just so we are clear, cutting BellSouth's input  
4 in half did not cause a single market to go from NPV positive  
5 to NPV negative, correct?

6 A I would need to look at the exhibit to double-check,  
7 if you don't mind.

8 Q Certainly not.

9 A And just so I know, I assume you are talking about  
10 Exhibit KWD-6 to Mr. Dickerson's rebuttal?

11 Q Correct. I think you all reproduced that as part of  
12 your presentation yesterday.

13 A Yes, sir, that is correct.

14 Q The other input that you talked about during your  
15 presentation yesterday was market share, and you said that  
16 changing the input from 15 percent total market share to 10  
17 percent reduced the NPV by 50 percent. Do you recall that  
18 testimony?

19 A Yes, sir. I hope I said approximately 50 percent,  
20 yes, sir.

21 Q That's right. And I wasn't going to pick on you. I  
22 actually did the math and it wasn't 50, but I wasn't going to  
23 bring that up. But thank you for making the record very clear.  
24 Cutting the total market share by one-third, as you did, did  
25 not cause a single market in BellSouth's territory to go from



1 NPV positive to NPV negative, correct?

2 A That is correct. And, of course, given the massive  
3 understatement of costs that Mr. Dickerson addresses in his  
4 testimony, that is not particularly surprising. Now, if the  
5 costs had been accurate in the BACE Model, we can't say what  
6 cutting the market share would do.

7 Q In your rebuttal testimony you criticized the cost of  
8 capital that Dr. Billingsley recommended be used in the BACE  
9 Model in this proceeding, right?

10 A Yes, sir, I did.

11 Q Dr. Billingsley -- well, why don't we just agree  
12 subject to check that Dr. Billingsley filed a total of 51 pages  
13 of testimony in this case and had exhibits consisting of 26  
14 pages. Can we agree with that subject to check?

15 A Subject to check, sure.

16 Q The only issue that Dr. Billingsley addressed in this  
17 entire proceeding was the appropriate cost of capital to be  
18 used in the BACE Model, correct?

19 A Yes, sir.

20 Q Now, your testimony regarding cost of capital  
21 consists of a little less than four pages, correct? It starts  
22 on 39 and goes through part of 42 of your rebuttal.

23 A Yes, sir, that is correct.

24 Q This case isn't the first time that you have  
25 recommended a cost of capital in a regulatory setting, is it?

1           A     That is correct. I have recommended other costs of  
2 capital in other regulatory proceedings.

3           Q     You recommended a cost of capital to be used in  
4 Sprint's recent UNE docket, correct?

5           A     That's correct.

6           Q     The Commission did not accept your proposal, did it?

7           A     No, they did not.

8           Q     Now, Mr. Dickerson in his testimony presents the  
9 study that underlies your proposal that the Commission adopt a  
10 cut-over of 11 DS-0s, right?

11          A     Yes, he does.

12          Q     And you refer to his calculations in your direct  
13 testimony, correct?

14          A     Yes, sir.

15          Q     In Mr. Dickerson's calculations he used the cost of  
16 capital that you recommended in Sprint's UNE docket and not the  
17 cost of capital that this Commission adopted, correct?

18          A     That is correct, because we obviously believe that is  
19 the correct cost of capital to use.

20                MR. SHORE: Dr. Staihr, thank you very much for your  
21 willingness to answer my questions directly. I don't have any  
22 other questions.

23                CHAIRMAN BAEZ: Thank you, Mr. Shore. Mr. Feil or  
24 Ms. Hyer.

25                MS. HYER: No questions.

1 CHAIRMAN BAEZ: Okay. Staff?

2 MR. ROJAS: We have a few questions.

3 CHAIRMAN BAEZ: All right.

4 CROSS EXAMINATION

5 BY MR. ROJAS:

6 Q Now, Dr. Staihr, there is a difference between switch  
7 capacity and switch utilization, correct?

8 A Certainly, yes, sir.

9 Q Okay. And can a carrier serving the mass market  
10 customers use its unused capacity to serve additional mass  
11 market customers?

12 A That is certainly possible, yes, sir.

13 Q And in this proceeding we are to consider whether a  
14 carrier is serving the mass market, correct?

15 A Yes, sir, the self-provisioning triggers are intended  
16 to identify where carriers have deployed their own switches to  
17 serve the mass market, yes.

18 Q And that would be reflected in the switch  
19 utilization, correct?

20 A Switch utilization, the utilized capacity dedicated  
21 to serving the mass market is certainly one way to identify  
22 that, yes, sir.

23 Q And states are to consider whether a carrier is  
24 capable of serving the mass market, correct?

25 A Yes, sir. One of the criteria that Sprint puts forth

1 is whether or not the carrier is capable of serving the market  
2 or simply serving highly select portions of the market, which  
3 is a different thing.

4 Q And the excess capacity of that switch should be  
5 considered in this case, correct?

6 A There is no reason to not consider it, so the answer  
7 is that it could certainly be considered, yes.

8 Q Okay. I just want to switch gears with you and we  
9 will wrap up. If I could refer you to the TRO, Paragraph 500,  
10 Note 1556.

11 A Okay.

12 Q Earlier you stated that this is an example of how the  
13 state can determine whether a carrier is likely to continue  
14 because it begins with "for instance," am I accurate in stating  
15 that?

16 A Yes, sir.

17 Q And do you believe this is an example or a standard?

18 A Oh, I absolutely believe this is one example.  
19 Usually when you use the phrase for instance, you are giving an  
20 example to follow. I don't think this is in any way a  
21 comprehensive list of all the things that determine whether a  
22 carrier is likely to continue to operate.

23 Q And can I now refer you to Paragraph 437 of the TRO?

24 A Okay.

25 Q And if you flip the page over, on the second page of

1 that paragraph, the first full sentence begins with "for  
2 example." Now, do you believe this is an example or a standard  
3 as used in that paragraph? And you can take a second to review  
4 that.

5 A I believe that this is an example of the data that  
6 was looked at by the FCC, and it is providing direction or at  
7 least an example of a direction for state commissions to  
8 follow.

9 Q So should we treat this as an example or a standard?

10 A I think you can treat it not to be -- as an example  
11 of a standard.

12 Q And earlier in Note 1556, would that be an example of  
13 a standard?

14 A I'm sorry, Note --

15 Q In the earlier instance I pointed you to in Paragraph  
16 500.

17 A Yes, that would be an example of one standard.

18 MR. ROJAS: Okay. Thank you. Staff has no further  
19 questions.

20 CHAIRMAN BAEZ: Thank you, Mr. Rojas. Commissioners,  
21 any questions?

22 COMMISSIONER JABER: No, Mr. Chairman.

23 CHAIRMAN BAEZ: No questions. Thank you, Dr. Staihr.

24 MS. MASTERTON: Could I just ask for a clarification?  
25 The Ohio order, did that get marked as an exhibit?

1 CHAIRMAN BAEZ: Yes, it did. Number 119.

2 MS. MASTERTON: To avoid having to argue objections  
3 at a later point in time, if we could put the entire order in  
4 as an exhibit as opposed to just these excerpts.

5 CHAIRMAN BAEZ: Would you be amenable?

6 MR. SHORE: Absolutely.

7 CHAIRMAN BAEZ: Okay. Then we will just strike the  
8 word excerpts from the description and we will have the -- I  
9 take it it is 032-04 -- well, this order doesn't have a number,  
10 so we will just identify it by the case number.

11 MR. SHORE: That's right. They don't give numbers to  
12 their orders. What are they thinking?

13 CHAIRMAN BAEZ: How about that, no numbers. A world  
14 without numbers.

15 MS. MASTERTON: Thank you.

16 CHAIRMAN BAEZ: Thank you, Ms. Masterton. Thank you,  
17 Dr. Staihr. You are excused. Mr. Rojas, I have it that the  
18 next witness here is Mr. Dickerson.

19 MR. SHORE: I believe that is correct.

20 CHAIRMAN BAEZ: My understanding is that staff is the  
21 only one that has questions for him?

22 MR. SHORE: No, sir, BellSouth has questions.

23 CHAIRMAN BAEZ: You have questions, okay. Great. I  
24 just wanted to get it straight. Thank you.

25 MS. AZORSKY: Excuse me, Mr. Chairman. While Mr.

1 Dickerson is taking the stand, Mr. Wood was not on staff's  
2 list, and I was wondering if he could be excused.

3 CHAIRMAN BAEZ: I think he can.

4 MS. AZORSKY: Thank you.

5 CHAIRMAN BAEZ: Assuming -- if you don't have any  
6 redirect, then that's fine.

7 MS. AZORSKY: Thank you.

8 CHAIRMAN BAEZ: Thank you.

9 MR. PHILLIPS: Mr. Chairman, Sprint tenders this  
10 witness for cross.

11 CHAIRMAN BAEZ: Thank you, Mr. Phillips. Good  
12 afternoon, Mr. Dickerson. Mr. Shore.

13 MR. SHORE: Thank you, Mr. Chairman.

14 CHAIRMAN BAEZ: Your witness.

15 KENT W. DICKERSON

16 was called as a witness on behalf of Sprint-Florida, Inc., and  
17 having been duly sworn, testified as follows:

18 CROSS EXAMINATION

19 BY MR. SHORE:

20 Q Mr. Dickerson, I am Andrew Shore. I am a lawyer with  
21 BellSouth. I'm going to ask you some questions about some of  
22 the things you said in your sworn testimony in this case.  
23 Let's start with your direct testimony. The purpose of your  
24 direct testimony was to provide the calculations used to  
25 support Sprint's recommendation of a cut-over point in this

1 case, correct?

2 A Yes.

3 Q And Sprint in your direct testimony that you filed, I  
4 believe it was on December 4th of last year, your calculations  
5 and attendant recommendation was that the Commission adopt a  
6 cut-over of 12 DS-0s, correct?

7 A Yes. That up to 11 it would be more economic to  
8 purchase individual DS-0s, and then 12 and above it would be  
9 more economic to serve that quantity on a DS-1.

10 Q And the purpose of establishing a cut-over in this  
11 case was to define who was a mass market customer, correct?

12 A Yes.

13 Q Can we agree that a customer that has 12 lines does  
14 not have the characteristics of a residential customer?

15 A I believe that is a general case, correct.

16 Q Now, in your cut-over analysis -- were you here a few  
17 moments ago when I was examining Dr. Staihr?

18 A I have been in and out a little, but I probably  
19 caught most of it.

20 Q Okay. If you stepped out you didn't miss much, I'm  
21 sure. I talked with Dr. Staihr about -- I'm sorry. You talked  
22 with Dr. Staihr, I talked with Dr. Staihr that in the  
23 calculations you performed to support Sprint's proposed  
24 cut-over you used the cost of capital that Dr. Staihr  
25 recommended in Sprint's recent UNE case, correct?



1 A Yes, that is correct.

2 Q And you heard Dr. Staihr testify -- or did you hear  
3 Dr. Staihr testify that the Commission rejected his proposed  
4 cost of capital in that case?

5 A Yes, I heard that.

6 Q And you knew that already because I think we talked  
7 with that at your deposition, right?

8 A Yes.

9 Q Now, can you turn to Page 38 of your deposition,  
10 please. Do you have that with you? Do you see there at the  
11 very top of page beginning on Line 1? We were talking about  
12 this very issue, and I asked you why didn't you use the  
13 Commission approved rate in your analysis. Do you see that  
14 question?

15 A Yes. I'm going to take a minute to look at this  
16 whole line of questioning if you don't mind, please.

17 Q Just let me know when you are ready.

18 A All righty. Okay.

19 Q So we can agree that what I was asking you about at  
20 the top of Page 38 was why in your cut-over analysis you didn't  
21 use the rate, the cost of capital that the Commission had  
22 adopted in its UNE docket rather than the rate Dr. Staihr had  
23 proposed in that docket. That was the context of that  
24 question, correct?

25 A At the top of 38, no, that is not what I'm seeing.

1 At the top of 38 you were asking me what effect the use of a  
2 lower cost of capital would have.

3 Q I think we have got a pagination issue, Mr.  
4 Dickerson.

5 A Yes. I think I see the problem. I was looking at  
6 the bottom of the page. I need to look at the deposition page,  
7 so let me take a look at that. Yes, I see that you asked that  
8 question at the top of 38.

9 Q Okay. And my question was we were talking about why  
10 you had used -- why you hadn't used what the Commission had  
11 adopted, but had used what Dr. Staihr had proposed instead.  
12 That was the context of my question starting at the top of Page  
13 38, correct?

14 A Yes. And I see my response on Page 43 reads, "Again,  
15 I think that it is intuitively logical to suggest that a  
16 company -- this goes to your earlier question about what is a  
17 struggling CLEC. I'm not defining this as a struggling CLEC, I  
18 am pointing out that starting a business from scratch, that in  
19 the real world the majority of start-up ventures fail and they  
20 fail because of cash flow problems. And that it is a difficult  
21 venture to enter a market with zero percent market share  
22 against a competitor who has around 95 to 100 percent market  
23 share.

24 That is difficult. And to suggest it is not  
25 difficult is unrealistic. And to suggest that lenders would

1 not see a logical difference between the cost of capital for  
2 these two diametrically polar opposites is unrealistic."

3 Q Let's talk about the answer that you gave to the  
4 question that I posed to you on Page 38 when I asked you why in  
5 your calculations you didn't use the cost of capital the  
6 Commission adopted, but instead used the cost of capital Dr.  
7 Staihr proposed in that case. And your response was, and I  
8 quote, it starts down there after your counsel and I have a  
9 little discussion. Down there on Page 13, you say, "It is  
10 pretty simple. I don't think that the Commission-approved cost  
11 of capital in the UNE docket is a realistic estimate of a  
12 CLEC's cost of capital."

13 That was your testimony in response to that question  
14 at the top of Page 38, correct?

15 A Yes. I see those words, yes. That is consistent  
16 with what I read to you. I see that I also said, "I think it  
17 is intuitively logical to suggest that a CLEC's cost of capital  
18 would be higher for a company that is already in business and  
19 has, say, 95 percent market share. To suggest that a start-up  
20 company who has zero market share would have the same cost of  
21 capital, I don't think that is logical."

22 Q What page were you reading from just then of your  
23 deposition?

24 A That was bottom of 38.

25 Q Okay. Now, I want to get back to your testimony in

1 the middle of 38 where you said, "It's pretty simple. I don't  
2 think the Commission-approved cost of capital in the UNE docket  
3 is a realistic estimate of a CLEC's cost of capital." And  
4 focus on that a second and let me ask you this question. Does  
5 the cost of capital that Dr. Staihr proposed in the UNE docket  
6 and that you used in your calculations in this case represent  
7 a, "realistic estimate of a CLEC's cost of capital"?

8 A It is probably an understated value, actually. I  
9 think it would be an understated value. So it is a  
10 conservative figure that we have used.

11 Q If you had used the cost of capital the Commission  
12 adopted in its UNE docket rather than the one Sprint proposed,  
13 it would have resulted in a lower cross-over point, correct?

14 A Not materially lower. And you and I discussed that,  
15 and that is consistent with my deposition response. I think it  
16 would directionally be lower, I don't think it would be a  
17 material difference.

18 Q I want to talk about your testimony about the BACE  
19 Model. You filed by my count -- and given the late date of  
20 which the testimony was coming in my count may not be accurate,  
21 but you filed 26 pages of rebuttal testimony, 11 pages of  
22 surrebuttal testimony, and 14 pages of supplemental surrebuttal  
23 testimony this last Friday, correct?

24 A I don't know if those page quantities are all  
25 correct, but I filed rebuttal, surrebuttal, and supplemental

1 testimony, that is correct.

2 Q And is it fair to say that all of those pages of the  
3 testimony you filed in this case addressed the BACE Model, both  
4 the model itself and some of the inputs into the model? Excuse  
5 me, not including your direct. I'm just referring to your  
6 rebuttal, surrebuttal, and supplemental surrebuttal. All of  
7 that testimony addresses the BACE Model in some dimension or  
8 another, or an input, correct?

9 A Yes, and/or external reasonableness tests that I made  
10 relative to the BACE Model.

11 Q Okay. And as of the date you recall I took your  
12 deposition last week, I think it was the 17th, correct?

13 A Yes, that is what it is dated.

14 Q As of the time I took your deposition last week, you  
15 had never personally run the BACE Model, correct?

16 A Yes. I discussed extensively with you that I am the  
17 director of cost support, I've got a staff of 28 people, and I  
18 explained to you rather I relied primarily on Christy  
19 Londerholm, who is on my staff right here behind me to perform  
20 the runs. And we had extensive discussion. I explained to you  
21 how I had participated in this docket, how we had gotten the  
22 testimony.

23 I had met with my staff, we had discussed the areas  
24 of analysis that we needed to perform. We got back together  
25 and we discussed how an inability or a lack of access to the

1 model prohibited a dominant portion of that analysis. Went  
2 forward, I described to you how we have on the Sprint campus a  
3 technology called the white board. It's called the smart  
4 board. And I described to you how I met with my staff on a  
5 regular basis two to three times a week, and Christi would pull  
6 up on the white board for myself and my staff to view. And  
7 what I basically told you is I didn't hold the mouse, but that  
8 I was involved with it every step of the way.

9 I was able to watch Ms. Londerholm run it on this  
10 technology, this smart board. I was able to see her reference  
11 the tables that we were discussing where the input values were,  
12 where they appeared. So on and so forth.

13 Q And what you told me was you had never personally run  
14 the BACE Model, correct?

15 A Yes, I told you that and everything else that I have  
16 shared here.

17 Q Let's look at precisely what you told me on Page 109  
18 of your deposition when I had asked you if you were qualified  
19 to run the BACE Model, and down on Line 12, beginning on Line  
20 12 --

21 A Sir, could you give me a chance to get to the page,  
22 please?

23 Q Absolutely.

24 A I'm on Page 109.

25 Q Okay. My question beginning at Line 1 was, "Are you

1 qualified --" well, actually flip back to Page 108. Let's make  
2 sure we get all of this in context. On Page 108, Line 19, I  
3 asked you, "And you have personally run the BACE Model?" Your  
4 answer --

5 MR. PHILLIPS: Mr. Chairman, I'm going to object,  
6 because I think this question has already been asked and  
7 answered. The witness said on the stand that he did not  
8 personally run the model, that he conducted tests with his  
9 staff of 28 people to run the model. I don't see what going  
10 through this belabored line of questioning is going to prove.

11 CHAIRMAN BAEZ: Mr. Shore, are you asking him -- are  
12 you pointing up to the deposition where he is inconsistent?

13 MR. SHORE: No, I was preparing to ask him about Page  
14 109, and I said let's put it in context. Let's flip back to  
15 108 so that our discussion on Page 109, something I'm going to  
16 ask him about next, is in context so that there wouldn't be any  
17 need for objections or anybody to be confused.

18 CHAIRMAN BAEZ: I will allow it.

19 BY MR. SHORE:

20 Q Mr. Dickerson, on Page 108 when I asked you if you  
21 had personally run the model, your answer, "Have I personally  
22 run it?" And I asked you, "I said have you personally run it.  
23 Have you not?" Your answer, "No." And you sat there and  
24 watched Christi -- well, I knew I couldn't get through this  
25 without doing this -- Londerholm run it. And you had looked at

1 the projected screen. "I did not hold the mouse." That was  
2 the end of your answer, correct?

3 A Not really the whole context. Let's continue to read  
4 on Page 109 there.

5 Q That's great.

6 A It says, "It is totally unnecessary, because I've got  
7 an excellent staff. As the director of cost support, my time  
8 is much more wisely spent interacting with my staff and  
9 directing my staff as to the areas of analysis that I think are  
10 necessary. Interacting with them on what their analysis has  
11 brought forward, interacting with them on assigning discovery,  
12 looking at discovery, writing my testimony, so on and so forth.

13 For me to sink down to the level of effort to run the  
14 model would be grossly inefficient use of my time versus all  
15 the tasks that a director of cost support is expected to  
16 perform. So I leave that to the capable hands of my staff. I  
17 have watched them run the model. I have read the  
18 documentation. I have seen it run in Wizard format. I have  
19 seen it run in manual form. I am familiar with the discovery  
20 responses I have sponsored. I have read all the testimony and  
21 I am very familiar with the exhibits and analysis that I  
22 present."

23 Q That was the end of your answer that you gave me at  
24 your deposition?

25 A No, you continued on.



1 MR. SHORE: You know what, fool me once, Mr.  
2 Dickerson. I don't have any further questions.

3 CHAIRMAN BAEZ: A wise move. Mr. Chapkis, no  
4 questions?

5 MR. CHAPKIS: No questions.

6 CHAIRMAN BAEZ: Staff has no questions?

7 MR. ROJAS: No questions.

8 CHAIRMAN BAEZ: I guess that does it, Mr. Dickerson.  
9 Thank you. I'm sorry, do the Commissioners have any questions?  
10 I have to remember that. I'm sorry.

11 COMMISSIONER DEASON: I'm still unsure whether he ran  
12 the model or not.

13 MR. SHORE: His counsel said that was no.

14 CHAIRMAN BAEZ: I'm sure after the hearing he would  
15 love to talk to you about that. Thank you, Mr. Dickerson.

16 WITNESS DICKERSON: Thank you.

17 CHAIRMAN BAEZ: Appreciate it. We are on redirect.  
18 Staff, do you have cross?

19 MR. SUSAC: Just of Dr. Bryant.

20 CHAIRMAN BAEZ: Oh, that's right. I'm sorry. I keep  
21 forgetting that you all have reserved time. Mr. Susac, who do  
22 you want up first?

23 MR. SUSAC: Dr. Bryant.

24 CHAIRMAN BAEZ: Okay.

25 MR. SUSAC: Thank you.

1 MARK BRYANT

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

4 CROSS EXAMINATION

5 BY MR. SUSAC:

6 Q Good afternoon, Dr. Bryant.

7 A Good afternoon.

8 Q I just have a few quick questions. My first question  
9 is does the FCC's guidance in the Triennial Review Order  
10 suggest that the wire center is the most appropriate starting  
11 point for an impairment analysis?

12 A Well, it certainly gives strong indications that it  
13 believes that they are important aspects of the CLECs' entry  
14 decision that occur at the wire center. And I would refer you  
15 that there is a long discussion in the TRO beginning about  
16 Paragraph 472 where they discuss a lot of the studies that the  
17 parties in the TRO proceeding submitted that basically had  
18 attempted to present a picture of the profitability of the  
19 CLECs attempting to provide service using UNE-L.

20 And they discuss studies submitted by AT&T, and MCI,  
21 and by SBC and BellSouth, amongst others, and specifically  
22 refer to a study that BellSouth presented that looked at the  
23 profitability of CLECs using UNE-L in a range of different wire  
24 center sizes. In fact, that same study concluded that a CLEC  
25 with 5 percent market share would not be profitable in wire

1 centers with less than 5,000 lines. So there is a long  
2 extended discussion.

3 They kind of conclude that by saying that we observe  
4 that all of the studies mentioned, including the BOC studies  
5 suggest that it would be uneconomic for a competing carrier to  
6 serve customers in smaller wire centers. All the studies found  
7 that in such wire centers entry would be much more expensive  
8 for the CLEC than for the incumbent, or simply would be  
9 uneconomic. And this, again, is in the context of their  
10 discussion of what they mean by granularity.

11 And when you finally get down to paragraph -- well, I  
12 kind of got my stuff out of order here -- but, 485, where they  
13 finally say what they mean by granularity, one of the things  
14 that they point to is the variation in cost among wire centers  
15 and the variation in revenues that can occur from wire center  
16 to wire center. So, yes, I think there is quite a bit of  
17 direction in the TRO that the Commission, the state commissions  
18 need to be looking at those kind of cost differences.

19 Q Okay. I appreciate the explanation, but to the  
20 extent you can answer with a yes or no, in light of the time  
21 and the hour, these are objective straightforward questions.  
22 And that was a yes, correct?

23 A Yes, it was emphatically a yes.

24 Q Okay. So if a single wire center is the starting  
25 point, does your recommendation of using a single wire center

1 as a market definition view a wire center as an ending point,  
2 as well?

3 A Well, I think a market definition is a market  
4 definition, and you need to decide what the market is that you  
5 are going to look at. And, yes, I would say that if you have  
6 chosen a wire center as your market definition that is both the  
7 beginning and the end of the analysis.

8 Q Okay. And that was a yes, again?

9 A Yes.

10 Q Do you refer to a wire center as a basic building  
11 block for the market definition?

12 A I don't know that I ever used those specific words,  
13 but certainly I think you could look below the wire center  
14 level, because there are cost differences that occur even  
15 there.

16 Q Okay. Could you look to your -- do you have your  
17 direct testimony with you today?

18 A Yes, I do.

19 Q On Page 2, Lines 15 through 19. And actually if you  
20 want to skip down to Line 19, I think it reads, "The use of a  
21 wire center as the basic building block for --"

22 A I did indeed say that, yes.

23 Q Okay. If it is a basic building block, doesn't that  
24 imply that more would be added?

25 A Not necessarily, no.

1 Q And why is that?

2 A Well, I think I have stated pretty unequivocally in  
3 my testimony that I believe the wire center is the appropriate  
4 market definition.

5 Q And you agree with the FCC that it is the starting  
6 point of every market definition, is that correct?

7 A I don't believe the FCC specified that there was a  
8 starting point. They indicated that there were cost  
9 differences that exist at the wire center level.

10 Q But in your direct testimony at Line 16 you state  
11 that the FCC guidelines in its Triennial Review Order all  
12 suggest that wire center is the most appropriate starting  
13 point, is that correct?

14 A You caught me, again. There are a lot of words in  
15 here, and I had forgotten that I had said that, yes.

16 Q Okay. And, once again, does the FCC say that it is  
17 the ending point as well as the starting point?

18 A I don't know -- well, the FCC says the ending point  
19 is the entire state. It can't be larger than the state.

20 Q Okay. Let me switch gears on you. Would you expect  
21 self-providing competitive carriers, if any, to be located in  
22 metropolitan areas?

23 A I think they are most likely to be located where  
24 there is the largest concentration of customers that they  
25 believe they can serve, and that may occur in an urban area, it

1 might not.

2 Q So is that a yes or --

3 A It's a qualified yes.

4 Q A qualified yes. In your opinion, would grouping  
5 contiguous wire centers in urban and suburban areas of  
6 metropolitan areas provide sufficient economies of scope and  
7 scale?

8 A No, I believe my opinion is that that kind of  
9 grouping greatly exceeds any kind of relevant economies of  
10 scale. The real economies of scale that are of concern occur  
11 at the wire center level.

12 Q All right. Well, if a market is defined as an  
13 aggregation of wire centers, would the cost of entering that  
14 market be the sum of costs of entering each wire center within  
15 that market?

16 A If the market is defined as an aggregation of wire  
17 centers, then, yes, the sum of the profitability of some wire  
18 centers and perhaps the unprofitability of other wire centers,  
19 the netting of that would be the profitability of entering that  
20 entire market as you have defined it.

21 Q So by that rationale wouldn't a CLEC still continue  
22 to examine the cost of entering a market on a wire-by-wire  
23 center basis?

24 A My testimony is that, yes, a CLEC is going to look at  
25 each wire center.

1 MR. SUSAC: Then I have no further questions, Chair.

2 CHAIRMAN BAEZ: Thank you, Mr. Susac. You have  
3 another witness.

4 MR. SUSAC: Could I ask one more question?

5 CHAIRMAN BAEZ: Sure, yes.

6 BY MR. SUSAC:

7 Q I'm sorry to do that, Dr. Bryant. Is it your  
8 understanding that MCI is offering residential service via  
9 BellSouth's UNE-P only in UNE Zones 1 and 2 in Florida?

10 A I believe that is correct, yes.

11 Q And is MCI marketing residential service over larger  
12 areas than those UNE zones, such as a LATA or an MSA?

13 A I'm not sure I completely follow the question. I  
14 mean, MCI markets nationally. I mean, you see ads for The  
15 Neighborhood on CNN, for example. Whether it actually markets  
16 in the sense of calls people on the phone, or provides service,  
17 then that is restricted to the areas where it is available here  
18 in Florida, for example.

19 Q Okay. And that was a yes, as well?

20 A Yes.

21 Q So if MCI is providing UNE-P based services only in  
22 UNE Zones 1 and 2, why shouldn't this Commission consider the  
23 same zones in defining the market in this proceeding?

24 A Well, that takes in an awful lot of territory. It is  
25 basically my whole testimony, which is that today using UNE-P a

1 CLEC is free to enter the market on a very wide scale basis,  
2 and it can effectively market to a LATA, an MSA, an entire  
3 state, and indeed nationwide. If you change the rules of the  
4 game and require CLECs to use UNE-L instead to provide their  
5 service, their situation becomes a lot more complicated.

6 And I believe that Mr. Gillan was talking about some  
7 of that double bind that the CLEC gets in earlier today. It  
8 has to make decisions whether to deploy facilities on a wire  
9 center by wire center basis, and yet it is trying to reach the  
10 mass market which needs to be marketed to on a LATA-wide and  
11 MSA-wide, a statewide, a nationwide basis.

12 So it is kind of a Catch-22 for the CLEC. It has to  
13 determine how many of those wire centers it is able to  
14 serve, and if it can't serve enough of them profitably, then it  
15 can't also effectively market on a widespread basis.

16 MR. SUSAC: Thank you, Chairman. That's all I have.

17 CHAIRMAN BAEZ: Thank you, Mr. Susac. Thank you, Dr.  
18 Bryant. And next we have Witness Lichtenberg.

19 MR. SUSAC: Yes.

20 CHAIRMAN BAEZ: Okay.

21 SHERRY LICHTENBERG

22 was called as a witness on behalf of MCI, and having been duly  
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SUSAC:



1 Q Good afternoon, Ms. Lichtenberg.

2 A Good afternoon.

3 Q Ms. Lichtenberg, in your testimony you created  
4 scenarios and discussed whether a customer was an enterprise  
5 customer or a mass market customer, is that correct?

6 A I'm sorry, could you tell me where in my testimony?

7 Q It's just a general question. If you don't know the  
8 answer, I can strike and we can move on.

9 A Thank you. I don't remember doing that.

10 Q All right. Actually, let me get out your direct  
11 testimony. I believe it is Page 22.

12 A Page 22 of my direct discusses consumers and churn.

13 Q Actually, in light of the time, let me just skip  
14 towards -- does MCI have voice capable switches in Florida that  
15 have all appropriate features and functions to provide  
16 residential service?

17 A No.

18 Q Is MCI currently using any switches to provide  
19 residential service in BellSouth's Florida territory?

20 A No.

21 Q Ms. Lichtenberg, are you familiar with the web page  
22 MCI Advantage?

23 A Yes, I am.

24 Q Okay. In the MCI web page titled MCI Advantage to  
25 small business customers, MCI states that this service replaces

1 your existing analog local business service, is that correct?

2 A I'm actually looking -- I assume you are asking about  
3 the exhibit that we have provided as a late-filed exhibit?

4 Q Yes. I actually have a printout here that I can give  
5 you, as well.

6 A The Advantage product requires a T-1, that is what we  
7 have been calling a DS-1 high speed digital line in order to --  
8 to the customer's premise that then allows them to have local  
9 service. It is not provided via an unbundled loop.

10 Q But you market that towards small business markets,  
11 correct?

12 A We market that to people who would like to buy T-1  
13 level digital service. It is not part of the MCI small  
14 business Business Complete offering.

15 Q Can you answer with a yes or no. Just for  
16 clarification, does MCI market small business customers through  
17 this web page?

18 A Yes, but not with the Advantage product.

19 Q Okay. And isn't it true that some small businesses  
20 use DS-0 lines?

21 A I'm sorry, I didn't hear you.

22 Q Isn't it true that some small businesses use DS-0  
23 lines?

24 A DS-0 or DS-L?

25 Q DS-0, zero.

1           A     DS-0. Some small businesses do have a very small  
2 number of DS-0 lines.

3           Q     So is it accurate to say that you are competing with  
4 DS-0 by switching them to DS-1 lines through this?

5           A     No, that is not accurate. A customer who would want  
6 to have the MCI Advantage would need to look at his own  
7 financials to decide whether the MCI Advantage offer is worth  
8 buying a T-1.

9           Q     All right. You state -- not you, but MCI states in  
10 its web page that this is available in 90 major metropolitan  
11 service areas. My question is are any of those service areas  
12 in Florida?

13          A     I believe the MCI Advantage is available in certain  
14 places in Florida.

15          Q     And is this quality of service comparable to voice  
16 service?

17          A     Not really. The MCI Advantage does not provide 911  
18 or individual telephone numbers other than behind generally the  
19 customer's PBX. This is a data service, essentially a digital  
20 service where a T-1 line is interfaced to the customer.

21          Q     Right. But my question was just voice quality. Is  
22 it comparable to voice quality service?

23          A     If you mean is the transmission standard the same as  
24 a POTS line? It is a packetized service, so it may have some  
25 loss that you wouldn't see in a standard analog POTS line.

1           Q     On Page 3 of 6, and I can give you a printout of the  
2 web page if you would like, it says quality of service.  
3 Beneath it says the benefits of this solution include, and the  
4 first one listed is excellent voice quality for every call. Is  
5 that correct?

6           A     I don't have it in front of me, but I will certainly  
7 accept your reading.

8           MR. SUSAC: Okay. I have no further questions,  
9 Chair.

10          CHAIRMAN BAEZ: Thank you, Mr. Susac. Commissioner  
11 Davidson.

12          COMMISSIONER DAVIDSON: Just a couple of questions.  
13 Hello, Ms. Lichtenberg.

14          MS. LICHTENBERG: Good afternoon.

15          COMMISSIONER DAVIDSON: How much has MCI agreed to  
16 pay in settlement of the fraud claims made against it?

17          MS. LICHTENBERG: I'm sorry?

18          COMMISSIONER DAVIDSON: How much has MCI agreed to  
19 pay in settlement of the fraud claims made against it?

20          MS. LICHTENBERG: I do not know.

21          COMMISSIONER DAVIDSON: Is it accurate to say that it  
22 is 500 million?

23          MS. LICHTENBERG: I do not know.

24          COMMISSIONER DAVIDSON: Do you have any estimate?

25          MS. LICHTENBERG: I do not know. I don't --

1 COMMISSIONER DAVIDSON: You have no idea of how much  
2 MCI has agreed to pay, no idea?

3 MS. LICHTENBERG: No, sir.

4 COMMISSIONER DAVIDSON: Is it accurate to state that  
5 whatever that amount is will no longer be available for MCI to  
6 invest in actual facilities in the State of Florida?

7 MS. LICHTENBERG: I assume that money that is spent  
8 is spent.

9 COMMISSIONER DAVIDSON: Thank you.

10 CHAIRMAN BAEZ: Commissioners, any other questions?  
11 Thank you, Ms. Lichtenberg. You don't have any more witnesses?

12 MR. ROJAS: We have Mr. Gillan.

13 CHAIRMAN BAEZ: Well, Mr. Gillan, of course.

14 MR. ROJAS: That is our last witness. Are you ready  
15 to begin, Mr. Gillan?

16 MR. GILLAN: Yes, I'm sorry.

17 JOE GILLAN

18 was called as a witness on behalf of Florida Competitive  
19 Carriers Association, and having been duly sworn, testified as  
20 follows:

21 CROSS EXAMINATION

22 BY MR. ROJAS:

23 Q Now, if I understand correctly, in your response to  
24 staff's Interrogatory 18A, you defined a method of entry as  
25 critical to competition --

1           A     Excuse me, the one set of documents I do not have  
2 with me is the staff interrogatories. If you could give us a  
3 moment.

4           Q     Definitely.

5           MS. KAUFMAN: Mr. Rojas, do you happen to have an  
6 extra copy? It might take more than a moment to dig it out of  
7 all the paper.

8           MR. ROJAS: I think that what is we are working on  
9 right now.

10          MS. KAUFMAN: Thank you.

11          MR. ROJAS: I am going to skip ahead. We will come  
12 back to that.

13 BY MR. ROJAS:

14          Q     Is it your understanding that AT&T is offering  
15 residential service via BellSouth's UNE-P only in UNE Zones 1  
16 and 2 in Florida?

17          A     I don't know. I know that there is UNE-P competition  
18 in all wire centers in Florida, and if you look at the exhibit  
19 to my testimony that mapped it out, it spikes and goes up and  
20 down, but there is no pronounced bias towards the urban areas  
21 versus the smaller areas. So as a market entry strategy it is  
22 producing results across the state, but whether AT&T, the  
23 individual carrier, sells service everywhere or not, I do not  
24 know.

25          Q     Would you accept that subject to check?

1 A Yes.

2 Q Is AT&T marketing residential service over larger  
3 areas than these zones, and in these zones I am referring to  
4 UNE Zones 1 and 2?

5 A Based on your representation to me that they are not,  
6 then the answer is no. But I am in the awkward position of  
7 answering your question with the information you provided me in  
8 the previous question.

9 Q Given that AT&T is providing UNE-P based services  
10 only in UNE Zones 1 and 2, why shouldn't this Commission  
11 consider these same zones in defining the market in this  
12 proceeding?

13 A Because I don't think AT&T defines the market  
14 unilaterally. I think you have to look at the entry pattern of  
15 this strategy overall, and that entry strategy overall does not  
16 appear to have a Zone 1, Zone 2, Zone 3 type of distribution.

17 In fact, based on the analysis I did earlier for my  
18 presentation, AT&T and MCI and Sprint collectively have only  
19 about 25 percent of the UNE-P lines. So I would think it would  
20 be inappropriate for you to try and define a marketplace based  
21 on the actions of a single carrier that finds itself in the  
22 minority of the market, as opposed to the actions of the market  
23 competitors overall, which have clearly brought competitive  
24 benefits across all three zones.

25 Q Thank you. We are going to skip ahead of the

1 interrogatory. Now, you testified in your deposition on Pages  
2 58 and 59 -- do you have those available?

3 A Yes.

4 Q You testified there that whether an entry method  
5 produces competition is measured by the market share or number  
6 of lines, correct? And I will let you turn there.

7 A Is it on 58 or 59, do you know?

8 Q I believe it is on both pages.

9 A Okay.

10 Q It carries over. It starts at the bottom of 58 and  
11 carries over onto 59.

12 A Yes, I see that. I'm sorry, what was your question?

13 Q I was just checking that you testified that entry  
14 method produces competition -- whether an entry method produces  
15 competition is measured by the market share or number of lines?

16 A Yes, that is one way to do it. As the deposition  
17 indicates, I indicated it was the simplest way to do it.

18 Q And I would like to refer you now to staff's  
19 Interrogatories 12C and E. Do you have those available?

20 MS. KAUFMAN: I apologize, Mr. Rojas. I didn't  
21 realize we were going to be going back to the discovery.

22 MR. ROJAS: Staff is going to be circulating a copy.

23 MS. KAUFMAN: Thank you.

24 WITNESS GILLAN: Thank you.

25 BY MR. ROJAS:



1           Q     Now, in regards to what I just handed you, those  
2 responses indicate that through December 2001 more lines were  
3 served using UNE-L, correct?

4           A     Yes.

5           Q     And that changed, though, didn't it, in 2002?

6           A     Yes.

7           Q     So the most profitable entry strategy can change over  
8 time, can't it?

9           A     Well, the answer to that is yes, but these facts  
10 don't have anything to do with that answer being yes. All this  
11 shows is that UNE-L was made available before UNE-P was made  
12 available, and for a period of time when UNE-P was not  
13 available, UNE-L was the only entry strategy growing. But it  
14 doesn't tell us anything about the relative profitability.

15                   Moreover, there is nothing in this data, and it is  
16 kind of an important problem that you need to understand, there  
17 is nothing in this data that allows you to look at mass market  
18 separate from the enterprise market. The UNE-L data collected  
19 by the FCC merges both together. The UNE-P data in virtually  
20 every state in the country is directly measuring mass market  
21 competition because it is almost entirely analog loops sold to  
22 mass market customers. The UNE-L data, however, reflects the  
23 mix, and you can't make comparisons between them because of the  
24 fact that they are measuring competition in completely  
25 different customer segments.

1 Q Thank you. Earlier today, Mr. Shore posed a question  
2 to Mr. Turner. I'm curious whether you believe that a cost  
3 disadvantage by itself is a sufficient basis for finding  
4 impairment in a market?

5 A If it is a significant enough cost disadvantage.  
6 However, maybe I missed something. I wasn't aware that Mr.  
7 Turner was crossed today.

8 CHAIRMAN BAEZ: I think that was Mr. Wood.

9 MR. ROJAS: Mr. Wood.

10 BY MR. ROJAS:

11 Q Could you repeat your answer for me?

12 A Yes, it can be an impairment if it is a material cost  
13 disadvantage.

14 Q How significant would that cost disadvantage be if  
15 entry were still otherwise technically and economically  
16 feasible?

17 A I'm sorry, I'm not sure I understand in that question  
18 what economically feasible would mean.

19 Q Well, what you are saying is that it would be a cost  
20 disadvantage if it was significant enough. And if all other  
21 technical and economic bases are feasible, I'm saying how  
22 significant would the disadvantage have to be?

23 A Well, I think as I indicated in my testimony, it  
24 would be a cost disadvantage that would make a material  
25 reduction in competition. I realize, you know, there is no

1 magic percentages here or formula that I can offer you. But,  
2 again, I think in this instance the disadvantages that are  
3 being discussed are so substantial that we don't have to wonder  
4 where the magic percentage is.

5 Q I'm going to change gears slightly. I'm not sure I  
6 understood something you said earlier. You're not testifying  
7 that it is impossible for a facilities-based provider using  
8 UNE-L to economically serve mass market customers in a specific  
9 market, are you?

10 A Impossible is such a draconian concept. No, I don't  
11 think I'm testifying that it is impossible for there to be some  
12 commercially insignificant level of competition from that entry  
13 strategy. And perhaps in some markets you might get more than  
14 others. I am testifying that there are material impairments  
15 that are addressed by access to unbundled local switching such  
16 that when unbundled local switching is available in any market,  
17 geographic market, you have a dramatic and material change in  
18 competitive conditions, and that that demonstrates among other  
19 things, that there is an impairment.

20 Q I would like to refer you now to your direct  
21 testimony, Page 21. And just let me know when you are there.

22 A I'm there, I'm sorry.

23 Q And I'm going to refer you to Lines 5 through 7.

24 A Yes.

25 Q Now, I believe here that you testify that economies

1 of scale and scope are cost consequences that a new entrant  
2 must overcome. I think you also indicate that scale economies  
3 pertaining just to the beginning stages of entry are not an  
4 appropriate factor in the unbundling analysis, is this correct?

5 A Sort of. There is a line -- there is a relatively  
6 short discussion in the USTA decision that sort of kicked off  
7 this process where the court said that a cost disadvantage that  
8 any entrant in any industry would experience would not be  
9 relevant for an impairment analysis. So, that statement means  
10 that from the court's perspective which we must follow, that  
11 there is some start-up cost that any entrant in any industry  
12 would face that you don't consider.

13 Now, quite frankly, I don't find that guidance  
14 particularly helpful, because, you know, any entrant in any  
15 industry seems to be sort of a vague discussion of what type of  
16 costs you wouldn't consider. Certainly the start-up costs for  
17 entrants in this industry are substantial and unique to this  
18 industry and in many ways the product of the way the industry  
19 evolved as a monopoly and is only in its later stages  
20 attempting to have competition introduced.

21 Q Can I refer you now to your Exhibit JPG-9?

22 A Yes.

23 Q Could you identify for me which companies on this  
24 list would qualify under your definition of a new entrant?

25 A All of them.

1 Q Okay. Thank you. Now, you will agree with me, won't  
2 you, that not all carriers provide service statewide, correct?

3 A That is correct.

4 Q And by virtue of that fact the customers' choice of  
5 carriers will tend to vary according to the geographic area in  
6 which the customer resides, correct?

7 A To some degree, yes.

8 Q Now, you have indicated that you think the Commission  
9 should consider switches that serve more than 80 to 90 percent  
10 enterprise loops as enterprise switches, correct?

11 A Yes. That is what the FCC did and that is what I  
12 recommend that this Commission do.

13 Q Do you think switches serving lesser percentages of  
14 enterprise loops could also be considered enterprise switches?

15 A Yes, it's possible. I mean, one of the things  
16 that -- one of the pieces of information we don't really have  
17 in front of us very well here, but which I think would be  
18 relevant if we ever get to the -- I mean, right now these are  
19 not close calls, but one of the things you need to look at is  
20 what is happening through time. If a carrier has some  
21 percentage, any percentage, let's say 50 percent of its switch  
22 is mass market loops, but it has ceased to offer that service,  
23 is no longer marketing, is no longer signing up customers, and  
24 is effectively abandoning that customer segment and moving on,  
25 there is clearly going to be some period of time where the

1 utilization on the switch doesn't reflect its current business  
2 activity. So in a situation like that you would have to take  
3 that factor into account.

4 But as a general -- you know, that is why it is  
5 important to not try and lock this into a hard and fast rule,  
6 because what you are trying to do is capture what is the  
7 essence of this company.

8 Q All right. Let me pose a hypothetical, then.  
9 Consider a new entrant that has a switch with a capacity of  
10 5,000 lines. That carrier is marketing to both enterprise and  
11 mass market customers. At present the switch is serving 500  
12 enterprise customers and 50 mass market customers. Is this an  
13 enterprise switch?

14 A All right. It has 500 voice grade equivalent  
15 enterprise lines?

16 Q It has a capacity of 5,000 lines and at present the  
17 switch is serving 500 enterprise customers and 50 mass market  
18 customers.

19 A Okay. The problem I have is that the calculation  
20 that the FCC used is based on voice grade equivalent capacity.

21 Q Let's assume voice grade.

22 A Okay. So it's 500 voice grade equivalent enterprise,  
23 50 voice grade equivalent mass market.

24 Q Yes.

25 A Not having a calculator with me, that looks like it

1 is 90 percent enterprise, a little over 90 percent enterprise,  
2 so that would be enterprise. Knowing that fact alone, that  
3 switch would be enterprise.

4 Q If you will just give me a moment. Okay. So even  
5 though we are only serving 550 customers total, and there is a  
6 capacity of 5,000 lines, only 10 percent of the switch capacity  
7 is currently serving enterprise customers, correct?

8 A Yes, and only one percent of the switch capacity is  
9 serving mass market lines.

10 Q But the switch is being utilized to serve mass market  
11 customers and is capable of being used to serve more, correct?

12 A In your hypothetical that is true, but in a trigger  
13 analysis we are not talking about what is it capable of doing,  
14 we are talking about what is it doing. And let's be honest  
15 here, when you look at the companies that are being named here,  
16 it's not a question of they are marketing to both, really, it's  
17 a question of they are serving the enterprise market and as a  
18 consequence of that have some mass market lines because  
19 customers are not perfectly one thing or the other.

20 Q Now, let's continue with the same hypothetical.  
21 Assume that for whatever reason the carrier starts to pick up  
22 mass market customers at a greater rate than it does enterprise  
23 customers. At what point does the switch cease being an  
24 enterprise switch?

25 A I apologize, but I'm so bad at these hypotheticals,

1 because the framework I'm recommending and the framework in the  
2 TRO is one of judgment applied to specific facts. It could be  
3 at some point in that type of hypothetical unrelated to the  
4 percentage that you view it as a mass market switch because the  
5 carrier itself is aggressively trying to acquire mass market  
6 lines and that is the thing you observe.

7           You have to apply some judgment to the facts at hand  
8 in addition to this relative weighting. What we know from the  
9 FCC is it looked out at the enterprise market, saw enterprise  
10 switches with mass market lines, recognized that didn't make  
11 them mass market switches, and provided us some guidance. It  
12 doesn't mean this Commission isn't supposed to use judgment.

13           Q     Well, in the hypothetical we said the carrier is  
14 marketing to both enterprise and mass market, and all of a  
15 sudden they begin to aggressively seek mass market customers  
16 even though they are serving more enterprise customers. At  
17 what point does the switch cease to be an enterprise switch?

18           A     I don't know.

19           Q     Thank you. You have also suggested that this  
20 Commission review the types of unbundled loops provisioned to  
21 the CLEC switch more recently to determine if the CLEC is  
22 actively serving the mass market, correct?

23           A     Yes, that goes to the time series information I was  
24 referring to. It doesn't appear like we need to actually do  
25 that here because the facts we have allow us to figure out what



1 companies are mass market and which ones are enterprise. But,  
2 in some more complicated analysis at some point in the future  
3 when it is a closer judgment call, that is precisely the type  
4 of information that I would recommend the Commission look at to  
5 understand what is the trend in the type of lines these  
6 companies are serving.

7 Q Now, when you say more recently, do you mean that the  
8 Commission should examine only the growth in the last six  
9 months?

10 A Yes, that would be a good period of time over which  
11 to judge the company's most recent behavior, six months, nine  
12 months.

13 Q Wouldn't data from the most recent six months have a  
14 greater chance of being skewed by random, natural, or seasonal  
15 fluctuations in the market?

16 A No. We are looking at what type of fundamental  
17 business activity these carriers are engaged in, and while it  
18 is true there are some seasonal fluctuations in things, it is  
19 not going to mask what business the carrier is in.

20 Q Couldn't the issuance alone of the TRO itself and the  
21 fallout from it skew the data?

22 A I don't see how.

23 Q If a CLEC has purchased an analog switch and is  
24 serving a limited number of analog loops to mass market  
25 customers, is that CLEC actively providing service to those

1 particular customers that it is, in fact, currently serving?

2 A No, I don't think that the fact that the circuit by  
3 itself is still up and running is really telling you whether  
4 they are actively providing service. It goes to whether they  
5 are actively competing and acquiring customers and lines.  
6 There are -- and as the affidavits show, there are instances  
7 where companies still serve loops that they acquired from a  
8 different era of their business plan.

9 When they abandoned the business plan, they didn't  
10 abandon the customers. They still have the loops and they are  
11 still serving those customers, but that is not their business  
12 anymore. And the purpose of this trigger is to figure out does  
13 the actual activity in the marketplace tell us there is  
14 impairment or does it tell us no barriers remain.

15 And obviously when a company abandons a business  
16 strategy and moves on to a different one, that is more likely  
17 to tell you that there is impairment than not impairment, and  
18 it would be inappropriate to consider the lines that they  
19 acquired in a legacy business strategy as somehow proving the  
20 opposite of what it actually proves. This is not a call for  
21 irrational results.

22 Q If a CLEC is serving or is capable of serving only a  
23 limited segment of mass market customers in a particular  
24 market, could this Commission define that portion of the market  
25 in which the CLEC is capable of serving mass market customers

1 as its own discreet market for purposes of its analysis?

2 A Well, the simple answer is yes, the Commission can do  
3 almost anything. But I think what you really want to ask me is  
4 does it make sense to do it that way, and I don't think so. I  
5 don't think you want to define markets based on what isolated  
6 CLECs do. I think you want to look at broad characterizations  
7 of how the market is being served and where customers are and  
8 then do your analysis based on that rather than trying to carve  
9 markets to conform to individual expectations like that.

10 MR. ROJAS: Staff has no further questions.

11 CHAIRMAN BAEZ: Thank you, Mr. Rojas. Commissioner  
12 Davidson, no questions? I think it officially concludes. You  
13 don't have any other witnesses that you are calling up, right?  
14 That officially concludes cross and we can move on to redirect.  
15 Let me take a poll here. Ms. Masterton, you have --

16 MS. MASTERTON: I have probably five minutes.

17 CHAIRMAN BAEZ: Five minutes.

18 MS. KAUFMAN: I'm just going to turn around. I think  
19 I only have about five minutes, too, but I just want to poll.

20 CHAIRMAN BAEZ: Okay. Mr. Hatch.

21 MR. HATCH: I'm about to find out.

22 CHAIRMAN BAEZ: You're about to find out. It's just  
23 whether we should take a break or just steam through if it's  
24 not a whole lot of time. No redirect?

25 MR. HATCH: We have no redirect.

1 CHAIRMAN BAEZ: Okay. Ms. McNulty.

2 MS. McNULTY: MCI has no redirect.

3 CHAIRMAN BAEZ: All right. So we are looking at ten  
4 minutes maybe, more or less. All right. Ms. Masterton, you  
5 spoke up first. Hold on. I'm sorry, since we have got Mr.  
6 Gillan up on the stand anyway, then perhaps we should do it  
7 that way.

8 MS. KAUFMAN: Whatever your pleasure. I think Mr.  
9 Gillan would probably appreciate that. And my redirect is very  
10 brief.

11 CHAIRMAN BAEZ: Hold on, Ms. Kaufman.

12 MR. CRUZ-BUSTILLO: Before you start, Mr. Chairman,  
13 Supra just waives redirect. I just wanted to put it on the  
14 record.

15 CHAIRMAN BAEZ: Thank you. Go ahead, Ms. Kaufman.

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

17 JOE GILLAN

18 was recalled as a witness on behalf of Florida Competitive  
19 Carriers Association, and having been duly sworn, testified as  
20 follows:

21 REDIRECT EXAMINATION

22 BY MS. KAUFMAN:

23 Q Mr. Gillan, do you remember this morning, I guess it  
24 was, that you were discussing with Mr. Lackey the situation  
25 with Orlando Telephone?

1           A     Yes.

2           Q     And Mr. Lackey referred you to a page or two from  
3 their website where you discussed the fact that their website  
4 provides that they serve minium -- they serve hospitality and  
5 business customers with a minimum of 15 lines?

6           A     Yes.

7           MS. KAUFMAN: Commissioners, I have some documents to  
8 pass out. These are already in the record, but just for ease.  
9 Just to speed this up, Commissioners, what I am handing you, as  
10 I said, are two documents that are already in the record. The  
11 longer document is Exhibit Number 95. We have called it by  
12 shorthand Tipton data summary. And the smaller document is a  
13 portion of Exhibit Number 8. I believe that is the BellSouth  
14 Confidential Stip-1. And Mr. Gillan and I are going to do this  
15 very carefully and not going to reveal any confidential  
16 information.

17 BY MS. KAUFMAN:

18          Q     Mr. Gillan, just as a brief bit of background, and  
19 very quickly can you tell us what your understanding is of  
20 Exhibit 95, what we have shorthanded the Tipton data summary?

21          A     Yes, this is the summary rollup of the information  
22 that BellSouth relied upon to claim that these companies  
23 satisfied the self-provisioning switch trigger. And just so  
24 the Commission can follow, it has the market designation, the  
25 CLLI code, the name of the CLEC, and then on the right-hand

1 side it has the number of lines at locations.

2 It's actually easier to think of it with these two  
3 columns reversed. The number of locations with that number of  
4 lines at it, that their records show these carriers are  
5 serving, so if you multiply those you get the total number of  
6 lines that they serve.

7 Q And the other document that was part of Exhibit  
8 Number 8, we have excerpted only the Orlando Telephone  
9 responses. Can you tell us what your understanding of this  
10 document is?

11 A This document is a copy of the discovery response  
12 from Orlando Telephone to a request made by BellSouth for  
13 information as to the number of lines, number of voice grade  
14 equivalents, actually that they serve.

15 MS. KAUFMAN: Commissioners, just so you can follow,  
16 on the shorter document I would direct you to the last page,  
17 which is Bates stamped 000231, and in the longer document we  
18 are only going to be looking at Pages 206 -- I'm sorry, 2006,  
19 2007, 2008, and we have highlighted the Orlando Telephone  
20 information. That is all we are going to be discussing, even  
21 though I know there is a lot of pages here.

22 BY MR. KAUFMAN:

23 Q Mr. Gillan, do you recall discussing with Mr. Lackey  
24 how you categorized Orlando Telephone and why you did it, can  
25 you explain through these documents?

1           A       Yes, we had characterized Orlando Telephone as a  
2 carrier, an enterprise carrier based on its website indicating  
3 that their business was to serve customers with 15 lines or  
4 more. Mr. Lackey challenged that by saying -- by pointing out  
5 that there was a link to another web page that presumably would  
6 give services for a smaller customer, and that Ms. Tipton  
7 showed that they were serving mass market customers.

8                   Even if one assumes that Ms. Tipton's data is 100  
9 percent reliable, and please understand that when you sign up  
10 customers to provide a digital service to you frequently end up  
11 also having to provide an analog line for a fax line or  
12 something else, or, you know, another location.

13                   If you were to go through on Page 2006, 2007, and  
14 2008 and add up all the lines that Orlando Telephone Company --  
15 all the, quote, mass market lines that BellSouth claims Orlando  
16 Telephone Company serves, you will get the number that is in  
17 the under right-hand corner of the first page of the other  
18 document.

19                   So, I'm going to direct you to just two numbers on  
20 the Orlando Telephone discovery response document. In the  
21 upper right-hand corner written in, that is the number of mass  
22 market lines that BellSouth claims this company serves. So  
23 assuming that it is 100 percent accurate, if you go to the last  
24 page, the answer to Question 3, and I will read to you the  
25 question, which is, "Provide the number of DS-0/voice grade

1 equivalent lines in use?" The answer to Number 3 tells you the  
2 total voice grade equivalent lines this company serves.

3 So, to compute the percentage of those lines that are  
4 mass market using BellSouth's data and assuming that it is 100  
5 percent accurate, you would take the handwritten number on the  
6 first page, divide it by the answer to Question 3, which is 1.4  
7 percent. Or said differently, this company's switch is serving  
8 lines 1.4 percent mass market, or 98.6 percent of the lines are  
9 enterprise. This is why we say this is an enterprise switch  
10 and clearly meets the standard used by the FCC and the one that  
11 we recommend here, as well. This company is not a  
12 self-provisioning switch trigger even applying BellSouth's  
13 data.

14 MS. KAUFMAN: That's all we have. Thank you.

15 CHAIRMAN BAEZ: Thank you, Ms. Kaufman, Mr. Gillan.  
16 Ms. Masterton.

17 MS. MASTERTON: Sprint would call Dr. Staihr to the  
18 stand.

19 BRIAN K. STAIHR  
20 was called as a witness on behalf of Sprint-Florida, Inc., and  
21 having been duly sworn, testified as follows:

22 REDIRECT EXAMINATION

23 BY MS. MASTERTON:

24 Q Dr. Staihr, do you recall that Mr. Shore asked you  
25 about Sprint's participation in the TRO proceedings in Nevada?



1 A Yes, I do.

2 Q Is Sprint recommending that the Nevada Commission use  
3 the same criteria in applying the trigger analysis as Sprint is  
4 recommending to the Florida Commission in this proceeding?

5 A Yes, we are recommending that they apply exactly the  
6 same criteria, the non de minimis, the enterprise switch, the  
7 serving a substantial portion, the actively serving. All the  
8 criteria we have discussed here we are asking the Nevada  
9 Commission to apply as they evaluate impairment.

10 Q Thank you. Can you explain why Sprint is challenging  
11 impairment in its Las Vegas market in Nevada but not in any of  
12 its Florida markets?

13 A We are challenging it there because the data  
14 demonstrates that it doesn't exist there. Nevada is the only  
15 area in the country that we have found the number of UNE-L  
16 exceeds the number of UNE-P and by more than two to one. If  
17 there is anyplace in the country that competitors are not  
18 impaired with UNE-L, it is Nevada, and the actual numbers  
19 demonstrate it.

20 MS. MASTERTON: That's all I have. Thank you, Dr.  
21 Staihr.

22 WITNESS STAIHR: Thank you.

23 CHAIRMAN BAEZ: Thank you, Dr. Staihr. Well, I guess  
24 that's it.

25 COMMISSIONER DAVIDSON: This week.

1           CHAIRMAN BAEZ: The only thing we have left is what I  
2 call the royal flush in Las Vegas terms. I'm holding -- I  
3 guess in this part of the case we have identified I'm showing  
4 Exhibits 105 through 117, and Exhibit 119. Are any of these  
5 exhibits -- with any of these exhibits do the sponsors intend  
6 on not offering it into the record? Is there any objection to  
7 the admission of these exhibits to the record?

8           MS. MASTERTON: I don't have an objection, but I just  
9 wanted to restate our agreement that for 119 that --

10          CHAIRMAN BAEZ: Exhibit 119 will constitute the  
11 complete order from the Ohio PUC.

12          MS. MASTERTON: Right. Thank you.

13          CHAIRMAN BAEZ: If there are no objections, Exhibits  
14 105 through 117 and Exhibit 119 will be admitted into the  
15 record. And I also note for the record that we are holding --  
16 I am holding off two late-filed exhibits. That will be Exhibit  
17 100, which was the one that Commissioner Jaber requested with  
18 the market share update and percentages. And then Exhibit 104,  
19 which I believe staff requested. And, Mr. Susac, if you can  
20 close the loop on those two late-filed. I know that one of  
21 them was by March 18th. I am assuming Commissioner Jaber's  
22 request that might work, as well.

23          MR. SUSAC: Will do.

24          CHAIRMAN BAEZ: Okay.

25          MS. KAUFMAN: Chairman Baez?

1 CHAIRMAN BAEZ: Yes, I'm sorry.

2 MS. KAUFMAN: I believe that on Exhibit 118 you had  
3 already ruled that that would not go into the record.

4 CHAIRMAN BAEZ: Exactly. That's why I left it out.

5 MS. KAUFMAN: I'm sorry, I thought you said through  
6 119.

7 CHAIRMAN BAEZ: No, and 119. Through 117 and Number  
8 119. 118 was disallowed.

9 (Exhibit Numbers 105 through 117 and Exhibit 119  
10 admitted into the record.)

11 CHAIRMAN BAEZ: Okay. I think there is nothing left  
12 for me to do than to thank you all, you guys. Everyone was  
13 great. Yes, Mr. Meza. You are interrupting my swan song here,  
14 Buddy.

15 MR. MEZA: I apologize. But in an abundance of  
16 caution, I just want to confirm that everything that we have  
17 presented in direct testimony and exhibits up until the  
18 previous days is in the record.

19 CHAIRMAN BAEZ: That is what I am showing by my  
20 count.

21 MR. MEZA: Thank you, sir.

22 CHAIRMAN BAEZ: And should it be otherwise, let it be  
23 that way right now. I mean, whatever we need to correct, you  
24 have me on the record saying it. So I don't know if that is  
25 enough to confirm or not, but it better be.

1 I want to thank you all on both sides of the issue.  
2 I want to thank the Commissioners for their participation.  
3 Staff has done an amazing job in preparing.

4 Mr. Susac, you had something to add before I set  
5 everyone free here?

6 MR. SUSAC: Yes. I'm sorry to spoil it. I'm sorry  
7 to come in --

8 CHAIRMAN BAEZ: No, I'm kidding. Come on, go ahead.

9 MR. SUSAC: Exhibit 12, did that move in over the --  
10 I think the objection was removed.

11 CHAIRMAN BAEZ: I'm showing that it did, but if  
12 someone wants to -- I'm showing that it was moved in. Speak  
13 now or forever hold your peace before we correct. All right.

14 MR. SUSAC: And Exhibit 118?

15 CHAIRMAN BAEZ: 118 was disallowed. I think we went  
16 over that.

17 MR. SUSAC: And then we have one last matter with a  
18 response to staff, and I will let Nancy speak on this.

19 CHAIRMAN BAEZ: All right. Ms. White, go ahead.

20 MS. WHITE: Yes. There was a response to staff, I  
21 think it was the 7th Production of Document Requests Number 95,  
22 that staff just received a copy of today. It is confidential,  
23 so we will be filing the confidential request on Monday. So  
24 that needs to be moved into Exhibit 8, which I think is  
25 BellSouth's Confidential Stip-1. And just reflect that the

1 answer to staff's 7th set of PODs, Number 95 will be in --

2 CHAIRMAN BAEZ: Well, we can let the record reflect  
3 that, although that is a mouthful.

4 MS. WHITE: I understand.

5 CHAIRMAN BAEZ: And just for my physical reference,  
6 does that cardboard -- are those the boxes?

7 MS. WHITE: No, no, no. This is something else  
8 completely.

9 CHAIRMAN BAEZ: Well, you know, you want something  
10 that you can touch. Let the record reflect that Exhibit 8 --

11 MS. KAUFMAN: Mr. Chairman.

12 CHAIRMAN BAEZ: Is this about something that I'm  
13 trying to finish up here?

14 MS. KAUFMAN: I am afraid it is.

15 CHAIRMAN BAEZ: Okay. Speak up.

16 MS. KAUFMAN: I just want to note that I don't know  
17 what Ms. White is referring to. We haven't seen it yet. So,  
18 you know, subject to check perhaps --

19 MS. WHITE: Subject to check is fine.

20 CHAIRMAN BAEZ: It's going to have to be subject to  
21 challenge. Let it show that your responses to Production of  
22 Documents -- is it 95 was the number?

23 MS. WHITE: Yes, it was Number 95. And I believe it  
24 was in the staff's 7th set of Production of Documents.

25 CHAIRMAN BAEZ: -- Production of Documents will be

1 included as part of BellSouth Confidential Stip-1, which is  
2 Exhibit 8 in the record.

3 MS. WHITE: Thank you.

4 CHAIRMAN BAEZ: Anyone else? All right. Ladies and  
5 gentlemen, school is out. I will see you next week. Safe  
6 trips.

7 (The hearing concluded at 4:15 p.m.)

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STATE OF FLORIDA       )  
  
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COUNTY OF LEON        )

CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 3rd day of March, 2004.



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JANE FAUROT, RPR  
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